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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 2023*



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September 29, 2023

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 37th 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 January 1, 2023, through June 30, 2023.

We assessed the overall performance of the three entities within the department that are 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 three performance indicators, one 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, we introduced a new ratings system. Instead of rating each entity's performance *superior*, *satisfactory*, or *poor*, we rated each entity *sufficient*, *sufficient with recommendations*, or *insufficient*. Overall, the department performed sufficiently in 23 percent of cases and sufficiently with recommendations in 49 percent of the cases we monitored. The department performed insufficiently in 28 percent of cases we monitored. Of the 192 cases we monitored and closed, we rated 45 cases *sufficient*, 94 *sufficient with recommendations*, and 53 *insufficient*. Hiring authorities failed to conduct an inquiry into alleged misconduct and refer matters to the Office of Internal Affairs without undue delay in 26 percent of cases and timely referred matters in 74 percent of cases. We found hiring authorities' overall performance to be either *sufficient* or *sufficient with recommendations* in 82 percent of cases. In this reporting period, we rated the Office of Internal Affairs' performance in administrative cases *sufficient* in 93 cases, *sufficient with recommendations* in 50 cases, and *insufficient* in 26 cases. We found the Office of Internal Affairs' performance in investigating criminal allegations of misconduct to be *insufficient* or *sufficient with recommendations* in 10 of 23 criminal investigations during this reporting period.



We assigned the department's Employment Advocacy and Prosecution Team (EAPT) a *sufficient* rating in 128 cases, a *sufficient with recommendations* rating in 45 cases, and an *insufficient* rating in 19 cases. The single most common criticism of department attorneys was failure to handle the disciplinary process without undue delay. We identified only 12 cases in which department attorneys provided inadequate recommendations to hiring authorities. During this reporting period, we monitored nine cases that were submitted to the State Personnel Board after a full evidentiary hearing, which is one case fewer than the number of cases we monitored in the last reporting period. Of those nine, the State Personnel Board modified the penalty in only two cases. Department attorneys were able to secure dismissals in four of the five dismissal cases taken to hearing.

During this reporting period, administrative misconduct was alleged in 165 cases, including cases in which a full investigation was conducted, the subject of the investigation was interviewed, and the department determined there was enough evidence to take direct action without an investigation. The remaining 27 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,



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) provide 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 (SAIG) 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 can 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 department's 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 to reject 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 for 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 then request a predeprivation hearing, otherwise known as a *Skelly* hearing, which provides the employee with the opportunity to present facts 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, through which 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

As noted in our previous report issued in June 2023, the OIG revamped our performance indicators, questions, and ratings for the January through June 2023 reporting period. There are now three indicators, one for each stakeholder. Previously, there were six performance indicators, two for each stakeholder. Under the previous rubric, we used one performance indicator to rate the stakeholder’s performance at the investigative and disciplinary phases and one indicator to rate the stakeholder’s performance during the preliminary stage of processing cases for the Office of Internal Affairs’ Central Intake Panel. The OIG continues to use standardized assessment questions to assess the three departmental stakeholders. Beginning in this reporting period, we summarize our findings for each stakeholder holistically as opposed to using the six performance indicators based on the stakeholder and the phase of the case. The three indicators we use are listed below:

Indicator 1: Hiring Authority

Indicator 2: Office of Internal Affairs

Indicator 3: Employment Advocacy and Prosecution Team

The OIG also changed its assessment ratings this reporting period by assigning each stakeholder a rating of *sufficient*, *sufficient with recommendations*, or *insufficient* to each applicable indicator, and an overall rating to the case.

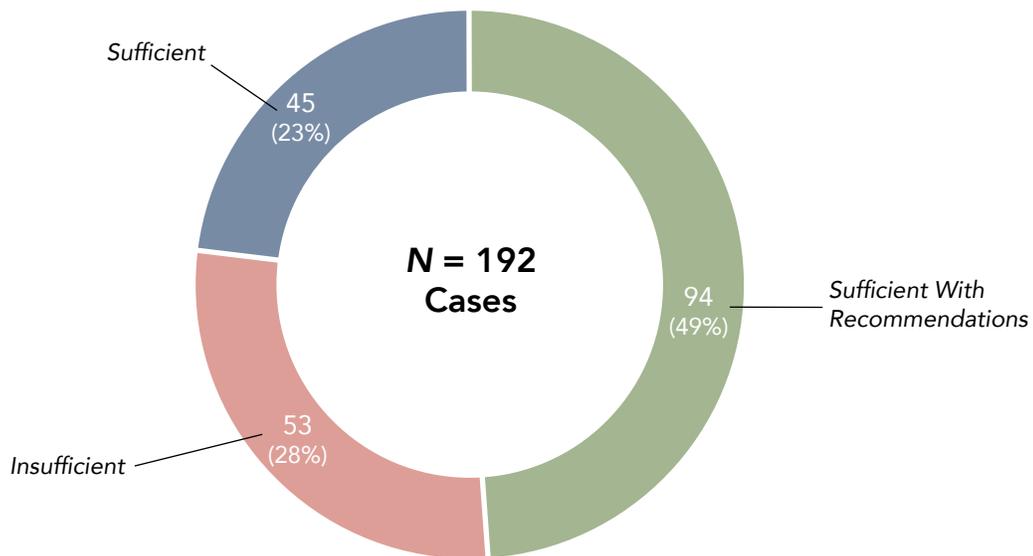
In general, a *sufficient* rating means that the OIG did not identify any significant deficiencies. A *sufficient with recommendations* rating means that the OIG found significant deficiencies, but the deficiencies did not appear to cause a negative outcome for the department or for the cases. An *insufficient* rating means that the OIG found significant deficiencies that caused a negative outcome for either the department or the cases.

Examples of a negative outcome might be that the department allowed the deadline to take disciplinary action to expire before disciplinary action could be taken; failed to dismiss an employee who should have been dismissed; or delayed an investigation or service of a disciplinary action, thereby causing an employee who had committed serious misconduct to spend an excessive amount of time on administrative time off or to be redirected from a post within the secure perimeter of a prison to the mailroom.

The OIG determines an overall rating for each case we monitor after considering the ratings for each indicator. The overall rating of a case is equal to the worst performance indicator. For example, if any of the three performance indicators is rated *insufficient*, we rate the entire case *insufficient*. Likewise, if the lowest rated performance indicator is *sufficient with recommendations*, we rate the entire case *sufficient with recommendations*.

In this reporting period we monitored and closed 192 cases. Of these, 165 involved administrative allegations, and 27 involved criminal allegations. We rated 23 percent of the cases (45 cases) *sufficient*, 49 percent (94 cases) *sufficient with recommendations*, and 28 percent (53 cases) *insufficient*. This means approximately three of four cases were not *insufficient*. On the other hand, it also means about three of four cases had significant deficiencies.

Figure 1. Ratings for Cases the OIG Monitored During the Period From January 1, 2023, Through June 30, 2023



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

The Hiring Authority

Hiring authorities are individuals within the department who are authorized to hire, dismiss, and discipline employees. Wardens are the hiring authorities in most of the cases we monitor. Hiring authorities are responsible for 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.

Hiring Authorities' Performance in Discovering and Referring Allegations of Employee Misconduct Worsened

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 enough 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 contrarily 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.

As previously mentioned, the OIG now assesses hiring authorities' performance overall, rather than separately assessing their performance in referring misconduct or their performance in determining and investigating disciplinary findings. Therefore, there is no rating comparing how hiring authorities performed in this area during this period. However, in the last reporting period, we found that hiring authorities handled the discovery and referral of employee misconduct allegations satisfactorily in 78 percent of cases.

