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OIG | OFFICE *of the* INSPECTOR GENERAL

Independent Prison Oversight

June 2023

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

*Semiannual Report
July–December 2022*



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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 36th 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 that we monitored and closed from July 1, 2022, through December 31, 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 performed in a *satisfactory* manner in 68 percent of cases we monitored. The department performed poorly in 32 percent of cases we monitored. Of the 184 cases we monitored and closed, we rated 125 cases *satisfactory* and 59 *poor*. Hiring authorities performed satisfactorily in discovering allegations of employee misconduct and referring those allegations to the Office of Internal Affairs in 78 percent of cases we monitored. They performed poorly in making investigative and disciplinary findings in 34 percent of cases. The Office of Internal Affairs performed satisfactorily in 78 percent of criminal investigations and in 86 percent of administrative investigations we monitored. Department attorneys performed satisfactorily in providing legal advice to the department when the Office of Internal Affairs processed employee misconduct referrals and conducted investigations in 89 percent of cases. However, department attorneys performed satisfactorily in providing legal representation in litigation in only 60 percent of cases we monitored, which was significantly worse than the last reporting period when the department attorneys performed satisfactorily in 71 percent of cases. The most significant failure by department attorneys was in delaying the drafting and service of disciplinary actions.



However, department attorneys performed well in litigating administrative hearings before the State Personnel Board. We monitored 10 cases that were submitted to the State Personnel Board after a full evidentiary hearing. The State Personnel Board upheld the penalty imposed by the hiring authority in eight of those 10 cases. During this reporting period, administrative misconduct was alleged in 152 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 32 cases involved alleged criminal misconduct, including criminal investigations into the use of deadly force. We encourage feedback from our readers and strive to publish reports that not only meet our statutory mandates, but also offer concerned parties a tool for improvement. For more information about the Office of the Inspector General, including all our published reports, please visit our website at www.oig.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Amarik K. Singh".

Amarik K. Singh
Inspector General

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LADY JUSTICE

The Inspector General

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

(California Penal Code section 6126 (a))

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

(California Penal Code section 6133 (a))

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

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

— *State of California*
Excerpted from Penal Code sections

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The Discipline Monitoring Unit

California Penal Code sections 6126 and 6133 mandate that the Office of the Inspector General (the OIG) provides oversight to the California Department of Corrections and Rehabilitation (the department). Our office monitors internal affairs investigations, both criminal and administrative, as well as the disciplinary process conducted by the department. The OIG's Discipline Monitoring Unit (DMU) is responsible for monitoring these processes, and this unit is staffed by attorneys who hold the classifications of Special Assistant Inspector General (SAIGs) or of Senior Assistant Inspector General (SrAIG). SAIGs in DMU have a minimum of eight years of experience practicing law, and these attorneys come from 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 courts. DMU attorneys have a wealth of experience and are able to provide valuable, real-time feedback and recommendations to the department regarding the investigative and the disciplinary processes.

The Discipline Monitoring Report

California Penal Code section 6133 (a) requires that our office advise the public regarding the adequacy of the department's internal affairs investigations that we monitor and whether discipline in those cases was warranted. The mandate requires that we issue regular reports, no less than semiannually, summarizing our oversight of the departments' Office of Internal Affairs' investigations. We satisfy these statutory requirements by publishing our discipline monitoring reports twice a year. Per our mandate, we report on the following:

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

Each month, we publish our findings on our website as they pertain to individual cases. These findings and assessments can be found at www.oig.ca.gov by accessing the **Data Explorer** tab, followed by **Case Summaries**.

The Department's Investigative and Disciplinary Process

The department's investigative process begins when the department discovers allegations of misconduct. If the hiring authority discovers an allegation of misconduct and determines there is a reasonable belief that misconduct occurred, he or she must refer the allegations to the Office of Internal Affairs' Central Intake Panel for review. The Central Intake Panel includes 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 returns the case to the hiring authority either as rejected because no misconduct was found or to take direct action in the form of discipline or corrective action.

If the Office of Internal Affairs approves an investigation, the case is referred to a regional office, where it is assigned to a special agent who conducts interviews and gathers evidence. The special agent consults with an OIG attorney on cases that the OIG monitors and with a department attorney on cases EAPT designates for assignment. The special agent completes a report when the investigation concludes and forwards it to the hiring authority for review. The hiring authority meets with both the OIG attorney and the department attorney to discuss the disciplinary findings. The hiring authority makes a finding of sustained, not sustained, exonerated, or unfounded regarding each allegation.

When the hiring authority sustains at least one allegation, he or she determines the appropriate discipline by referring to guidelines listed in 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 the employee with the opportunity to present factors or arguments in favor of reducing or revoking the discipline. After the disciplinary action takes effect, the employee can file an appeal with the State Personnel Board, where an evidentiary hearing is later conducted. At the hearing, the department has the burden of proving the allegations in the disciplinary action by a preponderance of the evidence.

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 phase of the case being assessed. The six indicators are listed below:

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 the 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 the case?
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?

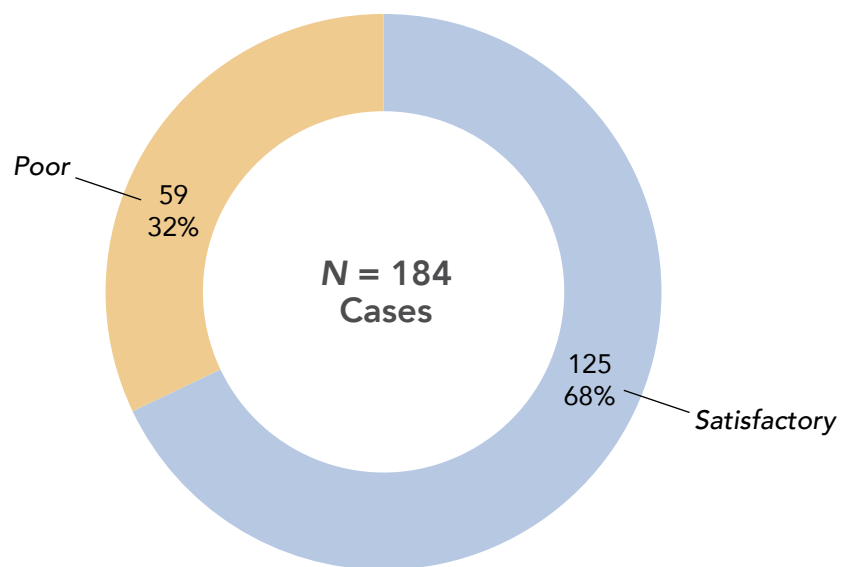
These indicators are organized chronologically. Indicators 1 and 4 are used to assess the hiring authority. Indicators 2 and 3 are used to assess the Office of Internal Affairs. Indicators 5 and 6 are used to assess the EAPT attorney. The OIG assigned a rating of *superior*, *satisfactory*, or *poor*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

DMU is in the process of revamping the indicators, questions, and ratings. There will be three indicators, one for each stakeholder. The new assessment methodology takes effect during the January through June 2023 reporting period. In recent discipline monitoring reports, we addressed each of the six indicators separately. However, as we did in our last report, issued September 2022, we will summarize our findings for each stakeholder holistically as opposed to summarizing each individual indicator.

The Department Performed in a *Satisfactory* Manner Overall in 68 Percent of the Cases We Monitored

The OIG determines an overall rating for each case we monitor after considering the ratings for each indicator. We consider the rating from all six indicators and determine whether the performance in its totality warrants a rating of *superior*, *satisfactory*, or *poor*. In this reporting period we monitored and closed 184 cases. Of these, 152 involved administrative allegations, and 32 involved criminal allegations. We rated 68 percent of the cases *satisfactory*, and 32 percent *poor*.

Figure 1. Ratings for Cases the OIG Monitored During the Period From July 1, 2022, Through December 31, 2022



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

The Hiring Authority

Hiring authorities are individuals within the department who have the authority to hire, dismiss, and discipline employees. Wardens are the hiring authorities in most of the cases we monitor. Hiring authorities are charged with timely referring discovered allegations to the Office of Internal Affairs when they have a reasonable belief misconduct occurred. Hiring authorities are also responsible for reviewing the investigation and evidence gathered by the Office of Internal Affairs, making findings regarding the allegations of misconduct, determining the appropriate level of discipline, and deciding whether to enter into a settlement with the disciplined employee. The OIG assesses the performance of hiring authorities throughout this process.

