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OIG | OFFICE *of the* INSPECTOR GENERAL

Independent Prison Oversight

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

*Semiannual Report
January–June 2022*



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September 28, 2022

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

Dear Governor and Legislative Leaders:

Enclosed 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 35th semiannual report, which is pursuant to California Penal Code section 6126 (a) et seq., summarizes the department's performance in conducting internal investigations and handling employee discipline cases we monitored and closed from January 1, 2022, through June 30, 2022.

We assessed the overall 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. We used six performance indicators, two for each entity, to determine the department's overall performance rating. The OIG's assessment is based on the department's adherence to laws, its own policies, and the OIG's considered opinion concerning what we believe constituted sound investigative practice and appropriate disciplinary processes and outcomes.

During this reporting period, each of the three entities performed in a *satisfactory* manner for one performance indicator, but a *poor* manner for the other. Overall, the department's performance in conducting internal investigations and handling employee discipline cases was *poor*. Of the 147 cases we monitored and closed, we rated 99 cases *satisfactory* and 47 *poor*. We found one case that exhibited an overall *superior* performance.

Hiring authorities performed satisfactorily in discovering allegations of employee misconduct and referring those allegations to the Office of Internal Affairs. They performed poorly, however, when making decisions regarding Office of Internal Affairs' investigations and serving disciplinary actions. The Office of Internal Affairs performed satisfactorily when investigating allegations of employee misconduct. Department attorneys performed satisfactorily in providing legal advice to the department when the Office of Internal Affairs processed employee misconduct referrals and conducted investigations.



During this reporting period, administrative misconduct was alleged in 121 cases, including cases in which a full investigation was conducted, the subject of the investigation was interviewed, and the department determined there was sufficient evidence to take direct action without an investigation. The remaining 26 cases involved alleged criminal misconduct, including criminal investigations into the use of deadly force.

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Sincerely,

A handwritten signature in blue ink that reads "Amarik K. Singh". The signature is fluid and cursive, with the first name being the most prominent.

Amarik K. Singh
Inspector General

Contents

Illustrations	iv
The Discipline Monitoring Unit of the OIG	1
The Discipline Monitoring Report	1
The Department’s Investigative and Disciplinary Process	2
Assessing Departmental Stakeholders	4
The Hiring Authority	5
Hiring Authorities Referred Allegations to the Office of Internal Affairs in a Timely Manner in Most Cases, yet Demonstrated Room for Improvement	5
The OIG Concurred with the Hiring Authority’s Investigative and Disciplinary Findings in the Vast Majority of Cases	7
The OIG Invoked Executive Review Twice in Cases Reported During This Period	9
Hiring Authorities Could Have Improved Their Performance in Conducting Timely Investigative and Disciplinary Findings Conferences	11
The Office of Internal Affairs	13
Central Intake Panel	13
Deadly Force Investigations	17
Administrative and Criminal Investigations	20
Employment Advocacy and Prosecution Team	25
The Employment Advocacy and Prosecution Team Can Improve in Several Areas	25
The Employment Advocacy and Prosecution Team Provided Appropriate Advice to Hiring Authorities Regarding Investigative and Disciplinary Findings Most of the Time	27
The Employment Advocacy and Prosecution Team Performed Well in Litigation	28
The Department Implemented Emergency Regulations Affecting the Disciplinary Process	31
The Department Made Significant Changes to the Penalty Ranges	31
The Department Made Significant Changes to the Disciplinary Matrix Sections	33
The Department Added Mitigating Factors to Consider	35
Critical Incidents	37
Recommendations	41

Illustrations

Figures

1. Descriptions of Disciplinary Findings	3
2. Hiring Authorities' Performance During the Prior Two Reporting Periods and During the January Through June 2022 Reporting Period	12
3. Distribution of Case Types Resulting From the Office of Internal Affairs' Decisions During the Central Intake Process From January 1, 2022, Through June 30, 2022	15
4. Types of Cases the OIG Monitored During the Reporting Period From January 1, 2022, Through June 30, 2022	20
5. Two Metrics Illustrating the Time Taken to Complete Investigations	22
6. The Department's Untimeliness in Three Critical Areas During the Prior Two Reporting Periods and During the January Through June 2022 Reporting Periods	27
7. The Department's Employee Disciplinary Matrix, Before 2022	31
8. The Department's Employee Disciplinary Matrix, After 2021	32
9. A Comparison of the Department's Old Matrix With Its New Matrix	33
10. The OIG's Criteria for Responding to Critical Incidents During the Reporting Period From January Through June 2022	37

Tables

1. Monitoring Criteria Used by the Office of the Inspector General	14
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Graphics

The OIG's Mandates	v
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"Scales of Justice" (cover): Graphic image designed by the U.S. Department of Justice; sourced via the internet

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

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



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The Discipline Monitoring Unit of the OIG

California Penal Code sections 6126 and 6133 mandate that the Office of the Inspector General (the OIG) provide oversight of internal affairs investigations and the disciplinary process of the California Department of Corrections and Rehabilitation (the department). The OIG's Discipline Monitoring Unit (DMU) is responsible for monitoring those processes. The DMU is composed of attorneys we call Special Assistant Inspectors General (SAIGs). All SAIGs in DMU have a minimum of eight years of experience in the practice of law. These attorneys have diverse legal backgrounds including, but not limited to, criminal prosecution and defense, administrative law, prosecution and defense of peace officer disciplinary actions, and civil litigation in State and federal court. By tapping into this combined wealth of knowledge and experience, DMU provides valuable, real-time feedback and recommendations to the department regarding its investigative and disciplinary processes.

The Discipline Monitoring Report

Penal Code section 6133(a) requires that the OIG advise the public regarding the adequacy of the department's internal affairs investigations we monitor and whether discipline was warranted in those cases. Penal Code section 6133(b)(1) requires that the OIG issue regular reports at least semiannually, summarizing our oversight of the department's Office of Internal Affairs' investigations. We satisfy these statutory requirements by publishing the *Discipline Monitoring Report* semiannually. We are required to provide the following information in the report:

1. A synopsis of each matter we review
2. An assessment of the quality of the investigation
3. An assessment of the appropriateness of the disciplinary charges
4. Our recommendations regarding the disposition and level of discipline in each case and whether the department agreed with our opinions
5. A report of any settlement in the case and whether we agreed
6. The extent to which discipline was modified after imposition

We satisfy these statutory requirements by publishing our findings regarding individual cases on a monthly basis on our public-facing website. Visit www.oig.ca.gov, click on our **Data Explorer** tab, and then the section labeled **Case Summaries** to read our findings.

The Department's Investigative and Disciplinary Process

The department's investigative process begins when its staff discover allegations of misconduct. If the hiring authority—typically a warden at a prison—discovers an allegation of misconduct and determines there is a reasonable belief misconduct occurred, he or she will refer the allegation to the department's Office of Internal Affairs' Central Intake Panel for review. The Central Intake Panel is made up of representatives of the Office of Internal Affairs, a department attorney from the department's Employment Advocacy and Prosecution Team (EAPT), and an attorney from the OIG. The Office of Internal Affairs processes the allegations and determines whether to open an investigation. If the Office of Internal Affairs does not open an investigation or approve an interview of the employee accused of misconduct, it will return the case to the hiring authority as either rejected on the grounds that misconduct did not occur, or for the hiring authority to take direct action such as discipline or corrective action.

If the Office of Internal Affairs approves an investigation, the case is referred to one of three regional offices: north, central, or south. Staff at the regional office assign the case to a special agent who conducts interviews and gathers evidence. The special agent consults with an OIG attorney on cases the OIG monitors and consults with a department attorney on cases EAPT designates for assignment. When the investigation concludes, the special agent completes a report and forwards it to the hiring authority for review. The hiring authority meets with the OIG attorney and department attorney to discuss the disciplinary findings. See Figure 1 on the next page for descriptions of the findings.

If the hiring authority sustains any allegations, the hiring authority determines the appropriate discipline by applying a penalty from the department's disciplinary matrix. The department attorney drafts a disciplinary action, and the department serves the disciplinary action on the employee who committed misconduct. The employee can request a predeprivation hearing, otherwise known as a *Skelly* hearing, which provides employees with an opportunity to present factors or arguments to reduce or revoke the discipline. After the disciplinary action takes effect, the employee can file an appeal with the State Personnel Board.

Figure 1.

Descriptions of Disciplinary Findings

NO FINDING: The complainant failed to disclose promised information to further the investigation; the investigation revealed that another agency was involved and the complainant has been referred to that agency; the complainant wishes to withdraw the complaint; the complainant refuses to cooperate with the investigation; or the complainant is no longer available for clarification of facts/issues.

NOT SUSTAINED: The investigation failed to disclose a preponderance of evidence to prove or disprove the allegation made in the complaint.

UNFOUNDED: The investigation conclusively proved that the act(s) alleged did not occur, or the act(s) may have, or in fact, occurred but the individual employee(s) named in the complaint(s) was not involved.

EXONERATED: The facts, which provided the basis for the complaint or allegation, did in fact occur; however, the investigation revealed that the actions were justified, lawful, and proper.

SUSTAINED: The investigation disclosed a preponderance of evidence to prove the allegation(s) made in the complaint.

Source: The Office of the Inspector General.

Assessing Departmental Stakeholders

In this reporting period, the OIG used standard assessment questions to assess three departmental stakeholders: the hiring authority, the Office of Internal Affairs, and EAPT. These assessment questions are grouped together in six indicators based on the stakeholder and the phase of the case being assessed. The indicators ask the following questions:

1. How well did the department discover and refer allegations of employee misconduct?
2. How well did the Office of Internal Affairs process and analyze allegations from hiring authorities?
3. How well did the department investigate allegations of employee misconduct?
4. How well did the department determine its findings for alleged misconduct and process cases?
5. How well did the department attorney provide legal advice during the Office of Internal Affairs' Central Intake Panel meeting and the investigative process?
6. How well did the department provide legal representation during litigation?

These indicators are organized chronologically. Indicators 1 and 4 are used to assess the hiring authority's performance. Indicators 2 and 3 are used to assess the Office of Internal Affairs staff's performance. Indicators 5 and 6 are used to assess the EAPT attorney's performance. The OIG assigns a rating of *superior*, *satisfactory*, or *poor* to each applicable indicator, and an overall rating to each case.