Hiring Authorities Did Not Improve Their Performance in Referring Allegations Without Undue Delay

The OIG monitors both 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 January through June 2023, we found that hiring authorities failed to conduct an inquiry into alleged misconduct and refer matters to the Office of Internal Affairs without undue delay in 26 percent of cases, and timely referred matters in 74 percent of cases. This was a slight decline from the last reporting period, when we found that hiring authorities timely referred allegations in 76 percent of cases. Hiring authorities continued a pattern of referring allegations late in approximately one of every four cases. Of the 53 cases we rated *insufficient*, 15 had untimely referrals of allegations. The following three case examples demonstrate this issue:

OIG Case No. 22-0043718-DM

An officer engaged in an overly familiar relationship with an incarcerated person, and the officer turned off her body-worn camera before talking to the incarcerated person. The hiring authority learned of the alleged misconduct on November 16, 2021, when the Office of Internal Affairs provided a memorandum detailing the allegations. However, the warden significantly delayed referring the matter back to the Office of Internal Affairs for an investigation and did not do so until June 17, 2022, 168 days after policy required. In July 2022, the officer submitted a letter of resignation. After an investigation, the hiring authority sustained the allegations and determined dismissal was the appropriate penalty. However, because the officer resigned before the disciplinary action could be served, the hiring authority placed a letter in the officer's official personnel file indicating she had resigned pending disciplinary action.

OIG Case No. 22-0044341-DM

An incarcerated person submitted a complaint that an officer had made disparaging remarks directed toward an incarcerated person. The officer referred to the incarcerated person as a "weirdo." Although the term may seem innocuous to the uninitiated, it is commonly understood in prison to refer to persons who had engaged in sexually deviant behavior. The hiring authority learned of the allegation upon reviewing the incarcerated person's complaint on October 20, 2021. The incarcerated person initially identified a different officer as having committed the misconduct. However, on November 14, 2021, the department secured body-worn camera footage revealing that the misconduct had been

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*.

committed by the officer who had received counseling related to the incident. The hiring authority referred the matter to the Office of Internal Affairs on August 8, 2022. The department did not identify the correct officer until August 25, 2022, more than nine months later and after the case had been referred to the Office of Internal Affairs. The department could have identified the correct officer earlier by more diligently reviewing the evidence. By the time the hiring authority conducted the investigative and disciplinary findings conference, the deadline to take disciplinary action had already expired by 46 days.

An officer allegedly failed to close a shower gate and failed to contact a supervisor to initiate controlled use-of-force protocols after an incarcerated person had refused to submit to an unclothed body search, which led to a use of force. The department learned of the alleged misconduct on May 6, 2022, and the Office of Internal Affairs' Allegation Inquiry Management Section began an inquiry on May 13, 2022.¹ The Allegation Inquiry Management Section returned the matter to the hiring authority on October 21, 2022, 161 days after initiating the inquiry, and the hiring authority did not refer the matter to the Office of Internal Affairs until April 25, 2023, 186 days after the matter had been returned and just 11 days before the deadline to take disciplinary action. The hiring authority found insufficient evidence to sustain the allegations. The OIG concurred.

The Allegation Inquiry Management Section and Departmental Hiring Authorities Significantly Delayed Processing 17 Cases, Which Caused the Statute of Limitations to Expire Prior to or While the Central Intake Panel Was Processing the Cases

In this reporting period, we continue to observe a 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 a notice of the adverse action is served within three years of 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. During the inquiry, if the assigned investigator determined there was a reasonable belief of misconduct, the investigator was required to end the inquiry and issue a report to the hiring authority with a summary of the evidence gathered and a finding that a reasonable belief of misconduct had occurred.

In the last reporting period, we identified 16 cases in which hiring authorities identified allegations before the deadline to take disciplinary action 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 this reporting period, that number has more than doubled to 37. In 17 cases, the time in which the deadline to serve disciplinary actions had already passed, and in 20 cases, the limitations period was set to expire in fewer than 30 days. The OIG observed that, once again, 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 17 cases that were referred after the deadline had passed for at least one allegation, the Allegation Inquiry Management Section had conducted an inquiry in 12 of them. While the shortest inquiry conducted, of those 12, lasted just one day, five of the inquiries took at least 300 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 12 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 also implement safeguards to ensure that they are able to refer allegations of misconduct as soon as possible to preserve their ability to impose discipline when appropriate.

Hiring Authorities Did Not Improve Their Performance in Making Investigative and Disciplinary Findings and Continued to Perform Below the Standard in Too Many Cases

After the Office of Internal Affairs completes an administrative investigation or an 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, identify the appropriate penalty, and serve 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 the OIG attorney, if one is assigned. The hiring authority then determines whether there is enough 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.

We found hiring authorities' overall performance to be either *sufficient* or *sufficient with recommendations* in 158 of 192 cases, or 82 percent of cases. Compared with the last reporting period, hiring authorities' performance in discovering and referring allegations was satisfactory or better in 144 of 184 cases, or 84 percent of cases, and hiring authorities' performance in determining their findings and processing cases was satisfactory or better in 101 of 152 cases or 66 percent. As explained below, delays in making disciplinary decisions are a persistent and recurring deficiency in hiring authority performance.

Hiring Authorities Frequently Held Untimely Investigative and Disciplinary Findings Conferences

Departmental policy requires that the hiring authority conduct the investigative and disciplinary findings conference no more than 14 calendar days after receipt of the final investigative report.² If 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.

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

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 failed to handle the investigative and disciplinary process without undue delay in 83 of 192 cases. One of the most common types of delay we observed was hiring authorities failing to timely conduct the investigative and disciplinary findings conference. The following are examples of cases in which the department delayed holding these conferences.

OIG Case No. 22-0043297-DM

Outside law enforcement arrested an officer for allegedly crashing his personal vehicle into a building while under the influence of alcohol. The Office of Internal Affairs approved a direct action⁴ and referred the matter back to the hiring authority to impose discipline. Although the officer's blood alcohol concentration was below the legal limit, the officer told outside law enforcement that he made a mistake and could feel the effects of the alcohol. The OIG recommended obtaining a copy of the criminal complaint prior to conducting the investigative and disciplinary findings conference. Despite multiple recommendations to conduct the conference, the conference did not occur until almost seven months after the Office of Internal Affairs had referred the matter back to the hiring authority.

OIG Case No. 22-0044884-DM

An officer abandoned his assigned post and left the prison without permission, failed to ensure that his departure time was accurately documented, and left his assigned post with his ammunition still within the secured perimeter. 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 111 days later and 97 days after policy required.

OIG Case No. 19-0028905-DM

An officer allegedly sexually molested a 15-year-old minor and sent inappropriate and sexual text messages to the minor. The Office of Internal Affairs approved a direct action and returned the matter to the hiring authority to impose discipline. The hiring authority unnecessarily

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 an interview of the employee (or employees) suspected of misconduct.

delayed concluding the investigative and disciplinary findings conference to wait for the criminal case to be resolved. The Office of Internal Affairs completed its investigation and referred the matter to the hiring authority on December 1, 2020. The hiring authority conducted an initial investigative and disciplinary findings conference on December 15, 2020, but decided to wait until the criminal case had concluded before making any findings. The hiring authority later reconsidered, and held the investigative and disciplinary findings conference on June 15, 2021, 182 days after the initial investigative and disciplinary findings conference and 196 days after the Office of Internal Affairs had referred the matter. The hiring authority decided to dismiss the officer. The hiring authority did not serve the disciplinary action until July 19, 2021, 34 days after the decision to dismiss the officer, and four days after policy required. The officer was finally separated from employment on July 27, 2021, more than two and a half years after the allegations against the officer had been discovered. The officer was working in the mailroom between July 14, 2020, and July 19, 2021, and was on paid administrative leave from July 19, 2021, until his dismissal.

