OIG | OFFICE of the INSPECTOR GENERAL

Fact Sheet
February 16, 2021

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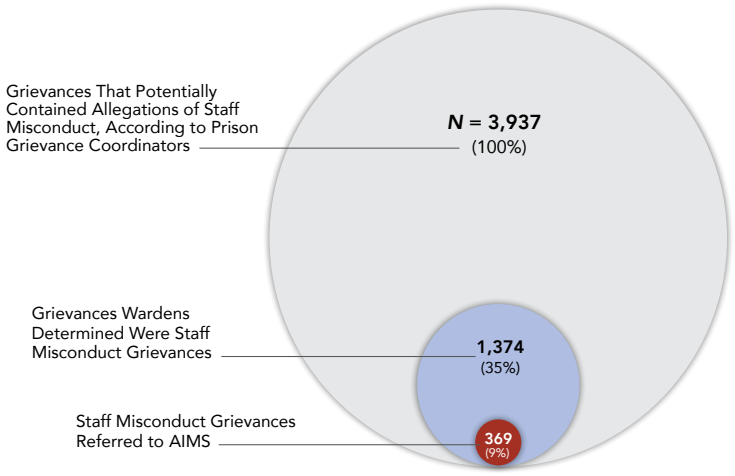
Independent
Prison Oversight

The California Department of Corrections and Rehabilitation: Its Recent Steps Meant to Improve the Handling of Incarcerated Persons' Allegations of Staff Misconduct Failed to Achieve Two Fundamental Objectives: Independence and Fairness; Despite Revising Its Regulatory Framework and Being Awarded Approximately $10 Million of Annual Funding, Its Process Remains Broken

The Office of the Inspector General is required to provide contemporaneous oversight of the California Department of Corrections and Rehabilitation's (the department) process for reviewing and investigating incarcerated persons' allegations of staff misconduct. In our January 2019 report *Special Review of Salinas Valley State Prison's Processing of Inmate Allegations of Staff Misconduct*, we concluded that Salinas Valley State Prison's handling of such allegations was inadequate, and that the lack of independence of the staff reviewing the allegations—their bias in favor of coworkers—contributed significantly to the inadequacy of their investigative efforts. We recommended the department overhaul its process statewide by adopting a regionalized staffing model to ensure that inquiries into staff misconduct allegations were not performed by staff embedded with those whose actions they were investigating. In response, the department requested and was awarded $9.8 million in annual funding to perform such inquiries through a new unit. The department also developed new regulations and procedures for handling incarcerated persons' grievances involving staff misconduct. This *Fact Sheet* presents highlights from our review of the department's new unit, called the Allegation Inquiry Management Section (AIMS), and of the department's new process for handling incarcerated persons' allegations of staff misconduct.

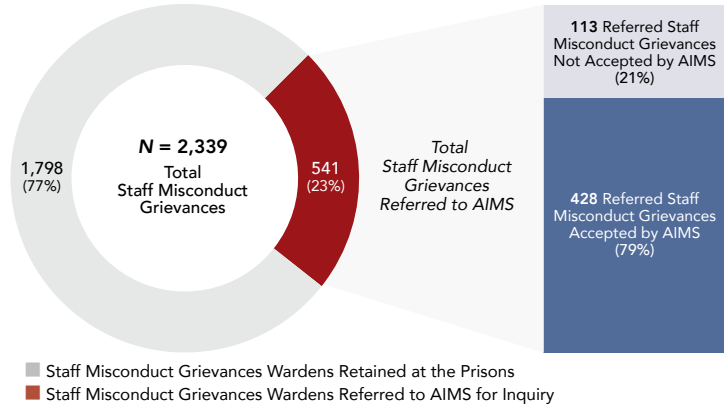
The Department's Identification and Routing of Grievances That Potentially Alleged Staff Misconduct During the Three-Month Period From June 1, 2020, Through August 31, 2020



Note: Prior to June 2020, the department did not track the number of grievances categorized as ***staff misconduct*** by grievance coordinators.

Source: The Office of the Inspector General's analysis of the California Department of Corrections and Rehabilitation's grievance data associated with its 35 prisons.

Wardens Referred Few Staff Misconduct Grievances to AIMS for Inquiry During the Five-Month Period From April 1, 2020, Through August 31, 2020



Source: The Office of the Inspector General's analysis of the California Department of Corrections and Rehabilitation's grievance data associated with its 35 prisons.

