Roy W. Wesley, Inspector General

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OIG | OFFICE *of the* INSPECTOR GENERAL

Independent Prison Oversight

December 2021

Monitoring Internal Investigations and the Employee Disciplinary Process of the California Department of Corrections and Rehabilitation

Semiannual Report
January–June 2021

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Roy W. Wesley, Inspector General
Bryan B. Beyer, Chief Deputy Inspector General

Independent Prison Oversight

Regional Offices

Sacramento
Bakersfield
Rancho Cucamonga

December 14, 2021

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California

Dear Governor and Legislative Leaders:

Enclosed please find the Office of the Inspector General's report titled *Monitoring Internal Investigations and the Employee Disciplinary Process of the California Department of Corrections and Rehabilitation.* This is the Office of the Inspector General's 33rd semiannual report, as mandated by California Penal Code sections 6126(a) and 6133(b)(1) and summarizes the California Department of Corrections and Rehabilitation's (the department) performance in conducting internal investigations and handling employee discipline cases we monitored and closed between January 1, 2021, and June 30, 2021.

We once again assessed the performance of the three entities within the department responsible for conducting internal investigations and managing the employee disciplinary process: hiring authorities (such as prison wardens), the Office of Internal Affairs, and department attorneys. Between January 1, 2021, and June 30, 2021, we monitored and closed 109 cases throughout California. We concluded the department's overall performance in conducting internal investigations and handling employee discipline cases was *poor*. Of the 109 cases, we rated 57 cases *satisfactory* and 52 *poor*. We did not find any cases with overall *superior* performance.

We found hiring authorities' performance was *satisfactory* in discovering allegations of employee misconduct and referring those allegations to the Office of Internal Affairs. However, we determined that hiring authorities' performance was *poor* in determining its findings for alleged misconduct and processing the cases. Hiring authorities timely conducted investigative and disciplinary findings conferences in only 62 percent of the cases and timely served disciplinary actions on peace officers in only 37 percent of the cases. This finding reflects a decline in performance since the last reporting period of July through December 2020, during which time hiring authorities timely served discipline on peace officers in 47 percent of those cases.

The Office of Internal Affairs performed in a *satisfactory* manner overall in processing referrals from hiring authorities and conducting investigations. Of the 109 cases the OIG monitored and closed during this reporting period, the Office of Internal Affairs processed 106 referrals in a timely manner, or 97 percent. The Office of Internal Affairs conducted investigations or interviews in 96 of 109 cases and returned the remaining 13 cases to the hiring authority for the hiring authority to address the alleged misconduct without an investigation or interview. In 94 of the 96 cases, or 98 percent, the Office of Internal Affairs conducted thorough investigations or interviews. In 95 of the 96 cases, or 99 percent, the

Gavin Newsom, Governor

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Office of Internal Affairs completed investigative reports that included all relevant facts and evidence and all appropriate allegations. Also during this reporting period, the Office of Internal Affairs processed 1,109 referrals from hiring authorities. Of those, the OIG disagreed with the Office of Internal Affairs' decisions in 170 of the 1,109 referrals, or 15 percent. We also assessed the Office of Internal Affairs' performance in conducting deadly force investigations. Pursuant to departmental policy, the Office of Internal Affairs is required to complete deadly force investigations within 90 days of assigning a special agent, unless the Office of Internal Affairs Chief of Field Operations grants an extension. The Office of Internal Affairs' performance in completing these investigations within the required time frame declined significantly during the January through June 2021 reporting period when compared to the previous reporting period. Of the 109 cases we monitored and closed between January and June 2021, the Office of Internal Affairs completed nine deadly force investigations and did not timely complete the investigations in six of the nine cases, or 67 percent. During the July through December 2020 reporting period, special agents did not timely complete deadly force investigations in two of the seven deadly force cases, or 29 percent.

We also assessed department attorneys, the third entity, and found they performed in a *satisfactory* manner in providing legal advice to the department when the Office of Internal Affairs processed employee misconduct referrals and conducted investigations. For cases we monitored and closed from January through June 2021, department attorneys provided appropriate consultation to the Office of Internal Affairs during both the central intake and investigative processes in 93 of 109 cases, 85 percent. In 88 of 109 cases, the department attorney provided legal advice to hiring authorities concerning the sufficiency of investigations and disciplinary findings. In 80 of the 88 cases, 91 percent, the department attorney provided appropriate legal consultation. However, department attorneys once again did not ensure that the department timely served disciplinary actions on peace officers, leading to an overall *poor* assessment rating.

For the January through June 2021 reporting period, we paid particular attention to cases hiring authorities referred to the Office of Internal Affairs that involved alleged domestic violence. We often disagreed with the Office of Internal Affairs' initial decision regarding these referrals because it routinely determined there was sufficient evidence to support the alleged misconduct without any interview or investigation. The OIG usually recommended a full investigation to obtain statements from the alleged victim and witnesses, as well as from the officer accused of the misconduct. Of the 170 referrals in which we disagreed with the Office of Internal Affairs in some aspect, 20 of those disagreements, 12 percent, involved cases in which an officer was alleged to have engaged in domestic violence. We also disagreed with the department's categorization of domestic violence allegations. In many instances where the Office of Internal Affairs determined that the case did not involve serious or great bodily injury, the Office of Internal Affairs categorized the case as something other than domestic violence, such as a general off-duty incident. By making this distinction in classifying cases, the Office of Internal Affairs makes it difficult for itself to respond to queries regarding the true number of cases that involved allegations of domestic violence. Therefore, we recommend that the Office of Internal Affairs categorize all domestic violence allegations in a manner that allows for accurate tracking. Furthermore, we recommend that the department conduct full investigations in all domestic violence cases.

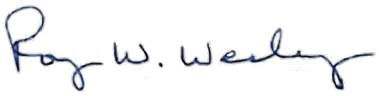
In this report we also highlight the department's current practice of failing to include required language in settlement agreements that would preclude the employee who resigns in lieu of having been dismissed to seek employment with the department in the future. Department Operations Manual, Section 33030.26.2, requires that when the department agrees to accept the employee's resignation in lieu of

termination, the agreement must include a clause wherein the employee agrees to "never apply for or accept employment with [the department]. . . ." If the department inadvertently hires the employee in the future, the employee agrees that the department will dismiss the employee and the employee may not appeal the dismissal. The OIG disagreed with the department's position that recent changes to the law prevents it from using this standard language. We recommended the department require the inclusion of no-rehire clauses in settlements that allows a dismissed employee to resign in lieu of dismissal. We further recommend that the department seek judicial review in the event the State Personnel Board rejects any settlement because of the inclusion of a no-rehire clause.

During the past four reporting periods, we expressed concern over the department's pattern of delaying the processing of employee dismissal cases and the costs that result from such delays. We again analyzed the department's lack of diligence and the resulting costs during the January through June 2021 reporting period. For this reporting period, we found that the department unnecessarily paid approximately $299,304 in salary and benefits to employees during periods of delay during the disciplinary process. Over the past two and one-half years, the department has paid approximately $1,314,489 in salary and benefits to employees during these delays.

Finally, we highlight two cases in which hiring authorities either failed to refer an officer's unintentional discharge of a firearm to the Office of Internal Affairs, or only did so after the OIG elevated the matter to the hiring authority's supervisor. Peace officers receive specialized training in the use and safe handling of firearms, which includes preventing unintentional discharges. When an officer unintentionally discharges a weapon, there is a reasonable belief that the officer engaged in misconduct by failing to follow the officer's training. Therefore, the OIG recommends that hiring authorities refer all unintentional discharge cases to the Office of Internal Affairs for analysis and review so that the department can review all incidents involving unintentional discharges in a thorough and consistent manner. Further, as exemplified in one of the unintentional discharge cases, the OIG recommends that the department review the locations where the department stores weapons to ensure that the facilities comply with proper safety measures to prevent unnecessary injury and to safeguard life. Additionally, as with domestic violence cases, the Office of Internal Affairs does not have a method to appropriately track the number of unintended discharge cases. When the OIG requested a list of all negligent discharge cases the department opened between January 1, 2021, through June 30, 2021, the department did not provide the OIG with an accurate list. Accordingly, the OIG recommends that the department categorize these cases in a manner that allows the department to track them.

Sincerely,



Roy W. Wesley
Inspector General

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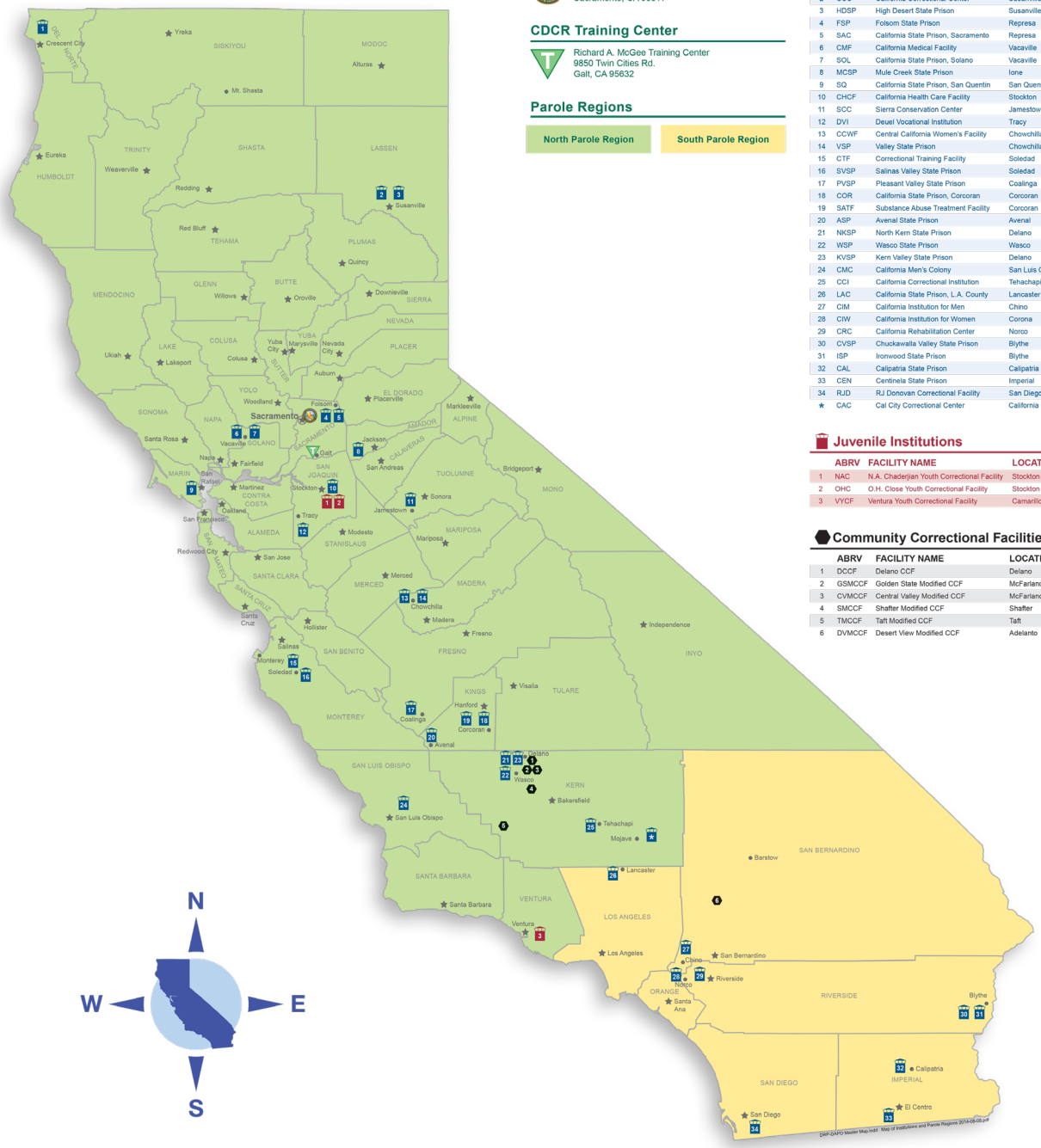
"Lady Justice" (page *viii*): Adapted from an illustration at www.vecteezy.com

California Department of Corrections and Rehabilitation
Institutions and Parole Regions



CDCR Headquarters

Department of Corrections and Rehabilitation
1515 "S" St.
Sacramento, CA 95811

CDCR Training Center

Richard A. McGee Training Center
9850 Twin Cities Rd.
Galt, CA 95632

Parole Regions

North Parole Region | South Parole Region

Adult Institutions

	ABRV	FACILITY NAME	LOCATION
1	PBSP	Pelican Bay State Prison	Crescent City
2	CCC	California Correctional Center	Susanville
3	HDSP	High Desert State Prison	Susanville
4	FSP	Folsom State Prison	Represa
5	SAC	California State Prison, Sacramento	Represa
6	CMF	California Medical Facility	Vacaville
7	SOL	California State Prison, Solano	Vacaville
8	MCSP	Mule Creek State Prison	Ione
9	SQ	California State Prison, San Quentin	San Quentin
10	CHCF	California Health Care Facility	Stockton
11	SCC	Sierra Conservation Center	Jamestown
12	DVI	Deuel Vocational Institution	Tracy
13	CCWF	Central California Women's Facility	Chowchilla
14	VSP	Valley State Prison	Chowchilla
15	CTF	Correctional Training Facility	Soledad
16	SVSP	Salinas Valley State Prison	Soledad
17	PVSP	Pleasant Valley State Prison	Coalinga
18	COR	California State Prison, Corcoran	Corcoran
19	SATF	Substance Abuse Treatment Facility	Corcoran
20	ASP	Avenal State Prison	Avenal
21	NKSP	North Kern State Prison	Delano
22	WSP	Wasco State Prison	Wasco
23	KVSP	Kern Valley State Prison	Delano
24	CMC	California Men's Colony	San Luis Obispo
25	CCI	California Correctional Institution	Tehachapi
26	LAC	California State Prison, L.A. County	Lancaster
27	CIM	California Institution for Men	Chino
28	CIW	California Institution for Women	Corona
29	CRC	California Rehabilitation Center	Norco
30	CVSP	Chuckawalla Valley State Prison	Blythe
31	ISP	Ironwood State Prison	Blythe
32	CAL	Calipatria State Prison	Calipatria
33	CEN	Centinela State Prison	Imperial
34	RJD	RJ Donovan Correctional Facility	San Diego
★	CAC	Cal City Correctional Center	California City

Juvenile Institutions

	ABRV	FACILITY NAME	LOCATION
1	NAC	N.A. Chaderjian Youth Correctional Facility	Stockton
2	OHC	O.H. Close Youth Correctional Facility	Stockton
3	VYCF	Ventura Youth Correctional Facility	Camarillo

Community Correctional Facilities

	ABRV	FACILITY NAME	LOCATION
1	DCCF	Delano CCF	Delano
2	GSMCCF	Golden State Modified CCF	McFarland
3	CVMCCF	Central Valley Modified CCF	McFarland
4	SMCCF	Shafter Modified CCF	Shafter
5	TMCCF	Taft Modified CCF	Taft
6	DVMCCF	Desert View Modified CCF	Adelanto

Map provided courtesy of the California Department of Corrections and Rehabilitation.

Terms Used in This Report	
Case Management System	The California Department of Corrections and Rehabilitation's computer program and database that staff use to enter and maintain information regarding internal investigations and employee discipline cases.
Corrective Action	A documented nonadverse action such as verbal counseling, training, written counseling, or a letter of instruction that a hiring authority takes to assist the employee in improving work performance, behavior, or conduct. Corrective action cannot be appealed to the State Personnel Board.
Disciplinary Action	A documented action that is punitive in nature and intended to correct misconduct or poor performance or which terminates employment and may be appealed to the State Personnel Board. It is also the "charging" document served on an employee who is being disciplined, advising the employee of the causes for discipline and the penalty to be imposed. Also referred to as an "adverse action" or a "notice of adverse action."
Department Operations Manual	The department's operations manual. The full title is *California Department of Corrections and Rehabilitation Adult Institutions, Programs, and Parole Operations Manual* (Sacramento: State of California, 2020). Commonly known as the DOM, it is available on the internet at https://www.cdcr.ca.gov/Regulations.
Employee Relations Officer	A person, who is not an attorney, employed by a California Department of Corrections and Rehabilitation institution, facility, or parole region responsible for coordinating disciplinary actions for the hiring authority and for representing the department at the State Personnel Board in cases not designated by the Employment Advocacy and Prosecution Team.
Employment Advocacy and Prosecution Team	A team of attorneys in the California Department of Corrections and Rehabilitation's Office of Legal Affairs assigned to provide legal advice during internal investigations and to litigate employee discipline cases.
Executive Review	A supervisory- or management-level review conducted by a hiring authority, department attorney, and OIG attorney to resolve a significant disagreement regarding investigative findings, proposed discipline, or lack thereof, or a proposed settlement.
Hiring Authority	An executive, such as a warden, superintendent, or regional parole administrator, authorized by the Secretary of the California Department of Corrections and Rehabilitation to hire, discipline, and dismiss staff members under his or her authority.
Investigative and Disciplinary Findings Conference	A meeting at which the hiring authority makes decisions regarding the findings and penalty in an employee discipline case.
Office of Internal Affairs	The entity within the California Department of Corrections and Rehabilitation responsible for investigating allegations of employee misconduct.
Office of Internal Affairs' Central Intake Unit	A unit of the Office of Internal Affairs consisting of special agents assigned to review referrals from hiring authorities regarding alleged employee misconduct.
Office of Internal Affairs' Central Intake Panel	A collection of stakeholders led by the Office of Internal Affairs that reviews hiring authority referrals regarding allegations of employee misconduct and which is responsible for ensuring the referrals are appropriately evaluated. Although a department attorney and an OIG attorney provide input at Office of Internal Affairs' Central Intake Panel meetings, a manager from the Office of Internal Affairs' Central Intake Unit is the individual who makes decisions at the meetings regarding the disposition of hiring authority referrals.
Special Agent	In the context of this report, a special agent is an investigator employed by the California Department of Corrections and Rehabilitation assigned to investigate alleged employee misconduct.
State Personnel Board	A quasi-judicial board established by the California State Constitution that oversees merit-based job-related recruitment, selection, and disciplinary processes of State employees.

Source: The Office of the Inspector General.

Lady Justice

The **Inspector General** shall be responsible for contemporaneous oversight of internal affairs investigations and the disciplinary process of the Department of Corrections and Rehabilitation, pursuant to Section 6133 under policies to be developed by the **Inspector General**.

(*California Penal Code section 6126 (a)*)

The **Office of the Inspector General** shall be responsible for contemporaneous public oversight of the Department of Corrections and Rehabilitation investigations conducted by the Department of Corrections and Rehabilitation's Office of Internal Affairs. ... The **Office of the Inspector General** shall also be responsible for advising the public regarding the adequacy of each investigation, and whether discipline of the subject of the investigation is warranted.

(*California Penal Code section 6133 (a)*)

The **Office of the Inspector General** shall also issue regular reports, no less than semiannually, summarizing its oversight of Office of Internal Affairs investigations pursuant to subdivision (a).

(*California Penal Code section 6133 (b) (1)*)

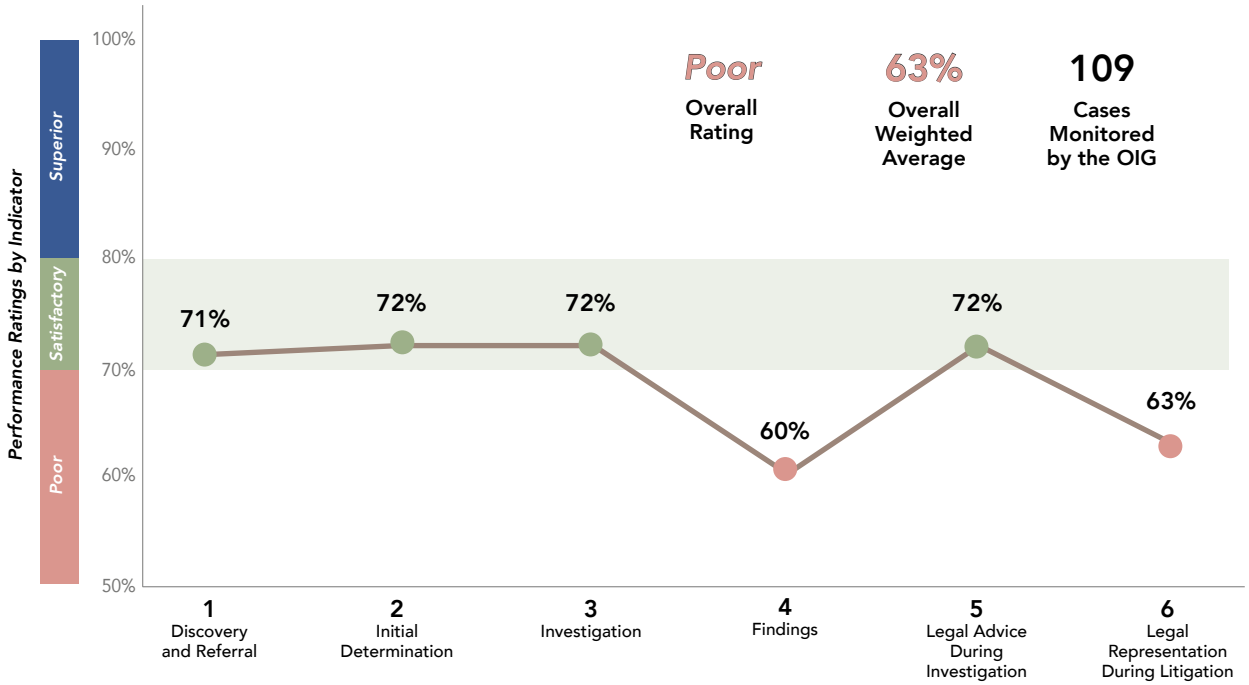
—State of California
Excerpted from Penal Code sections

Summary

Pursuant to California Penal Code sections 6126 (a) and 6133, the Office of the Inspector General (the OIG) has the authority to monitor and report on the internal investigations and employee disciplinary process of the California Department of Corrections and Rehabilitation (the department). The OIG has been monitoring and reporting on this process since 2005. This report, which addresses our monitoring activities between January 1, 2021, and June 30, 2021, is our 33rd semiannual report, in which we provide our assessment of 109 employee misconduct cases OIG attorneys monitored and closed during the reporting period. Our monitoring activities resulted in an assessment of the department's overall performance as *poor* for the 109 cases we monitored and closed.

The department's performance was *satisfactory* in four of the six performance indicators we used to assess performance: discovering and referring misconduct cases; making initial determinations regarding the referrals; performing investigations; and providing legal advice during the investigation. However, we found the department's performance *poor* when making and processing investigative and disciplinary findings regarding alleged misconduct and providing legal representation during litigation. Figure 1 below depicts each assessment area and the corresponding percentages.

Figure 1. The OIG's Overall Rating of the Department's Investigative and Discipline Process During the Period From January Through June 2021



Source: The Office of the Inspector General Tracking and Reporting System.

Consistent with the prior reporting period of July through December 2020, the department's performance in addressing the investigative and disciplinary findings after the Office of Internal Affairs completed its investigation was *poor* overall for the January through June 2021 reporting period. The department's performance was *poor* in 56 of 94 cases, 60 percent, and *satisfactory* in the remaining 38 cases. The department's failure to timely serve disciplinary actions on peace officers was the most significant factor affecting this *poor* assessment. The department did not timely serve disciplinary actions on peace officers in 31 cases, or 63 percent. The other factor contributing to this *poor* assessment was the department's failure to timely conduct investigative and disciplinary findings conferences. We found that in 36 of 94 cases, 38 percent, the department did not timely conduct investigative and disciplinary findings conferences.

We also found department attorney's legal representation during litigation to be *poor* overall in this reporting period. Of the 55 cases to which the department assigned an attorney, the department attorney's performance was *poor* in 29 cases, 53 percent. However, we found *superior* performance in two cases, with *satisfactory* performance in the remaining 24 cases.

We used six specific units of measurement, referred to as performance indicators (indicators), to assess the department's performance during the investigative and disciplinary process. Each indicator is designed to provide a more specific assessment of each of the three departmental entities we monitor: hiring authorities, the Office of Internal Affairs, and department attorneys from the Office of Legal Affairs' Employment Advocacy and Prosecution Team.