The Hiring Authorities' Performance in Discovering and Referring Allegations of Employee Misconduct Was *Satisfactory*

Whenever hiring authorities reasonably believe employee misconduct occurred, they are responsible for conducting a preliminary inquiry into the matter and timely requesting an investigation or approval for direct action from the Office of Internal Affairs' Central Intake Unit. The Central Intake Unit determines whether to assign the case to an investigator, return it to the hiring authority without any investigation, or reject the case entirely.

The hiring authority is required to review each case and conduct initial inquiries to ensure that sufficient information exists to determine whether there is a reasonable belief that the alleged misconduct occurred. Staff misconduct means an allegation that departmental staff violated a law, regulation, policy, or procedure, or acted contrary to an ethical or a professional standard, which, if true, would likely subject a staff member to adverse disciplinary action. Reasonable belief is established when facts and circumstances are known that make a reasonable person of average caution believe staff misconduct occurred.

We found that the hiring authorities handled this stage of the disciplinary process in a *satisfactory* or *superior* manner in 78 percent of the cases we monitored. This was a decline in performance from the last reporting period when hiring authorities handled cases in a *satisfactory* or *superior* manner in 84 percent of cases.

Hiring Authorities Can Improve Their Performance in Referring Allegations Without Undue Delay

The OIG monitors the thoroughness of a hiring authority's inquiry of alleged misconduct and the timeliness of referrals sent to the Office of

Internal Affairs. Departmental policy requires that hiring authorities refer matters of suspected misconduct to the Office of Internal Affairs within 45 days of discovering the alleged misconduct.

From July through December 2022, we found that hiring authorities referred cases to the Office of Internal Affairs within 45 days in 76 percent of cases. This was a slight improvement from the last reporting period when hiring authorities timely referred the allegations in 75 percent of cases. Although the department's performance improved slightly, hiring authorities continued the pattern of referring allegations late in almost one of every four cases. Of the 40 cases we rated *poor*, 33 had untimely referrals of allegations. The following are three case examples demonstrating the issue:

OIG Case No. 20-0032412-DM

A captain altered a sergeant's memorandum by adding dishonest information, and an associate warden later pressured a second associate warden to remove the dishonest information from the memorandum in order to conceal the sergeant's misconduct. The Office of Internal Affairs opened an investigation into the misconduct, and the first associate warden lied during the investigatory interview. The hiring authority, an associate director, sustained all the allegations and dismissed the first associate warden and captain. They both filed appeals, but the State Personnel Board upheld their dismissals. However, the warden significantly delayed referring the matter to the Office of Internal Affairs after discovering the misconduct. The second associate warden reported the alleged misconduct of the captain to the chief deputy warden on May 30, 2019. The Office of Internal Affairs determined that the chief deputy warden was not involved in the misconduct or had committed misconduct for not reporting the misconduct. The Office of Internal Affairs, department attorney, and the OIG all determined that the date of discovery for the purposes of determining the deadline to take disciplinary action was May 30, 2019. However, the hiring authority did not refer the allegations to the Office of Internal Affairs until December 23, 2019, 207 days later.

OIG Case No. 21-0041151-DM

An officer slapped his girlfriend, squeezed her throat, and attempted to prevent her from leaving her apartment. She left the scene in her own vehicle, and the officer followed her in his vehicle and attempted to stop her from reporting his misconduct to outside law enforcement by cutting her off with his vehicle. The hiring authority was aware of the misconduct the day after it occurred, but waited until after the officer was convicted in criminal court to refer the matter to the Office of Internal Affairs, which was 574 days after discovering the misconduct. The hiring authority eventually sustained the allegations, determined dismissal was the appropriate penalty, and served the disciplinary action

The OIG provides interactive features in 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.

on the officer. The officer retired before the disciplinary action could take effect.

OIG Case No. 22-0043129-DM

An incarcerated person submitted an allegation of staff misconduct that an officer had directed a derogatory and racist comment toward the incarcerated person. The hiring authority learned of the alleged misconduct and referred the case the next day to the Office of Internal Affairs' Allegation Inquiry Management Section¹ for an inquiry. A lieutenant conducted the inquiry and interviewed five incarcerated people, one staff member, and the officer. The lieutenant returned the matter to the hiring authority 151 days after the initial referral. The hiring authority exacerbated the delay by referring the matter to the Office of Internal Affairs 176 days after the inquiry had been completed. The Office of Internal Affairs returned the matter to the hiring authority for disciplinary action without an investigation. The hiring authority sustained the allegation and imposed a five percent salary reduction for a period of six months. The hiring authority later entered into a settlement with the officer, reducing the penalty to a written letter of reprimand. The OIG did not concur with the settlement.

The Allegation Inquiry Management Section and Departmental Hiring Authorities Significantly Delayed Processing 13 Cases Which Caused the Statute of Limitations to Expire Prior to or While the Central Intake Panel Was Processing the Cases

Between July and December 2022, we observed a disturbing trend of cases being referred to the Office of Internal Affairs after the statute of limitations had expired. State law limits the time in which an employer can initiate a disciplinary action against an employee. Government Code section 19635 provides, in part, that no adverse action shall be valid against any State employee for any cause for discipline based on any civil service law unless notice of the adverse action is served within three years after the cause for discipline, upon which the notice is based. The time frame narrows for employees who are peace officers. In general, in those cases, Government Code section 3304(d) provides that no disciplinary action shall be undertaken against a peace officer for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the agency's discovery by a person authorized to initiate an investigation of the allegation.

1. The Office of Internal Affairs Allegation Inquiry Management Section was responsible for conducting inquiries into allegations of staff misconduct made by incarcerated persons. If during the inquiry the assigned investigator determined there was a reasonable belief of misconduct, they were required to end the inquiry and issue a report to the hiring authority with a summary of the evidence gathered and finding that there was a reasonable belief misconduct occurred.

From July 1, 2022, through December 31, 2022, we identified 16 cases in which hiring authorities identified allegations before the deadline to take disciplinary action had expired, but referred them to the Office of Internal Affairs' Central Intake Panel after the statute of limitations period had expired or was rapidly approaching expiration. In 13 cases, the time in which to serve disciplinary actions had already passed, and in three cases, the limitations period was set to expire in fewer than 30 days. The OIG observed that delays in referrals to the Central Intake Panel were most often caused by delays from the Office of Internal Affairs' Allegation Inquiry Management Section in reviewing or investigating matters before referring them back to the hiring authority. Of the 13 cases that were referred after the deadline had passed for at least one allegation, the Allegation Inquiry Management Section had conducted an inquiry in 10 of them. Of those 10, the shortest inquiry conducted lasted 244 days, and eight of them took at least 320 days to complete. The hiring authority in turn often delayed referring the case after receiving the report from the Allegation Inquiry Management Section. Of the 10 cases with inquiries referenced above, the hiring authority took at least a month after the completion of the inquiry to refer the allegations to the Office of Internal Affairs in nine cases. While the Allegation Inquiry Management Section must conduct inquiries with greater urgency, hiring authorities should implement safeguards to ensure that they are able to refer allegations of misconduct as soon as possible in order to preserve their ability to take discipline when appropriate.

Hiring Authorities Improved Their Performance in Making Investigative and Disciplinary Findings, but Still Performed Poorly in Far Too Many Cases

After the Office of Internal Affairs completes an administrative investigation or interview of an employee suspected of misconduct, or returns a case to the hiring authority to address the misconduct allegation or allegations without an investigation or interview of the employee, the hiring authority must make findings concerning the allegations, identifying the appropriate penalty, and serving the disciplinary action if discipline was taken.

Before holding the investigative and disciplinary findings conference, a hiring authority is required to review available evidence regarding the misconduct allegations. At the conference, the hiring authority consults with the department attorney and OIG attorney, if one is assigned. The hiring authority determines whether there is sufficient evidence to make decisions regarding the allegations and, if the Office of Internal Affairs submitted a report, whether the report is sufficient or additional investigation is necessary. If the hiring authority determines there is sufficient evidence or the investigative report is sufficient, the hiring authority makes findings pertaining to the allegations. If the hiring authority sustains any allegation, the hiring authority determines

whether to impose corrective action or discipline and, if so, the specific action to be taken.

