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# OIG | OFFICE *of the* INSPECTOR GENERAL

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Independent Prison Oversight

May 2021

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

*Semiannual Report  
July–December 2020*



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May 19, 2021

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

Dear Governor and Legislative Leaders:

Enclosed please find the Office of the Inspector General's report titled *Monitoring Internal Investigations and the Employee Disciplinary Process of the California Department of Corrections and Rehabilitation*. This is the Office of the Inspector General's 32nd semiannual report, as mandated by California Penal Code sections 6126(a) and 6133(b)(1), which summarizes the California Department of Corrections and Rehabilitation's (the department) performance in conducting internal investigations and handling employee discipline cases we monitored and closed between July 1, 2020, and December 31, 2020.

Specifically, we assessed the performance of the three entities within the department responsible for conducting internal investigations and managing the employee disciplinary process: hiring authorities (such as prison wardens), the Office of Internal Affairs, and department attorneys. Between July 1, 2020, and December 31, 2020, we monitored and closed 138 cases throughout California, and concluded that the department's overall performance in conducting internal investigations and handling employee discipline cases was *poor*. Of the 138 cases, we rated 86 cases *satisfactory* and 52 *poor*.

In assessing the first of the three entities, we found that hiring authorities' performance was *satisfactory* in discovering allegations of employee misconduct and referring those allegations to the Office of Internal Affairs. However, we determined that hiring authorities' performance was *poor* in the timeliness of their decision-making regarding Office of Internal Affairs' investigations, and the service of disciplinary actions. Hiring authorities conducted timely investigative and disciplinary findings conferences in just 77 of 119 cases, 65 percent of the cases we monitored, and delayed serving disciplinary actions on peace officers in 35 of 66 cases, 53 percent.

The Office of Internal Affairs, the second entity, performed in a *satisfactory* manner in both processing referrals from hiring authorities and conducting investigations. The Office of Internal Affairs processed referrals from hiring authorities in a timely manner in 128 of 138 cases, or 93 percent, and conducted thorough investigations in 104 of 109 cases, 95 percent. However, we disagreed with the Office of Internal Affairs' decisions concerning hiring authority referrals in 259 of 1,063 cases, or 24 percent. In addition, between July and December 2020, the OIG monitored and closed seven cases involving the use of deadly force. The department's policy requires special agents to complete deadly force investigations within 90 days of assignment. During this reporting period, special agents did not complete deadly force investigations within 90 days of assignment in two of the seven deadly force cases, 29 percent. Nevertheless, we assessed six deadly force cases as *satisfactory*, despite finding in one of the six cases that a special agent did not comply with the department's internal time frames for completing investigations. For the one case, the special agent completed the investigation within 98 days. Moreover, the Office of Internal Affairs improved its timeliness in completing deadly force investigations from the January through June 2020 reporting period, during which it did not timely complete the investigations in five of 11 cases, or 45 percent.

In assessing department attorneys, the third entity, we found that department attorneys performed in a *satisfactory* manner in providing legal advice to the department while the Office of Internal Affairs processed



employee misconduct referrals and conducted investigations. During this reporting period, we found that department attorneys provided sound legal advice to the Office of Internal Affairs when the Office of Internal Affairs processed referrals from hiring authorities in 120 of 128 cases, 94 percent. Department attorneys also provided appropriate legal consultation to hiring authorities concerning the sufficiency of investigations and disciplinary findings in 96 of 108 cases, 89 percent. However, we found department attorneys' performance during litigation to be *poor*, primarily resulting from the untimely service of disciplinary actions on peace officers. Specifically, department attorneys prepared disciplinary actions for peace officers in 66 cases we reviewed, and in 35 of those cases, 53 percent, the department delayed serving the disciplinary action on at least one peace officer.

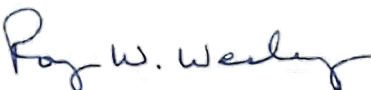
As in our three prior reports, we conducted an analysis of the unnecessary costs the department incurred while it delayed in processing employee discipline cases. We found that for the cases we monitored and closed during the July 1, 2020, through December 31, 2020, reporting period, such delays resulted in approximately \$174,578 of unnecessary costs to the State and taxpayers. Over the past four reporting periods, the department has unnecessarily paid approximately \$1,015,185 in salary and benefits to employees during the delays.

We also highlight in this report our finding that the Office of Internal Affairs' special agents often delayed commencing investigations. During this reporting period, we monitored and closed 138 employee discipline cases. In 102 of the 138 cases, the Office of Internal Affairs conducted at least one interview. We found that in 58 of the 102 cases, 57 percent, the assigned Office of Internal Affairs' special agent delayed conducting the first witness interview more than 45 days after the Office of Internal Affairs first assigned a special agent to the investigation. In this report, we describe the negative consequences of delaying an investigation. As such, we offer a recommendation that the department develop a policy requiring that special agents conduct the first investigatory interview within a specified time frame.

Finally, we examined a cohort of employee discipline cases in which a hiring authority submitted documentation to the Office of Internal Affairs evidencing employee misconduct, the Office of Internal Affairs determined that the hiring authority sufficiently documented the employee misconduct, and the Office of Internal Affairs authorized the hiring authority to address the alleged misconduct directly. Once authorized to move forward with direct disciplinary action, the hiring authority must hold an investigative and disciplinary findings conference to make a decision concerning each allegation and to determine the appropriate discipline, if any. Under our interpretation of the Department Operations Manual, Section 33030.13, the hiring authority should hold the investigative and disciplinary findings conference within 14 days of the Office of Internal Affairs' authorization. We reviewed all 497 cases in which the Office of Internal Affairs authorized the hiring authority to take direct disciplinary action between July 1, 2020, and December 31, 2020, to determine whether hiring authorities held timely investigative and disciplinary findings conferences. We did not wait for the cases to be closed by the department, and at the time of this writing, some of those cases are still open and pending decisions by the hiring authority.

We followed each case simply to determine when the hiring authority held the investigative and disciplinary findings conference. Our review revealed that of the 497 cases for which the Office of Internal Affairs determined the hiring authority already had sufficient information to decide each allegation of employee misconduct, the hiring authority did not conduct the investigative and disciplinary findings conference within 14 days in 433 of the cases, or 87 percent. In 129 of the 497 cases, or 26 percent, the hiring authority took longer than 90 days to hold the investigative and disciplinary findings conference. Therefore, we recommend that the department implement and enforce a bright-line rule requiring hiring authorities to hold investigative and disciplinary findings conferences within 14 days of receiving the case from the Office of Internal Affairs or receiving authorization from the Office of Internal Affairs to move forward with direct disciplinary action.

Sincerely,



Roy W. Wesley  
Inspector General

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“Scales of Justice” (cover): Graphic image designed by the U.S. Department of Justice; sourced via the internet

“Lady Justice” (page vii): Adapted from an illustration at [www.vecteezy.com](http://www.vecteezy.com)



# California Department of Corrections and Rehabilitation Institutions and Parole Regions



### CDCR Headquarters



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

### CDCR Training Center



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

### Parole Regions

North Parole Region

South Parole Region

### Adult Institutions

ABRV	FACILITY NAME	LOCATION
1	PBSP Pelican Bay State Prison	Crescent City
2	CCC California Correctional Center	Susanville
3	HDSP High Desert State Prison	Susanville
4	FSP Folsom State Prison	Represa
5	SAC California State Prison, Sacramento	Represa
6	CMF California Medical Facility	Yuba City
7	SOL California State Prison, Solano	Yuba City
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 Sainra Valley State Prison	Soledad
17	PVSP Pleasant Valley State Prison	Coalinga
18	COR California State Prison, Corcoran	Corcoran
19	SATF Substance Abuse Treatment Facility	Corcoran
20	ASP Avenal State Prison	Avenal
21	NKSP North Kern State Prison	Delano
22	WSP Wasco State Prison	Wasco
23	KVSP Kern Valley State Prison	Delano
24	CMC California Men's Colony	San Luis Obispo
25	CCI California Correctional Institution	Tehachapi
26	LAC California State Prison, L.A. County	Lancaster
27	CM California Institution for Men	Chino
28	CIW California Institution for Women	Corona
29	CRC California Rehabilitation Center	Norco
30	CVSP Chuckawalla Valley State Prison	Bythe
31	ISP Ironwood State Prison	Bythe
32	CAL Calipatria State Prison	Calipatria
33	CEN Centinela State Prison	Imperial
34	RJ 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	DDCF Delano CCF	Delano
2	GMCCF Golden State Modified CCF	McFarland
3	CVMCCF Central Valley Modified CCF	McFarland
4	SMCCF Shafter Modified CCF	Shafter
5	TMCCF Taft Modified CCF	Taft
6	DVMCCF Desert View Modified CCF	Adelanto

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



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

Source: The Office of the Inspector General.



LADY JUSTICE

## *T*he Inspector General

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

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

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

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

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

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

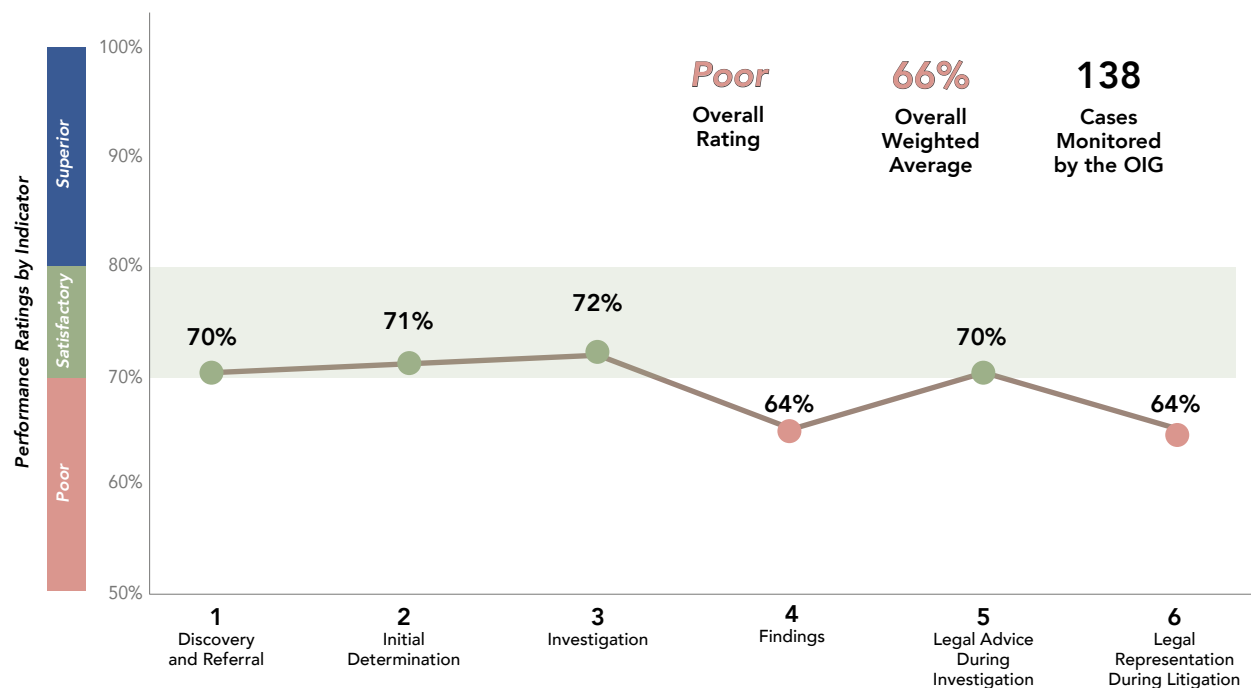
— *State of California*  
*Excerpted from Penal Code sections*

## Summary

The Office of the Inspector General (the OIG) has been monitoring and reporting on the internal investigations and employee disciplinary process of the California Department of Corrections and Rehabilitation (the department) since 2005, under the authority granted by California Penal Code sections 6126(a) and 6133. This report is our 32nd semiannual report, in which we detail our assessment of 138 employee misconduct cases OIG attorneys monitored and closed from July 1, 2020, through December 31, 2020. Concerning the 138 cases we monitored and closed within this time frame, the department's overall performance for these cases was *poor*.

The department's performance was *satisfactory* in discovering and referring misconduct cases, making initial determinations regarding the referrals, performing the investigation, and providing legal advice during the investigation. However, the department's performance was *poor* when making and processing investigative and disciplinary findings regarding alleged misconduct, and providing legal representation during litigation. Figure 1 below depicts each assessment area and the corresponding percentages.

**Figure 1. The OIG's Overall Rating of the Department's Investigative and Discipline Process During the Period From July Through December 2020**



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

During this reporting period, the performance indicator most significantly affecting the department's *poor* performance was the department's investigative and disciplinary findings after the Office of Internal Affairs completed its investigation. Of the cases in which the department made investigative and disciplinary findings, the department's performance was *poor* in 53 of the 119 cases, or 45 percent. Further, the hiring authorities did not timely consult with the OIG and a department attorney regarding the sufficiency of the evidence, investigation, findings, and disciplinary determinations in 42 of 119 cases, or 35 percent. The department's untimely service of disciplinary actions also affected this performance indicator. Of the 66 cases in which the department served a disciplinary action on a peace officer, the department failed to timely serve the disciplinary action in 35 of the 66 cases, or 53 percent. Likewise, in cases for which the department provided legal representation during litigation, the department's performance was *poor* in 32 of the 69 cases, or 46 percent.

To assess the department's performance, we divided the investigative and disciplinary process into six specific units of measurement referred to as *performance indicators* (indicators). The purpose of these six indicators is to provide a more direct assessment of the three departmental entities we monitor: hiring authorities, the Office of Internal Affairs, and the department attorneys from the Office of Legal Affairs' Employment Advocacy and Prosecution Team.

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

OIG attorneys who monitored the cases answered various compliance- or performance-related questions concerning each of the six indicators. In addition, they rated each of the six indicators as *superior*, *satisfactory*, or *poor* based on the collective answers to the indicator questions. They then analyzed each case as a whole to determine an overall rating for each case, using the same descriptors. From there, they assigned a point value to each indicator rating and case rating (discussed in detail in the Methodology section of this report), resulting in a percentage figure we used to arrive at an overall rating of each departmental unit's performance using the six indicators. We also used the same method to assess the department as a whole in its handling of a matter from the

time a hiring authority referred an employee misconduct allegation to the Office of Internal Affairs to the conclusion of any employee misconduct litigation for the period of July 1, 2020, through December 31, 2020. Using this methodology, we concluded the department's overall performance was *poor* when conducting internal investigations and handling employee misconduct cases for the cases we monitored and closed from July 1, 2020, through December 31, 2020.

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

- From the pull-down menu in the Reporting Period field, choose **2020-2**
- For the other filters, choose **ALL**; these include
  - **Case Number, Case Type, Division or Mission, Region, Allegation, Finding, Penalty, and Case Rating**
  - Leave date delimiter fields empty (**Incident Start Date** and **Incident End Date**)

**Filter Selection Panel**

The screenshot displays the 'Case Summaries' dashboard for the Office of the Inspector General, State of California. A red dashed box highlights the 'Filter Selection Panel' on the left side of the dashboard. This panel includes the following fields:

- Reporting Period:** 2020-2 (selected)
- Published Date:** ALL
- Case Number:** ALL
- Case Type:** ALL
- Division or Mission:** ALL
- Region:** ALL
- Allegation:** ALL
- Finding:** ALL
- Penalty:** ALL
- Case Rating:** ALL
- Incident Start Date:** (empty)
- Incident End Date:** (empty)

Below the filters, it shows 'Filtered Cases: 138' and a 'Reset Filters' button. The main content area displays a case summary for 'Incident Date: February 24, 2016' with 'OIG Case Number: 17-0000120-DM'. The case summary includes an 'Incident Summary', 'Disposition', and 'Case Rating' (poor). The 'Indicator Ratings\*' section shows a 'Poor' rating for indicators 1-6. The dashboard also features a navigation menu on the left, a top navigation bar with links like 'About Us', 'Publications', 'Services', 'Data Explorer', 'Careers', and 'Connect', and a footer with logos for the Office of the Inspector General, C-ROB, and the California Department of Corrections and Rehabilitation.

## Hiring Authorities

Although hiring authorities' performance in timely referring employee misconduct allegations to the Office of Internal Affairs has been an ongoing concern we have raised in five prior semiannual reports, during our last reporting period, we determined that hiring authorities performed in a *satisfactory* manner overall in discovering allegations of employee misconduct and referring the allegations to the Office of Internal Affairs during the January through June 2020 reporting period, with 79 percent of cases timely referred and only 21 percent untimely referred. During the present reporting period, July 1, 2020, through December 31, 2020, the percentage of timely referrals declined. We found the department referred 70 percent of cases timely and 30 percent untimely. Overall, the OIG remains concerned about the timeliness of referrals because such delays could affect the Office of Internal Affairs' ability to conduct thorough investigations before the deadline to take disciplinary action. In addition, the delays could impact the timely service of disciplinary actions on employees found to have committed misconduct, which for officers,<sup>26</sup> is within one year of the discovery of the alleged misconduct.<sup>27</sup> In addition, hiring authorities set poor examples for their staff when the hiring authority does not follow departmental policy for referrals. It is hypocritical for hiring authorities to hold their staff to a standard of following policy when they themselves refuse to follow policy to which they are subject.

