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OIG | OFFICE *of the* INSPECTOR GENERAL

Independent Prison Oversight

February 2021



SPECIAL REVIEW

*The California Department
of Corrections and Rehabilitation*

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

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Regional Offices

 Sacramento
 Bakersfield
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February 16, 2021

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

Dear Governor and Legislative Leaders:

Enclosed is the Office of the Inspector General's report titled *The California Department of Corrections and Rehabilitation: Its Recent Steps Meant to Improve the Handling of Incarcerated Persons' Allegations of Staff Misconduct Failed to Achieve Two Fundamental Objectives: Independence and Fairness; Despite Revising Its Regulatory Framework and Being Awarded Approximately \$10 Million of Annual Funding, Its Process Remains Broken*. On January 24, 2019, we published a report criticizing Salinas Valley State Prison's handling of incarcerated persons' allegations of staff misconduct; we found that the inquiries it performed into allegations of staff misconduct were mostly inadequate and suffered from a number of weaknesses, including a lack of independence. To address the lack of independence, we recommended the department consider redesigning its process statewide by reassigning responsibility for conducting staff complaint inquiries (referred to in this present report as staff misconduct inquiries) to employees who work outside the prison's command structure. In response, the department submitted a budget proposal to the legislature, requesting \$9.8 million in ongoing additional funding to perform inquiries into incarcerated persons' allegations of staff misconduct through a new unit, called the Allegation Inquiry Management Section (AIMS). In June 2019, the Governor and the legislature approved the department's proposal as part of the State's 2019–20 Budget Act. In turn, the department developed new regulations and procedures for handling grievances involving staff misconduct; it also established AIMS and hired staff. The new process went into full effect on April 1, 2020.

In this present report, we conclude that the lack of independence we highlighted two years ago still persists, even in this new process. Unfortunately, our review, which covers a five-month period in 2020 after the department established AIMS, found that wardens largely avoided referring staff misconduct grievances to the new unit. According to the department's data, incarcerated persons filed 50,412 grievances during the five-month period from April 1, 2020, through August 31, 2020. Wardens decided that 2,339 of these grievances (4.6 percent) actually alleged staff misconduct; however, they chose to refer only 541 of the 2,339 (23 percent) to AIMS. In effect, wardens elected not to refer to AIMS the remaining 1,798 grievances. Ultimately, the lack of referrals undermined AIMS's reason for existence—increasing the independence of the process—and diminished the new unit's effectiveness in making that process more independent. While the department had pledged that AIMS would perform 474 inquiries per month (for a total of nearly 5,700 per year), AIMS opened just 86 inquiries per month (18 percent of the projected volume). Nevertheless, prisons collectively received 468 staff misconduct grievances per month, nearly equal to the volume of inquiries the department had initially projected AIMS was capable of performing. Perhaps contributing to the low rate of referrals is the complexity and subjectivity of the



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

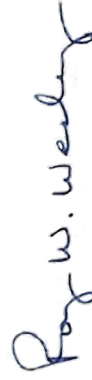
Page 2

referral decision-making process. The department's process provides numerous methods of diverting allegations of staff misconduct away from AIMS, giving wardens ample reasons for retaining such allegations at the local prisons.

Moreover, we are deeply concerned about the low rate at which wardens determined their staff violated policy (regardless of the entity that prepared the inquiry), which raises serious issues about the overall fairness of the process. Most notably, of the 1,293 allegations that wardens resolved between June 1, 2020, and August 31, 2020, wardens found that their staff violated policy in only 22 (1.7 percent). Our experience monitoring the department's formal disciplinary process over the last 15 years leads us to conclude that an exoneration rate of more than 98 out of every 100 instances demonstrates a lack of fairness in the process.

Finally, we found that weaknesses in the department's collection and tracking of staff misconduct data limit its ability to effectively analyze trends or perform meaningful assessments of its process. Despite having numerous information systems that contain data related to the staff misconduct process, the department lacks the ability to produce reports that are capable of identifying the names of all staff accused of misconduct or the names of all staff who were found to have violated policy as well as several other types of critical information. We also suspect the department has severely undercounted—potentially by the thousands—the number of allegations of staff misconduct. Without having these types of reports available or having an accurate count of the universe of staff misconduct allegations, the department has no way of knowing how effective its regulatory changes have been and has no way of measuring its success.

Respectfully submitted,



Roy W. Wesley
Inspector General

Contents

| | |
|---|-------------|
| Illustrations | iv |
| Terms Used in This Report | viii |
| Summary | 1 |
| Introduction | 5 |
| Background | 5 |
| Scope and Methodology | 12 |
| Review Results | 13 |
| Perpetuating Our Concerns About Independence, the Department's Newly Created Allegation Inquiry Management Section Handled Relatively Few Staff Misconduct Grievances; It Should Have Handled Many More | 13 |
| The Department's Process for Determining How to Handle Staff Misconduct Grievances Is Overly Complex and Subjective; These Factors May Explain Why Prisons Dealt With Them Internally Rather Than Refer Them to the Allegation Inquiry Management Section | 23 |
| Without Reasonable Justification, the Allegation Inquiry Management Section Refuses to Investigate Several Serious Types of Staff Misconduct and Allegations That Do Not Meet Several Poorly Conceived Procedural Requirements | 31 |
| Rather Than Perform a Complete Inquiry Into a Staff Misconduct Grievance, Allegation Inquiry Management Section Investigators Abruptly Stop Their Work as Soon as They Form a Reasonable Belief That Staff Misconduct Occurred | 42 |
| The Low Rate at Which Wardens Determined Their Staff Violated Policy Raises Serious Concerns Regarding the Fairness of the Process | 47 |
| Weaknesses in the Department's Data Collection and Tracking Process Limit the Department's Ability to Effectively Analyze Trends and Assess Its Process for Handling Staff Misconduct Grievances | 53 |
| The Department Should Require Incarcerated Persons to Submit Staff Misconduct Grievances Directly to the Allegation Inquiry Management Section to Increase Independence and Fairness | 63 |
| Recommendations | 67 |
| Response to the OIG's Report | 69 |
| Comments Concerning the Response Received From the Department of Corrections and Rehabilitation | 71 |

Illustrations

Figures

| | |
|--|----|
| 1. Excerpt From the California Department of Corrections and Rehabilitation's Training Materials for Employees Concerning the Grievance Process for Incarcerated Persons | 8 |
| 2. Wardens Referred Few Staff Misconduct Grievances to AIMS for Inquiry During the Five-Month Period From April 1, 2020, Through August 31, 2020 | 15 |
| 3. Both the Number of Staff Misconduct Grievances Wardens Referred to AIMS and Those Handled by AIMS Were Relatively Low in Each of the Five Months From April 1, 2020, Through August 31, 2020 | 17 |
| 4. Most Wardens Referred a Relatively Small Percentage of Staff Misconduct Grievances to AIMS During the Five-Month Period From April 1, 2020, Through August 31, 2020 | 18 |
| 5. Types of Allegations Among the Staff Misconduct Grievances AIMS Did Not Accept and Returned to Prisons During the Five-Month Period From April 1, 2020, Through August 31, 2020 | 20 |
| 6. Filled Staffing Levels for AIMS to Conduct Inquiries Were Near or Above Capacity During the Five-Month Period From April 1, 2020, Through August 31, 2020 | 21 |
| 7. The Department's Budget Proposal Demonstrated AIMS Had Ample Capacity to Handle Staff Misconduct Grievances Filed During the Five-Month Period, From April 1, 2020, Through August 31, 2020 | 22 |
| 8. The Department's Staff Misconduct Grievance Process Flowchart | 24 |
| 9. The Office of the Inspector General's Analysis of the Department's Existing Staff Misconduct Grievance Process During the Five-Month Period From April 1, 2020, Through August 31, 2020 | 27 |
| 10. Very Few of the Department's Resolved Claims of Staff Misconduct Resulted in Policy Violations During the Three-Month Period From June 1, 2020, Through August 31, 2020 | 48 |
| 11. Wardens Frequently Overruled Grievance Coordinators When Determining Whether a Grievance Alleged Staff Misconduct, Leading Us to Believe the Actual Number of Staff Misconduct Grievances Was Much Higher Than Reported During the Three-Month Period From June 1, 2020, Through August 31, 2020 | 60 |
| 12. The Department's Identification and Routing of Grievances That Potentially Alleged Staff Misconduct During the Three-Month Period From June 1, 2020, Through August 31, 2020 | 61 |
| 13. Recommended Process for Handling Incarcerated Persons' Grievances Alleging Staff Misconduct | 63 |

Tables

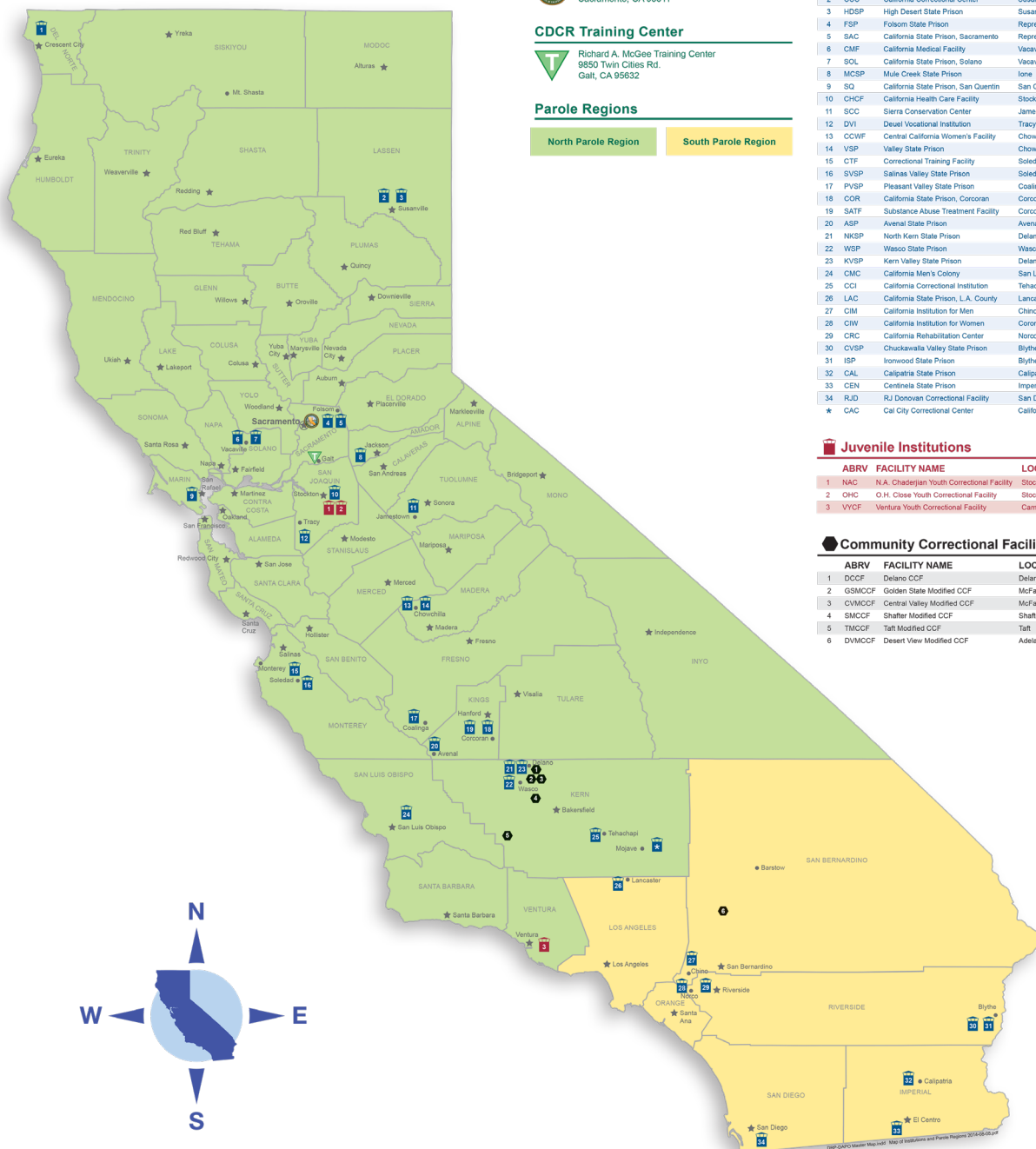
| | |
|--|----|
| 1. The Office of the Inspector General's Analysis of Grievances Potentially Containing Allegations of Staff Misconduct | 62 |
|--|----|

Graphics

| | |
|--|-----|
| California Department of Corrections and Rehabilitation: Institutions and Parole Regions | vi |
| The OIG's Mandate | vii |
| Excerpt From an Incarcerated Person's Staff Misconduct Grievance Form | 38 |



California Department of Corrections and Rehabilitation Institutions and Parole Regions



CDCR Headquarters

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

CDCR Training Center

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

Parole Regions

North Parole Region South Parole Region

Adult Institutions

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

Juvenile Institutions

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

Community Correctional Facilities

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

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

When requested by the Governor, the Senate Committee on Rules, or the Speaker of the Assembly, **the Inspector General** shall initiate an audit or review of policies, practices, and procedures of the department. . . . Following a completed audit or review, the Inspector General may perform a followup audit or review to determine what measures the department implemented to address **the Inspector General's** findings and to assess the effectiveness of those measures.

Upon completion of an audit or review . . . , **the Inspector General** shall prepare a complete written report, which may be . . . disclosed in confidence . . . to the Department of Corrections and Rehabilitation and to the requesting entity.

The Inspector General shall also prepare a public report. . . . Copies of public reports shall be posted on the Office of **the Inspector General's** internet website.

The Inspector General shall . . . during the course of an audit or review, identify areas of full and partial compliance, or noncompliance, with departmental policies and procedures, specify deficiencies in the completion and documentation of processes, and recommend corrective actions . . . including, but not limited to, additional training, additional policies, or changes in policy . . . as well as any other findings or recommendations that **the Inspector General** deems appropriate.

The Inspector General shall provide contemporaneous oversight of grievances that fall within the department's process for reviewing and investigating inmate allegations of staff misconduct and other specialty grievances, examining compliance with regulations, department policy, and best practices. . . . **The Inspector General** shall issue reports annually, beginning in 2021.

— *State of California*
Excerpted from
Penal Code section 6126 (b), (c), (d), and (i)

Terms Used in This Report

| | |
|----------------------------|---|
| AIMS | Acronym for the California Department of Corrections and Rehabilitation's Allegation Inquiry Management Section when referring to the new unit dedicated to conducting inquiries into claims of staff misconduct; the Allegation Inquiry Management System when referring to the data information system related to staff misconduct grievance inquiries (<i>The California Code of Regulations</i> (CCR), Title 15, Section 3484(a)). |
| Appeal | A claimant's written request to the Office of Appeals for review of a decision issued by the institutional or regional Office of Grievances (CCR, Title 15, Section 3480(b)(3)). |
| Claim (or Allegation) | A claim is a single complaint within a grievance arising from a unique set of facts or circumstances. The term <i>allegation</i> is used synonymously with the term <i>claim</i> . Both claim and allegation are assertions without proof or before proving (CCR, Title 15, Section 3480(b)(5)). |
| Claimant | An incarcerated person or a parolee under the custody or control of the department who files a grievance or appeal with the department (CCR, Title 15, Section 3480(b)(6)). |
| Grievance | An incarcerated person's written request to the institutional or regional Office of Grievances for review of one or more claims or allegations (CCR, Title 15, Section 3480(b)(10)). |
| Allegation Inquiry | The process of gathering preliminary information concerning a claim or allegation of staff misconduct (CCR, Title 15, Section 3480(b)(2)). |
| Investigation | The collection of evidence that supports or refutes an allegation of staff misconduct, including criminal investigations, administrative investigations, retaliation investigations, or allegation inquiries (Department Operations Manual, Section 31140.3). |
| Staff Misconduct Grievance | A grievance brought forward by an incarcerated person alleging facts that would constitute one or more allegations or claims of staff misconduct (CCR, Title 15, Section 3480(b)(10), (14)). |
| Staff Misconduct | An allegation or claim that departmental staff violated a law, regulation, policy, or procedure, or acted contrary to an ethical or professional standard, which, if true, would more likely than not subject a staff member to adverse disciplinary action (CCR, Title 15, Section 3480(b)(14)). |

Terminology compiled from *The California Code of Regulations* and the department's operations manual.

Summary

The Office of the Inspector General is required to provide contemporaneous oversight of the California Department of Corrections and Rehabilitation's (the department) process for reviewing and investigating incarcerated persons' allegations of staff misconduct. This report provides a review of the department's new unit, called the Allegation Inquiry Management Section (AIMS), dedicated to performing inquiries (or investigations) into such allegations, called *staff misconduct grievances*, and serves as a progress report on the department's implementation of its new process for handling such allegations. We have established a monitoring team to provide some oversight of the department's new staff misconduct grievance process.

On January 24, 2019, we issued a report titled *Special Review of Salinas Valley State Prison's Processing of Inmate Allegations of Staff Misconduct*, in which we concluded that Salinas Valley State Prison's handling of incarcerated persons' allegations of staff misconduct was inadequate: more than half the inquiries into the allegations we reviewed were performed inadequately because the prison staff who investigated the allegations did not follow sound practices in interviewing, collecting evidence, and writing reports. We also concluded that the reviewers' lack of independence—their bias in favor of coworkers—contributed significantly to the inadequacy of their investigative efforts.

We recommended the department consider a complete overhaul of its process statewide. Specifically, we urged the department to reassign responsibility for conducting staff complaint inquiries (referred to in this present report as *staff misconduct inquiries*) to employees who work outside the prison's command structure. We also urged the department to adopt a regionalized staffing model so that staff members performing inquiries at the prisons are not located at and do not work in facilities with the staff whose actions they investigate.

In response, the department submitted a budget proposal to the legislature, requesting \$9.8 million in ongoing additional funding to perform inquiries into incarcerated persons' allegations of staff misconduct through a new unit, now called AIMS. In June 2019, the Governor and the legislature approved the department's proposal as part of the State's 2019–20 Budget Act. The department later developed new regulations and procedures for handling grievances involving staff misconduct.

Highlights of our review include the following:

We remain concerned about the independence of the department's process, since the vast majority of staff misconduct grievances were handled internally, at the prisons; the department's newly created Allegation Inquiry Management Section handled relatively few staff misconduct grievances even though it should have handled many more. The department formed AIMS to create an independent entity, outside the prisons' chain of command, to investigate possible misconduct committed by staff at the prisons. However, prisons largely avoided using AIMS, instead investigating the vast majority of such complaints internally. Because we also established a new unit to monitor the handling of staff complaints by predominantly monitoring AIMS, the prisons' lack of referrals to AIMS has, essentially, circumvented our oversight process.

- Between April 1, 2020, and August 31, 2020, incarcerated persons filed 50,412 grievances; wardens determined that 2,339 alleged staff misconduct (4.6 percent); wardens referred 541 of the 2,339 to AIMS (23 percent).
- By not referring to AIMS the remaining 1,798 staff misconduct grievances (77 percent), wardens undermined the purpose of the new unit.
- The department's budget proposal, which requested \$9.8 million in additional funding, provided AIMS with 47 new positions, 36 of which were investigators (lieutenants) who were expected to perform about 13 inquiries per month; collectively, the department projected that AIMS would perform 474 inquiries per month and 5,690 inquiries per year.
- In the first five months that AIMS was fully operational, AIMS accepted for inquiry only 86 inquiries per month (18 percent of the projected volume); however, prisons received 468 staff misconduct grievances per month, nearly equal to the volume the department projected AIMS could perform.
- AIMS unnecessarily returned to the prisons many of the staff misconduct grievances wardens referred. Of the 541 staff misconduct grievances wardens referred to AIMS, the new unit returned 113 (21 percent) without an inquiry.

The department's process for determining where to route staff misconduct grievances is overly complex and subjective, diverts staff misconduct grievances from the Allegation Inquiry Management Section, and lacks oversight. The department requires staff to make a complex series of subjective decisions to screen grievances before the grievances reach AIMS to be investigated; at each screening juncture, more grievances are diverted away from AIMS's independent investigative process. All these decisions occur without oversight.

The department defines the term *staff misconduct* as an allegation that staff violated a law, regulation, policy, or procedure, or acted contrary to an ethical or a professional standard that would more likely than not lead to adverse disciplinary action if it were found to be true. Prison staff must apply their subjective interpretations of the term *staff misconduct* to decide where to route incarcerated persons' grievances; to further determine where to route each grievance, wardens must subjectively determine, before any investigation, whether or not an allegation is likely to be true.

AIMS returned various types of staff misconduct grievances without conducting investigations. Despite regulations requiring AIMS to conduct an allegation inquiry into every staff misconduct grievance it receives, AIMS returned without investigation many grievances that fit certain categories it used to screen referrals. The following list presents the types of staff misconduct that AIMS returned uninvestigated, despite having no reasonable justification for doing so:

- Allegations of excessive use of force that staff self-reported, but did not result in serious bodily injury; sexual misconduct or harassment; due process violations during the disciplinary process; disagreement with staff decisions during the disciplinary process; false rules violation reports; and staff misconduct related to the Americans With Disabilities Act's (ADA) reasonable accommodation process
- Allegations filed more than 30 days after the misconduct allegedly occurred
- Allegations about which AIMS overruled the warden's decision that the accused staff would likely incur adverse disciplinary action if the allegations were proven true

Rather than perform a complete inquiry into a staff misconduct grievance, investigators abruptly stop their work as soon as they form a reasonable belief that staff misconduct occurred. AIMS investigators conduct interviews and gather evidence to help wardens determine whether an allegation is likely true; however, when an investigator forms a reasonable belief that any misconduct occurred, the department requires the investigation be terminated—even though it is incomplete—and a report be sent immediately to the warden for review. Yet terminating an inquiry before gathering all evidence and interviewing all witnesses risks leaving undiscovered relevant evidence and may cause allegations to pass uninvestigated.