Hiring authorities' performance in making investigative and disciplinary findings was either *satisfactory* or *superior* in 66 percent of cases. This was a significant improvement from the last reporting period when hiring authorities' performance was *satisfactory* or better in only 51 percent of cases. And while hiring authorities did improve, they could do better.

Hiring Authorities Frequently Held Untimely Investigative and Disciplinary Findings Conferences

Departmental policy requires the investigative and disciplinary findings conference to be held no more than 14 calendar days after receipt of the final investigative report.² As long as the hiring authority made reasonable attempts to schedule the conference within 14 days and held the conference within 30 days of receipt of the case, we did not negatively assess a hiring authority for a late conference. If the hiring authority sustained any allegations, the hiring authority also determined whether to impose discipline and, if so, determined the type of discipline to impose.³

In this reporting period, hiring authorities held a timely consultation regarding the disciplinary findings in only 63 percent of cases. This is an improvement from the prior reporting period when hiring authorities held the conference in a timely manner in only 51 percent of cases. Although the department has improved from the last reporting period, there is still much room for improvement because hiring authorities are still holding delayed conferences in one of every three cases. Below are some examples of cases in which the department delayed holding these conferences.

OIG Case No. 21-0038942-DM

Outside law enforcement arrested an officer for allegedly battering a private citizen, thereby causing the citizen to dislocate a shoulder, and for being drunk and disorderly. The Office of Internal Affairs approved a direct action⁴ and referred the matter back to the hiring authority to impose discipline. The department finally made efforts to schedule the investigative and disciplinary findings conference two months after the Office of Internal Affairs had returned the matter. However, the conference did not take place until 105 days after policy required.

2. Cited in the department's operations manual, Section 33030.13.

3. Discipline includes a letter of instruction, letter of reprimand, salary reduction, suspension, demotion, or dismissal.

4. A direct action authorizes 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.

OIG Case No. 21-0039603-DM

A chaplain accessed confidential information about multiple incarcerated people from a departmental database without a valid reason and provided information from the departmental database to an incarcerated person. The Office of Internal Affairs approved a direct action and returned the matter to the hiring authority to impose discipline. The hiring authority did not conduct the investigative and disciplinary findings conference until 202 days after policy required.

OIG Case No. 22-0042003-DM

An officer conspired with an incarcerated person to introduce mobile phones and drugs into the prison for financial gain. The officer also possessed illegal steroids at his home. The hiring authority dismissed the officer, but only after delaying the investigative and disciplinary findings conference 47 days after policy required. The hiring authority also compounded the problem by delaying service of the disciplinary action until 19 days after policy required. The officer was on paid administrative leave during the delays.

The OIG Invoked Executive Review in One Case in This Reporting 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 one case we monitored and closed during this reporting period. EAPT invoked executive review once as well. Below are summaries of those cases and the issues in dispute.

OIG Case No. 21-0038150-DM

In one case, a department attorney allegedly disclosed confidential information pertaining to an officer's disciplinary case to the officer's former spouse, who was an Office of Internal Affairs special agent. The department attorney also allegedly used confidential information to solicit business for her husband's private legal practice. The hiring authority sustained the allegation that the department attorney had inappropriately disclosed confidential information, but not the other allegation, and imposed a 10-working-day suspension even though the penalty did not conform to the department's disciplinary guidelines. The OIG recommended that the hiring authority add and sustain a

dishonesty allegation, but the hiring authority rejected the OIG's recommendation. The OIG did not concur with the hiring authority's decision to impose only a 10-working-day suspension and to not add and sustain a dishonesty allegation, and elevated the decisions to the hiring authority's supervisor. At a higher level of review, the hiring authority's supervisor modified the department attorney's penalty to a 20-working-day suspension, but did not add a dishonesty allegation. The former Inspector General concurred. After a Skelly hearing, the hiring authority reversed her decision and imposed a 10-working-day suspension without a settlement because she felt the penalty was too severe. The OIG concurred. The department attorney filed an appeal with the State Personnel Board. However, pursuant to a settlement agreement, the department attorney withdrew her appeal to the State Personnel Board, and the department agreed to remove the disciplinary action from the department attorney's official personnel file. The OIG concurred.

OIG Case No. 21-0040458-DM

In the other case, two officers allegedly lied when they reported they were wearing face shields during an incident with an incarcerated person. The hiring authority sustained the allegations and determined that dismissal was the appropriate penalty. The OIG concurred. The department attorney did not concur and sought a higher level of review. At the higher level of review, the hiring authority's supervisor sustained the allegations and determined dismissal was the appropriate penalty. The hiring authority served a notice of dismissal on each officer. Each officer filed an appeal with the State Personnel Board. Prior to an evidentiary hearing, each officer resigned in lieu of dismissal and agreed to attach a copy of her or his stipulation to any employment application with the department in the future. The OIG concurred with the settlements.

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The Office of Internal Affairs

The Office of Internal Affairs is a unit within the department responsible for investigating allegations of staff misconduct. When hiring authorities discover allegations of staff misconduct and have a reasonable belief misconduct occurred, the hiring authority is required to refer the matter to the Office of Internal Affairs. When the Office of Internal Affairs approves an investigation, they will assign a special agent to conduct the investigation, interview witnesses and the employee accused of misconduct, and submit a report to the hiring authority summarizing the evidence and statements gathered during the evidence. The OIG monitors this process contemporaneously, provides real time feedback to the special agent, and assesses the Office of Internal Affairs' performance.

Central Intake Panel

Whenever the department reasonably believes an employee committed administrative or criminal misconduct, the hiring authority must timely request 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 evaluation of referrals is consistent, 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 special-agent-in-charge—not the panel—makes the final decision regarding the action the Office of Internal Affairs will take on each hiring authority referral. The options are as follows:

- 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

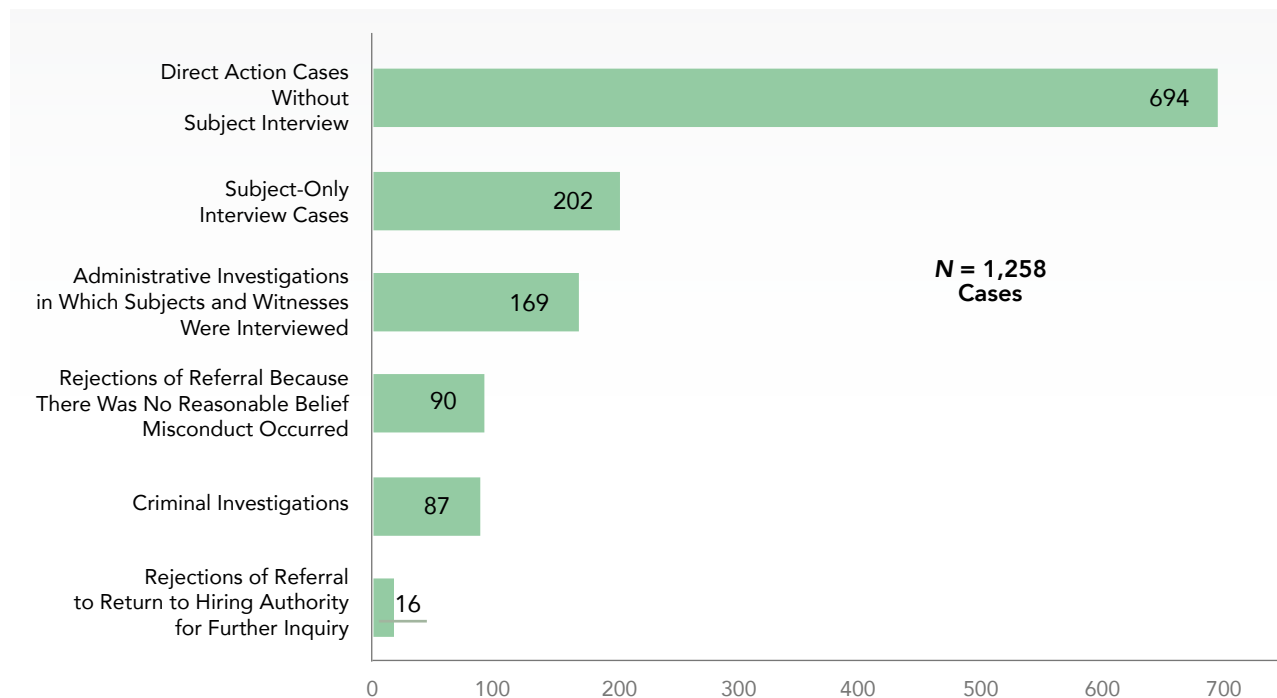
<i>Madrid-Related Criteria*</i>	OIG Monitoring Threshold
Abuse of Position or Authority	Unorthodox punishment or discipline of an incarcerated person, ward, or parolee; or purposely or negligently creating an opportunity or motive for an incarcerated person, ward, or parolee to harm another incarcerated person, ward, parolee, staff, or self, i.e., suicide.
Criminal Conduct	Trafficking of items prohibited by the California Penal Code or criminal activity that would prohibit an officer, if convicted, from carrying a firearm (all felonies and certain misdemeanors such as those involving domestic violence, brandishing a firearm, and assault with a firearm).
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
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).
Obstruction	Intimidating, dissuading, or threatening witnesses; retaliation against an incarcerated person or against another person for reporting misconduct; or the destruction or fabrication of evidence.
Sexual Misconduct	Sexual misconduct prohibited by California Penal Code, section 289.6.
Use of Force	Use of force resulting in, or which could have resulted in, serious injury or death or discharge of a deadly weapon.