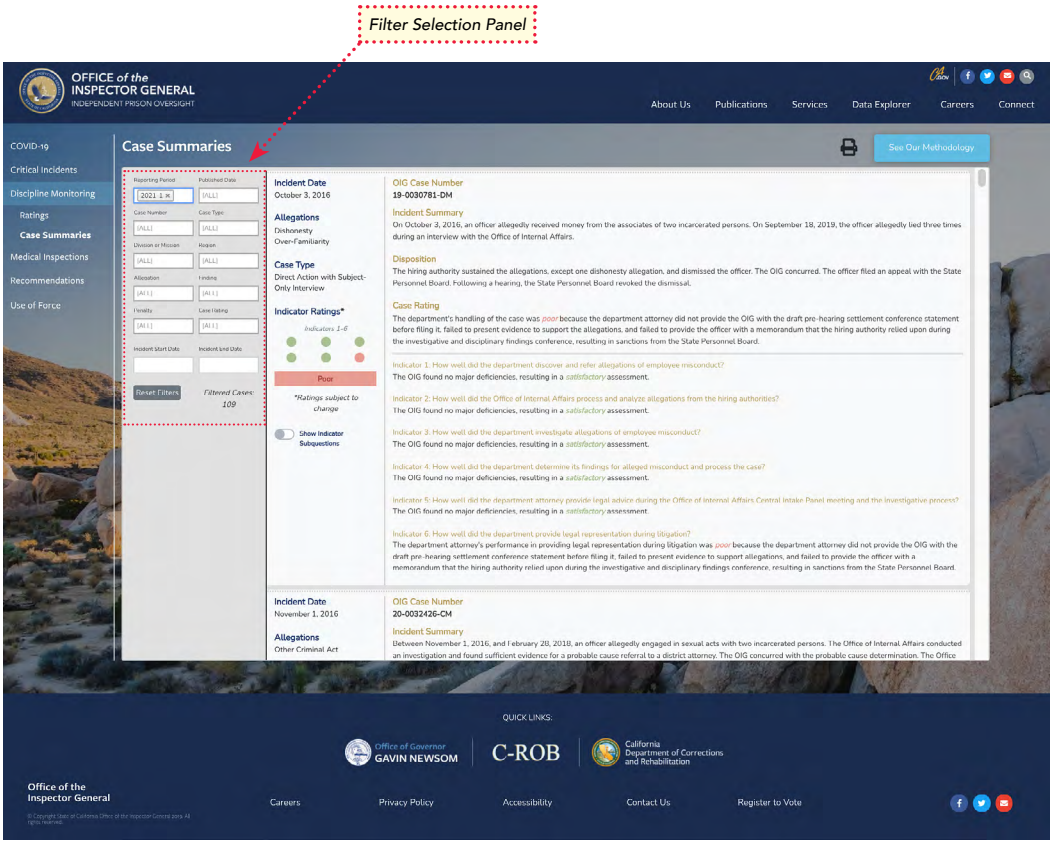
Using the six indicators, we measured the following activities: the hiring authorities' performance in discovering and referring employee misconduct cases to the Office of Internal Affairs, how well hiring authorities made investigative and disciplinary findings regarding the alleged misconduct, and how well they processed the cases; the Office of Internal Affairs' performance in processing employee misconduct referrals submitted by hiring authorities and its performance investigating misconduct allegations; and department attorneys' legal advice during the Office of Internal Affairs' handling of the cases, as well as the performance of department advocates, such as department attorneys and employee relations officers, in litigating employee disciplinary cases.

When monitoring a case, OIG attorneys answered numerous compliance and performance-related questions pertaining to each of the six indicators. At the conclusion of each case, the attorney assigned a rating to each of the applicable indicators: *superior*, *satisfactory*, or *poor*. The attorney then analyzed each to determine an overall rating for each case, using the same descriptors. The OIG has assigned a point value to each

indicator rating and case rating (discussed in detail in the Methodology section of this report), resulting in a percentage figure we used to arrive at an overall rating of each departmental unit's performance using the six indicators. We also used the same method to assess the department in its handling of a matter from the time a hiring authority referred an employee misconduct allegation to the Office of Internal Affairs to the conclusion of any employee misconduct litigation for the period of January 1, 2021, through June 30, 2021. Using this methodology, we concluded the department's overall performance was *poor* when conducting internal investigations and handling employee misconduct cases for the cases we monitored and closed in this reporting period.

For more details concerning the cases the OIG monitored and closed during this reporting period, individuals may directly access our discipline monitoring case summaries on **the OIG website**. If viewing this report on our website, click on the image below to be taken to our interactive dashboard. Once there, to review the case summaries, choose the following settings:

- From the pull-down menu in the Reporting Period field, choose **2021-1**
- For the other filters, choose **ALL**; these include
  - **Case Number**, **Case Type**, **Division or Mission**, **Region**, **Allegation**, **Finding**, **Penalty**, and **Case Rating**
  - Leave date delimiter fields empty (**Incident Start Date** and **Incident End Date**)



Hiring Authorities

During the January 1, 2021, through June 30, 2021, reporting period, hiring authorities' performance in discovering and referring allegations of employee misconduct to the Office of Internal Affairs was *satisfactory* and improved over the prior reporting period. During the January through June 2021 reporting period, hiring authorities timely referred 79 percent of cases, with 21 percent being untimely. During the last reporting period, the department timely referred 70 percent of cases and 30 percent were untimely. Delayed referrals can impact the Office of Internal Affairs' ability to conduct thorough investigations before the deadline to take disciplinary action. Moreover, delays could impact the timely service of disciplinary actions on employees found to have committed misconduct, which for officers,[1] is within one year of the discovery of the alleged misconduct.[2] In one particularly egregious case during this reporting period, a hiring authority failed to refer allegations of misconduct by an officer until over one year after discovering the misconduct. Any misconduct that could have been proven could not have resulted in any disciplinary action because the deadline to take any disciplinary action had already expired by the time the hiring authority referred the matter.

We found hiring authorities did not perform well in making timely decisions regarding Office of Internal Affairs' investigations, determining the allegations, processing cases, or serving disciplinary actions. Hiring authorities performed poorly in these areas in part because they timely conducted investigative and disciplinary findings conferences in only 62 percent of the cases. Hiring authorities made findings in 94 cases and decided to impose discipline in 67 of those 94 cases. Of the 67 cases where the hiring authority decided to impose discipline, the hiring authority did not timely conduct the investigative and disciplinary findings conference in 28 of 67, or 42 percent. Additionally, hiring authorities continued to delay serving disciplinary actions, especially on peace officers. The department did not serve disciplinary actions on peace officers within 30 days of the decision to impose discipline, which departmental policy requires, in 63 percent of the cases. In only 37 percent of the cases did the department timely serve disciplinary actions on peace officers in accordance with departmental policy. This reflects a decline in performance since the last reporting period, which revealed that hiring authorities delayed serving discipline on peace officers in 53 percent of the cases. These delays contributed to our overall assessment, demonstrate an apparent indifference to departmental policy, and set a bad example for departmental staff.

1. In this report, we use the word *officer* when referring to correctional peace officers, which include correctional officers, sergeants, lieutenants, parole agents, special agents, and so forth.

2. California Government Code section 3304 (d) (1).

However, despite the delays, we concluded that hiring authorities made appropriate determinations regarding the allegations in 87 of 94 cases in which they made findings, or 93 percent of the cases. Of the 94 cases in which hiring authorities made findings, they decided to take some form of action against employees in 68 cases. Hiring authorities decided to impose discipline in 67 of these 68 cases and decided to issue a letter of instruction in one case. In our opinion, hiring authorities selected the appropriate disposition or penalty in 58 of the 68 cases, or 85 percent.

The Office of Internal Affairs

After hiring authorities submit their referrals of alleged employee misconduct, Office of Internal Affairs' special agents are responsible for processing the referrals and conducting internal investigations. For the January through June 2021 reporting period, we found the Office of Internal Affairs performed overall in a *satisfactory* manner when processing referrals from hiring authorities and conducting investigations. As part of their monitoring activities, OIG attorneys answered up to 51 questions for each monitored investigation to assess the Office of Internal Affairs' performance.[3] These questions measured how well special agents performed in processing hiring authority referrals, conducting investigations, preparing reports, and conducting any follow-up investigation. The questions also assessed the timeliness of completing these activities. We assigned a *satisfactory* assessment rating to a case when a special agent conducted a proper, thorough, and timely investigation. Based on our assessment, we found the Office of Internal Affairs timely processed referrals from hiring authorities in 97 percent of the cases, conducted thorough investigations in 98 percent of the cases, and completed thorough investigative reports in 99 percent of the cases.

We determined that the Office of Internal Affairs performed in a *satisfactory* manner regarding its initial decision-making of hiring authority referrals. Between January and June 2021, the Office of Internal Affairs made decisions on 1,109 employee misconduct referrals from hiring authorities, some of which it received before January 1, 2021. Consistent with prior reporting periods, we did not always agree with the Office of Internal Affairs regarding some of its decisions concerning hiring authority referrals. Of the 1,109 referrals, the OIG disagreed with the Office of Internal Affairs' decision in 170 cases, or 15 percent of the cases. In 53 of the 170 cases, we disagreed with more than one decision. The nature of the disputes in the 170 cases included the Office of Internal Affairs' decisions to not add allegations to investigations, such as dishonesty or domestic violence allegations, or its decisions to not open full investigations and instead return the matter to hiring authorities to address the misconduct allegations without an interview or investigation.

3. Not all assessment questions apply to all cases. For example, some questions assess the effectiveness of criminal investigative techniques and do not apply to Office of Internal Affairs' administrative investigations.

Moreover, if we believed the Office of Internal Affairs made an unreasonable decision, we elevated the Office of Internal Affairs' decision to its management. For the 170 cases in which we disagreed with the Office of Internal Affairs' decision from January through June 2021, we elevated seven cases to Office of Internal Affairs' management. After we elevated these seven decisions, the Office of Internal Affairs approved or approved in part the OIG's recommendations in three cases.

For the January through June 2021 reporting period, we paid particular attention to cases referred from hiring authorities involving alleged domestic violence. We often disagreed with the Office of Internal Affairs' initial decision regarding these referrals. The Office of Internal Affairs typically determined there was sufficient evidence to support the alleged misconduct without the need for any interview or investigation and returned these referrals to the hiring authority to take direct disciplinary action. In some cases it approved only an interview of the officer. However, we routinely recommended full administrative investigations. In two cases where the OIG recommended an administrative investigation, the Office of Internal Affairs rejected the matter entirely, finding in one case there was insufficient information to open an investigation, and returned the second matter to the hiring authority for the hiring authority to conduct further local inquiry. Of the 170 referrals for which we disagreed with the Office of Internal Affairs' decision in some aspect, 20 of those disagreements involved cases where an officer was alleged to have engaged in domestic violence (12 percent).

We also assessed the Office of Internal Affairs' performance in completing deadly force investigations and found their performance in timely completing such investigations declined significantly since the July through December 2020 reporting period. For the 109 cases the OIG monitored and closed during the January through June 2021 reporting period, the Office of Internal Affairs did not complete deadly force investigation within the time required by the department's internal time frames in six of the nine cases, or 67 percent. This is a decline in performance compared with the July through December 2020 reporting period, during which the Office of Internal Affairs did not timely complete deadly force investigations in only two of the seven deadly force investigations, or 29 percent.

Department Attorneys

Our monitoring included an assessment of the performance of attorneys from the department's Office of Legal Affairs' Employment Advocacy and Prosecution Team. These attorneys provided legal advice to the Office of Internal Affairs during its decision-making process regarding hiring authority referrals and during investigations in cases in which the department assigned an attorney. In some cases, a department attorney was assigned to provide legal representation to hiring authorities during the employee disciplinary process, including during litigation.

Overall, department attorneys performed in a *satisfactory* manner in providing legal advice to the Office of Internal Affairs while it processed employee misconduct referrals and conducted investigations. For cases we monitored and closed in this reporting period, department attorneys performed in a *satisfactory* manner in 92 cases and performed poorly in 16 cases. In one case, the department attorney performed in a *superior* manner. Combined, these ratings form an overall *satisfactory* assessment rating of 72 percent. However, department attorneys still did not make timely entries into the department's case management system regarding critical dates in 15 of 91 cases, or 17 percent. If critical dates are not properly tracked, the deadline to take disciplinary action could expire, causing hiring authorities to impose discipline when it's too late to do so.

Department attorneys also provided sound legal advice to the hiring authority regarding the sufficiency of the evidence, investigation, and findings in 80 of the 88 cases, 91 percent. However, we found that department attorneys' performance during litigation was *poor* overall, primarily due to the delayed service of disciplinary actions. According to departmental policy, the department must serve disciplinary actions on officers within 30 days of the hiring authority's decision to take disciplinary action. In order to do so, the department attorney or employee relations officer must prepare the disciplinary action to allow sufficient time for service of the action within the 30-day time frame. In addition, the department must serve disciplinary actions before the deadline to take disciplinary action expires, which is within one year of the discovery of alleged misconduct for officers.[4] In 49 of the 88 cases, the department served one or more officers with disciplinary action. Of those 49 cases, department attorneys did not ensure the department served the disciplinary action within 30 days of the hiring authority's decision to take disciplinary action in 31 cases, or 63 percent.

4. California Government Code section 3304 (d) (1).

Summary of Facts: Monitoring Internal Investigations and the Employee Disciplinary Process of the California Department of Corrections and Rehabilitation, January–June 2021

The Office of the Inspector General (the OIG) is mandated by the California Penal Code to provide oversight of internal investigations and employee discipline cases of the California Department of Corrections and Rehabilitation (the department), and to advise the public regarding the adequacy of each investigation and whether employee discipline is warranted. Since 2005, the OIG has fulfilled its mission to bring transparency to investigations and employee discipline through diligent and trustworthy monitoring, reporting, and recommending improvements to the department.

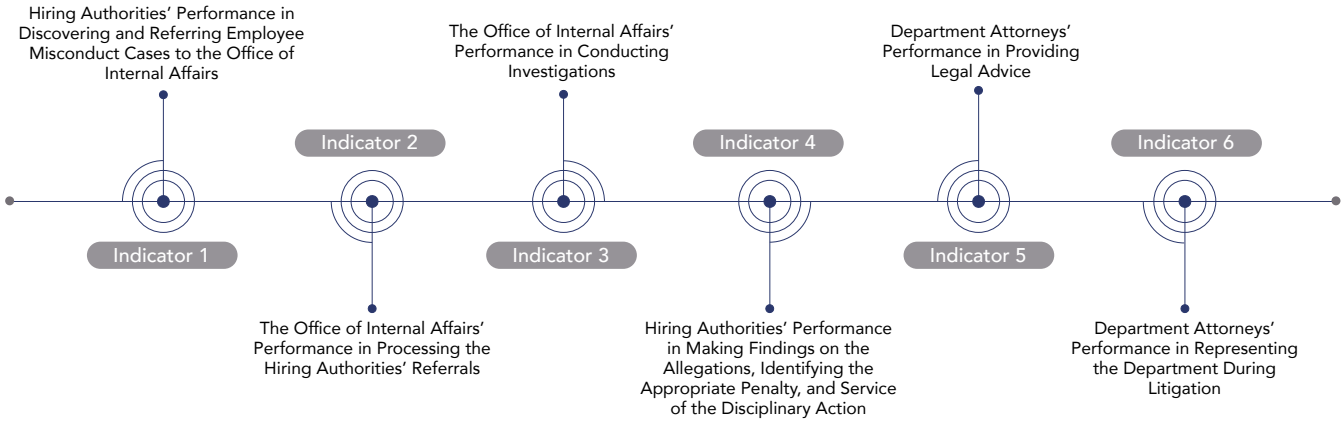
Overall Ratings for the January Through June 2021 Reporting Period

Overall Rating: *Poor*
Overall Weighted Average: 63%

Results & Percentages		
Superior	*Satisfactory*	*Poor*
100%–80%	79%–70%	69%–50%

Source: The Office of the Inspector General.

The Six Indicators Used to Assess the Department's Performance



The OIG's Recommendations

Nº 1. The OIG recommends the Office of Internal Affairs open full administrative investigations in all cases involving alleged domestic violence when initially deciding on a course of action during the central intake process.

Nº 2. The OIG recommends that the Office of Internal Affairs classify all allegations of domestic violence as ***Domestic Violence***, regardless of the extent of the injuries or presence of corroborating evidence.

Nº 3. The OIG recommends the department comply with its own departmental rules and require the inclusion of no-rehire clauses in any settlement that allows a dismissed employee to resign in lieu of dismissal. If the State Personnel Board rejects the settlement, the OIG recommends the department seek judicial review of the decision and obtain clarity from the courts regarding the applicability of the *California Code of Civil Procedures*, section 1002.5, to settlements involving appeals from dismissals.

Nº 4. The OIG recommends that hiring authorities refer all unintentional discharge cases to the Office of Internal Affairs for analysis and review. In addition, the OIG recommends the department assess all the locations where weapons are stored and handled to ensure proper safety measures are taken to safeguard life and prevent unnecessary injury.

Nº 5. The OIG recommends the department categorize all cases involving the unintended discharge of a firearm consistently and in a manner that the department can accurately track.

Introduction

Background

As discussed in the Summary, the California Penal Code mandates the Office of the Inspector General (the OIG) to provide oversight of and report on the California Department of Corrections and Rehabilitation's (the department) internal investigations and employee disciplinary process. Whenever a hiring authority reasonably believes an employee committed misconduct or engaged in criminal activity, the hiring authority must timely submit a referral to the department's Office of Internal Affairs' Central Intake Unit, requesting an investigation or approval to address the allegations without an investigation.[5] Participants from the Office of Internal Affairs, department attorneys from the Employment Advocacy and Prosecution Team, and attorneys from the OIG comprise a Central Intake Panel, which meets weekly to review the misconduct referrals from hiring authorities. The Office of Internal Affairs leads the meetings, and department attorneys provide legal advice to the Office of Internal Affairs. The OIG monitors the process, provides recommendations to the Office of Internal Affairs regarding decisions on referrals, and determines which cases the OIG will monitor. The Office of Internal Affairs, not the panel, makes the final decision regarding the action it will take on each hiring authority referral. The options are:

- To conduct an administrative investigation;[6]
- To conduct a criminal investigation;[7]
- To conduct only an interview of the employee (or employees) suspected of misconduct and no other investigative activity;
- To authorize the hiring authority to take direct action against the employee regarding the alleged misconduct without an investigation or interview of the employee (or employees) suspected of misconduct;
- To reject the referral without further action concerning the allegation or allegations because there is no reasonable belief misconduct occurred; or

5. Department Operations Manual, Section 33030.5.2 (hereafter: DOM). The DOM is defined in the table of terms found at the beginning of this report.

6. Elsewhere in this report, we also refer to an administrative investigation as a full administrative investigation or a full investigation.

7. While a criminal investigation is conducted to investigate whether there is a criminal law violation (leading to a potential criminal conviction with incarceration, criminal fines, or probation), an administrative investigation is conducted, generally, to determine whether there is a violation of policies, procedures, or California Government Code section 19572 leading to employee disciplinary action, such as dismissal from State employment, demotion, suspension from work, salary reduction, or a letter of reprimand.

- To reject the referral and return it to the hiring authority to conduct further inquiry.[8]

The OIG's activities included monitoring the Office of Internal Affairs' investigations that meet our monitoring criteria, as set forth on the next page, and evaluating the performance of the special agents' investigative work. We also monitored department attorneys' performances during internal investigations, as well as the work of department attorneys or employee relations officers in any subsequent disciplinary and litigation process. Finally, we assessed how well hiring authorities performed in determining allegations of employee misconduct, imposing discipline, and processing misconduct cases.

The information discussed in this report concerns the 109 cases we monitored and closed during the period from January through June 2021, including assessments of each departmental unit's performance in individual cases. Further, we detail herein the administrative cases in which the Office of Internal Affairs conducted an investigation or interview of an employee suspected of misconduct, cases in which the hiring authority made decisions regarding the investigation and allegations, and, if the hiring authority imposed discipline on an employee, any appeal process regarding the disciplinary action.

Our discussion also includes cases in which the Office of Internal Affairs returned referrals to the hiring authority to address the allegation or allegations based on the evidence available without any investigation, as well as cases wherein the Office of Internal Affairs conducted an investigation, but the hiring authority did not sustain allegations. To ensure the integrity of the entire process, we do not report the complete details of a case until all administrative proceedings have been completed.

Finally, because the OIG also monitored cases involving alleged criminal conduct, we included the details of criminal investigations we monitored and closed during the period from January through June 2021. We reported these cases once the Office of Internal Affairs referred its criminal investigation to the appropriate prosecuting agency for filing consideration or determined there was insufficient evidence to refer the matter.

8. An allegation inquiry is the collection of preliminary information concerning an allegation of employee misconduct necessary to evaluate whether the matter shall be referred to the Office of Internal Affairs' Central Intake Unit (DOM, Sections 31140.3 and 31140.14). Generally, a hiring authority conducts an initial inquiry before submitting an employee misconduct referral to the Office of Internal Affairs' Central Intake Unit. The Office of Internal Affairs' Central Intake Unit sometimes requests that hiring authorities conduct an additional inquiry.

Scope and Methodology

Scope

We provided a draft copy of this report to the department to allow it time to review and provide feedback. Upon review, the department declined to comment.

Consistent with prior reporting periods, the OIG monitored and assessed the department's more serious internal investigations of alleged employee misconduct, such as cases involving alleged dishonesty, code of silence, use of force, and criminal activity. Because officers are held to a higher standard of conduct, which was the core focus of the *Madrid* case (889 F. Supp. 1146 (N.D. Cal. 1995)) pursuant to which we began monitoring the department's internal investigations and employee discipline cases, we once again concentrated our efforts on peace officer employee discipline cases. Table 1 below lists criteria we used to determine which cases to monitor.

Table 1. Monitoring Criteria Used by the Office of the Inspector General

Madrid-Related Criteria*	OIG Monitoring Threshold
Use of Force	Use of force resulting in, or which could have resulted in, serious injury or death or discharge of a deadly weapon.
Dishonesty	Perjury; material misrepresentation in an official law enforcement report; failure to report a use of force resulting in, or which could have resulted in, serious injury or death; or material misrepresentation during an internal investigation.
Obstruction	Intimidating, dissuading, or threatening witnesses; retaliation against an incarcerated person or against another person for reporting misconduct; or the destruction or fabrication of evidence.
Sexual Misconduct	Sexual misconduct prohibited by California Penal Code section 289.6.
High Profile	Cases involving alleged misconduct by high-ranking department officials; misconduct by any employee causing significant risk to institutional safety and security, or for which there is heightened public interest, or resulting in significant injury or death to an incarcerated person, ward, or parolee (excluding medical negligence).
Abuse of Position or Authority	Unorthodox punishment or discipline of an incarcerated person, ward, or parolee; or purposely or negligently creating an opportunity or motive for an incarcerated person, ward, or parolee to harm another incarcerated person, ward, parolee, staff, or self, i.e., suicide.
Criminal Conduct	Trafficking of items prohibited by the California Penal Code or criminal activity that would prohibit an officer, if convicted, from carrying a firearm (all felonies and certain misdemeanors such as those involving domestic violence, brandishing a firearm, and assault with a firearm).

* *Madrid* v. *(Gomez) Cate* (N.D. Cal. 1995) 889 F.Supp. 1146 (citation (URL) accessed on 11-16-21).

Based on information the Office of Internal Affairs provided, from January 1, 2021, through June 30, 2021, the Office of Internal Affairs received 1,109 referrals, all but two of them with information hiring authorities submitted electronically using a process the department implemented on November 20, 2019. Only two referrals from a hiring authority were submitted using a printed form called the "Office of Internal Affairs' Confidential Request for Internal Affairs Investigation/ Notification of Direct Adverse Action," also known as Form 989. Between January 1, 2021, and June 30, 2021, the Office of Internal Affairs made decisions concerning a total of 1,058 referrals, some of which it received before January 1, 2021. Of the 1,058 referrals for which it made decisions, the Office of Internal Affairs found that in 995 referrals (94 percent), there was sufficient evidence to approve the hiring authority's request for investigation or approval to take direct disciplinary action on the misconduct allegations.

For the other 63 referrals (6 percent), the Office of Internal Affairs determined there was insufficient evidence of employee misconduct or criminal activity. In those cases, the Office of Internal Affairs rejected the referrals either because it determined that the information provided did not amount to misconduct or determined that the matter should be sent back to the hiring authority for the hiring authority to conduct further inquiry. Once rejected for further local inquiry, the Office of Internal Affairs does not ensure that the hiring authority complete the inquiry recommended by the Office of Internal Affairs, and in many cases, the matter goes no further. Of the 63 rejected referrals, the Office of Internal Affairs determined 50 did not amount to misconduct, and sent 13 back to the hiring authority to conduct further local inquiry. Of the 13 referrals sent back to the hiring authority for further inquiry, in only three cases did the hiring authority take further action. In two of the three, the hiring authority obtained the missing information and sent the matter back to the Office of Internal Affairs, who then approved the hiring authority to take direct disciplinary action. In one of the three, the hiring authority obtained further information and took corrective action by issuing a letter of instruction rather than referring the matter back to the Office of Internal Affairs.