We also assessed hiring authorities concerning the quality and timeliness of their decision-making regarding Office of Internal Affairs' investigations, allegations, the processing of the cases, and the service of disciplinary actions. We determined that hiring authorities' performance was *poor* in these areas in part because hiring authorities timely conducted investigative and disciplinary findings conferences in only 65 percent of the cases. However, despite delayed investigative and disciplinary findings conferences, hiring authorities made appropriate determinations regarding the allegations in 110 of 119 cases in which they made findings, or 92 percent of the cases. Further, hiring authorities decided to impose discipline in 87 of the 119 cases. Of these 87 cases in which hiring authorities decided to impose discipline, in our opinion, hiring authorities selected the appropriate penalty in 70 of 87 cases, or 80 percent.

For those 87 cases in which hiring authorities decided to impose discipline, especially on peace officers, hiring authorities continued to delay service of disciplinary actions, significantly impacting the overall *poor* assessment, another concern we have raised in the past.

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

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

The department did not serve disciplinary actions on peace officers within 30 days of the decision to impose discipline, which departmental policy requires, in 53 percent of the cases. As it follows, the department timely served disciplinary actions on peace officers in accordance with departmental policy in only 47 percent of the cases. Again, it is hypocritical for hiring authorities to refuse to follow policy while expecting their staff to follow policy. This poor leadership sets a bad example.

## The Office of Internal Affairs

Office of Internal Affairs' special agents are responsible for processing employee misconduct referrals submitted by hiring authorities. They also conduct internal investigations. Between July and December 2020, we found the Office of Internal Affairs performed overall in a *satisfactory* manner when processing referrals from hiring authorities and when conducting investigations. To reach this conclusion, OIG attorneys answered approximately 49 questions for each monitored investigation to assess the performance of the Office of Internal Affairs. The questions measure the performance of Office of Internal Affairs' special agents from their initial processing of hiring authority referrals, the actual investigation of allegations, the preparation of reports, the performance of any follow-up investigation requested by hiring authorities, and the timeliness of these activities. (Some assessment questions did not apply to certain cases. For example, some questions assess the effectiveness of criminal investigative techniques. Those questions are not applicable to Office of Internal Affairs' administrative investigations.) If a special agent conducted a proper, thorough, and timely investigation, the Office of Internal Affairs received a *satisfactory* rating for that case. In those instances in which the Office of Internal Affairs' special agent went above and beyond what was expected of him or her, then the Office of Internal Affairs received a *superior* rating. Therefore, in stating that the Office of Internal Affairs performed overall in a *satisfactory* manner, we conclude that it overall met the standards expected of those performing internal investigations. To that end, we found that the Office of Internal Affairs timely processed referrals from hiring authorities in 93 percent of the cases, that it conducted thorough investigations in 95 percent of the cases, and that it completed thorough investigative reports in 99 percent of the cases.

We determined, however, the Office of Internal Affairs needed improvement in its initial decision-making concerning hiring authority referrals. From July through December 2020, the Office of Internal Affairs made decisions regarding 1,063 employee misconduct referrals from hiring authorities. The Office of Internal Affairs received some of these referrals before July 1, 2020. Of these 1,063 referrals, the OIG disagreed with the Office of Internal Affairs' decision in 259 cases (24 percent). As in the past, the nature of the disputes included the Office of Internal Affairs' decisions to not add allegations to investigations,

such as dishonesty or domestic violence allegations, or its decisions to not open full investigations rather than return the referral to hiring authorities to address the misconduct allegations without investigations.

One of the areas in which we regularly disagreed with the Office of Internal Affairs in its initial decision-making concerning hiring authority referrals included referrals in which officers were alleged to have engaged in off-duty misconduct involving contact with outside law enforcement. We regularly recommended administrative investigations, or, at the least, an interview of the officer. The Office of Internal Affairs, however, regularly found that sufficient information supported the alleged misconduct without the need for an interview or investigation, and returned the referral to the hiring authority for the hiring authority to take direct disciplinary action.

Of the 259 referrals for which we disagreed with the Office of Internal Affairs' decision in some aspect, 51 of those referrals involved officer contact with outside law enforcement. In 18 of the 51 referrals, officers were allegedly involved in verbal or physical altercations with domestic partners, the public, or other officers. In 22 of the 51 referrals, officers allegedly drove under the influence of alcohol or were intoxicated in public. The remaining 11 of 51 referrals included various allegations, such as officer arrests for allegedly trespassing, allegedly failing to cooperate during noise complaint investigations, or for allegedly engaging in public masturbation or sexual contact with minors. In only 12 of the 51 referrals, or 24 percent, did the Office of Internal Affairs approve interviews of the officers or full administrative or criminal investigations. For 37 of the 51 referrals, or 73 percent, the Office of Internal Affairs determined that sufficient information supported the alleged misconduct and returned the referral to the hiring authority for the hiring authority to take disciplinary action without the need for an interview or investigation. In contrast, in 44 of the 51 cases, or 86 percent, we recommended an investigation or at least an interview of the officer.

For the 138 cases the OIG monitored and closed during the July through December 2020 reporting period, we found the Office of Internal Affairs improved its performance in timely completing deadly force investigations. For this reporting period, the Office of Internal Affairs did not complete deadly force investigation within 90 days as required by the department's internal time frames for completing investigations in two of the seven deadly force investigations, or 29 percent. This is an improvement compared with the January through June 2020 reporting period, during which the Office of Internal Affairs did not timely complete deadly force investigations in six of 11 cases, or 55 percent.



## Department Attorneys

The third departmental unit we assessed consists of attorneys from its Office of Legal Affairs' Employment Advocacy and Prosecution Team. These attorneys provided legal advice to the Office of Internal Affairs during its decision-making process regarding hiring authority referrals, as well as throughout an investigation if a department attorney was assigned to the case. In addition, department attorneys provided legal representation to hiring authorities for some cases during the employee disciplinary process.

We found that department attorneys performed overall in a *satisfactory* manner in providing legal advice to the department while the Office of Internal Affairs processed employee misconduct referrals and conducted investigations. For cases we monitored and closed from July through December 2020, department attorneys provided appropriate consultation in 70 percent of the cases. However, they still delayed making entries into the department's case management system regarding critical dates in 19 of 117 cases, or 16 percent. Failing to enter critical dates on time could cause hiring authorities to untimely impose discipline because the critical dates are not properly tracked.

However, we found department attorneys' performance during litigation to be *poor*. The primary reason for the *poor* assessment was untimely service of disciplinary actions. Departmental policy requires that the department serve disciplinary actions on officers within 30 days of the hiring authority's decision to take disciplinary action. To comply with this policy, the department attorney or employee relations officer must draft the disciplinary action with sufficient time to serve the disciplinary action and must ensure that the department serves the disciplinary action within the 30-day time frame mandated by departmental policy. In addition, the department must also serve the disciplinary actions before the deadline to take disciplinary action expires, which as noted above, is within one year of the discovery of the alleged misconduct for officers.<sup>28</sup> In 34 of the 67 cases, or 51 percent, department attorneys did not ensure that the department served the disciplinary action on an officer within 30 days of the hiring authority's decision to take disciplinary action, and in one case, the department attorney did not ensure that the department served the disciplinary action on an officer within the one-year deadline to take disciplinary action.

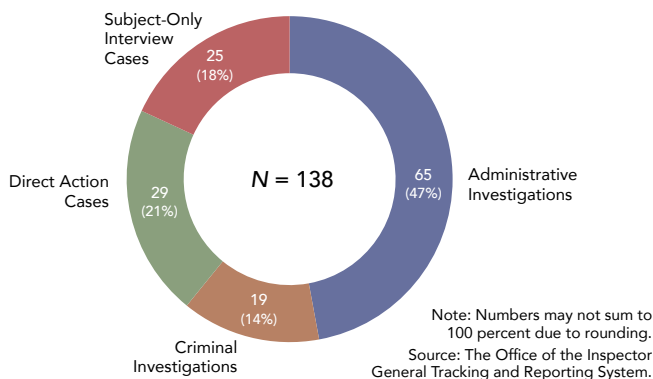
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28. California Government Code section 3304(d)(1).

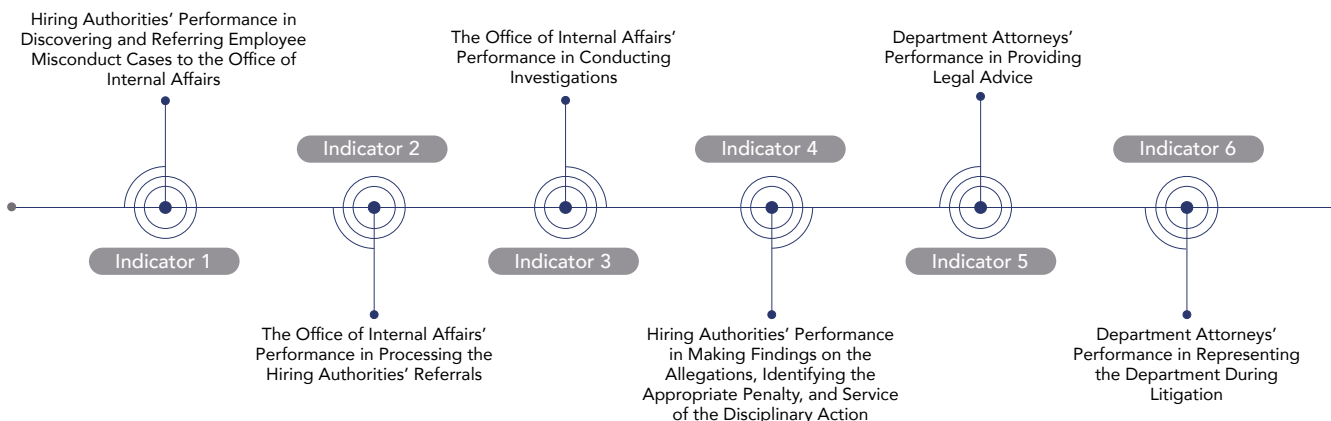
## SUMMARY OF FACTS: MONITORING INTERNAL INVESTIGATIONS AND THE EMPLOYEE DISCIPLINARY PROCESS OF THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, JULY–DECEMBER 2020

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

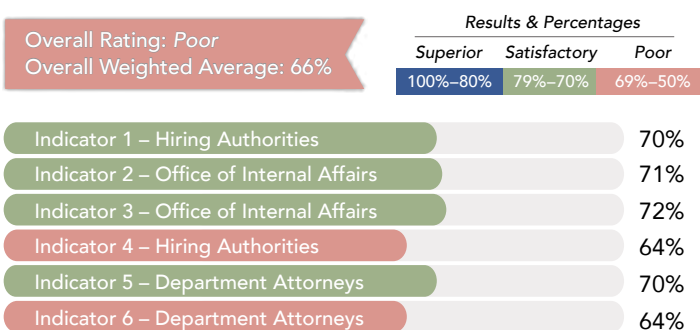
Types of Cases the OIG Monitored and Closed During the Period From July Through December 2020



### The Six Indicators Used to Assess the Department's Performance



### Overall Ratings for the July Through December 2020 Reporting Period



### Recommendations to Address Delays by Special Agents in Commencing Investigations and Delays by Hiring Authorities in Direct Action Cases

1. Develop and implement a policy that requires Office of Internal Affairs' special agents to conduct the first investigative interview within 45 days of case assignment.
2. Implement and enforce a bright-line rule requiring hiring authorities to hold investigative and disciplinary findings conferences within 14 days of either receiving the case from the Office of Internal Affairs or receiving authorization from the Office of Internal Affairs to move forward with direct disciplinary action.

# Introduction

## Background

As discussed in the Summary, the California Penal Code mandates the Office of the Inspector General (the OIG) to provide oversight of and report on the California Department of Corrections and Rehabilitation's (the department) internal investigations and employee disciplinary process. Whenever a hiring authority reasonably believes an employee committed misconduct or engaged in criminal activity, the hiring authority must timely submit a referral to the department's Office of Internal Affairs' Central Intake Unit, requesting an investigation or approval to address the allegations without an investigation.<sup>29</sup> Participants from the Office of Internal Affairs, department attorneys from the Employment Advocacy and Prosecution Team, and the OIG comprise a Central Intake Panel, which meets weekly to review the misconduct referrals from hiring authorities. The Office of Internal Affairs leads the meetings, and department attorneys provide legal advice to the Office of Internal Affairs. The OIG monitors the process, provides recommendations to the Office of Internal Affairs regarding decisions on referrals, and determines which cases the OIG will monitor. The Office of Internal Affairs, not the panel, makes the final decision regarding the action it will take on each hiring authority referral. The options are:

- To conduct an administrative investigation;<sup>30</sup>
- To conduct a criminal investigation;<sup>31</sup>
- To conduct only an interview of the employee (or employees) suspected of misconduct and no other investigative activity;
- To authorize the hiring authority to take direct action against the employee regarding the alleged misconduct without an investigation or interview of the employee (or employees) suspected of misconduct;
- To reject the referral without further action concerning the allegation or allegations because there is no reasonable belief misconduct occurred; or

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

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

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

- To reject the referral and return it to the hiring authority to conduct further inquiry.<sup>32</sup>

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

The information discussed in this report concerns the 138 cases we monitored and closed during the period from July through December 2020, including assessments of each departmental unit's performance in individual cases. Further, we detail herein the administrative cases in which the Office of Internal Affairs conducted an investigation or interview of an employee suspected of misconduct, cases in which the hiring authority made decisions regarding the investigation and allegations, and, if the hiring authority imposed discipline on an employee, any appeal process regarding the disciplinary action.

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

Finally, because the OIG also monitored cases involving alleged criminal conduct, we included the details of criminal investigations we monitored and closed during the period from July through December 2020. We reported these cases once the Office of Internal Affairs referred its criminal investigation to the appropriate prosecuting agency for filing consideration or determined there was insufficient evidence to refer the matter.

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

## Scope and Methodology

### Scope

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

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

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

\* *Madrid v. (Gomez) Cate* (N.D. Cal. 1995) 889 F.Supp. 1146 (citation (URL) accessed on 10-9-20).

Based on information the Office of Internal Affairs provided, from July 1, 2020, through December 31, 2020, the Office of Internal Affairs received 1,057 referrals, most of them with information hiring authorities submitted electronically using a process the department implemented on November 20, 2019. Of the 1,057 referrals, the Office of Internal Affairs received a small portion, 19 referrals, from hiring authorities using a printed form called the “Office of Internal Affairs’ Confidential Request for Internal Affairs Investigation/Notification of Direct Adverse Action,” also known as *Form 989*. Between July 1, 2020, and December 31, 2020, the Office of Internal Affairs made decisions concerning a total of 1,063 referrals, some of which it received before July 1, 2020. Of the 1,063 referrals for which it made decisions, the Office of Internal Affairs found that in 960 referrals (90 percent), there was sufficient evidence to approve the hiring authority’s request for investigation or approval to take direct disciplinary action on the misconduct allegations. For the other 103 referrals (10 percent), the Office of Internal Affairs determined there was insufficient evidence of employee misconduct or criminal activity and, therefore, rejected those referrals.

Of the 1,063 referrals, the Office of Internal Affairs returned 497 referrals (47 percent) to hiring authorities to take direct action on employee misconduct allegations without pursuing a full investigation or an interview of the employee who was alleged to have engaged in misconduct. The Office of Internal Affairs approved interviews of employees suspected of misconduct, but not full administrative investigations, in 132 of 1,063 cases (12 percent). These are cases in which the Office of Internal Affairs determined that, in order for a hiring authority to make decisions regarding the allegation, it was only necessary to interview the subject of the investigation and not conduct any other investigative work, such as interviewing other witnesses or collecting other evidence. In total, the Office of Internal Affairs determined that, in 629 of 1,063 referrals (59 percent), it did not need to conduct a full administrative investigation.