The DMU is in the process of revamping and consolidating the indicators, questions, and ratings. Once this process is completed, we will have reduced the six indicators to three, one for each stakeholder. The new methodology of assessment is scheduled to take effect in 2023. In recent discipline monitoring reports, we addressed each of the six indicators separately. In this report as we transition to our new methodology, however, we will summarize our findings for each stakeholder, overall, as opposed to summarizing our findings for each individual indicator.

The Hiring Authority

The hiring authority is almost always the first stakeholder engaged in the disciplinary process. The hiring authority has the authority to hire, discipline, and dismiss employees. A warden is the hiring authority for most of the cases we monitor and is the hiring authority for most if not all peace officers at a prison. Hiring authorities' involvement begins when they or one of their employees discovers allegations of misconduct. The department requires all employees to report misconduct, and requires all supervisors and managers to elevate allegations of misconduct to the hiring authority. If there is a reasonable belief misconduct occurred, the hiring authority must refer allegations of misconduct to the Office of Internal Affairs. Once the Office of Internal Affairs returns the case to the hiring authority, the hiring authority reviews the evidence and the recordings, and conducts an investigative and disciplinary findings conference in which he or she makes findings regarding the allegations and determines the appropriate penalty, if any.

Hiring Authorities Referred Allegations to the Office of Internal Affairs in a Timely Manner in Most Cases, yet Demonstrated Room for Improvement

Hiring authorities are required to process allegations of misconduct diligently and thoroughly. The OIG monitors the timeliness of hiring authority referrals sent to the Office of Internal Affairs. Departmental policy requires the hiring authority to refer allegations to the Office of Internal Affairs within 45 days of the date the hiring authority discovers the potential misconduct. During this reporting period, hiring authorities timely referred allegations in 75 percent of cases we monitored, a slightly lower percentage than that of the last reporting period. Timely referrals are the first step to ensuring a thorough and timely investigation. However, in 25 percent of cases, hiring authorities referred cases to the Office of Internal Affairs more than 45 days after the discovery of allegations.

Delayed referrals can have serious consequences. Not only can they result in faded memories and lost evidence, but they may also result in the department being legally barred from imposing discipline for employee misconduct. In contrast, expeditious referrals ensure statements are taken from witnesses before their memories fade, evidence is more likely to be secured, and the department is less likely to be legally barred from imposing discipline. Below is an example of a case in which a hiring authority delayed processing a referral in the proper time frame.

The OIG is pleased to introduce a new feature with this report. Click on the small blue boxes labeled with the **OIG Case No.**, and you can access the complete case summary text on our website. The first occurrence is seen on this page, *right*.

OIG Case No. 19-0030597-DM

In this case, four officers allegedly punched and kicked an incarcerated person in a housing unit and conspired to conceal the misconduct. A fifth officer allegedly assisted the officers by closing a gate behind the incarcerated person and conspired with the officers to conceal it. The hiring authority's performance in discovering and referring allegations of employee misconduct to the Office of Internal Affairs was deemed *poor* because the hiring authority did not timely refer the matter to the Office of Internal Affairs for investigation. Although the department learned of the alleged misconduct on April 25, 2019, the hiring authority did not refer the matter to the Office of Internal Affairs until July 19, 2019, 40 days after policy required. The Office of Internal Affairs did not complete its investigation until April 14, 2022, 10 days before the deadline to take disciplinary action. The hiring authority found the investigation insufficient and did not sustain any allegations. Because insufficient time remained for the Office of Internal Affairs to conduct a supplemental investigation, the hiring authority was unable to refer the matter back to the Office of Internal Affairs. Thus, the officers were not disciplined for their alleged misconduct.

The OIG Concurred with the Hiring Authority's Investigative and Disciplinary Findings in the Vast Majority of Cases

After the Office of Internal Affairs returns a case to the hiring authority, he or she must determine whether there is sufficient evidence to make a finding. If there is insufficient evidence to make a finding, the hiring authority may request further investigation or elect to make no finding. If there is sufficient evidence, the hiring authority determines whether the allegations are sustained, not sustained, or unfounded, or whether the employee is exonerated. The hiring authority consults with a department attorney, if one is assigned, and with the OIG if the case is monitored. The hiring authority considers each case on its individual merits to make appropriate findings. This consultation is known as *the investigative findings and penalty conference* and the hiring authority is required to conduct this review within 14 days from the day the Office of Internal Affairs returns the case.

If the hiring authority sustains misconduct allegations, he or she must then determine whether disciplinary action is appropriate and, if so, the appropriate penalty. The disciplinary matrix provides guidelines for determining the appropriate penalty after evaluating whether any mitigating or aggravating factors apply. During this reporting period, the hiring authority made appropriate findings regarding allegations 93 percent of the time and appropriate penalty decisions 91 percent of the time. Below are examples of cases in which we disagreed with the hiring authority's decisions.

OIG Case No. 21-0038852-DM

An officer allegedly threatened his wife while holding a firearm and indicated he would force outside law enforcement to shoot and kill him. Outside law enforcement arrested the officer after he allegedly assaulted his wife with a knife, threatened to kill her, and bit his minor son. The hiring authority sustained the allegations and imposed a 10 percent salary reduction for 24 months. The OIG concurred with the findings, but recommended dismissing the officer. The officer did not appeal his salary reduction.

OIG Case No. 21-0041775-DM

Outside law enforcement arrested an off-duty officer after he allegedly sat on his girlfriend's chest and put his hands around her throat during an argument, making it difficult for her to breathe. The officer also allegedly twisted his girlfriend's arm when she tried to prevent him from leaving their home. The hiring authority sustained the allegations, but did not include all the allegations the girlfriend made. The hiring authority failed to apply the appropriate domestic violence disciplinary

matrix section for the sustained misconduct. By sustaining allegations that the officer sat on his girlfriend's chest and twisted her arm, but not that he put his hands around her throat, the hiring authority appeared to believe part of the girlfriend's story, but not the entire story. The hiring authority also did not select the appropriate employee disciplinary matrix section addressing domestic violence, which would have resulted in a higher penalty. The hiring authority imposed a 5 percent salary reduction for three months. The OIG did not concur with sustaining the allegations because there was insufficient evidence to support the allegations and disagreed with the penalty because it was inconsistent with the allegations the hiring authority had sustained. The officer did not file an appeal with the State Personnel Board.

The OIG Invoked Executive Review Twice in Cases Reported During This Period

When any stakeholder has a significant disagreement with the hiring authority's findings regarding allegations, penalties, or a proposed settlement, the stakeholder can elevate the hiring authority's decision to the hiring authority's supervisor. Any stakeholder can continue to elevate the matter to an even higher level if desired. This process is referred to as *executive review*. If executive review is invoked, the hiring authority's supervisor is asked to review all the investigative materials. The stakeholders then meet to discuss the disagreement, and the hiring authority's supervisor makes his or her own determinations.

The OIG invoked executive review in two cases we monitored and closed during this reporting period. EAPT invoked executive review twice as well. Below are summaries of those cases and the issues in dispute.

OIG Case No. 20-0034094-DM

In one case, outside law enforcement arrested a sergeant after he grabbed his girlfriend's wrist, covered her mouth, and prevented her from leaving a vehicle. The sergeant also allegedly lied to outside law enforcement and in a report to the hiring authority. The hiring authority sustained the allegations that the sergeant grabbed his girlfriend's wrist and prevented her from exiting the vehicle, but not any of the remaining allegations, and decided to impose a 10 percent salary reduction for 24 months. The OIG disagreed with the penalty determination and the decision not to sustain the dishonesty allegations. The hiring authority's supervisor reviewed the case and requested further investigation. After the investigation, the hiring authority's supervisor sustained the same allegations as the hiring authority did, but determined the misconduct was serious enough to warrant dismissal. The sergeant appealed to the State Personnel Board. The State Personnel Board determined that the evidence supported the allegations, found that the victim reasonably feared for her life, and upheld the dismissal. If the OIG had not elevated this matter for executive review, this former sergeant would likely still be working as a peace officer.

OIG Case No. 20-0035408-DM

In a second case, the department deployed a crisis-response team and conducted a mass operation at a prison while investigating a security-threat group. A large number of incarcerated people alleged that unnamed officers and sergeants used unnecessary and excessive force on them, failed to provide them with face coverings, used racial epithets, and discriminated against them on the basis of race. The warden allegedly failed to review an operational plan before authorizing the operation, failed to ensure that incarcerated people wore face

coverings and were socially distanced, and subjected incarcerated people to disparate treatment based upon their race. The hiring authority sustained the allegation that the warden failed to ensure that incarcerated people were provided with face coverings, but not the remaining allegations, despite clear evidence that the warden had failed to review and approve an operations plan before deploying the crisis-response team. The OIG elevated the matter to the hiring authority's supervisor, who sustained the disputed allegation and imposed a letter of reprimand. The warden did not file an appeal.

OIG Case No. 20-0033659-DM

In one case, EAPT invoked executive review on the hiring authority after the hiring authority decided to revoke two dismissals following a *Skelly* hearing. The case involved several officers, sergeants, and a lieutenant. An incarcerated person began to exhibit bizarre behavior, and the officers, the sergeants, and the lieutenant responded to the issue at a dormitory-style housing unit. The lieutenant and one of the sergeants attempted to deescalate the situation, but did not succeed. Fearing a violent incident would occur if the disruption continued, a second incarcerated person lifted the first incarcerated person off the ground and carried him out of the building. One of the officers and one of the sergeants wrote in their reports that the second incarcerated person walked out of the building. The hiring authority sustained allegations that the officer and the sergeant were dishonest in their reports and in their interviews with the Office of Internal Affairs. After the sergeant's and the officer's presentations at their *Skelly* hearings, the hiring authority decided to revoke the dismissals. EAPT disagreed and elevated the matter to the hiring authority's supervisor, who upheld the dismissals. The sergeant and the officer filed appeals with the State Personnel Board, which later revoked the dismissals, finding that the officer and the sergeant were not dishonest, but merely mistaken in their reports and interviews.