Fewer than 2 percent of staff misconduct allegations were found to have merit, resulting in a policy violation; the low rate at which wardens determined their staff violated policy and the department's use of ambiguous language to track the results of its reviews raise serious concerns about the fairness and transparency of the process. The department could not

produce a report showing the number of inquiries that resulted in policy violations. We reviewed, as an alternative, a departmental report that showed the number of staff misconduct allegations that wardens had resolved, including those labeled as *approved* (as those would be the only ones capable of including a violation of policy). Of the 1,293 allegations the department resolved between June 1, 2020, and August 31, 2020, only 70 (5.4 percent) were labeled *approved*. Our closer inspection of those 70 approved allegations, however, revealed that only 22 were found to actually contain policy violations, or 1.7 percent of the total 1,293.

Weaknesses in the department's data collection and tracking process limit the department's ability to effectively analyze trends and self-assess its process for handling staff misconduct grievances. The department maintains numerous information systems that capture data regarding the staff misconduct grievance process, but none of these systems can produce some basic management reports that enable managers to perform meaningful trend analyses or assessments of the process. The department cannot produce basic reports necessary to successfully manage the process from a statewide perspective, including any of the following:

- The number or names of staff who have been accused of misconduct by incarcerated persons
- The names of staff found to have violated a policy in connection with a staff misconduct grievance allegation
- Any actions taken against staff to rectify any related policy violations

Because of the department's subjective internal grievance review process, wardens may have misclassified as routine thousands of grievances potentially alleging staff misconduct in just a three-month period, bypassing the allegation inquiry process and raising concerns about underreporting and data collection. Wardens overruled grievance coordinators more than two-thirds of the time to reclassify nearly 2,600 staff misconduct grievance allegations in three months as merely routine. At this rate, the annualized number of staff misconduct grievances may be as high as 10,000 more than reported by the department.

The department should require incarcerated persons to submit staff misconduct grievances directly to AIMS to increase the independence and, ultimately, the fairness of the process. To provide greater independence and consistency, and increase the legitimacy of the staff misconduct grievance process, we recommend, among other things, that the department restructure its grievance routing process so that incarcerated persons submit allegations of staff misconduct directly to AIMS, bypassing prison staff's subjective determinations. The department should also establish a new central intake function specifically for AIMS so that it can consistently process all allegations of staff misconduct arising from this process.

Introduction

Background

California Penal Code Section 6126 requires the Office of the Inspector General to provide contemporaneous oversight of grievances that fall within the California Department of Corrections and Rehabilitation's (the department) process for reviewing and investigating incarcerated persons' allegations of staff misconduct. Generally speaking, this oversight includes our examination of compliance with regulations, departmental policy, and best practices. The law requires that we issue reports annually, beginning in 2021. This report is intended to serve as a progress report covering the department's implementation of its new grievance process along with its creation of a new unit, called the Allegation Inquiry Management Section (AIMS). This new unit, which is part of the department's Office of Internal Affairs, is dedicated to performing inquiries (or investigations) into grievances that contain allegations of staff misconduct.

The Department Received About \$10 Million in Annual Funding, Including 47 Positions, to Improve the Independence and Quality of Its Staff Misconduct Grievance Inquiries, Based in Part on Recommendations From Our 2019 Review of Salinas Valley State Prison

On January 24, 2019, we issued a report titled *Special Review of Salinas Valley State Prison's Processing of Inmate Allegations of Staff Misconduct*. That report concluded, among other things, that Salinas Valley State Prison's handling of allegations of staff misconduct was inadequate and may have resulted in decisions the department could not defend. We noted in that report that more than half of the staff misconduct inquiries we reviewed were performed inadequately because the staff misconduct reviewers—supervisors the prison assigned to investigate allegations of staff misconduct—did not follow sound practices in interviewing, collecting evidence, and writing reports.

Moreover, we concluded that the reviewers' lack of independence contributed significantly to the inadequacy of the prison's investigative efforts. For example, we found that reviewers were frequently peers or coworkers of the accused staff and worked in the same location. The reviewers also displayed signs of bias in favor of fellow staff when conducting staff misconduct inquiries and sometimes ignored corroborating evidence offered by incarcerated witnesses. We also found that reviewers often compromised the confidentiality of the process, which could have exposed the incarcerated persons to retaliation for raising their concerns about staff behavior.

To address these concerns, we recommended the department consider a complete overhaul of the staff misconduct inquiry process statewide. Specifically, we urged the department to reassign the responsibility for conducting staff misconduct inquiries to employees who work outside the prison's command structure. We also recommended the department adopt a regionalized staffing model so that the staff members performing the inquiries were not embedded with the staff whose actions they were tasked with investigating.

In response to our findings and recommendations, the department submitted a budget proposal to the legislature, requesting approximately \$9.8 million in funding and 47 positions in fiscal year 2019–20 and ongoing. Among the 47 positions were 36 lieutenants to perform the inquiries, and six captains, three office technicians, one analyst, and one chief deputy administrator to provide supervision, management, and administrative work.¹ These staff would work in a new unit, later dubbed AIMS, within the department's Office of Internal Affairs, with the goal of increasing the objectivity and quality of the department's staff misconduct inquiries. Using the comparative number of staff misconduct grievances the department processed in the 2018 calendar year, the department projected that AIMS would handle approximately 5,690 staff misconduct grievance inquiries per year (or 474 per month). At this rate, each investigator would have to complete approximately 13 inquiries per month. In June 2019, the Governor and the legislature approved the department's proposal as part of the State's 2019–20 budget.

The Department Revised Its Process for Reviewing Incarcerated Persons' Allegations of Staff Misconduct: An Explanation of the Revised Process

In March 2020, the department proposed a new regulatory framework for processing allegations of staff misconduct. Generally, the new framework was supposed to move the responsibility for performing inquiries into these allegations away from staff working at the prisons and delegate that responsibility to staff working in AIMS.

In this new process, incarcerated persons file grievances by dropping them in collection boxes located in their housing units and at other locations throughout the prison.² Each day, a prison staff member collects the grievances from all the prison's lockboxes and provides them to an analyst in the prison's Office of Grievances. The analyst reviews and logs each grievance, then passes the grievances to the prison's grievance coordinator. The grievance coordinator reviews each grievance and separates out the grievances he or she believes contain allegations of staff misconduct from the routine grievances that do not contain

1. Throughout this report, we refer to the lieutenants who conduct staff misconduct inquiries for AIMS as investigators.

2. Prior to June 2020, incarcerated persons filed *appeals*. That term has been replaced with *grievances*.

allegations of misconduct. The grievance coordinator provides the set of grievances he or she believes allege staff misconduct to the prison's reviewing authority (either the warden or chief deputy warden³), who then determines whether the grievances officially contain allegations of staff misconduct. The department's regulations provide the following two-part definition to guide grievance coordinators, wardens, and other departmental staff in determining whether to classify a grievance as a staff misconduct grievance:⁴

Staff misconduct means an allegation that

1. departmental staff violated a law, regulation, policy, or procedure, or acted contrary to an ethical or professional standard,
2. which, if true, would more likely than not subject a staff member to adverse disciplinary action.

When an allegation meets both of these parameters, departmental regulations require the warden to refer the grievance to the Office of Internal Affairs. The particular unit within the Office of Internal Affairs that should receive the grievance depends on whether the grievance provides sufficient information to establish a reasonable belief that the alleged misconduct occurred. If so, the warden must refer the grievance to the Office of Internal Affairs' Central Intake Unit, requesting either a formal investigation or permission to take adverse action without additional investigation. If not, the warden must refer the grievance to the Office of Internal Affairs' AIMS, requesting an inquiry. The department's regulations mandate that wardens refer all staff misconduct grievances to one of these two units in the Office of Internal Affairs; the unit must investigate the allegations:⁵

1. [If] the claim warrants a request for an allegation inquiry [it] shall be referred to the Office of Internal Affairs, Allegation Inquiry Management Section. An allegation inquiry **shall be conducted** whenever the claim meets the definition of staff misconduct but the [warden] does not have a reasonable belief that the misconduct occurred. *[emphasis added]*
2. [If] the claim warrants a request for a formal investigation [it] shall be referred to the Office of Internal Affairs, Central Intake Unit. A formal investigation **shall be conducted** whenever the claim

3. Throughout this report, we use the term *warden* to refer to the *reviewing authority*.

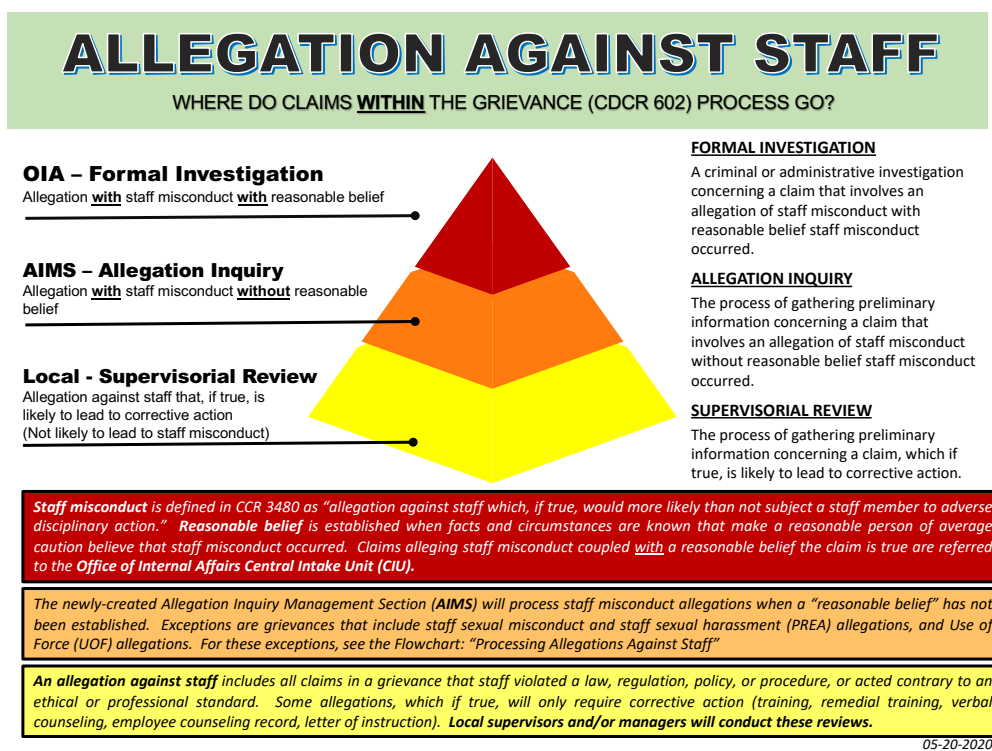
4. *The California Code of Regulations* (CCR), Title 15, section 3480(b)(14), "Implementation Date and Definitions."

5. CCR, Title 15, section 3484(a), "Allegations of Staff Misconduct."

meets the definition of staff misconduct and the [warden] has a reasonable belief that the misconduct occurred. *[emphasis added]*

When a grievance does not contain an allegation that qualifies as staff misconduct, wardens assign that grievance to supervisory staff at the prison for a review. The department provides a handout to staff to explain these different processes (see Figure 1).

Figure 1. Excerpt From the California Department of Corrections and Rehabilitation's Training Materials for Employees Concerning the Grievance Process for Incarcerated Persons



Source: The California Department of Corrections and Rehabilitation.

The department chose to exempt several types of claims from being referred to AIMS, instructing prison staff to retain the following staff misconduct allegations at the prison:

- Unnecessary or excessive use of force that was reported by staff but did not result in serious bodily injury
- Sexual misconduct or sexual harassment against an incarcerated person
- Staff involvement in due process violations during the disciplinary process

- Disagreement with staff decisions during the disciplinary process
- Issuance of false rules violation reports
- Staff misconduct in connection with the Americans With Disabilities Act's (ADA) reasonable accommodation process

When AIMS receives a staff misconduct grievance referral from a prison, AIMS staff first review the grievance to determine whether it possesses any of the following characteristics:

- The claim falls within any of the six categories of misconduct that prison staff are instructed to retain for handling at the prison
- The claimant filed the grievance more than 30 days after the alleged misconduct occurred
- The staff at AIMS disagrees with the warden's determination that the allegation meets the definition of staff misconduct
- The claim is not specific enough to be investigated
- The claim of staff misconduct did not have a material adverse effect on the claimant
- The claimant is refusing to cooperate with the department's attempts to obtain additional information
- The claim concerns harm to a person other than the person who signed the grievance
- The claim of staff misconduct was committed by staff not employed or under the control of the department
- The claim duplicates a claim that has already been filed

If a grievance meets any of these criteria, AIMS does not accept the grievance, returning it to the prison without performing an inquiry or investigation. The warden must then decide how prison staff will address the incarcerated person's allegations.

When AIMS accepts a staff misconduct grievance, it assigns the grievance to an investigator, who performs an *allegation inquiry* into the allegations contained in the grievance. During the inquiry, the investigator performs interviews and gathers records and physical evidence that may prove or disprove the allegations. In essence, the investigator performs an investigation. At the conclusion of this activity, the AIMS investigator prepares a report summarizing the evidence gathered during the inquiry. The report does not offer a judgment concerning the guilt or innocence of the accused staff; it merely recounts the evidence gathered.

Although the regulations are silent regarding what AIMS should do with the completed inquiry report, we have observed that the inquiry report is then returned to the warden of the corresponding prison, who decides whether or not the staff member likely committed the alleged acts. If the warden believes the evidence establishes a reasonable belief that the staff member engaged in misconduct, the warden returns the inquiry report to the Office of Internal Affairs, this time to the Central Intake Unit. The Office of Internal Affairs' Central Intake Unit then reviews the referral and takes one of three actions: (1) if the Central Intake Unit concludes there is sufficient evidence to sustain the allegations by a preponderance of the evidence, it will authorize the warden to take adverse action against the subject employee without further investigation; (2) if the Central Intake Unit concludes there is a reasonable belief that misconduct occurred, it will approve and open a formal investigation into the allegation (or a subject-only interview); or (3) if the Central Intake Unit concludes there is no reasonable belief that misconduct occurred, it will reject the request to open an investigation and return the report to the warden.

We Established a Monitoring Team to Provide Some Oversight of the Department's New Staff Misconduct Grievance Process

Soon after the legislature approved the department's nearly \$10 million budget request, it also augmented our authority, requiring that we begin providing contemporaneous oversight of the department's process for reviewing and investigating staff misconduct grievances. In response to this broadened statutory authority, we established a Staff Complaints Monitoring Team composed of five positions. To date, our staff have monitored the department's implementation of AIMS and observed several of AIMS's inquiries. We began our formal monitoring of AIMS's investigative activities on January 1, 2021. We are mandated to issue public reports summarizing our monitoring activities in this area just as we publish reports summarizing our monitoring activities of the department's disciplinary and use-of-force review processes. We are also developing a data dashboard, which we plan to publish and regularly update on our public-facing website to provide the public a better understanding of AIMS's progress and the quality of its inquiries.

Differences Between an Inquiry and an Investigation

From our experience working with various professional oversight entities from around the country, investigative entities often interchangeably use the words *inquiry* and *investigation* to mean *an examination or the attempt to determine the facts of an event or situation*. In fact, the definition of investigation or to investigate includes the word inquiry as a synonym for investigation, such as in the following example:

Investigation: The activity of trying to find out the truth about something, such as a crime, accident, or

historical issue; especially, either an authoritative inquiry into certain facts, as by a legislative committee, or a systematic examination of some intellectual problem or empirical question, as by mathematical treatment or use of the scientific method.⁶

Indeed, a standard thesaurus we reviewed identified the word *inquiry* as a synonym for *investigation*.⁷

Despite these generally accepted meanings, the department does not use the words interchangeably, instead distinguishing between inquiries and investigations. *The California Code of Regulations*, Title 15, section 3480(b)(2), offers the following definition of an allegation inquiry:

Allegation inquiry: the process of gathering preliminary information concerning a claim or allegation of staff misconduct.

While this passage describes an allegation inquiry as “preliminary” in nature, the department’s definition of an investigation, in its *Department Operations Manual* (31140.3), offers the term “allegation inquiries” as a type of investigation:

Investigation: The collection of evidence that supports or refutes an allegation of misconduct, including criminal investigations, administrative investigations, retaliation investigations, or **allegation inquiries**. [*emphasis added*]

Simply put, the department defines an allegation inquiry as a type of investigation, yet the department also attempts to distinguish between an inquiry and an investigation. In reality, however, whether the activity is called an inquiry or an investigation, staff who conduct either activity generally perform the same actions: they interview relevant parties, gather and examine relevant documentary evidence, and draft a report. They do this to accomplish the same objective: to discover factual evidence to support or refute allegations of staff misconduct. As a result, we do not believe there is a material distinction between these activities; for the department to hold otherwise is to engage in sophistry. Throughout this report, we generally refer to the inquiry work performed by departmental staff as an investigation.

6. *Black's Law Dictionary*, ed. B. Garner, 10th ed. (Thomson Reuters, 2014). Entry: “investigation.”

7. Merriam-Webster's *Thesaurus*, online: <https://www.merriam-webster.com/thesaurus/inquiry>.

Scope and Methodology

For the purposes of this report, we reviewed a number of key documents, including the department's revised regulations and the related training materials used to instruct both staff who conduct inquiries and those who interact with the process at the prisons. We also reviewed the workload analysis prepared by the department as part of its fiscal year 2019–20 budget proposal. In addition, our staff attended various live training sessions held by departmental instructors on the new inquiry process.

We observed, in real time, 24 inquiries conducted by AIMS's investigators. We also reviewed AIMS's intake procedures, including its decision-making process, to determine whether to accept new inquiries or return them to the prison wardens without an inquiry. For the purpose of this review, however, we did not provide an assessment of the quality of those particular inquiries that AIMS conducted. Rather, this report considered how the department's process functioned and whether it had achieved one of its desired objectives: independence.

We obtained and analyzed data from a number of the department's electronic tracking systems, including the offender grievance tracking system, inmate appeals tracking system (now retired), allegation inquiry management system, internal affairs tracking logs (referred to as CDCR Form 2140 spreadsheets), and various COMPSTAT⁸ reports. To better understand the meaning of key data fields, we held numerous discussions with departmental staff regarding the design and implementation of these systems and to gain a better understanding of how the department defines key terms.

We reviewed supporting documentation for all 70 claims involving allegations of staff misconduct that wardens approved from June 1, 2020, to August 31, 2020. The purpose of this review was to fully understand the specific allegations, or claims, the department had approved. We describe the results of this testing on page 49. In addition, we interviewed four wardens to understand their working definition of the term *approved*. We describe these interviews on page 50.

To validate a portion of the department's data tracking for claims that wardens disapproved, we selected a random sample of 40 grievances involving allegations of staff misconduct that the data-tracking system identified as *disapproved*. We matched this conclusion with source records to ensure the data reflected the same conclusion. Without exception, we matched the conclusion to supporting documentation. Finally, we selected a random sample of 15 claims in which wardens disagreed with their staff's initial determinations that the claims related to staff misconduct. We discuss the results of this testing on page 60.

8. COMPSTAT (COMParative STATistics) is a department-wide collaborative database designed for collecting, analyzing, and reporting strategic and operational performance data. Department Operations Manual, Section 101090.5, "Responsibility."

Review Results

Perpetuating Our Concerns About Independence, the Department's Newly Created Allegation Inquiry Management Section Handled Relatively Few Staff Misconduct Grievances; It Should Have Handled Many More

In 2020, the department formed the Allegation Inquiry Management Section (AIMS), a designated entity that functions as an independent unit responsible for reviewing and investigating staff misconduct grievance allegations raised by persons under the department's jurisdiction. The section is unattached to the prisons' chain of command, yet prisons did not use AIMS, instead continuing to investigate the vast majority of such complaints internally and without independent oversight. During the five months ending August 31, 2020, incarcerated persons filed 50,412 grievances, of which the department's wardens determined that 2,339 alleged staff misconduct (4.6 percent).⁹ Of those 2,339 staff misconduct grievances, the wardens referred only 541 (23 percent) to AIMS. In turn, AIMS accepted 428 of the referrals for inquiry and returned the remaining 113 referrals to the wardens without having conducted an inquiry. However, by not referring to AIMS the balance of 1,798 grievances involving staff misconduct (77 percent), wardens effectively avoided using the newly established unit. In tandem with the department's creation of this new section, the OIG also established a new unit, which is mandated to predominantly monitor AIMS in its handling of these staff misconduct grievances. Thus, the prisons' lack of referrals to AIMS has also circumvented our oversight.