The Office of Internal Affairs determined full administrative investigations were warranted in 244 of 1,063 referrals (23 percent). Investigations may include interviewing the employees suspected of misconduct; interviewing percipient witnesses, including incarcerated persons and private citizens, depending on the nature of the alleged misconduct; and obtaining additional documentary evidence, such as computer forensic reports. Lastly, the Office of Internal Affairs concluded there was enough evidence to warrant criminal investigations in 87 of 1,063 referrals (8 percent).<sup>33</sup> Generally, once the Office of Internal Affairs approved the referrals, the referrals became cases. Cases that required full investigations typically involved the most serious misconduct and, therefore, constituted the highest percentage of cases we monitored. From July through December 2020, the OIG identified 113 cases (12 percent) for monitoring of the 960 referrals in which the

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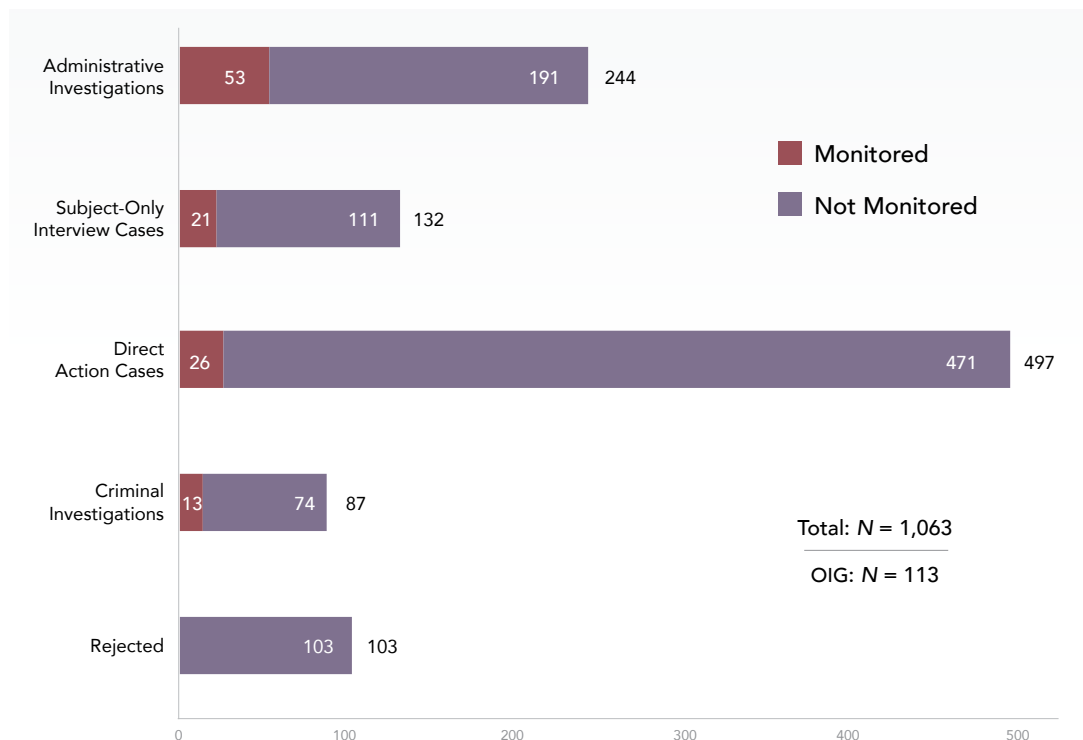
33. Numbers may not sum to 100 percent due to rounding.

Office of Internal Affairs approved the hiring authority’s request for investigation, interview, or request to directly address an employee misconduct allegation.

Of the 113 cases the OIG identified for monitoring, 53 cases (47 percent) involved an administrative investigation, and 13 cases (12 percent) involved a criminal investigation. In 26 of the 113 cases (23 percent) the OIG identified for monitoring, the Office of Internal Affairs decided there was sufficient evidence available for the hiring authority to address the misconduct allegations without any investigation. In 21 of the 113 cases (19 percent) we identified for monitoring, the Office of Internal Affairs decided the only investigative work needed was an interview of the employee suspected of misconduct. The OIG *began monitoring* these 113 cases the Office of Internal Affairs approved for investigation, employee interview, or direct action in the July through December 2020 reporting period. Elsewhere in the report, we mention that we are reporting on 138 cases that the OIG *monitored and closed* during the July through December 2020 reporting period.

Figure 2 below presents the number of cases opened by the Office of Internal Affairs from July through December 2020, the types of cases, and the number of each case type the OIG accepted for monitoring.

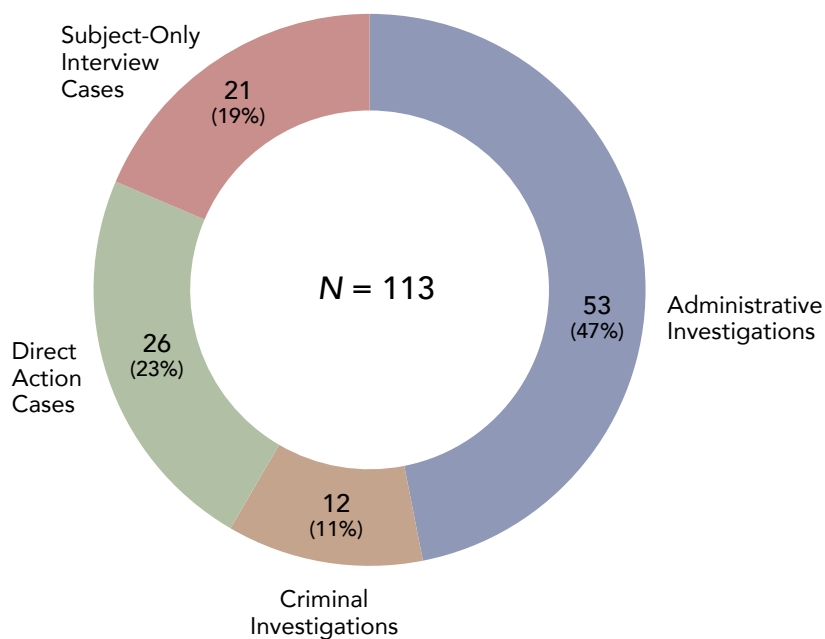
**Figure 2. Decisions the Office of Internal Affairs Made Concerning Hiring Authority Referrals and Cases the OIG Accepted for Monitoring During the Period From July Through December 2020**



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

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

**Figure 3. Percentages of Each Case Type the OIG Accepted for Monitoring During the Period From July Through December 2020**



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

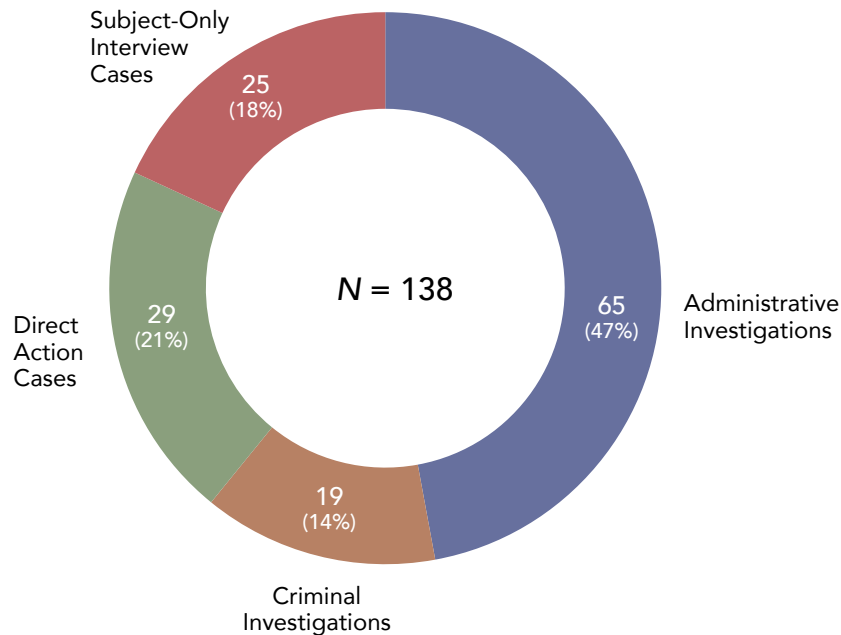
Source: The Office of the Inspector General Tracking and Reporting System.

Not all of the cases we accepted for monitoring during this reporting period were completed and closed before December 31, 2020. We only provide a final assessment of a case once we conclude our monitoring and close it. This report provides an assessment of 138 cases the OIG monitored and closed from July 1, 2020, through December 31, 2020, some of which were opened before July 1, 2020. Of the 138 cases the OIG monitored and closed between July 1, 2020, and December 31, 2020, 119 cases involved alleged administrative misconduct. The remaining 19 cases involved alleged employee criminal activity. Among the 138 cases we monitored and closed, 123 involved peace officers, eight involved employees who were not peace officers, and seven involved both peace officers and employees who were not peace officers.



Figure 4 below presents the percentages of case types the OIG monitored, closed, and is reporting for the July through December 2020 period.

**Figure 4. Types of Cases the OIG *Monitored* and *Closed* During the Period From July Through December 2020**

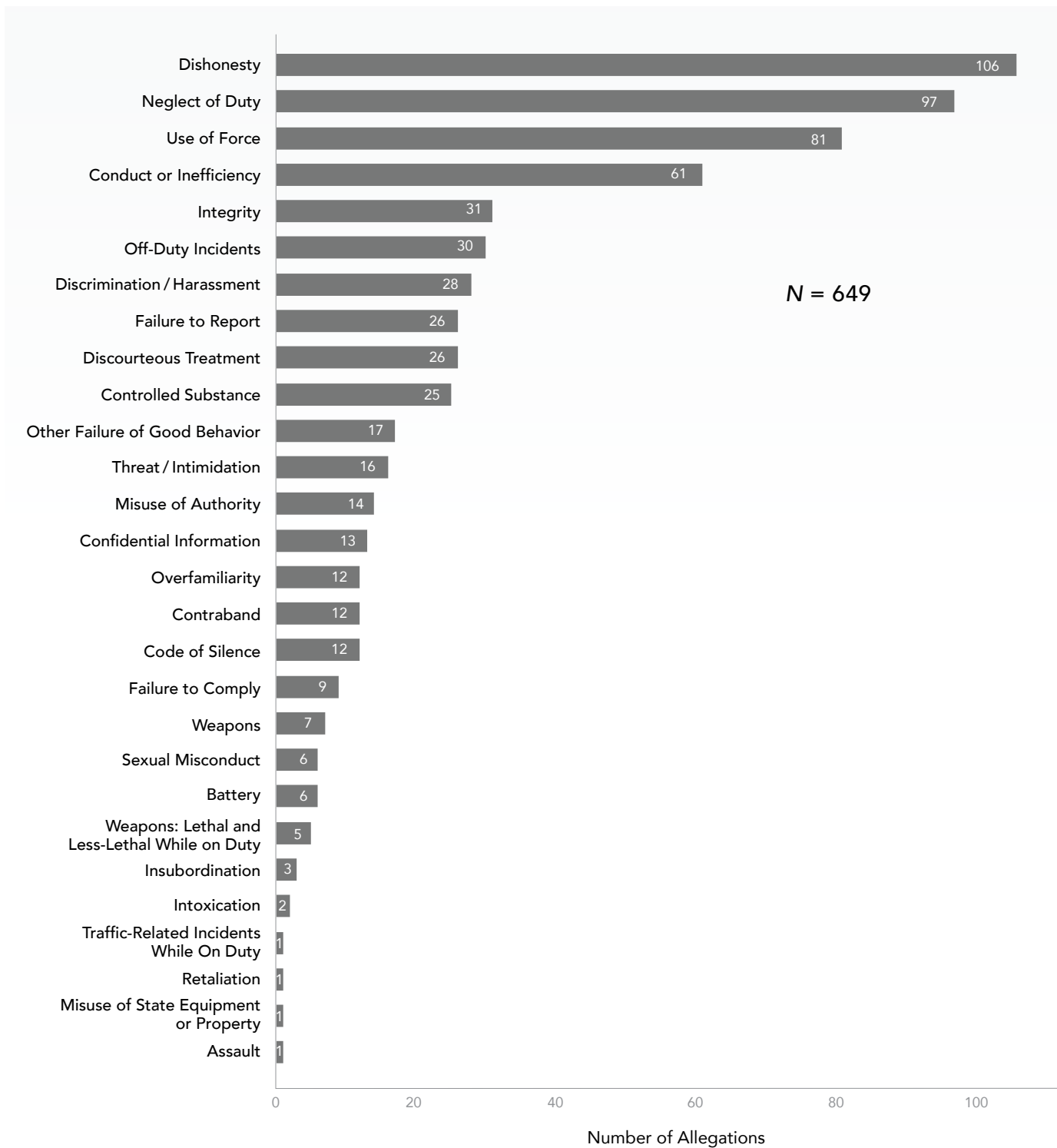


Note: Numbers may not sum to 100 percent due to rounding.

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

Many cases have more than one allegation or allegation type; consequently, the total number of allegations exceeds the number of cases we monitored and closed. For example, one case involved allegations that outside law enforcement arrested an officer after the officer allegedly grabbed his wife's neck and squeezed it, threw property belonging to his wife onto a street, and drove a vehicle in front of another vehicle, causing a collision. The officer also allegedly lied to outside law enforcement, did not cooperate with them, disobeyed a lieutenant's order to submit a report regarding the incident, and lied during an Office of Internal Affairs' interview. Although there was only one case, the case involved four types of allegations. Figure 5 on the next page includes the number of unique allegations in the cases we monitored from July through December 2020.

**Figure 5. Allegation Distribution in Administrative Cases the OIG Monitored and Closed During the Period From July Through December 2020**



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

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

## Methodology

During the January through June 2019 reporting period, the OIG implemented a new methodology to provide more specific assessments of each of the department's units and its compliance with policies and procedures. Specifically, the OIG developed an assessment tool consisting of six performance indicators broken down by departmental unit: hiring authorities, the Office of Internal Affairs, and department attorneys. Based on the data collected and reported for the January through June 2019 reporting period, through the July through December 2020 reporting period, we believe this approach achieves our goal of providing a more accurate and detailed analysis of the department's performance. As such, we are continuing to use this methodology herein. The following list describes the six performance indicators:

- **Indicator 1:** How well a hiring authority discovered and referred allegations of misconduct to the Office of Internal Affairs, including the timeliness of the referral and the quality of the inquiry preceding the referral.
- **Indicator 2:** How well the Office of Internal Affairs' Central Intake Unit processed the hiring authority's referral, including the Office of Internal Affairs' Central Intake Unit special agent's analysis of the referral, the Office of Internal Affairs' decision regarding the referral, and the timeliness of the decision.
- **Indicator 3:** The timeliness and effectiveness of the Office of Internal Affairs' performance in conducting investigations.
- **Indicator 4:** The hiring authority's performance after the Office of Internal Affairs returned the case following an investigation or interview, or after authorizing the hiring authority to take direct action on the allegations, including the hiring authority's findings on the allegations, identification of the appropriate disciplinary penalty, and service of any disciplinary action.
- **Indicator 5:** The department attorney's performance in providing legal advice to the Office of Internal Affairs as special agents processed and analyzed hiring authority employee misconduct referrals and conducted investigations.
- **Indicator 6:** How well the department attorney or employee relations officer represented the department during litigation, including the composition of the disciplinary action and advocacy during administrative hearings before the State Personnel Board.

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

Although we examined the department’s compliance with its own policies and procedures in arriving at the rating for each indicator, we also used our own judgment and opinion of the quality of the department’s performance from the time a hiring authority referred the allegation, during any subsequent investigation, and upon the completion of any appeal process if a hiring authority took disciplinary action. In addition, while procedural errors alone may not have necessarily resulted in a *poor* assessment, more significant or numerous departures from policy resulted in such a rating, because such departures may have resulted in harm to the department or the public. Delayed investigations or discipline could increase costs and even increase the potential for harm by allowing unsuitable or dishonest employees to continue working. Delays can also have a negative effect on the employees suspected of misconduct due to the stress and anxiety employees and their family members may endure while waiting for the outcome. Consequently, such identifiable harm often results in a *poor* assessment rating.