* *Madrid v. (Gomez) Cate* (N.D. Cal. 1995) 889 F.Supp. 1146) (citation URL accessed on 6-9-23).

The OIG monitors most cases that fall within this criteria, and, on occasion, monitors cases that fall outside this criteria.

In the six-month reporting period of July through December 2022, the Office of Internal Affairs made decisions concerning 1,258 referrals involving potential staff misconduct, which the OIG also reviewed during the central intake process (see Figure 2 below). In reviewing those cases, the OIG disagreed with the Office of Internal Affairs' initial review in 227 cases. Of those 227 cases the OIG found that the Office of Internal Affairs made the wrong decision in 173 of those cases, a significant figure of 76 percent.

Figure 2. Distribution of Case Types Resulting From the Office of Internal Affairs' Decisions During the Central Intake Process From July 1, 2022, Through December 30, 2022



Source: The Office of the Inspector General.

The Office of Internal Affairs' Central Intake Panel Processed Cases in a *Satisfactory* Manner in Most Cases

In this reporting period, the OIG found that the Office of Internal Affairs' performance during the Central Intake process was *satisfactory* in 84 percent of cases we monitored. This was an improvement compared with the last reporting period when the Office of Internal Affairs performed satisfactorily in 76 percent of cases.

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 23 percent of cases that our office monitored. Disagreements were often due to the OIG's position that the Office of Internal Affairs conducted a faulty, speculative, or ill-informed analysis. Examples included 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 an interview or an investigation. Of the 23 percent of cases with 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 had occurred.

The Office of Internal Affairs Satisfactorily Investigated Deadly Use-of-Force Incidents in the Vast Majority of Cases

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 a 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 these investigations. 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.

The department defines deadly force as any force that is likely to result in death. Any discharge of a firearm other than a 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 necessary to do one of the following: 1) defend the employee or other people from an imminent threat of death or great bodily injury; 2) prevent an escape from custody; 3) 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; and 4) 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 would be injured. Warning shots are only permitted in an institutional setting.

Between July and December 2022, the OIG monitored and closed 10 administrative cases and eight criminal cases that the Office of Internal Affairs investigated regarding the use of deadly force. We rated the Office of Internal Affairs' performance in investigating deadly force incidents in the current period *poor* in only one of these 18 cases. This is an improvement compared with the January through June 2022 reporting period when we rated three out of seven deadly force investigations *poor*. Below is a summary of a case we rated *poor*.

OIG Case No. 21-0038971-DM

Two incarcerated people attacked a third incarcerated person with makeshift weapons on an exercise yard. Officers deployed chemical agent grenades, fired three less-lethal rounds, and deployed a chemical agent grenade. An officer also fired two rounds from a Mini-14 rifle. One attacking incarcerated person was struck in the neck by one of the rounds from the Mini-14 rifle and survived the wound. The Deadly Force Review Board found the officer's use of deadly force complied with policy. The hiring authority determined the investigation revealed the officer's actions were justified, lawful, and proper. The OIG concurred with the hiring authority's determination. However, we found the department's performance in investigating employee misconduct was *poor*. First, the Office of Internal Affairs special agent did not document the individual staff reports in the final investigative report, so the statements in those reports could be compared with the statements made during the interviews. Second, the Office of Internal Affairs did not timely complete its investigation. Pursuant to the department's deadly force investigation procedures, Office of Internal Affairs special agents needed to complete deadly force investigations within 90 days of assignment or seek an extension from the Office of Internal Affairs Chief of Field Operations. In this case, the Office of Internal Affairs Chief of Field Operations granted an extension beyond the 90-day requirement due to delays in acquiring information from an outside law-enforcement agency. The OIG concurred with the extension, and the special agent completed an investigative report. However, the special agent later discovered a necessary witness had not been interviewed, and the special agent completed a supplemental investigative report 58 days after completing the first report. Although the Office of Internal Affairs completed the investigation within the time frame allotted for the extension, the investigation was unnecessarily delayed.

During the current reporting period, the Office of Internal Affairs did not complete deadly force investigations within 90 days in four of the 18 cases monitored and closed by the OIG. The Office of Internal Affairs Chief of Field Operations granted extensions in all four of these cases.

In January 2023, The Office of Internal Affairs changed its policy regarding the time frame to complete deadly force investigations. The department requires special agents to complete criminal and

administrative deadly force investigations for incidents occurring within a prison within 120 days. Investigations occurring outside a prison should be completed within 180 days. The Office of Internal Affairs Chief of Field Operations may still grant an extension of these deadlines in appropriate circumstances. We will monitor the Office of Internal Affairs' compliance with this new procedure and provide updates in future reports.

Employees Violated the Deadly Use-of-Force Policy in Five Cases

The department found that employees violated the department's deadly use-of-force policy in five of the 10 administrative cases we monitored and closed. We concurred with the department's findings in all these cases. In two cases, hiring authorities determined a parole agent and a lieutenant should be dismissed. These cases are discussed below:

OIG Case No. 21-0040573-DM

An off-duty supervising parole agent shot himself with his personal handgun and caused injury to his chest. It was unclear whether he shot himself on purpose. Three months prior to the incident, the supervising parole agent had submitted a urine sample that later tested positive for methamphetamine. The supervising parole agent retired and refused to be interviewed by the Office of Internal Affairs regarding the handgun incident. The hiring authority determined dismissal was the appropriate penalty but did not serve a disciplinary action because the supervising parole agent had retired already.

OIG Case No. 22-0042304-DM

An off-duty lieutenant discharged nine rounds from a handgun while in his residence after an argument with his wife and later lied to outside law enforcement about the incident. The lieutenant resigned prior to the completion of the investigation. The hiring authority determined dismissal was the appropriate penalty, but did not serve a disciplinary action because the lieutenant had already resigned.

While these two cases involved off-duty misconduct, there were two cases in which the department determined the employee violated the deadly use of force policy while on duty. Those cases are summarized below:

OIG Case No. 21-0040807-DM

An incarcerated person escaped from a hospital room, and officers later located the incarcerated person on the roof of the hospital. An officer from the department's Crisis Response Team intervened to take over the escort of the incarcerated person, away from the location. While taking

hold of the incarcerated person, the officer swung his rifle from one side of his body to the other, and shortly after unintentionally discharged two rounds from his rifle into the roof of the hospital. The hiring authority sustained the allegation that the officer violated the use-of-force policy and issued the officer a five percent salary reduction for a period of 12 months. The hiring authority later entered into a settlement with the officer that reduced the penalty to a five percent salary reduction for nine months, and the hiring authority agreed to remove the disciplinary action from the officer's official personnel file at the conclusion of the salary reduction period. The OIG concurred with the hiring authority's decisions.

OIG Case No. 22-0042581-DM

A parole agent picked up a parolee from a detention facility and placed her in the front seat of his State vehicle. The parole agent retrieved his handgun from the trunk of the vehicle, but as he was handling it, he unintentionally discharged a round that pierced the trunk of the car, exited through the windshield, and later struck a cement wall. No one was injured. The hiring authority sustained the allegation that the parole agent violated the use-of-force policy and issued the parole agent a five percent salary reduction for eight months. The OIG concurred with the decision. The parole agent did not appeal the matter to the State Personnel Board.