Moreover, according to the analysis the department presented in its budget proposal, the department projected that AIMS would conduct 6,259 staff misconduct grievance inquiries each year, requiring about 54 additional staff positions, 39.6 of which included investigator positions. At this staffing level, the department believed that AIMS would be able to conduct about 158 inquiries per investigator per year. Instead of asking for the total projected amount, however, the department adjusted its request to 47 total positions (36 of which would be for investigators). Therefore, at the rate of 158 inquiries per investigator per year and the newly requested staffing level of 36 investigators, its adjusted capacity would equate to 5,690 inquiries per year. This in turn would yield a capacity of approximately 474 inquiries per month, or about 13 inquiries per investigator per month. Nevertheless, in the first five months during which AIMS was fully

9. The figure 2,339 refers to the number of grievances the department determined included at least one claim (or allegation) of staff misconduct. Grievances often contained more than one claim of staff misconduct. On June 1, 2020, the department began including the number of claims in its database known as the strategic offender management system.

operational, the new section opened inquiries into only 86 staff misconduct grievances per month, on average, or about 18 percent of the monthly volume it had pledged to produce. Yet AIMS had the capacity—according to its own analysis—to handle all the grievances statewide that the department designated as staff misconduct grievances during this five-month period.¹⁰ On average, prisons received 468 staff misconduct grievances per month, which is just within the monthly volume of 474 the department had told the legislature that AIMS could perform with a nearly \$10 million annual budget augmentation.

Wardens must decide if a claim (or allegation) meets the definition of staff misconduct:

An allegation that departmental staff violated a law, regulation, policy, or procedure, or acted contrary to an ethical or a professional standard, which, if true, would more likely than not subject a staff member to adverse disciplinary action.

After determining that an allegation satisfies this definition, wardens have three options to consider:

1. Refer the allegation to the Office of Internal Affairs' Central Intake Unit if he or she determined the allegation(s) met the definition of staff misconduct and **has a reasonable belief** that the allegation(s) is/are true.
2. Refer the allegation to the Office of Internal Affairs' AIMS if he or she determined the allegation(s) met the definition of staff misconduct, **but does not have a reasonable belief** that the allegation(s) is/are true.
3. Retain the grievance at the prison if he or she determined the allegation(s) did not meet the definition of staff misconduct or determined the allegation(s) fell into one of six categories excluded from referral to AIMS. Typically, a warden refers the grievance to a locally designated investigator or a supervisor to handle internally.

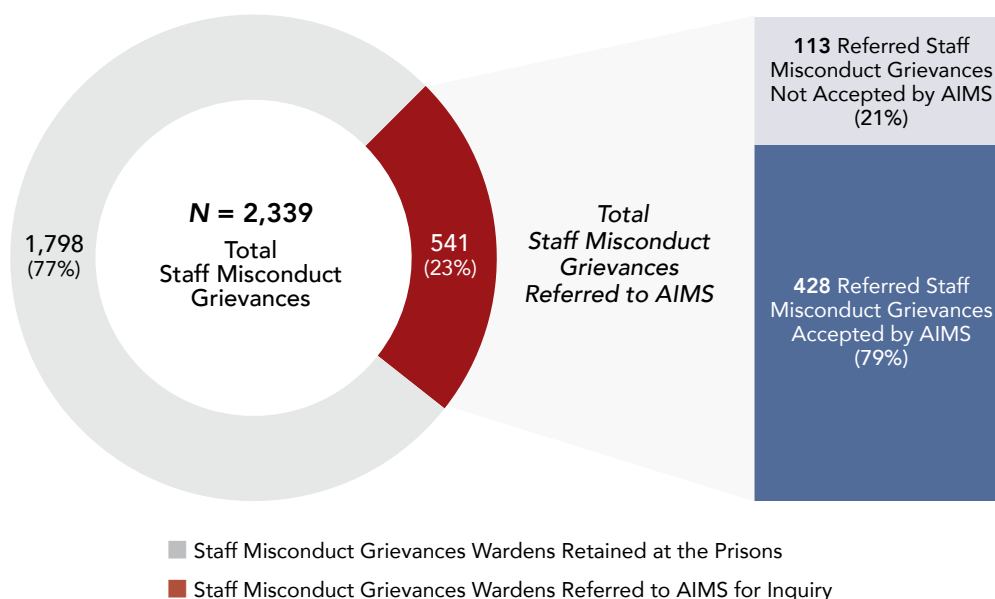
Source: The Office of the Inspector General's analysis of the department's regulations.

Prisons Handled the Vast Majority of Staff Misconduct Grievances Internally, Choosing to Refer Only a Small Percentage of Them to the Department's Allegation Inquiry Management Section

On January 27, 2020, the department formally activated a portion of AIMS. As part of this initial activation, the department directed prisons and parole offices in northern California as well as at the Richard J. Donovan Correctional Facility in San Diego to refer allegations of staff misconduct, also referred to as claims, to the new unit. Approximately two months later, on April 1, 2020, the department fully activated AIMS by including the remaining prisons and parole offices in central and southern California. For the five-month period of April 1, 2020, through August 31, 2020, incarcerated persons statewide filed a total of 50,412 grievances. Wardens designated 2,339 of those grievances as staff misconduct grievances in the various information systems the department used to track incarcerated persons' grievances.

10. As we discuss further on in this report (beginning on page 53), we have significant concerns that the department may have undercounted and underreported the actual number of grievances that include one or more claims of staff misconduct.

Figure 2. Wardens Referred Few Staff Misconduct Grievances to AIMS for Inquiry During the Five-Month Period From April 1, 2020, Through August 31, 2020



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

However, as we show in Figure 2 (above), wardens referred only 541 of those 2,339 staff misconduct grievances to AIMS (23 percent). According to the department's regulatory framework, a warden is supposed to refer a grievance to AIMS when he or she concludes that one or more claims within that grievance has met the definition of staff misconduct, but the warden also does not have a reasonable belief that the misconduct occurred. The text box on the previous page presents the regulatory framework that wardens must follow.

Furthermore, we found no evidence of wardens immediately referring for a formal investigation any of the 2,339 grievances to the Office of Internal Affairs' Central Intake Unit, leading us to conclude that, without having first ordered an inquiry, wardens had no reasonable belief that misconduct had occurred in any of these grievances.

This means that wardens retained the remaining 1,798 (77 percent) staff misconduct grievances for their own local inquiry or supervisory review. We find troubling the sheer number of grievances wardens chose not to refer to either AIMS or the Central Intake Unit. These data suggest—at a minimum—that wardens were reluctant to refer staff misconduct grievances to an entity outside the prison. As we explain later in this report, beginning on page 23, the department's process by which wardens decide whether to refer a staff misconduct grievance to AIMS for an inquiry or to perform the inquiry themselves is overly

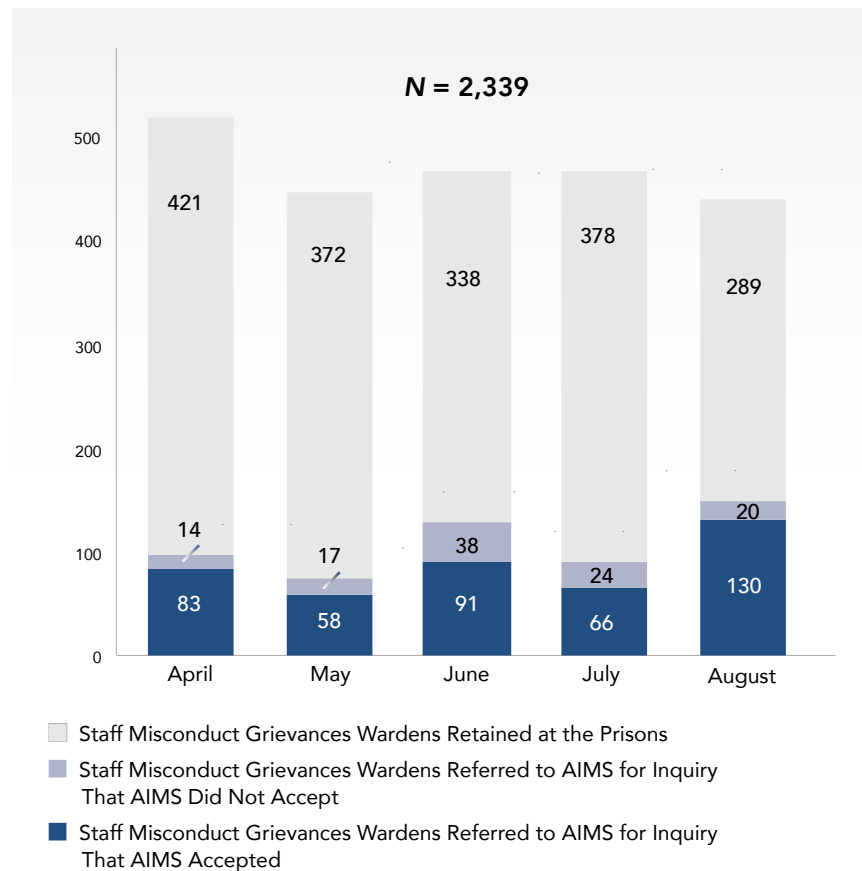
complex and subjective, offering wardens wide discretion in choosing to retain such grievances. However, since the process was intended to divert the handling of such grievances to an outside entity, we believe that the vast majority of these grievances should have been referred to AIMS or to the Central Intake Unit, as the following examples make clear.

In one of these 1,798 staff misconduct grievances that a warden did not refer to AIMS, an incarcerated person made several serious allegations involving unreasonable uses of force, neglect of duty, and retaliation by staff. The individual alleged that staff used unnecessary force on him that required subsequent medical treatment and that staff denied his request for medical attention; that he was pepper sprayed, but staff did not allow him to decontaminate as required by policy; that he was pushed to his knees while staff cut off his personal clothing; and that staff moved him to a different cell nine times in retaliation for filing multiple grievances. All of these allegations, if true, constituted serious violations of law or policy that would more likely than not result in adverse action (potentially as high as dismissal) in the judgment of any reasonable person. The warden decided, however, to avoid referring the matter to AIMS and instead ordered a supervisory review at the prison. Departmental regulations define a supervisory review as the gathering of preliminary information concerning a claim that does **not** involve an allegation of staff misconduct.¹¹ Since these were potentially allegations of serious misconduct that, if true, would warrant significant discipline, the warden's decision not to forward the matter to the Office of Internal Affairs not only defies the regulatory framework, it defies all logic. Staff at the prison performed a supervisory review into the allegations in this particular staff misconduct grievance. The warden reviewed the resulting report and found no policy violations.

In another staff misconduct grievance selected from among the 1,798 staff misconduct grievances handled by prison staff—and not by AIMS—an incarcerated person made several serious allegations of staff misconduct involving excessive use of force, neglect of duty, and making threats. He alleged that staff beat him with specialized batons and pepper-sprayed him; that he was locked in what he called a “miniature cage” for 6.5 hours while being deprived of water, ventilation, and medical treatment; and that staff had threatened him, although he did not explain the nature of the threats. Again, given the seriousness of these allegations and the requirements of the regulatory framework, the warden should have referred this staff misconduct grievance to AIMS. The minimum penalty for significant unreasonable use of force likely to cause injury is a salary reduction or suspension. Despite the incarcerated person's grievance clearly describing misconduct that would, if true, result in adverse action, the warden chose not to refer the staff misconduct grievance to AIMS and instead ordered a local inquiry.

11. CCR, Title 15, section 3480(b)(15), “Implementation Date and Definitions.”

Figure 3. Both the Number of Staff Misconduct Grievances Wardens Referred to AIMS and Those Handled by AIMS Were Relatively Low in Each of the Five Months From April 1, 2020, Through August 31, 2020



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

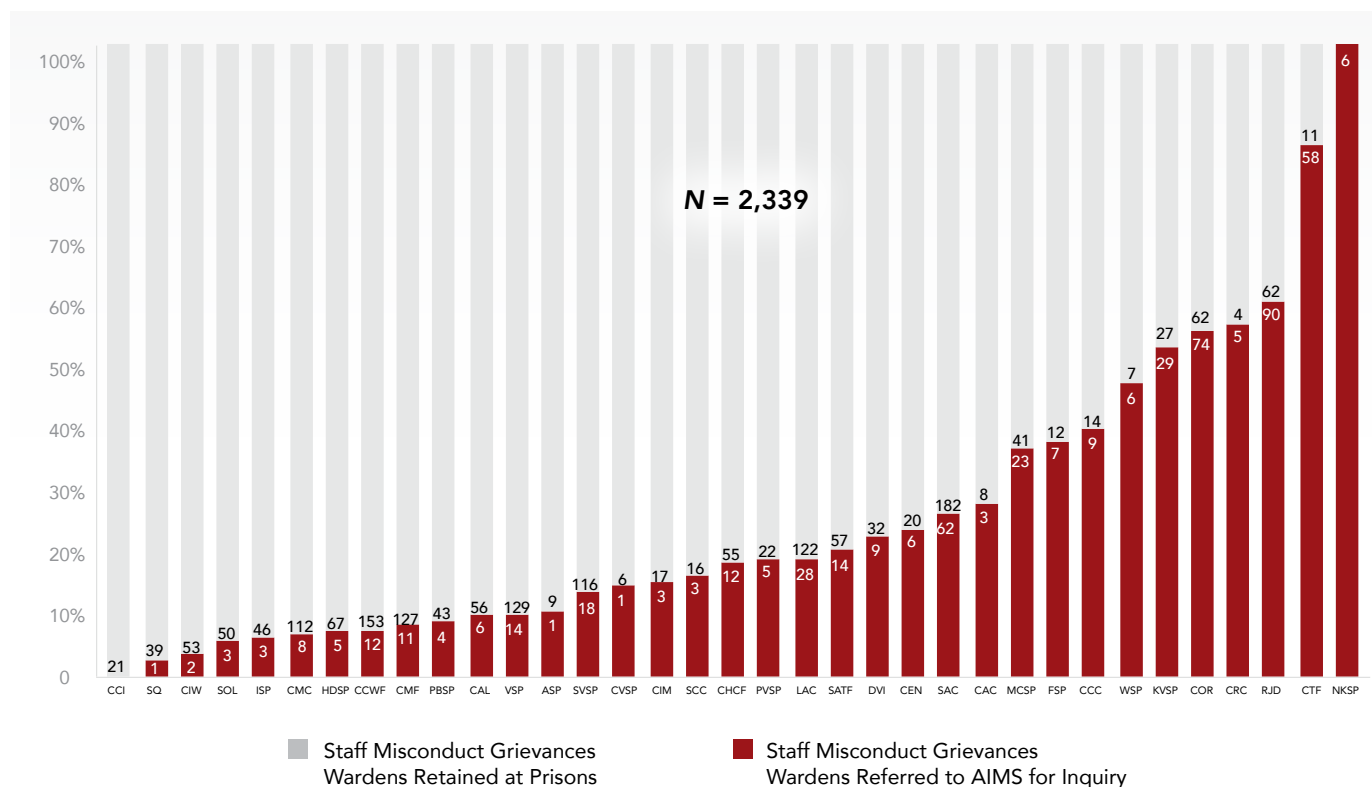
Staff at the prison conducted the inquiry, and the warden found no policy violations.

After first considering the total number of staff misconduct grievances that wardens referred to AIMS during the unit's first five months in operation, we then considered the department's staff misconduct grievance data on a monthly basis, as shown in Figure 3 (see above). We found the number of staff misconduct grievances that wardens collectively referred to AIMS each month appeared relatively consistent, albeit low when compared with the total number of grievances designated as staff misconduct grievances in the department's grievance tracking systems. In April, for example, wardens collectively referred only 97 staff misconduct grievances (19 percent) to AIMS, which was approximately 2.8 per prison. Although this was only the first full month

of AIMS's activation, we found it surprising to learn that wardens retained the vast majority of the staff misconduct grievances internally. The volume of referrals during this five-month period peaked in August, when wardens referred 150 staff misconduct grievances (34 percent) to AIMS, at a rate of 4.3 per prison, which was still lower than the rate we expected to see, given the 2018 staff misconduct grievance totals and the department's corresponding workload projections.

Across the department's 35 prisons statewide (Figure 4, below), the volume and rate of referrals to AIMS was inconsistent during the five-month period from April 1, 2020, through August 31, 2020; on a percentage basis, referrals ranged from zero to 100 percent. Only six prisons referred more than half of their staff misconduct grievances to AIMS, while 13 prisons referred 10 percent or less of their staff misconduct grievances to AIMS. Of greatest concern to us, California Correctional Institution—a high-security prison—referred none of the 21 staff misconduct grievances it received to AIMS, and Salinas Valley State Prison—another high-security prison and the prison we previously criticized in 2019 for its inadequate handling of staff misconduct

Figure 4. Most Wardens Referred a Relatively Small Percentage of Staff Misconduct Grievances to AIMS During the Five-Month Period From April 1, 2020, Through August 31, 2020



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

grievances—referred only 18 of its 134 staff misconduct grievances to AIMS (13 percent). Given the nature of the findings we published in 2019 concerning the handling of these types of inquiries at Salinas Valley State Prison, we think it is likely that the wardens' retention of so many grievances at their prisons continued to undermine the independence of the process.

The Department's Allegation Inquiry Management Section Unnecessarily Rejected Many of the Staff Misconduct Grievances That Wardens Did Refer

The department's regulations make it clear that “the reviewing authority shall refer claims alleging staff misconduct to the Office of Internal Affairs for completion of an allegation inquiry or formal investigation pursuant to section 3484.”¹² Despite the relatively low volume of staff misconduct grievances that wardens referred to AIMS, we were surprised to find that AIMS did not accept for inquiry some of those grievances it did receive, instead returning them to the prisons to handle locally. Although wardens referred 541 staff misconduct grievances to AIMS—requesting AIMS to conduct an inquiry—AIMS returned 113 (a rate of 21 percent) without having done so. AIMS cited a primary reason for each return, with the two most commonly listed reasons for returning a referred staff misconduct grievance being *supervisory* and *exceeds time constraints*.

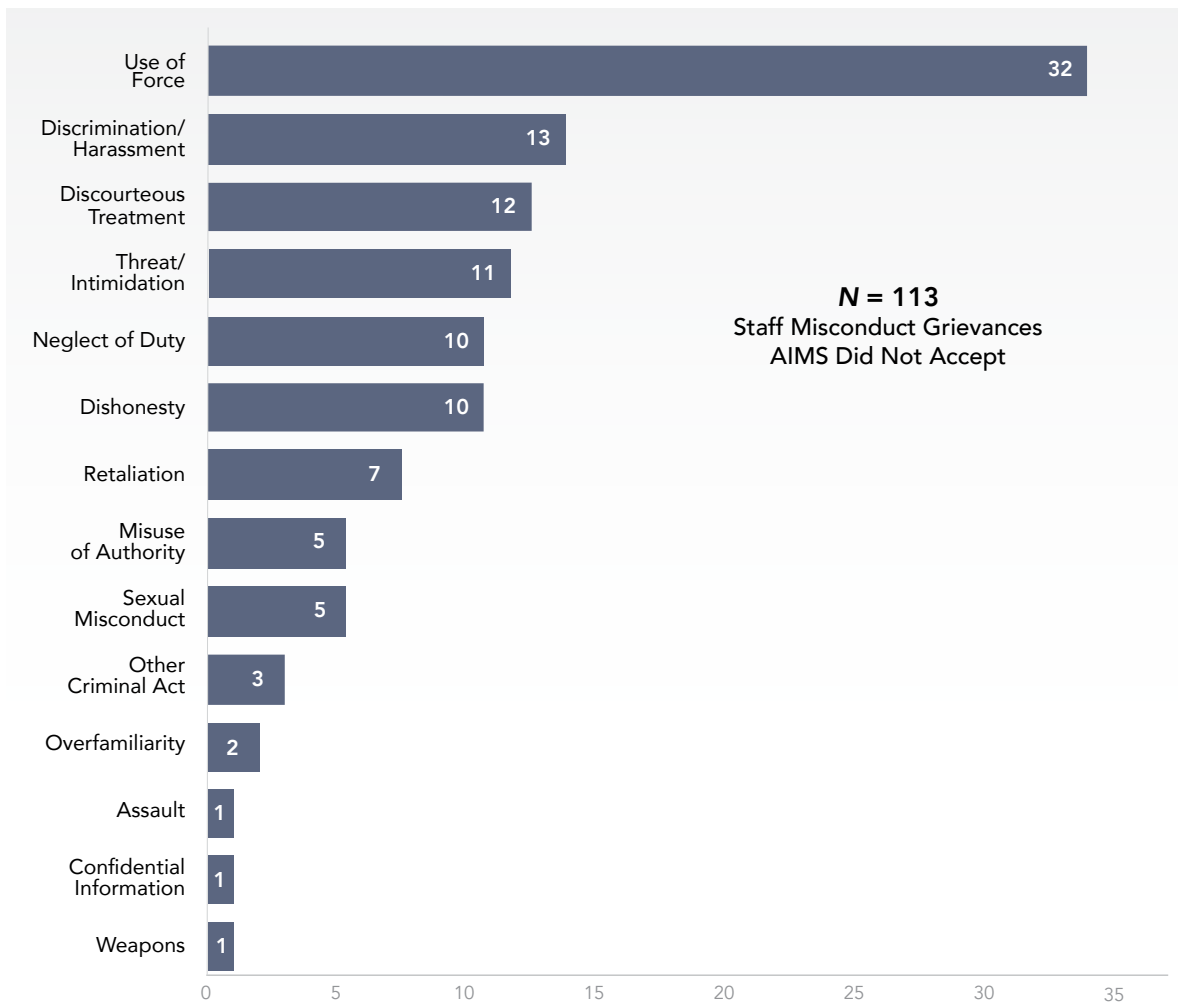
We learned that *supervisory* returns occurred when AIMS disagreed with the warden's determination that the matter would more likely than not result in adverse action. We also learned that the category *exceeds time constraints* applied to grievances AIMS returned because the grievance was not filed within 30 days of the allegation described in the grievance. We find these two reasons for returning grievances particularly troubling. Neither of these causes for return, which accounted for just over half (51 percent) of the grievances AIMS did not accept for inquiry, provide a legitimate justification to refuse a warden's request that AIMS investigate allegations of staff misconduct.