Of the 1,058 referrals, the Office of Internal Affairs returned 592 referrals (56 percent) to hiring authorities to take direct action on employee misconduct allegations without pursuing a full investigation or an interview of the employee who was alleged to have engaged in misconduct. The Office of Internal Affairs approved interviews of employees suspected of misconduct, but not full administrative investigations, in 112 of 1,058 cases (11 percent). These are cases in which the Office of Internal Affairs determined that, in order for a hiring authority to make decisions regarding the allegation, it was only necessary to interview the subject of the investigation and not conduct any other investigative work, such as interviewing other witnesses or collecting other evidence. In total, considering both direct action and

subject-only interview cases, the Office of Internal Affairs determined that, in 704 of 1,058 referrals (67 percent), it did not need to conduct a full administrative investigation.

The Office of Internal Affairs determined full administrative investigations were warranted in 208 of 1,058 referrals (20 percent). Investigations may include interviewing the employees suspected of misconduct; interviewing percipient witnesses, including incarcerated persons and private citizens, depending on the nature of the alleged misconduct; and obtaining additional documentary evidence, such as computer forensic reports. Lastly, the Office of Internal Affairs concluded there was enough evidence to warrant criminal investigations in 83 of 1,058 referrals (8 percent).[9] Generally, once the Office of Internal Affairs approved the referrals, the referrals became cases. Cases that required full investigations typically involved the most serious misconduct and, therefore, constituted the highest percentage of cases we monitored. From January through June 2021, the OIG identified 125 cases (13 percent) for monitoring of the 995 referrals in which the Office of Internal Affairs approved the hiring authority's request for investigation, interview, or request to directly address an employee misconduct allegation.[10] Not all of these cases became final at the end of the reporting period.

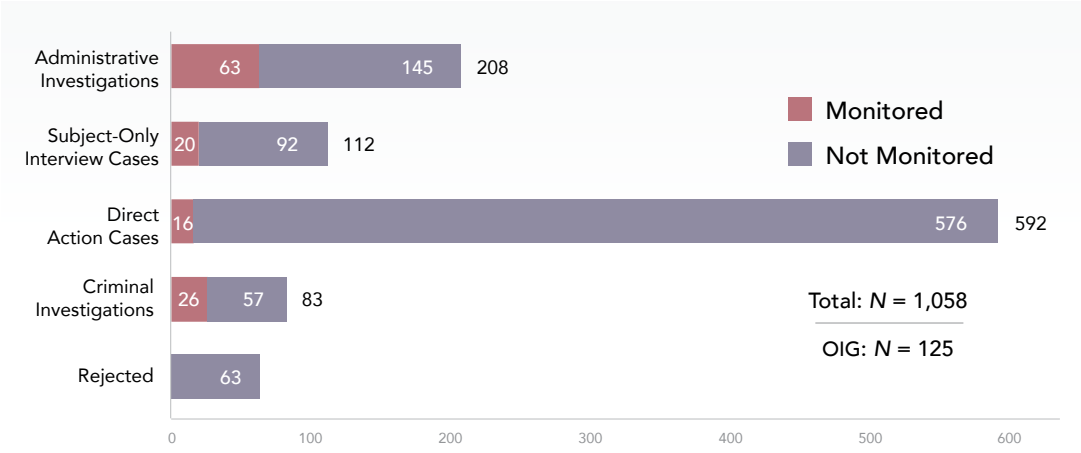
Of the 125 cases the OIG identified for monitoring, 63 cases (50 percent) involved an administrative investigation, and 26 cases (21 percent) involved a criminal investigation. In 16 of the 125 cases (13 percent) the OIG identified for monitoring, the Office of Internal Affairs decided there was sufficient evidence available for the hiring authority to address the misconduct allegations without any investigation. In 20 of the 125 cases (16 percent) we identified for monitoring, the Office of Internal Affairs decided the only investigative work needed was an interview of the employee suspected of misconduct. The OIG began monitoring these 125 cases the Office of Internal Affairs approved for investigation, employee interview, or direct action in the January through June 2021 reporting period. Elsewhere in the report, we mention that we are reporting on 109 cases that the OIG monitored and closed during the January through June 2021 reporting period.

Figure 2 on the next page presents the number of cases opened by the Office of Internal Affairs from January through June 2021, the types of cases, and the number of each case type the OIG accepted for monitoring.

9. Numbers may not sum to 100 percent due to rounding.

10. The OIG monitored fewer cases than usual during this reporting period because of staff vacancies and the OIG's focus and redistribution of resources to a special report.

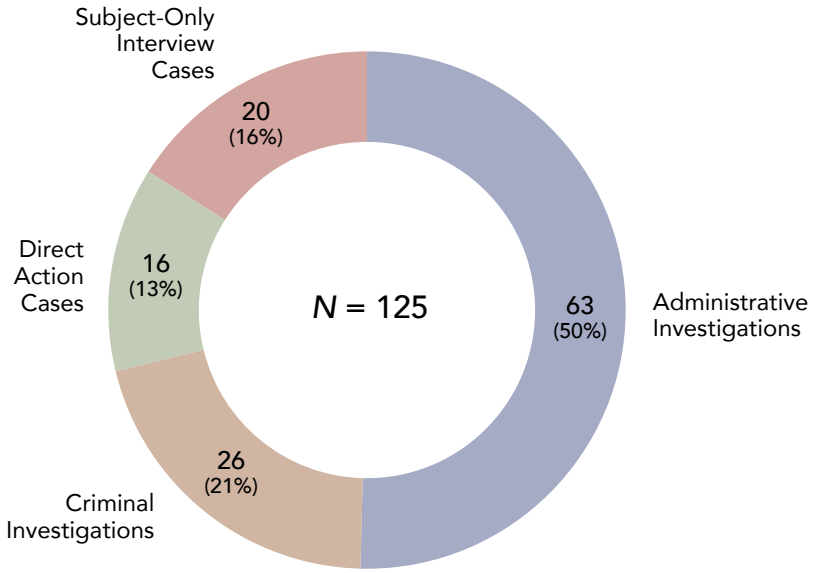
Figure 2. Decisions the Office of Internal Affairs Made Concerning Hiring Authority Referrals and Cases the OIG Accepted for Monitoring During the Period From January Through June 2021



Sources: The California Department of Corrections and Rehabilitation's Case Management System and the Office of the Inspector General Tracking and Reporting System.

Figure 3 below presents the percentages of each case type we accepted during the monitoring period.

Figure 3. Percentages of Each Case Type the OIG *Accepted* for Monitoring During the Period From January Through June 2021



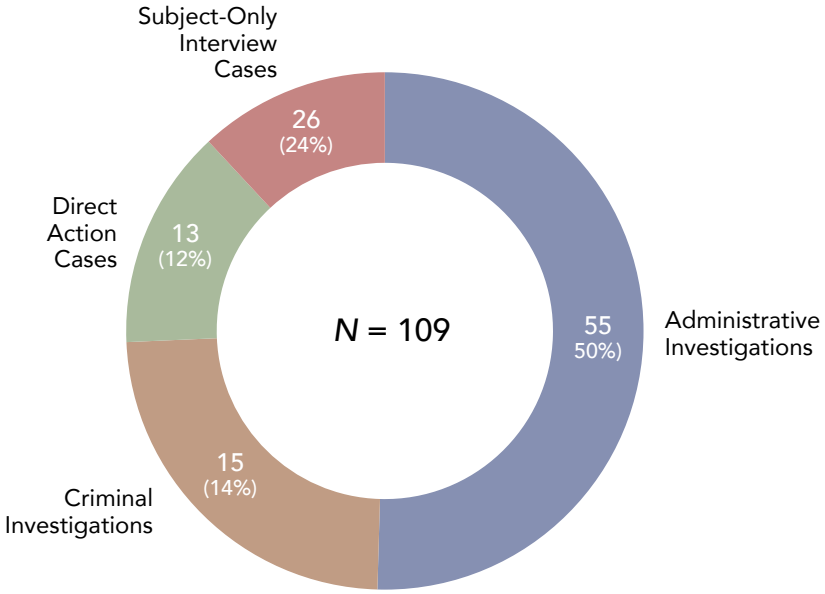
Note: Numbers may not sum to 100 percent due to rounding.

Source: The Office of the Inspector General Tracking and Reporting System.

The department did not complete and close all of the cases we accepted for monitoring during this reporting period before June 30, 2021. We only provide a final assessment of a case once we conclude our monitoring and close it. As noted above, this report provides an assessment of 109 cases the OIG monitored and closed from January 1, 2021, through June 30, 2021, some of which were opened before January 1, 2021. Of the 109 cases the OIG monitored and closed between January 1, 2021, and June 30, 2021, 94 cases involved alleged administrative misconduct. The remaining 15 cases involved alleged employee criminal activity. Among the 109 cases we monitored and closed, 98 involved peace officers, eight involved employees who were not peace officers, and three involved both peace officers and employees who were not peace officers.

Figure 4 below presents the percentages of case types the OIG monitored, closed, and is reporting for the January through June 2021 reporting period.

Figure 4. Types of Cases the OIG *Monitored* and *Closed* During the Period From January Through June 2021

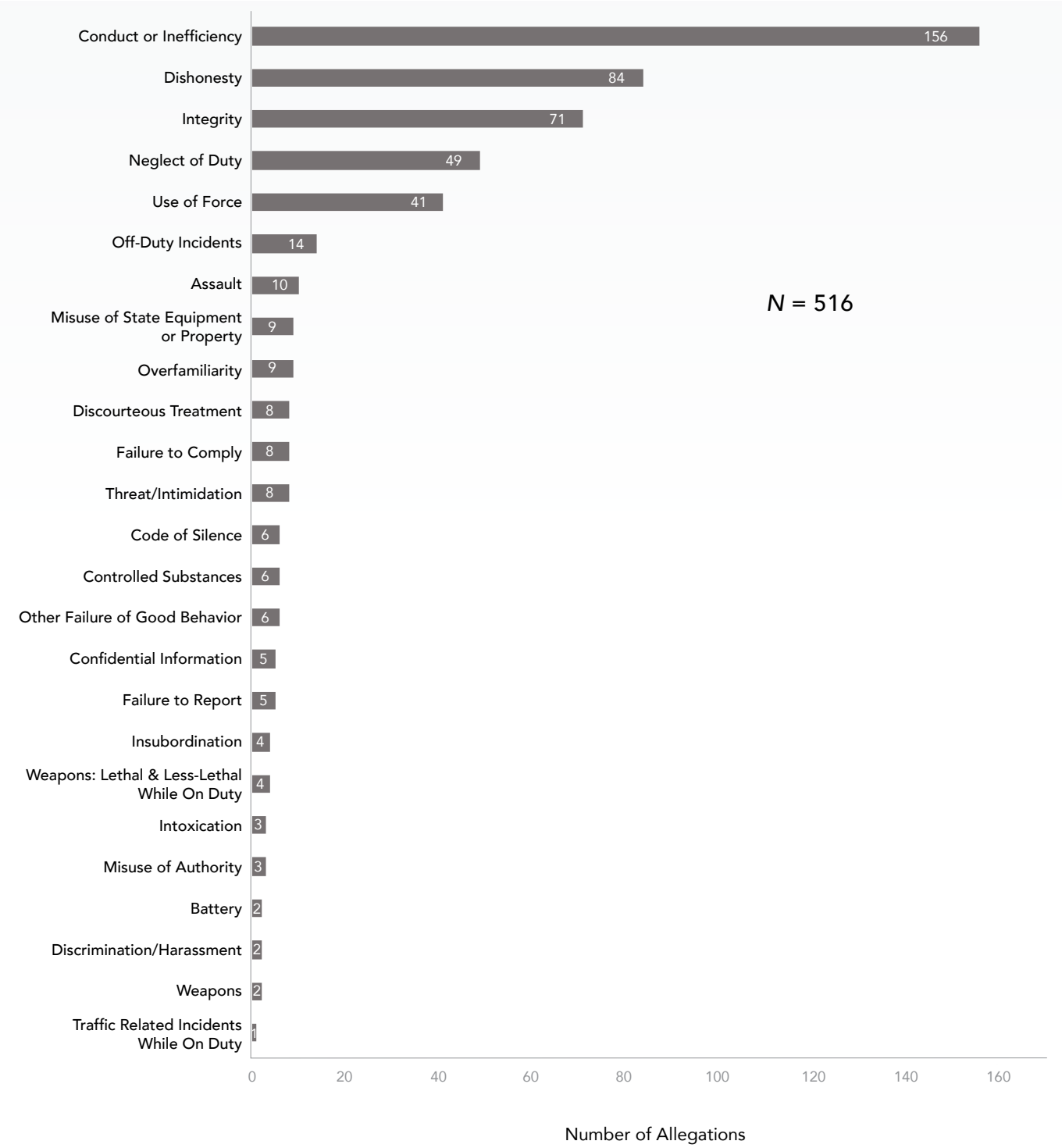


Note: Numbers may not sum to 100 percent due to rounding.

Source: The Office of the Inspector General Tracking and Reporting System.

Many cases have more than one allegation or allegation type; consequently, the total number of allegations exceeds the number of cases we monitored and closed. For example, in one case after a ward spit on a youth counselor, an officer allegedly kicked and attempted to strangle the ward and a second officer allegedly kicked, slammed the ward's head against the floor, and punched the ward in the ribs.

Figure 5. Allegation Distribution in Administrative Cases the OIG *Monitored* and *Closed* During the Period From January Through June 2021



Note: The total number of allegations exceeds the number of cases we monitored and closed because several cases involve more than one allegation against the subject of the case.

Source: The Office of the Inspector General Tracking and Reporting System.

A sergeant allegedly pulled on the ward's restraints, causing him to scream. The first and second officer, a third officer, and a parole agent allegedly failed to report the incident and were dishonest when they did. The parole agent allegedly did not submit a report until the next day. The sergeant and the third and a fourth officer allegedly threatened to harm the ward if he reported the assault, and the sergeant allegedly failed to report the use of force. Later, the third officer and a fourth officer allegedly threatened the ward again, and the fourth officer failed to report the third officer's threats. The first officer then allegedly lied during an Office of Internal Affairs interview. This one case involved 18 allegations against six subjects categorized under four allegation types. Figure 5 on the facing page includes the number of unique allegations in the cases we monitored from January through June 2021.

Methodology

During the January through June 2019 reporting period, the OIG implemented a new methodology to provide more specific assessments of each of the department's units and its compliance with policies and procedures. Specifically, the OIG developed an assessment tool consisting of six performance indicators broken down by departmental unit: hiring authorities, the Office of Internal Affairs, and department attorneys. Based on the data collected and reported for the January through June 2019 reporting period, through the January through June 2021 reporting period, we believe this approach achieves our goal of providing a more accurate and detailed analysis of the department's performance. As such, we are continuing to use this methodology herein. The following list describes the six performance indicators:

- **Indicator 1**: How well a hiring authority discovered and referred allegations of misconduct to the Office of Internal Affairs, including the timeliness of the referral and the quality of the inquiry preceding the referral.
- **Indicator 2**: How well the Office of Internal Affairs' Central Intake Unit processed the hiring authority's referral, including the Office of Internal Affairs' Central Intake Unit special agent's analysis of the referral, the Office of Internal Affairs' decision regarding the referral, and the timeliness of the decision.
- **Indicator 3**: The timeliness and effectiveness of the Office of Internal Affairs' performance in conducting investigations.
- **Indicator 4**: The hiring authority's performance after the Office of Internal Affairs returned the case following an investigation or interview, or after authorizing the hiring authority to take direct action on the allegations, including the hiring authority's findings on the allegations, identification of the appropriate disciplinary penalty, and service of any disciplinary action.

- **Indicator 5**: The department attorney's performance in providing legal advice to the Office of Internal Affairs as special agents processed and analyzed hiring authority employee misconduct referrals and conducted investigations.
- **Indicator 6**: How well the department attorney or employee relations officer represented the department during litigation, including the composition of the disciplinary action and advocacy during administrative hearings before the State Personnel Board.

The OIG also developed compliance and performance-related questions concerning each indicator, again with the goal of providing a more thorough assessment of the department's performance. The OIG attorneys assigned to monitor each case answered the questions, rated each of the six indicators for each case as *superior*, *satisfactory*, or *poor*, and finally, assigned an overall rating for each case, using the same rating terminology.

Although we examined the department's compliance with its own policies and procedures in arriving at the rating for each indicator, we also used our own judgment and opinion of the quality of the department's performance from the time a hiring authority referred the allegation, during any subsequent investigation, and upon the completion of any appeal process if a hiring authority took disciplinary action. In addition significant or numerous departures from policy usually resulted in a *poor* assessment. Delayed investigations or discipline could increase costs and even increase the potential for harm by allowing unsuitable or dishonest employees to continue working. Delays can also have a negative effect on the employees suspected of misconduct due to the stress and anxiety employees and their family members may endure while waiting for the outcome. Consequently, such identifiable harm often results in a *poor* assessment rating.

For the January through June 2021 reporting period, the OIG used the same numerical point value assigned to each of the individual indicator ratings and to the overall rating for each case that we used for the last four reporting periods: the January through June 2019 reporting period, the July through December 2019 reporting period, the January through June 2020 reporting period, and the July through December 2020. The point system is as follows:

Superior ..... 4 points

Satisfactory ..... 3 points

Poor ..... 2 points

The collective value of the assigned points is divided by the total number of points possible to arrive at a weighted average score. The following hypothetical example consisting of 10 cases illustrates this system. For 10 cases, the maximum point value (denominator) is 40 points (10 cases multiplied by four points). If the department scored two *superior* results, five *satisfactory* results, and three *poor* results, its raw score (numerator) would be 29 points. The weighted average score is obtained by dividing 29 by 40, yielding a score of 72.5 percent, as given in the hypothetical equation below.

We assigned the final ratings of *superior*, *satisfactory*, and *poor* to weighted averages as follows:

Equation. Scoring Methodology

$$\frac{[\,(2\ \textit{superior} \times 4 \text{ points}) + (5\ \textit{satisfactory} \times 3 \text{ points}) + (3\ \textit{poor} \times 2 \text{ points})\,]}{(10 \text{ cases} \times 4 \text{ points})}$$

Superior: weighted averages between 100 percent and 80 percent;

Satisfactory: weighted averages between 79 percent and 70 percent;

Poor: weighted averages between 69 percent and 50 percent.[11]

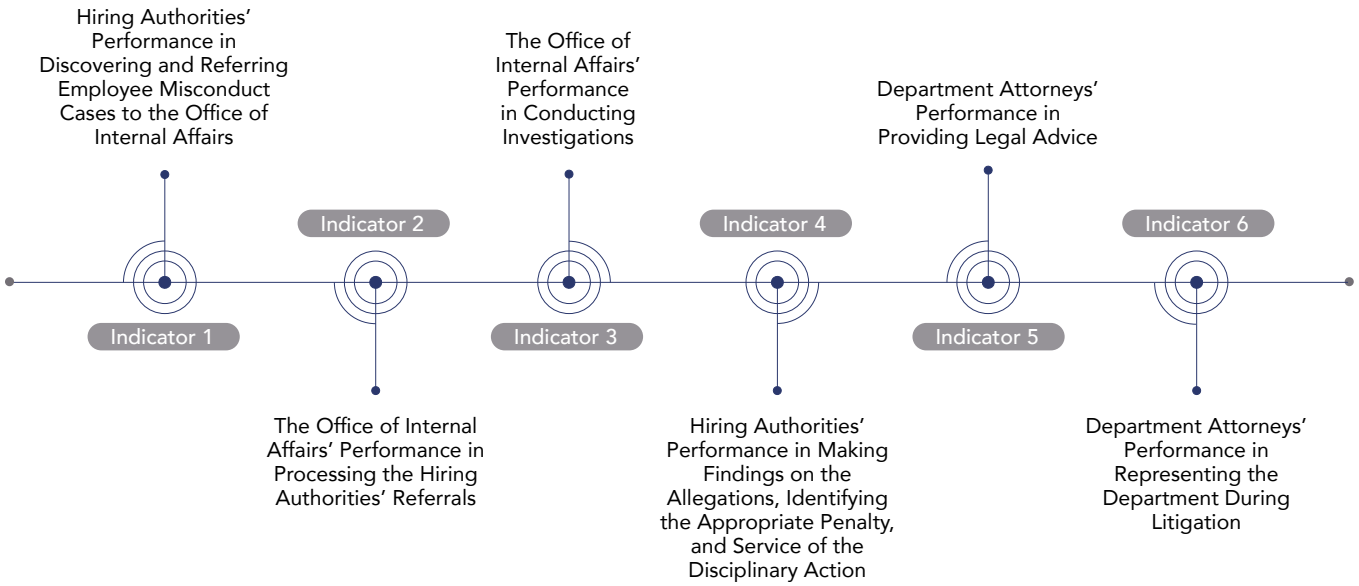
Using the example above, the summary-level rating would be *satisfactory* because the weighted average score of 72.5 percent was between 79 percent and 70 percent.

Results & Percentages		
Superior	*Satisfactory*	*Poor*
100%–80%	79%–70%	69%–50%

On the next page, we offer a brief overview of the six indicators and the corresponding performance ratings for the period of this report.

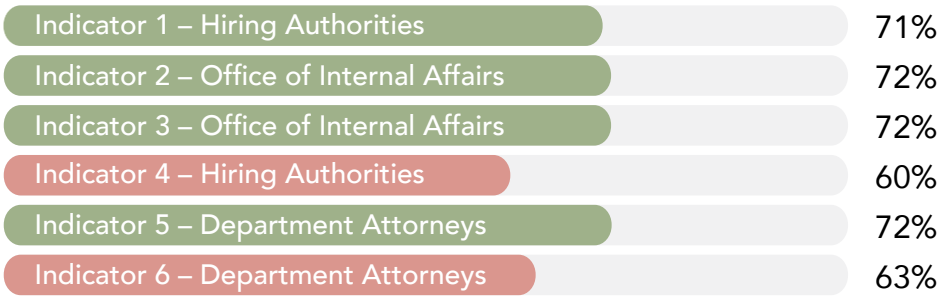
11. As we assign a minimum of two points to each rating, the minimum weighted average percentage value is 50 percent.

Figure 6. The Six Indicators Used to Assess the Department's Performance, and the Department's Overall Ratings From January Through June 2021



Overall Rating: ***Poor***
Overall Weighted Average: 63%

Results & Percentages		
Superior	***Satisfactory***	***Poor***
100%–80%	79%–70%	69%–50%



Source: The Office of the Inspector General.

Monitoring Results

The Department's Overall Performance in Investigating Employee Misconduct and in Handling Its Employee Disciplinary Process Was *Poor*

During the January through June 2021 reporting period, the OIG found the department's overall performance in investigating allegations of employee misconduct and handling its employee disciplinary process to be *poor*. The process began when the hiring authority discovered potential misconduct and referred the allegations to the Office of Internal Affairs. The case concluded when one of the following occurred:

1. The hiring authority sustained an allegation and imposed discipline, and the employee:
    a. Accepted the penalty; or
    b. Filed an appeal, and the resulting litigation at the State Personnel Board or in the California courts was resolved; or
    c. Entered into a settlement regarding the disciplinary action; or
2. The hiring authority sustained an allegation, but later withdrew the discipline; or
3. The hiring authority decided to impose discipline, but the employee resigned or retired before the hiring authority imposed discipline; or
4. The hiring authority determined there was insufficient evidence to sustain the allegations or that the allegations were unfounded.

The department's handling of a criminal case ended when the Office of Internal Affairs completed its criminal investigation and either submitted the investigation for filing consideration to a prosecuting agency, such as a county district attorney's office, the State of California Office of the Attorney General, or the Offices of the United States Attorneys at the U.S. Department of Justice, or determined there was insufficient evidence for a criminal referral.

The OIG's overall assessment of the department's effectiveness in handling cases involving investigations into employee misconduct and the employee disciplinary process is based on a cumulative assessment of our six identified indicators. Two indicators are assigned to each of three involved departmental units: the hiring authority; the Office of Internal Affairs; and the department attorney. The OIG based its rating

for each of the six indicators on the answers to specific compliance- or performance-related questions. To answer the questions, we used the standards outlined in the Department Operations Manual and other established procedures, such as the Office of Internal Affairs' Field Guide and its deadly force investigations procedures' memoranda, as well as our opinion of best practices.