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

**Superior** ..... 4 points

**Satisfactory** ..... 3 points

**Poor** ..... 2 points

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

#### Equation. Scoring Methodology

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

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

***Superior***: weighted averages between 100 percent and 80 percent;

***Satisfactory***: weighted averages between 79 percent and 70 percent;

***Poor***: weighted averages between 69 percent and 50 percent.<sup>34</sup>

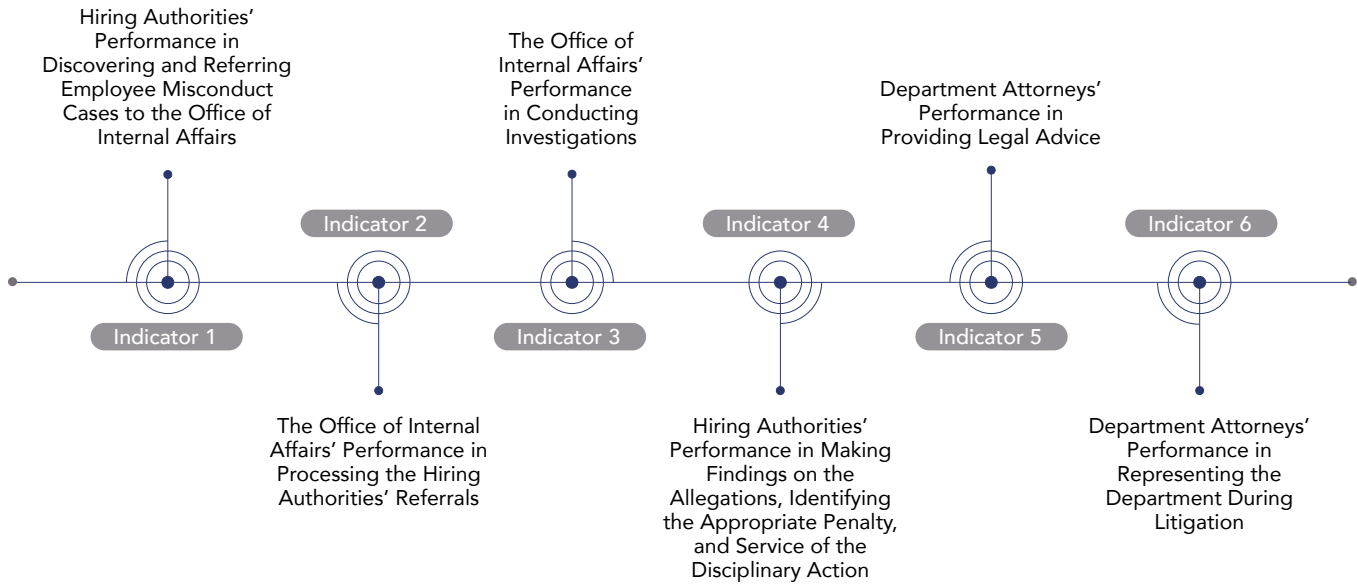
Using the example above, the summary-level rating would be *satisfactory* because the weighted average score of 72.5 percent was between 79 percent and 70 percent.

Results & Percentages		
<i>Superior</i>	<i>Satisfactory</i>	<i>Poor</i>
100%–80%	79%–70%	69%–50%

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

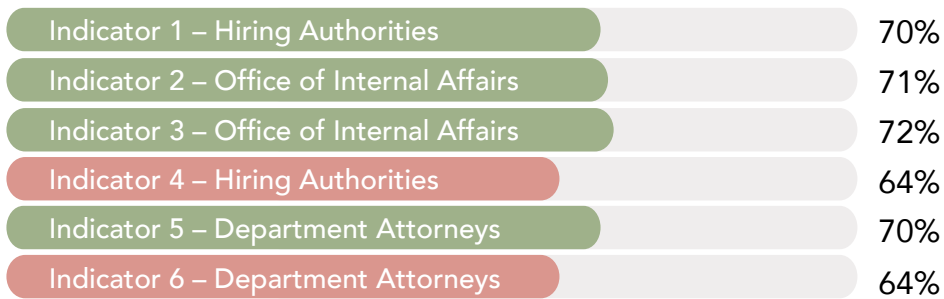
34. As we assign a minimum of two points to each rating, the minimum weighted average percentage value is 50 percent.

**Figure 6. The Six Indicators Used to Assess the Department’s Performance, and the Department’s Overall Ratings From July Through December 2020**



**Overall Rating: *Poor***  
**Overall Weighted Average: 66%**

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



Source: The Office of the Inspector General.

## Monitoring Results

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

During the July through December 2020 reporting period, the OIG found the department's overall performance in investigating allegations of employee misconduct and handling its employee disciplinary process to be *poor*. The process began when the hiring authority discovered potential misconduct and referred the allegations to the Office of Internal Affairs or when the Office of Internal Affairs opened a case on its own. The case concluded when one of the following occurred:

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

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

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

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

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

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

The two remaining indicators applied to department attorneys, if any were assigned.<sup>35</sup> The answers to the questions in Indicator 5 determined our assessment regarding how well the department attorney provided legal advice to the Office of Internal Affairs when it processed referrals of suspected employee misconduct from the hiring authority and when the Office of Internal Affairs conducted administrative investigations. Because the department does not assign department attorneys to its criminal investigations, only the first six questions in Indicator 5 applied to department attorneys in cases involving criminal investigations, to assess how well the department attorney provided legal advice to the Office of Internal Affairs while it addressed hiring authority referrals. For administrative cases, we also used Indicator 5 to assess the department attorney's performance during the investigative and disciplinary findings conference the hiring authority conducted.

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

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



After considering the ratings for our six indicators, we found the department's overall performance was *poor*. Specifically, we assessed the department's overall performance as *satisfactory* in 86 cases and *poor* in 52 cases. We did not find that the department's overall performance was *superior* in any of the cases. Table 2 below displays the department's overall ratings by case type.

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

Case Type	Superior	Satisfactory	Poor	Total
Full Administrative Investigation	None	58% (34 cases)	42% (25 cases)	100% (59 cases)
Criminal Investigation	None	83% (15 cases)	17% (3 cases)	100% (18 cases)
Direct Action	None	55% (16 cases)	45% (13 cases)	100% (29 cases)
Direct Action With Subject Interview	None	64% (16 cases)	36% (9 cases)	100% (25 cases)
Administrative Use of Deadly Force	None	67% (4 cases)	33% (2 cases)	100% (6 cases)
Criminal Use of Deadly Force	None	100% (1 case)	None	100% (1 case)
<b>Totals</b>	None	<b>62% (86 cases)</b>	<b>38% (52 cases)</b>	<b>100% (138 cases)</b>

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

Further, we found the department's overall performance was *poor* in conducting internal investigations and handling employee discipline cases, and the overall percentage score was 66 percent. For the 52 cases we assessed as *poor* overall, the combined assessment score was 50 percent. The indicator ratings for the 52 cases we rated as *poor* can be seen in Table 3 on the next page.

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

**N = 52**

OIG Case Number	Discovery and Referral	Initial Determination	Investigation	Findings	Ratings		
					Legal Advice During Investigation	Legal Representation During Litigation	Case Rating
					Superior ■	Satisfactory ■	Poor ■
17-0000120-DM	■	■	■	■	■	■	■
17-0023100-DM	■	■	■	■	■	■	■
17-0023570-DM	■	■	■	■	■	■	■
18-0027632-DM	■	■	■	■	■	■	■
18-0028046-DM	■	■	■	■	■	■	■
19-0028353-DM	■	■	■	■	■	■	■
19-0028737-DM	■	■	■	■	■	■	■
19-0028973-DM	■	■	■	■	■	■	■
19-0029271-CM	■	■	■	■	■	■	■
19-0029571-DM	■	■	■	■	■	■	■
19-0029575-DM	■	■	■	■	■	■	■
19-0029757-DM	■	■	■	■	■	■	■
19-0030113-DM	■	■	■	■	■	■	■
19-0030183-DM	■	■	■	■	■	■	■
19-0030184-DM	■	■	■	■	■	■	■
19-0030412-DM	■	■	■	■	■	■	■
19-0030482-DM	■	■	■	■	■	■	■
19-0030588-DM	■	■	■	■	■	■	■
19-0030867-DM	■	■	■	■	■	■	■
19-0031148-DM	■	■	■	■	■	■	■
19-0031233-DM	■	■	■	■	■	■	■
19-0031322-DM	■	■	■	■	■	■	■
19-0031392-DM	■	■	■	■	■	■	■
19-0031396-DM	■	■	■	■	■	■	■
19-0031461-DM	■	■	■	■	■	■	■
19-0031468-DM	■	■	■	■	■	■	■
19-0031702-DM	■	■	■	■	■	■	■
19-0031705-DM	■	■	■	■	■	■	■
19-0031803-DM	■	■	■	■	■	■	■
19-0031873-DM	■	■	■	■	■	■	■
19-0031904-DM	■	■	■	■	■	■	■
19-0031912-CM	■	■	■	■	■	■	■
19-0031920-CM	■	■	■	■	■	■	■
19-0031940-DM	■	■	■	■	■	■	■
19-0031998-DM	■	■	■	■	■	■	■
19-0032001-DM	■	■	■	■	■	■	■
19-0032014-DM	■	■	■	■	■	■	■
19-0032133-DM	■	■	■	■	■	■	■
20-0032279-DM	■	■	■	■	■	■	■
20-0032677-DM	■	■	■	■	■	■	■
20-0032732-DM	■	■	■	■	■	■	■
20-0032735-DM	■	■	■	■	■	■	■
20-0032823-DM	■	■	■	■	■	■	■
20-0032992-DM	■	■	■	■	■	■	■
20-0033351-DM	■	■	■	■	■	■	■
20-0033729-DM	■	■	■	■	■	■	■
20-0033819-DM	■	■	■	■	■	■	■
20-0034111-DM	■	■	■	■	■	■	■
20-0034112-DM	■	■	■	■	■	■	■
20-0034153-DM	■	■	■	■	■	■	■
20-0034740-DM	■	■	■	■	■	■	■
20-0034741-DM	■	■	■	■	■	■	■

Note: A gray block in a column indicates this category was not applicable.  
Source: The Office of the Inspector General Tracking and Reporting System.

The following presents information concerning three cases in which all three departmental units performed poorly:

- In one case, an incarcerated person decapitated another incarcerated person in a cell the two individuals shared. Two officers conducted counts and, even though an incarcerated person was dead, allegedly falsely reported in their documentation that they observed the decapitated incarcerated person alive. A third officer and a fourth officer allegedly did not report that they had each observed the first two officers fail to properly conduct the counts. The first officer also allegedly lied during his Office of Internal Affairs' interview. The special agent who conducted the investigation did not interview several key witnesses and did not investigate whether officers appropriately placed the incarcerated persons together in a cell. Further, the hiring authority delayed conducting the investigative and disciplinary findings conference, delayed serving disciplinary actions on the officers, and entered into settlement agreements that reduced the penalties without identifying any new evidence, flaws, or risks that would have justified the reductions. In the OIG's opinion, the department attorney should have requested additional investigation regarding whether officers appropriately placed the two incarcerated persons in the same cell, and should have recommended that the hiring authority dismiss the first officer due to the serious nature of both his actions and the consequences. In addition, the department attorney delayed drafting the disciplinary actions for the first and second officers, resulting in the department serving the disciplinary actions 36 and 46 days after policy required.
- In a second case, an officer allegedly ignored an incarcerated person who was kicking a cell door and yelling he was suicidal, failed to report the incarcerated person had covered a cell window and was unresponsive, failed to ensure he saw the incarcerated person alive during security checks and incarcerated person counts, and falsely documented he saw the incarcerated person alive during security checks and counts. A second officer also allegedly failed to ensure she saw the incarcerated person alive during two incarcerated person counts. A psychiatric technician allegedly failed to conduct a direct observation of the incarcerated person during her clinical rounds, falsely documented she engaged in a conversation with the incarcerated person when she had not, and allegedly lied during an interview with the Office of Internal Affairs. The Office of Internal Affairs delayed conducting and completing the investigation, the hiring authority for the psychiatric technician delayed conducting the investigative and disciplinary findings conference, the department attorney delayed preparing the

disciplinary actions, and the hiring authority for the officers delayed serving the disciplinary actions and should have dismissed the first officer.

- In the third case, after four incarcerated persons attacked a fifth incarcerated person with makeshift weapons on an exercise yard, an officer fired a shot from a Mini-14 rifle, striking one of the attacking incarcerated persons and stopping the attack. The Deadly Force Review Board found the officer's use of force did not comply with policy because the officer fired an alleged warning shot into an unsafe area where the bullet either directly hit, or ricocheted and hit, the incarcerated person. The department's performance was deemed *poor* because prison staff waited five hours to obtain a statement from the officer who fired the shot (a public safety statement that addressed safety issues such as where the officer fired the shot and whether anyone was injured), and because the Office of Internal Affairs delayed in obtaining reports, did not identify or interview critical witnesses, did not confer with the OIG upon initiating the case, and did not cooperate with the OIG while the OIG was on scene. Further, in the OIG's opinion, the hiring authority should have added and sustained a dishonesty allegation, and imposed a higher penalty because the officer said he fired a warning shot into a safe area 30 feet away from the incarcerated person. The evidence showed the bullet wound resulted from a direct impact, however, rather than from a shot that ricocheted. The department attorney should have recommended that the hiring authority add and sustain a dishonesty allegation, and impose a higher penalty based on the evidence.

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

Pursuant to a memorandum the Office of Internal Affairs issued on July 20, 2014, hiring authorities are required to refer matters of suspected employee misconduct to the Office of Internal Affairs within 45 days of discovering the alleged misconduct. We based our assessment in part on this procedure, as well as on departmental policy governing the responsibilities of hiring authorities, including the responsibility to conduct initial inquiries to ensure there is sufficient information before referring a matter to the Office of Internal Affairs.<sup>36</sup> For the July through December 2020 reporting period, we found that hiring authorities performed in a *satisfactory* manner in discovering and referring allegations of employee misconduct to the Office of Internal Affairs. In one case, we found the hiring authorities' performance in discovering and referring misconduct allegations garnered a *superior* assessment rating, whereas we found *poor* performance in 30 cases. In 107 cases, we assessed the hiring authorities' performance as *satisfactory*.

We determined that hiring authorities were still late in submitting matters to the Office of Internal Affairs, a concern we have raised in the past. Although hiring authorities improved slightly for the cases we monitored and closed during the January through June 2020 reporting period to only 21 percent for untimely referrals, the percentage of untimely referrals increased again for the 138 cases we monitored and closed during this July through December 2020 reporting period to 30 percent of cases that hiring authorities untimely referred. This was the same percentage we observed for the cases we monitored and closed during the July through December 2019 reporting period, when hiring authorities also untimely referred 30 percent of cases we monitored.

For the 30 cases in which we assessed the hiring authorities' performance as *poor* in discovering and referring allegations of employee misconduct to the Office of Internal Affairs, we found untimely referrals in 26 cases, which is 87 percent of those cases with overall *poor* assessments, indicating that a late referral is a major factor in the *poor* assessment. Although a late referral does not necessarily result in a *poor* assessment, it has been the most common factor in hiring authorities' assessments that were *poor*.

Further, for all cases we closed between July and December 2020, the longest delay by a hiring authority in submitting a referral to the Office of Internal Affairs was 305 days, 10 months after policy required. For the cases we closed between July and December 2020, the second-longest delay was 219 days after policy required, and the shortest delay was

Indicator Score  
**Satisfactory**  
(70%)

*Superior*  
One case

*Satisfactory*  
107 cases

*Poor*  
30 cases

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

46 days after learning of the alleged misconduct, or one day after policy required.

On the other hand, hiring authorities timely referred matters to the Office of Internal Affairs in the one case we assessed as *superior* and for 91 of the cases we assessed as *satisfactory* for this indicator. In the one case we assessed as *superior*, four officers and a sergeant allegedly failed to immediately initiate life-saving measures after discovering an incarcerated person hanging from a noose in a cell. Although we assessed this case as *poor* overall due to *poor* performance in other performance indicators, the hiring authority's performance in referring the matter to the Office of Internal Affairs in just 12 days warranted a *superior* rating for this performance indicator.

During the July through December 2020 reporting period, delayed referrals by hiring authorities most frequently occurred in cases that involved allegations of neglect of duty, followed by allegations of dishonesty. Hiring authorities did not timely refer matters involving alleged neglect of duty in 36 percent of those cases and did not timely refer cases involving dishonesty in 33 percent of those cases. The following are examples of delayed referrals. The first involves allegations of neglect of duty, and the second two involve allegations of both neglect of duty and dishonesty:

- In one case, an officer allegedly publicly displayed at work her disciplinary action that identified the names of the officers who reported her misconduct. The hiring authority did not refer the matter to the Office of Internal Affairs until 350 days after the department learned of the misconduct, 305 days after policy required.
- A second case involved a senior youth counselor who allegedly encouraged a ward to accept sole responsibility for a fight he had with another ward, withheld information and dismissed behavior reports (issued to wards for disciplinary violations) in an effort to influence Juvenile Parole Board decisions, failed to properly investigate before dismissing ward behavior reports, and lied during an Office of Internal Affairs' interview. A treatment team supervisor allegedly withheld information and also dismissed behavior reports in an effort to influence Juvenile Parole Board decisions. The hiring authority did not refer the matter to the Office of Internal Affairs until 133 days after the department learned of the alleged misconduct, 88 days after policy required.
- In a third case, an officer allegedly observed incarcerated persons fighting in a dormitory and did not stop the fight; used profanity, which was directed toward the incarcerated persons; did not sound his personal alarm; failed to notify a sergeant of injuries sustained by the incarcerated persons; made false statements to

the sergeant regarding the incident; and later submitted a false memorandum. The hiring authority did not refer the matter to the Office of Internal Affairs until 97 days after the department learned of the misconduct, 52 days after policy required.