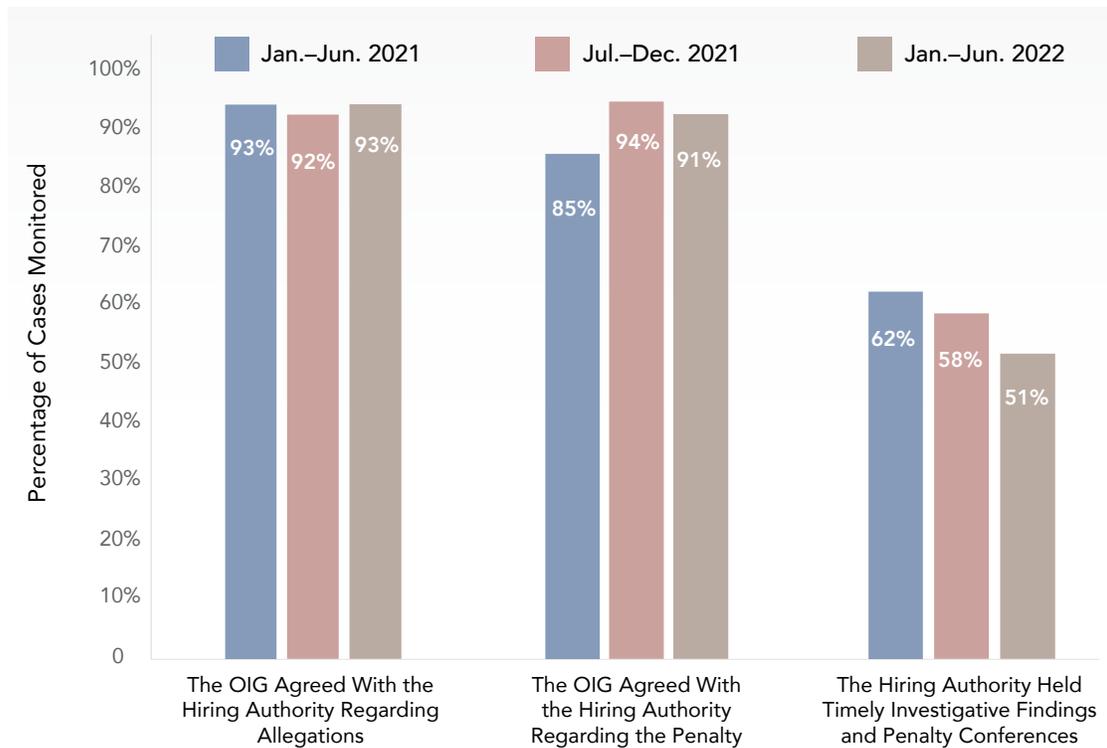
OIG Case No. 21-0041222-DM

In another case, outside law enforcement arrested a correctional counselor after he allegedly struck his wife with an open palm on her back and pushed and pulled her, causing her to fall and hit her head. The hiring authority sustained the allegation that the counselor pushed his wife, but not the remaining allegations, and decided to impose a 10 percent salary reduction for 10 months. EAPT invoked executive review on the hiring authority. The hiring authority's supervisor sustained allegations that the counselor struck, pulled, grabbed, and pushed his wife and imposed a 48-working-day suspension. The department later entered into a settlement with the counselor that converted the penalty to a 10 percent salary reduction for 24 months.

Hiring Authorities Could Have Improved Their Performance in Conducting Timely Investigative and Disciplinary Findings Conferences

During this reporting period, hiring authorities continued to delay conducting disciplinary findings and penalty conferences. Departmental policy requires hiring authorities to conduct the conference within 14 days of receiving the case from the Office of Internal Affairs. EAPT disagrees with our interpretation of departmental policy; it has determined that the hiring authority need only select a conference date no later than 14 days after the referral from the Office of Internal Affairs, and that the conference can be held within 30 days of the referral. In assessing timeliness, we have determined that if a hiring authority makes reasonable attempts to schedule the conference within 14 days, but is unable to do so, the conference would be considered timely insofar as it is held within 30 days. Even with this more relaxed interpretation, hiring authorities timely conducted findings and penalty conferences in only 51 percent of cases. Therefore, as in previous reporting periods, timeliness of findings and penalty conferences continued to be a problem. Figure 2 below compares the performance of hiring authorities during this reporting periods with the two prior reporting periods.

Figure 2. Hiring Authorities' Performance During the Prior Two Reporting Periods and During the January Through June 2022 Reporting Period



Source: The Office of the Inspector General.

Below are two examples of cases with delayed conferences:

OIG Case No. 19-0030589-DM

A sergeant allegedly lied to two officers when he told them that he had viewed a recording on a mobile phone of a third officer reclining in his chair with his feet resting on a desk when the third officer should have been working. The sergeant allegedly submitted a false memorandum to an associate warden and a captain concerning the incident, and lied during Office of Internal Affairs' interviews. Hiring authorities performed poorly in determining findings regarding the alleged misconduct because they delayed holding the investigative and disciplinary findings conference. The hiring authority did not consult with the OIG and department attorney until 35 days after receiving the referral, 21 days after policy required. At the conference, the hiring authority initially determined that the investigation was sufficient and only requested further investigation from the Office of Internal Affairs after the OIG recommended the matter be investigated further. The Office of Internal Affairs granted the request, conducted further investigation, and the hiring authority sustained the allegations and dismissed the sergeant. The OIG concurred. The sergeant filed an appeal with the State Personnel Board. Following a hearing, the State Personnel Board upheld the dismissal.

OIG Case No. 21-0039478-DM

An officer allegedly failed to inform the department that his driver license had expired. Moreover, outside law enforcement arrested the officer for allegedly driving under the influence, and the officer failed to timely notify the hiring authority of the arrest. The hiring authority did not consult with the OIG and the department attorney until 63 days after the referral and 49 days after policy required. The hiring authority dismissed the officer, and the State Personnel Board later dismissed the officer's appeal after he failed to appear for the hearing.

The Office of Internal Affairs

Central Intake Panel

Whenever the department reasonably believes an employee committed misconduct or a crime, the hiring authority is responsible for timely requesting an investigation or approval of a direct action from the Office of Internal Affairs. The hiring authority refers these matters to the Office of Internal Affairs' Central Intake Unit. Pursuant to departmental policy, Office of Internal Affairs special agents, department attorneys from EAPT, and OIG attorneys comprise a Central Intake Panel, which meets weekly to review the misconduct referrals from hiring authorities. The Office of Internal Affairs leads the meetings to ensure the consistent evaluation of referrals, and department attorneys provide legal advice to the Office of Internal Affairs. The OIG monitors the process on a weekly basis, 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;
- To conduct a criminal investigation;
- 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
- To reject the referral and return it to the hiring authority to conduct further inquiry.

The following table is the OIG’s guide for determining which cases to accept for monitoring:

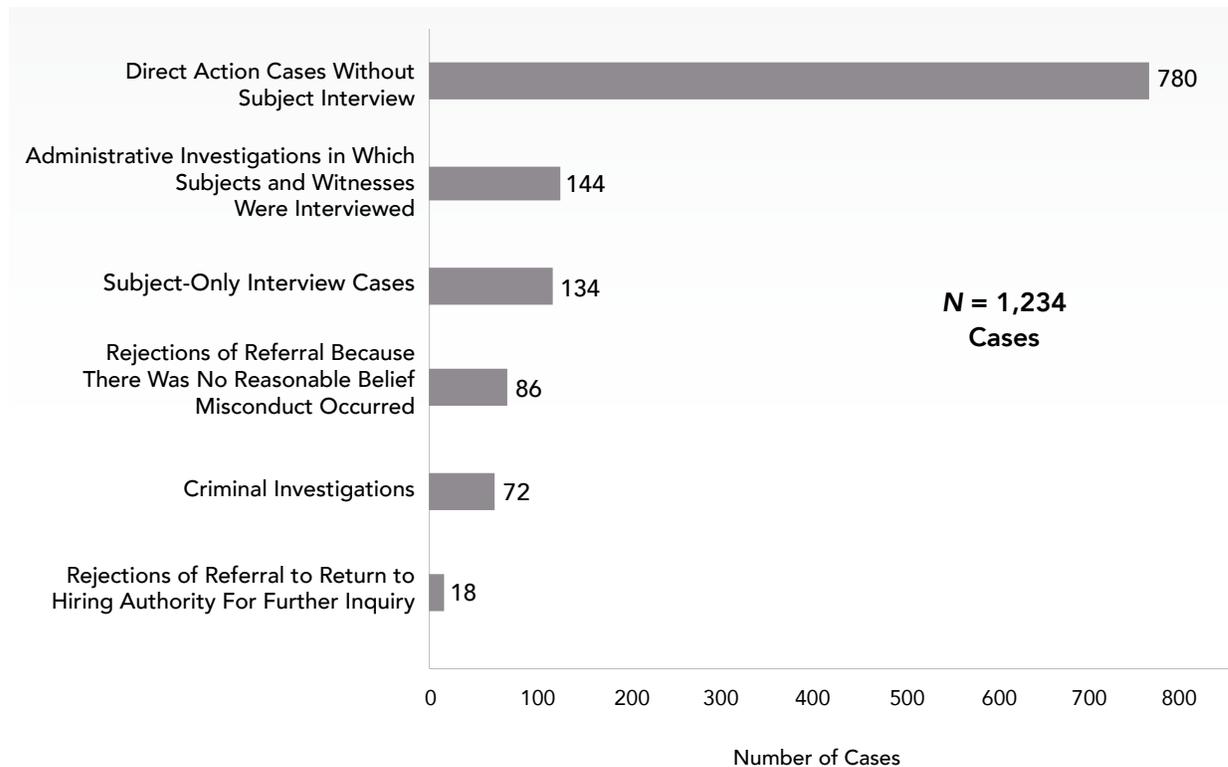
Table 1. Monitoring Criteria Used by the Office of the Inspector General

<i>Madrid-Related Criteria*</i>	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.
High Profile	Cases involving alleged misconduct by high-ranking departmental 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 a peace 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 9-21-22).

In the six-month reporting period of January through June 2022, the Office of Internal Affairs made decisions concerning 1,234 referrals involving potential staff misconduct, which the OIG also reviewed during the Central Intake process (see Figure 3 below).

Figure 3. Distribution of Case Types Resulting From the Office of Internal Affairs' Decisions During the Central Intake Process From January 1, 2022 Through June 30, 2022



Source: The Office of the Inspector General.

The Office of Internal Affairs' decisions during the Central Intake process resulted in the following distribution of types of cases:

- 780 direct action cases without a subject interview
- 144 administrative investigations in which subjects and other witnesses were interviewed
- 134 direct action cases with an interview of the employee or employees (also known as a subject-only interview)

- 86 rejections of the referral without further action concerning the allegation or allegations because there was no reasonable belief misconduct occurred
- 72 criminal investigations
- 18 rejections of the referral to return it to the hiring authority for further inquiry

In this reporting period, the OIG found that the Office of Internal Affairs' performance during the central intake process was *satisfactory* in 76 percent of cases. This was a slight uptick compared with its performance during the last reporting period when the rating was *satisfactory* in 74 percent of cases.