The Office of Internal Affairs Could Improve Its Performance in Criminal Investigations

We found the Office of Internal Affairs performed poorly in investigating criminal allegations of misconduct in 22 percent of cases. We found that the special agent did not thoroughly and appropriately conduct an investigation in three of the poorly rated cases. We found that the special agent did not conduct all necessary and relevant interviews in two of those cases. We also found that the special agent did not use effective interviewing techniques in two of those cases. In five of those cases, we found that the special agent did not complete the investigation within six months of assignment of the case to his or her region. The Office of Internal Affairs could significantly improve its handling of criminal cases. Below is an example of a case in which we rated the Office of Internal Affairs' performance *poor*.

OIG Case No. 21-0041216-CM

A nurse allegedly engaged in sexual acts with an incarcerated person and made sexual comments to multiple incarcerated persons. The Office of Internal Affairs referred the matter to a district attorney's office. We rated the case *poor* because for multiple reasons. The special agent used a single photograph to have an incarcerated person identify the nurse as

opposed to using a six-person photo lineup which is the best practice. The special agent failed to interview an officer to whom an incarcerated person claimed she reported the sexual assault. The special agent failed to include in the report time sheets and medical records that could have established when the nurse saw the incarcerated people who had made the allegations and when medical assistants could have been present. Moreover, the special agent took more than eight months to complete the investigation.

OIG Case No. 21-0043596-CM

A social worker allegedly received money from an incarcerated person's family to purchase jewelry for the incarcerated person, and smuggled jewelry, marijuana, and mobile phones into the prison for the incarcerated person. The Office of Internal Affairs opened a criminal investigation into the allegations and eventually referred the matter to a district attorney's office for prosecution. However, during the investigation, the special agent failed to ask key questions about the jewelry at issue and failed to ask open-ended questions that could have corroborated allegations that the social worker was in a sexual relationship with the incarcerated person. The special agent also failed to investigate critical information about whether the social worker went to the prison on a day she was not working.

The Office of Internal Affairs in General Performed Well in Conducting Administrative Investigations

We found that the Office of Internal Affairs performed satisfactorily in 86 percent of administrative cases we monitored. This was only a slight decrease in performance from the last reporting period when we rated the performance either *satisfactory* or *superior* in 87 percent of cases. The most common reason we rated a case *poor* related to a failure to ask all relevant questions. Even so, we found that the special agent asked all relevant questions in 93 percent of the 117 administrative cases we monitored.

However, below are two cases that involved *poor* performance by the Office of Internal Affairs. In one case, the lack of due diligence by the Office of Internal Affairs precluded the department from taking disciplinary action. The other involved a delay that caused the case to be delivered to the hiring authority only eight days before the deadline to take disciplinary action. Those cases are summarized below.

OIG Case No. 21-0040869-DM

An officer allegedly failed to summon medical attention for two incarcerated people who complained of chest pains. The officer and

a second officer allegedly conducted a retaliatory cell search of one of the incarcerated people who had complained of chest pains. The first officer admitted to failing to summon medical attention, but the hiring authority made no findings on the allegations against the officer because the deadline to take disciplinary action had passed. The hiring authority found insufficient evidence to sustain the allegation against the second officer.

The investigation of these allegations suffered from undue delay. After the department attorney notified the special agent that the deadline to take disciplinary action was incorrect in the case management system, the special agent did not correct it. Moreover, the special agent waited eight months after having been assigned to the case to conduct the first investigative interview and waited an additional 15 days after the deadline had passed to take disciplinary action. The special agent failed to interview one of the complaining incarcerated people, and this incarcerated person died six months after the case was assigned. The delays in this case were egregious, and the special agent's failure to complete the investigation in a timely manner barred the hiring authority from taking disciplinary action.

OIG Case No. 21-0041618-DM

An officer allegedly accessed approximately 180 incarcerated people's confidential records in one database and approximately 84 incarcerated people's confidential records in a second database without having a valid operational need to do so. The special agent was assigned to conduct only an interview of the officer, which took place more than seven months after the case was assigned to the region. The special agent finished the report and delivered it to the hiring authority only eight days before the deadline to take disciplinary action was set to expire. Although the hiring authority did not sustain any allegations, the delay in completing the investigation precluded the hiring authority from requesting additional investigation if warranted and unnecessarily caused the hiring authority to rush in completing the review of the investigation and in conducting a meaningful investigative and disciplinary findings conference.

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The Employment Advocacy and Prosecution Team

The Employment Advocacy and Prosecution Team (EAPT) is the third stakeholder that the DMU monitors during the investigative and disciplinary processes. EAPT attorneys, known as vertical advocates, provide legal recommendations to both the Office of Internal Affairs and hiring authorities. In general, the same vertical advocate represents the department throughout the entire investigative and disciplinary process. The OIG monitors the vertical advocate's performance, performs real time feedback during the investigation and litigation process, and assesses the vertical advocate's performance.

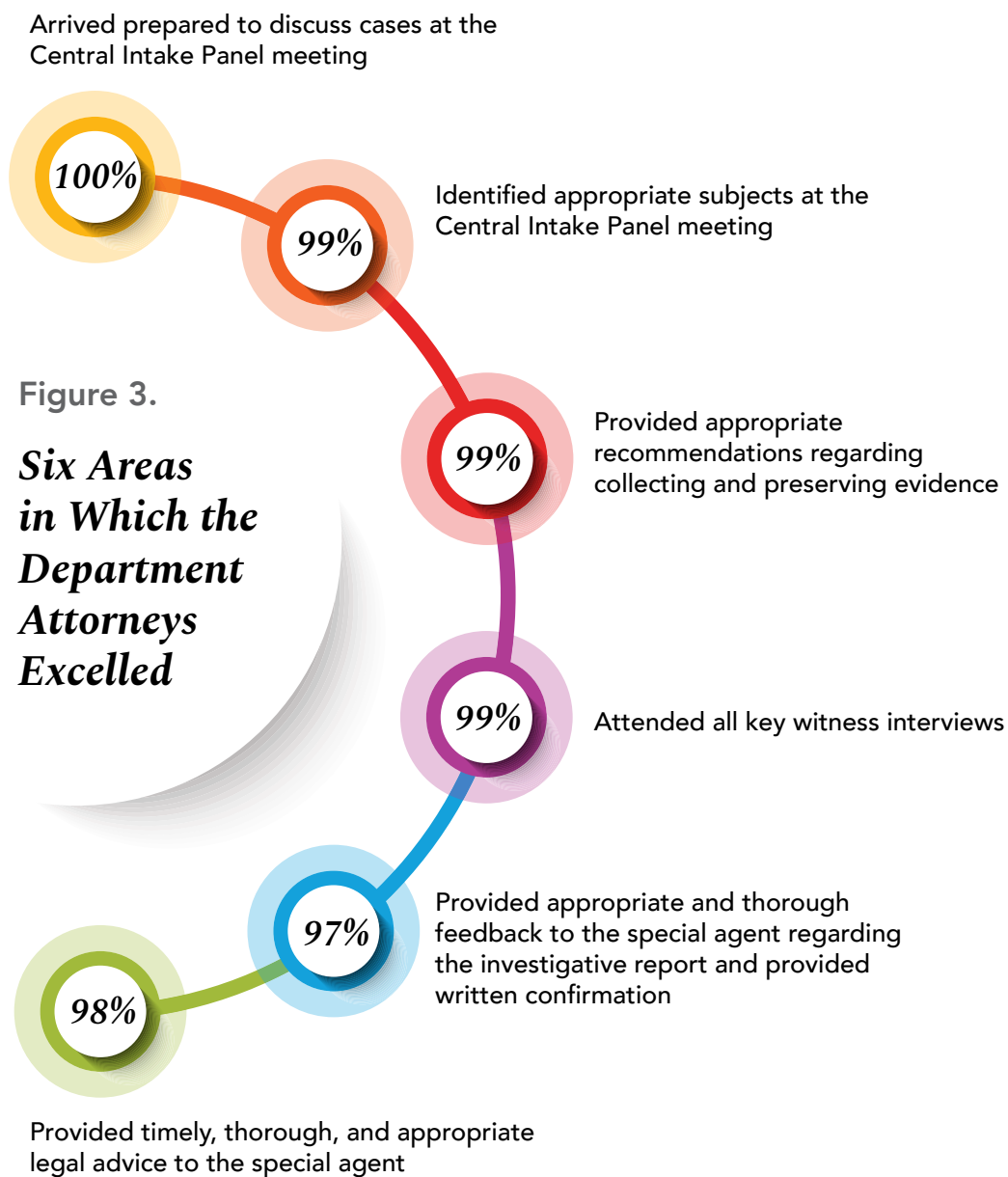
Vertical Advocates in General Provided Appropriate Advice and Recommendations During the Investigative Process

During this reporting period, we assigned EAPT a *satisfactory* rating for providing legal advice and support during the investigative process in 89 percent of the cases we monitored. For the legal representation EAPT provided during litigation, however, we assigned a *satisfactory* rating in only 60 percent of the cases. The most commonly recurring problem over the past several reports has been EAPT's failure to exercise due diligence to ensure that disciplinary actions are served without undue delay. The department failed to serve the disciplinary action in compliance with departmental policy in 52 percent of the cases, which is an increase over the 48 percent compliance rate of the previous reporting period. On the following page, Figure 3 displays the performance of department attorneys in specific areas.