The OIG Invoked Executive Review in Two Cases 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 two cases 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. 21-0037756-DM

In one case we elevated, an officer allegedly struck his girlfriend with a vehicle, threatened to shoot her with a firearm, and caused injuries to her hands and wrist by pulling her purse away from her. The officer also lied during an interview with the Office of Internal Affairs by denying that his girlfriend had been trying to get away from him, that he had cut her off in his vehicle and caused her to pull over, that he had caused her injuries, and that he had been the aggressor in the incident. The officer was also convicted of false imprisonment. The hiring authority sustained the allegations, except for poorly worded allegations, and dismissed the officer. The OIG concurred.

After a *Skelly* hearing, the hiring authority decided to remove the dishonesty allegation and reduce the penalty to a 75-working-day suspension. The OIG did not concur. The OIG invoked executive review five times in this case. Four executives agreed with the decision to remove the dishonesty allegation and reduce the penalty. At the fifth level of review, the Secretary sustained all the allegations and dismissed the officer. The OIG concurred. The officer filed an appeal with the State Personnel Board. Before a hearing could be conducted, the department entered into a settlement agreement with the officer after the officer's girlfriend told the department attorney that she did not want to testify and that she had put the incident behind her. The settlement reduced the penalty to a five-month suspension. The OIG did not concur with the settlement.

The hiring authority, the Office of Internal Affairs, and department attorneys performed *insufficiently* during the investigative and disciplinary processes. Initially, the Office of Internal Affairs did not want to perform any investigation into the matter. The OIG elevated the matter to an Office of Internal Affairs manager who concurred with our recommendation to open a full investigation. However, the Office of Internal Affairs significantly delayed conducting the investigation into this case. The department redirected the officer to work in the mailroom shortly after his arrest, but the Office of Internal Affairs did not interview him until six months after the district attorney's office made it clear that it did not object to an interview, and 14 months after the incident. The officer received full pay during the delay.

The department attorney recommended modifying the allegations and penalty despite a preponderance of evidence including video evidence supporting dishonesty. During the executive review process, departmental executives and the department attorney argued they could not sustain the allegation that the officer lied to the Office of Internal Affairs because the interview of the officer had occurred too long after the incident. The department attorney argued this point, but had not made any meaningful effort to recommend that the Office of Internal Affairs interview the officer without undue delay.

The department attorney made other inadequate arguments supporting the modification. The department attorney argued that the special agent conducted a poor interview of the officer. However, the department attorney had been present to make recommendations to the special agent during the interview, and the department attorney had confirmed in a memorandum to the hiring authority prior to the initial investigative and disciplinary findings conference that the investigation was sufficient. The department attorney had not made any reference to the quality of the interview in the memorandum or to its effect on the evidence.

The department attorney also argued to departmental executives that the OIG had been attempting to add a new allegation after the *Skelly*

hearing and that this was outside the customary process. To the contrary, the OIG argued that the department should not remove the dishonesty allegation that the department attorney had already included in the disciplinary action she had drafted.

OIG Case No. 20-0036415-DM

In the other case we elevated, outside law enforcement arrested an officer after he allegedly drove a vehicle while under the influence of alcoholic beverages and collided with a restaurant sign. The officer then fled the scene of the collision and discharged several rounds from a firearm in a residential neighborhood. The hiring authority sustained the allegations and imposed a 10 percent salary reduction for 45 months. The OIG recommended adding an allegation that the officer lied to outside law enforcement by denying he had discharged the firearm. The OIG also recommended the hiring authority dismiss the officer. The OIG elevated the matter to two departmental executives who upheld the hiring authority's decisions. The OIG elevated the matter a third time to the acting secretary of the department who agreed with the OIG to dismiss the officer based on the severity of the misconduct, but did not add the recommended dishonesty allegation. The officer filed an appeal with the State Personnel Board. Prior to the hearing, the department entered into a settlement agreement with the officer in which he resigned in lieu of dismissal and agreed to never seek employment with the department in the future. The OIG concurred with the settlement agreement.

The hiring authority and department attorneys performed *insufficiently* during the disciplinary process. The hiring authority refused to add an allegation of dishonesty despite the body-worn camera evidence capturing the officer lying to outside law enforcement. The department attorney also recommended against adding the allegation, arguing that the officer did not remember firing several rounds from his firearm in a residential neighborhood because he was drunk. The hiring authority and department attorney also did not believe that the sustained allegations involving a hit and run collision and recklessly discharging a firearm in a residential neighborhood warranted dismissal. The department also significantly delayed serving the dismissal action.

OIG Case No. 20-0032973-DM

In the case that EAPT elevated, an officer allegedly lowered a bucket from an observation tower and allowed an incarcerated person to retrieve candy from the bucket. A sergeant attempted to prevent a second officer from reporting the incident, and failed to document and report that the second officer had informed him that the first officer was being overly familiar with the incarcerated person. The sergeant submitted false documentation about the information the second officer had provided to him, and the first officer lied during an Office of Internal Affairs' interview. The sergeant also lied during an Office of Internal Affairs'

interview. The hiring authority sustained the allegations against the sergeant, except the allegation that he had attempted to prevent a second officer from reporting the incident and a poorly worded allegation, and dismissed the sergeant. Furthermore, the hiring authority sustained the allegations against the officer, except for the poorly worded allegations, and dismissed the officer. The OIG concurred. The department attorney disagreed with the hiring authority's findings because EAPT argued it could not prove dishonesty and elevated the matter to the hiring authority's supervisor. At the higher level of review, the hiring authority's supervisor agreed with the hiring authority's findings and dismissed the officer. The officer and the sergeant filed appeals with the State Personnel Board. The department entered into a settlement with the officer and reduced the penalty to a 90-working-day suspension. The OIG did not concur. The State Personnel Board upheld the dismissal of the sergeant. The sergeant filed a writ petition with the Superior Court, which the court denied.

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, it 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 investigation. 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 has a reasonable belief that 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 that 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.⁵ 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;

5. During this reporting period, the Office of Internal Affairs and EAPT assembled a working group to consider changes to the Central Intake process. Although we requested to monitor the working group, the department indicated it would only provide us with notes of the progress. We will report on changes the working group makes to the Central Intake process once implemented.