Consistent with prior reporting periods, we did not always agree with the Office of Internal Affairs regarding decisions concerning hiring authority referrals. The OIG disagreed with the Office of Internal Affairs' initial determination in 46 of the 147 cases (31 percent) that the OIG identified for monitoring. Disagreements were often due to the OIG's position that the Office of Internal Affairs conducted a faulty, speculative, or ill-informed analysis. Examples include the Office of Internal Affairs' failure to add appropriate allegations or identify all appropriate subjects. Disputes also included our disagreement with the department's decisions to not open full investigations and to instead return matters to hiring authorities to address misconduct allegations without conducting an interview or an investigation.

Of the 31 percent of cases in which the OIG disagreed, one of the most common causes of disagreement was the Office of Internal Affairs' decision not to add all appropriate allegations supported by a reasonable belief that misconduct occurred.

OIG Case No. 21-0041334-DM

An officer allegedly accepted and agreed to photocopy an incarcerated person's legal documents, but then placed the documents in a second incarcerated person's cell. The officer allegedly told the first incarcerated person that he had lost the documents. When interviewed more than six weeks after the incident, the officer claimed he could not recall what he had done with the documents. However, video surveillance footage showed the officer retrieved the documents from the incarcerated person and subsequently threw them into another cell just two minutes later. Therefore, in the OIG's opinion, there was a reasonable belief that the officer had lied when claiming he could not recall what he had done with the documents. Nevertheless, the Office of Internal Affairs believed it would have been premature to approve a dishonesty allegation.

Deadly Force Investigations

Between January and June 2022, the OIG monitored and closed seven cases the Office of Internal Affairs investigated regarding the use of deadly force. The Office of Internal Affairs opens a deadly force investigation when an employee fires a deadly weapon with the intent to strike a person or in some cases an animal, or when an officer uses a tool such as a baton or less-lethal round to intentionally strike a person in the head. The Office of Internal Affairs also occasionally opens a deadly force investigation when an employee fires a warning shot or unintentionally discharges a deadly weapon. The Office of Internal Affairs assigns special agents from the Deadly Force Investigation Team to conduct an investigation. One special agent is responsible for conducting a criminal investigation, and another special agent is responsible for conducting an administrative investigation. The OIG monitors all deadly force investigations. During this reporting period, we monitored and closed three administrative investigations and four criminal investigations.

The department defines *deadly force* as any force likely to result in death. Any discharge of a firearm other than lawful discharge during weapons qualification, firearms training, or other legal recreational use of a firearm is considered deadly force. Employees are only authorized to use deadly force when it is reasonably necessary to do one of the following:

- Defend the employee or other people from an imminent threat of death or great bodily injury
- Prevent an escape from custody
- Stop acts such as riots or arson that constitute an immediate threat to institutional security and, because of their magnitude, are likely to result in escapes, great bodily injury, or the death of other people
- Dispose of seriously injured or dangerous animals when no other disposition is practical

Officers are not to discharge a firearm if there is a reason to believe someone other than the intended target will be injured. Warning shots are only permitted in an institutional setting.

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. For the seven deadly force investigation cases that the OIG monitored and closed between January and June 2022, the Office of Internal Affairs completed investigations within 90 days in five cases and

within an applicable extension period in one case. In that case (OIG Case No. 19-0031308-DM), the OIG did not object to the extension because a criminal prosecution was still active. However, the Office of Internal Affairs did not conduct a thorough investigation because it closed its investigation before criminal proceedings concluded, yet failed to conduct any interviews. The department's rate of timeliness in completing deadly force investigations improved compared with the July through December 2021 reporting period, during which time the Office of Internal Affairs timely completed deadly force investigations in three of 10 cases, or 30 percent. In one of the deadly force cases monitored and closed during the current reporting period, the investigation was handled primarily by an outside law enforcement agency in conjunction with the Office of Internal Affairs but was still completed within 90 days (OIG Case No. 21-0041058-CM).

We rated the Office of Internal Affairs' performance in investigating deadly force incidents during the current period *poor* in 43 percent of deadly force investigations. Specifically, we found that three of the seven deadly force investigations had deficiencies in the investigation that contributed to the *poor* rating. We provide details for these three cases below.

OIG Case No. 19-0031308-DM

Outside law enforcement arrested an officer after he allegedly discharged a firearm during a confrontation with a private citizen, and the round struck the private citizen in the thigh. The Deadly Force Review Board determined the officer's use of deadly force violated policy. The hiring authority sustained the allegation and determined that dismissal was the appropriate penalty. However, the officer resigned before the investigation was completed. Therefore, the hiring authority did not serve the officer with disciplinary action, instead placing a letter in the officer's official personnel file indicating the officer had resigned pending disciplinary action in a separate matter. We found that the department's handling of the case was *poor* for several reasons. First, the Office of Internal Affairs should have added allegations 1) for dishonesty because the officer denied having a firearm even though outside law enforcement had found a firearm registered to him in the area; 2) for misuse of authority because the officer disputed his arrest with outside law enforcement on the basis that he was an officer; and 3) for vandalizing a vehicle. The department attorney should have recommended adding, and the hiring authority should have sustained, vandalism allegations. We also found that the hiring authority delayed conducting the investigative and disciplinary findings conference and that the department attorney failed to provide written confirmation of the penalty discussions to the hiring authority or the OIG.

OIG Case No. 21-0038927-DM

A sergeant allegedly discharged a firearm in a negligent manner while cleaning it in an office building. The sergeant sustained only a minor injury. We found the department poorly handled the case because the hiring authority did not obtain written reports from four percipient witnesses regarding their observations and did not obtain a timely public safety statement. Furthermore, one special agent failed to properly preserve the scene of the shooting for evidence and a second special agent failed to ask all relevant questions during the interviews.

OIG Case No. 21-0037546-DM

An Office of Internal Affairs special agent discharged a firearm in a negligent manner while cleaning it at his home. Fortunately, no one was injured. We determined the department's handling of the case was *poor* because the special agent who conducted the administrative investigation unnecessarily ordered the subject special agent to provide a statement, which prevented the use of the statement in the criminal investigation.

In these three cases, the department found that each employee violated policy by using deadly force. In one case, although the department determined the officer should be dismissed, he had already resigned when the decision was made. In the others, the department issued letters of reprimand to the sergeant and the special agent. The OIG concurred with all the department's findings in these cases.

In three separate criminal investigations, the department found no probable cause that the employees who used deadly force committed a crime, and we concurred. Outside law enforcement led the fourth investigation, and the department provided minimal support.

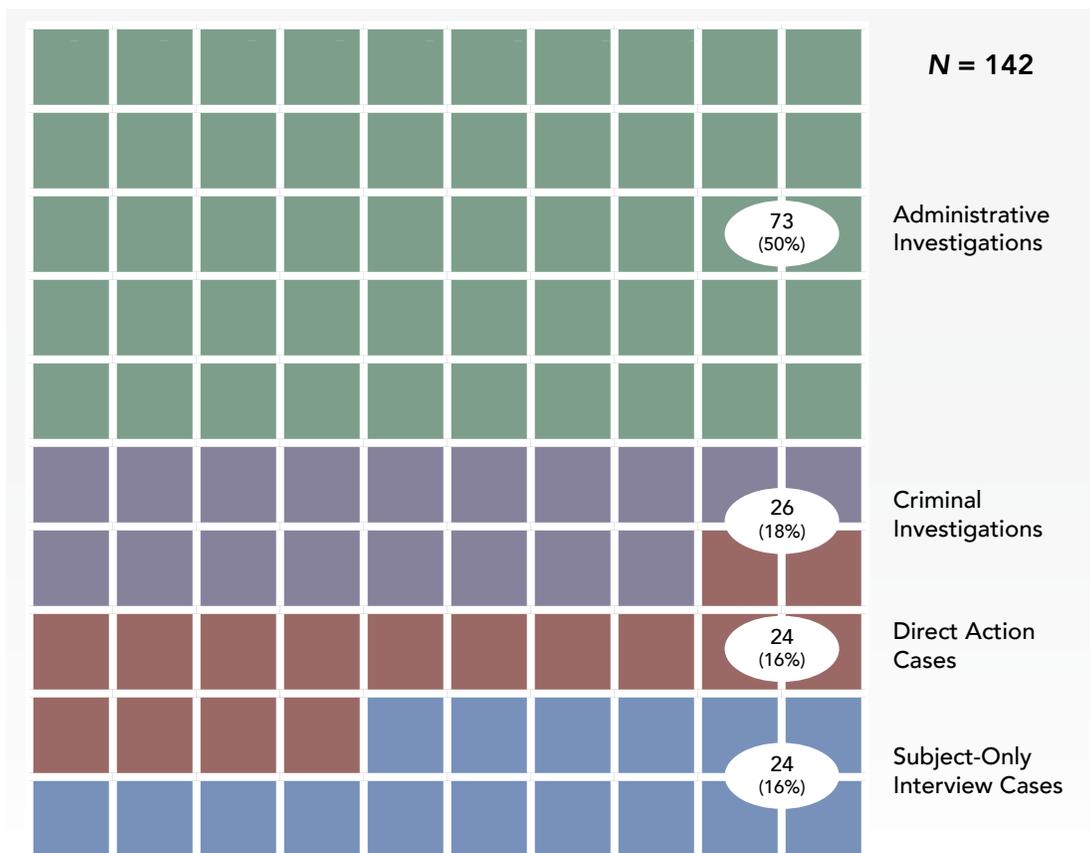
Administrative and Criminal Investigations

The DMU is responsible for monitoring the department's internal investigative process. We monitor cases involving both criminal and administrative allegations. Our monitoring activities include the initial case conference, investigative interviews, and the review of evidence and investigative reports. We assess investigations for thoroughness, fairness, and accuracy.

The Office of Internal Affairs Delayed Completing Investigations and Reports

In this reporting period, the OIG monitored 24 direct action cases, 24 cases with only an interview of the accused employee (referred to as subject-only interview cases), 26 criminal investigations, and 73 administrative investigations.