Indicator 1 and Indicator 4 applied to hiring authorities' performances. Answers to the questions in Indicator 1 determined how well the hiring authority discovered and referred allegations of employee misconduct to the Office of Internal Affairs, and the answers to the questions in Indicator 4 assessed how well the hiring authority determined its findings regarding alleged misconduct and processed the misconduct cases. Because hiring authorities do not make any investigative or disciplinary findings in criminal cases, Indicator 4 did not apply in cases involving criminal investigations.

We used information from the answers to Indicator 2 to assess how well the Office of Internal Affairs' Central Intake Unit analyzed hiring authority referrals of employee misconduct, whereas the answers to the questions in Indicator 3 addressed how well the Office of Internal Affairs conducted investigations, interviewed employees suspected of misconduct, and prepared investigative reports. If the Office of Internal Affairs did not conduct an investigation or interview of the employee suspected of misconduct, Indicator 3 did not apply.

The two remaining indicators applied to department attorneys, if any were assigned.[12] The answers to the questions in Indicator 5 determined our assessment regarding how well the department attorney provided legal advice to the Office of Internal Affairs when it processed referrals of suspected employee misconduct from the hiring authority and when the Office of Internal Affairs conducted administrative investigations. Because the department does not assign department attorneys to its criminal investigations, only the first six questions in Indicator 5 applied to department attorneys in cases involving criminal investigations, to assess how well the department attorney provided legal advice to the Office of Internal Affairs while it addressed hiring authority referrals. For administrative cases, we also used Indicator 5 to assess the department attorney's performance during the investigative and disciplinary findings conference the hiring authority conducted.

Finally, we used Indicator 6 to assess how well the department attorney (or employee relations officer, if the case was not assigned to a department attorney) handled employee discipline litigation.

12. The department does not assign an attorney to every internal investigation or employee discipline case.

After considering the ratings for our six indicators, we found the department's overall performance was *poor*. Specifically, we assessed the department's overall performance as *satisfactory* in 57 cases and *poor* in 52 cases. We did not find that the department's overall performance was *superior* in any of the cases. Table 2 below shows the department's overall ratings by case type.

Table 2. Ratings by Case Type: *Superior*, *Satisfactory*, and *Poor*

Case Type	*Superior*	*Satisfactory*	*Poor*	Total
Full Administrative Investigation	None	56% (28 cases)	44% (22 cases)	100% (50 cases)
Criminal Investigation	None	73% (8 cases)	27% (3 cases)	100% (11 cases)
Direct Action	None	23% (3 cases)	77% (10 cases)	100% (13 cases)
Direct Action With Subject Interview	None	46% (12 cases)	54% (14 cases)	100% (26 cases)
Administrative Use of Deadly Force	None	60% (3 cases)	40% (2 cases)	100% (5 cases)
Criminal Use of Deadly Force	None	75% (3 cases)	25% (1 case)	100% (4 cases)
Totals	None	**52% (57 cases)**	**48% (52 cases)**	**100% (109 cases)**

Source: The Office of the Inspector General Tracking and Reporting System.

Further, we found the department's overall performance was *poor* in conducting internal investigations and handling employee discipline cases, and the overall percentage score was 63 percent. For the 52 cases we assessed as *poor* overall, the combined assessment score was 50 percent. The indicator ratings for the 52 cases we rated as *poor* can be seen in Table 3 on the next page.

Table 3. Assessment Indicators for 52 Cases Rated as *Poor*

***N* = 52**

Ratings: *Superior* ■ *Satisfactory* ■ *Poor* ■

OIG Case Number	Discovery and Referral	Initial Determination	Investigation	Findings	Legal Advice During Investigation	Legal Representation During Litigation	Case Rating
18-0027356-DM	Satisfactory	Satisfactory	Satisfactory	Poor	Poor	Satisfactory	Poor
18-0027570-DM	Satisfactory	Satisfactory	Satisfactory	Poor	Satisfactory	Poor	Poor
18-0027838-DM	Satisfactory	Poor	Satisfactory	Poor	Poor	Poor	Poor
19-0028731-DM	Satisfactory	Satisfactory	Satisfactory	Poor	Satisfactory	Poor	Poor
19-0028978-DM	Satisfactory	Satisfactory	Satisfactory	Poor	Satisfactory	Poor	Poor
19-0028991-DM	Satisfactory	Satisfactory	Satisfactory	Poor	Satisfactory	Poor	Poor
19-0029078-DM	Poor	Poor	Satisfactory	Poor	Satisfactory	Poor	Poor
19-0029428-DM	Satisfactory	Satisfactory	Satisfactory	Poor	Satisfactory	Poor	Poor
19-0029487-DM	Satisfactory	Poor	Satisfactory	Poor	Satisfactory	Poor	Poor
19-0029763-DM	Satisfactory	Satisfactory	Satisfactory	Poor	Poor	Poor	Poor
19-0030593-DM	Satisfactory	Satisfactory	Satisfactory	Poor	Poor	Poor	Poor
19-0030682-DM	Satisfactory	Satisfactory	Poor	Poor	Superior	Poor	Poor
19-0030780-DM	Satisfactory	Satisfactory	Satisfactory	Poor	Satisfactory	Poor	Poor
19-0030781-DM	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Poor	Poor
19-0031052-DM	Satisfactory	Satisfactory	Satisfactory	Poor	Satisfactory	Poor	Poor
19-0031326-DM	Satisfactory	Satisfactory	Satisfactory	Poor	Satisfactory	Satisfactory	Poor
19-0031331-DM	Poor	Poor	Satisfactory	Poor	Poor	Satisfactory	Poor
19-0031544-DM	Satisfactory	Satisfactory		Poor	Satisfactory	Poor	Poor
19-0032138-DM	Satisfactory	Satisfactory	Satisfactory	Poor	Satisfactory	Poor	Poor
20-0032426-CM	Poor	Satisfactory	Poor		Satisfactory		Poor
20-0032495-DM	Satisfactory	Satisfactory	Satisfactory	Poor	Satisfactory	Satisfactory	Poor
20-0032622-DM	Satisfactory	Satisfactory	Satisfactory	Poor	Satisfactory	Poor	Poor
20-0032623-DM	Poor	Satisfactory	Satisfactory	Poor	Satisfactory	Poor	Poor
20-0032734-DM	Satisfactory	Poor	Satisfactory	Satisfactory	Poor		Poor
20-0032820-DM	Satisfactory	Satisfactory	Satisfactory	Poor	Poor	Poor	Poor
20-0032893-DM	Satisfactory	Satisfactory	Poor	Poor	Satisfactory	Poor	Poor
20-0032894-DM	Satisfactory	Satisfactory	Satisfactory	Poor	Satisfactory		Poor
20-0032974-DM	Poor	Satisfactory	Satisfactory	Poor	Poor	Satisfactory	Poor
20-0032993-DM	Poor	Satisfactory	Satisfactory	Poor	Poor	Poor	Poor
20-0033025-DM	Poor	Poor	Poor	Satisfactory	Poor		Poor
20-0033032-DM	Satisfactory	Satisfactory		Poor	Poor	Satisfactory	Poor
20-0033660-DM	Superior	Satisfactory	Satisfactory	Poor	Satisfactory	Satisfactory	Poor
20-0033947-DM	Satisfactory	Satisfactory	Satisfactory	Poor	Satisfactory		Poor
20-0033997-DM	Satisfactory	Poor	Poor	Satisfactory	Satisfactory	Superior	Poor
20-0034080-DM	Poor	Satisfactory	Satisfactory	Poor	Poor		Poor
20-0034110-DM	Satisfactory	Satisfactory		Poor	Satisfactory	Poor	Poor
20-0034132-DM	Satisfactory	Satisfactory		Poor	Satisfactory	Poor	Poor
20-0034156-DM	Poor	Satisfactory	Poor	Poor	Satisfactory		Poor
20-0034181-DM	Satisfactory	Poor		Poor	Poor	Satisfactory	Poor
20-0034225-CM	Satisfactory	Poor	Satisfactory		Poor		Poor
20-0034353-DM	Satisfactory	Satisfactory	Satisfactory	Poor	Satisfactory	Poor	Poor
20-0034759-CM	Poor	Satisfactory	Poor		Satisfactory		Poor
20-0034828-CM	Satisfactory	Satisfactory	Poor		Satisfactory		Poor
20-0034829-DM	Satisfactory	Poor	Satisfactory	Poor	Satisfactory	Poor	Poor
20-0034901-DM	Satisfactory	Satisfactory		Poor	Satisfactory	Satisfactory	Poor
20-0034991-DM	Satisfactory	Satisfactory		Poor	Satisfactory	Satisfactory	Poor
20-0035061-DM	Satisfactory	Satisfactory		Poor	Satisfactory	Poor	Poor
20-0035610-DM	Satisfactory	Poor		Poor	Satisfactory		Poor
20-0036939-DM	Satisfactory	Satisfactory	Satisfactory	Poor	Poor		Poor
21-0038065-DM	Poor	Satisfactory		Poor	Satisfactory		Poor
21-0038846-DM	Poor	Satisfactory	Satisfactory	Satisfactory	Satisfactory		Poor
21-0039040-DM	Poor	Poor	Satisfactory	Satisfactory	Satisfactory		Poor

Note: A gray block in a column indicates this category was not applicable.

Source: The Office of the Inspector General Tracking and Reporting System.

The following are examples of four cases in which all three departmental units performed poorly during the January through June 2021 reporting period:

- In one case, a psychologist allegedly failed to evaluate incarcerated persons quarantined due to the novel coronavirus, disobeyed an order from a supervising psychiatric social worker, and lied in a memorandum to the supervising psychiatric social worker. The Office of Internal Affairs returned the matter to the hiring authority without approving an interview of the psychologist. At the investigative and disciplinary findings conference, the department attorney provided poor advice to the hiring authority when she recommended the hiring authority not consider aggravating factors related to the misconduct. The hiring authority sustained the allegations, except that the psychologist lied in a memorandum, and issued only a letter of reprimand. The OIG did not concur with the penalty determination. The hiring authority subsequently entered into a settlement agreement reducing the penalty further to a letter of instruction without sufficient evidence to justify the reduction.

- In a second case, a sergeant allegedly encouraged an incarcerated person to continue trying to commit suicide, lied to an Allegation Inquiry Management Section lieutenant who was conducting an inquiry regarding the incident, and lied to a special agent during an Office of Internal Affairs interview. The hiring authority sustained the allegations, except that the lieutenant lied to an Allegation Inquiry Management Section lieutenant, and demoted the sergeant. The OIG did not agree and elevated matter to the hiring authority's supervisor, who dismissed the sergeant. The department attorney should have recommended and the Office of Internal Affairs should have approved a full investigation, as the OIG recommended. However, the Office of Internal Affairs only approved an interview of the sergeant. After the sergeant's interview, the department attorney agreed that additional interviews were needed and submitted an appeal to the Office of Internal Affairs, which the Office of Internal Affairs granted. However, after the additional interviews, the hiring authority did not sustain all dishonesty allegations and decided only to demote the sergeant when dismissal was the more appropriate level of discipline based on the seriousness of the misconduct. In addition, the department attorney did not confirm relevant dates in the department's case management system.

- In a third case, three officers allegedly forcefully pulled a restraint chain through a handcuff port, injuring an incarcerated person's wrists. The officers allegedly failed to document the force they used, two additional officers failed to report the force they observed, and none of the officers submitted a report before

leaving work. The hiring authority delayed referring the matter to the Office of Internal Affairs. In the OIG's opinion, because evidence suggested the officers did not accurately report the force used or witnessed, the Office of Internal Affairs should have added dishonesty allegations and the department attorney should have recommended dishonesty allegations to the Office of Internal Affairs. Further, the Office of Internal Affairs delayed completing the investigation, and the department attorney did not timely provide a memorandum regarding the sufficiency of the evidence, investigation, findings, and disciplinary determinations to the hiring authority and to the OIG.

- In a fourth case in which all three units performed poorly, an officer allegedly conducted an unauthorized shower program by himself, improperly escorted incarcerated persons to the shower, failed to ensure a cell door was secured, and unlocked the cell door, allowing unauthorized incarcerated persons to enter the cell. The officer allegedly lied to a sergeant and a captain when he stated the cell door was locked and that he conducted the shower program with a second officer. The first and second officers allegedly failed to maintain eye contact with each other and work as a team. Also, the first officer allegedly lied during an Office of Internal Affairs interview. The Office of Internal Affairs caused an unnecessary delay by initially declining to add a dishonesty allegation or approve interviews of the officers. Although the hiring authority initially asked for a full investigation, the hiring authority subsequently and without new information changed his request and agreed with the Office of Internal Affairs to take action without an investigation. At the investigative and disciplinary findings conference, the OIG recommended an investigation, and the hiring authority agreed. After the investigation, the hiring authority sustained the allegations against the first officer, except that he unlocked the cell door and failed to maintain eye contact and work as a team with the second officer, and dismissed him, and found insufficient evidence to sustain the allegation against the second officer. The department attorney delayed drafting the notice of dismissal, and the department failed to timely serve the dismissal.

Indicator 1: The Performance by Hiring Authorities in Discovering and Referring Allegations of Employee Misconduct Was Satisfactory

Indicator Score
Satisfactory
(71%)

Superior
Two cases

Satisfactory
87 cases

Poor
20 cases

A memorandum the Office of Internal Affairs issued on July 20, 2014, requires hiring authorities to refer matters of suspected employee misconduct to the Office of Internal Affairs within 45 days of discovering the alleged misconduct. We based our assessment of hiring authorities in part on this requirement, as well as departmental policy that governs hiring authority responsibilities. Those responsibilities include conducting initial inquiries to ensure there is sufficient information before referring a matter to the Office of Internal Affairs.[13] For the January through June 2021 reporting period, we found that hiring authorities performed in a *satisfactory* manner overall in discovering and referring allegations of employee misconduct to the Office of Internal Affairs. We found hiring authorities performed in a *satisfactory* manner in 87 individual cases when discovering and referring misconduct allegations, and in two cases, we found hiring authorities performed in a *superior* manner. However, we found that hiring authorities performed poorly in 20 cases.

We also found hiring authorities improved their performance in timely referring misconduct allegations over the July through December 2020 reporting period. For the January through June 2021 reporting period, hiring authorities once again submitted untimely referrals in 21 percent of the total referrals, whereas 79 percent were timely. For the 20 cases in which we assessed the hiring authorities' performance as *poor* in discovering and referring allegations of employee misconduct to the Office of Internal Affairs, we found untimely referrals in 15 cases, or 75 percent. Delayed referrals have been the most common factor in *poor* assessment ratings of hiring authorities even though a late referral alone does not necessarily lead to a *poor* rating.

However, hiring authorities timely referred matters to the Office of Internal Affairs in the two cases we assessed as *superior* and in 78 of the cases we assessed as *satisfactory* for this indicator. In one of the two cases we assessed as *superior*, an officer allegedly forced an incarcerated person to the ground without justification and lied in a report about the incident. Three other officers allegedly failed to report the first officer's unnecessary use of force. Just seven days after learning of the suspected misconduct, the hiring authority referred the matter to the Office of Internal Affairs. In the second case we assessed as *superior* for this indicator, an officer allegedly failed to adequately secure, search, and scan an incarcerated person with a metal detector. Subsequently, the incarcerated person attacked and killed a second incarcerated person with a makeshift weapon. The officer allegedly failed to respond to the

13. Refers to DOM, Section 33030.5.2, which sets forth the requirement that hiring authorities are to submit employee misconduct referrals to the Office of Internal Affairs' Central Intake Unit, and the Office of Internal Affairs' Memorandum dated June 20, 2014, which sets forth the time frames for hiring authorities to submit referrals.

attack. The hiring authority referred the matter to the Office of Internal Affairs just nine days after discovering the alleged misconduct.

In contrast, in cases in which a hiring authority delayed in submitting a referral to the Office of Internal Affairs for the cases we closed between January and June 2021, the longest delay was 354 days after policy required. The second-longest delay was 265 days after policy required, and the shortest delay was 49 days after learning of the alleged misconduct, or four days after policy required. Delayed referrals by hiring authorities often occurred in cases that involved allegations of officer integrity or dishonesty. During this reporting period, hiring authorities referred 43 cases involving allegations of officer dishonesty or integrity. Of the 43 cases involving possible peace officer dishonesty, hiring authorities did not timely refer 13 of the 43 cases, or 30 percent. The following examples demonstrate significant delays by hiring authorities in referring cases involving possible officer dishonesty.

- In one case, an officer allegedly intentionally submitted a false rules violation report indicating he discovered alcohol manufactured by an incarcerated person during a cell search, even though he had not searched the cell. The hiring authority did not refer the alleged misconduct to the Office of Internal Affairs until 399 days after discovering the potential misconduct, 354 days after policy required, and 34 days after the deadline to take disciplinary action against the officer had expired.
- In a second case, after a mentally ill incarcerated person cut himself with a razor and repeatedly yelled for assistance, two officers allegedly failed to call for assistance, and one of the officers allegedly lied during an Office of Internal Affairs interview. The hiring authority did not refer the matter to the Office of Internal Affairs until 310 days after discovery and 265 days after policy required.
- In a third case, outside law enforcement arrested a youth counselor after he allegedly drove under the influence of alcohol, caused a vehicle collision, and fled the scene. The youth counselor also allegedly withheld pertinent facts regarding the collision when reporting the event to the hiring authority. The hiring authority did not refer the matter to the Office of Internal Affairs until 194 days after discovery and 180 days after policy required.

Officers hold "a position of trust, and the public has a right to the highest standard of behavior from those they invest with the power and authority of a law enforcement officer. Honesty, credibility and temperament are crucial to the proper performance of an officer's duties."[14] Although they are not the only allegations that will lead to an

14. *Talmo* v. *Civil Service Com.* (1991) 231 Cal.App.3d 210, 231.

officer's dismissal, sustained allegations of dishonesty or integrity often result in an officer's dismissal because "[d]ishonesty is incompatible with the public trust."[15] Dishonesty allegations may also be added after a hiring authority refers a matter to the Office of Internal Affairs if, for example, an officer lies during an investigative interview with the Office of Internal Affairs.

For cases the OIG monitored and closed between January and June 2021, hiring authorities determined dismissal was the appropriate penalty in 35 cases. In seven of those 35 cases, or 20 percent, in which hiring authorities initially determined dismissal was the appropriate penalty, the hiring authority did not timely identify and refer the serious misconduct allegations to the Office of Internal Affairs. Six of the seven cases involved allegations of peace officer dishonesty or integrity, and in one of the seven cases, the officer refused to answer questions during her investigative interview. In the prior reporting period of July through December 2020, hiring authorities determined dismissal was the appropriate penalty in 39 cases and did not timely refer 13 of those 39 cases, or 33 percent. While there has been an improvement in timely referrals of cases involving potential dismissal, untimeliness remains a concern.

In one of the seven cases in which the hiring authority did not timely refer allegations to the Office of Internal Affairs and ultimately determined dismissal was the appropriate penalty, the hiring authority delayed 133 days after discovering the alleged misconduct and 88 days after policy required in referring the matter to the Office of Internal Affairs. After the investigation, the hiring authority sustained allegations that an officer falsely documented that an agitated incarcerated person refused to remove a cell window covering, and that the officer lied during an Office of Internal Affairs interview. The hiring authority served the officer a notice of dismissal, but the officer resigned before the dismissal took effect.

In a second case, an officer allegedly inappropriately displayed a firearm in public. The officer also allegedly lied to outside law enforcement, to a sergeant, and during Office of Internal Affairs interviews. The hiring authority delayed 62 days after policy required in referring the matter to the Office of Internal Affairs. After the hiring authority sustained allegations and dismissed the officer, the officer filed an appeal with the State Personnel Board but resigned in lieu of dismissal as part of a settlement agreement.

In a third case, a sergeant allegedly encouraged an incarcerated person to continue trying to commit suicide. The sergeant also allegedly lied to an Allegation Inquiry Management Section lieutenant and during an Office of Internal Affairs interview. The hiring authority delayed 17 days after

15. Ibid.

policy required in referring the matter to the Office of Internal Affairs. The department sustained the allegations, except that the sergeant lied to an Allegation Inquiry Management Section lieutenant, and dismissed him. After a hearing, the State Personnel Board upheld the dismissal.

In a fourth case, an officer allegedly engaged in an overly familiar relationship with an incarcerated person and inappropriately communicated with him by mobile phone. The hiring authority delayed four days after policy required in referring the matter to the Office of Internal Affairs. The officer refused to answer questions during the investigation. The hiring authority determined dismissal was the appropriate penalty, but the officer resigned before the Office of Internal Affairs completed its investigation.

In a fifth case, an officer allegedly walked away from a computer station without securing the computer, failed to review a draft report prior to uploading it into a departmental database, and lied to a sergeant. A second officer allegedly lied to a sergeant concerning the incident and submitted a false report. The hiring authority delayed 20 days after policy required in referring the matter to the Office of Internal Affairs. After the investigation, the hiring authority sustained the allegations against the first officer, except that he lied to a sergeant, and provided training. The hiring authority decided to dismiss the second officer, but withdrew the dismissal after a *Skelly* hearing.

In a sixth case, two officers allegedly failed to immediately remove an incarcerated person from a vehicle after a fire extinguisher discharged, provide adequate medical attention to the incarcerated person, or contact a supervisor. Both officers allegedly lied to a lieutenant. One of the officers also allegedly recorded the incident with his personal mobile phone. The hiring authority delayed 28 days after policy required in referring the matter to the Office of Internal Affairs. After an investigation, the hiring authority dismissed one of the officers, but the State Personnel Board revoked the dismissal following a hearing. The hiring authority issued a salary reduction to the second officer.

In the final case, an officer allegedly inappropriately grabbed an incarcerated person's arm, tried to place handcuffs on him, then lied to a lieutenant. The hiring authority delayed 13 days after policy required in referring the matter to the Office of Internal Affairs. During the investigation, the officer allegedly lied during his interview. The hiring authority dismissed the officer. However, after a hearing in which the department attorney performed especially poorly, the State Personnel Board revoked the dismissal, as discussed in further detail below under Performance Indicator 6.

The department is divided into different divisions such as the Division of Adult Institutions and the Division of Adult Parole Operations. The department groups hiring authorities from the Division of Adult

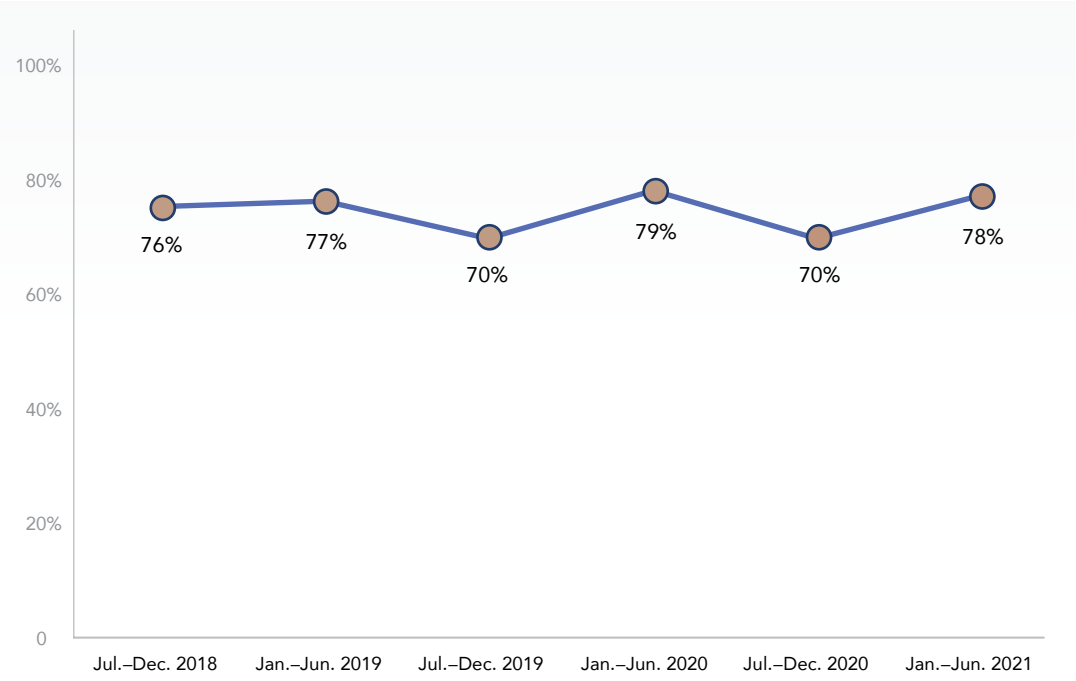
Institutions into different collectives of prisons, called *missions*, which include *General Population*, *High Security*, *Female Offender Programs and Services/Special Housing*, and *Reception Centers*. The OIG tracks how timely hiring authorities refer matters to the Office of Internal Affairs by mission.