Of similar concern were the types of allegations contained in the grievances AIMS returned, which included allegations of staff dishonesty, discourteous treatment, and unreasonable use of force, to name a few (refer to Figure 5 on the following page). These types of allegations were very serious and, depending on the behavior of the individuals, could have resulted in severe forms of discipline, including dismissal from State service.

While it is reasonable for AIMS not to accept claims for which it lacks jurisdiction and claims that duplicate another active or previously investigated claim, we believe that AIMS should have accepted for inquiry the vast majority of these 113 staff misconduct grievances.

12. CCR, Title 15, section 3484(d), “Allegations of Staff Misconduct.”

Figure 5. Types of Allegations Among the Staff Misconduct Grievances AIMS Did Not Accept and Returned to Prisons During the Five-Month Period From April 1, 2020, Through August 31, 2020



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

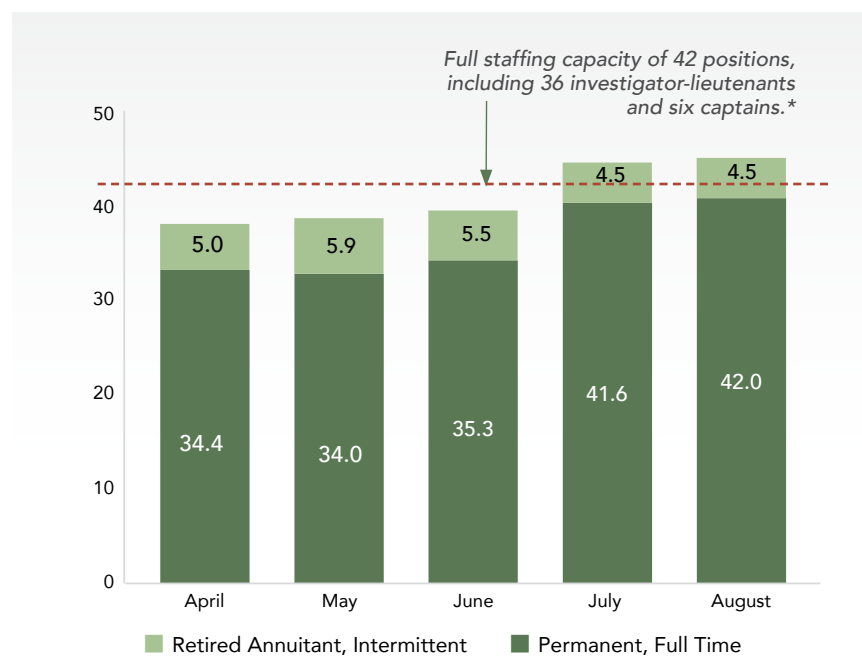
According to the Department's Own Analysis and the Number of Positions Funded by the Legislature, the Department's Allegation Inquiry Management Section Had Ample Capacity to Handle Significantly More Staff Misconduct Grievances Than It Did

When the department sought additional, ongoing funding from the legislature to create AIMS, it informed the legislature that AIMS could handle 5,690 staff misconduct inquiries per year, or about 474 per month. At this rate, each investigator would need to handle about 13 inquiries per month. However, during the first five months of full operation, with nearly

all positions filled, AIMS opened a total of only 428 inquiries, far short of the 2,370 inquiries it predicted it would handle in the same time frame.

Further, between April 2020 and August 2020, AIMS's investigators generally handled between one and four inquiries per month, well short of the estimated 13 inquiries per month. Yet, as shown in Figure 6 (below), the number of investigators and captains AIMS employed during this period was either near or above its authorized capacity. In this time frame, AIMS accepted, on average, only 86 staff misconduct grievances per month, which again, is far short of the projected monthly average of 474 grievances the department promised the legislature.

Figure 6. Filled Staffing Levels for AIMS to Conduct Inquiries Were Near or Above Capacity During the Five-Month Period From April 1, 2020, Through August 31, 2020



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

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

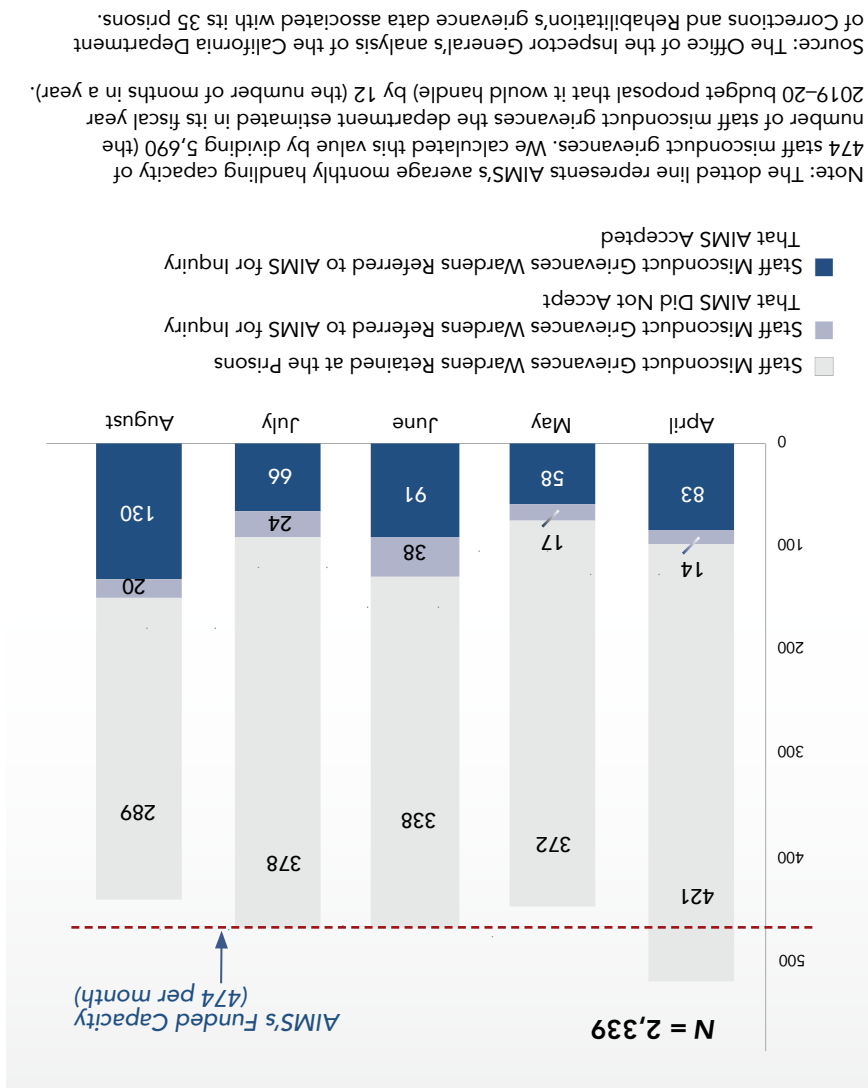


Figure 7. The Department's Budget Proposal Demonstrated AIMS Had Ample Capacity to Handle Staff Misconduct Grievances Filed During the Five-Month Period From April 1, 2020, Through August 31, 2020

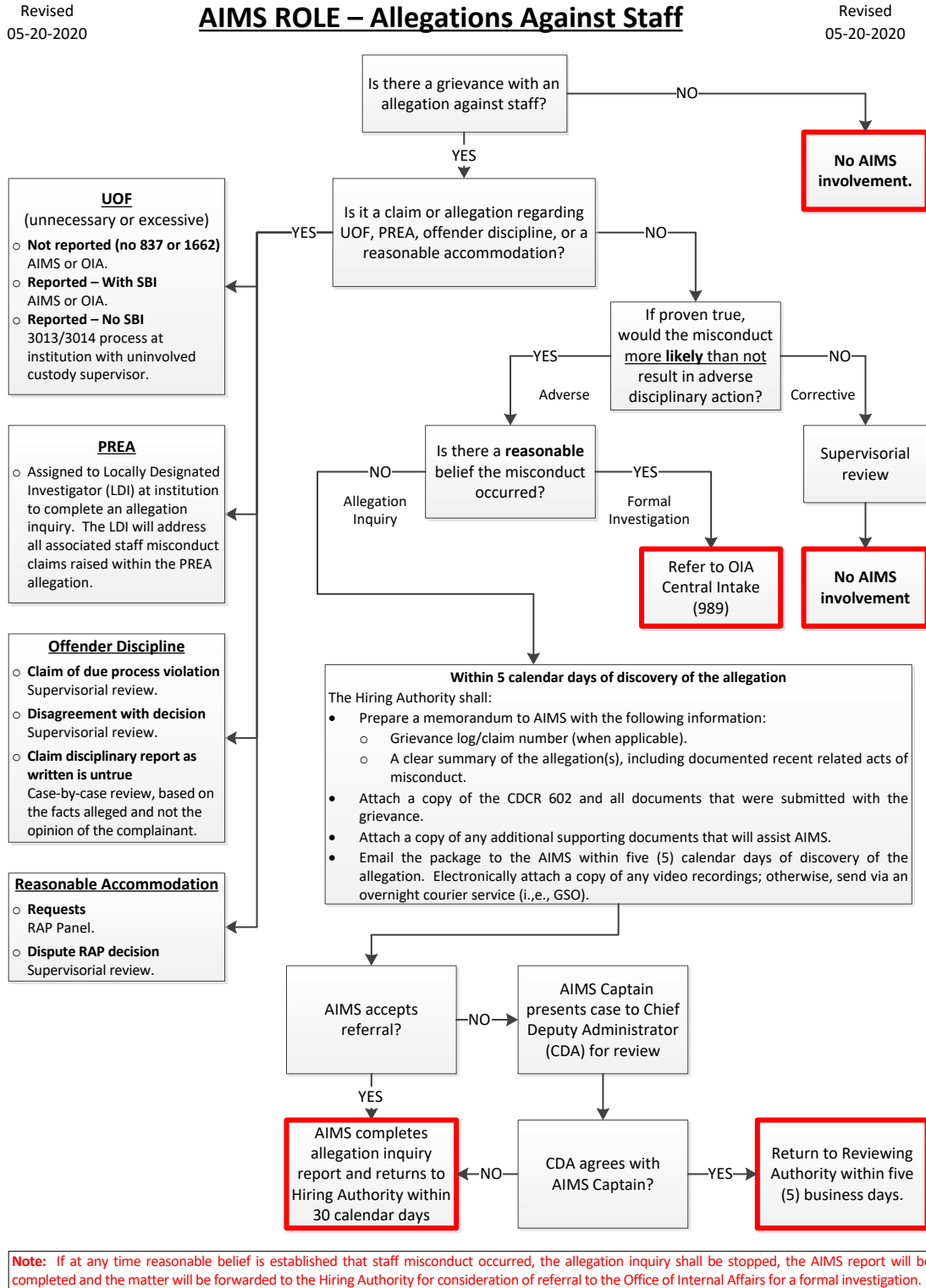
As illustrated in Figure 7, below, if AIMS had met its workload estimates, it could have handled all the staff misconduct grievances that incarcerated persons had filed, compared with only a fraction of them (18 percent).

The Department's Process for Determining How to Handle Staff Misconduct Grievances Is Overly Complex and Subjective; These Factors May Explain Why Prisons Dealt With Them Internally Rather Than Refer Them to the Allegation Inquiry Management Section

When the department redesigned its grievance and appeals process by transferring the responsibility for conducting staff misconduct inquiries from the prisons to the Office of Internal Affairs, it sought to accomplish two objectives: to increase the independence and improve the quality of these inquiries. Our present monitoring and review of this process shows that the department's new process has abandoned the first objective; we will address in a subsequent report the second objective. Instead of creating a straightforward process that can be applied consistently from prison to prison, the department designed a convoluted process replete with exceptions and subjective decisions that result in prison staff handling staff misconduct grievances rather than AIMS's investigators, thereby undermining the independence of the process. As we explained in our 2019 *Special Report* on Salinas Valley State Prison's staff misconduct process, prison staff cannot be relied upon to perform independent, objective, or thorough staff misconduct inquiries.

The department's new process for handling incarcerated persons' allegations of staff misconduct requires that staff make a complex series of decisions to screen grievances before they reach AIMS to be investigated; at each decision point, grievances were—and continue to be—diverted from AIMS's independent investigative process. To help train wardens, investigators, and other stakeholders in how to route grievances under the new staff misconduct grievance process, the department created a decision flowchart (see Figure 8 on the following page).

Figure 8. The Department's Staff Misconduct Grievance Process Flowchart



Notes: OIA is the abbreviation for the department's Office of Internal Affairs. GSO is the abbreviation for Golden State Overnight, a commercial overnight courier service located in California.

Source: The California Department of Corrections and Rehabilitation. The flowchart is reproduced verbatim.

The flowchart demonstrates the sheer complexity of what should be a fairly straightforward process. It also demonstrates how many criteria a single grievance must fulfill to be referred to AIMS, even though the process as outlined in the department's budget proposal was supposed to transfer the authority for handling staff complaint grievances to AIMS. By highlighting all the exceptions to the process that was designed to route all staff misconduct grievances to the Office of Internal Affairs, the department's flowchart demonstrates how the process, in reality, operates to divert grievances away from AIMS and into local prison processes.

Equally problematic is the complete lack of oversight of the decisions staff make while applying criteria from this flowchart, resulting in their routing or not routing staff misconduct grievances to AIMS. These early decisions whittle away the number of staff misconduct grievances that make their way to AIMS for an independent investigation. An added concern is that mistakes made at this early step in the process remain unchecked, creating the risk that allegations that would otherwise meet the definition of staff misconduct continue being handled by prison staff instead of by Office of Internal Affairs' investigators.

The Department's New Process Requires Wardens and Other Prison Staff to Apply Their Personal, Subjective Interpretations of the Term *Staff Misconduct* in Deciding Which Entity Within the Department Will Handle Staff Misconduct Grievances

To follow the department's decision flowchart, staff are required to make a series of judgments, using criteria that are neither objective nor consistent. Immediately upon receipt of a grievance, prison staff are tasked with making a determination that could irretrievably prevent an allegation of staff misconduct from being referred to AIMS for an independent assessment. At this first step in the department's grievance routing process, an analyst, a grievance coordinator, and the prison's warden are each independently tasked with evaluating incarcerated persons' allegations. Each individual must apply his or her personal understanding of both the law and departmental policy to his or her personal interpretations of the incarcerated persons' allegations. If these staff members determine a grievance does not warrant a referral to AIMS, then the grievance is to be handled locally by prison staff as a routine or supervisory grievance.

The classification of a grievance as one involving staff misconduct involves a two-part determination. First, the reviewer must determine whether the grievance presents an allegation that departmental staff violated a law, regulation, policy, or procedure, or acted contrary to an ethical or professional standard. Although this part of the definition seems straightforward, it may not always be clear whether a specific law, regulation, policy, procedure, or standard is in place that governs the alleged acts. Some individuals who review the grievances may bring to

bear more familiarity with the decision-making process or command a better understanding of the applicable laws and regulations than others. Accordingly, one reviewer may recognize that the complained-of acts qualify as a violation of law, regulation, policy, procedure, or other ethical or professional standard, whereas another reviewer may not recognize the violation; this situation can lead reviewers to arrive at opposite conclusions regarding the same behavior.

After filtering out grievances that do not meet the first part of the definition, staff reviewing the remaining grievances must then make the second part of the determination: the reviewer must determine whether the alleged acts, if later found to have occurred, would more likely than not subject a staff member to adverse disciplinary action. This, too, requires subjective analysis by reviewing staff, who must apply their own independent judgment to determine whether the complained-of act would warrant adverse disciplinary action or a penalty less severe, such as corrective or informal action. These determinations are highly subjective and can vary according to individuals' experiences and beliefs. Misconduct that one warden or grievance coordinator would elect to address by adverse disciplinary action may not warrant such action in the mind of another warden or grievance coordinator.

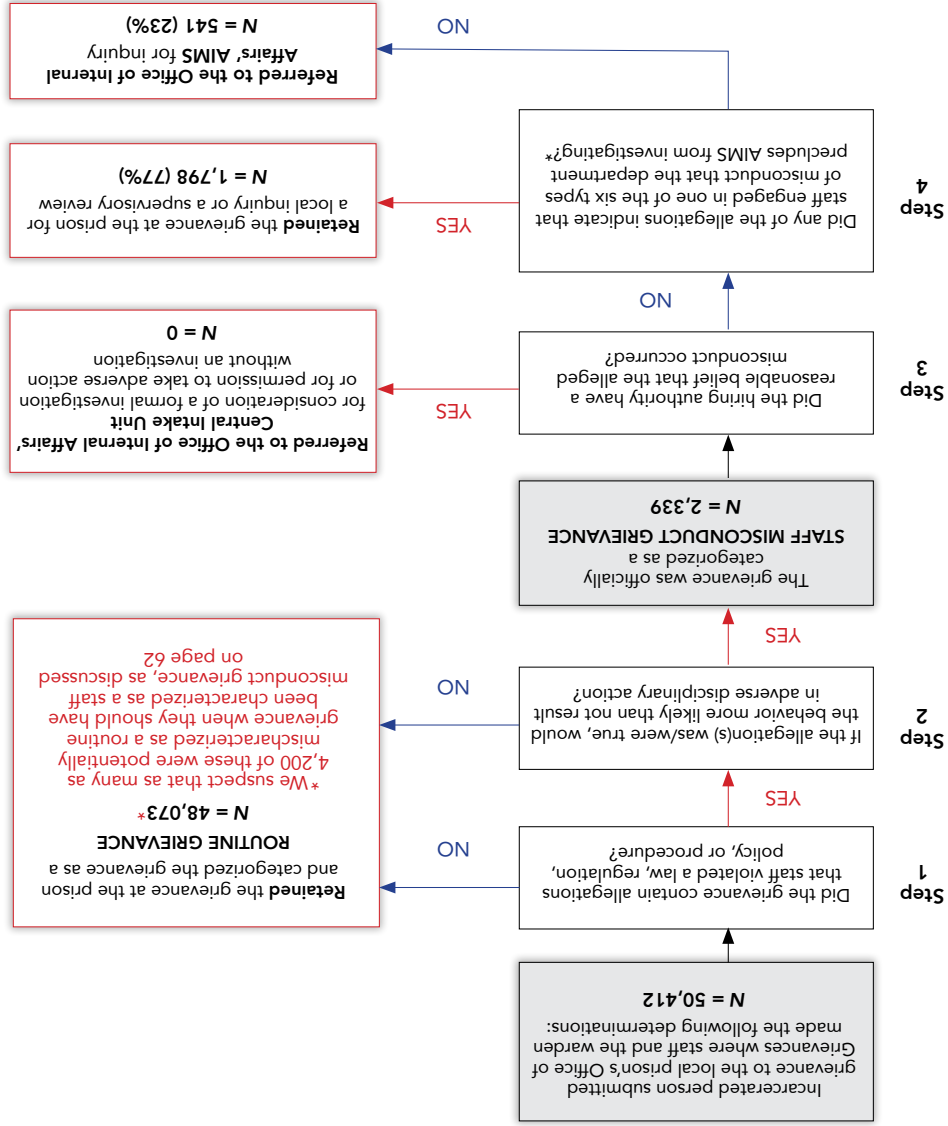
The State's progressive discipline system makes it particularly difficult to predict the appropriate penalty level in isolation from any context, especially without considering other critical factors as the department's process requires. The California Department of Human Resources provides the following description of the progressive discipline process, by which State agencies impose discipline on State employees:¹³

Progressive discipline is the overarching process that starts with corrective action and includes formal discipline. Progressive discipline requires that when you first address an employee's performance deficiencies, you start with a modest correction, like verbal counseling, or an informal email or memorandum documenting your conversation with the employee and the employee's agreement to improve. If there is no improvement, the actions you take are progressively more formal and serious, from counseling memos to a formal adverse action.

A formal adverse action is the final phase of progressive discipline in which the actions taken will have a negative, often financial, impact on the employee's job status.

13. California Department of Human Resources, "CalHR's Supervisors Guide to Addressing Poor Performance," <https://www.calhr.ca.gov/Training/Pages/supervisors-guidebook.aspx> (last visited January 28, 2021).

Figure 9. The Office of the Inspector General's Analysis of the Department's Existing Staff Misconduct Grievance Process During the Five-Month Period From April 1, 2020, Through August 31, 2020



*The department precludes AIMS from investigating the following six types of misconduct:

- 1) unnecessary or excessive use of force that staff self-reported, but did not result in serious bodily injury,
- 2) sexual misconduct or harassment by staff against an incarcerated person,
- 3) due process violations during the disciplinary process,
- 4) disagreement with staff decisions during the disciplinary process,
- 5) issuance of false rules violation reports, and
- 6) staff misconduct related to the reasonable accommodation process under the Americans With Disabilities Act.