Areas in Which the Employment Advocacy and Prosecution Team Could Improve During the Investigative Process

Making Timely Entries in the Case Management System

The most commonly identified deficiency in this reporting period was department attorneys' failure to make a timely entry into the case management system regarding their assessment of the statute of limitations. It is critical that department attorneys immediately assess the statute of limitations and any tolling exceptions so that they can give appropriate advice to special agents about how much time they have to complete their investigation. However, despite the critical nature of this assessment, department attorneys failed to make entries into the case management system that included this analysis in 20 cases we monitored. One example is on page 25:



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

OIG Case No. 21-0040742-DM

An officer allegedly divulged confidential information to and brought contraband in to a prison for multiple incarcerated people. The officer also allegedly engaged in a sexual act with an incarcerated person. The Office of Internal Affairs conducted a criminal investigation, referred the case to a district attorney's office, and thereafter opened an administrative investigation. The department attorney was assigned to the administrative case on September 16, 2021, but did not make an entry into the case management system regarding the deadline for taking disciplinary action or contact the special agent and the OIG to discuss the elements of a thorough investigation until November 15, 2021, 60 days after assignment and 39 days after policy required.

OIG Case No. 22-0041937-DM

An off-duty officer allegedly pulled his girlfriend into a vehicle and during a struggle with the officer, the girlfriend fell out of the vehicle, causing injury to her head. Outside law enforcement arrested the officer on charges of domestic violence and kidnapping. The Office of Internal Affairs approved an interview of the officer. A department attorney was assigned to the case, but did not make an entry into the case management system regarding the deadline for taking disciplinary action.

Providing Timely Recommendations for the Investigative and Disciplinary Findings Conference

We also found that department attorneys did not provide a timely memorandum with the attorney's recommendations for the investigative and disciplinary findings conference to the hiring authority and to the OIG at least 24 hours before the conference in nine percent of the cases. EAPT's policy and best practice dictate that such memoranda are to be provided with sufficient time for the stakeholders to conduct a meaningful review of the recommendations and supporting evidence. When stakeholders have sufficient time, they can conduct a meaningful review of recommendations and supporting evidence. Below are two examples:

OIG Case No. 21-0040745-DM

A lieutenant allegedly failed to document a rules violation hearing and failed to sign out of an isolation logbook. The department attorney's performance in providing legal advice to the hiring authority was *poor* for the following reasons:

- The department attorney did not provide a memorandum to the hiring authority and the OIG until fewer than 15 minutes before the investigative and disciplinary findings conference.

- The department attorney also failed to advise the hiring authority to add and sustain allegations that the evidence supported.

The hiring authority sustained the allegations and served a letter of reprimand on the lieutenant. The department eventually entered into a settlement reducing the penalty to a letter of instruction, but the department attorney failed to notify the OIG of the settlement until after it had been completed.

OIG Case No. 22-0042448-DM

Two officers failed to wear a personal alarm device and failed to activate an alarm after one of the officers discovered an unresponsive incarcerated person. The first officer also wore her uniform in such a manner that it obstructed her body-worn camera during the incident. The hiring authority scheduled the initial investigative and disciplinary findings conference on March 25, 2022. Because the department attorney did not complete a memorandum for the hiring authority before that date, the conference was delayed until April 4, 2022. The department attorney was again not prepared on April 4, 2022, so this conference was delayed a second time until April 13, 2022.

Vertical Advocates Have Significant Room for Improvement When Providing Legal Representation During Litigation

We found that department attorneys performed satisfactorily in providing legal representation during litigation in only 60 percent of cases we monitored. This performance was significantly worse than the last reporting period when department attorneys performed satisfactorily in 71 percent of cases. Vertical advocates in general performed well when litigating in front of the State Personnel Board, but performed poorly in timely processing disciplinary actions.

Vertical Advocates Continue to Delay the Drafting and Service of Disciplinary Actions

We found that the most significant failure by EAPT in the disciplinary process continued to be the delay in drafting and serving disciplinary actions. Departmental policy required hiring authorities to serve disciplinary actions on peace officers within 30 days of the hiring authority's decision to take disciplinary action. Any delay can be significant, but delays are even more problematic when they occur in cases in which the hiring authority has decided to dismiss the employee. Dismissal cases often involve employees who are on paid leave or who have been redirected to a nonpeace-officer post pending the investigation.

After several years of identifying this failure, it is clear the department takes an apathetic stance toward these delays. We found that more than half of the disciplinary actions served during this reporting period were served beyond the 30-day deadline required by departmental policy. The following two cases are examples:

OIG Case No. 21-0040333-DM

A sergeant failed to assist an officer who was being attacked by an incarcerated person and failed to report the officer's use of force. The sergeant later lied in a report, lied to a supervisor, and lied to the Office of Internal Affairs. The hiring authority decided to dismiss the sergeant, but the department attorney did not provide even a draft of the disciplinary action to the department until 56 days after the decision to dismiss the officer. The department served the dismissal four days later, but the sergeant retired before the dismissal could take effect.

OIG Case No. 21-0040742-DM

An officer shared confidential information with incarcerated people and lied to a lieutenant and to the Office of Internal Affairs about the misconduct. The hiring authority decided to dismiss the officer. However, the department attorney did not provide a draft report to the OIG for review until more than two months after the hiring authority's decision to dismiss the officer, and the hiring authority served the dismissal action on the officer 85 days after the decision. The officer eventually resigned before the dismissal took effect.

Vertical Advocates Secured Favorable Decisions From the State Personnel Board in the Vast Majority of Cases

We found that EAPT in general performed well when a case did not settle, and the department attorney litigated the case in front of the State Personnel Board. During this reporting period, we monitored 10 cases that were submitted to the State Personnel Board after a full evidentiary hearing. Of those 10, the State Personnel Board modified the penalty in only two cases. Department attorneys were able to secure dismissals in six of the seven dismissal cases taken to hearing. Below are two examples:

OIG Case No. 19-0028909-DM

A parole agent allegedly provided the questions and answers for a promotional examination to a second parole agent who then allegedly received and used the questions and answers to cheat on the examination. The hiring authority sustained the allegations against both parole agents and determined dismissal was the appropriate penalty for both parole agents. The first parole agent retired prior to the completion of the investigation. The second parole agent filed an appeal with the

State Personnel Board. At the hearing, the vertical advocate performed well by preparing witnesses, organizing and presenting evidence effectively, and making a strong closing statement. The State Personnel Board upheld the dismissal.

OIG Case No. 21-0039865-DM

An off-duty officer was arrested twice after incidents in which he hit his wife. The officer also lied to outside law enforcement conducting the investigation into his misconduct. The hiring authority sustained the allegations and dismissed the officer. The officer appealed the dismissal, and at the hearing, the vertical advocate was able to secure the wife's testimony despite her not wanting to testify at the hearing. The administrative law judge credited the wife's testimony, sustained the allegations, and upheld the dismissal.

The Department's New Disciplinary Regulations

In our last report, we discussed the changes the department made to its employee discipline policies with emergency regulations. The Office of Administrative Law approved these regulations in September 2022. In our prior report, we noted the new regulations include significant changes to the penalty ranges within the disciplinary matrix, which allowed for significantly longer suspensions and salary reductions. The new matrix also allowed for a temporary demotion for a fixed term of 12 to 24 months. In cases we monitored, hiring authorities imposed longer periods of salary reduction or suspension in four cases and imposed a temporary demotion in one case. We concurred with the hiring authority's penalty determinations at the investigative and disciplinary findings conference in all of those cases.