Figure 4. Types of Cases the OIG Monitored During the Reporting Period From January 1, 2022, Through June 30, 2022



Source: The Office of the Inspector General.

We determined that the Office of Internal Affairs' performance was *satisfactory* in 88 percent of the criminal investigations we monitored. This is a substantial improvement from the last reporting period, during which we rated 73 percent of the criminal investigations *satisfactory*.

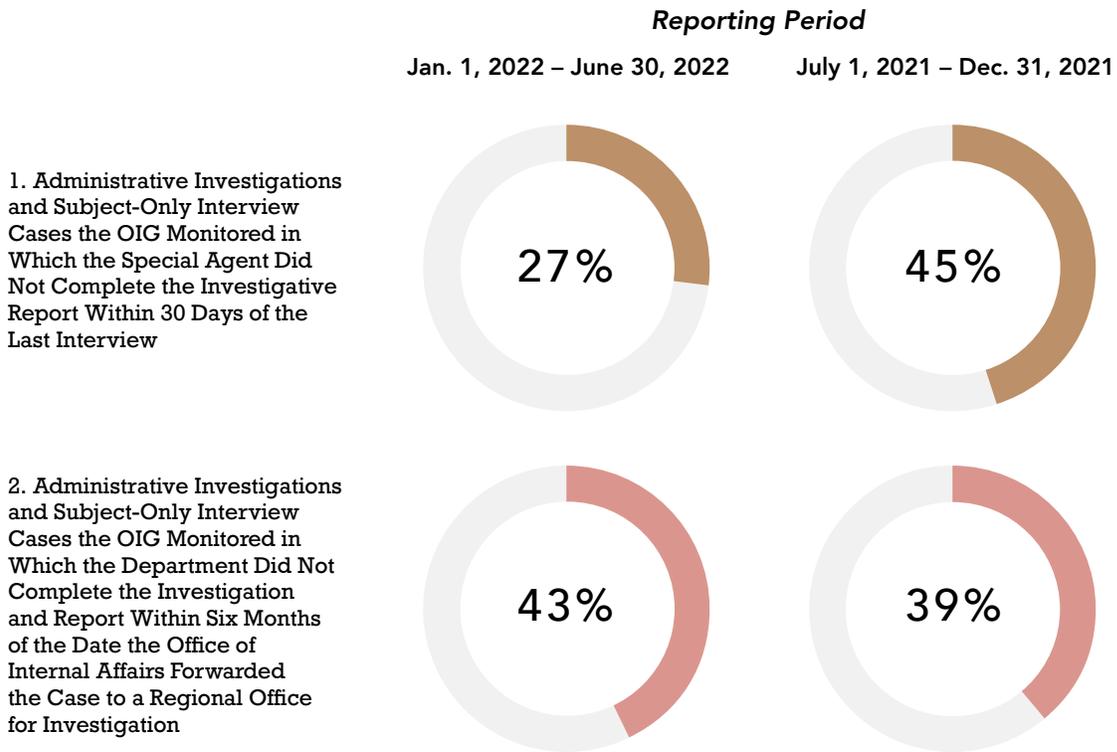
We assigned a *satisfactory* or *superior* rating to 87 percent of the administrative investigations and subject-only interview cases. In the last reporting period, we rated 86 percent of the administrative cases *satisfactory* or *superior*, and 14 percent *poor*.

We found that the most significant deficiency was related to the timeliness of the investigations. In 27 percent of the administrative investigations and subject-only interview cases that the OIG monitored, the Office of Internal Affairs special agent did not complete the investigative report within 30 days of the last interview. In 43 percent of the investigations and subject-only interview cases that the OIG monitored, the department did not complete the investigation and report within six months of the date the Office of Internal Affairs forwarded the case to a regional office for its investigation.

This was the most prevalent issue identified in the last reporting period as well, when 45 percent of the investigative reports were not completed within 30 days of the completion of the last investigative interview, and 39 percent of the investigations were not completed within six months.

Failure to timely complete an investigation can affect the hiring authority's ability to take appropriate action. Furthermore, when investigations are delayed, other harmful effects can result, such as memories degrading over time, evidence being lost, employees being paid to remain on administrative leave while the investigation is pending, and further misconduct occurring in the interim that could result in the department incurring civil liability. Figure 5 on the next page shows a comparison between the current reporting period and the previous one concerning the time taken to complete investigations.

Figure 5. Two Metrics Illustrating the Time Taken to Complete Investigations



Source: The Office of the Inspector General.

The OIG identified significant consequences caused by delays in the following cases.

OIG Case No. 21-0041707-DM

An officer conspired with an incarcerated person and an incarcerated person's relative to smuggle mobile phones into a prison. The officer also lied during an Office of Internal Affairs' interview and possessed knives, alcohol, and ammunition while on institutional grounds. The Office of Internal Affairs interviewed the officer during an operation, and the officer admitted to criminal conduct that same day. Despite the officer's admissions, the Office of Internal Affairs delayed approving an administrative case for more than seven months, during which time the officer completed her probationary period. If the Office of Internal Affairs had approved the administrative case in a timely manner, the department could have rejected the officer on probation or dismissed her much sooner. Moreover, the department paid the officer while she was on administrative leave for 267 days.

OIG Case No. 19-0030597-DM

The Office of Internal Affairs did not complete an investigation until two years and eight months after the case was opened. The special agent did not complete the investigative report until 10 days before the deadline to take disciplinary action. As a result, the hiring authority was not afforded sufficient time to adequately review the investigation and address the allegations of misconduct involving four officers who allegedly used excessive force on an incarcerated person and a fifth officer who allegedly conspired with four other officers to conceal the incident. Although the hiring authority deemed the investigation insufficient and did not sustain any allegations, due to the delay in completing the investigation, there was insufficient time for the hiring authority to request that the Office of Internal Affairs conduct a supplemental investigation.

The Office of Internal Affairs Asked All Relevant Questions in Most but Not All Cases

The Office of Internal Affairs conducted thorough investigations and asked all relevant questions in most cases we monitored. However, the Office of Internal Affairs could have improved its performance in a few cases. Of the 13 administrative investigations that received a *poor* rating, the Office of Internal Affairs special agent failed to ask all relevant questions during interviews in seven cases, or 54 percent. In one of the seven cases, the special agent did not interview anyone.

OIG Case No. 21-0039409-DM

An outside law enforcement agency arrested an officer after the officer and a sergeant, who were engaged to be married, allegedly battered each other at a motel. The sergeant allegedly lied to outside law enforcement and to the department by claiming the officer punched him in the head. The assigned special agent did not adequately prepare for the investigation. For example, the special agent did not obtain and review the body-worn camera videos of the incident before conducting interviews of the sergeant and officer even though the department possessed those videos. The video evidence could have been used to confront the sergeant about the inconsistent statements he had made during the Office of Internal Affairs' interview. Moreover, the interview of the officer captured on body-worn camera videos showed that the officer had long fingernails, which prevented her from making a fist. Had the special agent viewed the body-worn camera videos, the agent could have asked the sergeant whether the officer struck him with a closed fist. The special agent also failed to ask all relevant questions during the interviews and did not use effective interviewing techniques. When the sergeant disclosed that he had exaggerated his previous statement about the incident, the special agent failed to ask any follow-up questions about the nature of the exaggeration, whether the exaggeration was made to outside law enforcement or to the department in the sergeant's written memorandum, and whether he exaggerated or lied.

The Office of Internal Affairs Conducted a *Superior* Investigation**OIG Case No. 21-0039701-DM**

We assigned the Office of Internal Affairs a *superior* rating in an administrative investigation of an officer who had allegedly accessed confidential information in departmental databases and shared the information with incarcerated people. The officer introduced a pocket-knife inside the secured perimeter of a prison and lied during an Office of Internal Affairs' interview. The special agent assigned to the case performed in a *superior* manner by preparing well for the interview and using excellent interviewing techniques, including using video evidence during the interview to obtain admissions from the officer. For example, prior to the interview of the officer, the special agent discovered evidence on the video that was overlooked by other agents investigating the case. The special agent noted that, on the video, the officer was shown directing a hand signal toward an incarcerated person, which indicated that a second incarcerated person had cooperated with institutional investigators. The second incarcerated person was subsequently attacked on a yard. During the interview, the special agent showed the video to the officer, who then had to admit what she had done. The officer refused to finish the interview and resigned the same day.

Employment Advocacy and Prosecution Team

As part of our monitoring duties, we also monitor the attorneys working on the Employment Advocacy and Prosecution Team (EAPT). These attorneys provide legal recommendations to the Office of Internal Affairs and hiring authorities; they are referred to as *vertical advocates* according to the vertical prosecution model implemented by departmental policy. In general, the same vertical advocate represents the department in an internal affairs matter from the time the Office of Internal Affairs refers a case to a region, throughout the entire investigation, during the investigative and disciplinary findings conference, the drafting of the disciplinary action, and the litigation before the State Personnel Board and superior courts. We assigned EAPT a *satisfactory* rating in 88 percent of cases during this reporting period for providing legal advice and support during the investigative process. For the legal representation it provided during litigation, we assigned EAPT a *satisfactory* rating in only 71 percent of cases. The most common reason EAPT received a *poor* rating was because the department had delayed serving a disciplinary action. This has been a recurring common deficiency in several past reporting periods.

The Employment Advocacy and Prosecution Team Can Improve in Several Areas

Departmental policy requires department attorneys to make an entry into the department's case management system documenting their analysis of the statute of limitations within 21 days of their assignment to a case. The purpose of this rule is to ensure that the deadline for completing the investigation and taking disciplinary action is assessed as soon as possible to minimize the risk of running out of time to complete investigations and impose discipline when needed. Department attorneys failed to make a timely entry in 20 percent of cases we monitored.

EAPT's policy and best practices dictate that department attorneys provide the hiring authority and the OIG a copy of the recommendations memorandum for the investigative and disciplinary findings conference at least 24 hours before the start of the conference. Doing so gives the stakeholders sufficient time to conduct a meaningful review of recommendations and supporting evidence. Department attorneys failed to provide a timely memorandum in 13 percent of cases, a significant increase from the last reporting period.

Departmental policy also requires the department to serve disciplinary actions on peace officers within 30 days of the day the hiring authority decides to take disciplinary action. This policy ensures that disciplinary actions are served in a timely manner. Timely service of

disciplinary actions is especially critical when peace officers are on paid administrative leave, working in a nonpeace-officer post, such as in the mailroom, or continuing to work in their regular position, but exposing the department to potential liability. The department delayed serving disciplinary actions on peace officers in 52 percent of cases.