Prisons Handled the Vast Majority of Staff Misconduct Grievances Internally, Choosing to Refer Only a Small Percentage to AIMS

- During the five-month period from April 1, 2020, through August 31, 2020, incarcerated persons filed 50,412 grievances.
- Of those 50,412 grievances, wardens determined that only 2,339 alleged staff misconduct (4.6 percent).
- Of the 2,339 staff misconduct grievances, wardens referred 541 to AIMS (23 percent).
- Of the 541 grievances wardens referred to AIMS, the new unit accepted 428 (79 percent) and returned 113 (21 percent) without an inquiry.
- Grievances AIMS refused to accept included allegations of unreasonable use of force, threats and intimidation, dishonesty, neglect of duty, sexual misconduct, and retaliation, among other serious allegations.

Notable Results

- The department's budget proposal requesting $9.8 million in additional funding for AIMS estimated the new unit would perform 474 inquiries per month and 5,690 inquiries per year.
- In the first five months that AIMS was fully operational, it opened only 86 inquiries per month (18 percent of the projected volume), yet prisons received 468 staff misconduct grievances per month, nearly the volume the department projected AIMS could perform.
- By not referring to AIMS the 1,798 grievances wardens determined involved staff misconduct (77 percent), wardens undermined the purpose of the new unit, which was to create an independent means, outside the local prisons, to investigate possible misconduct committed by staff at the prison.

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The Department's Process for Determining Where to Route Staff Misconduct Grievances Is Overly Complex and Subjective, Diverts Staff Misconduct Grievances Away From the Allegation Inquiry Management Section, and Lacks Oversight

The department requires staff to make a complex series of subjective decisions to screen grievances before the grievances reach AIMS to be investigated. Each decision diverts more grievances from AIMS's independent investigative process, and all of these decisions occur without oversight.

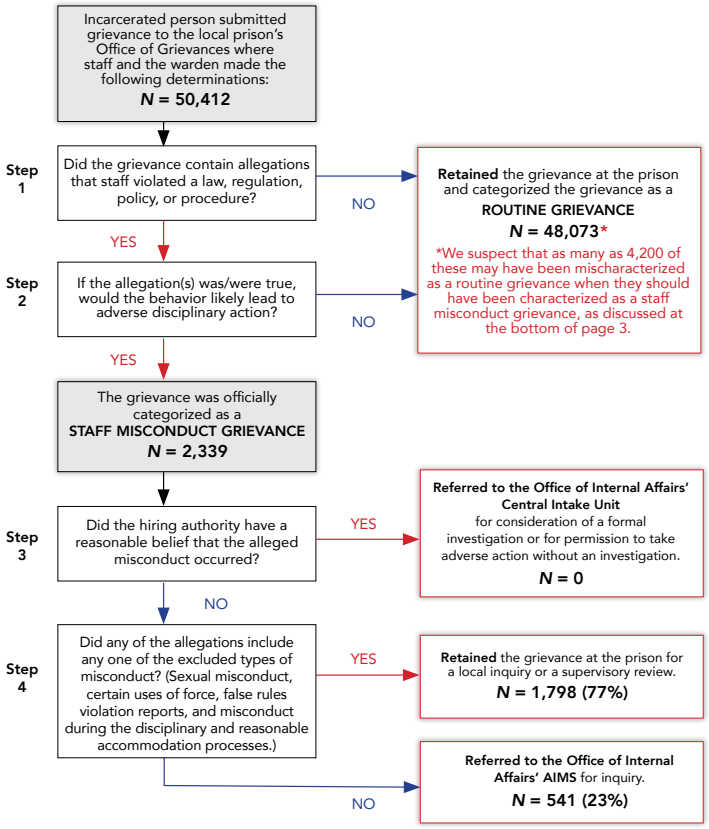
- At each prison, an analyst, the grievance coordinator, and the reviewing authority (usually the warden) successively apply their interpretations of the term ***staff misconduct*** to decide where to route incarcerated persons' grievances.
- Next, the warden decides, prior to any investigation, whether or not an allegation of staff misconduct is likely to be true.
- This routing process provides no oversight of the decisions staff and wardens make at each step.
- Since our new unit for monitoring staff misconduct grievances primarily monitors AIMS, the prisons' lack of referrals to AIMS also circumvents our oversight.