- 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

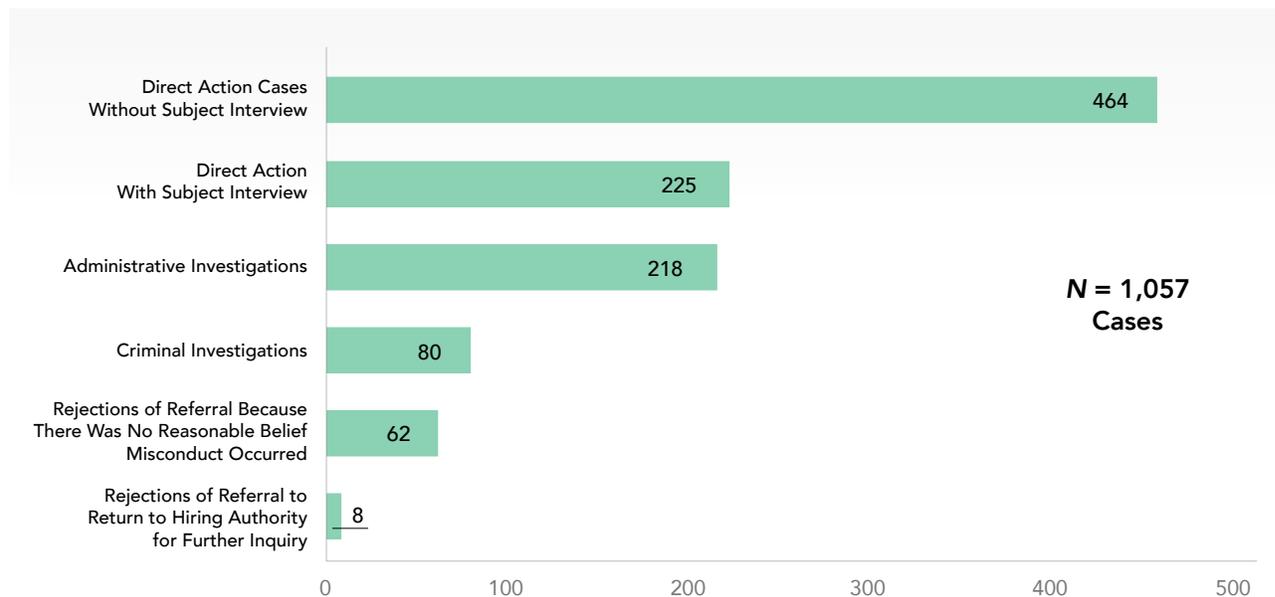
<i>Madrid-Related Criteria*</i>	OIG Monitoring Threshold
Abuse of Position or Authority	Unorthodox punishment or discipline of an incarcerated person, ward, or parolee; or purposely or negligently creating an opportunity or motive for an incarcerated person, ward, or parolee to harm another incarcerated 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 a peace officer, if convicted, from carrying a firearm (all felonies and certain misdemeanors or “wobblers” 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 8-29-23).

In this reporting period, the OIG monitored 90 percent of cases that had been opened by the Office of Internal Affairs that we identified as falling within these criteria. Because the above-listed seven categories typically constitute the most serious cases, the OIG strives to monitor as many of such cases as possible while taking into account staffing and attorney caseloads. On occasion, we monitor cases that fall outside these criteria. However, about 25 years ago, in the class-action lawsuit, *Madrid v. Gomez*, the federal court found, among other things, that department officials had failed to investigate and discipline employees who committed serious misconduct. As a result, we focus our efforts and resources on monitoring cases that meet the above-listed criteria instead of ordinary or low-level misconduct. The OIG is committed to monitoring such cases at a very high level.

In the six-month reporting period of January through June 2023, the Office of Internal Affairs made decisions concerning 1,181 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 179 cases. Of those 179 cases, the OIG found that the Office of Internal Affairs made the wrong decision in 132 of those cases, a significant figure of 74 percent.

Figure 2. Distribution of Case Types Resulting From the Office of Internal Affairs' Decisions During the Central Intake Process From January 1, 2023, Through June 30, 2023



Source: The Office of the Inspector General.

The Office of Internal Affairs' Central Intake Panel Processed Cases Timely and Appropriately in Most Cases

In this reporting period, the OIG found fault with the Office of Internal Affairs' performance during the Central Intake process in 46 of the 192 cases we monitored and closed. In 10 of the cases, we found that the Office of Internal Affairs delayed processing cases. In 36 cases, we found that the Office of Internal Affairs made inappropriate determinations.

We do 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 19 percent of cases that our office monitored during this reporting period. This was an improvement from the last period in which we disagreed in 23 percent of cases. 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 for addressing misconduct allegations without an interview or an investigation. Of the 19 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 occurred.

The Office of Internal Affairs Sufficiently Investigated Deadly Use-of-Force Incidents in Most 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 January and June 2023, the OIG monitored and closed six administrative cases and four 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 reporting period as either *sufficient* or *sufficient with recommendations* in every one of the 10 cases. In the July through December 2022 reporting period, we rated one of 18 deadly force investigations *poor*.⁶ However, the Office of Internal Affairs' performance was not perfect. Below is a summary of a case in which we rated the Office of Internal Affairs' performance as *sufficient with recommendations*.

6. As discussed, in the July through December 2022 reporting period, we used the ratings of *superior*, *satisfactory*, and *poor*.

OIG Case No. 22-0044883-DM

On October 14, 2022, two incarcerated people attacked a third incarcerated person with makeshift weapons on an exercise yard. An officer fired one warning shot and one shot for effect from a Mini-14 rifle. The shot for effect struck the first incarcerated person in the shoulder, stopping the attack. The third incarcerated person died from the injuries inflicted on him during the attack. The Deadly Force Review Board found that 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. Although we found the Office of Internal Affairs' performance in investigating the incident was *sufficient*, we found room for improvement. First, although the special agent asked witnesses questions about their estimated distance from the incident, we felt that more questions should have been asked to determine whether the witnesses were near the line of fire. This is important information in determining whether the shots were fired safely. Second, and perhaps as a result of not asking the questions, we found the final investigative report lacked a description of where officers were standing in relation to the line of fire.

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 in a prison within 120 days. Investigations occurring outside a prison should be completed within 180 days. During the current reporting period, the Office of Internal Affairs did not complete deadly force investigations within 120 days in three of the 10 cases monitored and closed by the OIG. The Office of Internal Affairs' Chief of Field Operations granted extensions in all three of these cases.

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

The department found that employees violated the department's deadly use-of-force policy in two of the six administrative cases we monitored and closed. We concurred with the department's findings that the use-of-force policy had been violated in both cases. One of the cases involved an officer who fled the scene of a collision while under the influence of alcohol, which was discussed earlier in this report. In the other case, the hiring authority demoted a lieutenant, and the OIG disagreed. However, there was also a case in which the department found the employee did *not* violate the deadly use-of-force policy and the OIG *disagreed*. These last two cases are discussed below:

OIG Case No. 22-0044439-DM

An off-duty lieutenant unintentionally discharged a round from a handgun, which caused injuries to himself, his spouse, and another person. The Deadly Force Review Board found that the officer's use of deadly force did not comply with policy. The hiring authority sustained the allegation and determined a demotion was the appropriate penalty. The OIG did not concur with the penalty and recommended the officer be dismissed because the lieutenant was intoxicated at the time of the incident, and the officer's spouse suffered a concussion, which was a serious injury.

OIG Case No. 22-0043588-DM

Three incarcerated people attacked a fourth incarcerated person on an exercise yard. An officer fired one round from a Mini-14 rifle that did not strike the intended target, but stopped the attack. The Deadly Force Review Board found the officer's use of deadly force complied with policy. The hiring authority determined the conduct did occur, but the investigation revealed the officer's actions were justified, lawful, and proper. The OIG did not concur with the finding that the officer had complied with policy. The officer did not fire the Mini-14 rifle in a safe manner because the officer fired the round in a direction where incarcerated people other than the intended target could have been injured.

The Office of Internal Affairs Often Delayed Criminal Investigations

We found the Office of Internal Affairs' performance in investigating criminal allegations of misconduct to be *insufficient* or *sufficient with recommendations* in 10 of 23 criminal investigations during this reporting period. In all but one of those cases, the deficiencies we identified pertained to a lack of due diligence, failure to act in a timely fashion, or delays of some sort. For example, we found delays in requesting administrative investigations, in conducting and completing investigations, and in referring matters to a district attorney. The Office of Internal Affairs could significantly improve in its handling of criminal cases without undue delay. Below are two cases in which we rated the Office of Internal Affairs' performance *insufficient*, which illustrate the issue.