Figure 4. A Comparison of the Department's Old Matrix With Its New Matrix

33030.16 Employee Disciplinary Matrix Penalty Levels			3392.4 Employee Disciplinary Matrix		
(a) Employee Disciplinary Matrix Penalty Levels:			(a) 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	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 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	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 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	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.
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 (left) and Section 3392.4 (right).

The department also added three new subsections in the disciplinary matrix related to body-worn cameras. During the current reporting period, hiring authorities sustained allegations related to the misuse of body-worn cameras in nine cases we monitored and closed. Two of those cases involved officers who intentionally had failed to start, shut off, or disabled their body-worn cameras. Dismissal is the presumptive penalty for this type of misconduct. These two cases are discussed below:

OIG Case No. 21-0041777-DM

An officer held one hand over an incarcerated person's mouth and the other hand around the incarcerated person's neck. The officer kned the incarcerated person in the head, called the incarcerated person a derogatory name, and turned off a sergeant's body-worn camera. The officer also failed to report that he had kned the incarcerated person and lied during an interview with the Office of Internal Affairs. The hiring authority served a notice of dismissal to the officer. However, the officer resigned before the disciplinary action took effect. The hiring authority placed a letter in the officer's official personnel file indicating he had resigned pending disciplinary action.

OIG Case No. 22-0041938-DM

Four officers failed to keep their body-worn cameras activated during a use-of-force incident and failed to report the use of force they had observed. One of the officers intentionally turned off his body-worn camera. The four officers failed to assist other officers while an incarcerated person resisted on the ground. One of the officers made a derogatory comment to the incarcerated person, and another officer laughed at the comment. Four officers falsely reported they did not observe force, and three of the officers lied during their interviews with the Office of Internal Affairs. The hiring authority determined dismissals were the appropriate penalties for the officers. However, one officer retired before the investigation was completed, and three officers resigned before their disciplinary actions took effect. The hiring authority placed letters in each of the officers' official personnel files indicating they had retired or resigned pending disciplinary action.

We agreed with the hiring authorities' determinations in eight of the nine cases we monitored and closed involving the misuse of body-worn cameras. The case in which we disagreed with the department is discussed below:

OIG Case No. 21-0040744-DM

An officer failed to turn on his body-worn camera and wear it in the proper location during a use-of-force incident. The hiring authority sustained the allegations and issued a letter of instruction. We disagreed with the hiring authority's decision to issue a letter of instruction to the officer because he had violated two policies regarding the use of the body-worn camera.

The new regulations also made a significant change to the discipline imposed in cases involving employees who used or possessed controlled substances that were not medically prescribed. Under the old disciplinary matrix, the presumptive penalty for this type of misconduct was dismissal. However, the new regulations changed the

presumptive penalty to a lengthy salary reduction or a suspension. The new regulations also added an aggravating factor that applies when the would-be disciplined employee is a supervisor or peace officer. During the current reporting period, we monitored and closed five cases with allegations that employees used or possessed controlled substances. Hiring authorities sustained these allegations in four of the five cases and dismissed the employees. Two of these cases included allegations of dishonesty. We agreed with the hiring authorities' decisions in all five cases.

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Critical Incidents

The OIG’s Discipline Monitoring Unit assesses the department’s response to critical incidents such as uses of deadly force, unexpected deaths, and hunger strikes. In the six-month reporting period of July through December 2022, the following critical incidents required OIG notification:

Figure 5. The OIG’s Criteria for Responding to Critical Incidents During the Reporting Period From July Through December 2022

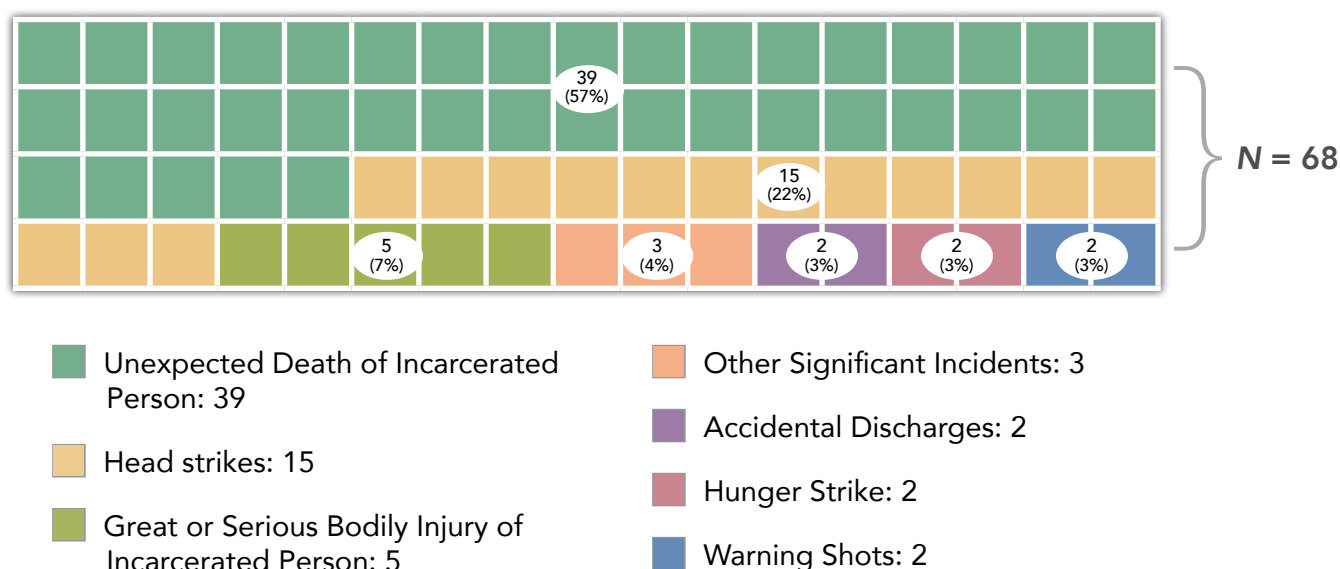
- Any staff use of deadly force (any use of force that is likely to result in death, including any discharge of a firearm, including warning shots and unintended discharges) or if an inmate is struck in the head with a baton or impact munitions regardless of the extent of injury.
- Death of an inmate 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 we do monitor serious incidents that are more likely to give rise to allegations of misconduct. The OIG reviews critical incidents by evaluating potential causes, assessing the department's response, and determining 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 typically monitors the case.

During the current reporting period, the OIG monitored and closed 68 critical incident cases (Figure 6, below). Hiring authorities identified potential employee misconduct in 13 of those incidents and made referrals to the Office of Internal Affairs in all of them. One of the 13 incidents involved an officer's unintended discharge of a firearm. The other incidents concerned the death of an incarcerated person due to COVID-19, two homicides, four suicides, two use-of-force cases involving strikes to an incarcerated person's head, a use-of-force case that resulted in serious bodily injury to an incarcerated person, one attempted suicide by a ward, and one vehicle crash that resulted in serious bodily injury to an incarcerated person. The Office of Internal Affairs opened disciplinary cases for all 13 incidents, and the OIG is monitoring 11 of them.

Figure 6. Distribution of Incidents That Occurred During the Reporting Period From July 1, 2022, Through December 31, 2022



Note: Percentage may not sum to 100% due to rounding.

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

The hiring authority made timely referrals in six of the 13 referrals. In 10 of the 13 referrals, video-recorded evidence assisted the hiring authorities in identifying potential misconduct. The hiring authority referred potential misconduct to the Office of Internal Affairs within 45 days in four of those 10 cases. In the other six, the hiring authority was able to complete the referral to the Office of Internal Affairs shortly after departmental time frames require. Video-recorded evidence assisted hiring authorities in identifying and ruling out allegations of misconduct, and expedited the referral for potential misconduct to the Office of Internal Affairs.

One significant incident we monitored occurred in January of 2022, in which correctional staff at a fire camp housed an incarcerated person in a transportation van overnight for more than 12 hours. The temperature outside fell as low as 40 degrees Fahrenheit. The Office of Internal Affairs' Allegation Inquiry Management Section conducted an inquiry of the allegation. During the inquiry, it was discovered that, under the direction of a lieutenant, a sergeant and two officers detained the incarcerated person in waist restraints and isolated the incarcerated person in a van after suspecting the person had violated policy. The officers allegedly housed the incarcerated person in the van because the camp did not have holding cells. The sergeant told an investigator that the officers provided meals to the incarcerated person and allowed him to leave the van to use the restroom.