During the January through June 2021 reporting period, we found that some hiring authorities improved their performance in referring matters to the Office of Internal Affairs. Hiring authorities from the *General Population* mission improved significantly in referring suspected misconduct, as they timely referred suspected misconduct allegations to the Office of Internal Affairs in 92 percent of referrals. During the last reporting period of July through December 2020, hiring authorities from the *General Population* mission timely referred allegations to the Office of Internal Affairs in only 64 percent of referrals. Hiring authorities from the *Reception Centers* mission also improved their performance. For the January through June 2021 reporting period, hiring authorities from the *Reception Centers* mission timely referred 73 percent of suspected misconduct allegations to the Office of Internal Affairs, an increase from 60 percent during the July through December 2020 reporting period.

However, other hiring authorities' performance in referring matters to the Office of Internal Affairs declined during the January through June 2021 reporting period. Hiring authorities from the *Female Offender Programs and Services/Special Housing* mission timely referred 79 percent of cases, a decrease from the July through December 2020 reporting period, during which time these hiring authorities timely referred 85 percent of suspected misconduct allegations. Hiring authorities from the *High Security* mission timely referred suspected misconduct during the January through June 2021 reporting period in 77 percent of cases, down slightly from the July through December 2020 reporting period, when they timely referred 79 percent of misconduct allegations to the Office of Internal Affairs.

Figure 7 on the next page presents the percentages of timely hiring authority referrals statewide over the last six reporting periods.

Figure 7. Percentages of Cases Hiring Authorities Referred to the Office of Internal Affairs Within 45 Days

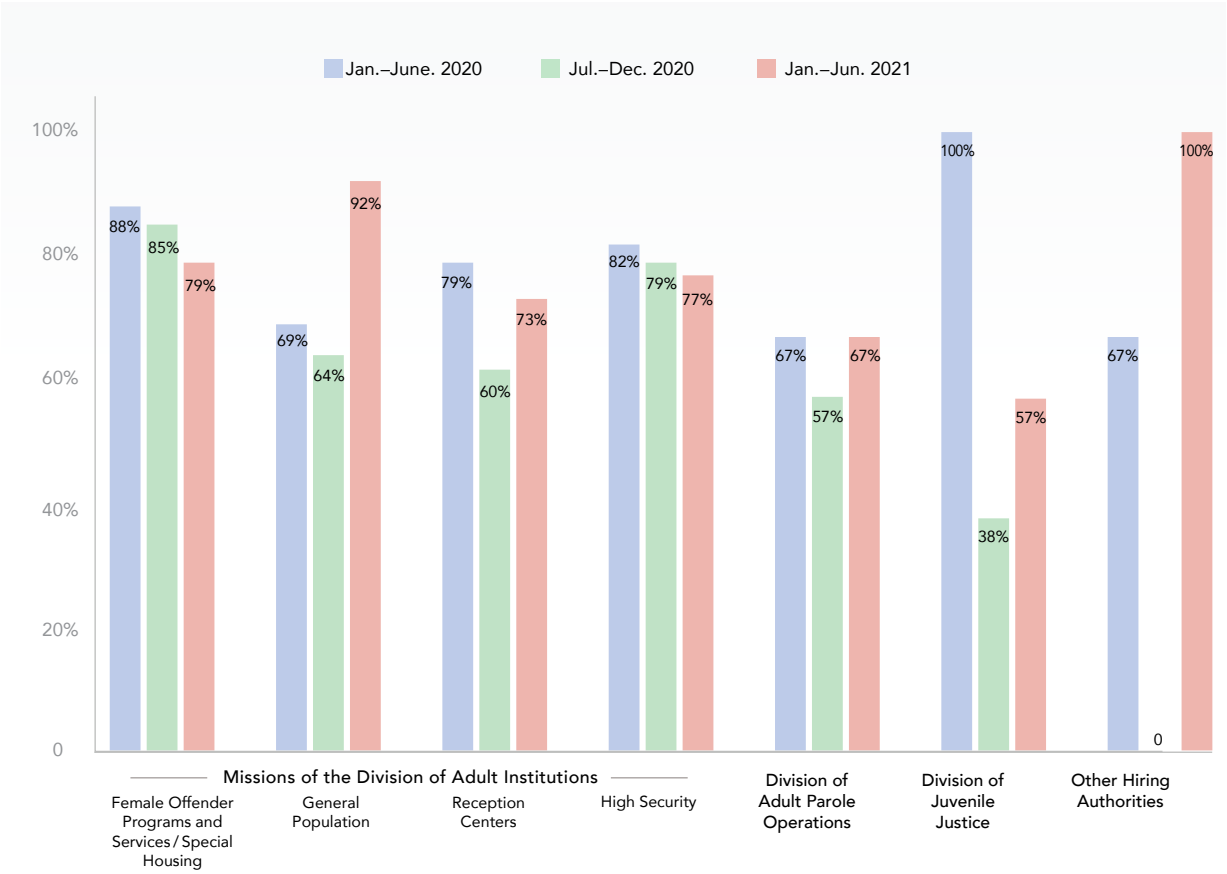


Note: This figure reflects cases that the OIG monitored and closed during the period from January through June 2021 and the five prior reporting periods.

Source: The Office of the Inspector General Tracking and Reporting System.

Figure 8 on the next page presents specific information regarding hiring authority referrals by division and also by the Division of Adult Institutions' missions, as established by the department, for the reporting period of January through June 2021, as well as for the two prior reporting periods. We report the timeliness of hiring authority referrals by division and mission because a separate director is assigned to oversee each division. As noted above, regarding the Division of Adult Institutions, the department groups its prisons into different collectives of institutions, called missions, with a separate associate director assigned to oversee each mission.

Figure 8. Timely Hiring Authority Referrals by Divisions; Division of Adult Institutions' Missions; and Other Hiring Authorities



Note: This figure reflects cases that the OIG monitored and closed during the period from January through June 2021 and the two prior reporting periods.

Source: The Office of the Inspector General Tracking and Reporting System.

Indicator Score
Satisfactory
(72%)

Superior
Zero cases

Satisfactory
94 cases

Poor
15 cases

Indicator 2: The Performance by the Office of Internal Affairs in Processing and Analyzing Hiring Authority Referrals of Employee Misconduct Was *Satisfactory*

The Office of Internal Affairs performed in a *satisfactory* manner overall in processing and analyzing referrals it received from hiring authorities for cases we monitored and closed between January and June 2021. We found the Office of Internal Affairs' performance was *satisfactory* for this indicator in 94 cases and its performance was *poor* in 15 cases. We did not find any cases with *superior* performance during this reporting period.

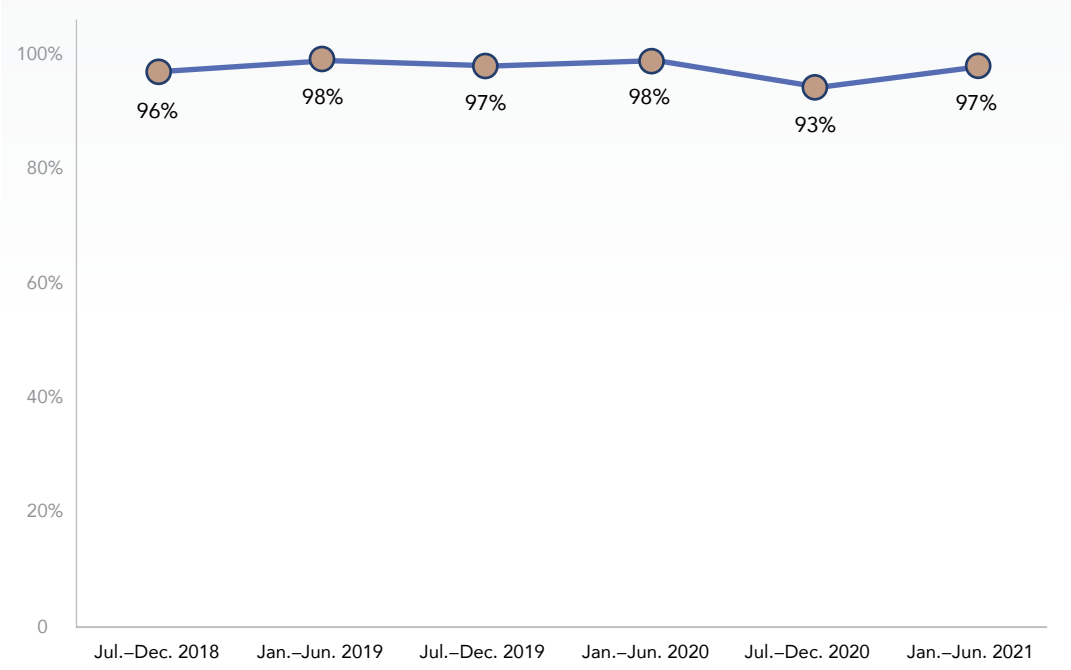
Department policy requires the Office of Internal Affairs to decide on a course of action regarding each hiring authority referral within 30 days of receipt and to meet weekly to review those referrals. Each week, the Office of Internal Affairs assigned a special agent who reviewed each case before the meeting and prepared a written analysis with his or her recommendations. The special agent recommended the subjects and allegations appropriate for each case. The special agent also recommended which course of action to take: approve an administrative or criminal investigation; approve only an interview of the subject of the investigation; return the case to the hiring authority to take disciplinary or corrective action without an interview or investigation; or reject the referral. The Office of Internal Affairs led each weekly meeting, which OIG and department attorneys also attended. In addition to attending the weekly meetings, the OIG attorneys monitored the entire process, starting with a review of all referrals and the special agents' analyses, providing recommendations to the department, and identifying which cases the OIG should monitor.

We based our assessment for this indicator on the Office of Internal Affairs' Central Intake Unit special agent's analysis and recommendations regarding the hiring authority's referral, the Office of Internal Affairs' final decision regarding the referral, and the timeliness of the Office of Internal Affairs' decision. In our opinion, timeliness is essential, as a timely initial determination can impact the timeliness of any resulting investigation, the hiring authority's determination, and ultimately the service of discipline. Statute sets forth the deadlines by which disciplinary actions must be served, and failure to meet the deadlines could preclude the department from pursuing disciplinary action against an employee.

For cases we monitored and closed between January and June 2021, we found the Office of Internal Affairs made a timely determination regarding hiring authority referrals in 97 percent of the cases (106 of 109 cases). Improving from the July through December 2020 reporting period, in which the Office of Internal Affairs made a timely determination in 93 percent of the cases, the Office of Internal Affairs again performed well.

Figure 9 below shows the percentages of cases for which the department made timely determinations over the last six reporting periods.

Figure 9. Percentages of Cases With Timely Determinations Made by the Office of Internal Affairs' Central Intake Unit



Note: This figure reflects cases that the OIG monitored and closed during the period from January through June 2021 and the five prior reporting periods.

Source: The Office of the Inspector General Tracking and Reporting System.

For the 109 cases the OIG monitored and closed during the period of January through June 2021, the OIG disagreed with decisions made by the Office of Internal Affairs' Central Intake Unit in 18 cases (17 percent). Figure 10 on the next page lists these disagreements.

Figure 10.

Disagreements With Office of Internal Affairs' Decisions Regarding Hiring Authority Referrals in the 109 Cases the OIG Monitored and Closed From January Through June 2021

2	OIA's decision to not open a full administrative investigation (and OIA returned the case to the hiring authority without an investigation or interview of the subject)
3	OIA's decision to not open a full administrative investigation (but approved an interview of the subject)
7	OIA's decision to not add a dishonesty allegation
5	OIA's decision to not add another allegation (not dishonesty)
1	OIA's decision to either remove or not add a subject to a case
2	OIA's decision to not approve an interview of a subject
1	OIA's decision to not open an administrative investigation simultaneously with a criminal investigation
1	OIA's decision to not open a criminal investigation and instead open an administrative investigation
1	OIA's decision to not conduct further inquiry before making a decision concerning the case
23	*Total Disagreements*

Notes: In this figure, the abbreviation OIA refers to the Office of Internal Affairs.

Of the 109 cases, the OIG disagreed with the Office of Internal Affairs in 18 cases. In four of those 18 cases, the OIG disagreed with more than one decision, and in the remaining 14, we disagreed with one decision.

From January through June 2021, OIA made decisions regarding 1,058 hiring authority referrals and rejected 63 of those referrals. The OIG disagreed with eight of those decisions.

Source: The Office of the Inspector General Tracking and Reporting System.

Indicator 3: The Performance by the Office of Internal Affairs in Investigating Allegations of Employee Misconduct Was *Satisfactory*

Indicator Score
Satisfactory
(72%)

Superior
Zero cases

Satisfactory
84 cases

Poor
12 cases

The Office of Internal Affairs assigned a special agent in those cases in which it decided to conduct either an administrative or criminal investigation, or an interview of the employee suspected of misconduct. The Office of Internal Affairs has a regional office and a headquarters office in Sacramento, and regional offices in Bakersfield and Rancho Cucamonga, and usually assigns the special agent based on the geographic location of the prison of the employee suspected of misconduct. For the cases the OIG monitored and closed from January through June 2021, we found that the Office of Internal Affairs' performance in investigating allegations of employee misconduct was *satisfactory* overall. Of the 109 total cases the OIG monitored and closed during this reporting period, the Office of Internal Affairs conducted interviews or investigations in 96 cases. The Office of Internal Affairs performed in a *satisfactory* manner in 84 cases and performed poorly in 12 cases. We found no *superior* performance during this reporting period.

Several factors contributed to the OIG's assessments for this indicator, including whether the Office of Internal Affairs timely assigned a special agent to the case; the special agent's preparedness for the investigation; whether the special agent completed the investigation with due diligence; the special agent's compliance with departmental policy and the Office of Internal Affairs' field guide; the thoroughness and quality of the investigation and interviews; and whether the special agent adequately consulted with the hiring authority, a department attorney, and an OIG attorney.

As noted in the Summary of this report, OIG attorneys answered a series of up to 51 assessment questions to measure the performance of Office of Internal Affairs' special agents. Some assessment questions did not apply to certain cases. For example, some questions only applied to those cases in which the Office of Internal Affairs conducted criminal investigations but not administrative investigations. The OIG assigned a *satisfactory* rating when a special agent conducted a proper, thorough, and timely investigation. If the Office of Internal Affairs' special agent went above and beyond what was expected of him or her, the OIG assigned a *superior* rating, but there were no such cases during the January through June 2021 reporting period.

For cases the OIG monitored and closed between January through June 2021, the OIG concluded that special agents completed all necessary and relevant interviews in 98 percent of cases, and asked all relevant questions in 100 percent of the cases. Further, special agents thoroughly and appropriately conducted investigations in 98 percent of cases. Special agents addressed all appropriate allegations in all except one of their reports.

The Office of Internal Affairs' performance decreased significantly in its timeliness in completing deadly force investigations.

Between January and June 2021, the OIG monitored and closed nine cases the Office of Internal Affairs investigated regarding the use of deadly force. Five of those cases involved administrative investigations, and the remaining four involved criminal investigations. Pursuant to the department's deadly force investigation procedures, Office of Internal Affairs' special agents must complete deadly force investigations within 90 days of assignment or seek an extension from the Office of Internal Affairs Chief of Field Operations.[16]

For the nine deadly force investigation cases the OIG monitored and closed between January and June 2021, the Office of Internal Affairs did not complete those investigations within 90 days or within an applicable extension period as policy requires in six of the nine cases, or 67 percent. In only three cases, 33 percent, did the Office of Internal Affairs complete the investigations within 90 days or within an applicable extension period. This performance is a significant decline in the timeliness of completing deadly force investigations from the July through December 2020 reporting period, during which time the Office of Internal Affairs timely completed deadly force investigations in five of seven cases, or 71 percent. Further, the delays in all but two cases during the January through June 2021 reporting period were significantly longer than policy requires. For the six cases in which the Office of Internal Affairs took longer than policy requires to complete the deadly force investigation, the length of delay by the Office of Internal Affairs to complete the investigation ranged from six days to 251 days.

Moreover, in the OIG's opinion, the Office of Internal Affairs unnecessarily wasted time and resources investigating one of the deadly force cases. In that case, an officer allegedly discharged a firearm at his home and killed his two-year old child and himself. Outside law enforcement already investigated the incident, and the officer was dead. Therefore, the department could not impose any disciplinary action against him. Nevertheless, the department unnecessarily expended resources investigating this incident. In addition, even after deciding to investigate the matter, the Office of Internal Affairs took 11 months, significantly more than 90 days, to complete the investigation.

Of the nine deadly force investigation cases we monitored and closed during the January through June 2021 reporting period, two cases involved incidents in which a shooter aimed at or near an individual. In one of those two cases, after three incarcerated persons attacked a fourth incarcerated person on an exercise yard, one officer allegedly fired a warning shot from a Mini-14 rifle, and a second officer fired two shots from a Mini-14 rifle at one of the attacking incarcerated persons,

16. Office of Internal Affairs' Deadly Force Investigations Team Procedures, October 1, 2020.

striking him in the back and killing him. In the second case as discussed above, an off-duty officer allegedly shot and killed his two-year old child, then himself.

Two other cases, one administrative and one criminal, arose from the same incident in which a parole agent allegedly discharged a round from a firearm at a dog that was running toward him in an aggressive manner, but did not strike the dog. In two other cases, one administrative and one criminal, that arose out of the same incident, an incarcerated person attacked an officer on an exercise yard, and approximately 24 other incarcerated persons joined the attack, using makeshift weapons against the officer and other responding officers. A second and third officer deployed pepper spray, a fourth officer intentionally used a baton to strike an attacking incarcerated person on the head, and a fifth officer fired a warning shot from a Mini-14 rifle, which stopped the attack. The final three deadly force investigation cases involved officers who allegedly discharged a firearm in a negligent manner, one while cleaning it at home, one while cleaning it at work in a department office building, and one during an alleged domestic violence incident.

Figure 11 presents the numbers and types of deadly force used in the incidents the OIG monitored and closed during the January through June 2021 reporting period. The number is greater than the number of deadly force cases because in some cases, departmental staff used more than one instance of deadly force, as described in the incident above in which an officer used a baton to intentionally strike an incarcerated person on the head and another officer fired a warning shot. In addition, in four cases, two incidents gave rise to both an administrative and a criminal investigation, but we count each use of force only once for each incident.

Ruger Mini-14 .223 caliber rifle

Figure 11.

Number and Types of Deadly Force Used in Cases We Monitored and Closed From January Through July 2021

	Totals
Shots for Effect	5
Warning Shots	2
Baton	1
Negligent Discharge	3
Total	**11**

Source: The Office of the Inspector General Tracking and Reporting System. Figures are for the period from January through June 2021.

Photographs courtesy of the Department of Corrections and Rehabilitation.

Indicator 4: The Performance by Hiring Authorities in Determining Findings Regarding Alleged Misconduct and Processing the Misconduct Cases Was *Poor*

Indicator Score
Poor
(60%)

Superior
Zero cases

Satisfactory
38 cases

Poor
56 cases

After the Office of Internal Affairs returned a matter to the hiring authority without an investigation or after completing an administrative investigation or interview of an employee suspected of misconduct, the hiring authority met with the OIG and the department attorney, if assigned, to determine the appropriate disposition of the misconduct allegations. If the hiring authority made reasonable attempts to schedule the investigative and disciplinary findings conference within 14 days and held the conference within 30 days of receipt of the case, we did not negatively assess a hiring authority for a late conference. If the hiring authority sustained any allegations, the hiring authority also determined whether to impose discipline and, if so, the type of discipline to impose. The hiring authority was also responsible for serving any disciplinary action within the required time frame. Between January and June 2021, the OIG assessed the hiring authority's performance in those areas in 94 cases and determined that the hiring authorities' overall performance in this indicator was *poor*.[17] We assessed the hiring authorities' performance as *satisfactory* in 38 cases and *poor* in 56 cases. We did not assess any as *superior*.

We used this indicator to assess whether the hiring authorities conducted the investigative and disciplinary findings conferences in a timely manner, were adequately prepared for the conferences, made appropriate investigative and disciplinary findings, and served the disciplinary actions in a timely manner.

Untimely investigative and disciplinary findings conferences and delayed service of disciplinary actions on peace officers were the primary reasons for *poor* assessments. Timely investigative and disciplinary findings conferences are crucial because if a hiring authority finds an employee was dishonest, the presumptive penalty would be dismissal from the department. Delays in taking disciplinary action may unnecessarily extend the payment of salary to the would-be dismissed employee and enable those employees to remain in positions in which they can continue to inflict harm.

Hiring authorities often did not conduct investigative and disciplinary findings conferences in a timely manner, even in cases involving potential dismissal.

When assessing the hiring authority's timeliness in conducting the investigative and disciplinary findings conference, we rely on our interpretation of the Department Operations Manual. We believe the Department Operations Manual provides that the investigative and

17. This performance indicator did not apply to the 15 criminal cases the OIG monitored and closed.

disciplinary findings conference is to be held within 14 days of receiving the matter from the Office of Internal Affairs.[18] However, as long as the hiring authority made reasonable attempts to schedule the investigative findings and disciplinary conference within 14 days and held the conference within 30 days of receiving the case, we did not assign a negative assessment for a late conference. For the January through June 2021 reporting period, the OIG found that hiring authorities conducted investigative and disciplinary findings conferences or made reasonable attempts to schedule the conference within 14 days in only 62 percent of the cases (58 of 94). We highlighted this problem in our last report, but the department's performance continues to decline. During our last reporting period, July through December 2020, hiring authorities timely conducted investigative and disciplinary findings conferences in 65 percent of cases.

Even when hiring authorities decided to dismiss employees, they still often delayed conducting investigative and disciplinary findings conferences. During the January through June 2021 reporting period, hiring authorities delayed conducting the investigative and disciplinary findings conferences in 12 of the 35 of cases involving dismissal, or 34 percent. This reflects a slight decline in performance since the July through December 2020 reporting period, when hiring authorities delayed conducting the investigative and disciplinary findings conferences in 33 percent of cases involving dismissals.

The longest delay was 56 days after policy required. In this case, the hiring authority sustained allegations that an officer tested positive for benzodiazepines and alcohol, and made unprofessional statements to a sergeant. The hiring authority dismissed the officer, and the officer filed an appeal with the State Personnel Board. However, because the officer did not appear at the hearing, the State Personnel Board dismissed his appeal.

The department did not serve disciplinary actions on officers within the time frame set forth in policy in 63 percent of the cases in which hiring authorities decided to impose discipline.

In cases the OIG monitored and closed between January and June 2021, we found that the department continued to delay serving disciplinary actions on peace officers. A hiring authority will decide whether to impose discipline at an investigative and disciplinary findings conference attended by a department attorney, if assigned to the case, and an OIG attorney in cases the OIG monitors. If a hiring authority decides to impose discipline on a peace officer, policy requires the department to serve the disciplinary action within 30 days of the hiring authority's decision to take disciplinary action.[19]

18. DOM, Section 33030.13.

19. DOM, Section 33030.22.

For the January through June 2021 reporting period, the department served disciplinary actions on peace officers in 49 cases. Of those 49 cases, the department delayed serving disciplinary actions in 31 cases, or 63 percent. For the previous reporting period of July through December 2020, we found the department delayed serving disciplinary actions on peace officers in 35 of 66 cases, or 53 percent. Thus, the department's performance in serving disciplinary actions on peace officers within the required time frames has declined since the July through December 2020 reporting period. Between January and June 2021, the shortest delay in serving peace officers with a disciplinary action was 31 days after the hiring authority decided to take disciplinary action, which was one day after policy required. The longest delay was 116 days after the decision to take disciplinary action, or 86 days after policy required.

Moreover, in one of the cases we monitored and closed during the January through June 2021 reporting period, the department did not serve the disciplinary action until after the statutory deadline to take disciplinary action had expired. In this case, an officer allegedly intentionally submitted a false rules violation report indicating he discovered alcohol manufactured by an incarcerated person during a cell search, even though he had not searched the cell. The hiring authority sustained an allegation that the officer had submitted an inaccurate report, but not that he had lied, and determined a 5 percent salary reduction for 12 months was the appropriate penalty. However, the hiring authority also determined the deadline for taking disciplinary action had expired and therefore, issued a letter of instruction in lieu of disciplinary action. This case is a prime example of why it is imperative that hiring authorities promptly refer matters to the Office of Internal Affairs. In this case, the deadline to take disciplinary action expired because the hiring authority did not refer the matter to the Office of Internal Affairs until 399 days after the date of discovery and 354 days after policy required.