OIG Case No. 22-0042909-CM

A dental assistant allegedly engaged in a sexual relationship with an incarcerated person and conspired with the incarcerated person to bring heroin and SIM cards into the prison. SIM cards are considered contraband because they can be used with mobile phones to facilitate illicit communications. The dental assistant also allegedly engaged in a sexual relationship with a second incarcerated person while the person was incarcerated and after he was released on parole. The alleged criminal misconduct occurred between November 1, 2021, and April 22, 2022. The Office of Internal Affairs conducted an investigation and referred the matter to a district attorney. We rated the case *insufficient* because the special agent did not refer the matter to the district attorney's office until after the deadline to file criminal charges had expired for two allegations of criminal misconduct that occurred in November and December of 2021, and did not complete the investigation until 262 days after the investigation had been opened. We also found that the special agent did not perform any investigative work for almost four months during the investigation. The special agent collected mobile phones from the cell of an incarcerated person as part of the investigation. However, the special agent delayed approximately six months before requesting the mobile phones be examined to determine their evidentiary value (i.e., whether they could be connected with alleged criminal acts). The special agent did not complete the investigation within 90 days of the date the subject was placed on administrative time off pursuant to the department's guideline. Moreover, the special agent did not timely request that an administrative case be opened even though the dental assistant had been on paid administrative leave for serious allegations which, if sustained, were likely to result in a dismissal. The dental assistant was eventually dismissed, but not until more than three months had passed since the Office of Internal Affairs had approved an administrative case.

A youth counselor allegedly smuggled marijuana into a juvenile facility. 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, the Office of Internal Affairs significantly delayed opening an administrative case after the youth counselor had been found in possession of marijuana on facility grounds. The department placed him on paid leave the same day he was found in possession of the contraband substance. However, the special agent assigned to the criminal investigation did not attempt to have the marijuana tested and did not interview two critical witnesses until more than four months after the counselor had been caught with marijuana. One witness refused to cooperate, and the other did not return the special agent's phone calls. The special agent submitted the criminal investigative report to the district attorney almost six months after the start of the criminal investigation. Finally, the Office of Internal Affairs did not approve an administrative interview of the counselor until after the counselor had been on paid leave for seven months.

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

In the last reporting period, we rated the Office of Internal Affairs' performance as *satisfactory* in 86 percent of administrative cases we monitored. In this reporting period we rated the Office of Internal Affairs' performance in administrative cases as *sufficient* in 89 cases, *sufficient with recommendations* in 50 cases, and *insufficient* in 26 cases. The most common reason we rated a case *insufficient* was due to excessive delays in completing the investigation or other delays, including those caused by the Allegation Inquiry Management Section of the Office of Internal Affairs.

Below are two cases that involved *insufficient* performance by the Office of Internal Affairs. In one case, the lack of due diligence by the Office of Internal Affairs prevented that office from securing a compelled interview.⁷ That case is summarized below.

OIG Case No. 22-0042989-DM

An officer allegedly put his hand on the leg of a counselor, put his arm around the counselor, and stood within inches of the counselor and would not move when asked to do so. The Office of Internal Affairs approved an interview of the officer. However, the special agent rescheduled the interview more than once. By the time the interview of the officer was completed, nearly four months had passed since the interview had been approved. Immediately upon completing the interview of the officer, the Office of Internal Affairs determined more interviews were necessary, including an interview of the counselor. After the Office of Internal Affairs approved a full investigation, the special agent learned that the counselor had resigned from the department 56 days before the officer was interviewed, which meant the department could no longer compel the counselor to participate. The Office of Internal Affairs attempted to interview the counselor three months after she resigned, but she declined to participate in an interview. The hiring authority found insufficient evidence to sustain the allegations, in part, because the counselor had not been interviewed.

OIG Case No. 21-0041513-DM

Two officers allegedly failed to continuously monitor an incarcerated person who was being treated at an outside hospital, thereby allowing him to escape; failed to ensure that the incarcerated person's hospital room was secure at the beginning of their shifts; and failed to ensure

7. Department employees may be compelled to answer questions related to their employment or face discipline up to and including dismissal, but only as long as they remain employed by the department.

that the incarcerated person was securely restrained while at the outside hospital. Two additional officers allegedly kicked and punched the incarcerated person after they located him, and a fifth officer failed to report that the third and fourth officers had kicked and punched the incarcerated person.

During the interview of one of the officers, the special agent presented reports of the incident authored by two of the other involved officers for the first officer to review. It was unnecessary for the officer to review reports he did not write. However, having done so, the special agent needlessly informed the officer that the reports were inconsistent before questioning him about the reports. The special agent downplayed the inconsistencies by telling the officer the inconsistencies could be explained. Instead of immediately questioning the officer about the reports, the special agent offered the officer an opportunity to first consult with his representative. This practice provided an opportunity for the officer's representative to coach the officer regarding potential answers to questions. Better practice would have been to allow the officer to review the reports (if at all) with the officer's representative without first telling him 1) there were inconsistencies, and 2) the inconsistencies could be explained. Moreover, the special agent asked leading questions during the interviews. As a result, it was unclear whether the officers truly recalled the details of the incident or answered based on information the special agent had included in his questions.

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The Employment Advocacy and Prosecution Team

The Employment Advocacy and Prosecution Team (EAPT) is the third stakeholder that 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 to hiring authorities. Generally, 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 Could Improve Their Performance by Avoiding Delays and by Making Appropriate Recommendations to Hiring Authorities

During this reporting period, we assigned EAPT a *sufficient* rating in 128 cases, a *sufficient with recommendations* rating in 45 cases, and an *insufficient* rating in 19 cases. Our single most common criticism of department attorneys was their failure to handle the disciplinary process without undue delay. We found department attorneys had failed to handle the disciplinary process without undue delay in 26 percent of cases in which a hiring authority imposed discipline. Our second most common criticism was that department attorneys had failed to make timely entries in the case management system. Department attorneys' poor recommendations to hiring authorities during investigative and disciplinary findings conferences had a significantly negative impact on cases we rated *insufficient*. Cases illustrating some of the above deficiencies are detailed below

Failure to Handle the Disciplinary Process Without Undue Delay

The most common deficiency in this reporting period was department attorneys' failure to handle the disciplinary process without undue delay. The disciplinary process includes consulting at the investigative and disciplinary findings conference, drafting the disciplinary action for service, and attending *Skelly* hearings. Even though it is of the utmost importance to complete these steps, department attorneys delayed the disciplinary process, often by taking too long to draft and provide the disciplinary action to the hiring authority. We found 31 cases in which the department attorney did not handle the disciplinary process without undue delay. Below are two examples:

An officer allegedly sexually harassed a medical technician and subjected employees in a medical clinic to cursing, throwing items, hitting keyboards, and disrupting medical provider lines. The officer allegedly told the medical technician that he did not trust people with red hair, did not believe the medical technician's red hair was real, asked to see her hair roots, threw objects, cursed at her, and showed her photos of his girlfriend in a bathtub. The hiring authority sustained allegations and imposed a 90-working-day suspension. However, the department did not serve the disciplinary action until 114 days after the decision to suspend the hiring authority, even though policy required service of disciplinary actions 30 days after the decision. Even more egregious, the department attorney did not provide the OIG with a copy of the draft disciplinary action for review before providing it to the hiring authority. When the final disciplinary action was served, it contained a material drafting error that significantly misstated the penalty that the hiring authority had intended to impose. As a result, the hiring authority entered into a settlement agreement with the officer modifying the penalty.

OIG Case No. 22-0044804-DM

An off-duty officer allegedly reported for duty while under the influence of alcohol, assumed an armed post, and failed to sign orders for the armed post. Because of the severity of the misconduct, the hiring authority sustained the allegations and dismissed the officer. The department attorney did not provide a draft disciplinary action to either the OIG or the hiring authority until 49 days after the decision to dismiss the officer and, by the time it was finalized, about two months had passed since the hiring authority had made the decision. The officer filed an appeal, but ultimately withdrew it, and the officer was reassigned to the mailroom outside the secure perimeter during the delay. The department should have expedited service of the dismissal action because the allegations against the officer were serious, and he had been reassigned to the mailroom. The department should have expedited service of the dismissal action, especially considering the case involved an officer who had been assigned to handle firearms, but was under the influence of alcohol.