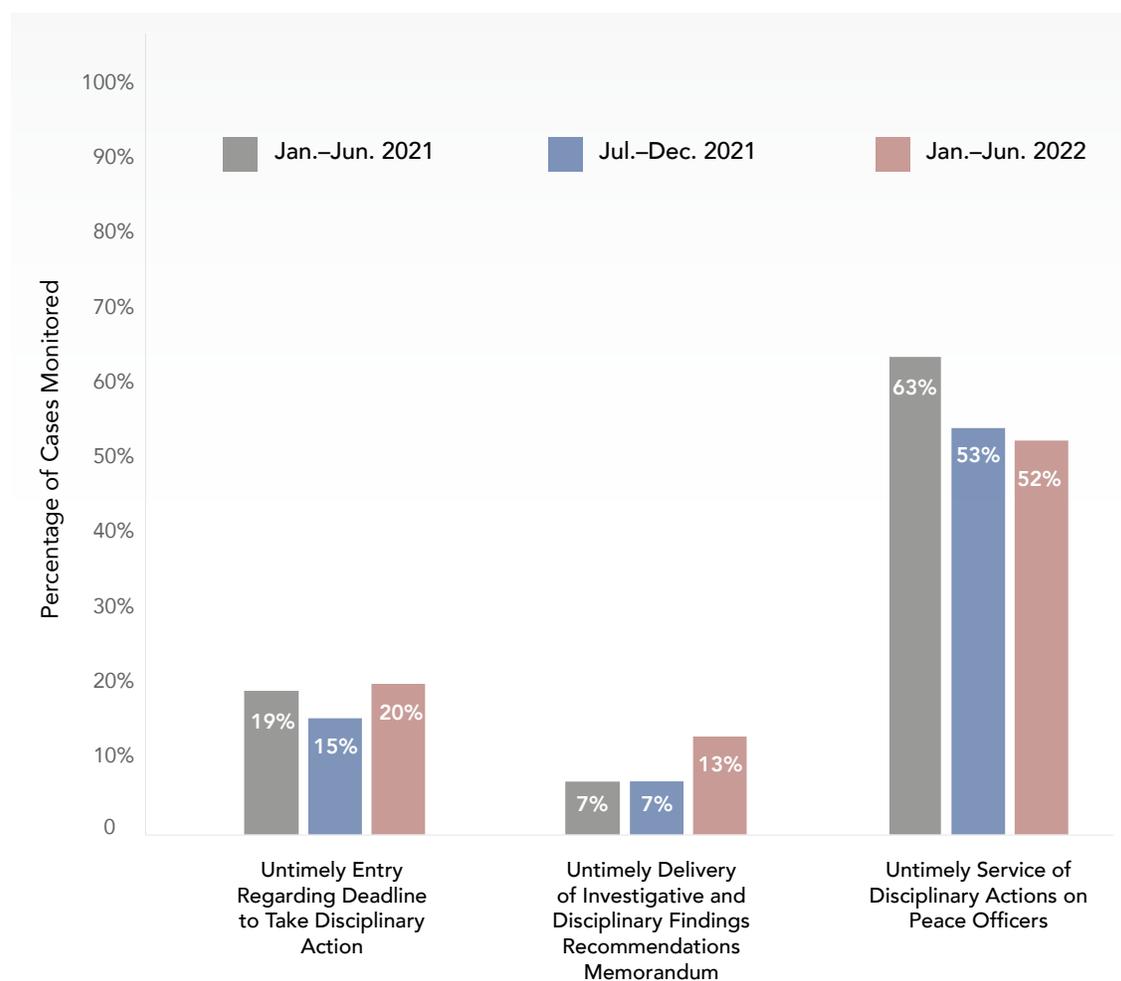
OIG Case No. 19-0031802-DM

Two officers allegedly wrote false reports, and a sergeant knowingly approved a false report. All three employees lied during their Office of Internal Affairs interviews, and, on July 10, 2020, the hiring authority decided to dismiss them. However, the department attorney did not provide the OIG with a copy of the first draft of the disciplinary action until September 17, 2020, and the department did not serve the three dismissals until October 20, 2020, 102 days after the decision was made to dismiss the employees. The employees were all paid their full salaries by the department during these delays.

The deficiencies noted above involve failures to perform critical tasks in a timely manner, and in many cases demonstrate a lack of due diligence. The rate at which the department has made these deficiencies is not unique to this reporting period, and the department should attempt to address these issues in a meaningful way. Continued failures in these areas may result in the department being barred from imposing discipline, unnecessary employment of officers who expose the department to liability, or continued payment of salary and benefits to employees whom the hiring authority has decided to dismiss.

On the next page, Figure 6 displays how often the department untimely performed required tasks in the areas discussed above during this reporting period compared with previous reporting periods.

Figure 6. The Department’s Untimeliness in Three Critical Areas During the Prior Two Reporting Periods and During the January Through June 2022 Reporting Period



Source: The Office of the Inspector General.

The Employment Advocacy and Prosecution Team Provided Appropriate Advice to Hiring Authorities Regarding Investigative and Disciplinary Findings Most of the Time

Department attorneys are responsible for providing recommendations and advice to hiring authorities regarding whether to sustain allegations and if sustained, the appropriate penalty to impose. The OIG found that department attorneys provided sufficient or reasonable recommendations regarding the allegations in 93 percent of the cases we monitored. The OIG also found that department attorneys provided sufficient or reasonable recommendations regarding the appropriate penalty in 95 percent of cases we monitored. This includes many cases in which we disagreed with them, but found their recommendations to be reasonable.

However, there was one notable example in which a department attorney provided *poor* recommendations.

OIG Case No. 19-0030589-DM

A department attorney recommended that a hiring authority not sustain allegations against a sergeant when a preponderance of evidence existed to support them. The department attorney also made a highly offensive racial remark when arguing that a witness lacked credibility. The OIG convinced the hiring authority to request further investigation. EAPT reassigned the case to another department attorney, who later recommended sustaining the allegations and imposing a dismissal. The second department attorney litigated the case before the State Personnel Board, which sustained the allegations and upheld the dismissal.

The Employment Advocacy and Prosecution Team Performed Well in Litigation

The department performed well in litigating cases during this reporting period. The department litigated 13 evidentiary hearings before the State Personnel Board this reporting period. It succeeded in proving all the allegations and upholding the penalty in 10 of those cases. The OIG identified only one case out of the 13 in which the department's performance was deficient in a specific area. In that case, the department failed to prepare an expert or other witness to testify regarding the quality and reliability of video evidence. The State Personnel Board revoked the dismissal against the officer who had appealed the discipline.

The department attorney performed sufficiently and secured favorable outcomes for the department in 10 cases that included a hearing. Three of those cases are summarized below.

OIG Case No. 20-0033528-DM

An officer was leaving the prison in his vehicle when he collided with his coworker's vehicle, which was parked next to his. The officer heard a car alarm, exited the car, observed the damage to his coworker's vehicle, made a statement about the coworker parking too close to his vehicle, and left without leaving a note or reporting the accident to a supervisor. The officer later lied about the incident when questioned by a sergeant and by the Office of Internal Affairs. The hiring authority dismissed the officer, who later appealed the disciplinary action to the State Personnel Board. The department attorney performed well at the hearing by preparing witnesses, making a strong opening statement, handling video evidence and expert testimony, and effectively cross-examining the officer's witnesses, including the officer himself. The State Personnel Board sustained the allegations and upheld the dismissal.

OIG Case No. 20-0033027-DM

An officer made inappropriate comments toward and sexually harassed other employees, failed to control the movement of incarcerated people, and lied to the Office of Internal Affairs. The hiring authority dismissed the officer, who later appealed the disciplinary action to the State Personnel Board. The department attorney presented a preponderance of evidence to sustain almost every factual allegation and established that dismissal was the appropriate penalty. The State Personnel Board upheld the dismissal, and the officer made no further appeal.

OIG Case No. 19-0030589-DM

A sergeant lied to officers about the alleged misconduct of a third officer, lied in a memorandum, and lied to the Office of Internal Affairs. The hiring authority dismissed the sergeant, and the sergeant submitted an appeal to the State Personnel Board. At the hearing, the department attorney effectively cross-examined the sergeant, impeaching his testimony with prior statements and with his memorandum. After the hearing closed, the administrative law judge discovered that the recording device did not properly record a large portion of the hearing. The department attorney handled this issue well when the hearing was reconvened and presented an excellent closing argument. The State Personnel Board upheld the dismissal.

The Department Implemented Emergency Regulations Affecting the Disciplinary Process

In January 2022, the department implemented emergency regulations regarding the department’s disciplinary process, which improved the process of determining the appropriate penalty in disciplinary cases. These regulations involved changes to employee discipline policies, specifically penalty ranges, disciplinary matrix sections, and aggravating and mitigating factors.

The Department Made Significant Changes to the Penalty Ranges

Chapter 3, Article 22, of the department’s operations manual includes a disciplinary matrix and policy for imposing discipline. These policies became effective in January 2006. The employee disciplinary matrix has nine penalty levels, ranging from an official reprimand, progressing to a salary reduction, a suspension, a demotion, and ultimately a dismissal. This matrix originally included considerable overlap between penalty levels throughout the spectrum of progressive discipline, which caused confusion for hiring authorities. For example, if the hiring authority chose to impose a 5 percent salary reduction for 12 months, which is a level-three penalty, the financial penalty could potentially be higher than a penalty selected by another hiring authority in the level-four range. For example, although a 10 percent salary reduction for five months is in the level-four range, that is the financial equivalent of a 5 percent salary reduction for 10 months. In general terms, the

Figure 7. The Department’s Employee Disciplinary Matrix, Before 2022

33030.16 Employee Disciplinary Matrix Penalty Levels		
1 Official Reprimand	4 Salary Reduction 10% for 3-12 months <i>or</i> Suspension w/o pay for 6-24 work days	7 Suspension w/o pay for 49-60 work days
2 Suspension w/o pay for 1-2 work days	5 Salary Reduction 5% for 13-36 months <i>or</i> Suspension w/o pay for 13-36 work days	8 Demotion to a lower class
3 Salary Reduction 5% for 3-12 months <i>or</i> Suspension w/o pay for 3-12 work days	6 Salary Reduction 10% for 13-24 months <i>or</i> Suspension w/o pay for 26-48 work days	9 Dismissal

Work Week Group E and SE employees shall not receive a suspension of less than five (5) work days, unless the union contract provides otherwise.