The department is divided into different divisions, such as the Division of Adult Institutions and the Division of Juvenile Justice. The department groups the hiring authorities from the Division of Adult Institutions into different collectives of prisons, called *missions*. These missions include *General Population*, *High Security*, *Female Offender Programs and Services/Special Housing*, and *Reception Centers*. For all four missions, the hiring authorities' performance in referring suspected misconduct allegations to the Office of Internal Affairs either remained unchanged from the January through June 2020 reporting period or the performance worsened.

For the January through June 2020 reporting period, hiring authorities from the four missions timely referred suspected misconduct allegations to the Office of Internal Affairs as follows: *General Population*, 69 percent of referrals; *High Security*, 82 percent of referrals; *Female Offender Programs and Services/Special Housing*, 88 percent of referrals; and *Reception Centers*, 79 percent of referrals. In contrast, for the July through December 2020 reporting period, hiring authorities from the *General Population* mission timely referred suspected misconduct in 64 percent of referrals; *High Security* in 79 percent of referrals; *Female Offender Programs and Services/Special Housing*, 85 percent of referrals; and *Reception Centers*, 60 percent of referrals.

For cases the OIG monitored and closed between July and December 2020, hiring authorities determined that dismissal was the appropriate penalty in 39 cases. In 13 of those 39 cases, or 33 percent, in which hiring authorities initially determined dismissal was the appropriate penalty, they did not timely identify and refer those allegations of serious misconduct to the Office of Internal Affairs. In the prior reporting period of January through June 2020, hiring authorities delayed referring such matters to the Office of Internal Affairs in five of 45 cases, or 11 percent. The percentage of delayed referrals in dismissal cases tripled from one period to the next.

In one of the cases we closed between July and December 2020 in which the hiring authority initially determined dismissal was the appropriate penalty, the hiring authority delayed 133 days after discovering the alleged misconduct and 88 days after policy required in referring the matter to the Office of Internal Affairs. After the investigation, the hiring authority sustained allegations that a senior youth counselor failed to properly investigate the dismissal of ward behavior reports (issued to wards for disciplinary violations) and was dishonest during an Office of Internal Affairs' interview; the hiring authority, therefore, dismissed the senior youth counselor. The senior youth counselor filed an appeal

with the State Personnel Board. Following a hearing, the State Personnel Board upheld the dismissal and the senior youth counselor petitioned for a rehearing, which the State Personnel Board denied. The senior youth counselor filed a writ with the superior court, which the court granted, finding that the department violated the Public Safety Officers Procedural Bill of Rights Act when it continued to gather evidence of the dishonesty allegation beyond the one-year statute of limitations period; the court returned the matter to the State Personnel Board. In accordance with the superior court's ruling, the State Personnel Board dismissed the dishonesty allegation, but not the allegation that the senior youth counselor failed to properly investigate the dismissal of ward disciplinary reports and reduced the penalty to a six-month suspension.

In another case, an officer allegedly planned with and received bribes from incarcerated persons, their family members, and their friends to introduce mobile phones into a prison, then lied during an Office of Internal Affairs' interview. The hiring authority delayed 50 days after policy required in referring the matter to the Office of Internal Affairs. The officer resigned before the disciplinary action took effect.

In a third case, an officer allegedly observed incarcerated persons fighting in a dormitory and did not stop the fight, used profanity directed toward the incarcerated persons, did not sound his personal alarm, failed to notify a sergeant of injuries sustained by the incarcerated persons, made false statements to the sergeant regarding the incident, and submitted a false memorandum about the incident. The hiring authority delayed 32 days after policy required to refer the matter to the Office of Internal Affairs. After issuing the officer a disciplinary action for dismissal, the hiring authority ultimately entered into a settlement agreement with the officer during a State Personnel Board hearing, reduced the penalty to a one-year suspension, removed the disciplinary action from the officer's official personnel file, and agreed that the hiring authority should dismiss the officer if the officer incurred any sustained dishonesty allegations within the next two years, with the officer waiving any right to appeal the dismissal.

In the remaining cases, the officers resigned or retired in five cases, received nonpunitive terminations in two cases, received a modified salary reduction in one case, had his termination action upheld in another case, and in the final case, the hiring authority withdrew the officer's disciplinary action after a supplemental investigation.

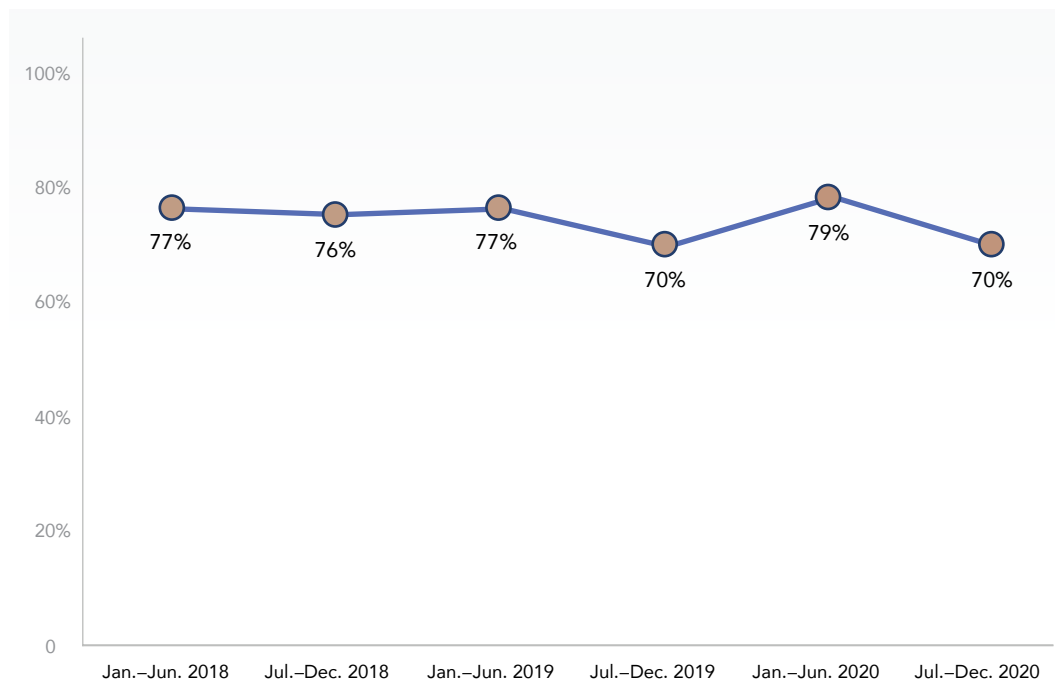
Below are other examples of incidents involving serious allegations in which hiring authorities delayed referring alleged misconduct to the Office of Internal Affairs:



- In one case, an officer allegedly engaged in sexual activity with and provided mobile phones, drugs, and tobacco to an incarcerated person. The hiring authority did not refer the matter to the Office of Internal Affairs until 115 days after learning of the alleged misconduct, 70 days after policy required.
- In a second case, an officer allegedly received a bribe from and conspired with an incarcerated person to bring cigarettes and mobile phones into a prison. The hiring authority did not refer the matter to the Office of Internal Affairs until 93 days after learning of the alleged misconduct, 48 days after policy required.

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

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



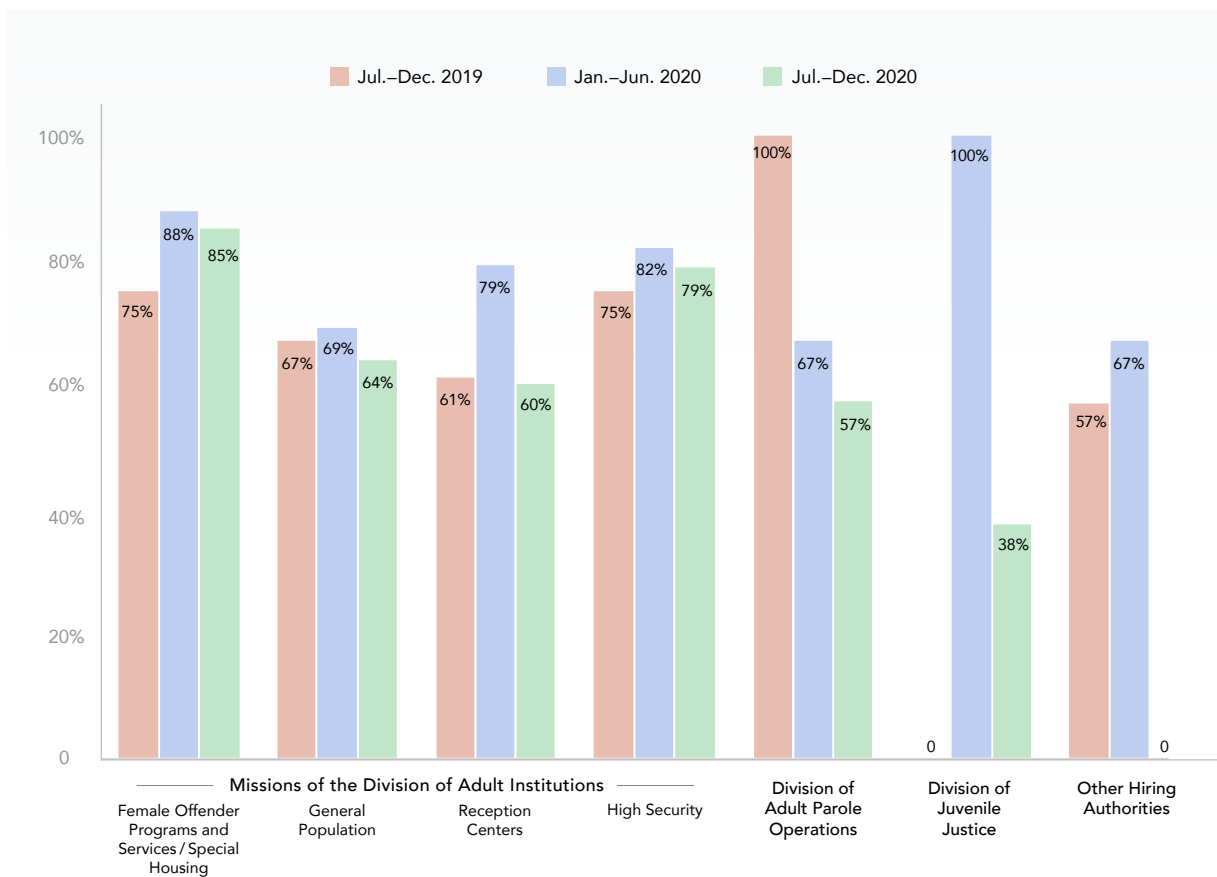
Note: This figure reflects cases that the OIG monitored and closed during the period from July through December 2020 and the five prior reporting periods.

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

Figure 8 on the next page presents specific information regarding hiring authority referrals by divisions and also by the Division of Adult Institutions' missions, as established by the department, for the reporting period of July through December 2020, as well as for the two prior reporting periods. The OIG reports the timeliness of hiring authority referrals by division and mission because the department is divided into

different divisions, such as the Division of Adult Institutions or the Division of Adult Parole Operations, with a separate director assigned to oversee each division. As noted above, regarding the Division of Adult Institutions, the department groups prisons into different collectives of institutions, called missions, with a separate associate director assigned to oversee each mission. The principal missions in the Division of Adult Institutions are *Female Offender Programs and Services/Special Housing*, *General Population*, *Reception Centers*, and *High Security*.

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



Note: This figure reflects cases that the OIG monitored and closed during the period from July through December 2020 and the two prior reporting periods.

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

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

After the Office of Internal Affairs received the referrals of alleged misconduct from hiring authorities, it processed and analyzed those referrals collectively in a *satisfactory* manner. We assessed the Office of Internal Affairs' performance as *satisfactory* in this indicator in 117 cases we monitored and closed between July and December 2020. We assessed the Office of Internal Affairs' performance as *poor* in 21 cases and did not find any *superior* performance during this reporting period.

Pursuant to departmental policy, the Office of Internal Affairs must decide on a course of action regarding each hiring authority referral within 30 days of receipt and meet weekly to review those referrals. During this reporting period, the Office of Internal Affairs led the weekly meeting and assigned a special agent from the Office of Internal Affairs' Central Intake Unit to review each case before the meeting. The special agent prepared a written analysis of his or her recommendations that included which employee subjects and allegations were appropriate for the case. The special agent also recommended whether the Office of Internal Affairs should approve an administrative or criminal investigation, approve only an interview of the subject of the investigation, return the case to the hiring authority without an investigation or interview of the employee who was the subject of the investigation, or reject the referral. OIG attorneys reviewed all referrals and the special agents' analyses, attended each weekly meeting, provided recommendations to the department, and identified cases for OIG monitoring.

Our assessment for this indicator is based on the Office of Internal Affairs' Central Intake Unit special agent's analysis and recommendations regarding the hiring authority's referral, the Office of Internal Affairs' final decision regarding the referral, and the timeliness of the Office of Internal Affairs' decision. Although the special agent's analysis is a key consideration, we consider timeliness to be critical, as timely initial determinations can impact the timeliness of any resulting investigation, and the hiring authority's determination and service of discipline. Timeliness is critical because statute sets forth the deadlines by which disciplinary actions must be served, and failure to meet the deadlines could preclude the department from pursuing disciplinary action against an employee.

For cases we monitored and closed between July and December 2020, we determined that the Office of Internal Affairs made a timely determination regarding hiring authority referrals in 93 percent of the cases (128 of 138 cases). Similar to the January through June 2020 reporting period, in which the Office of Internal Affairs made a timely determination in 98 percent of the cases, the Office of Internal Affairs

Indicator Score  
**Satisfactory**  
(71%)

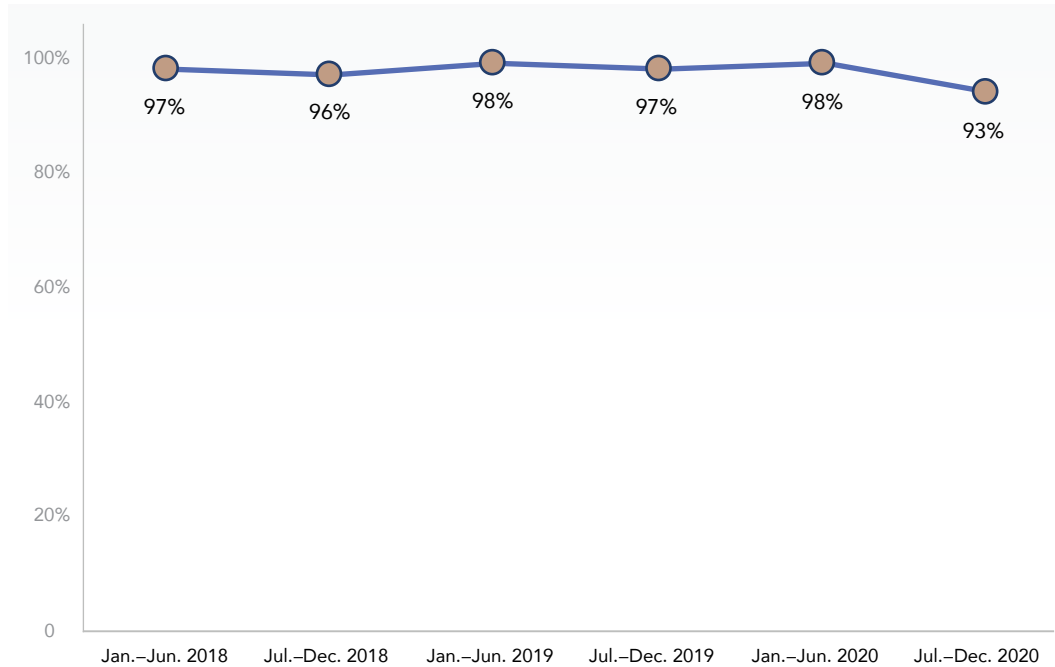
*Superior*  
Zero cases

*Satisfactory*  
117 cases

*Poor*  
21 cases

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

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



Note: This figure reflects cases that the OIG monitored and closed during the period from July through December 2020 and the five prior reporting periods.