Inappropriate Recommendations to the Hiring Authority

In addition to delaying the disciplinary process, we also found that department attorneys sometimes did not provide appropriate recommendations or legal advice to hiring authorities during investigative and disciplinary findings conferences. Hiring authorities depend on department attorneys to counsel them about crucial disciplinary decisions concerning employees who work under them. Nevertheless, there were 12 cases in which department attorneys made inadequate recommendations. Those inadequate recommendations were impactful because in seven of those cases (more than half), we rated the case as *insufficient*. Below are two examples:

OIG Case No. 22-0045604-DM

An officer allegedly committed acts of domestic violence against his wife, resulting in his arrest by an outside law enforcement agency. The officer allegedly kicked a security guard, used rude and offensive language toward outside law enforcement, was intoxicated in public, and resisted outside law enforcement officers during his arrest. The department attorney failed to recommend that the hiring authority sustain the domestic violence allegation, even though several witnesses confirmed that the officer had pushed or struck his wife. The department attorney also failed to recommend dismissing the officer and inappropriately advised the hiring authority that the officer's prior disciplinary action was too old to be considered by the State Personnel Board. In addition, the department attorney advised against dismissing the officer because the officer was intoxicated, as if that somehow mitigated the officer's misconduct. As a result, the hiring authority did not dismiss the officer. The OIG disagreed because the officer endangered the safety of others by becoming publicly intoxicated to the point that outside law enforcement placed him in a body restraint.

OIG Case No. 22-0044656-DM

A counselor allegedly lied to a lieutenant about meeting with an incarcerated person and failed to confirm that an officer had met with the incarcerated person prior to a classification committee meeting. On July 21, 2021, the counselor also allegedly falsely documented that she had met with the incarcerated person. At the investigative and disciplinary findings conference, the department attorney recommended the hiring authority add and sustain an allegation that the counselor had neglected her duties. The recommendation was unreasonable because the investigation failed to establish that the counselor violated a known duty or that there was a relevant policy which was violated.

Vertical Advocates Can Improve Their Performance When Providing Recommendations to the Central Intake Panel and Making Timely Entries in the Case Management System

Department attorneys generally performed well in providing recommendations to the Central Intake Panel and making timely entries in the department's case management system, but could improve their performance by giving thoughtful and well-considered advice at the Central Intake Panel meeting, and ensuring that the deadline to take disciplinary action is promptly recorded in the case management system. Although these aspects of department attorney work occur relatively early, they are still important because they may have ramifications for the investigation and the hiring authorities' decisions as cases progress.

Vertical Advocates Could Improve in Making Timely Entries in the Case Management System

It is critical that department attorneys immediately assess the statute of limitations and any tolling exceptions so that they can provide 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 in the case management system that included this analysis in 13 cases we monitored. Although this is an improvement over the 20 monitored cases in the last reporting period that lacked timely entries, there is still room for improvement. In four of the 13 cases, the assessment was late, but in nine of the 13 cases, the assessment was not entered at all. Below are two such cases:

OIG Case No. 22-0045614-DM

A sergeant and three officers allegedly threw an incarcerated person on a bench, grabbed him by his hair, and struck his face and neck. The department assigned a department attorney to the case almost seven months after the incident allegedly occurred, yet the department attorney did not make any entry into the case management system confirming the date of the reported incident, the date of discovery, or the deadline for taking disciplinary action. The department attorney forgot to attend one of the investigative interviews and recommended that the special agent remove a relevant exhibit from the report. Ultimately, the hiring authority did not sustain the allegations.

OIG Case No. 22-0046640-DM

An officer allegedly used unnecessary physical force when taking a noncompliant incarcerated person to the ground, and a sergeant allegedly refused to cooperate with an Allegation Inquiry Management

Section investigator. The Office of Internal Affairs approved an investigation. A department attorney was assigned to the case, but the department attorney did not make an entry into the case management system regarding the deadline for taking disciplinary action. The Office of Internal Affairs, EAPT, and the OIG conducted status conferences at 120- and 60-day intervals before the deadline to take disciplinary action. Throughout the life of the case, all stakeholders appeared to be in general agreement about the deadline. However, at the investigative and disciplinary findings conference, the department attorney opined that the deadline was much later than previously thought, but did not elaborate. Timely and consistent case management system entries may have alleviated any confusion.

Vertical Advocates Could Improve in Making Recommendations to the Office of Internal Affairs' Central Intake Panel

One of the more frequent criticisms of EAPT in this reporting period occurred at the inception of the disciplinary process. Department attorneys are tasked with reviewing cases referred by hiring authorities to the Office of Internal Affairs' Central Intake Unit. The Central Intake Unit makes decisions about which cases will be opened and the allegations and the subjects that will be approved. As such, it behooves department attorneys to identify issues that shape the scope of the investigation, to be prepared for the Central Intake Meeting, and to identify appropriate subjects and allegations. We found 12 instances in this reporting period in which department attorneys did not make appropriate recommendations during this process. The following two cases are examples:

OIG Case No. 22-0043200-CM

An officer allegedly engaged in illegal communications with an incarcerated person, had a sexual relationship with the incarcerated person, conspired with the incarcerated person to introduce mobile phones into the prison, and introduced mobile phones into the prison. By the time the matter was considered by the Central Intake Panel, the officer had been redirected to work in the mailroom for one month, and appropriately so. The Office of Internal Affairs approved a criminal investigation, which was also appropriate. However, the department attorney failed to recommend that the Office of Internal Affairs approve an administrative investigation. The OIG recommended that the Office of Internal Affairs open an administrative investigation at the same time as the criminal investigation. Instead, the Office of Internal Affairs only approved a criminal investigation and left an administrative investigation to be approved later, even though the evidence supported a reasonable belief that the administrative allegations were true. The administrative investigation was approved more than seven months later. The officer resigned thereafter.

A parole agent allegedly fled the scene of an accident without immediately contacting outside law enforcement and subsequently had lied to outside law enforcement. At the Central Intake Panel meeting, the OIG recommended the Office of Internal Affairs approve an allegation that the parole agent lied to outside law enforcement because the parole agent allegedly had provided a false name and occupation to investigating officers. Therefore, the OIG believed there was enough evidence to support a reasonable belief that the allegation was true. The department attorney at the Central Intake Panel meeting expressed EAPT's position that the case had been appropriately scoped without adding a dishonesty allegation. The Office of Internal Affairs declined to approve the allegation. However, to EAPT's credit, the department attorney who was later assigned to the investigation identified the dishonesty allegation, and the allegation was added for the hiring authority's consideration. Thereafter, the hiring authority considered but did not sustain the allegation.

Vertical Advocates Continue to Secure Favorable Decisions From the State Personnel Board in Most Cases

In general, we found that EAPT continued to perform well when a settlement agreement was not reached requiring the department attorney to litigate the case before an administrative law judge at the State Personnel Board. During this reporting period, we monitored nine cases that had been submitted to the State Personnel Board for a decision after a full evidentiary hearing had taken place, which is one fewer than the number of cases in the last reporting period. Of those nine, the State Personnel Board revoked the penalty in only two cases. In one case, discussed previously in this report, EAPT had opined the case could not be proven but nevertheless prevailed at the State Personnel Board hearing. Department attorneys were able to secure dismissals in four of the five dismissal cases taken to hearing. Below are two examples:

OIG Case No. 21-0040165-DM

An officer allegedly failed to immediately respond to incarcerated people yelling and kicking their cell doors to get the officer's attention during a medical emergency of an incarcerated person, lied in a report and in a logbook that he had observed a second officer perform incarcerated person counts, and allowed multiple section doors to remain unsecured and open overnight. The officer allegedly lied during an interview with the Office of Internal Affairs when he said he was always alert. The incarcerated person with the medical emergency was pronounced dead. The hiring authority sustained the allegations and dismissed the officer. The OIG concurred. The officer filed an appeal with the State Personnel Board. After a hearing, the State Personnel Board upheld the dismissal. The State Personnel Board determined that the department did not prove that the officer had falsified his report and the logbook because the officer had documented that a second officer had performed a count of incarcerated people, so his entries reflected what had occurred. However, the Board still upheld the penalty. The administrative law judge found that the department had proved that the officer had slept during his shift even though incarcerated people had been yelling for help. The department attorney elicited a response from the officer that showed the officer did not accept responsibility or express remorse for his misconduct.