How Staff Determine Staff Misconduct Grievances

The department defines a ***staff misconduct grievance*** as an allegation that staff violated a law, regulation, policy, or procedure, or acted contrary to an ethical or professional standard, that would more likely than not subject a staff member to adverse disciplinary action if it were found to be true. In evaluating grievances, staff and wardens make the following judgments:

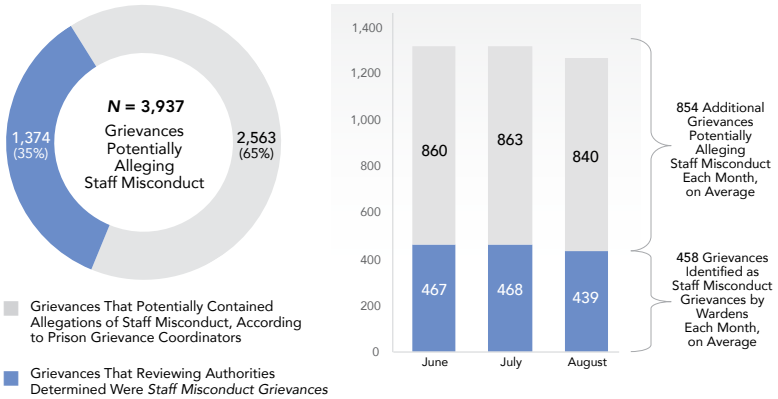
- To discern whether a violation has occurred, staff and wardens apply their individual, subjective interpretations of relevant policies and standards to the alleged acts as written on the grievance form. Because people differ in their awareness and understanding of policies and standards, these subjective determinations lack objectivity and consistency.
- To predict the penalty that would be imposed assuming the alleged acts are found to have occurred, staff and wardens are required to predetermine an appropriate level of discipline without having much of the information that is necessary to the disciplinary determination, such as the employees' disciplinary history, the evidence uncovered by the investigation, and the existence of mitigating and aggravating factors.

The Office of the Inspector General's Analysis of the Department's Existing Staff Misconduct Grievance Process During the Five-Month Period From April 1, 2020, Through August 31, 2020



Source: The Office of the Inspector General's analysis of the California Department of Corrections and Rehabilitation's Staff Misconduct Grievance Process. The data included in this flowchart are for the five-month period ending August 31, 2020.

Wardens Frequently Overruled Grievance Coordinators When Determining Whether a Grievance Alleged Staff Misconduct, Leading Us to Believe the Actual Number of Staff Misconduct Grievances Was Much Higher Than Reported During the Three-Month Period From June 1, 2020, Through August 31, 2020



Note: Prior to June 2020, the department did not track the number of grievances categorized as *staff misconduct* by grievance coordinators.

Source: The Office of the Inspector General's analysis of the California Department of Corrections and Rehabilitation's Offender Grievance Tracking System data for June 1, 2020, through August 31, 2020.

Without Reasonable Justification, AIMS Refuses to Investigate Several Serious Types of Staff Misconduct and Returns Without Investigation Allegations that Do Not Meet Various Procedural Requirements

AIMS will not perform inquiries into the following types of allegations or filed grievances: uses of force that staff reported but that did not result in "serious bodily injury" ◆ due process violations during the disciplinary process ◆ violations of the Prison Rape Elimination Act (PREA) ◆ disagreement with disciplinary decisions staff make ◆ false rules violations ◆ misconduct during the Americans With Disabilities Act's reasonable accommodation process ◆ allegations AIMS does not believe constitute staff misconduct ◆ grievances filed more than 30 days after alleged misconduct occurred ◆ misconduct that did not have a "material effect" on the claimant ◆ allegations concerning harm to someone other than the person who signed the grievance ◆ grievances in which the claimant refuses to cooperate with staff's attempts to obtain further information.

Rather than Perform a Complete Inquiry Into a Staff Misconduct Grievance, AIMS Investigators Abruptly Stop Their Work as Soon as They Form a Reasonable Belief that Staff Misconduct Occurred

AIMS stops all investigative activity when it discovers sufficient evidence to determine that any form of misconduct occurred, even when an inquiry involves several allegations of misconduct. Terminating an inquiry before gathering all evidence and interviewing all witnesses risks leaving undiscovered relevant evidence and may cause related allegations to pass uninvestigated.