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

As in the past, we disagreed with the Office of Internal Affairs regarding some of its decisions concerning hiring authority referrals. For referrals the Office of Internal Affairs processed from hiring authorities between July 1, 2020, and December 31, 2020, we disagreed with the Office of Internal Affairs' decisions in 259 of 1,063 cases (24 percent). In 57 of these 259 cases, we disagreed with more than one decision, such as both the decision to deny an investigation and whether to add an allegation. For each case submitted to the Office of Internal Affairs, the Office of Internal Affairs is required to decide whether there is sufficient evidence to open a full investigation and, if so, whether the nature of the allegations warrants a criminal or administrative investigation; whether to return the matter to the hiring authority to decide appropriate action without an investigation; whether to approve an interview of the subject of the investigation; or whether to reject a case for further local inquiry or because there is no reasonable belief misconduct occurred. The Office

of Internal Affairs also decides who the appropriate subjects of the investigation will be and the specific allegations against them.

If we believe the Office of Internal Affairs made an unreasonable decision, we may elevate the Office of Internal Affairs' decision to its management. For the 259 cases in which we disagreed with the Office of Internal Affairs' decision from July 1, 2020, through December 31, 2020, we elevated 29 cases to Office of Internal Affairs' management. After these 29 decisions were elevated, the Office of Internal Affairs approved or approved in part the OIG's recommendations in seven cases.

For the 138 cases the OIG monitored and closed during the period of July through December 2020, the OIG disagreed with decisions made by the Office of Internal Affairs' Central Intake Unit in 28 cases (17 percent). Figure 10 on the next page lists these disagreements.

Figure 10.  
**Disagreements With Office of Internal Affairs' Decisions  
 Regarding Hiring Authority Referrals in the 138 Cases  
 the OIG Monitored and Closed From July Through December 2020**

5	OIA's decision to not open a full administrative investigation (and OIA returned the case to the hiring authority without an investigation or interview of the subject)
2	OIA's decision to not open a full administrative investigation (but approved an interview of the subject)
9	OIA's decision to not add a dishonesty allegation
7	OIA's decision to not add another allegation (not dishonesty)
3	OIA's decision to either remove or not add a subject to a case
3	OIA's decision to not approve an interview of a subject
1	OIA's decision to not open an administrative investigation simultaneously with a criminal investigation
2	OIA's decision to not open a criminal investigation and instead open an administrative investigation
1	OIA's decision to not conduct further inquiry before making a decision concerning the case
<b>33</b>	<b>Total Disagreements</b>

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

Of the 138 cases, the OIG disagreed with the Office of Internal Affairs in 28 cases. In two of those 28 cases, the OIG recommended interviewing subjects because statute prohibits the hiring authority from taking disciplinary action based solely on an arrest report. However, we did not assess OIA negatively for not approving the interviews. In nine of the 28 cases, the OIG disagreed with more than one decision, and in the remaining 14, we disagreed with one decision.

**From July through December 2020, OIA made decisions regarding 1,063 hiring authority referrals and rejected 103 of those referrals. The OIG disagreed with 16 of the rejections.**

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

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

Once the Office of Internal Affairs decided to conduct either an administrative or criminal investigation, or to interview an employee suspected of misconduct, it assigned a special agent to conduct the investigation or interview. The Office of Internal Affairs has a regional office and a headquarters office in Sacramento, and regional offices in Bakersfield and Rancho Cucamonga. The Office of Internal Affairs typically assigns the special agent based on the geographic location of the prison of the employee suspected of misconduct. For the cases the OIG monitored and closed from July through December 2020, we found that the Office of Internal Affairs' performance in investigating allegations of employee misconduct was *satisfactory* overall. The OIG determined that the Office of Internal Affairs' performance was *satisfactory* in 96 cases and *poor* in 13 cases. We found no *superior* performance during this reporting period.

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

As noted in the Summary of this report, OIG attorneys answered a series of approximately 49 assessment questions to measure the performance of Office of Internal Affairs' special agents. Some assessment questions did not apply to certain cases. For example, some questions were applicable to only those cases in which the Office of Internal Affairs conducted criminal investigations, but not administrative investigations. If a special agent conducted a proper, thorough, and timely investigation, the Office of Internal Affairs received a *satisfactory* rating for that case. In those cases in which the Office of Internal Affairs' special agent went above and beyond what was expected of him or her, then the Office of Internal Affairs received a *superior* rating.

For cases the OIG monitored and closed between July through December 2020, the OIG concluded that special agents completed all necessary and relevant interviews in 97 percent of cases, and asked all relevant questions and used effective interviewing techniques in 100 percent of the cases. Further, special agents thoroughly and appropriately conducted investigations in 95 percent of cases. Special agents included all relevant facts and evidence in 98 percent of their reports, and addressed all appropriate allegations in all except one of their reports.

Indicator Score  
**Satisfactory**  
(72%)

*Superior*  
Zero cases

*Satisfactory*  
96 cases

*Poor*  
13 cases

*The Office of Internal Affairs improved its timeliness in completing deadly force investigations.*

Between July and December 2020, the OIG monitored and closed seven cases the Office of Internal Affairs investigated regarding the use of deadly force. Six of these cases involved administrative investigations, and the remaining case involved a criminal investigation. The OIG assessed six cases as *satisfactory*, despite finding in one of the *satisfactory* cases that special agents did not comply with the department's internal time frame for completing the investigation. Pursuant to the department's deadly force investigation procedures, Office of Internal Affairs' special agents were required to complete deadly force investigations within 90 days of assignment.<sup>37</sup>

For the deadly force cases the OIG monitored and closed between July and December 2020, special agents completed deadly force investigations within 90 days of assignment in five of the seven deadly force cases, or 71 percent. This is an improvement from the January through June 2020 reporting period, during which the Office of Internal Affairs timely completed deadly force investigations in five of 11 cases, or 45 percent. Of the two deadly force investigations not completed within the required time frame between July and December 2020, the longest delay was 175 days after the incident (85 days after policy required). Both delays involved administrative investigations.

Of the seven deadly force investigation cases, six cases involved incidents in which the shooter aimed at or near an individual, or in some cases, animals. In one case, as approximately 100 incarcerated persons participated in a riot on an exercise yard, officers deployed chemical-agent grenades and fired less-lethal rounds. An officer fired three shots for effect from a Mini-14 rifle, stopping the riot. In another case, after an incarcerated person attacked a second incarcerated person on an exercise yard, an officer fired a shot from a Mini-14 rifle, striking the first incarcerated person in the lower back. A second officer fired a less-lethal round, and a sergeant struck the first incarcerated person on his left shoulder with a baton twice, stopping the attack. In a third case, an off-duty officer allegedly discharged a firearm and shot a round near the feet of a process server who was attempting to serve a subpoena on the officer's mother. The officer also allegedly unnecessarily identified herself as a peace officer and lied to outside law enforcement, and later sustained a misdemeanor conviction for brandishing a firearm in relation to the incident.

Figure 11 presents the numbers and types of deadly force used in the incidents the OIG monitored and closed during the July through December 2020 reporting period. The number is greater than the number of deadly force cases because in some cases, departmental staff used more than one instance of deadly force. For example, in the

37. Office of Internal Affairs' Deadly Force Investigations Team Procedures, June 6, 2007.





*Ruger Mini-14 .223 caliber rifle*

Figure 11.

### Number and Types of Deadly Force Used in Cases We Monitored and Closed From July Through December 2020

	<i>Totals</i>
Shots for Effect	9
Less-Lethal Round	1
<b>Total</b>	<b>10</b>



Source: The Office of the Inspector General Tracking and Reporting System. Figures are for the period from July through December 2020.

Photographs courtesy of the Department of Corrections and Rehabilitation.

case described above, when approximately 100 incarcerated persons participated in a riot on an exercise yard, departmental staff used four instances of deadly force: an officer fired three shots for effect from a Mini-14 rifle, stopping the riot, and officers also used less-lethal rounds, one of which struck an incarcerated person on the face, and he sustained a broken jaw.

In addition, in one case, one incident gave rise to both an administrative and a criminal investigation, but we count each use of force only once because there was only one incident.

Indicator Score  
**Poor**  
(64%)

*Superior*  
One case

*Satisfactory*  
65 cases

*Poor*  
53 cases

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

After the Office of Internal Affairs returned a matter to the hiring authority without an investigation or after completing an administrative investigation or interview of an employee suspected of misconduct, the hiring authority met with the OIG and the department attorney, if assigned, to determine the appropriate disposition of the misconduct allegations. As long as the hiring authority made reasonable attempts to schedule the investigative and disciplinary findings conference within 14 days and held the conference within 30 days of receipt of the case, we did not negatively assess a hiring authority for a late conference. If the hiring authority sustained any allegations, the hiring authority also determined whether to impose discipline and, if so, the type of discipline to impose. The hiring authority was also responsible for serving any disciplinary action within the required time frame. Between July and December 2020, the OIG assessed the hiring authority's performance in these areas in 119 cases and determined that the hiring authorities' overall performance in this indicator was *poor*. We assessed the hiring authorities' performance as *superior* in one case, *satisfactory* in 65 cases, and *poor* in 53 cases.

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

#### *Hiring authorities often did not conduct investigative and disciplinary findings conferences in a timely manner.*

Although the department does not have a clear policy governing when hiring authorities are required to conduct the investigative findings conference, we assessed hiring authorities based on a 14-day time frame pursuant to our interpretation of the Department Operations Manual.<sup>38</sup> However, as long as the hiring authority made reasonable attempts to schedule the findings and penalty conference within 14 days and held the conference within 30 days of receipt of the case, we did not negatively assess a hiring authority for a late conference. For the July through December 2020 reporting period, the OIG found that hiring authorities conducted investigative and disciplinary findings conferences or made reasonable attempts to schedule the conference within 14 days in only 65 percent of the cases (77 of 119). Although this is a slight improvement compared with the 63 percent considered timely in the January through June 2020 reporting period, the number of delayed conferences is still

38. DOM, Section 33030.13.

of concern. Delayed conferences often resulted in untimely service of disciplinary actions.

Untimely investigative and disciplinary findings conferences and delayed service of disciplinary actions on peace officers were the primary reasons for *poor* assessments. This was particularly true in cases involving dishonesty allegations. In the 58 cases in which at least one employee was suspected of being dishonest (cases containing allegations regarding dishonesty or lack of integrity), the department did not conduct timely investigative and disciplinary findings conferences in 22 of those cases, or 38 percent.

Timely investigative and disciplinary findings conferences are crucial because if the hiring authority finds an employee was dishonest, the presumptive penalty would be dismissal from the department. Such delays may unnecessarily extend the payment of salary and cause the department to retain dishonest employees in positions in which they can continue to inflict harm.

*Hiring authorities often held untimely investigative and disciplinary findings conferences in dismissal cases.*

When hiring authorities decided to dismiss employees, they often delayed in conducting investigative and disciplinary findings conferences. During the July through December 2020 reporting period, hiring authorities delayed in conducting the investigative and disciplinary findings conferences in 13 of the 39 dismissal cases, or 33 percent. This was a slight decline in performance from the January through June 2020 reporting period, when hiring authorities delayed in conducting the investigative and disciplinary findings conferences in 27 percent of cases involving dismissals. Notably, in cases in which hiring authorities decided to dismiss employees, but the employees resigned or retired before the hiring authorities served disciplinary actions or prior to the effective date of the disciplinary actions, hiring authorities delayed conducting the investigative and disciplinary findings conferences in eight cases.

- Hiring authorities delayed conducting the investigative and disciplinary findings conferences in seven cases in which they decided to dismiss an employee and subsequently served a disciplinary action for dismissal.

The longest delay was 232 days after policy required. In this case, the hiring authority sustained allegations that a lieutenant allegedly grabbed a handcuffed incarcerated person by the back of the neck, pushed his face into a wall, placed his knee on the incarcerated person's back, and failed to report the use of force. The hiring authority decided to dismiss

the lieutenant; however, the lieutenant retired before the department served the disciplinary action.

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

Of the cases the OIG monitored and closed between July and December 2020, the OIG found that, once again, the department did not perform well in timely serving disciplinary actions on peace officers.

Pursuant to policy, the department is required to serve disciplinary actions on officers within 30 days of the hiring authority's decision to take disciplinary action. The hiring authority made his or her decision at an investigative and disciplinary findings conference. A department attorney, if one was assigned, attended the conference, and an OIG attorney attended in those cases we monitored.

For the July through December 2020 reporting period, the department served disciplinary actions on peace officers in 66 cases. Of those 66 cases, the department did not timely serve the disciplinary actions in 35 cases, or 53 percent. For the previous reporting period of January through June 2020, we found the department delayed serving disciplinary actions on peace officers in 38 of 75 cases, or 51 percent. Between July and December 2020, the shortest delay in serving peace officers with a disciplinary action was 31 days after the hiring authority decided to take disciplinary action, which was one day after policy required. The longest delay was 162 days after the decision to take disciplinary action, or 132 days after policy required. Thus, the department has continued its practice of not serving disciplinary actions within the required time frames.

Moreover, in cases the OIG monitored and closed during the July through December 2020 reporting period, in two cases, the department served the disciplinary actions after the deadline to take disciplinary action had expired. In one case, a hiring authority determined that a parole administrator and two supervising parole agents engaged in misconduct associated with a mock-shooting training exercise at a prison in which a parole agent pretended he had been shot. Not knowing that it was a mock exercise and that the parole agent was not actually injured, other parole agents hurriedly transported the purportedly injured parole agent to a community hospital, damaging a State vehicle during the transport. The hiring authority imposed salary reductions for the two supervising parole agents and a suspension for the parole administrator for exercising poor judgment in approving, planning, implementing, or managing the training exercise. However, after a hearing, the State Personnel Board revoked all three penalties because the department had

not served the disciplinary actions before the deadline to have done so had expired.

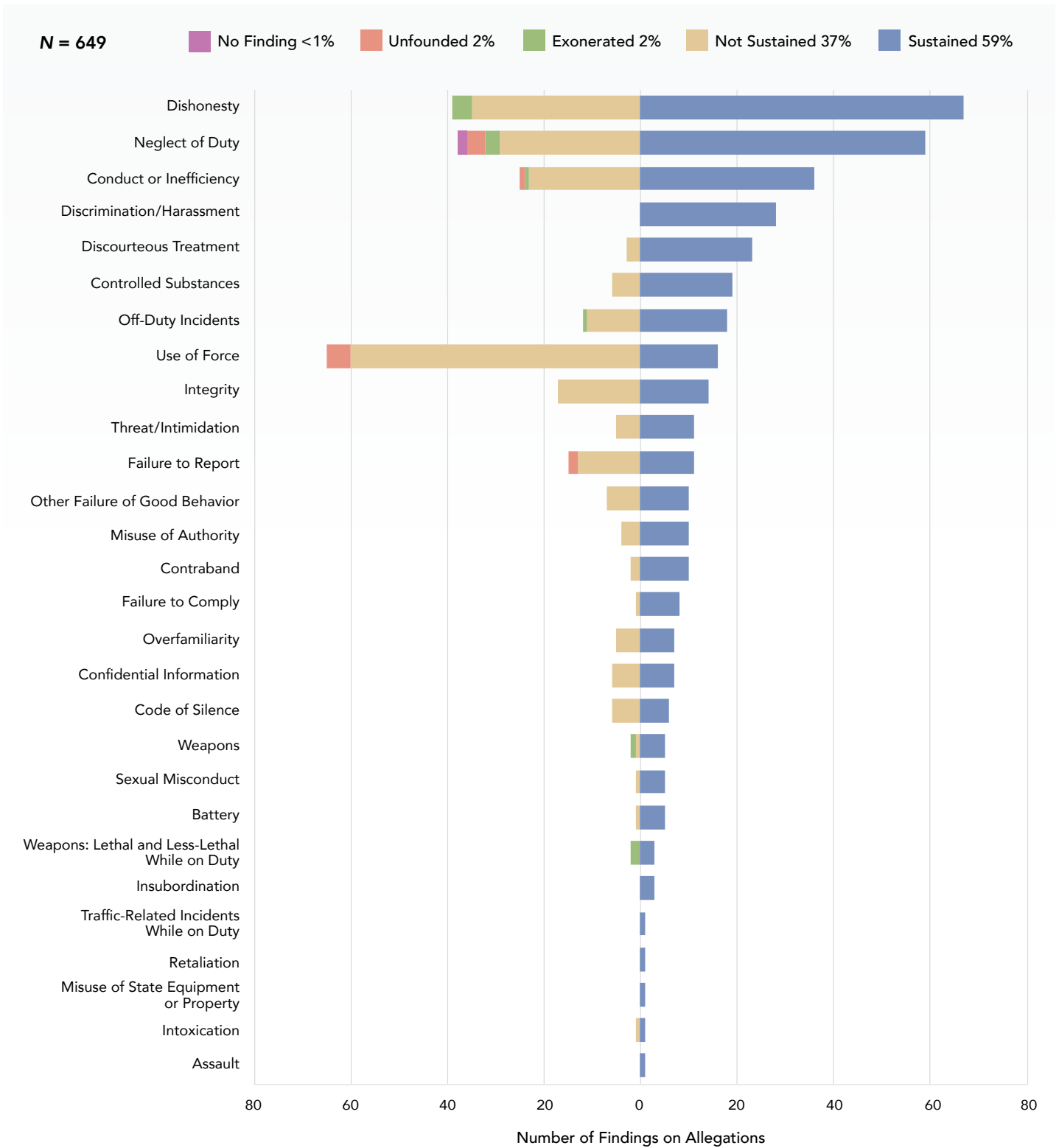
*Despite the overall poor assessment, hiring authorities made appropriate investigative findings and penalty determinations in the majority of cases.*

A hiring authority must prepare for the investigative and disciplinary findings conference by reviewing all the available evidence. This evidence could include the Office of Internal Affairs' investigative reports, reports from outside law enforcement agencies, audio and video recordings, and other supporting documentation. The hiring authority, department attorney, if assigned, and the OIG attorney, if monitoring the case, consult to discuss the evidence and alleged misconduct. If the hiring authority determines further evidence is needed to make a fully informed decision regarding the allegations, the hiring authority may request further investigation from the Office of Internal Affairs. However, if the hiring authority determines there is sufficient evidence to decide, then the hiring authority makes determinations regarding the allegations and, if the allegations are sustained, decides whether to impose corrective action or disciplinary action.