OIG Case No. 21-0040925-DM

An officer allegedly lied in a rules violation report and falsified a logbook about an incarcerated person's conduct. The first officer and a second officer allegedly failed to ensure that their body-worn cameras had been activated during their entire shifts, and a sergeant allegedly instructed the first officer to wear his body-worn camera even though the first

officer had told him it was inoperable. The first officer allegedly lied during an Office of Internal Affairs’ interview. The hiring authority sustained the allegations against the first officer, except for the allegation that he had failed to ensure that his body-worn camera was activated during his shift, and dismissed the officer. The hiring authority found insufficient evidence to sustain the allegations against the second officer and the sergeant. The OIG concurred. The first officer filed an appeal with the State Personnel Board. Following a hearing, the State Personnel Board upheld the dismissal, citing issues with the first officer’s credibility, in part because the department had impeached the officer’s testimony multiple times.

Critical Incidents

The OIG also 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 January through June 2023, the following critical incidents required OIG notification:

Figure 3. The OIG’s Criteria for Responding to Critical Incidents During the Reporting Period From January Through June 2023

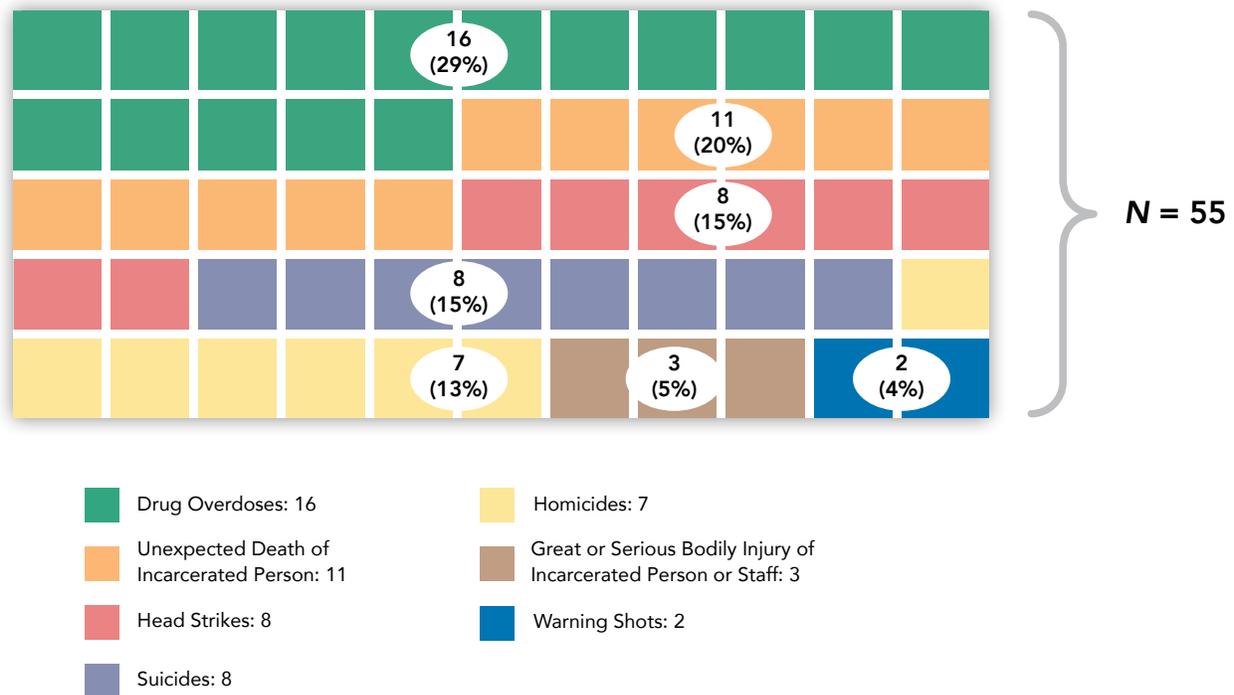
- Any staff use of deadly force (any use of force that is likely to result in death, including any discharge of a firearm, including warning shots and unintended discharges) or if an inmate is struck in the head with a baton or impact munitions regardless of the extent of injury.
- Death of an inmate 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 the department reports to us, 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 involved potential employee misconduct. The OIG may recommend that a hiring authority refer allegations from the 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 55 critical incident cases. Hiring authorities identified potential employee misconduct in 14 of those incidents and made referrals to the Office of Internal Affairs in 10 of them and corrective action, such as a

Figure 4. Distribution of Incidents That Occurred During the Reporting Period From January 1, 2023, Through June 30, 2023



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

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

letter of instruction or on-the-job training, in the remaining four cases. Four of the 10 incidents involved homicides. The other incidents concerned three overdoses or suspected overdoses, two suicides, and a use-of-force case that resulted in serious bodily injury to an incarcerated person. The Office of Internal Affairs opened disciplinary cases for all 10 incidents, and the OIG is monitoring seven of them.

The hiring authority made timely referrals in seven of the 10 referrals. In four of the 10 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 three of those four cases. In the other case, 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 noteworthy incident we monitored occurred in June 2022. An officer saw an incarcerated person attack a second incarcerated person in a housing unit with makeshift weapons (see Photos 1 and 2, next page). The officer fired two less-lethal rounds, which stopped the attack. Five officers and four nurses began life-saving measures for the second incarcerated person, and transported him to a triage and treatment area where paramedics continued life-saving measures until a physician pronounced the second incarcerated person dead. The prison completed an investigation and referred the matter to a district attorney's office for criminal charges. The department's Mortality Review Committee determined that the cause of death was traumatic shock due to assault by sharp object and the manner of death was homicide. The hiring authority did not identify any staff misconduct.

When the incident occurred, there were more than 20 incarcerated people in the dayroom. According to the autopsy report, the attacked incarcerated person was stabbed 82 times. Therefore, it was clear that this was an intense and prolonged attack. The OIG identified potential policy violations because the control-booth officer had not been at his post to provide coverage of the area where the attack occurred. Instead, a floor officer assumed the duties of the control-booth officer. However, no other officer replaced the floor officer's position while he was in the control booth. Another floor officer had been working, but that officer was in the program office rather than providing coverage to the housing unit. Instead of having two officers on the dayroom floor and one in the control booth, one officer was in the control booth, and no officers were on the floor. The OIG recommended that the hiring authority refer the matter to the Office of Internal Affairs for an investigation. We rated the department's handling of the case as *insufficient* because there were not enough officers to prevent and adequately respond to an extended and intense attack that led to the killing of an incarcerated person.

In addition, the department failed to refer the matter to the Office of Internal Affairs for an investigation into potential policy violations such as the control-booth officer leaving his post, the floor officer relieving the control-booth officer, and the absence of officers in the dayroom during the attack.