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The Low Rate at Which Wardens Determined Their Staff Violated Policy and the Department's Use of Ambiguous Language to Track the Results of Its Reviews Raise Serious Concerns About the Fairness of the Process

Between June 1, 2020, and August 31, 2020, wardens exonerated staff in 98.3 percent of incarcerated persons' allegations.

Similarly, our 2019 review of the former process in place at Salinas Valley State Prison found that the prison exonerated staff at a rate of 97.3 percent, a full percentage point lower than the department's new statewide process.

The department's grievance referral process is designed in such a manner that wardens are instructed to refer to AIMS only those allegations of staff misconduct that they do not reasonably believe to have occurred.

In our opinion, among other factors contributing to the low rate at which wardens found policy violations against their staff is this requirement that wardens predetermine the outcome of the inquiry before it has even begun.

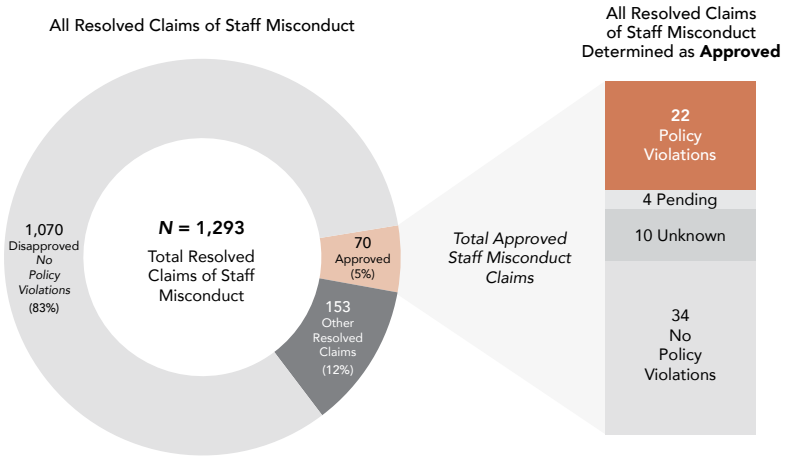
Weaknesses in Its Data Collection and Tracking Process Limit the Department's Ability to Effectively Analyze Trends and Assess Its Process for Handling Staff Misconduct Grievances

The department maintains numerous information systems that capture data regarding the staff misconduct grievance process, but none of these systems can produce basic management reports that enable managers to perform meaningful trend analyses or assessments of the process.

The department cannot produce basic reports necessary to successfully manage the process from a statewide perspective or at the level of the individual prison, including any of the following:

- A report identifying the inquiries that resulted in policy violations or disciplinary actions
- A report identifying the number or names of staff who have been accused of misconduct by incarcerated persons
- A report identifying the names of staff found to have violated a policy in connection with an allegation of staff misconduct
- A report identifying any actions taken against staff to rectify any related policy violations

Very Few of the Department's Resolved Claims of Staff Misconduct Resulted in Policy Violations During the Three-Month Period From June 1, 2020, Through August 31, 2020



Disapproved The reviewing authority found by a preponderance of the evidence available that all applicable policies were followed and that all relevant decisions, actions, conditions, or omissions by the department or departmental staff were proper.

Approved The reviewing authority did not find by a preponderance of the evidence available that all applicable policies were followed or that all relevant decisions, actions, conditions, or omissions by the department or departmental staff were proper.

Other Resolved Claims We are using the term *resolved* to include grievance decisions of *approved*, *disapproved*, *rejected*, and *time expired*. We exclude unresolved claims categorized as *no jurisdiction*, *reassigned*, *redirected*, and *under investigation*.

Source: The Office of the Inspector General's analysis of the California Department of Corrections and Rehabilitation's grievance data associated with its 35 prisons.