For cases monitored and closed between July and December 2020, the OIG determined that hiring authorities identified the appropriate subjects and allegations in 98 percent of the cases and made the appropriate findings in 92 percent of those cases. In our opinion, hiring authorities decided on the appropriate penalty in 80 percent of the cases in which they decided to impose a penalty. Figure 12 on the next page displays the findings hiring authorities made regarding allegations presented to them for review.

*In one case, the hiring authority performed in a superior manner by conducting the investigative and disciplinary findings conference timely and serving the disciplinary action within just eight days of the hiring authority's decision to dismiss the officer.*

In one case, an officer allegedly tested positive for cocaine. The hiring authority held the investigative and disciplinary findings conference within 12 days of the Office of Internal Affairs' authorization for the hiring authority to take direct disciplinary action. Thereafter, the hiring authority served the disciplinary action within just eight days of the hiring authority's decision to dismiss the officer.

**Figure 12. Administrative Cases: Findings Determined by Hiring Authorities**

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

*For cases the OIG monitored and closed from July through December 2020, the OIG determined that the department proposed an unreasonable course of action, and the OIG subsequently sought review by departmental executives in one case.*

Policy provides that when either the OIG or the department attorney believes a hiring authority made an unreasonable decision regarding whether to sustain an allegation or regarding the discipline to be imposed, either the OIG or the department attorney may elevate that decision to the hiring authority's supervisor for further review. The desired outcome of this process of seeking additional review by the hiring authority's supervisor is to determine whether the hiring authority's decision is just and proper.<sup>39</sup> If either the OIG or the department attorney believes the hiring authority's supervisor also made an unreasonable decision, the matter may be presented to still higher levels, such as a director, an undersecretary, or the Secretary of the department. We use the executive review process only in very limited cases (see Table 4, page 47).

Of the 119 administrative cases the OIG monitored and closed during the July through December 2020 reporting period, the OIG sought a higher level of review in one case. In that case, two officers allegedly pushed a restrained and unresisting incarcerated person to the ground, and the first officer punched him repeatedly, claiming that the incarcerated person was biting one of his hands. A video of the incident did not depict the incarcerated person resisting the officers. A third officer allegedly witnessed the incident, but did not accurately report it. The second officer and the third officer both allegedly wrote and submitted dishonest reports concerning the incident. All three officers then allegedly lied during interviews with the Office of Internal Affairs. The hiring authority sustained the allegations. The OIG concurred. The department attorney disagreed and elevated the matter, however, arguing that none of the allegations could be sustained. At a higher level of review, an associate director sustained the allegations and added dishonesty allegations against the first two officers for lying during their Office of Internal Affairs' interviews and against one of the officers for writing and submitting a false report, and decided dismissal was the appropriate penalty for all the officers. The OIG concurred. The department attorney again elevated the matter for a higher level of review. At the higher level of review, a deputy director did not sustain any of the allegations. The OIG did not agree regarding the allegations against the first two officers and elevated the matter to a director. The director sustained the allegations against the first two officers, including the dishonesty allegations, and also decided dismissal was the appropriate penalty. The department attorney disagreed and elevated the matter again, this time to an undersecretary. The undersecretary sustained the allegations that the officers used unnecessary force when they pushed the incarcerated person to the ground, but did not sustain the allegation that the first

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39. DOM, Section 33030.14.

officer used excessive force when he punched the incarcerated person or sustain the allegations the officers were dishonest; the undersecretary then imposed a 60-working-day suspension on both officers. The OIG did not concur.

According to a recommendation made by the department attorney, the undersecretary later modified the first officer's penalty to a seven-working-day suspension, followed by a 5 percent salary reduction for one month and a 10 percent salary reduction for 27 months. The undersecretary also modified the second officer's penalty to a five-working-day suspension, followed by a 5 percent salary reduction for one month and a 10 percent salary reduction for 28 months. The department attorney recommended the modifications so that the officers would avoid paying the employer's share of their health benefits. The OIG did not concur. The officers filed appeals with the State Personnel Board. At the prehearing settlement conference, the first officer entered into a settlement wherein the department agreed to reduce the penalty to a seven-working-day suspension, followed by a 5 percent salary reduction for one month, a 10 percent salary reduction for two months, and a 5 percent salary reduction for one month, agreed to remove the disciplinary action from the officer's official personnel file after six months, and agreed to a provision in the settlement wherein the officer did not admit any fault. The department also entered into a settlement with the second officer and agreed to reduce the penalty to a five-working-day suspension, followed by a 5 percent salary reduction for one month, a 10 percent salary reduction for two months, and a 5 percent salary reduction for one month. The OIG did not concur.



**Table 4. Executive Review Case**

Case Number	Summary	Initial Departmental Position	Department Attorney Position	OIG Position	Final Disposition
1	Two officers allegedly pushed a restrained and unresisting incarcerated person to the ground and the first officer punched him repeatedly, claiming that the incarcerated person was biting one of his hands. A video of the incident did not depict the incarcerated person resisting the officers. A third officer allegedly witnessed the incident, but did not accurately report it. The second and third officers allegedly wrote and submitted dishonest reports concerning the incident. The officers then allegedly lied during interviews with the Office of Internal Affairs.	The hiring authority sustained the allegations.	The department attorney argued that the allegations could not be sustained and sought a higher level of review. At the first level of review, an associate director sustained the allegations and added dishonesty allegations as to the three officers. The department attorney again sought a higher level of review.	The OIG concurred with the hiring authority's and the associate director's decisions to sustain the allegations. At the second level of review, a deputy director did not sustain any of the allegations. The OIG did not concur and sought one further level of review as to the first two officers. At the third level of review, the OIG did not concur with the undersecretary's decision to not sustain the allegation that the first officer used excessive force when he punched the incarcerated person or the allegations that the officers were dishonest, and did not concur with the penalty. The OIG also did not concur with the settlement agreements.	<p>The undersecretary sustained the allegations that the officers used unnecessary force when they pushed the incarcerated person to the ground, but did not sustain the allegation that the first officer used excessive force when he punched the incarcerated person or the allegations that the officers were dishonest, and imposed a 60-working-day suspension as to both officers.</p> <p>After the officers filed appeals with the State Personnel Board, at a prehearing settlement conference, the first officer entered into a settlement wherein the department agreed to reduce the penalty to a seven-working-day suspension, followed by a 5 percent salary reduction for one month, a 10 percent salary reduction for two months, and a 5 percent salary reduction for one month, and agreed to remove the disciplinary action from the officer's official personnel file after six months, and agreed to a provision in the settlement wherein the officer did not admit any fault. The department also entered into a settlement with the second officer and agreed to reduce the penalty to a five-working-day suspension, followed by a 5 percent salary reduction for one month, a 10 percent salary reduction for two months, and a 5 percent salary reduction for one month.</p>

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

Indicator Score  
**Satisfactory**  
 (70%)

*Superior*  
 Zero cases

*Satisfactory*  
 104 cases

*Poor*  
 28 cases

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

For cases we monitored and closed from July through December 2020, department attorneys performed in a *satisfactory* manner in providing legal advice to the Office of Internal Affairs as the Office of Internal Affairs' Central Intake Unit processed employee misconduct referrals from hiring authorities and during its internal investigations. We assessed 104 cases as *satisfactory* and 28 cases as *poor*. We did not find the department attorneys' performance to be *superior* in any of the cases.

The department assigned attorneys to some of the cases in which the Office of Internal Affairs conducted administrative investigations, but it did not assign them to criminal investigations. The department assigned attorneys in 108 cases we monitored and closed. In 89 of the 108 cases, or 82 percent, the Office of Internal Affairs conducted investigations or an interview of the subject alleged to have committed misconduct. In 69 of 89 cases, or 78 percent, the legal advice was thorough and appropriate.<sup>40</sup> Department attorneys consulted with hiring authorities regarding investigative findings in 108 cases. In 96 of these 108 cases, or 89 percent, department attorneys' consultation was appropriate. In 95 cases, department attorneys provided legal advice to hiring authorities regarding disciplinary determinations. In 84 of the 95 cases, or 88 percent, department attorneys provided appropriate advice regarding the disciplinary determinations.

Notwithstanding the performance noted above, department attorneys still delayed making entries regarding critical dates into the department's case management system. Pursuant to policy, once department attorneys are assigned a case, they have 21 days from assignment to enter into a computerized case management system the date of the reported incident, the date of discovery, the deadline for taking disciplinary action, and any exceptions to the deadline known at the time. In 19 of 117 cases (16 percent) between July and December 2020, department attorneys either did not make any entry into the case management system regarding the relevant dates, or they made late or incomplete entries. This is a slight improvement compared with the 20-percent figure we noted in the January through June 2020 reporting period. Of the 117 cases for which department attorneys or employee relations officers entered the critical dates into the case management system, they did not make correct entries in 11 of 117 cases, or 9 percent. This is slightly worse than the 6 percent of cases for which department attorneys or employee relations officers failed to correctly enter critical dates between January and June 2020. Not only do other departmental units and staff rely on these dates in performing their respective duties, but

<sup>40</sup>. Due to the uniqueness of each case, department attorneys did not necessarily perform each function assessed by the questions in Indicator 5.

the dates are critical to ensuring that the disciplinary process, including the service of any disciplinary action, is completed before the deadline for the disciplinary action expires. Failing to enter critical dates on time can preclude the hiring authority from imposing discipline because the hiring authority relies on those dates to ensure timely service of a disciplinary action. If the department attorney or employee relations officer does not enter those dates, or enters them incorrectly, then the hiring authority may not serve the disciplinary action before the deadline to take disciplinary action, precluding the hiring authority from taking any disciplinary action.

Indicator Score  
**Poor**  
 (64%)

*Superior*  
 One case

*Satisfactory*  
 36 cases

*Poor*  
 32 cases

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

For the cases we monitored and closed from July through December 2020, we assessed department advocates' performance in providing legal representation to the department in 69 cases and concluded the overall assessment rating was *poor*. We rated the department's performance in this indicator as *superior* in one case, *satisfactory* in 36 cases, and *poor* in 32 cases.

In this indicator, we assessed the department's legal representation during litigation, which began with the preparation of any disciplinary actions and ended with the completion of any appeal process to the State Personnel Board or appellate court. During the July through December 2020 reporting period, there were 69 cases in which the department assigned an attorney or an employee relations officer to provide legal representation during litigation. The department assigned an attorney in all but six of the 69 cases. In these six cases, an employee relations officer was responsible for handling the duties. Our assessment did not distinguish between department attorneys and employee relations officers, but assessed the department's legal representation as a whole.

The specific duties we assessed were the drafting of thorough and legally adequate disciplinary actions in a timely manner, the representation of the department at prehearing settlement conferences before the State Personnel Board, the preparation of cases for evidentiary hearings, and the litigation of cases before the State Personnel Board. If any party pursued an appeal to the superior or appellate courts, department attorneys handled those appeals, and the OIG continued monitoring and assessing their representation of the department during the writ or appeal proceedings. This indicator also included an assessment of the timeliness of serving disciplinary actions on peace officers, although due to some overlapping responsibilities with hiring authorities, this issue is also assessed in Indicator 4.

In all but three of the cases with a *poor* assessment rating, the hiring authorities delayed in serving disciplinary actions on peace officers as discussed in the section addressing the assessments for Indicator 4 that begins on page 40. In the three cases with a *poor* assessment, despite timely service of the disciplinary actions, we based the negative assessments on a variety of issues. In one case, the department attorney did not provide the OIG with a draft of a disciplinary action or consult with the OIG before serving an amended disciplinary action on an officer. In another example, the department attorney provided poor legal advice when the attorney recommended that a hiring authority settle a case based on the attorney's perception of a witness's testimony without having actually talked to that witness and performed poorly when the attorney failed to secure the testimony of another witness before a State

Personnel Board hearing. In a third case, the department attorney failed to draft the disciplinary action at all and, instead, waited for the associate warden to retire. The employee retired 82 days after the decision to take disciplinary action and 52 days after policy required the disciplinary action to be served.

The OIG's assessment also included whether department attorneys and employee relations officers prepared legally sufficient and thorough disciplinary actions. For cases the OIG closed between July and December 2020, department attorneys and employee relations officers prepared disciplinary actions in 68 cases. Despite the overall *poor* assessment for this indicator, we found that in 65 of the 68 cases in which a department advocate prepared a disciplinary action, the department advocate prepared disciplinary actions that contained the relevant facts, relevant and legally supported causes of action, all factual allegations hiring authorities sustained, and the correct penalties.

*A department attorney performed in a superior manner by drafting the disciplinary action within three days of the hiring authority's decision to dismiss the officer.*

In one case, an officer allegedly tested positive for cocaine. The hiring authority decided to dismiss the officer. The department attorney performed in a superior manner by drafting the disciplinary action and providing it to the hiring authority just three days after the hiring authority's decision. Thereafter, the department served the dismissal action just eight days after the hiring authority's decision.

## The Department Delayed in Processing Dismissal Cases, Resulting in the Payment of Approximately \$174,578 to Ultimately Dismissed Employees During the Delays

For the July through December 2020 reporting period, the OIG reviewed the department's delays in dismissal cases to determine how much the department and taxpayers paid in salary and benefits to employees during unnecessary delays in the disciplinary process. We concluded that the department paid approximately \$174,578 in salary and benefits to employees during those delays.<sup>41</sup> The total costs due to delays in dismissal cases have decreased compared with the last period, but they are still unnecessarily high. Over the past two years, the department has paid approximately \$1,015,185 in salary and benefits to employees during the delays.

During this reporting period, the department served 23 dismissal actions in 21 separate cases that were later upheld or in which the employee resigned after service of the action. The department delayed in serving 17 of the 23 dismissal actions, or 74 percent. The delays occurred during one of the following four critical steps in the disciplinary process:

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

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41. In the report covering the January to June 2020 reporting period, the OIG also reported upon delays in serving dismissal actions. Since the publication of the report in December of 2020, the OIG discovered that one case was mistakenly included in the data set used to conclude that there were \$312,584 in payments to would-be dismissed employees during delays and that this case should have been reported on in the next report regarding the July through December 2020 reporting period. That case should have been and is now included in the data and analysis for this report. The corrected total of costs due to delays for the January through June 2020 reporting period is approximately \$302,455.

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

- The hiring authority delayed referring misconduct allegations to the Office of Internal Affairs beyond the 45-day time frame that policy required in seven cases, or 33 percent. The total cumulative delay for this critical step was 132 days, and the department paid approximately \$39,605 to would-be dismissed employees during the delays.
- The Office of Internal Affairs delayed processing a referral beyond the 30-day time frame policy required in one of the 21 cases. The total cumulative delay for this critical step was 14 days, and the department paid approximately \$4,431 to would-be dismissed employees during the delays.
- The hiring authority delayed investigative and disciplinary conferences beyond the 14-day time frame policy required in three cases, or 14 percent. The cumulative delay for this critical step was 48 days, and the department paid approximately \$14,294 to would-be dismissed employees during the delays.
- The department delayed serving 10 disciplinary actions on peace officers beyond the 30-day time frame policy required in eight of 19 peace officer cases, or 42 percent. The total cumulative delay for this critical step was 350 days, and the department paid approximately \$116,247 to would-be dismissed employees during the delays.<sup>42</sup>

The following are notable examples of cases with extensive delays:

- In one case, an officer purchased and sold controlled substances, two sergeants purchased controlled substances, and all three employees lied during the investigation into the misconduct. The hiring authority dismissed all three employees, but did not serve the disciplinary actions on all three employees until many days after policy required. In total, the department paid the three employees approximately \$18,963 during the delays, which amounted to 51 days disbursed among the three employees. Two of the employees resigned after service of the dismissals, and the third later entered into a settlement wherein he agreed to resign.
- In a second case, an officer failed to document force she observed and then lied about the incident during an Office of Internal Affairs' interview. The hiring authority decided to dismiss the officer. Prior to service, however, there were delays in three critical steps: the hiring authority delayed 16 days after

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42. Dollar amounts in our calculations for this report are approximations and subject to rounding.

policy required in referring the matter to the Office of Internal Affairs, delayed 18 days after policy required in conducting the investigative and disciplinary findings conference, and delayed 88 days after policy required in serving the dismissal action. In all, the department paid the officer approximately \$38,615 during 122 days of delay.