Another example of the department's failure to serve disciplinary actions within policy time frames is a case in which outside law enforcement arrested a sergeant after he allegedly threatened to kill and bury another officer, damaged personal and state property in front of employees he supervised, lied to outside law enforcement, and lied during an Office of Internal Affairs interview. The hiring authority did not conduct the investigative and disciplinary findings conference until 19 days after policy requires. The hiring authority decided to dismiss the officer. However, instead of serving him with a dismissal action, the hiring authority, on the advice of the department attorney, decided instead to wait for him to retire 70 days after the decision to dismiss him. As a result, the sergeant received 59 days of salary and benefits that he should not have received based on his misconduct.

Despite the overall poor *assessment, hiring authorities made appropriate investigative findings and penalty determinations in most cases.*

A hiring authority must be adequately prepared to make an informed and reasonable decision at the investigative and disciplinary findings conference. Adequate preparation requires that the hiring authority review all available evidence, including the Office of Internal Affairs' investigative reports, reports from outside law enforcement agencies, audio and video recordings, and any other supporting documentation. The hiring authority, department attorney, if assigned, and the OIG attorney, if monitoring the case, discuss the evidence and alleged misconduct. The hiring authority may decide there is not enough evidence to make a fully informed decision regarding the allegations. In this situation, the hiring authority may ask the Office of Internal Affairs to conduct further investigation. However, if there is sufficient evidence, the hiring authority makes determinations regarding the allegations. If allegations are sustained, the hiring authority decides whether to impose corrective action or disciplinary action, and what level of discipline to impose.

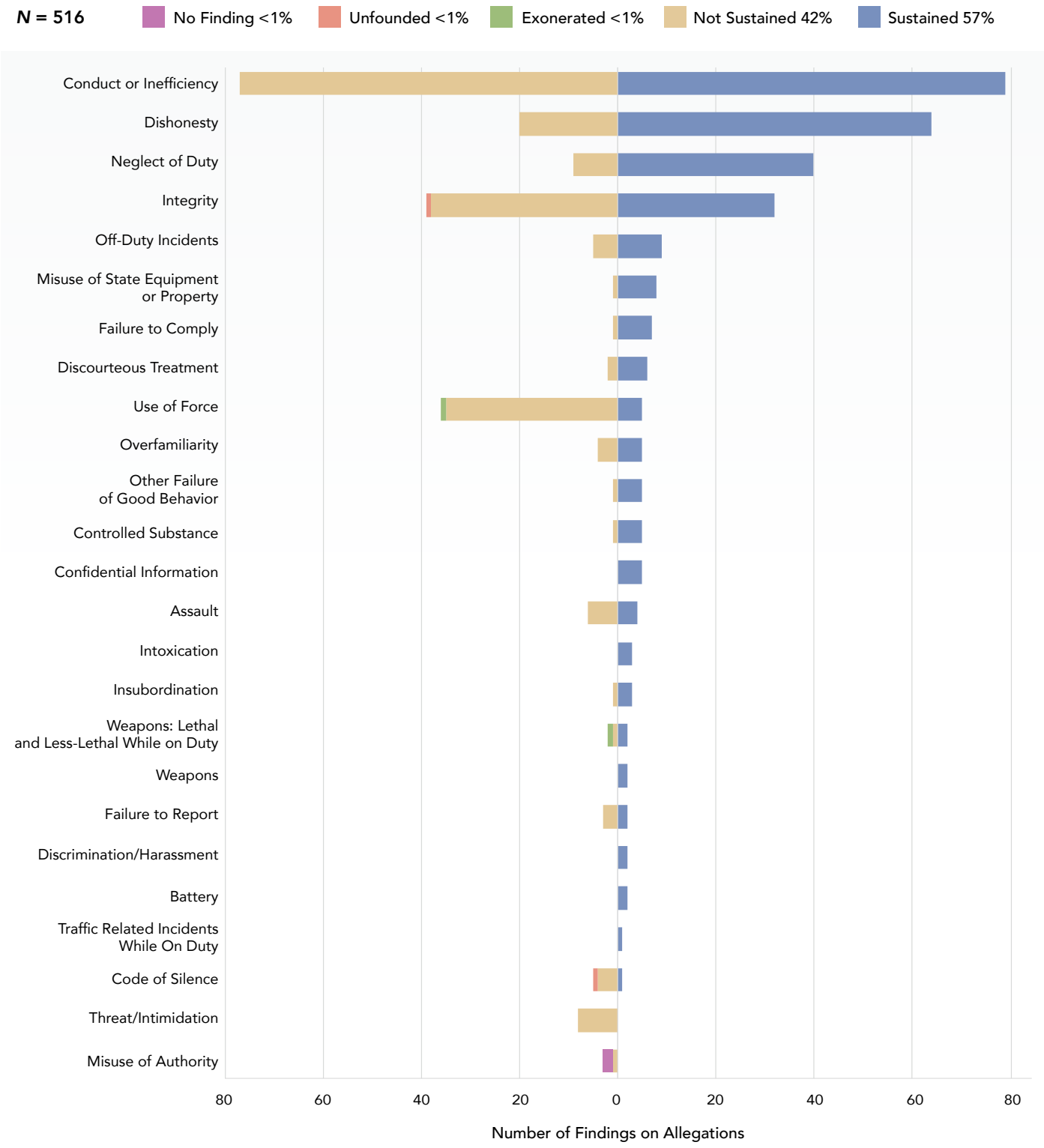
We found that hiring authorities identified the appropriate subjects and allegations in 98 percent of the cases the OIG monitored and closed between January and June 2021. In 93 percent of those cases, we also concluded that hiring authorities made appropriate findings. For cases in which the hiring authority decided to impose a penalty, we found hiring authorities identified an appropriate penalty in 85 percent of the cases. Figure 12 on the next page depicts the findings hiring authorities made regarding allegations presented to them for review.

The OIG sought review by departmental executives in seven cases where we identified a significantly unreasonable course of action.

In some circumstances, the OIG or department attorney may elevate a hiring authority's decision regarding the investigative findings and penalty to the hiring authority's supervisor for further review. This elevation is referred to as an "executive review." The purpose of executive review is to resolve significant disagreements between stakeholders about investigative findings, imposition of penalty, or settlement agreements.[20] If the OIG or department attorney believes the hiring authority's supervisor also made an unreasonable decision, either stakeholder may elevate the matter to still higher levels, such as a director, an undersecretary, or the Secretary of the department. In order to preserve the integrity of this process, the OIG reserves the executive review process for select cases in which there are truly significant disagreements that justify its use.

20. DOM, Section 33030.14.

Figure 12. Administrative Cases: Findings Determined by Hiring Authorities



Note: Numbers may not sum to 100 percent due to rounding.

Source: The Office of the Inspector General Tracking and Reporting System.

Of the 94 administrative cases the OIG monitored and closed during the January through June 2021 reporting period, the OIG sought a higher level of review in seven cases. Table 4 on next page contains a summary of all seven cases in which the OIG elevated a hiring authority's decision to a higher level of review.

One particular case should be emphasized due to the severity of the misconduct and initial decision by the hiring authority. In this case, a sergeant allegedly encouraged an incarcerated person to continue trying to commit suicide. During an inquiry into the matter, the sergeant allegedly lied to an Allegation Inquiry Management Section lieutenant. The sergeant subsequently allegedly lied again during an Office of Internal Affairs interview. The hiring authority sustained the allegations, except that the sergeant lied to the Allegation Inquiry Management Section lieutenant, and decided to demote the sergeant. Because the hiring authority agreed the sergeant had been dishonest, the OIG did not concur with the hiring authority's decision to demote the sergeant rather than dismiss him. Consequently, the OIG elevated the matter to the hiring authority's supervisor. At the higher level of review, the hiring authority's supervisor decided to dismiss the sergeant. The sergeant filed an appeal with the State Personnel Board, which upheld the dismissal following a hearing.

Table 4. Executive Review Cases

Case Number	Summary	Initial Departmental Position	Department Attorney Position	OIG Position	Final Disposition
1	Ten officers allegedly conspired to allow incarcerated persons to assault other incarcerated persons by sharing confidential information regarding commitment offenses and allowing the incarcerated persons access to the dining hall to hide drugs and retrieve materials to make weapons. Three of the officers also allegedly lied during Office of Internal Affairs interviews.	The hiring authority sustained conspiracy allegations against the first six officers and allegations that the first, second, and third officers lied during their interviews with the Office of Internal Affairs, and determined dismissal was the appropriate penalty for all six officers. However, the hiring authority had already dismissed the fifth and sixth officers in connection with other cases prior to the investigative and disciplinary findings conference for this case. The hiring authority found insufficient evidence to sustain the allegations against the other four officers.	The department attorney did not agree that the allegations against the first and second officers could be sustained and elevated the hiring authority's decision as to the first and second officers to the hiring authority's supervisor, then to the deputy director.	The OIG concurred with the hiring authority and the hiring authority's supervisor that the allegations against the first and second officer should be sustained. The OIG did not concur with the deputy director, the director, or the undersecretary that insufficient evidence supported the allegations against the first and second officers and elevated the matter. The OIG concurred with the other decisions, including the decisions concerning the settlement agreements.	At the higher level of review, the hiring authority's supervisor sustained the allegations against the first and second officers. At the next level of review, the deputy director found insufficient evidence to sustain the allegations. At the next level of review, the director also found insufficient evidence to sustain the allegations. At the higher level of review, the undersecretary also found insufficient evidence to sustain the allegations. The OIG did not concur. The third and fourth officers filed appeals with the State Personnel Board. Prior to the State Personnel Board proceedings, the department entered into a settlement agreement with the third officer rescinding the dismissal and reducing the penalty to a 233-working-day suspension, and entered into a settlement agreement with the fourth officer rescinding the dismissal and reducing the penalty to a one-year suspension.

Continued on next page..

Table 4. Executive Review Cases (continued)

Case Number	Summary	Initial Departmental Position	Department Attorney Position	OIG Position	Final Disposition
2	Two sergeants allegedly failed to process an incarcerated person's bed move before the end of their respective shifts, and three officers allegedly failed to properly conduct and document incarcerated person counts and lied in their documentation of the counts.	The hiring authority sustained the allegations against the officers and determined 60-working-day suspensions were the appropriate penalties. The hiring authority sustained the allegations against one of the sergeants and imposed a 10 percent salary reduction for 12 months. The hiring authority found insufficient evidence to sustain the allegation against the other sergeant.	The department attorney agreed with the hiring authority's determination.	The OIG did not agree with how the allegations against the three officers were worded and elevated the matter. Also, the OIG did not concur with the settlement agreements.	At the higher level At the higher level of review, the hiring authority's supervisor did not change the penalty but agreed to change the wording of the allegations against the officers to include the word "dishonest" for falsifying documents. After a *Skelly* hearing, the hiring authority entered into settlement agreements with two officers reducing the penalty for one officer to a 53-working-day suspension and reducing the penalty for the other officer to a 10 percent salary reduction for 30 months. The third officer filed an appeal with the State Personnel Board but then withdrew his appeal and retired prior to the State Personnel Board hearing. The sergeant filed an appeal with the State Personnel Board. After a hearing, the State Personnel Board upheld the penalty.
3	A sergeant allegedly submitted a false police report regarding the purported theft of a firearm, lied to outside law enforcement and during his interview with the Office of Internal Affairs, and submitted a false memorandum to the hiring authority.	The hiring authority sustained the allegations and dismissed the sergeant. Following a *Skelly* hearing, however, the hiring authority decided to withdraw the disciplinary action.	The department attorney initially recommended dismissal but at subsequent levels of review, indicated their position was "neutral."	The OIG concurred with the hiring authority's initial determination to sustain the allegations and dismiss the sergeant but did not concur with withdrawing the sergeant's disciplinary action or reducing the penalty to a demotion and elevated the matter.	The hiring authority's supervisor also decided to withdraw the disciplinary action. A deputy director then decided to reduce the penalty from dismissal to demotion. At the next level of review, a director decided to sustain the allegations and dismiss the sergeant. The sergeant filed an appeal with the State Personnel Board, which upheld the dismissal following a hearing.
4	An officer allegedly accepted $8,000 in four separate transactions from relatives and friends of an incarcerated person and lied six times during an Office of Internal Affairs interview.	The hiring authority found insufficient evidence to sustain any of the allegations.	The department attorney recommended sustaining two of the four financial transaction allegations and three of the dishonesty allegations.	The OIG did not concur with the hiring authority's determinations, recommended sustaining all of the allegations, and elevated the matter.	At the higher level of review, the hiring authority's supervisor sustained the allegations for two of the four financial transactions and three of the six dishonesty allegations and dismissed the officer. The officer filed an appeal with the State Personnel Board, which upheld the dismissal following a hearing.

Continued on next page..

Table 4. Executive Review Cases (continued)

Case Number	Summary	Initial Departmental Position	Department Attorney Position	OIG Position	Final Disposition
5	An officer allegedly directed an offensive term toward an incarcerated person, asked other officers to help with an incarcerated person he reported was disruptive when the incarcerated person was not disruptive, and lied to a sergeant. A second officer allegedly failed to document hearing the first officer direct an offensive term toward the incarcerated person. Both officers allegedly lied during Office of Internal Affairs interviews.	The hiring authority sustained the allegations against the first officer, except that he asked other officers to help with an incarcerated person he reported was disruptive, and dismissed the first officer. The hiring authority sustained the allegations against the second officer, except that he failed to document hearing the first officer use an offensive term toward the incarcerated person, and dismissed the second officer. Following a *Skelly* hearing, the hiring authority wanted to reduce the second officer's penalty from dismissal to a 49-working-day suspension.	The department attorney did not concur with sustaining the allegations and dismissing the first officer and elevated the matter.	The OIG concurred with the hiring authority's findings and penalty determination, but not with the hiring authority's decision after the *Skelly* hearing to reduce the second officer's penalty, and elevated the matter.	The hiring authority's supervisor sustained the allegations and penalty for the first officer as initially determined. At the higher level of review that followed the *Skelly* hearing, the hiring authority's supervisor decided that the penalty would remain as initially determined. The first and second officers filed appeals with the State Personnel Board. After a hearing, the State Personnel Board revoked the first officer's dismissal and modified the second officer's dismissal to a 30-working-day suspension.
6	A sergeant allegedly encouraged an incarcerated person to continue trying to commit suicide, lied to an Allegation Inquiry Management Section lieutenant conducting an inquiry, and lied during an Office of Internal Affairs interview.	The hiring authority sustained the allegations, except that the sergeant lied to an Allegation Inquiry Management Section lieutenant conducting an inquiry, and demoted the sergeant.	The department attorney recommended adding dishonesty allegations and dismissing the sergeant.	The OIG recommended dismissing the sergeant and elevated matter to the hiring authority's supervisor.	At the higher level of review, the hiring authority's supervisor dismissed the sergeant. The sergeant filed an appeal with the State Personnel Board, which upheld the dismissal following a hearing.

Continued on next page.

Table 4. Executive Review Cases (continued)

Case Number	Summary	Initial Departmental Position	Department Attorney Position	OIG Position	Final Disposition
7	After a fire extinguisher accidentally discharged in a State vehicle, an officer allegedly failed to immediately remove an incarcerated person from the vehicle, contact the sergeant at an outside hospital to inform him of the incarcerated person's exposure to fire extinguisher residue, or provide adequate medical attention to the incarcerated person, and lied in a memorandum. A second officer also allegedly failed to immediately remove the incarcerated person from the vehicle, provide adequate medical attention to the incarcerated person, or contact the sergeant, and possessed a personal mobile phone without authorization and visually recorded the incident. The second officer then allegedly lied to a lieutenant regarding the incident. Then the first officer allegedly lied during his Office of Internal Affairs' interview.	The hiring authority sustained the allegations that the first officer lied in his memorandum regarding the incident and twice during his Office of Internal Affairs interview, but not the remaining allegations, and dismissed him. The hiring authority sustained the allegation that the second officer possessed his personal mobile phone while on duty, but not the remaining allegations against him.	The department attorney agreed with the hiring authority and the hiring authority's supervisor.	The OIG concurred, except for finding the officer was not dishonest to the lieutenant, and elevated the matter to the hiring authority's supervisor. The OIG also did not concur with the settlement.	At the higher level of review, the hiring authority's supervisor determined the lieutenant to whom the second officer allegedly lied should be interviewed, based on OIG's recommendation. After the lieutenant's interview, the hiring authority again did not sustain the allegation the officer lied to the lieutenant and imposed a 5 percent salary reduction for 12 months. Both officers filed appeals with the State Personnel Board. Prior to the State Personnel Board proceedings, the department entered into a settlement agreement with the second officer reducing the penalty to a 5 percent salary reduction for eight months because the second officer was remorseful. Following a hearing, the State Personnel Board revoked the dismissal against the first officer and imposed a 30-working-day suspension.

Source: The Office of the Inspector General Tracking and Reporting System.

Indicator 5: The Performance by Department Attorneys in Providing Legal Advice While the Office of Internal Affairs Processed Employee Misconduct Hiring Authority Referrals and Conducted Internal Investigations Was *Satisfactory*

Indicator Score
Satisfactory
(72%)

Superior
One case

Satisfactory
92 cases

Poor
16 cases

For cases we monitored and closed from January through June 2021, department attorneys performed in a *satisfactory* manner in providing legal advice to the Office of Internal Affairs as the Office of Internal Affairs' Central Intake Unit processed employee misconduct referrals from hiring authorities and during its internal investigations. Of the 109 cases we monitored and closed during this reporting period, we assessed one case as *superior*, 92 cases as *satisfactory*, and 16 cases as *poor*.

The department assigns attorneys to some of the cases in which the Office of Internal Affairs conducts administrative investigations. However, policy does not require or provide for department attorneys to be assigned during criminal investigations. For the January through June 2021 reporting period, the department assigned attorneys in 95 cases we monitored and closed. In 80 of the 95 cases, or 84 percent, the Office of Internal Affairs conducted investigations or an interview of the subject alleged to have committed misconduct. In all 80 cases that involved an investigation or interview of the officer, the department attorney and special agent cooperated and appropriately consulted with each other. In 77 of those 80 cases, or 96 percent, the department attorney provided appropriate and thorough feedback to the special agent regarding the investigative report. Also in all 80 cases, the department attorney provided timely legal advice to the special agent during the investigation.

However, department attorneys still delayed making entries regarding critical dates into the department's case management system. Pursuant to policy, once the department assigns an attorney to a case, the attorney has 21 days from assignment to enter into a computerized case management system the date of the reported incident, date of discovery, deadline for taking disciplinary action, and any exceptions to the deadline known at the time. Of the 94 administrative cases the OIG monitored, department attorneys or employee relation officers did not make a timely entry into the case management system regarding the relevant dates in 18 of 94 cases, or 19 percent.

In 88 cases, department attorneys provided advice to the hiring authority concerning the sufficiency of the evidence, investigation, and findings. In eight of those 88 cases, or nine percent, the department attorney did not provide appropriate legal consultation. In seven of those eight cases, the OIG rated the department attorney's performance for Indicator 5 and the overall case rating as *poor*.

In one of the seven cases in which the OIG rated the department attorney's performance and overall case as *poor*, a psychologist allegedly failed to evaluate incarcerated persons quarantined due to the novel

coronavirus and disobeyed an order from a supervising psychiatric social worker to provide written support for her assertion that she could not work due to a medical condition. Subsequently, the psychologist allegedly lied in a memorandum she submitted to the supervising psychiatric social worker. At the investigative and disciplinary findings conference, despite evidence to the contrary, the department attorney advised the hiring authority not to sustain any of the allegations. The department attorney also had not adequately prepared for the conference.

In a second case, an officer allegedly walked away from a computer station without securing the computer, failed to review a draft report prior to submitting and uploading it into a departmental database, and lied to a sergeant. A second officer allegedly lied to a sergeant twice concerning the incident and submitted a false report. Then, the second officer allegedly lied during an Office of Internal Affairs interview. A third, fourth, fifth, and sixth officer each allegedly lied to a sergeant and tampered with the report the first officer submitted and uploaded. The hiring authority sustained the allegations against the first officer, but not that he lied to a sergeant, and provided training. The hiring authority sustained the allegations against the second officer, except that he lied a second time to the sergeant, and decided to dismiss the second officer. The hiring authority did not sustain allegations against the remaining officers. After a *Skelly* hearing, the hiring authority withdrew the disciplinary action against the second officer. In the OIG's opinion, the department attorney should have advised the hiring authority against withdrawing the disciplinary action against the second officer because the officer did not provide any new evidence, flaws, or risks during the *Skelly* hearing that justified withdrawing the disciplinary action.

In a third case, an officer allegedly inappropriately grabbed an incarcerated person's arm and tried to apply handcuffs. A second officer allegedly lied to a lieutenant concerning the incident. The first officer also allegedly lied to the lieutenant, then lied during an Office of Internal Affairs interview. At the investigative and disciplinary findings conference, the department attorney recommended against sustaining the allegations against the first officer and did not recommend adding allegations against the first officer for lying during the investigative interview despite sufficient evidence, and failed to include all factors considered in her written confirmation of penalty discussions. Nonetheless, the hiring authority sustained the allegations against the first officer and dismissed him; however, the hiring authority found insufficient evidence to sustain the allegation against the second officer.

In a fourth case, two sergeants allegedly failed to process an incarcerated person's bed move before the end of their respective shifts, and the next day three officers allegedly failed to properly conduct and document incarcerated person counts and lied in their documentation concerning the counts. During the investigative and disciplinary findings conference, the department attorney did not provide appropriate legal consultation

to the hiring authority regarding the findings because the department attorney did not recommend including dishonesty allegations for the three officers who claimed they conducted incarcerated person counts, when they had not counted at all. Despite the department attorney's lack of appropriate legal advice, the hiring authority sustained the allegations against the officers and determined a 60-working-day suspension was the appropriate penalty for each officer.

Indicator Score
Poor
(63%)

Superior
Two cases

Satisfactory
24 cases

Poor
29 cases

Indicator 6: The Performance of Department Attorneys and Employee Relations Officers in Providing Legal Representation During Litigation Was *Poor*

Of the 94 administrative cases we monitored and closed from January through June 2021, the department served disciplinary actions in 55 cases. We assessed the department's legal representation during litigation for these 55 cases, beginning with the preparation of any disciplinary actions and ending with the completion of any appeal process to the State Personnel Board or appellate court. We found the department advocates' performance to be *poor* overall for these 55 cases. The department's performance was *superior* in two cases, *satisfactory* in 24 cases, and *poor* in 29 cases.

We used this Indicator to assess whether department advocates prepared thorough and legally sufficient disciplinary actions in a timely manner. We also assessed how well department advocates represented the department at prehearing settlement conferences and evidentiary hearings before the State Personnel Board, including their preparation of the cases for the hearings and related litigation. Our monitoring continued when any party filed an appeal to the superior or appellate courts to assess the department attorney's representation of the department during the writ or appeal proceedings. Finally, although also assessed in Indicator 4 due to some overlapping responsibilities with hiring authorities, we also assessed the timeliness of serving disciplinary actions on peace officers.

Delayed service of disciplinary actions on peace officers strongly impacted the assessment rating in the 29 cases we assessed as *poor*. Of those 29 cases, 27 involved peace officers. In 19 of those 27 cases, or 70 percent, the department did not serve disciplinary actions on officers within 30 days of the decision to impose discipline, as policy requires. The remaining eight cases with *poor* assessment ratings had timely service of the disciplinary action (within 30 days), but the department attorney's performance still fell short of *satisfactory* due to other insufficiencies. For example, in one of those eight cases, an officer allegedly discharged a firearm in a negligent manner while unholstering it at a firing range. The round struck a cement pad and ricocheted, striking a second officer in the shin. The hiring authority sustained the allegation and imposed a 5 percent salary reduction for six months. In violation of policy, the department attorney did not provide the OIG with a draft of the disciplinary action before serving it.

In a second case with timely service, but *poor* performance, an officer allegedly possessed and used anabolic steroids without a prescription and possessed a personal mobile phone on prison grounds. The officer was also allegedly involved in a domestic dispute with his wife, which resulted in a response by outside law enforcement. The hiring authority sustained the allegations and dismissed the officer. The department attorney did not provide the OIG with a draft of the disciplinary action

and did not include in the final disciplinary action relevant facts and allegations the hiring authority sustained. In addition, neither the department attorney or hiring authority advised the OIG of the officer's *Skelly* hearing, and the department entered into a settlement agreement with the officer withdrawing the disciplinary action and accepting his resignation. The settlement agreement did not include a required clause prohibiting the officer from seeking employment with the department in the future.