Fewer Than 2 Percent of Staff Misconduct Grievances Were Found to Contain Policy Violations Between June 1, 2020, and August 31, 2020

- Because the department could not produce a report showing the number of staff misconduct grievances in which accused staff had violated policy, we examined a department report showing the number of allegations of staff misconduct that wardens had ***approved***.
- California regulations define ***approved*** as meaning the reviewing authority (i.e., warden) did not find by a preponderance of the evidence available that all applicable policies were followed and that all relevant decisions, actions, conditions, or omissions by the department or departmental staff were proper. ***Disapproved*** is the opposite.
- Of the 1,293 allegations the department resolved between June 1, 2020, and August 31, 2020, only 70 were resolved as ***approved*** (5 percent).
- Of those 70 approved claims, only 22 were found to contain policy violations (1.7 percent).
- Wardens used the term ***approved*** inconsistently, applying it to claims they determined to be in policy, out of policy, or still pending.
- The department's ambiguous use of the term ***approved*** obscures accurate reporting of inquiry outcomes and undermines the department's transparency in reporting.

The Office of the Inspector General's Analysis of Grievances Potentially Containing Allegations of Staff Misconduct

		3-Month Period, Ending August 31, 2020	5-Month Period, Ending August 31, 2020*	Annualized*
A	Grievances That Potentially Contained Allegations of Staff Misconduct, According to Prison Grievance Coordinators	3,937	**6,562**	**15,748**
B	Grievances That Reviewing Authorities Determined Met the Criteria for a Staff Misconduct Grievance	1,374	2,339	**5,614**
C	Staff Misconduct Grievances Referred to AIMS	369	541	**1,298**
	Grievances We Believe Were Potentially Mischaracterized as Routine Grievances (the difference between A and B)	2,563	4,223	**10,134**

* Prior to June 1, 2020, the department did not capture the number of grievances that prison grievance coordinators identified as potentially containing allegations of staff misconduct. Due to this limitation, we adjusted the values in bold for the five-month period based on the monthly average for the three-month period. We then annualized the values on all three rows based on the monthly average for the five-month period.

Source: The Office of the Inspector General's analysis of the department's grievance data associated with its 35 prisons.

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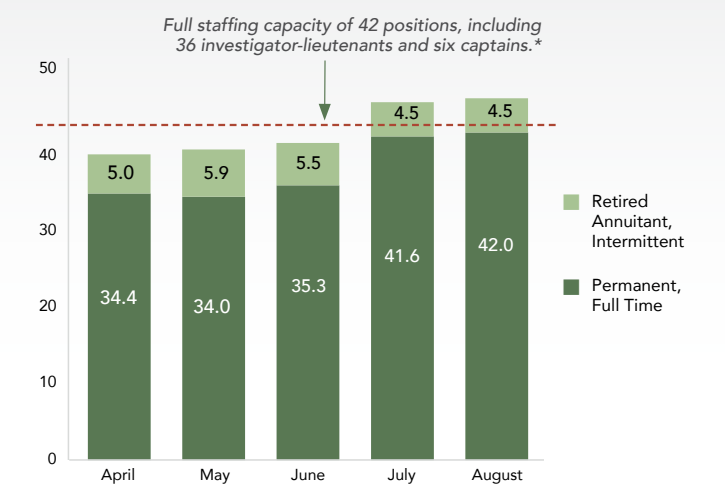
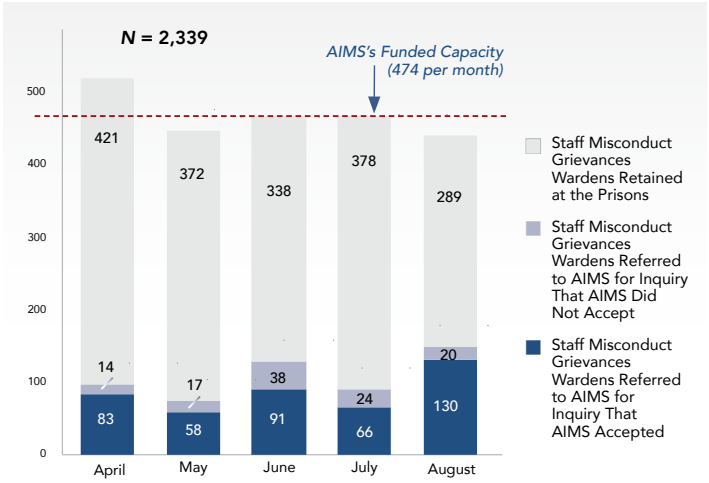
Filled Staffing Levels for AIMS to Conduct Inquiries Were Near or Above Capacity During the Five-Month Period From April 1, 2020, Through August 31, 2020



* This analysis excludes the four support positions and the one managerial position that were also established within AIMS. For comparison purposes, we adjusted the number of retired annuitants to reflect their full-time equivalent value. Some retired annuitant positions did not perform investigations; for example, one retired annuitant maintained an information system.