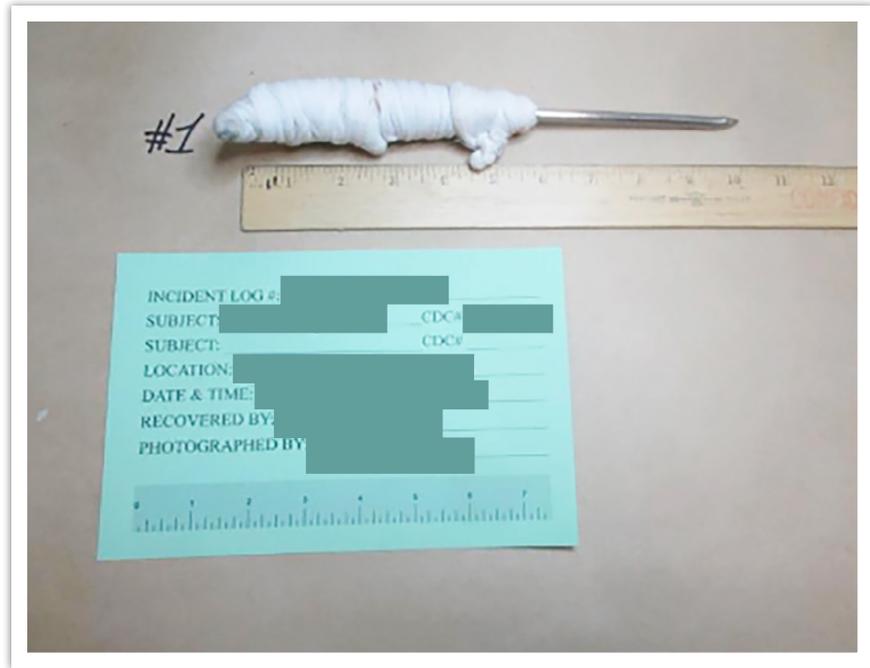


Photo 1. Makeshift weapon (view 1).

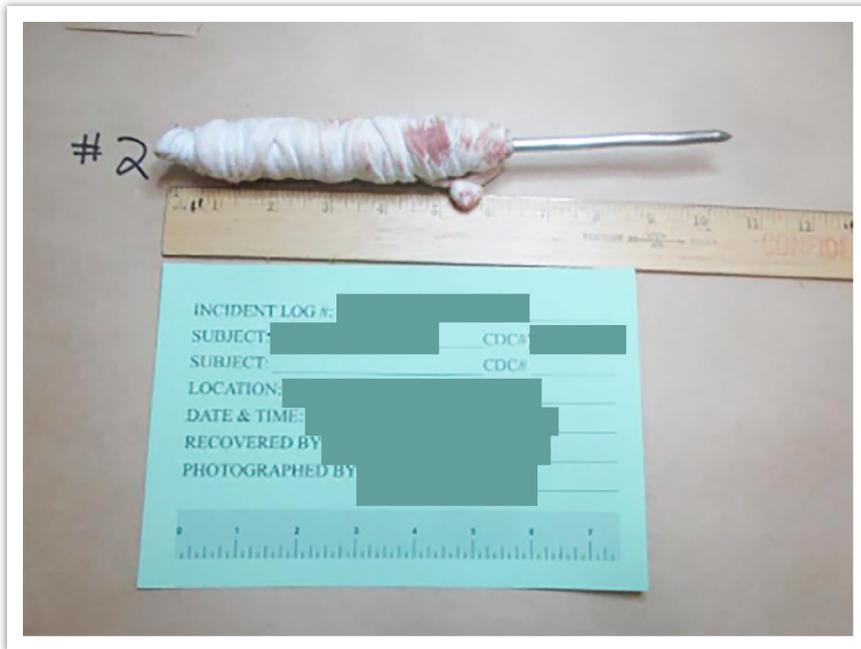


Photo 2. Makeshift weapon (view 2).

The OIG recommends, for the sake of security and safety, that the department ensure there is sufficient staff coverage to prevent these types of incidents.

The OIG Makes Recommendations in Several Ways

As demonstrated throughout this report, the OIG provides recommendations to the department in real time as we monitor cases from their inception to their conclusion. For example, in any given case, SAIGs may recommend that the Office of Internal Affairs approve certain allegations and interview certain witnesses. SAIGs may also recommend that the department attorneys include or exclude certain language in a disciplinary action or in documents filed with the State Personnel Board. Finally, SAIGs may recommend the hiring authority sustain or not sustain certain allegations and impose certain penalties. These examples constitute only a sampling of the types of contemporaneous recommendations and feedback we offer as any case progresses through the investigative and disciplinary phases. Moreover, as mentioned earlier, as part of our new rating method, we have included a rating of *sufficient with recommendations*. When a case merits that rating, we articulate recommendations to the department as part of our rating and assessment that we publish on our website. Doing so allows us to provide contemporaneous recommendations on a monthly basis throughout the reporting period.

We also make recommendations in reports when we identify a systemic problem or serious issue that we believe merits additional attention or scrutiny. As we observe trends across several cases or relating to a specific stakeholder, the OIG may provide recommendations for the department to consider in addressing the issue. We may also provide recommendations pertaining to a single case that may cause issues in the future. In this reporting period, we identified one such issue discussed in the following section.

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The Department Should Draft Disciplinary Actions That Plead Alternative Theories of Misconduct to Avoid Adverse State Personnel Board Decisions

Another issue that arose during this reporting period involved only one case, but may have further-reaching ramifications. A sergeant allegedly instructed two officers to falsify contraband surveillance watch documentation, failed to complete restraint inspections as required, confronted the officers regarding their reporting of the sergeant's failure to complete the restraint inspection, and used a derogatory term directed toward the officers. The hiring authority sustained the allegations, except for a poorly worded allegation, and imposed a 10 percent salary reduction for 24 months. The OIG concurred. The sergeant filed an appeal with the State Personnel Board. Following a hearing, the State Personnel Board dismissed several allegations, but upheld the salary reduction. The sergeant filed a petition for writ with the Superior Court, which the court denied. The sergeant filed an appeal with the Court of Appeal, Fourth District. The Court of Appeal reversed the State Personnel Board's decision on the grounds that the sergeant was denied due process. The Court of Appeal ruled that the department had failed to include the allegations in the disciplinary action that had been sustained by the State Personnel Board.

The Court of Appeal found the disciplinary action did not put the sergeant on adequate notice for the allegation sustained by the State Personnel Board. The sergeant argued that the factual findings which the State Personnel Board adopted after the hearing were not supported by substantial evidence and were significantly different from those alleged in the disciplinary action. The Court of Appeal agreed and concluded that the State Personnel Board had violated the sergeant's due-process rights when it found the sergeant had engaged in different conduct than the department had alleged. Although the department alleged that the sergeant had engaged in discourteous treatment when the sergeant allegedly confronted the officers about reporting misconduct he had committed, the State Personnel Board found that the sergeant had been discourteous under a different factual scenario—that he had confronted the officers because he was upset they had erroneously reported he had committed misconduct.

Whether or not one agrees with the court's analysis and findings, it would behoove the department to anticipate a similar situation arising again in the future, as long as the court's decision remains law. We recommend the department consider drafting disciplinary actions that would allow an administrative law judge to consider multiple theories

and explicitly argue that the alleged misconduct occurred, regardless of the alternative scenario. For example, in the case discussed above, it may be useful to incorporate qualifying language such as “even if (he) had completed the restraint inspection” or “whether or not (he) had completed the restraint inspection,” the conduct against the officers was discourteous, and so forth.

Recommendations

For this reporting period, we offer one recommendation to the department:

- We recommend that the department plead alternative theories in disciplinary actions when appropriate.

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

*Semiannual Report
January–June 2023*

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STATE *of* CALIFORNIA
September 2023

OIG