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

Staff members' decisions about the appropriate level of discipline to impose, therefore, will depend not only on the severity of the alleged misconduct but also on the accused staff member's history of training, prior corrective action, and prior disciplinary action. These critical details are not among the information provided to a grievance coordinator or warden reviewing the grievance to determine whether the alleged misconduct would lead to disciplinary action.

Departmental policy also dictates that the warden must consider several aggravating and mitigating factors before determining an appropriate penalty for any sustained allegation of misconduct. Many of these factors cannot be known to the warden until the accused employee is interviewed about the incident: examples of such factors include whether the misconduct was intentional or premeditated; whether the employee had a primary role in the misconduct or played a more minor role; whether the employee reasonably should have understood the consequences of the actions; and whether the employee was forthcoming or remorseful, or accepted responsibility for the actions.

Hypothetically, an officer's failure to wear a face covering to protect against transmission of the novel coronavirus may be initially remedied by informal corrective action. The first violation may result in verbal counseling, during which the officer's supervisor tells the officer that he or she has violated policy and must wear a mask while at work. The second violation may result in a written counseling memo that includes the same instruction, but which may be placed in the officer's supervisory file. It may not be until the third or fourth violation that the warden decides to impose formal adverse action, such as a formal letter of reprimand. On the other hand, adverse action may be appropriate after the first or second violation if the officer was particularly lacking in remorse or expressed blatant disregard for the mask-wearing requirement.

By asking prison staff to predict a penalty without having access to all the details outlined above, the department inappropriately treats every allegation in isolation, ignoring the alleged wrongdoer's past actions and discounting the possibility that aggravating factors may exist. In reality, those specific past actions and aggravating factors might elevate the appropriate level of discipline from one of corrective action—which would not trigger a referral to AIMS—to adverse action that would trigger a referral to AIMS.

The decision to route a staff misconduct grievance to either AIMS or the Central Intake Unit also requires staff to prejudge the allegations. The warden must determine the likelihood that the alleged misconduct has actually occurred, but the warden must make that determination before any evidence has been collected, using only the incarcerated person's grievance and the Office of Grievance staff's summary of that grievance. If the warden has a reasonable belief the allegation is true, the staff

misconduct grievance is supposed to be routed to the Office of Internal Affairs' Central Intake Unit; if not, then the grievance is supposed to be routed to AIMS for an inquiry. In the absence of information from an investigation, a warden could have no way of knowing whether or not an allegation was likely to be true; thus, we would expect wardens to route all or nearly all staff misconduct grievances to AIMS.

Yet as we noted earlier on page 15, we found no evidence that wardens referred any of the 2,339 staff misconduct grievances during the five-month period of our review directly to the Central Intake Unit. We also found that wardens referred to AIMS only 541 of the 2,339 staff misconduct grievances (23 percent). Given the highly subjective nature of this process, we examined the products of those referral decisions—the disposition of staff misconduct grievances—and questioned staff who made those types of decisions, so we could better understand how so few allegations of staff misconduct were referred to AIMS.

We spoke with staff in the Office of Grievances at several of the prisons to understand how they made their determinations. (Our discussion with four wardens, regarding their understanding of the term *approved*, is presented on page 50.) When we spoke to grievance coordinators, we were surprised—and concerned—to hear some of their perspectives regarding the new AIMS referral process. One individual expressed some displeasure with AIMS and stated she purposefully held back some staff misconduct grievances because she believed AIMS would just return them without performing an inquiry, so she saw no reason to recommend their referral. We find this philosophy troubling because it potentially violates the regulations that govern the grievance process, highlights the subjective nature of the referral process, and demonstrates the ease with which AIMS can be circumvented. Office of Grievances staff may easily choose not to identify a grievance as a staff misconduct grievance, which in turn would bypass the wardens' review without allowing for any oversight. Similarly, a warden may just as easily choose not to refer a staff misconduct grievance to AIMS, regardless of the merits of the grievance.

The highly subjective nature of the department's definition of staff misconduct creates a risk that any one of the reviewers at any level may improperly filter out a grievance that would qualify for referral to AIMS. Specifically, the subjectivity involves a risk that staff will apply the term *staff misconduct* inconsistently, both within each prison (different staff at a single prison could have different definitions) and statewide (definitions could vary from prison to prison). The inconsistent application of these essential standards early in the department's screening process is particularly concerning because the screening process itself is not subject to any scrutiny or oversight. The grievance coordinator and warden have complete discretion to determine whether an allegation meets the definition of staff misconduct and to prevent a staff misconduct grievance from being referred to AIMS.

The end result of the department's routing decisions is illustrated in Figure 9 (page 27). Ultimately, the department's new process frustrates the objective of making inquiries independent of bias shown at the prison level. By injecting subjectivity into the grievance referral process, the department has empowered the prisons to continue using the process we criticized in 2019 and circumvent the new independent entity the department created to investigate misconduct grievances brought forward by incarcerated persons.

Without Reasonable Justification, the Allegation Inquiry Management Section Refuses to Investigate Several Serious Types of Staff Misconduct and Allegations That Do Not Meet Several Poorly Conceived Procedural Requirements

Several provisions in the new regulations governing the department's revised staff misconduct grievance process instruct grievance coordinators to refer certain types of grievances to other administrative processes at the prison. At the same time, the revised regulations also require wardens to refer to AIMS all allegations incarcerated persons raise in a grievance that meet the department's definition of staff misconduct. Once a warden determines an allegation qualifies as staff misconduct (that it alleges a policy violation which would likely result in adverse disciplinary action if found to be true) and refers the allegation to AIMS, the regulation dictates that "an allegation inquiry shall be conducted[.]"¹⁴ Nothing in the department's new regulations permits AIMS to refuse to perform an inquiry into an allegation of staff misconduct once a warden has referred it to AIMS. Nor do the new regulations expressly authorize AIMS to overrule a warden's determination that a grievance contains an allegation of staff misconduct. Nevertheless, AIMS screens every complaint it receives and rejects wardens' requests to investigate grievances it believes should have been handled by another process or grievances that failed to comply with the new grievance regulations.

Specifically, the department precludes AIMS from performing inquiries into the following six serious types of staff misconduct allegations:

- Unnecessary or excessive use of force that was reported by staff but did not result in serious bodily injury¹⁵
- Sexual misconduct or sexual harassment against an incarcerated person under the Prison Rape Elimination Act¹⁶
- Staff involvement in due process violations during the disciplinary process

14. CCR, Title 15, section 3484(a)(1), "Allegations of Staff Misconduct."

15. Although the new regulations do not instruct reviewing authorities to refer to AIMS claims involving unnecessary or excessive use of force that were reported by staff but did not result in serious bodily injury, the regulations do not authorize AIMS to reject cases on this basis. CCR, Title 15, section 3484(d), "Allegations of Staff Misconduct."

16. For claims involving allegations of sexual misconduct, the new regulations require a local prison official to "immediately commence an appropriate response as required by all applicable laws and regulations." CCR, Title 15, section 3483(a), "Grievance Review." Although the Department Operations Manual places the responsibility for conducting an inquiry with local prison staff, we identified nothing in law or regulation that prohibits AIMS from investigating an allegation, especially if an inquiry or investigation has not already been performed. Department Operations Manual, Section 54040.12, "Investigation."

- Disagreement with staff decisions during the disciplinary process
- Staff's issuance of false rules violation reports
- Staff misconduct in connection with the ADA's reasonable accommodation process¹⁷

Furthermore, AIMS refuses to perform an investigation for the following procedural reasons:

- The incarcerated person filed the grievance more than 30 days after the alleged misconduct occurred
- The staff at AIMS disagrees with the warden's determination that the allegation meets the definition of staff misconduct
- The grievance is not specific enough to be investigated
- The misconduct alleged in the grievance did not have a material adverse effect on the claimant
- The claimant is refusing to cooperate with the department's attempts to obtain additional information
- The claim concerns harm to a person other than the person who signed the grievance or appeal
- The claim falls outside of AIMS's jurisdiction
- The claim duplicates another active or previously investigated claim

Apart from the last two reasons listed above, we do not believe a logical reason exists to exempt any of these types of claims from AIMS. These screening criteria reduce the already low number of grievances AIMS investigates, frustrating the intent of the amended grievance and appeals process. Moreover, because AIMS instructs wardens and grievance coordinators not to refer grievances it would reject for these reasons, this screening process also reduces the number of staff misconduct grievances wardens refer to AIMS in the first place. While we know AIMS rejected 113 of the 541 grievances wardens referred to it, as displayed in Figure 2 on page 15, we do not know how many staff misconduct grievances wardens chose not to refer to AIMS because those allegations fell into the categories of claims AIMS refuses to review or because the wardens believed AIMS would ultimately reject the grievances for any other reason.

17. The new regulations state that claims which make a request for a reasonable accommodation shall be redirected to the institutional or regional ADA coordinator, but these regulations do not exempt claims of staff misconduct related to the reasonable accommodation process from AIMS's purview. CCR, Title 15, section 3483(b)(2), "Grievance Review."

The Department Excludes Six Serious Types of Staff Misconduct Grievances from the Allegation Inquiry Management Section's Jurisdiction

In accordance with training AIMS provides to prison staff related to the grievance referral process, prison staff typically retain the following types of allegations for handling at the prison instead of referring them to AIMS:

- Unnecessary or excessive use of force that was reported by staff, but did not result in serious bodily injury
- Sexual misconduct or sexual harassment against an incarcerated person under the Prison Rape Elimination Act
- Staff involvement in due process violations during the disciplinary process
- Disagreement with staff decisions during the disciplinary process
- Staff's issuance of false rules violation reports
- Staff misconduct in connection with the ADA's reasonable accommodation process

However, when wardens refer these types of allegations to AIMS, AIMS returns the grievances to the wardens, refusing to perform an inquiry into the allegations. Although each prison has in place a local process to address these types of allegations, the existence of these local processes does not justify an automatic exemption from AIMS. These six categories of behavior are among the most serious types of staff misconduct that could occur, including criminal acts, physical and sexual assault, dishonesty, and various other acts having the potential to inflict serious and irreversible harm. These instances of staff misconduct require the independent investigations AIMS was specifically intended to provide. Yet AIMS rejected 14 grievances wardens referred for an inquiry between April and August 2020 because those grievances contained allegations that fell within one of these six categories of misconduct; those grievances comprised 12 percent of the claims AIMS rejected during that time.

Of these six serious categories of staff misconduct that the department excludes from AIMS, the exclusion of claims in which the staff member reported the use of force, but the force used did not cause serious bodily injury, is of particular concern. Whenever staff use unnecessary or excessive force, the potential for serious injury always exists. The fact that a particular use of unnecessary or excessive force did not happen to cause serious bodily injury does not justify the department's decision to treat staff's actions any differently than it treats incidents in which the use of unnecessary or excessive force results in serious injury. Staff who used unnecessary or excessive force should be investigated by an independent entity and face discipline—when appropriate—for

confirmed uses of unnecessary or excessive force, regardless of the injury inflicted. The department should not wait until serious injury occurs before taking seriously a complaint of unnecessary or excessive force by referring it for an independent investigation.

Similarly, staff sexual misconduct is among the most heinous actions and abuses of power a staff member can take against an incarcerated person. The seriousness of this matter was among the reasons that the legislature recently passed California Senate Bill No. 1421, which increased public access to records of incidents in which allegations of staff sexual misconduct have been sustained against peace officers. Although the federal Prison Rape Elimination Act and the California Sexual Abuse in Detention Elimination Act both require prison staff to take immediate action to protect the incarcerated victim, the department can satisfy this obligation and simultaneously refer the allegation to AIMS for a prompt, independent inquiry. In other words, this local process, although necessary to carry out an important legal obligation, could work in concert with AIMS: prison staff could ensure the safety of the victim while AIMS performs an independent investigation into the allegations of staff misconduct. Similarly, due process violations and false rules violation reports can result in a denial of an incarcerated person's constitutionally protected rights, while misconduct occurring during the ADA's reasonable accommodation process can cause substantial and prolonged harm to an incarcerated person with a disability. By exempting these serious allegations from AIMS's purview and electing to have these allegations handled by local prison staff in a process the department has acknowledged lacks independence, objectivity, and compliance with standard investigative practices, the department intentionally subjects these serious allegations to an investigative process which it knows to be seriously flawed.

Moreover, staff's decisions are not subject to any oversight, either internally or externally, when they choose not to refer to AIMS the allegations of staff misconduct that fall within one of these six categories. Such staff misconduct grievances, excluded from AIMS's purview, are handled by local prison staff; those grievances will not be referred to the Office of Internal Affairs unless the local inquiry causes the warden to form a reasonable belief that staff misconduct did in fact occur.

The Allegation Inquiry Management Section Rejects Staff Misconduct Grievances If They Are Filed More Than 30 Days After the Misconduct Allegedly Occurred, Further Limiting the Volume of Staff Misconduct Grievances It Handles

Although not apparent from the flowchart (Figure 8, page 24), another factor that prevents allegations of staff misconduct from being investigated by AIMS is the department's imposition of a 30-day time limit for incarcerated persons to raise allegations of staff misconduct through the grievance process. AIMS rejected 28 grievances wardens

referred for an inquiry between April 1, 2020, and August 31, 2020, because claimants had exceeded the arbitrary 30-day time limit. This was the second most frequently listed justification for AIMS's decisions to reject staff misconduct grievances during that five-month period, making up 25 percent of the rejections.

California law generally provides employers a full calendar year to investigate allegations of peace officer misconduct; however, the department has authorized AIMS to refuse wardens' requests to investigate incarcerated persons' allegations of staff misconduct if those allegations are not raised within 30 days of the date the alleged misconduct occurred. While departmental regulations impose a general 30-day time limit during which an incarcerated person must file a grievance, no statute or regulation limits AIMS's ability to investigate allegations of staff misconduct once it becomes aware of them.¹⁸ Nor should there be such a restriction. The department has a legal obligation to review and appropriately respond to all allegations of staff misconduct, regardless of their source.¹⁹ When anyone other than an incarcerated person presents a warden with allegations of staff misconduct, department policy generally provides the warden 45 days to request that the Office of Internal Affairs open an investigation. However, the Office of Internal Affairs does not refuse to perform an investigation when wardens fail to meet this deadline. By providing a 30-day deadline for incarcerated persons to file a grievance alleging staff misconduct, and not providing the same deadline for others, the department treats allegations raised by incarcerated persons as less worthy of investigation. There is no logical reason to treat incarcerated persons' allegations any differently than all other allegations.

Nevertheless, even though AIMS refuses to investigate allegations filed after the 30-day deadline, AIMS recognizes that department regulations do not forbid investigation of allegations of staff misconduct that are not filed within the 30-day deadline. In the various letters AIMS sent to wardens explaining its decision to reject their requests to investigate a particular grievance, AIMS typically included one of the two following statements:

AIMS is returning this case back to [the prison] for review and disposition with the recommendation that the grievance be logged into the CDCR Form 2140, Internal

18. Staff misconduct grievances are unlike typical, or routine, grievances: while both may request some form of personal remedy, the primary purpose behind designating a grievance as a staff misconduct grievance is to put the department on notice that a staff member may have violated policy so the staff member can be held accountable for any alleged wrongdoing. Therefore, while the regulations permit the department to reject a grievance for various reasons, once the department has notice of an allegation of staff misconduct, it is obligated to examine those allegations even if the traditional grievance process and the associated remedies are unavailable for other reasons.

19. California Penal Code section 832.5.

Affairs Allegation Log and an inquiry conducted outside the grievance process.

The return of this grievance does not excuse [the prison] from logging the complaint onto the CDCR Form 2140, Internal Affairs Allegation Log and conducting an inquiry outside the appeals process.

By suggesting that prisons should conduct their own investigation into the allegations, AIMS acknowledges that departmental regulations do not preclude investigations into allegations that are more than 30 days old. We do not know how many grievances wardens did not refer to AIMS because they were not filed within 30 days of the alleged incident. However, during the course of our monitoring, we reviewed several grievances that wardens referred to AIMS, but that AIMS returned to the wardens because they did not comply with the 30-day filing rule, including the following:

- An incarcerated person submitted a grievance form on June 2, 2020, alleging that on May 3, 2020, two officers, whom he identified by name, had a conversation in the day room that was loud enough for everyone in the building to hear. During this conversation, one of the officers stated that the incarcerated person was “a piece of shit, [who] raped his wife and kids” and specifically identified the cell number in which the incarcerated person lived. The prison’s appeals office did not receive the grievance until the next day, which was 31 days after the incident allegedly occurred. Although the grievance coordinator and the chief deputy warden determined the grievance contained allegations that met the definition of staff misconduct, AIMS refused to investigate the allegations because the grievance was filed 31 days after the alleged incident occurred.
- An incarcerated person submitted a grievance on May 29, 2020, alleging that on March 13, 2020, two officers “beat him very terribly,” called him a “bitch” because he urinated in his holding cell, and did not provide him his meal. The chief deputy warden referred the case to AIMS, recommending it perform an inquiry into the allegations. AIMS refused to perform an inquiry and returned the grievance to the prison because the grievance was not filed until 77 days after the incident allegedly occurred.
- An incarcerated person submitted an undated grievance that the prison received on June 4, 2020, alleging that an officer grabbed him by one of his arms, which was broken, and pulled him down to the ground. At that point, another officer started beating the person’s leg and knee with his baton. Although the person did not state the date on which the event allegedly occurred, prison staff, after performing some research, identified April 29, 2020,

as the likely date of the incident and referred the grievance to AIMS, requesting it perform an inquiry into the allegations. AIMS refused to perform an inquiry and returned the grievance to the prison because the grievance was not received until 36 days after the incident allegedly occurred.

- An incarcerated person submitted a grievance on June 6, 2020, alleging an officer filed a false rules violation report against him; harassed and bullied him; placed falsified information in his central file; and threatened to plant a weapon on him, instruct other officers to file false rules violation reports against him, take away his assigned job, throw his grievances in the trash, and falsely convict him of a serious rules violation. Although the person did not identify the dates of these incidents in his grievance, AIMS staff reviewed the person's records and identified a recent rules violation report that appeared to be related to the incident described in the grievance. AIMS used the information in that rules violation report to conclude the incidents occurred between May 10, 2020, and May 18, 2020, meaning the incarcerated person filed the grievance within 19 to 27 days of the incidents. This information suggests that the grievance was filed within the required time frame. AIMS, however, rejected the grievance for several reasons, including that the grievance did not contain the date of the alleged incident, which, according to AIMS, meant that staff at the unit could not conclusively determine that the grievance complied with the requirement it be filed within 30 days of the incident. In his grievance, the person explained he did not attach the rules violation report that would have provided the incident dates because he was afraid it would be destroyed; he promised to bring a copy of the document with him when the department interviewed him about his grievance.

The juxtaposition of these last two staff misconduct grievances is particularly revealing. In both cases, because the grievances omitted the dates of the alleged incidents, departmental staff performed independent research to determine whether any departmental records might help them determine the dates on which the alleged incidents occurred. In one case, this additional research provided sufficient information to lead prison staff to believe that the incident occurred more than 30 days before the grievance was filed. AIMS staff used this information to conclude that the grievance was untimely and rejected the grievance accordingly. However, in the second case, AIMS staff's independent research demonstrated that the grievance was filed within 30 days of the incident. In this instance, AIMS staff did not use the information to judge whether the grievance was filed within the required time frame. Instead, they turned to the grievance's undated description of alleged staff misconduct to dismiss the grievance on the grounds that AIMS staff could not conclusively determine that it met the 30-day requirement. AIMS rejected both cases as untimely, leading us to believe that AIMS is

willing to rely on information that enables it to reject a staff misconduct grievance, but it is not willing to rely on similar information that would allow it to investigate a staff misconduct grievance.

While the department should certainly encourage incarcerated persons to raise allegations of staff misconduct as soon as possible so that the department can preserve evidence and gather witness accounts while they are still fresh, the department should not automatically reject allegations of staff misconduct because they were not filed within 30 days. When incarcerated persons choose to formally accuse staff of misconduct, they place themselves at risk of retaliation. This is not an easy decision for anyone to make; it may take some time before an incarcerated person feels comfortable or decides that the benefit of filing the complaint will outweigh the risk of retaliation. Changes to staff assignments that occur weeks or months after the incident, such as an officer's transfer to another prison or to another housing unit within the same prison, may also make a person more willing to file a complaint. As one incarcerated person explained in a grievance AIMS rejected because it was not filed within 30 days of the incident, it can be traumatic to file a staff misconduct grievance against an officer, especially against an

Excerpt From an Incarcerated Person's Staff Misconduct Grievance Form, June 6, 2020.