In a third case with timely service, but *poor* performance, an officer allegedly failed to complete required security checks and subsequently submitted false memoranda concerning the incidents. The hiring authority sustained the allegations and dismissed the officer. After the officer filed an appeal with the State Personnel Board, the department attorney's supervisor erroneously advised the OIG that the case had settled, thereby preventing the OIG from monitoring the hearing.

In addition to assessing how timely the department served disciplinary actions, we used this indicator to assess whether department attorneys and employee relations officers prepared legally sufficient and thorough disciplinary actions. For cases the OIG closed between January and June 2021, department attorneys and employee relations officers prepared disciplinary actions in 55 cases. Despite the overall *poor* assessment for this indicator, we found that in 53 of the 55 cases in which a department advocate prepared a disciplinary action, the department advocate prepared disciplinary actions that contained the relevant facts, relevant and legally supported causes of action, and appropriate penalties.

During this reporting period, in three cases, department attorneys performed especially poorly. In these cases, the State Personnel Board revoked hiring authorities' decisions to dismiss officers. In contrast, in two cases, department attorneys performed especially well. In those cases, the State Personnel Board sustained a dismissal in one case, and the officer withdrew his appeal challenging his salary reduction in the second case.

In one of the two cases in which department attorneys performed especially well, a counselor allegedly tested positive for methamphetamine. The hiring authority sustained the allegation and dismissed the counselor. The counselor filed an appeal with the State Personnel Board. In preparation for the hearing, the department attorney selected and competently prepared expert witnesses that established that the level of methamphetamine found in the counselor's urine suggested casual use, and stipulated with the counselor's attorney to legal issues in the department's favor before the hearing. During the hearing, the department attorney exposed the inconsistencies in both the testimony of the counselor's witnesses and in the documentary evidence. The State Personnel Board relied upon these inconsistencies to uphold the dismissal.

In the second case, a parole agent allegedly removed and destroyed flyers and a sign belonging to protesters in a residential neighborhood. The hiring authority sustained the allegations and imposed a 5 percent salary reduction for 12 months. The parole agent filed an appeal with the State Personnel Board. The department attorney prepared exceptionally well for the hearing. And, during the hearing, the department attorney expertly conducted direct examination, cross-examination, and redirect examination of the parole agent, impeaching him so adeptly that the administrative law judge rejected flyers that the parole agent attempted to place into evidence because the parole agent provided three different accounts of how he obtained the flyers. Shortly thereafter, the parole agent withdrew his appeal.

In contrast, in one of the cases with *poor* performance, an officer allegedly directed an offensive term toward an incarcerated person, requested assistance from other officers concerning an incarcerated person he falsely reported as being disruptive, and lied to a sergeant. A second officer allegedly failed to document that he heard the first officer use an offensive term toward the incarcerated person. Both officers then allegedly lied during Office of Internal Affairs interviews. The hiring authority sustained the allegations against the first officer and dismissed him. The hiring authority also sustained allegations against the second officer, except that he failed to document that the first officer used an offensive term toward the incarcerated person, and dismissed him. At the investigative and disciplinary findings conference, the department attorney recommended that no allegations be sustained against either officer. In the OIG's opinion, this advice was not reasonable considering the weight of evidence against both officers. In addition, the department attorney did not advise the hiring authority to add dishonesty allegations for both officers who, the evidence established, lied during their Office of Internal Affairs interviews. After the officers filed appeals with the State Personnel Board, the department attorney failed to adequately prepare key witnesses for hearing, did not present sufficient oral arguments against prehearing motions, and failed to call the involved incarcerated person as a witness. The State Personnel Board revoked the first officer's dismissal and modified the second officer's dismissal to a 30-working-day suspension. The State Personnel Board based its decision on a lack of evidence. The incarcerated person may have provided that evidence had he been called to testify.

In a second case with *poor* department attorney performance, an officer allegedly inappropriately grabbed an incarcerated person's arm and tried to apply handcuffs. The officer also allegedly lied to a lieutenant and during his Office of Internal Affairs interview. A second officer also allegedly lied to the lieutenant regarding the incident. At the investigative and disciplinary findings conference, the department attorney recommended not sustaining the allegations against the first officer despite sufficient evidence and failed to recommend adding allegations against him for lying during the investigative interview.

Despite the department attorney's poor legal advice, the hiring authority sustained the allegations against the first officer and dismissed him. However, the hiring authority found insufficient evidence to sustain the allegation against the second officer. At the first officer's State Personnel Board hearing, the department attorney failed to confront the officer regarding his dishonest statements and failed to ask witnesses clarifying questions. Subsequently, the State Personnel Board revoked the first officer's dismissal.

In a third case in which a department attorney performed poorly, an officer allegedly received money from the associates of two incarcerated persons and lied during an interview with the Office of Internal Affairs. The hiring authority sustained the allegations, except one dishonesty allegation, and dismissed the officer. After the officer filed an appeal with the State Personnel Board, the department attorney failed to provide the OIG with a draft prehearing settlement conference statement before filing it. During the State Personnel Board hearing, the department attorney failed to present evidence to support the allegations and failed to provide the officer with a memorandum the hiring authority relied upon during the investigative and disciplinary findings conference. Due to the department attorney's failure to provide the memorandum to the officer, the State Personnel Board issued sanctions against the department. In addition, following the hearing, the State Personnel Board revoked the officer's dismissal.

The Department Unnecessarily Paid $299,304 to Employees During Delays in Processing Dismissal Actions

For the January through June 2021 reporting period, the OIG reviewed the department's delays in dismissal cases to determine how much the department and taxpayers paid in salary and benefits to employees during unnecessary delays in the disciplinary process. We concluded that the department paid approximately $266,022 in salary and benefits to employees during those delays. In addition, the department paid another $33,282 in salary and benefits to an employee unnecessarily during a period of executive review after having served, then withdrawn, a dismissal action. This brought the total paid unnecessarily to employees in dismissal actions to $299,304. Over the past five reporting periods, the department has paid approximately $1,314,489 in salary and benefits to employees during the delays.

During this reporting period, the department served or should have served 26 dismissal actions in 23 separate cases that were later upheld or in which the employee resigned after service of the action. The department delayed in serving 18 of the 26 dismissal actions, or 69 percent. The delays occurred during one of the following four critical steps in the disciplinary process:

- The hiring authority's referral of allegations of employee misconduct to the Office of Internal Affairs within 45 days of discovering the alleged misconduct.
- The Office of Internal Affairs' processing of employee misconduct referrals from the hiring authority within 30 days of receipt of the case.
- The hiring authority's administration of the investigative and disciplinary findings conference within 14 days of receipt of the case from the Office of Internal Affairs. In cases in which the hiring authority made reasonable attempts to schedule the conference within 14 days, the OIG did not negatively assess the department if the conference was ultimately held within 30 days.
- The department's service of the disciplinary action on a peace officer within 30 days of making the decision to impose discipline.

Concerning the above-listed four critical steps, the OIG found the following delays among the 23 cases in which the department served a dismissal, and the dismissal was later upheld or the employee resigned,

or the department chose not to serve the action and instead waited for the employee to retire:

- The hiring authority delayed referring misconduct allegations to the Office of Internal Affairs beyond the 45-day time frame that policy required in three cases, or 13 percent. The total cumulative delay for this critical step was 167 days, and the department paid approximately $55,883 to would-be dismissed employees during the delays.
- The Office of Internal Affairs delayed processing a referral beyond the 30-day time frame policy required in one of the 23 cases. The total delay for this critical step was six days, and the department paid approximately $1,952 to would-be dismissed employees during the delays.
- The hiring authority delayed conducting investigative and disciplinary conferences beyond the 14-day time frame policy required in eight of 23 cases, or 35 percent. The cumulative delay for this critical step was 176 days, and the department paid approximately $47,180 to would-be dismissed employees during the delays.
- In total, the department served or should have served 20 dismissal actions on peace officers in 20 cases. The department delayed serving the disciplinary actions on peace officers beyond the 30-day time frame policy required by policy in 15 of the 21 dismissal actions, or 71 percent. The total cumulative delay for this critical step was 531 days, and the department paid approximately $161,006 to would-be dismissed employees during the delays.

The following are notable examples of cases with extensive delays:

- In one case, an officer falsely documented that an incarcerated person was agitated and refused to remove a cell window covering and lied during an Office of Internal Affairs interview. The hiring authority decided to dismiss the officer. The hiring authority delayed 88 days beyond the 45 days required to refer the possible misconduct to the Office of Internal Affairs. The Office of Internal Affairs delayed processing the referral six days beyond the 30-day time frame required by policy. The hiring authority delayed 22 days to hold the investigative and disciplinary findings conference beyond the 14 days required by policy. The hiring authority served the officer with a dismissal action, but the officer resigned before the disciplinary action took effect. In total, the department paid the officer approximately $37,747 during the 116 days of delays.
- In a second case, an officer conducted a shower program for incarcerated persons by himself when he was supposed to

conduct them with another officer, failed to escort incarcerated persons at a 1 to 5 ratio while conducting the shower program, failed to ensure cell doors were secure, lied when he stated that a cell door was locked and that he conducted the shower program with a second officer, and lied during an Office of Internal Affairs interview. The hiring authority sustained the allegations and decided to dismiss the officer. The hiring authority did not serve the dismissal action on the officer until 114 days after the hiring authority's decision and 84 days after policy requires, paying the officer a total of approximately $27,334 during the 84-day delay.

- In a third case, an officer inappropriately displayed a firearm in public, lied to outside law enforcement about the incident, lied to a sergeant about the incident, then lied during Office of Internal Affairs interviews. The hiring authority dismissed the officer. The hiring authority referred the matter to the Office of Internal Affairs 62 days beyond the 45 days required by policy to refer the matter to the Office of Internal Affairs, delayed five days to hold the investigative and disciplinary findings conference, and delayed service of the dismissal action 25 days after policy required. In total, the department delayed 92 days, and the department paid the officer approximately $29,937 during the delay. The officer filed an appeal with the State Personnel Board, but pursuant to a settlement agreement, the officer resigned in lieu of dismissal.
- In a fourth case, a sergeant submitted a false police report regarding the purported theft of a firearm, made false statements to an outside law enforcement officer, and submitted a false memorandum to the hiring authority. Thereafter, the sergeant lied during his interview with the Office of Internal Affairs. The hiring authority delayed 14 days after policy required in conducting the investigative and disciplinary findings conference and delayed 62 days after policy required in serving the dismissal action. The department paid the officer approximately $31,618 during the 76 days of delay.

During this reporting period we included for the first time in our analysis a case in which the department made a deliberate decision to *not* serve a dismissal action and instead allowed the employee to remain employed until his planned retirement. In that case, outside law enforcement arrested a sergeant after he allegedly threatened to kill and bury another officer, used profanity and damaged personal and state property in the presence of staff he supervised, and lied to outside law enforcement. The sergeant then lied during an Office of Internal Affairs interview. After the department completed its investigation, the hiring authority delayed 19 days after policy required to conduct the investigative and disciplinary findings conference. Moreover, after the hiring authority decided dismissal was the appropriate penalty, the department attorney

drafted the dismissal action, but recommended delaying service of the disciplinary action because the sergeant intended to retire. Here, the department delayed 19 days to hold the investigative and disciplinary findings conference, and delayed 40 days after policy requires to (not) serve the dismissal action, resulting in 59 days of salary and benefits to the sergeant, or approximately $24,546. We included this case in our analysis because these delays occurred during one of the critical junctures and the department should have dismissed the sergeant instead of allowing him to continue to be paid until he retired.

Also included in the total sum paid to ultimately dismissed employees during this reporting period is a case where the department paid an employee to sit at home and then work in a mail room after having initially been served a dismissal action. The hiring authority inexplicably decided to withdraw the dismissal before a department executive overruled the decision and decided to impose the dismissal. In the fourth case mentioned above, where a sergeant submitted a false police report regarding the theft of a firearm, the hiring authority sustained the allegations and served the sergeant a dismissal action on January 20, 2020. The disciplinary action was supposed to take effect on February 6, 2020. However, the hiring authority decided to withdraw the disciplinary action after a *Skelly* hearing. The department attorney supported this decision. In the OIG's opinion, this was an unreasonable course of action, since the investigation clearly demonstrated that the allegations should be sustained. The OIG sought a higher level of review. At the higher level of review, the hiring authority's supervisor also decided to withdraw the disciplinary action. A deputy director then decided to reduce the penalty from dismissal to a demotion. At a higher level of review, a director decided to sustain the allegations and dismiss the sergeant. Rather than allowing the dismissal to immediately go forward after the *Skelly* hearing, the department continued to pay the sergeant to stay at home on administrative time off from the date he should no longer have been an employee, February 7, 2020, to February 25, 2020. On February 26, 2020, the department assigned the sergeant to the mail room at the prison where he continued to receive his regular pay until April 27, 2020. Ultimately, the sergeant filed an appeal with the State Personnel Board, and after a hearing, the State Personnel Board upheld the dismissal. From February 7, 2020—the date the dismissal action should have taken effect—through April 27, 2020, the department unnecessarily paid the sergeant approximately $33,282 in salary and benefits, on top of the $31,618 during the 76 days of delay mentioned previously, for a grand total of $64,900 in unnecessary pay to an ultimately dismissed employee.

These delays are concerning because employees who commit serious enough misconduct necessitating the department dismiss them from State service may continue to work their regular assignments during the delays and expose the department to further potential liability. Moreover, based on the serious nature of their misconduct, these employees

should not be rewarded with a job at taxpayers' expense any longer than necessary. Even worse, in our review of the department's delays in dismissal cases, we found that 59 percent of the salary and benefits paid by the department during delays went to employees at home receiving their regular paycheck while not working or on reassignment to a different position, usually not requiring peace officer designation, such as in a mail room. Of the $299,304, paid to ultimately dismissed employees during delays, $87,209 of that amount, or 29 percent, the department paid to employees who were at home or on administrative time off. The department paid another $89,149 of the $299,304, or 30 percent, to employees in redirected positions. In all, the department wasted approximately $176,359.

Further, not included in the analysis and total amount paid to would-be dismissed employees are delays by the hiring authority serving non-peace officers. The department's policy calls for peace officers to be served within 30 days of the decision to take disciplinary action. However, the department's policy is silent concerning when to serve disciplinary actions on non-peace officer employees. For example, in one case, a recreational therapist while instructing incarcerated persons during a group therapy session failed to properly wear a face covering, failed to ensure that incarcerated persons maintained proper physical distancing and wore face coverings, and even instructed incarcerated persons to remove their face coverings. The department decided to dismiss the recreational therapist on November 19, 2020, while she was at home receiving her regular salary. The department did not serve the dismissal action until January 22, 2021, providing for 64 days of salary and benefits totaling approximately $16,854 while the department drafted and served the disciplinary action.

In total, the department's unnecessary delays within one of the four critical steps in the disciplinary process cost the department and taxpayers approximately $266,022 in salary and benefits this reporting period. The department inexplicably paid an additional $33,282 in salary and benefits to an employee during a period of an executive review, bringing the total amount paid to would-be dismissed employees during delays to $299,304.

Table 5 on the next page presents a detailed breakdown of the costs associated with unnecessary delays in dismissal cases.

Table 5. Detailed Information Regarding Costs Associated With Unnecessary Delays in Dismissal Cases

				Total Delays							
				Critical Steps in the Investigative and Disciplinary Process							
OIG Case Number	Classification	Monthly Salary at Mid-Step ($)	Daily Rate ($)	Referral*	OIA Processes Referral†	Hiring Authority Makes Findings‡	Hiring Authority Serves Action§	Total Days Late	Total Salary ($)	Total Benefits ($)	Total Cost ($)
18-0027570-DM	Sergeant	8,248	270	…	…	…	23	23	6,219	3,349	9,569
18-0027959-DM	Counselor I	8,177	268	…	…	…	1	1	268	144	412
19-0028731-DM	Sergeant	8,248	270	…	…	14	62	76	20,551	11,067	31,618
19-0028978-DM	Officer	6,451	212	…	…	…	17	17	3,596	1,936	5,532
19-0028991-DM	Officer	6,451	212	…	…	…	3	3	635	342	976
19-0029078-DM	Officer	6,451	212	…	…	…	84	84	17,767	9,567	27,334
19-0029428-DM	Sergeant	8,248	270	…	…	…	60	60	16,225	8,737	24,962
19-0029487-DM[l]	Officer	6,451	212	…	…	32	44	76	…	…	…
19-0030682-DM	Officer	6,451	212	…	…	…	25	25	5,288	2,847	8,135
19-0030780-DM[l]	Officer	6,451	212	…	…	56	44	100	…	…	…
19-0031331-DM	Sergeant	8,248	270	17	…	…	…	17	4,597	2,475	7,072
19-0031544-DM	Officer	6,451	212	…	…	…	19	19	4,019	2,164	6,183
19-0032138-DM	Sergeant	8,248	270	…	…	19	40	59	15,954	8,591	24,546
20-0032623-DM	Officer	6,451	212	62	…	5	25	92	19,459	10,479	29,937
20-0032820-DM	Officer	6,451	212	…	…	…	33	33	6,980	3,759	10,738
	Officer	6,451	212	…	…	…	51	51	10,787	5,809	16,596
20-0032893-DM	Officer	6,451	212	…	…	41	…	41	8,672	4,670	13,342
20-0035061-DM	Recreational Therapist	5,641	185	…	…	43	…	43	7,952	3,372	11,324
21-0037517-DM	Officer	6,451	212	88	6	22	…	116	24,535	13,212	37,747
			Totals	**167**	**6**	**232**	**531**	**936**	**$173,502**	**$92,520**	**$266,022**
19-0028731-DM	Sergeant	8,248	270	*Total Paid During Executive Review*				**80**	**$21,633**	**$11,649**	**$33,282**
										TOTAL	**$299,304**

* The hiring authority refers misconduct allegation to the Office of Internal Affairs.

† The Office of Internal Affairs processes the hiring authority's referral.

‡ The hiring authority conducts the investigative and disciplinary findings conference.

§ The hiring authority serves disciplinary action on the employee.

l Cases 19-0029487-DM and 19-0030780-DM are included for count of days delayed, but not considered for salary calculations because the employee was on medical dock at the time of the delay.

Notes: The **Office of Internal Affairs** is abbreviated **OIA**. Amounts in the **Total Salary**, **Total Benefits**, and **Total Cost** columns are approximations and subject to rounding.

Sources: The Office of the Inspector General Tracking and Reporting System, and the California Department of Corrections and Rehabilitation.

The Office of Internal Affairs Often Did Not Open Full Administrative Investigations and Did Not Accurately Categorize All Cases Involving Alleged Domestic Violence by Officers

For the January through June 2021 reporting period, the OIG paid particular attention to cases with domestic violence allegations involving officers. In many of these cases, the Office of Internal Affairs did not initially agree to open a full administrative investigation during the central intake process. Of the 32 total cases involving allegations that an officer engaged in domestic violence during the January through June 2021 central intake process, we identified 24 cases, 75 percent, in which the Office of Internal Affairs initially intended to either reject the matter entirely or return the matter to the hiring authority to address the allegations without an investigation. In some cases, we believed the Office of Internal Affairs made an unreasonable determination, prompting us to elevate the matter to Office of Internal Affairs management.

Cases involving domestic violence allegations involve at least two parties, and frequently witnesses who typically disagree on the facts and circumstances of the incident. To thoroughly investigate the facts and assess the credibility of those involved, including witnesses, the OIG believes it is necessary that special agents interview all of those involved rather than rely on outside law enforcement reports. Because outside law enforcement often obtain evidence in the heat of the moment when emotions are high, the evidence may not always be reliable. Moreover, because outside law enforcement is concerned more about public safety and potential criminal activity than employee discipline, such evidence is often incomplete.

Promptly opening a full investigation can help ensure witness cooperation and the reliability of evidence. The more time victims and witnesses have to ponder the events, the less likely they are to cooperate. Also, the more time that passes, the more likely memories will fade. Therefore, a prompt, thorough administrative investigation conducted by the Office of Internal Affairs is necessary to obtain and provide the hiring authority with sufficient reliable evidence to make an informed determination regarding the allegations. In some cases, that evidence may reveal that the subject did *not* behave in the manner alleged, and may lead to the allegations not being sustained.

Of the 24 cases involving domestic violence allegations in which the OIG disagreed with the Office of Internal Affairs' initial determination not to open a full investigation, the Office of Internal Affairs eventually approved full investigations in only seven of the 24 cases. In five of the 24 cases, the Office of Internal Affairs eventually approved an interview of the subject, and returned 10 of the 24 cases to hiring authorities

to determine the allegations without any investigation. The Office of Internal Affairs rejected two cases because they did not have a reasonable belief misconduct occurred. Some of the more notable cases are summarized below.

- In one case, outside law enforcement arrested an officer for allegedly grabbing his ex-wife by the neck, pulling her out of a vehicle and carrying her against her will. The ex-wife had visible injuries to her face, arm, ankle, and neck. Although outside law enforcement responded and interviewed both the officer and his ex-wife, they did not ask the officer the critical question of whether he grabbed the his ex-wife by the neck. There were also disputes regarding which person was the initial aggressor. The Office of Internal Affairs decided to return the matter to the hiring authority without any investigation, and the OIG elevated this decision to Office of Internal Affairs management. Only after the OIG elevated the matter did the Office of Internal Affairs agree to open a full investigation. The investigation has not yet concluded.
- Another case involved an officer who allegedly kicked and raped his wife and physically abused their son. Based on these allegations, the officer had a temporary restraining order imposed against him. The Office of Internal Affairs alleged misconduct based only on the temporary restraining order and not the underlying allegations of rape and physical abuse, and refused to open a full investigation. The OIG elevated the Office of Internal Affairs' decisions not to add the allegations for the underlying misconduct or open an investigation. The Office of Internal Affairs management also did not agree to add allegations for the alleged rape and physical abuse or open a full investigation. The Office of Internal Affairs advised the OIG that since the hiring authority had issued a non-punitive termination to the officer based on the temporary restraining order, the officer was no longer an employee, and it does not conduct investigations on non-employees. Subsequently, the officer obtained a court order removing his firearm restriction. The hiring authority then allowed the potentially violent officer to reinstate his employment with the department. However, the officer subsequently resigned based on yet another temporary restraining order.
- In another case, an officer allegedly pushed his girlfriend over the footboard of a bed, placed a loaded handgun to her head, and threatened to kill her. The officer also allegedly lied to outside law enforcement when he denied the actions and denied having any other firearms in his house. While searching the house, outside law enforcement found other firearms, including a rifle, multiple rounds of ammunition, and a substance suspected to be an illicit drug. The officer was charged on multiple counts,

including child endangerment for having loaded firearms accessible to his 11-year-old son. The OIG recommended opening a full investigation and adding an allegation for possession of narcotics; however, the Office of Internal Affairs did not add the allegation and only approved an interview of the officer. Six months after it opened the case, the Office of Internal Affairs conducted an interview of the officer. Following the interview, the special agent agreed it was necessary to open a full investigation to interview both officer's father and requested a full administrative investigation. However, by this time, the victim had time to reconsider and declined to interview on the basis that she already "ruined" the officer's career. However, the officer's father agreed to be interviewed. The case has not yet concluded.

- In another case, an officer was arrested for allegedly pushing his ex-girlfriend and causing her to hit her head on a doorframe. The officer also lied to outside law enforcement. The officer denied pushing the victim, but the victim's two daughters confirmed the allegation, and one of the daughters claimed the officer also pushed the daughter so he could get to the victim. The victim's mother was also a potential witness. Although the Office of Internal Affairs noted the inconsistencies between the statements of the officer and the two daughters, it only approved an interview of the officer. After the officer's interview, the special agent agreed it was prudent to interview the victim's mother and daughters. However, by this time, the witnesses failed to return the special agent's telephone calls or respond to his letters.