Source: The Office of the Inspector General's analysis of the California Department of Corrections and Rehabilitation's fiscal year 2019–20 budget proposal and Allegation Inquiry Management Section staffing and workload data.

The Department's Budget Proposal Demonstrated AIMS Had Ample Capacity to Handle Staff Misconduct Grievances Filed During the Five-Month Period From April 1, 2020, Through August 31, 2020



Note: The dotted line represents AIMS's average monthly handling capacity of 474 staff misconduct grievances. We calculated this value by dividing 5,690 (the number of staff misconduct grievances the department estimated in its fiscal year 2019–20 budget proposal that it would handle) by 12 (the number of months in a year).

Source: The Office of the Inspector General's analysis of the California Department of Corrections and Rehabilitation's grievance data associated with its 35 prisons.

According to Its Own Analysis, AIMS Had the Resources to Investigate Significantly More Staff Misconduct Grievances Than It Did

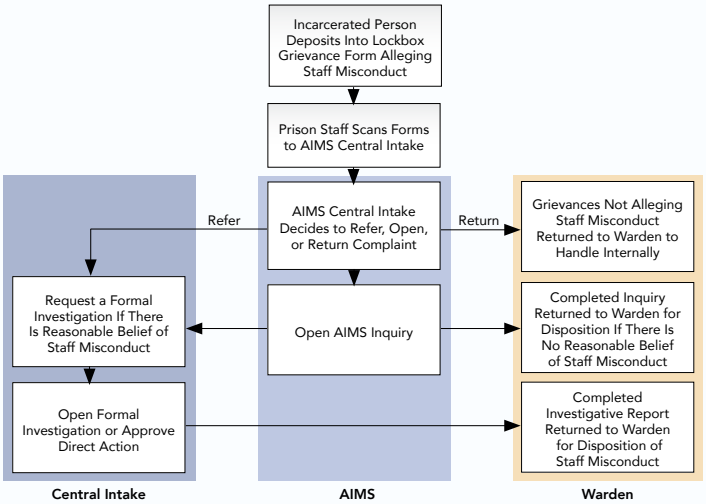
- The department's fully funded AIMS unit included 47 positions. Among these were 36 lieutenants to perform the inquiries, and six captains, three office technicians, one analyst, and one chief deputy administrator to provide supervision, management, and administrative work. With this staffing, the unit was expected to handle all of the department's staff misconduct grievances.
- The department projected that AIMS would handle approximately 5,690 staff misconduct inquiries per year, based on the number of staff misconduct grievances the department processed in the 2018 calendar year.
- With nearly all positions filled, AIMS has handled only about 18 percent of the staff misconduct grievances the department stated it would handle. Between April 2020 and August 2020, AIMS's investigators handled between one and four inquiries per month, well short of the projected rate of 13 inquiries per month. Yet the number of investigators and captains AIMS employed during this period was either near or above its authorized capacity.

Recommendations: The Department Should Require Incarcerated Persons to Submit Staff Misconduct Grievances Directly to the Allegation Inquiry Management Section to Increase the Independence and, Ultimately, the Fairness of the Process

To provide greater independence, consistency, and legitimacy to the staff misconduct grievance process, we recommend the department take the following actions, among others:

- Revise its process for receiving and referring allegations of staff misconduct, as depicted to the right.
- Remove the procedural and substantive limitations to AIMS's jurisdiction.
- Require AIMS to perform complete investigations rather than stop its investigations when it believes misconduct has been substantiated.
- Redefine *staff misconduct* to remove the subjectivity inherent in its current definition.
- Prepare a workload analysis factoring the length of time it takes to conduct an inquiry and the number of staff it would need to handle the total volume of allegations of staff misconduct.
- Implement a statewide review process to ensure wardens make consistent and fair disciplinary determinations.
- Develop a centralized information tracking system that comprehensively tracks key information and data involving the entire staff misconduct process.

Recommended Process for Handling Incarcerated Persons' Grievances Alleging Staff Misconduct



Source: The Office of the Inspector General.

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