A. Continuation of CDCR 602, Section A only (Explain your issue) : _____

utilizes gang like tactics to bully and force other c/os to falsify Documents (R.V.R's) WHICH HE HAS DONE TO ME. _____ would threaten & Intimidate inmates. _____ would tell me He'd Ruin MY LIFE & would Retaliate against me and Remove me from my job as _____ is very aggressive and I'm afraid to say anything or submit a CDCR-602 until now because he gone for Abusing officer. He _____ allowed self written fake notes to be entered into my c-file & consistently Bullied and Harassed me. He would have correctional officers falsify Documents R.V.R Against me and He would be the reviewing supervisor or Bully other Sergeants to sign off to find me guilty. Internal Affairs will be notified with a copy of this 602. It's a felony to falsify Documents in California to give inmates time for violating charged write-up. I finally came to my breaking point and cannot tolerate it so I'm documenting the corruption _____ has done to me. I was told to do a Staff complaint when THREATENED WITH WEAPON BY _____ By co-workers but I told them I WAS AFRAID BECAUSE OF WHAT HE TOLD ME. HE SAID "if you file a Staff complaint against me it will end up in the trash" And I'll make SURE MY OFFICER will PLANT A A-1 offence on you!" whatever that means. I've Always been Afraid for my life to write-him up but enough is enough. PLEASE HELP FIGHT THIS CORRUPTION THIS OFFICER HAS CREATED ON _____

Inmate/Parolee Signature: _____ Date Submitted: 06-06-2020

Source: The California Department of Corrections and Rehabilitation.

officer who has already subjected the incarcerated person to threats and retaliation before he filed the grievance:

Although the passage of time may increase the difficulty of investigating and substantiating allegations, the department should treat incarcerated persons' allegations the same way it treats those presented by any other person. AIMS should not refuse to examine an allegation simply because more than 30 days have elapsed since the incident occurred.

The Allegation Inquiry Management Section Rejected Grievances by Overruling Wardens' Determinations That Allegations of Staff Misconduct Would Result in Adverse Disciplinary Action If Found to Be True

AIMS rejected 30 grievances wardens referred for an inquiry between April 1, 2020, and August 31, 2020, because AIMS believed the allegations would not likely have resulted in adverse disciplinary action even if an inquiry or investigation determined the allegations were true. This was the most frequently cited justification for AIMS's decisions to reject staff misconduct grievances during that five-month period, making up 27 percent of its rejections. We find this practice, whereby AIMS second-guesses and overrules wardens' disciplinary decisions, particularly puzzling.

The department's regulations authorize only wardens to determine whether an allegation of staff misconduct, if found true, would more likely than not result in adverse disciplinary action.²⁰ Once a warden reviews the allegation and determines it warrants a referral to AIMS because it meets the definition of staff misconduct but the warden does not have a reasonable belief that the misconduct occurred, the regulations state that "an allegation inquiry shall be conducted."²¹ This responsibility properly resides with wardens, because as hiring authorities, they are the departmental officials authorized to make disciplinary decisions regarding the majority of the staff working at their prisons.²² Since the official in charge of making disciplinary decisions has already decided that he or she would more likely than not institute adverse action if the allegations were true, AIMS staff have no need to consider whether the grievance meets this requirement. AIMS's investigative personnel, who occupy a rank well below that of warden, are not reviewing authorities and have no experience making such difficult, complex disciplinary decisions. As AIMS is not authorized to overrule the disciplinary determinations a warden makes *after* an investigation has been performed, it makes no sense that AIMS would assume the authority to overrule a warden's disciplinary determinations *before* an inquiry is conducted.

20. CCR, Title 15, section 3484(a), "Allegations of Staff Misconduct."

21. CCR, Title 15, section 3484(a)(1), "Allegations of Staff Misconduct."

22. The prison's chief executive officer is the hiring (or reviewing) authority for health care staff working at the prison.

The Allegation Inquiry Management Section Rejects Staff Misconduct Grievances It Determines Do Not Comply with Various Procedural Claim-Filing Requirements

The department's revised grievance and appeal regulations contain various procedural filing requirements. Some of these requirements are reasonable, such as the requirement that an incarcerated person may not file a claim regarding the behavior of employees who work outside the department, such as county jail staff or outside hospital employees. Similarly, it is reasonable to disallow duplicate claims. If the department is already performing an inquiry into the allegation, an additional claim serves no purpose. However, the department maintains several other claim-filing requirements that are less sound, causing AIMS to refuse wardens' requests to investigate allegations of staff misconduct. AIMS refuses to open the following claims that violate the department's procedural claim-filing requirements:

- Staff misconduct that did not have a material adverse effect on the claimant
- Claims in which the claimant is refusing to cooperate with the department's attempts to obtain additional information
- Claims concerning harm to a person other than the person who signed the grievance or appeal
- Claims that are not specific enough to be investigated

AIMS refused to investigate nine grievances wardens referred for an inquiry between April and August 2020 because those grievances failed to comply with one of these claim-filing requirements; those grievances comprised 8 percent of the claims AIMS refused to accept for inquiry during that period.

Although a claimant's refusal to cooperate with an investigation will increase the difficulty of investigating a claim, as the claimant is typically the most important witness, the department should not refuse to investigate an allegation of staff misconduct on this basis without first taking other investigative steps to determine whether any other information exists to corroborate the claim, such as a video recording or an incident report. As discussed on page 38, it takes considerable courage for an incarcerated person to file a claim against a staff member. It takes even more courage to proceed with the investigative process. When people are incarcerated, they face potential consequences if they choose to speak with law enforcement, such as retaliation by staff and ostracism by other incarcerated persons. One should not interpret a claimant's decision not to cooperate with an investigation as meaning the allegation is untrue or cannot be substantiated, nor should the claimant's lack of cooperation prevent an investigation into the allegation.

We find equally unjustified the department's refusal to investigate an allegation of staff misconduct because it was filed by a witness to the alleged misconduct instead of by the person harmed by the misconduct. The department is obligated to investigate all allegations of staff misconduct, even if the person harmed by the misconduct is unwilling to report the misconduct. The person who filed the claim should be interviewed to determine whether he or she is a percipient witness or if he or she filed the claim based on rumors or other indirect information.

Rather Than Perform a Complete Inquiry Into a Staff Misconduct Grievance, Allegation Inquiry Management Section Investigators Abruptly Stop Their Work as Soon as They Form a Reasonable Belief That Staff Misconduct Occurred

Wardens refer staff misconduct grievances to AIMS because they do not yet have a reasonable belief that the alleged staff misconduct occurred. When assigned to investigate a grievance, AIMS investigators interview witnesses and subjects as well as gather evidence to help wardens determine whether such reasonable belief exists. However, the department has illogically decided that once AIMS's staff have gathered enough evidence to form a reasonable belief that any misconduct has occurred, AIMS's staff must not investigate any further. At this point, the investigator ceases all investigative activity, summarizes the information gathered so far into a report, and provides the report concerning the unfinished investigation to the warden. The warden then reviews the report of the evidence gathered before the investigation was stopped and independently determines whether the investigator's report provides sufficient information to establish a reasonable belief that misconduct occurred. If the report meets this standard, the warden is supposed to refer the matter to the Office of Internal Affairs' Central Intake Unit, requesting either a formal investigation or permission to take adverse action without additional investigation. The Office of Internal Affairs' Central Intake Unit then independently reviews the report and either authorizes the warden to take adverse action against the subject employee, approves its own formal investigation into the allegation, or rejects the request to open an investigation and returns the report to the warden.

This practice of stopping an investigation before completion is problematic because it is unclear whether a warden would request that AIMS reopen an inquiry that has been prematurely closed if the warden disagrees with the AIMS investigator and believes the inquiry did not uncover sufficient information to warrant a referral to the Office of Internal Affairs' Central Intake Unit. By terminating the inquiry before gathering all evidence and interviewing all witnesses and subjects, the department risks leaving undiscovered, potentially relevant evidence that could be factored into the decisions wardens and the Office of Internal Affairs' Central Intake Unit staff make after reviewing the inquiry report. If the warden disagrees with the AIMS investigator's determination that a reasonable belief of misconduct exists, the warden would not send the inquiry report to the Office of Internal Affairs' Central Intake Unit for further action. In our observations, wardens do not refer inquiry reports back to AIMS to reopen the inquiry and collect the remaining evidence. The inquiry is over despite its being incomplete.

One inquiry we observed demonstrates how AIMS's practice of terminating inquiries prematurely causes allegations to fall out of

the investigative process. In this case, AIMS opened an inquiry into allegations that an officer used excessive force when he struck a disabled incarcerated person in the chest and shoved him into a counter, causing him to fall to the floor and aggravate his preexisting back injury. The AIMS investigator interviewed the claimant, the accused officer's partner, and an incarcerated person who allegedly witnessed the incident. The accused officer's partner stated that she was in the restroom when the incident occurred and did not see anything, but she had heard some yelling while in the restroom. She stated that after she left the restroom, another staff member told her that an incarcerated person had fallen. She also stated that she spoke with her partner, who explained that the incarcerated person had fallen on his own after leaning against a table or cabinet that was mounted on wheels, which had slipped out from behind him. When probed about the identities of the people she spoke with about the incident, she provided the investigator with somewhat evasive and conflicting answers: she could not recall with whom she spoke, whether that person was her partner or a nurse, or whether she spoke with a man or a woman. Given this information, the AIMS investigator felt that the partner's behavior during the interview established a reasonable belief that misconduct had occurred. The AIMS investigator decided to conclude the inquiry at that moment. He finalized his report and returned it to the warden. After reviewing the inquiry report, the warden sent the claimant a response stating the following:

[Incarcerated person's name]'s appeal is granted in part that this matter was thoroughly investigated. In regards to the Allegation of Unnecessary or Excessive Force: Staff did not violate CDCR policy with respect to the issues raised.

The warden's assertion that an investigation had been performed into the allegation of unnecessary or excessive force was inaccurate. The investigation into this allegation had never been completed. AIMS terminated the inquiry into the allegation after its staff had formed the belief that a different staff member engaged in an unrelated form of misconduct: dishonesty during an administrative investigation. AIMS had been planning to interview the officer who allegedly pushed the incarcerated person, but because the AIMS investigator concluded the inquiry after interviewing the accused officer's partner, this critical interview never occurred.

In addition, the investigation was not thorough. The department's investigation into the actual allegation presented—the use of unnecessary force—consisted of an interview of the claimant, an interview with one other incarcerated person who was in the area of the incident, and an interview with one staff member who did not actually witness the incident. During his interview, the claimant reiterated his allegations and insisted the officer hit and pushed him. The incarcerated

witness confirmed seeing the claimant fall down but did not have a clear view of the incident and did not see what caused the claimant to fall. The only staff member interviewed—the officer's partner—stated she had not witnessed the incident but was told that the incarcerated person fell down on his own. Although the investigation uncovered sufficient information to substantiate that the incarcerated person fell down, the investigation included no information from which anyone could determine whether the officer pushed the person or whether the person fell accidentally. A thorough investigation would have included interviews of the subject and other witnesses who were in the same area on the date the incident occurred to determine whether anyone could shed light on this critical detail.

When the AIMS investigator terminated the inquiry, he risked the possibility that the warden would disagree with his assessment that a reasonable belief of misconduct existed. In this case, that risk became reality: the warden decided the inquiry did not sufficiently establish that the officer was dishonest in her interview and, therefore, did not refer the AIMS inquiry report to the Office of Internal Affairs' Central Intake Unit for further action. Significantly, the inquiry report included no indication the inquiry had been cut short; such an indication might have caused the warden to request further investigation into the use-of-force allegation. As a direct result of AIMS's practice of terminating an inquiry once an investigator has formed a reasonable belief that any form of misconduct occurred, even if that misconduct was not what was alleged in the staff misconduct grievance, the incarcerated person's specific allegation of staff misconduct was not fully investigated.

Similarly, if a grievance contains multiple allegations of staff misconduct and the AIMS investigator determines that one of the allegations meets the standard of reasonable belief, the entire inquiry is stopped, and the incomplete report is sent to the warden. If the warden agrees with the AIMS investigator's determination that the evidence gathered provides a reasonable belief of misconduct regarding this one allegation, the warden will send the entire inquiry report to the Office of Internal Affairs' Central Intake Unit for further action. However, because the AIMS investigator did not complete the investigation into all the claimant's allegations, the Office of Internal Affairs' Central Intake Unit may not have enough information to assess the allegations that were not fully investigated. Without sufficient information to establish a reasonable belief that any alleged misconduct occurred, the Office of Internal Affairs' Central Intake Unit will not open an investigation into the allegation. Once the Office of Internal Affairs' Central Intake Unit opens an investigation into the allegation for which a reasonable belief exists, the assigned Office of Internal Affairs' agent may add the related allegation on his or her own, but the Office of Internal Affairs' agent is not required to do so. Therefore, when AIMS stops its investigative work into a staff misconduct grievance before completing its inquiry into all of

a claimant's allegations, it creates a risk that any remaining allegations raised in the grievance will go uninvestigated.

Another AIMS inquiry we monitored most unfortunately demonstrates this effect. In this instance, an incarcerated person filed a grievance alleging he told a nurse during pill call that he was feeling suicidal and that he later started a fire in his cell and began cutting himself to get staff's attention. He also alleged that he placed a sign in his cell window stating that he was suicidal, and that even though several custody and medical staff saw the sign, they refused to provide him medical treatment or alert mental health staff. AIMS opened an inquiry into the allegations, interviewed the claimant, reviewed video footage of the incident, and gathered various records. The video footage corroborated some of the claimant's allegations, specifically that he had started a fire in his cell for a brief period of time and that several staff saw signs he had placed in the windows of his cell. The footage also provided sufficient evidence for AIMS's investigators to determine there was a reasonable belief that several staff members shown on the video recording failed to correctly perform their mandated 30-minute welfare checks on the incarcerated person and that other staff shown on the video failed to maintain constant observation of him after learning he was feeling suicidal. However, AIMS had not yet completed the inquiry into the other allegations the incarcerated person raised in his grievance, specifically that he informed the pill call nurse he was feeling suicidal, but she had not provided him with assistance; that he had cut himself; or that the staff who came to his cell failed to summon the appropriate medical and mental health personnel. At this point, the AIMS investigator's supervisor, a captain, after consulting with the warden, determined the video footage provided a reasonable belief that some misconduct occurred, and AIMS closed the inquiry.

The AIMS investigator then drafted an inquiry report summarizing the incomplete inquiry's results and sent it to the warden, along with the evidence gathered during the partial investigation. Ultimately, the warden sent the report to the Office of Internal Affairs' Central Intake Unit, requesting permission to take disciplinary action against the involved staff. The Office of Internal Affairs' Central Intake Unit opened an investigation to obtain further information to determine whether the incarcerated person ever told anyone he was suicidal, since the video did not provide an audio recording of the incident. However, the other allegations the incarcerated person included in the grievance were not included within the initial scope of the internal affairs' investigation because the report of the interrupted inquiry did not provide the Office of Internal Affairs' Central Intake Unit with sufficient evidence to suggest a reasonable belief that these alleged acts had occurred. The assigned Office of Internal Affairs' agent could add these allegations to the scope of the investigation at a later date, but as of the date of this publication, that agent had not done so.

AIMS's practice of stopping an inquiry as soon as the investigator discovers evidence that may establish a reasonable belief that staff misconduct had occurred undermines the unit's purpose, which is to provide investigations into incarcerated persons' allegations of staff misconduct. By not completing their inquiries, AIMS investigators leave staff misconduct grievances uninvestigated, truncate the unit's work, and diminish AIMS's usefulness to the department.

The Low Rate at Which Wardens Determined Their Staff Violated Policy Raises Serious Concerns Regarding the Fairness of the Process

Our analysis of the department's documentation concerning the outcomes of inquiries into staff misconduct grievances revealed a troubling reality: very few allegations (or claims) of staff misconduct—fewer than 2 percent—were found to be true or resulted in findings of policy violations against staff. For instance, according to the department's offender grievance tracking system, during the three-month period ending August 31, 2020, the department completed an investigation or some type of review into 1,293 allegations, or claims,²³ of staff misconduct serious enough to lead to adverse action if true, yet wardens found policy violations in only 22 (or 1.7 percent). In essence, the department fully cleared staff in 98.3 percent of incarcerated persons' allegations it investigated or otherwise resolved. We found very little difference in results between the inquiries performed by AIMS and those performed by local prison staff; both generally resulted in the exoneration of staff. Surprisingly, this rate of exoneration was even higher than our prior findings at Salinas Valley State Prison, where we concluded, in part, that the prison fully cleared staff in 183 of the 188 inquiries we reviewed, an exoneration rate of 97 percent. Consequently, given the very low rate of policy violations resulting from its inquiry efforts, the department has not increased our confidence in the fairness of its process.

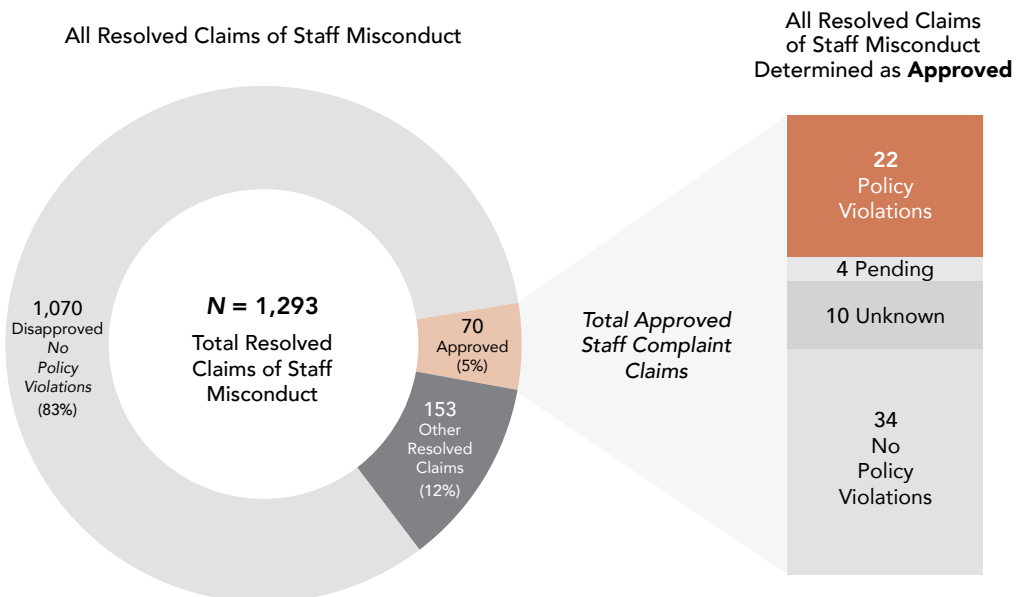
Because the department could not provide us with a report showing how many inquiries resulted in policy violations directly, we considered an alternative departmental report that showed the number of allegations of staff misconduct that wardens had approved (the category that presumably contained policy violations). According to this report, the rate of policy violations at first appeared to be 5.4 percent (70 out of 1,293) when we considered the number of approved claims, but a closer analysis revealed that the actual number of policy violations was only 1.7 percent (22 out of 1,293). We are concerned about the low rate of findings of policy violations and the department's use of the term *approved*, which obscured accurate reporting. The department's use of ambiguous language in reporting its responses to staff misconduct grievances makes its reporting less transparent; in the next section, beginning on page 53, we address how the department's insufficient information management systems continue to diminish the transparency of its reporting as well as inhibit the department's ability to analyze, manage, and improve its staff misconduct grievance monitoring process. Moreover, the lack of transparency in the department's information systems and practices also causes us to question the overall fairness of the department's process.

23. A single staff misconduct grievance may contain several allegations, or claims, of misconduct.

Fewer Than 2 Percent of Staff Misconduct Grievance Allegations Were Found to Have Merit, Resulting in a Policy Violation

We also question the fairness of a process for handling incarcerated persons' allegations of staff misconduct that finds almost no policy violations against staff. In the three months ending August 31, 2020, the department processed 1,293 allegations of staff misconduct serious enough to lead to adverse action if they were found to be true. Wardens found policy violations stemming from just 22 allegations (or 1.7 percent). This information was not readily available from the department; in fact, the department's documentation of staff misconduct grievance outcomes obscures this information. To retrieve these data from the department, we asked the department for a report that showed us the number of staff misconduct grievances in which accused staff had violated policy.

Figure 10. Very Few of the Department's Resolved Claims of Staff Misconduct Resulted in Policy Violations During the Three-Month Period From June 1, 2020, Through August 31, 2020



- **Disapproved** The reviewing authority found by a preponderance of the evidence available that all applicable policies were followed and that all relevant decisions, actions, conditions, or omissions by the department or departmental staff were proper.
- **Approved** The reviewing authority did not find by a preponderance of the evidence available that all applicable policies were followed or that all relevant decisions, actions, conditions, or omissions by the department or departmental staff were proper.
- **Other Resolved Claims** We are using the term *resolved* to include grievance decisions of *approved*, *disapproved*, *rejected*, and *time expired*. We exclude unresolved claims categorized as *no jurisdiction*, *reassigned*, *redirected*, and *under investigation*. CCR, Title 15, Section 3483(i), "Grievance Review."

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

The department, however, could not provide us with that information because the department does not track it. Rather than record whether an incarcerated person's staff misconduct grievance resulted in a finding that staff did or did not violate policy, the department recorded whether or not the warden approved or disapproved an incarcerated person's allegation of staff misconduct.²⁴

In its regulations, the department defines *approved* claims as those that “the reviewing authority **did not** find by a preponderance of the evidence available that all applicable policies were followed or that all relevant decisions, actions, conditions, or omissions by the department or departmental staff were proper” (emphasis added).²⁵ In plain language, this definition means that when a warden *approves* a claim, the warden has determined that staff may have violated some type of policy. In contrast, the department defines *disapproved* claims as those in which “the reviewing authority found by a preponderance of the evidence available that all applicable policies **were followed** and that all relevant decisions, actions, conditions, or omissions by the department or departmental staff **were proper**” (emphasis added).²⁶ In plain language, again, this definition means that when a warden *disapproves* a claim, the warden has found that staff *did not* violate policy in connection with the allegation of staff misconduct or with any other surrounding matter.