- In another case, an officer was arrested for allegedly trying to strangle his girlfriend and causing her to briefly lose her eyesight. The victim had visible bruising on her neck and hand and claimed she had a video recording of the officer admitting to the alleged misconduct. The video recording depicted a male voice, but because the person speaking could not be seen on the video, the person's identity was unknown. In addition, outside law enforcement reportedly had body worn camera footage of their initial emergency response, but the Office of Internal Affairs did not have this evidence at the time of its initial determination. The hiring authority requested a full investigation, but the Office of Internal Affairs returned the matter to the hiring authority without any investigation. At the investigative and disciplinary findings conference, the hiring authority found insufficient evidence to determine the allegations and requested an interview of the officer, which the Office of Internal Affairs granted. After the officer's interview, which was eight months after the case was opened, the hiring authority again decided a full investigation was needed to interview the victim and other possible witnesses based in part

> on the officer's lack of credibility during his interview. The Office of Internal Affairs finally approved an investigation, one year and seven months after the alleged incident, and one year and two months after the department discovered the alleged misconduct.

A thorough investigation of domestic violence allegations is critical for providing hiring authorities with enough evidence to make a reasonable and informed decision regarding whether a staff member committed serious misconduct. Failure to conduct a thorough investigation provides a disservice to the department, the accused staff members, the alleged victims, and the public. Although the Office of Internal Affairs sometimes ultimately agrees to open a full investigation in domestic violence cases, it's failure to do so initially causes unnecessary delay and potentially leads to stale evidence, faded memories, a lack of witness cooperation, or insufficient evidence upon which a hiring authority can make an informed decision regarding the allegations.

The OIG also identified that the department does not always accurately categorize and track these cases. Depending on the extent of the injuries and presence of corroborating evidence, the Office of Internal Affairs may categorize a domestic violence case as "domestic violence," but may also use a generic allegation such as "Off Duty Incidents – Undetermined Other." The OIG requested a list of all domestic violence or domestic dispute cases processed by the Office of Internal Affairs Central Intake Panel between January 1, 2021, and June 30, 2021. The Office of Internal Affairs provided a list of only 20 of the 32 cases identified by the OIG as involving domestic violence allegations against an officer. Missing from the list were four of the five case examples listed above. The list did not include the case in which an officer allegedly kicked and raped his wife and physically abused their son. Also not include was the case in which an officer allegedly pushed his girlfriend over the footboard of a bed and threatened to kill her while he placed a loaded handgun to her head. Another case not included was one in which an officer allegedly pushed his ex-girlfriend and she hit her head on a doorframe. Finally, the case in which an officer allegedly tried to strangle his girlfriend, causing her to temporarily lose her eyesight was also not included. The Office of Internal Affairs did not classify any of these cases as domestic violence. However, each case contained allegations involving a battery or violence against a spouse or girlfriend. Properly classifying these cases as involving domestic violence would allow the department to easily identify and track the number of domestic violence cases in general, or by any other subset, such as by officer, institution, or region. The department would then be able to accurately respond to requests for information regarding these significant cases from stakeholders such as departmental headquarters, the department's Employment Advocacy and Prosecution Team, the OIG, the Legislature, or the Governor's office.

Under their classification methods, the Office of Internal Affairs under-reported the total number of domestic violence and domestic disturbance

cases by 38 percent when asked to provide a list of all such cases processed during this reporting period. By assigning domestic violence cases a generic allegation category, it makes it extremely difficult to track the full number of domestic violence cases that are processed by the Office of Internal Affairs.

The OIG recommends that, when initially deciding on a course of action during the central intake process, the Office of Internal Affairs open full administrative investigations in all peace-officer-involved cases of alleged domestic violence. Further, the OIG recommends that the Office of Internal Affairs classify all allegations of domestic violence as "Domestic Violence," regardless of the extent of the injuries or presence of corroborating evidence.

The Department Violated Policy by Failing to Include Required Language in Settlements

During the January through June 2021 reporting period, the OIG found the department failed to include settlement terms required by Article 22 of the Department Operations Manual when entering into settlement agreements that allow dismissed employees to resign in lieu of dismissal.

Article 22, Section 33030.26.2, of the Department Operations Manual, section "Essential Settlement Language" states:

> If the Appellant has agreed to resign:
>
> On [insert date], APPELLANT agrees that he/she will be deemed to have resigned. This resignation is irrevocable and is not contingent on the action of any other State agency, or in the future. Appellant further agrees, as part of the consideration and inducement for execution of the STIPULATION AND RELEASE, to never apply for or accept employment with the California Department of Corrections and Rehabilitation (CDCR), or any entity providing services to inmates or wards within the CDCR. If the Department inadvertently offers appellant a position, appellant breaches this agreement by accepting a position with the Department. APPELLANT shall be terminated at such time as is convenient to the Department and excluded from all institutions, and APPELLANT hereby waives any right APPELLANT may have to appeal that termination and/or exclusion in any forum.[21]

This type of clause is commonly referred to as a "no-rehire" clause. The department has determined that a relatively new statute prohibits it from including the "no-rehire" clause in settlement agreements. The OIG disagrees with the department's position. In 2020, California enacted section 1002.5 of the *California Code of Civil Procedures*. This section forbids the use of a no-rehire clause in an agreement to settle an employment dispute between an employer and an "aggrieved person" who has filed a claim against the employer. Following the enactment of section 1002.5, the department stopped using the no-rehire clause in settlements after learning the State Personnel Board began rejecting settlement agreements with this language. The department determined that an employee who was terminated for misconduct but appealed the dismissal with the State Personnel Board is an "aggrieved person" under section 1002.5. While we acknowledge the department's position, we disagree because such position shows a lack of understanding of the purpose of the statute.

21. DOM, Section 33030.26.2.

The purpose of section 1002.5 is to protect claimants who were victims of harassment and discrimination. In support of the bill enacting section 1002.5, the author stated:

> AB 749 will bring greater fairness and clarity to existing law by voiding any settlement provision arising from an employment dispute if the provision restricts the ability of an "aggrieved" employee to work for the employer. The bill defines an "aggrieved" employee as one who has filed a claim against the employer, whether the employee filed the claim in court, with an administrative agency, in an alternative dispute resolution forum, or through an internal grievance procedure. **In short, it will only protect employees who are victims of alleged discrimination, harassment, or other labor law violations. It will not protect the perpetrators of wrongful acts that give rise to an employment dispute.** An employer always retains the right to discharge an employee or refuse to re-hire an employee if there are valid grounds for doing so.[22] (*Emphasis added.*)

Section 1002.5 defines an aggrieved person as "a person who, in good faith, has filed a claim against the person's employer in court, before an administrative agency, in an alternative dispute resolution forum, or through the employer's internal complaint process."[23] Employees who are dismissed by state agencies are not aggrieved persons simply because they appealed their discipline. Dismissed employees do not file claims against their departments, but file appeals of their dismissals for cause with the State Personnel Board. Such employees are not an aggrieved person as defined in the statute.

Moreover, the department failed to take advantage of an exception to the prohibition against using the no-rehire clause. Even if a court were to determine that dismissed employees are considered aggrieved persons after appealing a dismissal, section 1002.5 provides an exception to the prohibition against using the no-rehire clause. The exception identified in section 1002.5 applies to cases in which an employer documents in good faith any sexual harassment, sexual assault, or criminal conduct on the part of the aggrieved person prior to the filing of the claim. The exception for criminal conduct was added to the statute in 2021. Despite this exception, the department still failed to include no-rehire clauses in settlement agreements that allowed employees to resign even when the department previously documented criminal conduct on the part of the dismissed employee. The OIG began raising this issue with the department late in the January through June 2021 reporting period,

22. Chris Micheli, *Will California Open the Floodgates to Employment Litigation?* (2019) 51 U. Pac. L. Rev. 285, 294; footnote 48 [Senate Judiciary Committee, Committee Analysis of AB 749 at 8 (Jul. 9. 2019).]

23. *California Code of Civil Procedures*, section 1002.5 (c) (1).

yet the department still would not include the clause in settlement agreements. Below are some examples of this type of case.

In one case, a sergeant allegedly solicited sexual activity from an undercover detective who was posing online as an underage girl. The sergeant allegedly arranged to pick up the girl up near her high school for the purpose of having sexual relations, searched for hotels in the area, and purchased prophylactics while en route to meet the person he believed to be a minor. Outside law enforcement arrested the sergeant near the high school. The department conducted an investigation and dismissed the sergeant. At a prehearing settlement conference, the department entered into a settlement agreement with the sergeant allowing the sergeant to resign in lieu of dismissal. Even though the department had documented criminal conduct the sergeant had committed prior to his appeal, it failed to include the required no-rehire clause in the settlement.

In a second case, an off-duty officer allegedly struck a police officer with his vehicle, fled the scene, and lied about the incident to outside law enforcement and a supervisor. The department interviewed the officer, and the hiring authority sustained the allegations and dismissed the officer. Prior to a State Personnel Board hearing, the department entered into a settlement agreement with the officer withdrawing the dismissal and allowing the officer to resign in lieu of dismissal. Even though the department had documented criminal conduct by the officer prior to his appeal, it failed to include the required no-rehire clause in the settlement.

In a third case, an officer allegedly possessed and used anabolic steroids without a prescription and possessed a mobile phone on prison grounds. The department conducted an investigation, sustained the allegations, and dismissed the officer. At a prehearing settlement conference, the department entered into a settlement agreement with the officer withdrawing the dismissal and allowing the officer to resign in lieu of dismissal. Despite having documented criminal conduct by the officer prior to his appeal, the department failed to include the required no-rehire clause in the settlement.

The OIG recommends the department comply with its own departmental rules and require no-rehire clauses to be included in any settlement that allows a dismissed employee to resign in lieu of dismissal. At a minimum, the department should be including no-rehire clauses in any of these settlements when they documented criminal conduct by the dismissed employee prior to the appeal. If the State Personnel Board rejects the settlement, the OIG recommends the department seek judicial review of the decision and obtain clarity from the courts regarding the applicability of the *California Code of Civil Procedures*, section 1002.5, to settlements involving appeals from dismissals.

The Department Failed to Refer All Unintentional Discharge Cases to the Office of Internal Affairs for Investigation And Did Not Accurately Categorize All Cases Involving Unintentional Discharges

During the January through June 2021 reporting period, the OIG identified that hiring authorities failed to follow the requirements of the Department Operations Manual (DOM) regarding the review, assessment, and handling of unintentional discharge cases by failing to refer them to the Office of Internal Affairs.

An unintentional discharge is deadly force.[24] Deadly force cases are in the category of the most serious types of incidents the department reviews for discipline because of the high potential for serious injury or death, and as such, are an important public safety concern. The department should diligently review incidents involving unintentional discharges in a thorough and consistent manner. For that reason, all unintentional discharge incidents should be referred to the Office of Internal Affairs Central Intake Unit for review and processing.

Moreover, departmental policy is clear that the hiring authority does not have discretion when the hiring authority has sufficient information that misconduct occurred. Article 14, Section 31140.14 of the Department Operations Manual ,"Allegation Inquiry," states in pertinent part:

> If, during the course of the allegation inquiry, sufficient information is obtained to warrant an Internal Affairs investigation, the locally designated investigators approved by the OIA or the OIA investigator *shall* notify the Hiring Authority. The Hiring Authority shall forward a CDC Form 989 to the OIA CIU requesting an Internal Affairs investigation. If the allegation inquiry reveals sufficient evidence for the Hiring Authority to impose direct adverse action, the Hiring Authority ***shall*** forward a CDC Form 989 to the OIA CIU requesting to impose direct adverse action. (*Emphasis added.*)

Peace officers are highly trained individuals who are held to a higher standard of behavior.[25] The department invests tremendous time,

24. DOM, Section 51020.4, "Definitions" defines "deadly force" as any use of force that is likely to result in death. **Any discharge of a firearm other than the lawful discharge during weapons qualification, firearms training, or other legal recreational use of a firearm, is deadly force** (*emphasis added*).

25. DOM, Section 33030.3.3, "Law Enforcement Code of Ethics," which states as follows: "Peace officers employed by the Department are held to a higher standard of conduct on and off duty, as specified in the Law Enforcement Code of Ethics and the peace officer oath. The Law Enforcement Code of Ethics is as follows: As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property.

resources, and money into training its officers. Furthermore, the department provides specialized training to its officers regarding the use and safe handling of firearms. Therefore, when a unintentional discharge occurs, it is reasonable to believe misconduct may have occurred because peace officers receive extensive training on preventing such incidents.

Below is an example from this reporting period during which the hiring authority initially did not send an unintentional discharge case to the Office of Internal Affairs for review.

An off-duty officer was in a bedroom of his home when he removed a handgun from his gun safe. The officer unintentionally pulled the trigger while cleaning the handgun and fired a round through the wall of his bedroom and it lodged into the wall of the laundry room. Thankfully, no one was injured. The hiring authority reviewed the incident and determined that no misconduct occurred because it was an "accident" void of misconduct. The OIG disagreed and elevated the hiring authority's decision to the hiring authority's supervisor. The hiring authority's supervisor agreed there was potential staff misconduct based on the officer's alleged unintentional discharge of a firearm. Therefore, the hiring authority's supervisor referred the matter to the Office of Internal Affairs. The Office of Internal Affairs authorized the hiring authority's supervisor to address the allegation without a formal investigation, and the OIG accepted the case for monitoring. Ultimately, the hiring authority imposed corrective action and issued the officer a letter of instruction. While the OIG disagreed with the decision to issue a letter of instruction, the hiring authority's supervisor at least ensured the case proceeded through the appropriate channels within the disciplinary process.

Without intervention from the OIG, the department would not have appropriately tracked, reviewed, and evaluated this unintentional discharge case. The department established the Office of Internal Affairs Central Intake Panel to ensure that all allegations of employee misconduct are processed and reviewed objectively.[26] The Office of Internal Affairs Central Intake Panel receives referrals of alleged misconduct from hiring authorities and conducts a separate inquiry into the alleged misconduct. All allegations of misconduct statewide are funneled through the Office of Internal Affairs for review, which allows for an objective assessment and balanced analysis of cases. When the Central Intake Panel reviews cases, the OIG and the Employment Advocacy and Prosecution Team may assign attorneys to the cases, which further ensures consistency in the application of discipline.

26. DOM, Section 31140.3, "Definitions": The Central Intake Unit (CIU) is a team of special agents, supervisors, and support staff within the Office of Internal Affairs responsible for receiving, screening, and analyzing allegation inquiries for presentation to the Central Intake Panel.

When a hiring authority fails to follow established protocols and unilaterally decides that a unintentional discharge does not constitute potential misconduct, it inhibits the department from assessing unintentional discharges on a macro level. The department's inability to identify systemic issues ultimately robs the department of an opportunity to progress and improve.

This issue is further magnified in another unintentional discharge case in which a hiring authority did not refer a matter to the Office of Internal Affairs for review. In this case, an officer at a fire camp was in the *hot room*[27] returning his weapon after transporting an incarcerated person. The officer entered the hot room alone and approached the ballistics pad, which was located on the top of a mini refrigerator. He removed his handgun from his holster with his right hand, placed the muzzle face down on top of the ballistics pad, and began the process of making the weapon "safe." The officer held his weapon in his right hand and pulled the slide back with his left hand. However, he forgot to remove the magazine and did not lock the slide open. As he pulled the weapon back preparing to secure it, he inadvertently pulled the trigger and fired one round, striking the top of the mini refrigerator next to the red ballistics pad. The round ricocheted off the mini refrigerator and went through the dry wall. The prison's armory sergeant for the prison responded to the scene and located the expelled round on top of a green duffel bag in the adjacent office. The OIG also responded to the scene. While the Office of Internal Affairs was timely notified, it chose not to respond. The hiring authority reviewed the matter and categorized this unintentional discharge as an "accident." Without consulting the OIG, the hiring authority provided corrective action to the officer and closed the matter.

This incident is concerning on multiple levels. First and foremost, the current configuration of the Hot Room at this fire camp is dangerous. It is fortunate that the bullet did not ricochet off of the mini refrigerator and strike the officer. Also fortuitous was that the adjacent office was unoccupied at the time of the unintentional discharge. In the institutional setting, weapons are generally stored in an armory, which is configured in a manner that provides a significant amount of safety and protection to the rest of the institution. Armories are located outside of the secure perimeter of a prison and are confined to rooms or buildings constructed with concrete blocks. This creates a barrier to the rest of the institution. A stray bullet could not penetrate the walls of a traditional armory. The fire camp described in the above incident has a makeshift armory that is insufficient for the proper storage and handling of firearms.

Second, the department violated the department's use-of-force policy when a responding supervisor failed to request a public safety

27. The *hot room* is the room at the fire camp where the gun lockers are located.

statement from the officer.[28] The purpose of a public safety statement is to determine existing threats to public safety and identify transitory evidence that must be preserved. The hiring authority overlooked this issue and did not identify any misconduct or violations of policy in this case.

Last, the Office of Internal Affairs did not respond even though this incident could have had serious or deadly consequences. The Office of Internal Affairs should respond to and investigate unintentional discharge cases, especially those that involve officers who unintentionally discharge their duty weapons on prison grounds.

We also found that the department does not accurately categorize and track unintentional discharge cases after the hiring authority refers them to the Office of Internal Affairs. The OIG requested a list of all alleged negligent discharge cases that the Office of Internal Affairs processed from January 1, 2021, to June 30, 2021. The Office of Internal Affairs provided a list of 14 cases that included "discharge" within the text of an allegation. Of those 14 cases, only 10 involved alleged negligent discharges of firearm by an officer. Two of the 14 involved instances involved an officer firing a shot from a Mini-14 rifle for effect. The other two cases did not involve a firearm at all. We were independently able to review the facts of each case reviewed and verify whether these 14 cases involved an unintentional discharge. However, if the Office of Internal Affairs provided this list to an outside stakeholder, the Office of Internal Affairs would likely provide them inaccurate data. The underlying issue is that the Office of Internal Affairs does not have a category for allegations involving the alleged negligent discharge of a firearm when the incident occurs off duty. Of the 10 cases processed by the Office of Internal Affairs during this reporting period involving allegations that an officer negligently discharged a firearm, four involved off-duty incidents. In these four cases, the Office of Internal Affairs categorized the misconduct under "Off Duty Incidents – Undetermined Other," the same category the Office of Internal Affairs often used to categorize incident involving alleged domestic violence. By using this general, catch-all category does not provide sufficient information for the department to be able to track unintentional discharge incidents. Therefore, the Office of Internal Affairs should create a unique drop down to capture all alleged negligent discharge cases, including those that occur on duty and those that occur off duty.

28. DOM, Section 51020.17.5, "Response Supervisor-Additional Reporting Requirements for Deadly Force" in pertinent part: "The on duty/Response Supervisor shall ask the employee who used deadly force to provide a public safety statement immediately after the incident. This is the employee's oral statement. This statement helps determine the general circumstances of the incident, assess the need for resources, set the perimeter, locate injured persons, and determine the nature of the evidence to be sought. It shall provide basic information such as the number of persons involved in the incident, the number not yet in custody, and number and direction of shots fired."

The OIG recommends that hiring authorities refer all unintentional discharge cases to the Office of Internal Affairs for analysis and review. As exemplified above, unintentional discharge cases are serious, complex, and give rise to a multitude of issues. By referring these cases to the Office of Internal Affairs, the department would comply with departmental policy, respond consistently with either corrective or disciplinary action, give stakeholders a chance to monitor the case, and provide the department with an opportunity for the department to evolve and critically evaluate unintentional discharge cases. The OIG also recommends the department assess all the locations where the department stores weapons to ensure those locations are in appropriate areas with safety precautions such as concrete walls, to safeguard life and prevent unnecessary injury. Also, the OIG recommends that the department categorize all cases involving the unintended discharge of a firearm consistently and in a manner that the department can accurately track.

The OIG Added Value in Its Monitoring of Cases From January Through June 2021

The OIG attorneys come from a variety of backgrounds, such as criminal prosecution, employment law, and civil rights litigation, and bring a wealth of experience to the OIG. With this wealth of experience, OIG attorneys provide skilled and in-depth monitoring of the department's internal investigations and employee disciplinary processes. Between January and June 2021, our attorneys contemporaneously monitored the performances of hiring authorities, Office of Internal Affairs' special agents, and department attorneys. Similar to the last reporting period of July through December 2020, OIG attorneys again positively impacted the Office of Internal Affairs' Central Intake Unit's processing of hiring authority referrals for cases we closed between January and June 2021. Of the 109 cases the OIG monitored and closed between January through June 2021, our attorneys made a positive impact during the Central Intake process in 13 of the 109 cases, or 12 percent. We highlight a few of those cases below.

In one case, an officer allegedly allowed incarcerated persons to hide contraband in a staff restroom to prevent it from being discovered during a cell search. The Office of Internal Affairs initially determined the matter should be returned to the hiring authority to take action without any investigation or interview of the officer. The OIG recommended an investigation, and the Office of Internal Affairs agreed and opened an investigation. Following the investigation, the hiring authority sustained the allegations and dismissed the officer.

In a second case, a captain allegedly appeared to be under the influence of alcohol at work and inappropriately touched a contract employee multiple times. The Office of Internal Affairs initially recommended rejecting the case. However, in the OIG's opinion there was sufficient evidence to open an administrative investigation. The Office of Internal Affairs eventually agreed and after the investigation, the hiring authority sustained the allegations, rejected the captain during his probationary period, and demoted him from a lieutenant position to a sergeant position. Following a hearing, the State Personnel Board upheld the demotion.

In a third case, a librarian allegedly conspired with an incarcerated person to have a sexual relationship, engaged in the sexual relationship, and communicated with the incarcerated person outside of work. The librarian also allegedly provided pornographic images from the internet to a second incarcerated person. When referring the potential misconduct to the Office of Internal Affairs, the hiring authority failed to forward evidence showing the librarian engaged in sexual misconduct with an incarcerated person. The OIG advised the Office of Internal Affairs that the hiring authority had key evidence of the alleged sexual misconduct that was not provided to the Office of Internal Affairs. Based

on this information, the Office of Internal Affairs obtained the evidence and opened a criminal investigation. After conducting the criminal investigation, the Office of Internal Affairs found sufficient evidence to refer the matter to the district attorney's office.

In a fourth case, outside law enforcement arrested an officer after she allegedly struck and bit her boyfriend, causing injuries to his forehead, tooth, and cheek. The Office of Internal Affairs special agent recommended returning the matter to the hiring authority to take action without an investigation. The OIG and department attorney recommended the Office of Internal Affairs interview the officer to determine whether she acted in self-defense. After the officer's interview, the hiring authority found insufficient evidence to sustain the allegations, finding the officer acted in self-defense.

The OIG also had a positive impact during other phases of our monitoring process. For example, in one case, an officer allegedly conducted an unauthorized shower program alone, improperly escorted incarcerated persons to the shower, failed to ensure a cell door was secured, and unlocked the cell door allowing unauthorized incarcerated persons to enter the cell. The officer lied about the incident, including claiming he conducted the shower program with a second officer. The first and second officers allegedly failed to maintain eye contact with each other and work as a team. After the Office of Internal Affairs returned the matter to the hiring authority to take action without an investigation or interviews, the OIG recommended the hiring authority resubmit the matter to the Office of Internal Affairs to request an investigation. The hiring authority agreed, and the Office of Internal Affairs approved an investigation.

In another case, a high-ranking Prison Industry Authority official allegedly harassed a staff member and played a recording of a staff member's investigative interview regarding the official's alleged misconduct as a possible attempt to intimidate the staff member. During the investigation, the OIG recommended the special agent interview a witness to obtain additional information, and the special agent agreed. Based partly on the additional interview, the hiring authority sustained the allegation that the high-ranking official called the staff member into his office and played a recording of an interview and imposed a 30-working-day suspension. However, the official retired before the disciplinary action took effect.

Recommendations

For the January through June 2021 reporting period, we offer the following recommendations to the department:

Nº 1. The OIG recommends the Office of Internal Affairs open full administrative investigations in all cases involving alleged domestic violence when initially deciding on a course of action during the central intake process.

Nº 2. The OIG recommends that the Office of Internal Affairs classify all allegations of domestic violence as ***Domestic Violence***, regardless of the extent of the injuries or presence of corroborating evidence.

Nº 3. The OIG recommends the department comply with its own departmental rules and require the inclusion of no-rehire clauses in any settlement that allows a dismissed employee to resign in lieu of dismissal. If the State Personnel Board rejects the settlement, the OIG recommends the department seek judicial review of the decision and obtain clarity from the courts regarding the applicability of the *California Code of Civil Procedures*, section 1002.5, to settlements involving appeals from dismissals.

Nº 4. The OIG recommends that hiring authorities refer all unintentional discharge cases to the Office of Internal Affairs for analysis and review. In addition, the OIG recommends the department assess all the locations where weapons are stored and handled to ensure proper safety measures are taken to safeguard life and prevent unnecessary injury.

Nº 5. The OIG recommends the department categorize all cases involving the unintended discharge of a firearm consistently and in a manner that the department can accurately track.

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