Source: The California Department of Corrections and Rehabilitation, Department Operations Manual, Section 33030.16.

matrix is designed to determine a penalty proportionate to the level of egregiousness of the misconduct. However, in some instances, depending on the penalty the hiring authority chooses to impose, a level-three salary reduction could be a higher penalty than a level-four salary reduction. This kind of overlap was found between penalty ranges five and six as well. A penalty in the level-five range (5 percent salary reduction for 30 months) could be higher than a penalty in the level-six range (10 percent salary reduction for 13 months).

The emergency regulations include a new disciplinary matrix with new penalty ranges. This penalty matrix still consists of nine levels of discipline, beginning with a level one, a letter of reprimand, and ending with a level nine, which is a dismissal. The notable difference: There is no longer overlap between the penalty matrix sections. For example, a level three has a penalty range of a 5 percent salary reduction for three to 12 months and a level-four penalty range is a 10 percent salary reduction for seven to 12 months. The highest penalty in a level-three range is still lower than the lowest penalty in a level-four range. A five percent salary reduction for 12 months is the financial equivalent to a 10 percent salary reduction for six months.

Figure 8. The Department’s Employee Disciplinary Matrix, After 2021

<u>3392.4. Employee Disciplinary Matrix.</u>		
(a) Employee Disciplinary Matrix Penalty Levels:		
<u>1. Letter of Reprimand</u>	<u>4. Salary Reduction 10% for 7-12 Qualifying Pay Periods; or</u> <u>Suspension Without Pay for 14-24 Qualifying Work Days.</u>	<u>7. Salary Reduction 10% for 31-45 Qualifying Pay Periods; or</u> <u>Suspension Without Pay for 62-90 Qualifying Work Days.</u>
<u>2. Salary Reduction 5% for 1-2 Qualifying Pay Periods; or</u> <u>Suspension Without Pay for 1-2 Qualifying Work Days.</u>	<u>5. Salary Reduction 5% for 25-36 Qualifying Pay Periods; or</u> <u>Suspension Without Pay for 25-36 Qualifying Work Days.</u>	<u>8. Temporary Demotion to a lower class for 12-24 Qualifying Pay Periods; or</u> <u>Permanent Demotion.</u>
<u>3. Salary Reduction 5% for 3-12 Qualifying Pay Periods; or</u> <u>Suspension Without Pay for 3-12 Qualifying Work Days.</u>	<u>6. Salary Reduction 10% for 19-30 Qualifying Pay Periods; or</u> <u>Suspension Without Pay for 38-60 Qualifying Work Days.</u>	<u>9. Dismissal.</u>

Source: The California Department of Corrections and Rehabilitation, Department Operations Manual, Section 3392.4, new regulations effective 12-27-21.

Another notable difference in the penalty matrix is that there are much longer periods of salary reductions. For example, the longest salary reduction in the old matrix was a 5 percent salary reduction for 36 months. However, the new matrix allows for a 10 percent salary reduction for 45 qualifying pay periods. In addition, there is a distinct difference in the level-eight penalty. Under the old matrix a level-eight penalty was a demotion to a lower job classification. In the new matrix, the hiring authority who opts to impose a level-eight penalty can choose between a temporary demotion to a lower classification for 12 to 24 qualifying pay periods or a “permanent” demotion.

The OIG commends the department on the changes it has made to the disciplinary matrix to resolve the overlap of penalties between penalty matrix sections. The changes promote consistency and fairness in administering discipline.

Figure 9. A Comparison of the Department’s Old Matrix With Its New Matrix

33030.16 Employee Disciplinary Matrix Penalty Levels		
1 Official Reprimand	4 Salary Reduction 10% for 3-12 months <i>or</i> Suspension w/o pay for 6-24 work days	7 Suspension w/o pay for 49-60 work days
2 Suspension w/o pay for 1-2 work days	5 Salary Reduction 5% for 13-36 months <i>or</i> Suspension w/o pay for 13-36 work days	8 Demotion to a lower class
3 Salary Reduction 5% for 3-12 months <i>or</i> Suspension w/o pay for 3-12 work days	6 Salary Reduction 10% for 13-24 months <i>or</i> Suspension w/o pay for 26-48 work days	9 Dismissal
Work Week Group E and SE employees shall not receive a suspension of less than five (5) work days, unless the union contract provides otherwise.		

3392.4 Employee Disciplinary Matrix		
(a) Employee Disciplinary Matrix Penalty Levels:		
1. Letter of Reprimand	4. Salary Reduction 10% for 7-12 Qualifying Pay Periods; <i>or</i> Suspension Without Pay for 14-24 Qualifying Work Days.	7. Salary Reduction 10% for 31-45 Qualifying Pay Periods; <i>or</i> Suspension Without Pay for 62-90 Qualifying Work Days.
2. Salary Reduction 5% for 1-2 Qualifying Pay Periods; <i>or</i> Suspension Without Pay for 1-2 Qualifying Work Days.	5. Salary Reduction 5% for 25-36 Qualifying Pay Periods; <i>or</i> Suspension Without Pay for 25-36 Qualifying Work Days.	8. Temporary Demotion to a lower class for 12-24 Qualifying Pay Periods; <i>or</i> Permanent Demotion.
3. Salary Reduction 5% for 3-12 Qualifying Pay Periods; <i>or</i> Suspension Without Pay for 3-12 Qualifying Work Days.	6. Salary Reduction 10% for 19-30 Qualifying Pay Periods; <i>or</i> Suspension Without Pay for 38-60 Qualifying Work Days.	9. Dismissal.

Source: The California Department of Corrections and Rehabilitation, Department Operations Manual, Section 33030.16 (left) and Section 3392.4 (right).

The Department Made Significant Changes to the Disciplinary Matrix Sections

The disciplinary matrix is categorized by different types of misconduct and addresses misconduct committed by employees both on and off duty. Although it is not an exhaustive list, it can guide hiring authorities when they must consider disciplinary determinations. For example, it includes sections for conduct and job performance, integrity and dishonesty, off-duty incidents, and uses of force.

The emergency regulations made significant changes to the discipline imposed in cases involving illegal drug use. Historically, the presumptive penalty for the use or possession of controlled substances that were not medically prescribed for staff who were on or off duty has been dismissal. However, the new regulations changed the presumptive penalty range to a seven, which is either a lengthy salary reduction or a suspension. In the original matrix, there were only two categories that addressed drug possession for use or sale. In contrast, the new disciplinary matrix includes 10 separate subsections addressing alcohol, tobacco and drugs. One section specifically separates marijuana from other drugs and, again, the presumptive penalty is a level seven, not a level nine.

The dishonesty and integrity section has more than doubled in size, in part because of the addition of penalty matrix categories concerning audio and visual equipment. Surveillance video camera systems have been installed at numerous prisons in the past few years, and the department is beginning to require officers at some prisons to wear body-worn cameras while on duty.

Surveillance and body-worn cameras are critical in not only capturing misconduct by staff, but also misconduct by incarcerated people. Video evidence is also often used to exonerate peace officers who have had false allegations levied against them. It is critical that this evidence be deployed and used properly to promote transparency and ensure that both employees and incarcerated people follow the department's rules.

The disciplinary matrix includes three new subsections relating to surveillance camera systems or body-worn cameras. One section addresses repeated and unintentional failures to start, shut off, or disable the surveillance video system or body-worn cameras. Another section addresses allegations that an employee has intentionally failed to start, shut off, or disable the surveillance video system or body-worn cameras. A third section covers tampering with, altering, or destroying the surveillance video system or body-worn camera equipment. The first of these three sections has a presumptive penalty level of two, which would result in a minor suspension or salary reduction. However, dismissal is the presumptive penalty for the other two sections involving intentionally turning off cameras or tampering with video evidence. The OIG agrees with the department in its decision to apply harsh penalties

against peace officers who intentionally alter evidence or otherwise try to prevent the recording of misconduct.

The OIG will closely monitor the cases involving allegations of misconduct regarding body-worn cameras.

The Department Added Mitigating Factors to Consider

The new employee disciplinary regulations include notable changes to the list of mitigating factors that hiring authorities should consider when determining an appropriate penalty. Now, a hiring authority can consider that an employee was initially untruthful, but later came forward with an explanation, as a mitigating factor. The OIG anticipates there will be disagreement in the interpretation of this mitigating factor and the circumstances surrounding the employee coming forward. The department also added an aggravating factor that applies when the would-be disciplined employee is a supervisor or peace officer. The department has always held peace officers to a higher standard than civilian employees. This expectation is now officially part of policy as an aggravating factor. We will monitor and track cases in the next reporting period to observe how this aggravating factor affects disciplinary determinations in different types of cases, such as drug cases.

Critical Incidents

As part of our monitoring duties, the OIG’s discipline monitoring unit attorneys assess the department’s response to critical incidents. These incidents include those involving uses of deadly force, escapes, homicides, and suicides. The department is required to notify the OIG of critical incidents within one hour of establishing control of an incident. The OIG maintains a 24-hour contact number in each region through which we receive notifications from the department.

During the reporting period, the following critical incidents required OIG notification:

Figure 10. The OIG’s Criteria for Responding to Critical Incidents During the Reporting Period From January Through June 2022

- Any staff use of deadly force (any use of force that is likely to result in death, including any discharge of a firearm, including warning shots and unintended discharges) or if an inmate is struck in the head with a baton or impact munitions regardless of the extent of injury.
- Death of an inmate or any serious injury to an inmate which creates a substantial risk of death or results in a loss of consciousness, concussion, or protracted loss or impairment of function of any bodily member or organ. (Note: The OIG does not require that the department report to us inmate injuries—apart from death—resulting from or connected with inmates engaging in athletic activities.)
- Death or great bodily injury to any departmental staff member if the death or injury occurs in the performance of his or her duties or if the death or great bodily injury has a connection to his or her duties.
- Suicide by any individual in the legal custody or physical control of the department.
- All allegations of sexual misconduct or sexual harassment an individual in the legal custody or physical control of the department makes against a departmental staff member.
- Any time the department places or extends an inmate on, or removes from, contraband surveillance watch, or any time the department transports an inmate who is on contraband surveillance watch to an outside hospital.
- Any riot or disturbance within an institution that requires assistance from multiple facilities or yards or from anyone designated as a “Code 3” responder or any riot or disturbance within an institution that requires the assistance of off-duty staff, neighboring institutions, or mutual aid.
- Any time the department determines an inmate to be on hunger strike, any time an inmate concludes a hunger strike, or when the department transports an inmate on hunger strike to an outside hospital.
- Incidents of notoriety or significant interest to the public, including inmate escapes.
- Any other significant incident the Inspector General or the Chief Deputy Inspector General identify.