The department defended the use of the van by asserting there were low staffing levels at the time, that the distance to another suitable facility was long, and that the nearest prison would not accept the incarcerated person due to COVID-19 precautions. However, the officers did not contact a prison to find out whether it would accept the incarcerated person. The department transported the incarcerated person to a prison the following day.

The OIG recommended referring the matter to the Office of Internal Affairs for an investigation. However, because the warden had claimed this was a common practice at the camp and because the incarcerated person had been provided breaks for eating and using the restroom, the hiring authority provided training to those involved and revised local policy. The focus of the training was that when staff face an issue not covered by policy, they should notify the administrative officer of the day, chief deputy warden, and warden. After we discussed the case with the warden, the prison updated a local policy to specifically allow for the use of transportation vans as temporary holding cells if other holding cells are not available.

The OIG does not agree with the practice or policy of using a transportation van as a holding cell. Furthermore, these rudimentary remedial measures would not be necessary if the department made holding cells available at camps in the first place. The OIG recommends

that the department install and maintain holding cells at all conservations camps. Although it is understandable that the department would sequester incarcerated persons following a suspected rules violation, keeping an incarcerated person in a van overnight, especially in cold weather, is a dangerous and inhumane practice that could be avoided entirely by installing holding cells. The department put the incarcerated person's health at risk, unnecessarily risked an escape, and risked civil liability.

We raised our concern with a warden from a second prison that manages fire camps who told us his prison was in the process of obtaining cost estimates for the installation of holding cells and issued a directive not to use vans as holding cells. The OIG encourages the department to implement the OIG's recommendation to avoid similar incidents occurring in the future.

The Department Unnecessarily Delayed Dismissing Employees Who Committed Serious Misconduct

We found that the department has unnecessarily delayed dismissing employees who were caught committing serious misconduct, including but not limited to criminal off-duty conduct. In many of those cases, the department placed employees on paid leave during the undue delays. Below are two examples from this reporting period. These are not isolated instances of delay; in previous reports, we have highlighted delays at all phases of the disciplinary process.

OIG Case No. 22-0043377-DM

Outside law enforcement arrested an off-duty officer who had attempted to meet a decoy, a 14-year-old girl for sex. The hiring authority placed the officer on paid leave two days later, but did not refer the case to the Office of Internal Affairs for more than two months. The Office of Internal Affairs initially decided to return the case to the hiring authority without an investigation despite the OIG's and the department attorney's objections. Although the Office of Internal Affairs reversed its decision 12 days later and approved an interview of the officer, it delayed the interview for more than two months before attempting the interview and finding that the officer would not cooperate. The attempted interview took place five months after the arrest. The special agent added an allegation of insubordination, but did not forward the final report to the hiring authority for another 30 days, even though the report was only four pages long. The hiring authority eventually served the officer with a dismissal action. The officer resigned a week later. By the time the process was complete, the officer had remained employed by the department for more than seven months, all while on paid leave.

OIG Case No. 21-0041151-DM

The department delayed dismissing an officer after he was convicted of misdemeanors stemming from an off-duty incident. While arguing with his girlfriend, the officer grabbed his girlfriend by the throat and squeezed tightly. The officer also slapped his girlfriend multiple times and prevented her from leaving her apartment. The next morning, the officer's girlfriend drove to the local police department. The officer followed her in another vehicle and attempted to cut her off as she entered the parking lot. The local prosecutor filed charges against the officer three days later.

On the day the victim reported the crime, the police department called the prison and informed a lieutenant that the police were looking for the officer so that they could arrest him. Even though the hiring

authority became aware of the allegations of domestic violence that day, the hiring authority did not refer the matter to the Office of Internal Affairs for another 18 months. Despite the OIG’s objection, the Office of Internal Affairs referred the case back to the hiring authority without an investigation. The hiring authority took another seven months to process the case and request reconsideration of the decision to deny an investigation. The Office of Internal Affairs finally approved an interview of the officer and submitted a six-page report to the hiring authority two months later. The officer eventually announced his retirement before the hiring authority could serve the dismissal action, more than two and a half years after the department discovered the misconduct.

In contrast, other law enforcement agencies quickly dismiss officers who are caught committing criminal acts. In 2022, the Placer County Sheriff’s Department dismissed a deputy sheriff one week after the deputy sheriff was arrested for driving under the influence while on duty.⁵ In 2022, the San Antonio Police Department, in Texas, dismissed an officer less than a week after he shot a teenager who had been eating a hamburger in a vehicle.⁶ In 2023, the Memphis police department fired five officers within two weeks after a young black man, Tyre Nichols, died following a use-of-force incident.⁷

The department has shown that, in some cases, it can act with the appropriate level of urgency. Using the automatic resignation statute, 11 days after learning of the misconduct, the department dismissed an officer who had sexually abused his two minor daughters.⁸ Likewise, the department nonpunitively dismissed an officer who had attempted to kidnap two children approximately two months after it discovered the misconduct.⁹ We recommend that the department act with this same level of urgency and without undue delay in all similar cases.

To address this issue, the OIG recommends that the department implement new policies and procedures to conduct investigations swiftly when an officer allegedly commits serious criminal misconduct. This recommendation applies to cases in which an employee commits serious off-duty criminal conduct investigated by an outside agency, or when an employee is caught committing acts of bribery, conspiracy, or sexual misconduct with a person in the custody or under the supervision of the department. We recommend that the department create a policy that facilitates swift and appropriate action in these types of cases. The policy should include the following:

5. “[Sacramento-Area Sheriff’s Deputy Fired, Arrested on Suspicion of DUI While on Duty](#)”; *The Sacramento Bee*, November 21, 2022.

6. “[Texas Officer Fired After Shooting Hamburger-Eating Teenager](#)”; ABC News, October 7, 2022.

7. “[5 Memphis Police Officers Fired in Death of Tyre Nichols](#)”; CBS News, January 21, 2023.

8. OIG Case No. 22-0042900-DM.

9. OIG Case No. 22-0042931-DM.

- The Office of Internal Affairs must immediately assign special agents to urgently interview subject employees and complete investigative reports.
- The Office of Internal Affairs should assign attorneys to draft disciplinary actions on an expedited basis when allegations are sustained by the hiring authority.
- The department should set expedited deadlines for completing investigative and disciplinary tasks, including but not limited to referring the matter to the Office of Internal Affairs, approving the matter for investigation, holding the initial case conference, conducting interviews, drafting and reviewing investigative reports, holding the investigative and disciplinary findings conference, and drafting and serving the disciplinary action when applicable.

Delays in investigating these cases not only increase costs and liability for the department, but they can also sabotage the case against the officer who committed the misconduct. The longer the delay, the more likely witnesses will become unavailable or unable to recollect what happened. Furthermore, employees are not allowed to refuse to provide a compelled statement in an administrative interview. If the Office of Internal Affairs immediately attempts to interview employees accused of serious misconduct, the department may obtain admissions from employees, or employees may refuse to cooperate, thereby subjecting themselves to prompt dismissal for failing to cooperate with an Office of Internal Affairs' investigation.

We also recommend that the department use the unpaid administrative time-off statute. California Government Code, section 19574.5, allows for agencies to place a State employee on unpaid administrative time off for up to 15 days in matters involving accusations of misappropriation of public funds or property, drug addiction, mistreatment of persons in a State institution, immorality, or acts that would constitute a felony or a misdemeanor involving moral turpitude. A crime of moral turpitude is one that involves dishonesty or moral depravity. The law does not require that the department wait for a conviction to place the employee on unpaid administrative time-off. We recommend that the department consider section 19574.5 when establishing deadlines to complete these cases on an expedited basis without continuing to pay employees who have committed egregious misconduct.

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Recommendations

For this reporting period, we offer three recommendations to the department:

Nº 1. We recommend that the department install and maintain holding cells at all fire camps.

Nº 2. We recommend that the department implement new policies and procedures for quickly dismissing employees who commit serious criminal misconduct. This includes a policy or procedure promoting the use of the unpaid administrative time-off statute.

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

*Semiannual Report
July–December 2022*

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STATE *of* CALIFORNIA
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OIG