As shown in Figure 10 on the previous page, during the three-month period ending with August 2020, the department's offender grievance tracking system indicated that wardens approved only 70 of the 1,293 allegations of staff misconduct that wardens resolved during this time frame (5.4 percent).²⁷ According to the department's definitions, only those staff misconduct grievance claims in which wardens found staff to have violated policy or possibly violated policy could be categorized as *approved*. Therefore, to better understand which allegations wardens approved among these claims, we reviewed documentation for all 70 claims. To our surprise, and as we show in Figure 10, we discovered that wardens found staff had violated policy in only 22 of the 70 approved claims and had not violated policy in 34 of the 70 approved claims. Of the remaining 14 approved claims, we determined that 10 did not specifically identify whether staff had likely violated policy or not and that the final results for the remaining four were still pending. This means that the overall rate at which staff were found to have violated policy was only 1.7 percent (22 of 1,293). Stated another way, the department concluded that more than 98 out of every 100 claims were unsubstantiated, or lacked merit.

24. The warden could also choose to enter a final determination of a claim of no jurisdiction, redirected, reassigned, under inquiry or investigation, pending legal matter, rejected, time expired, and disallowed. CCR, Title 15, Section 3483(i), “Grievance Review.”

25. CCR, Title 15, Section 3483(i)(2), “Grievance Review.”

26. CCR, Title 15, Section 3483(i)(1), “Grievance Review.”

27. We are using the term *resolved* to include grievance decisions of *approved*, *disapproved*, *rejected*, and *time expired*. We exclude unresolved claims categorized as *no jurisdiction*, *reassigned*, *redirected*, and *under investigation*. CCR, Title 15, Section 3483(i), “Grievance Review.”

In our opinion, among other factors contributing to wardens' low rate of finding policy violations against their staff is the requirement that wardens predetermine the outcome of the inquiry before it has even begun. By design, for a staff misconduct grievance to result in a referral to AIMS in the first place, the warden must have already made two determinations: 1) that the alleged acts met the definition of staff misconduct and 2) that the alleged acts were not reasonably believed to have occurred. However, without having investigated the claims, how can a warden know in advance the likelihood of whether the alleged acts occurred? To refer the staff misconduct grievance to AIMS, the warden must decide, without any evidence outside of the original complaint, that the staff member had not likely committed the misconduct. Given this decision-making calculus at the start, the wardens' final determinations give the impression that the end result was simply a self-fulfilling prediction.

We Found Inconsistencies in Staff's Application of the Term *Approved*, and We Question Its Usefulness for Analyzing Data

The exact rate at which the department found policy violations was obscured by the department's ambiguous use of the term *approved*. Since the term was applied to claims that wardens determined to be in policy, out of policy, or still pending, the inconsistent usage of the word made it difficult to understand which meaning staff meant to convey; the department's collection of such disparate outcomes under the umbrella of one term makes it difficult to discover how many claims of staff misconduct led to a finding that staff committed misconduct.

Given the range of meanings attributed to claims marked as approved, we spoke with four wardens along with their key staff, to obtain their working perspective of the term *approved* as applied to staff misconduct claims. All the wardens stated that, generally, an approved claim is one in which they had identified a policy violation. One warden even read back to us the definition from the regulation verbatim; however, when we presented him with an example of a claim he had approved, his answer became less clear. In this instance of a claim the warden approved, in which the incarcerated person alleged that he told staff that canteen workers were extorting him, but staff did nothing (and told him they did not care), the prison staff's written response to the incarcerated person was the following:

Inmate canteen workers are not allowed to select or decide which inmates shop for canteen items. After further inquiry, it was discovered the inmate IDs are collected by Facility A Yard Officers and/or by the canteen staff. Therefore, not making it possible for inmates to dictate or give priority to inmates paying for expedited service. The Warehouse manager was informed of your allegation. [Staff Name] stated the inmate ID's are collected by Facility A Yard Officers

and/or by the canteen staff; therefore, not making it possible for inmates to dictate or give priority to inmates paying for expedited service.

Prison staff who responded to the incarcerated person identified no policy violation; instead, they essentially cleared staff of wrongdoing, yet did so without stating so directly. After we presented this information to the warden, his response was “I see what you are saying.” The warden then stated that the process is still new, and his staff are unsure of how the term *approved* should be defined and applied.

We brought another example to a different warden (and his staff) regarding an incarcerated person's claim of having been sexually harassed and propositioned by a staff member. Although the warden had approved this grievance, the response to the claimant indicated that the matter was still being reviewed. During our discussion with the warden and the grievance coordinator, the coordinator said that, in the beginning, the prison was trying to respond to the claimant right away and that, since the prison was conducting a review of the claim, they decided to approve it. The coordinator said that they have since received additional instruction from the department's Office of Appeals indicating that they should wait, up to the time afforded by the regulatory process, to respond to the claimant.

In another example at a different prison, an incarcerated person alleged staff used unreasonable force when a staff member grabbed the incarcerated person's arm. The warden approved the claim, but the prison staff's written response to the incarcerated person stated the following:

[Incarcerated Person's name] appeal is Approved in that the matter was thoroughly investigated. In regards to the Allegation of Unnecessary or Excessive Force: Staff DID NOT violate CDCR policy with respect to the issues raised.

In this example, the prison staff's response is emphatic, even using all capital letters to state that staff did not violate policy. Notably, this response posits another possible interpretation: that the term *approved* means *to investigate*. We found other approved claims that used a similar justification in concluding there were no policy violations. We also found examples of claims in which the outcome was not specifically identified. In one such approved claim, an incarcerated person alleged staff were not following face-covering guidelines. In the prison staff's response to the incarcerated person, staff wrote:

It is the personal responsibility of each staff member and inmate to ensure compliance with face covering

mandates. It is the expectation set forth by the California Department of Corrections and Rehabilitation to hinder the spread of COVID-19.

Prison staff further informed the incarcerated person that staff would be reminded to ensure they wear masks; however, the written response to the incarcerated person gave no indication whether staff had violated policy. When we followed up with the warden of the prison, he responded by saying:

I can not [sic] confirm whether policy was violated or not as the inmate alleged. There was no submission of a 989 and no OIA investigation. But the appeal was approved and supervisory personnel were tasked to ensure future compliance.

The warden's apathetic response was surprising—and concerning—because the warden, who directs the custody and administrative operations of the prison, could not find out what happened, and because he presented the matter as if it were out of his hands as there had been no investigation. Ironically, it is the warden who dictates which claims are referred to the Office of Internal Affairs for an investigation; therefore, it was his decision not to refer the matter. Nevertheless, because he did not know whether or not there had been a policy violation concerning a staff misconduct grievance he approved, the warden left himself, his prison staff, and the department exposed to criticism for—at minimum—not thoroughly documenting staff's efforts to address the allegation.

These examples, along with the 32 others that resulted in no policy violations, illustrate the inconsistency in staff's application of the term *approved*. Wardens and departmental staff use the term (which is defined in regulation to indicate that misconduct may have occurred) even when the warden has not found a policy violation. Thus, the term itself obscures the fact that the department's rate of finding policy violations is even lower than its data suggest.

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

The department maintains numerous information systems that capture data regarding the staff misconduct grievance process, but none of these systems is capable of generating some basic management reports that would allow managers to perform meaningful trend analyses or assessments of the process statewide. For example, the department cannot produce a report identifying the number or names of staff who have been accused of misconduct by incarcerated persons. Likewise, the department cannot produce a report identifying the names of staff found to have violated a policy in connection with an allegation of staff misconduct. Further, the department cannot produce a report identifying the actions it took, if any, against staff to rectify any related policy violations. Without these basic and essential types of management reports, the department limits its ability to properly manage—and assess—the staff misconduct grievance process and even prison operations in general.

Moreover, we are concerned that due to the department's subjective internal grievance review process, it may be significantly underreporting, by thousands, the number of staff misconduct grievances incarcerated persons have filed. In the three-month period for which data were available, we found that wardens disagreed more than two-thirds of the time with their staffs' recommendations to treat allegations as claims of staff misconduct. Wardens reclassified nearly 2,600 possible staff misconduct grievance allegations as merely routine. Without accurately counting all the claims of staff misconduct, the department limits its ability to conduct effective analyses concerning the staff misconduct grievance process; and without accurately tracking all claims of staff misconduct, the department cannot be certain that it handled them all properly.

The Department Has Created Numerous Information Systems, But None of Them—Individually or Collectively—Contain Reliable Data Concerning Certain Types of Outcomes of Staff Misconduct Grievances

None of the information systems that the department uses to track incarcerated persons' staff misconduct contain the outcomes of investigations or the names of the staff involved, among other crucial data points necessary to effectively manage the process. The department uses several information systems in connection with its process for handling incarcerated persons' allegations of staff misconduct; however, various entities within the department have created separate and

incomplete methods of tracking various components of the process. For example, the Office of Internal Affairs uses the allegation inquiry management system for allegations referred to it for inquiry. It uses a separate system, called the case management system, for allegations referred to the Office of Internal Affairs' Central Intake Unit for formal investigation. Beginning June 1, 2020, the department also implemented a new module for its strategic offender management system, called the offender grievance tracking system, to track statewide grievance-related data. Finally, each prison also independently uses a spreadsheet, called an Internal Affairs' allegation log (CDCR Form 2140), to track—among other things—incarcerated persons' allegations of staff misconduct.

We found, however, that none of these systems can be used to examine key elements of the grievance process, such as the names of staff accused of misconduct and the final outcome (or disposition) of a staff misconduct grievance, identifying whether or not the claim was found to be true. Instead, each system tracks information within narrowly defined parameters for specific purposes. For example, the Office of Internal Affairs' allegation inquiry management system tracks data points related to the progress of an inquiry only while the inquiry remains within AIMS's jurisdiction; this information system focuses mainly on workloads and timeliness. Although this system tracks some useful information, it cannot be used as an overall management tool because it is limited to only those claims referred to AIMS; even more strictly, it does not include any information before or after the involvement of AIMS, including the end result or the inquiry outcome. In other words, AIMS does not track what happens after it returns a completed or rejected inquiry to prisons, including whether any of the claims resulted in a policy violation or disciplinary action.

Similarly, each prison tracks staff misconduct grievances they receive on a spreadsheet (again, called the Internal Affairs allegation log, or CDCR Form 2140), but they do so independently of one another, and inconsistently, with each prison tracking its own data points. One major shortcoming we observed concerning these types of spreadsheets was that prisons included little to no information regarding the final outcomes of the claims or the grievances, such as whether or not the warden found policy violations in connection with the allegations in the staff misconduct grievance or whether the allegations resulted in any disciplinary action against staff. For example, although the department's Internal Affairs allegation log has a field for recording resulting data and action, we found that staff at California State Prison, Corcoran, only recorded the dates on the log, not the actions. None of the log's entries in that field included whether or not the allegation was substantiated. Although the log at California State Prison, Corcoran, included additional fields not available in the department's official log, entries in those fields still did not consistently document outcomes for staff misconduct grievances listed on the log. Because the prison did not track outcomes, it cannot sort the spreadsheet data to identify

trends or determine whether staff members have had multiple sustained allegations, which is information key to determining the appropriate level of progressive discipline.

The log for Richard J. Donovan State Prison was also missing pertinent information for most of its entries. Although staff at that prison did document resulting actions and dates for most of the log's entries, staff frequently omitted information necessary to identify the subjects of the allegations. Specifically, staff frequently left blank or incomplete two of the log's fields: subject first name and subject badge number. There were no entries at all in the badge number field of the log. And although many of the log's entries did include the subjects' first initials, few entries included the subjects' full first names. Because the prison employs hundreds of employees, it is likely that some of them may share the same last names, even among employees in the same job classifications. Because staff so frequently omitted important identifying information, it would be difficult—if not impossible—for Richard J. Donovan State Prison management to use the data to conduct important analysis, including determining whether particular staff members had multiple sustained allegations.

Although the spreadsheet used at California State Prison, Sacramento, did document outcomes, the spreadsheet was separated into multiple worksheets, which made it difficult for prison management to identify trends or easily determine whether staff members had multiple sustained allegations. This prison's spreadsheet contained six different worksheets, one each for different categories of allegations, such as concerns with equal employment opportunity or staff misconduct grievances. Each of the worksheets included the required fields, and staff at the prison consistently provided information in those fields. However, because Microsoft Excel only lets users search and analyze data on one worksheet at a time, such a segregated log of separate sheets would not allow prison management to easily search or sort across worksheets to identify trends or staff members who have repeatedly violated departmental policy; this shortcoming potentially limits management's ability to determine appropriate levels of progressive discipline.

In addition to the use of this segregated log at California State Prison, Sacramento, which made it difficult for management to effectively aggregate and parse the available data, our review of the log itself revealed the prison further limited management by circumventing the department's grievance and appeals policies and regulatory requirements for numerous staff misconduct allegations it had received from incarcerated persons. As mentioned in the previous paragraph, this log contained multiple worksheets that segregated the allegations by type; it also contained a separate worksheet tab titled "WARDEN2020." This worksheet contained numerous allegations, which according to the log's data entries, were based on letters received from incarcerated persons, their family members, or representatives. Many of these entries

were complaints that alleged staff misconduct. However, even though the letters alleged staff misconduct, entries in the log clearly indicated that the prison did not process the allegations consistent with the department's staff misconduct grievance policies and regulations. For example, the log included one incarcerated person's allegation that he had been assaulted by various officers and that officers took several of the incarcerated person's personal belongings and gave them to other incarcerated persons. These allegations, if true, were certainly serious enough to result in adverse action. If the prison had adhered to the grievance and appeal requirements, management should have referred the allegations to AIMS for an inquiry or to the Office of Internal Affairs' Central Intake Unit for a formal investigation. Instead of referring the allegation to either of these units, however, the log's resulting action field indicated that a prison sergeant interviewed the incarcerated person and encouraged him to use the grievance process to resolve any future issues. By not following the grievance and appeal regulatory requirements and instead handling the allegations at the local level, the prison circumvented the AIMS process as well as outside oversight. Additionally, by processing and tracking the staff misconduct grievances separately, the prison prevented the staff misconduct grievances from being tracked in the department's tracking system, thus undercounting the prison's staff misconduct grievances and preventing anyone who did not have access to the spreadsheet from viewing any of the grievance's details or even knowing that the grievance existed at all.

In addition to circumventing the grievance and appeal policies and regulations, the practice at California State Prison, Sacramento, of processing staff misconduct allegations not received on the department's official grievance form outside the department's grievance and appeals process resulted in prison staff instituting an unnecessary administrative hurdle for incarcerated persons to surmount before they could submit grievances and have them properly adjudicated. For the several staff misconduct allegations on the spreadsheet's "WARDEN2020" worksheet, the resulting action field indicated that prison staff performed a limited review of the allegations, or none at all, and then told the incarcerated person to document and submit the allegations on the department's official grievance form. That instruction placed an unnecessary administrative requirement on the incarcerated person when the prison had already received the incarcerated person's written staff misconduct grievance. In addition, such action could potentially set the stage for administrative denial of the grievance since presumably the 30-day deadline would not be tolled until the grievance form was filed.

In one such example, the log documented an incarcerated person's letter requesting an investigation due to being harassed by an officer because he had filed a grievance against other officers. The spreadsheet's resulting action field for this staff misconduct allegation documented only that the incarcerated person was advised and encouraged to use the

staff misconduct grievance process. Even though the prison possessed a documented staff misconduct allegation from an incarcerated person, it required the incarcerated person to resubmit the information on the department's form. The unreasonableness of the prison's practice was supported by a later email message from the department's associate director of its Office of Appeals to the department's grievance coordinators. The associate director's message stated that, while the department preferred that grievances be filed on the department's official form, if a grievance was received by a prison's office of grievances "on any kind of paper (including a paper towel) they are to process the grievance in OGT [offender grievance tracking system]." The prison's practice of unnecessarily requiring an incarcerated person to use the department's official grievance form could result in an inadequate investigation by prison staff into the allegations and could discourage incarcerated persons from submitting legitimate staff misconduct grievances, preventing the department from identifying staff misconduct.

Beginning on June 1, 2020, the department replaced its inmate appeals tracking system with the offender grievance tracking system. This system serves as the department's primary data system for the grievance process. Among other changes, it tracks some new data points, such as the total number of grievances, the number of individual claims noted in each grievance, the number of claims that were approved or disapproved, and the number of staff misconduct grievances that a grievance coordinator forwarded to the warden. However, this system fails to track other basic information about the grievance process, such as the specific outcomes of the inquiry (apart from the vague terms *approved* or *disapproved*), the names of staff involved, and details regarding any disciplinary actions resulting from the inquiry.

Consequently, despite some limited tracking ability, the department does not have a single, effective tool to track the staff misconduct grievance process from start to finish, nor can it effectively produce management reports that include such basic information as the number and names of staff who were accused of misconduct or were found to have violated policy, nor any of the resulting disciplinary actions (corrective or adverse) taken as a result of the process. More important, however, these flaws also limit the department's—and the

Questions we asked of the department concerning its grievance reporting capabilities. Due to limitations in the department's data-tracking processes, it could not produce any of the requested documents.

1. Can the department run a summary report, showing the decisions, dispositions, or outcomes of completed inquiries, statewide or by prison? In other words, can the department quantify how many inquiries resulted in no policy violations or policy violations; or in corrective or adverse actions?
2. Is there a data field in any of the departments IT systems that identifies decisions, dispositions, or outcomes of a completed inquiry?
3. Can the department run a complaint-level report, showing the decision, disposition, or outcome of an inquiry in detail? Or can someone in the department pull up an inquiry and see what ultimately happened?
4. Can the department run a report identifying the names of employees who were accused of misconduct as a result of an inquiry or inquiries?
5. Can the department run a report identifying the names of employees who were found to have violated policy or to have committed misconduct as a result of an inquiry or inquiries?

Source: Email sent on August 20, 2020, to the Director of Correctional Policy Research and Internal Oversight.

wardens'—ability to perform meaningful trend analyses that may pertain to actions of the staff accused of misconduct throughout the State and any subsequent actions taken to address future misconduct.

We asked the department about its data tracking and management reporting capabilities. Our questions, shown in the text box, were fundamental in nature and represented what we believed were the minimum components necessary for an effective data tracking and reporting tool. The department, however, could not produce any of the requested reports or provide any of the information from its data systems. The department's response to these questions, from its director of Correctional Policy Research and Internal Oversight, included the following:

We have completed a thorough review of all of our tracking systems used in the Office of Appeals and the Office of Internal Affairs. None of our systems currently have the ability to do everything you have asked [in your email]. The Offender Grievance Tracking (OGT) system in SOMS tracks all grievances, including complaints against staff, that meet the criteria to be responded to via the Administrative Remedies (Grievance and Appeals) process, and this system documents whether the claim was approved or disapproved, however, this system does not record information regarding any corrective action or discipline that was imposed as a result of a claim finding. The Allegation Inquiry Management System (AIMS) tracking is designed to track the inquiry process from referral to the point that the completed inquiry report is provided to the Reviewing Authority, however, this system does not record information specific to whether the claim (that led to the inquiry) was approved or disapproved and the system does not record information regarding any corrective action or discipline that was imposed as a result of a claim finding. Finally, the Case Management System (CMS) does track investigation requests from when the request is made by the hiring authority to the final decision by the hiring authority regarding misconduct and any corrective action or disciplinary action that is taken as a result. However, CMS does not track all staff complaints or allegation inquiries; CMS only tracks cases that have been referred to OIA for investigation or direct action.²⁸

28. Email from the Director of Correctional Policy Research and Oversight sent on September 2, 2020.

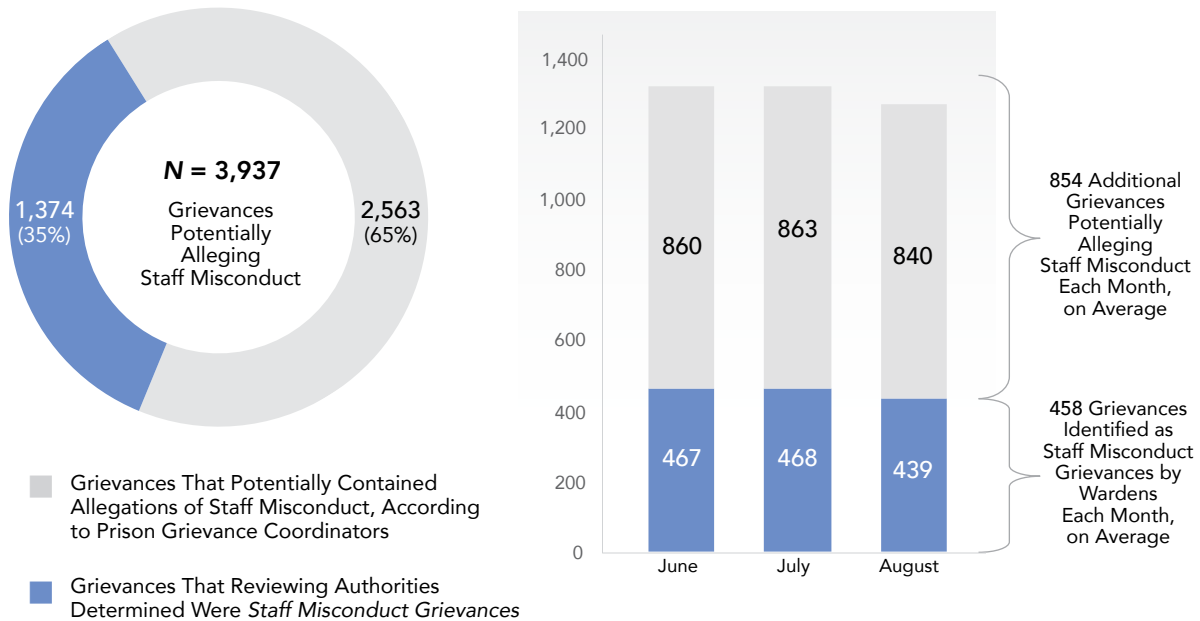
The director's response highlighted our fundamental concern: The department cannot produce basic types of reports to successfully manage the process from either a statewide perspective or at the level of the individual prison. Moreover, we observed that the department does not appear to have assigned one person in the department full responsibility, or ownership, of the staff misconduct grievance process. By design, the process spans multiple offices and divisions within the department, but that should not prevent a single point of leadership or ownership of the program. Instead, from what we have seen, each departmental entity tracks its own data in a silo: prisons have a piece that they track, the Office of Internal Affairs has two pieces that it tracks separately (formal investigations in the Central Intake Unit and inquiries in AIMS), and the Office of Appeals, which is responsible for responding to appeals of grievances, has a piece that it tracks. However, none of these systems are useful from an overall data management perspective. As a result, the department's managers and executives, who work in different offices and divisions, are left without key information to make better decisions, analyze trends, and assess and correct deficiencies in the process.