Source: The Office of the Inspector General.

The OIG does not monitor every critical incident reported to us by the department, but selects those incidents that have a higher likelihood of allegations of misconduct. These incidents include deaths of incarcerated people, deadly uses of force, and unintentional discharges of firearms. The OIG reviews critical incidents by evaluating potential causes, the department's response, and whether the incidents involve potential employee misconduct. The OIG may recommend that a hiring authority refer allegations from incidents to the Office of Internal Affairs for investigation. If a hiring authority identifies potential misconduct and refers the matter to the Office of Internal Affairs, the OIG will typically monitor the case.

During the current reporting period, the OIG monitored and closed 65 critical incident cases. Hiring authorities identified potential employee misconduct in 13 of these incidents and made referrals to the Office of Internal Affairs. One of the 13 incidents involved an officer's unintended discharge of a firearm. The other incidents concerned deaths of four incarcerated people from unknown causes, three homicides, three suicides, a suspected drug overdose, and an escape. The Office of Internal Affairs opened disciplinary cases for all 13 incidents, and the OIG is monitoring nine of them.

The types of employee misconduct identified by the hiring authorities varied. They included alleged failures to timely provide aid to incarcerated people, to sound an alarm during an emergency, and to remain alert while on duty. In addition, an officer allegedly acted in a discourteous manner toward an incarcerated person, and officers failed to continually observe an incarcerated person at an outside hospital. The most common allegation concerned the failure of custody staff to properly perform counts or welfare checks of incarcerated people. This type of allegation was identified in six cases: a suicide, two of the homicides, and three of the deaths from unknown causes.

A hiring authority also identified potential misconduct after an officer negligently discharged a handgun at his residence. While attempting to show the handgun to a private citizen, the officer allegedly pulled the slide to the rear. His finger inadvertently pressed the trigger, and the handgun discharged a round out a bedroom window and toward a cinder-block wall. The hiring authority referred the matter to the Office of Internal Affairs for an investigation. The Office of Internal Affairs returned the matter to the hiring matter to address the allegation without conducting an investigation. The OIG is monitoring the disciplinary case.

However, hiring authorities did not refer a case involving an unintentional firearm discharge to the Office of Internal Affairs. The OIG recommended a referral in this case because there was a reasonable belief that misconduct had occurred. An officer attempted to load a handgun while placing it into a clearing barrel. The officer inadvertently

pressed the trigger while performing a “chamber check” and fired one round into the clearing barrel. A “chamber check,” or “press check,” consists of inserting an ammunition magazine into a weapon and pulling back on the slide to visually inspect the chamber for the presence of ammunition. The hiring authority noted the officer’s lack of experience, and provided training and a letter of instruction.

Although the incident did not cause serious injuries, an unintentional discharge is a use of deadly force. Article 2, Section 51020.4, of the Department Operations Manual provides that 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. Deadly force cases involve a high potential for serious injury or death. In one of our recent discipline monitoring reports, **published in December 2021**, we recommended that the department refer all unintentional discharge incidents to the Office of Internal Affairs for review and processing. The OIG reiterates its prior recommendation. The department should diligently, thoroughly, and consistently review all incidents involving unintentional discharges.

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Recommendations

Nº 1. The department should assess all potential deadlines for taking disciplinary action when beginning investigations and endeavor to conclude the disciplinary process by the most conservative date.

The OIG has consistently found that EAPT and OIG attorneys have disagreed over how to assess the date of discovery of allegations in administrative cases against peace officers. Government Code section 3304 (d) (1) provides that the department cannot impose disciplinary action against a peace officer for any act of misconduct if the investigation of the allegation is not completed within one year of the department’s discovery by a person authorized to initiate an investigation of the allegation. Not only must the department complete the investigation within one year of the discovery of allegations by a person authorized to initiate the investigation, but it must also provide notice of the discipline to the disciplined employee within one year.

The most common disagreement regarding this issue revolves around the language reading “person authorized to initiate an investigation.” EAPT frequently cites its policies that state only the hiring authority can submit a referral of allegations to the Office of Internal Affairs, and therefore, only the hiring authority—not any of his or her subordinates—can initiate an investigation. The OIG has determined that the safest practice is to determine when an uninvolved supervisor discovered the allegations. More specifically, the OIG generally identifies the date of discovery as the date when a peace officer, not accused of misconduct in the matter, who is at least one rank above the highest-ranking peace officer involved in the alleged misconduct discovers said allegations. Case law supports both the OIG’s and EAPT’s positions, but the legal issue is not settled. However, EAPT’s practice creates unnecessary risks in many cases. This liability occurs in instances when it incorrectly identifies the hiring authority, or if a court disagrees with its analysis or interpretation of the law. If the OIG’s analysis is wrong, the analysis was too conservative, but nothing was lost. If the department detrimentally relies on EAPT’s analysis of a less conservative date of discovery, the department could potentially lose the ability to take disciplinary action.

Departmental policy requires the department attorney to assess the date of discovery and the deadline to take disciplinary action within 21 days of being assigned to the case. Typically, limited information exists as to when the hiring authority first became aware of the alleged misconduct at the outset of a case. Because of this, department attorneys often base their analysis on the limited documentation they receive when they are assigned the case. The analysis is often based on when the hiring

authority approved a request for investigation, or when the hiring authority received a memorandum from the department's Investigative Services Unit regarding serious allegations. By relying on only these documents, department attorneys run the risk of learning later in the investigation that the hiring authority knew about the allegations much earlier than had been understood to be true.

The OIG recommends that department attorneys consider both when the first uninvolved supervisor became aware of the allegations and when the subject employee's hiring authority became aware of the allegations. The department attorney should document both dates in the department's case management system, but recommend that the Office of Internal Affairs complete the investigation while allowing sufficient time to impose disciplinary action, if necessary, within one year of the most conservative date of discovery.

In a case from a past reporting period (OIG Case No. 18-0027632-DM), several parole agents and a parole administrator allegedly conducted an unsafe, reality-based training exercise. EAPT assessed the date of discovery as August 23, 2018, when a single hiring authority discovered allegations of misconduct. The OIG recommended relying on the date that the first uninvolved supervisor discovered the misconduct, which was June 12, 2018. Several captains, lieutenants, and even a chief deputy warden were aware of the incident on June 12, 2018. Despite our recommendation, and despite the investigation being completed on June 7, 2019, the department served the disciplinary actions on July 29 and August 1, 2019. The State Personnel Board identified two other people authorized to initiate an investigation for the involved employees, and found that these people knew about the alleged misconduct on June 12, 2018, more than one year before the department served the disciplinary actions. As a result, the State Personnel Board dismissed the disciplinary actions. Had the department adopted the OIG's more conservative analysis, it would likely have had time to serve the disciplinary actions.

The OIG has found that some department attorneys are using the more conservative analysis, while others are assessing the date of discovery based on when the hiring authority became aware of the allegations. We maintain that our analysis is more prudent. The OIG recommends that EAPT adopt a consistent policy of assessing the date of discovery based on both OIG and EAPT's method of analyzing the date of discovery, and that EAPT recommend the Office of Internal Affairs completes the investigation and the hiring authority serves the disciplinary action within one year of the most conservative date of discovery. The department should document the more conservative date and deadline in the case management system to avoid confusion. If the department follows this recommendation, doing so will reduce the potential liability of violating the statute of limitations, while still maintaining its policy that only hiring authorities have the authority to initiate an investigation.

№ 2. The Employment Advocacy and Prosecution Team should implement a clear policy requiring that EAPT attorneys send all disciplinary actions to the hiring authority within 25 days of the investigative and disciplinary findings conference unless approved by a supervisor.

Departmental policy requires the hiring authority to serve a peace officer with a disciplinary action within 30 calendar days of a decision to take disciplinary action. In many cases, the peace officer to be served the disciplinary action faces dismissal and is either on administrative leave or reassigned to a prison mailroom. Delays in service of the disciplinary action result in the department unnecessarily paying salaries to officers who are to be dismissed. Moreover, the department's continued employment of these employees who are subject to dismissal exposes it to additional liability should any additional misconduct occur during the delays.

Most cases we monitor are assigned to a department attorney. However, an employee relations officer also plays a significant role in the process. The employee relations officer is required to assemble and attach all supporting materials to the disciplinary action. The employee relations officer also often deals with exhibits that present a technological challenge, such as video footage that must be formatted and properly saved to a disk. The employee relations officer must schedule the service of the disciplinary action on the peace officer; a brief delay in serving the disciplinary action is allowed if the peace officer is on leave or working during nonstandard business hours. However, any delay on the part of the department attorney in providing the disciplinary action to the hiring authority can have a domino effect, which can trigger additional delays further down the line for the employee relations officer.

Unnecessary delays in serving dismissal actions on peace officers results in the unnecessary payment of salary and benefits to would-be dismissed employees. In previous reports, the OIG identified the total expenses incurred by taxpayers due to delays in serving dismissal actions. These delays allowed would-be dismissed officers who committed serious misconduct to continue receiving salary and benefits. These delays are also concerning because they allowed some employees who committed misconduct that was serious enough to warrant dismissal to continue working in their regular assignments, thereby exposing the department to further potential liability. Finally, delays in the service of the disciplinary action can also result in witnesses' memories fading or witnesses becoming unavailable, which could present challenges for the department in upholding the dismissal action if a case is brought before the State Personnel Board.

As we have noted in this report and in the last several reports, hiring authorities and EAPT are continuing to delay the service of disciplinary actions. The OIG recommends that the department develop a policy to ensure that hiring authorities have adequate time to serve the final disciplinary action within 30 days of the decision to take disciplinary action by requiring department attorneys to prepare the disciplinary action and submit it to the hiring authorities within 25 days of the hiring authority’s decision. This new policy would allow sufficient time for the employee relations officer to assemble the disciplinary action package and serve the employee with the disciplinary action within 30 days of the investigative and disciplinary findings conference.

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

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