Thousands of Grievances Possibly Alleging Staff Misconduct Could Have Been Misclassified as Routine Grievances in Just a Three-Month Period, Bypassing the Allegation Inquiry Process and Raising Concerns About Underreporting and Data Collection

One of the new data points collected in the department's offender grievance tracking system is an entry for the number of grievances that staff in the prisons' Office of Grievances identify as a "possible" staff misconduct grievance. Once an incarcerated person files a grievance, it is reviewed by staff in the prison's Office of Grievances to determine how the prison will handle it. If staff believe the allegations contained in the grievance constitute possible staff misconduct, they forward the grievance (or certain allegations or claims within it) to the warden for review. If the warden agrees, the grievance is identified in the department's offender grievance tracking system as a staff misconduct grievance. If the warden disagrees with his or her staffs' initial determination, the warden designates the grievance as routine.

However, when we reviewed the department's grievance data for the three-month period in which it tracked these particular data, we grew alarmed at the volume and rate at which wardens disagreed with their staffs' initial determinations. According to the department's data, wardens agreed with their staffs' initial determinations only 35 percent of the time, disagreeing with them for the remaining 65 percent. This resulted in 2,563 grievances in just a three-month period that were ultimately classified as routine, despite containing indications of alleged staff misconduct (refer to Figures 11 and 12 on pages 60 and 61, respectively).

Figure 11. Wardens Frequently Overruled Grievance Coordinators When Determining Whether a Grievance Alleged Staff Misconduct, Leading Us to Believe the Actual Number of Staff Misconduct Grievances Was Much Higher Than Reported During the Three-Month Period From June 1, 2020, Through August 31, 2020



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

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

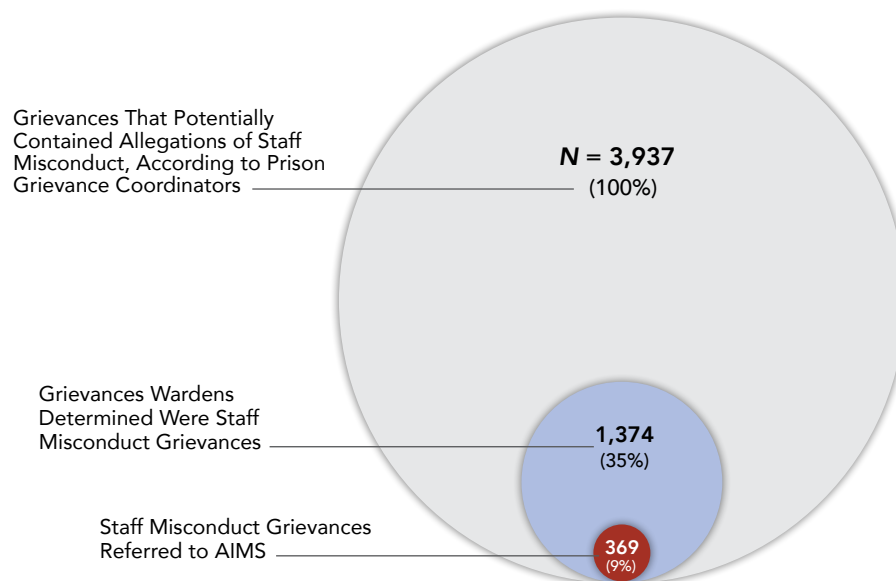
To better understand the types of allegations included in these 2,563 routine grievances, we selected a random sample of 15 to review. In every grievance, we believed there were allegations made against staff that met the department's definition of staff misconduct and should have been classified as a staff misconduct grievance. Although the 15 grievances we reviewed were not intended to represent all 2,563 routine grievances that fell into this category, we are concerned that, given those we did review, the department has misclassified many grievances as routine, thereby potentially undercounting the actual number of staff misconduct grievances.

For example, of among the 2,563 routine grievances, an incarcerated person alleged that a captain forged the incarcerated person's signature while the captain conducted an administrative review into the incarcerated person's placement in the administrative segregation unit. This is an allegation of peace officer dishonesty carrying the highest possible penalty—dismissal

from State service. Staff at the prison's Office of Grievances identified that the incarcerated person's grievance alleged staff misconduct; but again, the warden determined that the grievance did not contain any allegations of staff misconduct and ordered the grievance to be processed as routine. This grievance was not counted among the number of staff misconduct grievances filed by incarcerated persons in the time frame we reviewed, even though the claim clearly met the definition of staff misconduct.

The reviewing staff who processed this routine grievance at the prison did at least conduct an interview of the accused captain. That conversation, along with copies of the underlying documentation, revealed a reasonable explanation of what had transpired: the captain indicated that the incarcerated person refused to sign the administrative order; as a result, the captain marked "RTS," a common initialism for "refused to sign." Further, the captain placed his own signature in the signature block where the incarcerated person was supposed to sign. The documentation we reviewed supported the conclusion of disapproved, essentially clearing the captain of the suspected forgery. However, since this grievance was not designated a staff misconduct grievance, the prison's records will never show that the incarcerated person made these allegations nor will they show that the captain was essentially exonerated.

Figure 12. The Department's Identification and Routing of Grievances That Potentially Alleged Staff Misconduct During the Three-Month Period From June 1, 2020, Through August 31, 2020



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

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

The effect of misclassifying the types of grievances could potentially be quite significant: if our sample of routine grievances is consistent with the other grievances designated as routine, the actual number of staff misconduct grievances across the department could be drastically underreported by, possibly, thousands of claims. For instance, in just the three-month period we reviewed, wardens rejected 2,563 claims that the prisons' Office of Grievances determined contained allegations of staff misconduct. At this rate, the number of misclassified (or uncounted) staff misconduct grievances could be as high as 10,000 in a year, which would more than double the total number of staff misconduct grievances currently reported (refer to Table 1, below). These uncounted staff misconduct grievances themselves alter the department's understanding of what it is accomplishing. Having the ability to connect them to the rest of the collected data and analyze them would enable the department to more effectively manage its program and be more transparent. This problem, however, is far more significant than mere underreporting of data: it also means that claims alleging staff misconduct were likely processed without an inquiry and without any oversight.

Table 1. The Office of the Inspector General's Analysis of Grievances Potentially Containing Allegations of Staff Misconduct

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

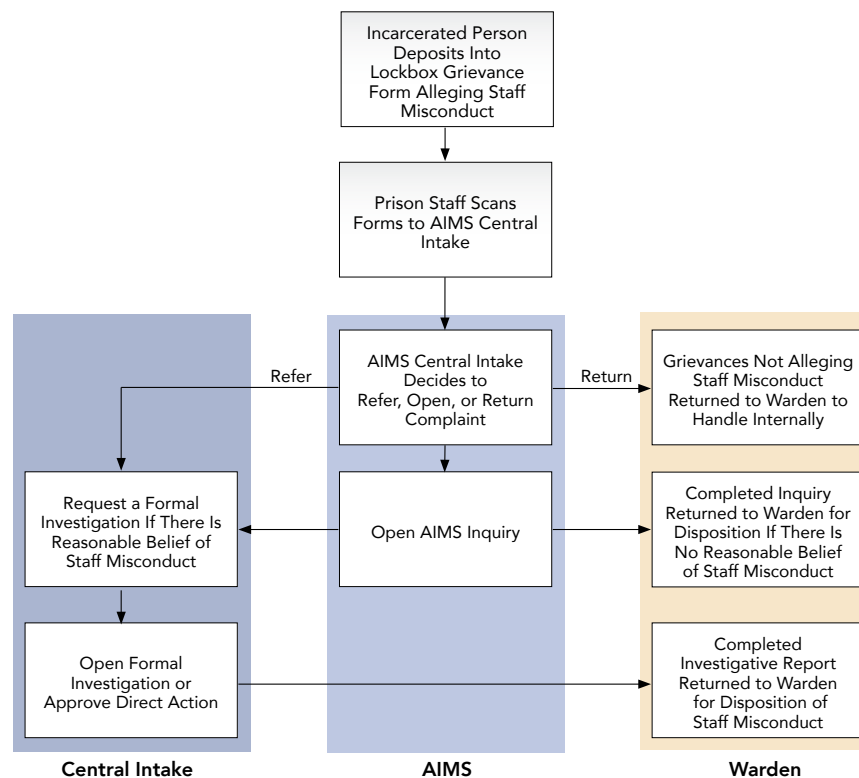
* Prior to June 1, 2020, the department did not capture the number of grievances that prison grievance coordinators identified as potentially containing allegations of staff misconduct. Due to this limitation, we adjusted the values in bold for the five-month period based on the monthly average for the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

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

The Department Should Require Incarcerated Persons to Submit Staff Misconduct Grievances Directly to the Allegation Inquiry Management Section to Increase Independence and Fairness

To provide a greater degree of independence, consistency, and legitimacy to the staff misconduct grievance process, the department should, among other things, completely restructure its grievance routing process (refer to Figure 13, below). The first and most important change we recommend is to require incarcerated persons to submit their allegations of staff misconduct directly to AIMS. The department could easily create separate lockboxes for staff misconduct grievances and instruct staff who collect those grievances to send them to AIMS electronically. This would enable every allegation of staff misconduct to bypass the subjective determinations wardens and other prison staff make while reviewing grievances to decide whether they meet the definition of staff misconduct. With this system of direct referral, there would be no need for the analyst, grievance coordinator, and warden at each of the State's 35 adult prisons to individually review each grievance and apply this set of subjective determinations that is preventing AIMS from reviewing allegations of staff misconduct.

Figure 13. Recommended Process for Handling Incarcerated Persons' Grievances Alleging Staff Misconduct



Source: The Office of the Inspector General.

Upon receipt of the staff misconduct grievances, AIMS staff would review each grievance and assess the allegations contained in the grievance to identify any issues that prison staff would need to address immediately, such as safety concerns or sexual assault allegations. The AIMS intake staff would then notify the appropriate prison personnel of these concerns so they could be addressed. From that point, we recommend AIMS create a process similar to that used by the Office of Internal Affairs' Central Intake Unit so that a designated group of AIMS staff review each grievance and assess whether the allegations in each grievance meet the department's definition of staff misconduct. When a relatively small number of AIMS staff are charged with reviewing every grievance, those staff members will develop expertise that can be applied consistently statewide. This change also eliminates the time spent by the approximately three individuals who currently review the grievances at each prison—a total of approximately 105 different prison staff.

Grievances that AIMS staff determine do not contain allegations of staff misconduct could be returned to their respective prisons and handled by prison staff. For grievances that contain allegations of staff misconduct, we recommend AIMS open an inquiry into each allegation. We issue a separate recommendation that the department revise its definition of staff misconduct to include all allegations that a staff member violated a law, regulation, policy, or procedure, or acted contrary to an ethical or professional standard, not just those that are likely to lead to adverse disciplinary action if found to be true. However, in the event the department is unwilling to revise its definition of staff misconduct, we recommend AIMS include within the scope of each inquiry any other related allegations that meet the first part of the definition of staff misconduct—conduct that violates any law, regulation, policy, or procedure, or is contrary to an ethical or a professional standard—regardless of whether those individual actions may lead to formal adverse action or informal corrective action. This guarantees only one set of investigators interviews the complainant, witnesses, and staff about any single incident. We further recommend AIMS investigators complete their investigations into every allegation before terminating the inquiry and drafting a report. This will ensure every allegation receives a complete and thorough inquiry and that no allegation is assessed based on limited evidence.

At the end of the inquiry, rather than refer the inquiry report back to the warden of the corresponding prison, we recommend AIMS send the inquiry report directly to the Office of Internal Affairs' Central Intake Unit if AIMS's staff have formed a reasonable belief of misconduct; otherwise, AIMS should send the report to the respective prison's warden. By referring the inquiry report directly to the Office of Internal Affairs' Central Intake Unit, the department ensures that an experienced group of decision makers will consistently apply the standard of reasonable belief in their assessment throughout the State as part of their daily job duties.

This new process would also be far more efficient. All requests for formal investigations and the imposition of formal discipline must be approved by the Office of Internal Affairs' Central Intake Unit, so the department would save the time it now takes to return the inquiry report to the prison, where the warden must then review the inquiry report and send it to the Office of Internal Affairs' Central Intake Unit. This direct referral from AIMS to the Office of Internal Affairs' Central Intake Unit would reduce the risk that wardens will make improper determinations that would terminate the investigative process. In addition, direct referral would ensure that all decisions resulting from an inquiry are subject to independent oversight and scrutiny.

Finally, by sending all staff misconduct grievances directly to AIMS, this new process would address our concern regarding the underreporting of allegations. It would also enable the department to use a single tracking system and place responsibility of that system within one unit.

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Recommendations

To address our greatest concern—that the department's revised process for handling allegations of staff misconduct is still not independent—the department should completely overhaul the process by requiring incarcerated persons to file allegations of staff misconduct directly to AIMS, bypassing staff and the warden of the prison. As part of this recommendation, the department should take the following actions:

- Detach allegations of staff misconduct from the grievance process, entirely. The department should create a separate form that is specific to allegations of staff misconduct, such that the form could be used by anyone who has a complaint, including incarcerated persons, department staff, and members of the public.
- Eliminate the 30-day time limit placed on incarcerated persons to file allegations of staff misconduct and instead encourage them to file their allegations as soon as possible.
- Process and consider allegations from any source, even if it is a person who is not directly or personally affected by the alleged misconduct, such as a witness or other third party with knowledge of a perceived improper act.
- Create a separate central intake function at AIMS to process all allegations of staff misconduct brought forward utilizing the new form we recommend creating above, returning to the prisons only those allegations that do not relate to staff misconduct.
- Require AIMS to address all allegations of staff misconduct by either completing an inquiry or referring allegations directly to the existing Central Intake Unit for formal investigation.
- Eliminate the requirement that AIMS investigators stop their inquiry work when they form a reasonable belief of misconduct; they should instead continue to gather and analyze all relevant evidence and complete their inquiry.
- Require AIMS to refer completed inquiries directly to the existing Central Intake Unit for formal investigation when there is a reasonable belief that the alleged misconduct occurred. AIMS should return to the wardens for a final review and determination fully completed inquiries in which there is not a reasonable belief that the alleged misconduct occurred.

To ensure AIMS has sufficient staffing levels, the department should prepare a workload analysis, factoring the length of time it takes to conduct an inquiry and the number of staff it would need to handle the total volume of allegations of staff misconduct.

To address our concern that the department's definition of staff misconduct is overly subjective, the department should redefine the meaning of staff misconduct as "an allegation or claim that departmental staff violated a law, regulation, policy, or procedure, or acted contrary to an ethical or professional standard." We believe that the current definition includes too much subjectivity by having decision-makers determine, prior to the completion of an inquiry or investigation, whether there is a likelihood that the alleged conduct, if true, would result in adverse action.

To address another of our significant concerns that the department's revised process for handling allegations of staff misconduct is not fair, the department should develop a statewide review process to ensure wardens make consistent and fair disciplinary determinations following the completion of an inquiry or formal investigation. The department should pay close attention to key performance indicators, such as the number of allegations found to be true. In addition, this review process should ensure that any resulting disciplinary penalties from the inquiry process were reasonable and effectuated.

To address our concern that the department cannot effectively analyze trends and assess the effectiveness of its staff misconduct process, the department should consider developing a new centralized information tracking system or modifying an existing system so that it comprehensively tracks key information and data involving the entire staff misconduct process. Toward that end, the department should account for all allegations of staff misconduct and identify by location, at a minimum, the following:

- The number of reported allegations of staff misconduct
- The logistical details of an allegation of staff misconduct, such as any relevant dates or time frames, relevant locations, and the categorical nature of the allegation
- The names and other related information of those who filed allegations of staff misconduct
- The names, badge numbers (or other unique identifiers), and titles of the accused staff
- The outcome or disposition of each allegation of staff misconduct, such as whether or not the allegation was sustained (or found to be true)
- The disciplinary determinations made for each sustained allegation, such as whether the subject(s) received corrective or adverse action

Response to the OIG's Report

STATE OF CALIFORNIA — DEPARTMENT OF CORRECTIONS AND REHABILITATION

GAVIN NEWSOM, GOVERNOR

OFFICE OF THE SECRETARYP.O. Box 942883
Sacramento, CA 94283-0001

February 8, 2021

Mr. Roy Wesley
Office of the Inspector General
10111 Old Placerville Road, Suite 110
Sacramento, CA 95827

Dear Mr. Wesley:

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

CDCR takes every allegation of employee misconduct very seriously, and we are committed to ensuring all allegations are properly and fairly reviewed, whether at the Department or at the local level. The Department appreciates this review by the Office of Inspector General (OIG), and recognizes the report provides valuable feedback which we will consider as we continue to improve how allegations against staff are reviewed. However, some of the conclusions in the report may be premature, given the Allegation Inquiries Management Section (AIMS) structure was activated less than a year ago.

1

As is expected with the activation of such a significant new unit and processes, CDCR has encountered challenges, especially in the beginning. Wardens and grievance coordinators struggled with the new screening process. However, CDCR has not found evidence demonstrating wardens are intentionally circumventing the new process. Rather, typical learning curve challenges have transpired. CDCR has worked diligently to address this and have taken steps to provide additional training to wardens and grievance coordinators including relevant job aid as well as established increased performance monitoring to ensure allegations of misconduct are handled appropriately.

We recognize the OIG's position that an investigation and an inquiry is one in the same. CDCR's historical policy and application recognize inquiries and investigations as different in operational practice. Nomenclature for inquiry versus investigative process was determined as part of the Madrid Remedial Plan, and the OIG participated in developing this Plan. As a result of the Madrid Remedial Plan, only the civil service classifications in the special agent series can complete an investigation. As such, AIMS Lieutenants are able to perform inquiries but cannot complete the formal investigation process.

2

Roy Wesley, Office of the Inspector General
Page 2

We thank you for the opportunity to review and comment on the draft report. CDCR wholly appreciates the importance of maintaining independence and fairness when reviewing allegations of staff misconduct. We are committed to persistently working to improve our processes in this regard, and we value the observations of the OIG as they continue to monitor this process.

If you have further questions, please contact me at (916) 323-6001.

Sincerely,


KATHLEEN ALLISON
Secretary

Comments Concerning the Response Received From the Department of Corrections and Rehabilitation

To provide clarity and perspective, we comment on the California Department of Corrections and Rehabilitation's (the department) response to our report. The numbers below correspond with the numbers we have placed in the margin of the department's response.

1. In its response, the department asserts our conclusions may be "premature" given that the department activated AIMS less than a year ago. Yet the problems we discuss are structural and are not dependent on when it activated AIMS. The primary reason we published this progress report was to highlight structural problems in the department's regulations and to point out that those problems will remain until the department changes the regulations (and its process), again. The faulty regulatory structure has introduced unnecessary complexity and subjectivity within several stages of the decision-making process and our recommendations are aimed at addressing these, and other, weaknesses in it.
2. We raised this point to ensure that when department staff complete an inquiry, that they do so with the same level of due diligence and professionalism as they would with any other investigation. The department, in its response, did not articulate any material difference between inquiries and investigations. As we explained in the Introduction of this report, the activities of these two terms are identical: they both involve interviewing claimants, witnesses, and subjects; collecting evidence; and writing reports. We found no legal criteria barring a lieutenant from performing any of these activities, and by extension, from performing an investigation. Likewise, we found no legal criteria that specifies that only special agents can perform an investigation; that is simply an operational choice made by the department. We mention this because we believe that an inquiry in this context is on equal footing with an investigation. To us, they are one and the same.

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Special Review

The California Department of Corrections and Rehabilitation

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

OFFICE of the INSPECTOR GENERAL

Roy W. Wesley
Inspector General

Bryan B. Beyer
Chief Deputy Inspector General

STATE of CALIFORNIA
February 2021

OIG