- In a third case, an officer found a wallet in front of a bank and kept it instead of returning it to the owner, failed to report to the hiring authority that he had been booked into the county jail, and lied during the administrative investigation into his misconduct. The hiring authority dismissed the officer, and the officer did not appeal. However, prior to service of the dismissal action, there were delays in three critical steps: the hiring authority delayed 16 days after policy required in referring the matter to the Office of Internal Affairs, delayed 19 days after policy required in conducting the investigative and disciplinary findings conference, and delayed 49 days after policy required in serving the dismissal action. In all, the department paid the officer approximately \$26,588 during the 84 days of delay.

In sum, the department's unnecessary delays cost the department and taxpayers approximately \$174,578 in salary and benefits this reporting period. Table 5 on the next page presents a detailed breakdown of the costs associated with unnecessary delays in dismissal cases.



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

OIG Case Number	Classification	Monthly Salary at Mid-Step (\$)	Daily Rate (\$)	Total Delays							
				Critical Steps in the Investigative and Disciplinary Process							
				Referral*	OIA Processes Referral†	Hiring Authority Makes Findings‡	Hiring Authority Serves Action§	Total Days Late	Total Salary (\$)	Total Benefits (\$)	Total Cost (\$)
17-0023570-DM	Officer	6,110	200	16	...	18	88	122	24,440	14,175	38,615
18-0028046-DM	Psych. Tech. <sup>1</sup>	4,873	160	...	...	11	...	11	1,757	826	2,583
19-0029757-DM	Sergeant	7,812	256	...	...	...	30	30	7,683	4,456	12,140
19-0029826-DM	Officer	6,110	200	...	...	...	19	19	3,806	2,208	6,014
	Sergeant	7,812	256	...	...	...	23	23	5,891	3,417	9,307
	Sergeant	7,812	256	...	...	...	9	9	2,305	1,337	3,642
19-0030184-DM	Officer	6,110	200	...	...	...	48	48	9,616	5,577	15,193
19-0030335-DM	Officer	6,110	200	4	...	...	...	4	801	465	1,266
19-0031146-DM	Psych. Tech.	4,873	160	36	...	...	...	36	5,752	2,703	8,455
19-0031324-DM	Officer	6,110	200	...	...	...	5	5	1,002	581	1,583
19-0031325-DM	Officer	6,110	200	...	14	...	...	14	2,805	1,627	4,431
19-0031457-DM	Counselor	6,691	219	2	...	...	...	2	439	254	693
19-0031803-DM	Officer	6,110	200	...	...	...	32	32	6,410	3,718	10,129
19-0032133-DM	Officer	6,110	200	...	...	...	47	47	9,415	5,461	14,876
20-0032732-DM	Officer	6,110	200	16	...	19	49	84	16,828	9,760	26,588
20-0032888-DM	Officer	6,110	200	50	...	...	...	50	10,016	5,810	15,826
20-0033258-DM	Sergeant	7,812	256	8	...	...	...	8	2,049	1,188	3,237
<b>Totals</b>				<b>132</b>	<b>14</b>	<b>48</b>	<b>350</b>	<b>544</b>	<b>\$111,015</b>	<b>\$63,563</b>	<b>\$174,578</b>

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

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

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

§ The hiring authority serves disciplinary action on the employee.

<sup>1</sup> Abbreviation for Psychiatric Technician.

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

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

## Special Agents From the Office of Internal Affairs Significantly Delayed Commencing Investigations

During the July through December 2020 reporting period, we report on our finding that Office of Internal Affairs' special agents delayed initiating investigations. The Department Operations Manual (DOM), Article 22, and Office of Internal Affairs' policy set forth strict time lines for referring and initiating investigations.<sup>43</sup> Under policy, the hiring authority is required to refer allegations to the Office of Internal Affairs' Central Intake Unit within 45 calendar days of discovery. In turn, the Central Intake Unit has 30 calendar days to determine whether to investigate the allegations.<sup>44</sup> If the Office of Internal Affairs opens a case for investigation, the case is sent to one of three regions where the misconduct occurred, or to the Special Investigations Unit, and the regional Office of Internal Affairs' manager has 10 calendar days to assign the investigation to a special agent. Then, in cases in which a department attorney is assigned, the department attorney has 21 calendar days to reach out to the assigned special agent to discuss the elements of a thorough investigation into the allegations of the alleged misconduct.<sup>45</sup> The department has set forth clear time lines on referring allegations and in sending the investigation to the regions, presumably understanding the importance of investigating allegations in a timely manner. However, the Office of Internal Affairs does not have a policy regarding a time line for special agents to conduct the first interview in the investigation.

Theoretically, it is possible for the department to be in compliance with policy when conducting the initial case conference, which occurs approximately three and a half months after the discovery of allegations. A hiring authority can refer a case 45 days after discovery, the Office of Internal Affairs' Central Intake Unit can take 30 days to process a case, a supervisor can take 10 days to assign the case, and a special agent can conduct the initial case conference 21 days after assignment. Adding even more days to that process, agents do not normally begin interviewing witnesses immediately after the initial case conference. In fact, the OIG has observed a pattern of extreme delays taken by special agents in conducting the first interview.

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43. "In an effort to ensure acts of misconduct are addressed timely, cases should be referred to OIA's Central Intake Unit within 45 days from discovery of the misconduct. . . . If there are CDCR Form 989 submissions that require longer than the 45-day time frame, Hiring Authorities should contact the Chief, Headquarters Operations, OIA, as soon as possible to discuss the time frame necessary prior to submission. OIA may grant additional time under limited circumstances when warranted. This policy will be incorporated in the next revision of the DOM, Article 14" (Office of Internal Affairs' Memorandum Dated June 20, 2014).

44. "The CIU shall review each CDC Form 989 and all supporting documentation and shall evaluate and make a determination regarding each matter within thirty 30 calendar days" (DOM, Section 31140.16).

45. "As soon as operationally feasible, but no later than twenty-one (21) calendar days after the assignment of a case, the Vertical Advocate shall contact the assigned investigator for designated cases and the assigned SAIG, for cases the [OIG] is monitoring, to discuss the elements of a thorough investigation of the alleged misconduct" (DOM, 33030.11).

During this reporting period, Office of Internal Affairs' special agents conducted interviews in 101 cases of the 138 cases the OIG monitored. Of those cases, the special agent did not conduct an interview within 45 days of his or her assignment to the case in 58 of 101 cases, or 57 percent of cases. The issue was not specific to one region. Special agents in the northern region did not complete the first interview within 45 days of assignment for 28 of 44 cases, or 64 percent; special agents in the central region did not complete the first interview within 45 days of assignment in 18 of 29 cases, or 62 percent; and special agents in the southern region did not complete the first interview within 45 days of assignment in 12 of 28 cases, or 43 percent. In those cases for which the special agent conducted the interview more than 45 days after a special agent was assigned to do so, the average number of days before the first interview was 58 days beyond the initial 45-day period.

Furthermore, special agents delayed conducting the first interview more than 45 days after assignment in 67 percent of cases in which the department eventually dismissed the employee based on the allegations being investigated, and the dismissal was upheld or not appealed. The department should be conducting interviews with due diligence in all cases, but even more so in cases that have serious allegations that can result in a penalty of dismissal. However, the data from this reporting period demonstrate that the Office of Internal Affairs delayed conducting the first interview in would-be dismissal cases more often than it did in all cases in general.

Below are some examples of investigations from this reporting period during which the first interview was delayed.

In one case, an officer allegedly engaged in sexual acts with a minor. The Office of Internal Affairs assigned a special agent on January 2, 2020, to conduct the investigation. The special agent conferred with the prosecuting attorney and received the "approval" confirmation from a criminal prosecutor to proceed with the administrative investigation on January 29, 2020. However, the special agent did not conduct the first interview until July 28, 2020, approximately six months later. The hiring authority decided to dismiss the officer on November 4, 2020, and served the officer with a letter of intent advising the officer that he would be dismissed. The officer retired before the hiring authority could serve him with the disciplinary action. The officer worked in a nonpeace officer position in the mail room for the entirety of the investigation. The officer was paid to do clerical work while awaiting the Office of Internal Affairs to investigate.

In another case, the Office of Internal Affairs opened an investigation involving two officers and a psychiatric technician who were on duty when an incarcerated person committed suicide. The Office of Internal Affairs approved an investigation on December 5, 2018, and assigned a special agent to the case on December 10, 2018. The special agent did

not conduct the first interview until May 10, 2019, approximately five months after receiving the assignment. After the initial interview, the special agent did not continue conducting interviews until July 11, 2019, 62 days after the first interview. The special agent did not complete the investigation and send the investigative report to the hiring authority until September 27, 2019, 15 days before the deadline to take disciplinary action against the officers. The hiring authority decided to suspend one officer and reduce the salary of the other officer. The procrastination of the special agent assigned to this case placed the hiring authority in the difficult position of having to scramble and attempt to serve the officers with disciplinary actions at the last minute. The hiring authority dismissed the psychiatric technician, who then resigned before the disciplinary action took effect.

In another case, the Office of Internal Affairs opened an administrative investigation into allegations that an officer punched an incarcerated person in the face and slammed him to the ground, and that four other officers failed to report the incident. The Office of Internal Affairs assigned a special agent to the case on October 24, 2019. The special agent did not conduct the first interview until February 25, 2020, four months later. The special agent did not complete his investigation until July 15, 2020, almost nine months thereafter. The hiring authority discovered the allegations on June 16, 2019, and the one-year disciplinary deadline expired on June 16, 2020; however, due to the Governor's Executive Order, the disciplinary deadline was arguably extended by 60 days to August 15, 2020.<sup>46</sup> If it had not been for the executive order having been issued, the department would have missed the disciplinary deadline. This case exemplifies how delays by special agents have potentially significant consequences. The hiring authority did not sustain the allegations.

In another case involving criminal allegations, two sergeants and two officers allegedly kicked and punched a handcuffed incarcerated person. The Office of Internal Affairs approved a criminal investigation on December 4, 2019; however, the Office of Internal Affairs did not assign a special agent until December 17, 2019, three days after departmental policy required. The special agent did not complete any work on the case the entire time that he was assigned, a period of approximately three months. The Office of Internal Affairs assigned a second special agent to the case on March 10, 2020; however, the second special agent did not conduct the first interview in this investigation until July 14, 2020. This was 124 days after being assigned the case and 210 days after the Office of Internal Affairs assigned the first investigator. The second special agent did not complete his investigation until December 4, 2020, 30 days after the deadline to file misdemeanor charges. Ultimately, the investigation

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46. "The deadline specified in Government Code section 3304(d) for opening and completing investigations of alleged misconduct by public safety officers is extended by 60 days" (Executive Order N-40-20 (15)). The Governor of California issued this executive order in response to the COVID-19 pandemic.

did not establish sufficient evidence for the Office of Internal Affairs to refer the matter to a district attorney for prosecution.

In another case involving allegations that an officer failed to report incarcerated persons fighting in a dormitory and then lied to a sergeant about the incident, the Office of Internal Affairs assigned a special agent to the investigation on May 13, 2019, but the special agent did not conduct the first interview until September 16, 2019, more than four months later. The special agent did not deliver the report to the hiring authority until December 5, 2019, only 49 days before the deadline to take disciplinary action. The hiring authority dismissed the officer, but then settled the case and allowed the officer to return to work when the department attorney discovered at the hearing that an incarcerated person, a witness, had been paroled from custody and did not appear to testify at the hearing.

In another case involving criminal allegations, a counselor allegedly conspired to introduce heroin and mobile phones into a prison and illegally communicated with incarcerated persons. The Office of Internal Affairs assigned a special agent on July 25, 2019. During a case conference with the OIG on July 30, 2019, the special agent discussed stopping the counselor at the prison's entry to search and interview the counselor, but did not do so until December 4, 2019, more than four months after receiving the assignment. The Office of Internal Affairs later determined there was sufficient evidence to refer the case to the local district attorney's office for possible prosecution.

The above summaries highlight lengthy delays in cases involving serious allegations and exemplify the consequences that occur when the Office of Internal Affairs' special agents delay the start of investigations. A prompt investigation is necessary for a multitude of reasons: It reduces the risk of evidence growing stale or disappearing altogether, it decreases the potential for witnesses' memories to fade with the passage of time, and it permits the department to complete its investigation and disciplinary action before disciplinary deadlines expire, including those deadlines pursuant to the Public Safety Officers' Procedural Bill of Rights Act.<sup>47</sup>

There are important benefits to conducting the first interview as soon as possible. In cases that include a complainant, interviewing the complainant soon after the discovery of the allegations demonstrates to

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47. "[N]o punitive action, or denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct" California Government Code section 3304(d)(1).

"No adverse action shall be valid against any State employees for any cause for discipline based on any civil service law of this State, unless notice of this adverse action is served within three years after the cause for discipline, upon which the notice is based, first arose" Government Code section 19635(a).

the complainant that the department is treating the allegations seriously. If special agents determine as soon as possible whether incarcerated persons or parolees need to be interviewed, prompt interviews allow the interviewer to gather information before a confirmed date of discharge or before such witnesses are transferred to a prison far from the special agent's home office. The longer the Office of Internal Affairs waits to conduct interviews, the more likely that witnesses' memories will fade. Moreover, extreme delays can put undue pressure on a hiring authority to rush the disciplinary process to ensure that the hiring authority disciplines the employee before the deadline to take disciplinary action expires and precludes the hiring authority from acting altogether. Finally, unnecessary delays during the investigative process can result in would-be dismissed employees who are facing serious allegations receiving unwarranted pay during the delays.

Therefore, the OIG recommends the Office of Internal Affairs implement a policy that requires the special agent to conduct the first interview within 45 days for cases in which a special agent is assigned to conduct an investigation or a subject interview, except for cases in which the specific facts of the case warrant not immediately conducting an interview and that the warranted delay is approved by a manager with the Office of Internal Affairs.

## The Department Unnecessarily Delayed Resolving Direct Action Cases

For the July through December 2020 reporting period, the OIG reviewed a cohort of employee discipline cases for the sole purpose of determining whether the hiring authority held timely investigative and disciplinary findings conferences. The OIG previously recommended in our report from the January through June 2019 reporting period that the department develop a time frame reflecting the number of days an investigative and disciplinary findings conference must be held after a hiring authority receives

1. an investigative report from the Office of Internal Affairs;
2. a report from the Office of Internal Affairs regarding its interview of an employee suspected of misconduct; or
3. a notice of approval from the Office of Internal Affairs to take direct action on employee misconduct allegations without an investigation or interview.

In our review of this cohort, we reviewed cases in which the hiring authority submitted a referral with supporting documentation to the Office of Internal Affairs, and after review, the Office of Internal Affairs determined that the “misconduct [was] sufficiently well-documented,”<sup>48</sup> in the materials provided by the hiring authority and therefore authorized the hiring authority to take direct disciplinary action against the employee regarding the alleged misconduct without an investigation or interview of the employee (or employees) suspected of misconduct. For these cases especially, the hiring authority need not delay making decisions concerning the alleged misconduct, since the hiring authority already has all of the information necessary to make a decision concerning each allegation of employee misconduct and does not need to review any new material, as the Office of Internal Affairs already determined that the hiring authority sufficiently documented the misconduct.

After the Office of Internal Affairs returns a case to the hiring authority, the hiring authority will make a decision concerning the alleged misconduct at an investigative and disciplinary findings conference. Under the OIG’s interpretation of the Department Operations Manual, the hiring authority should conduct the conference within 14 days of the Office of Internal Affairs’ decision to return the case to the hiring authority.<sup>49</sup> At the investigative and disciplinary findings conference, the hiring authority will decide several matters including whether he

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48. DOM, Section 31140.16.

49. DOM, Section 33030.13.

or she agrees with the Office of Internal Affairs that the misconduct is sufficiently well-documented, whether to sustain the alleged misconduct, and if so, the appropriate corrective action or discipline.

If the hiring authority does not agree that the referral the hiring authority provided to the Office of Internal Affairs contains sufficient evidence of misconduct, and believes that he or she requires more information in the form of interviews or further investigative work before making a decision, the hiring authority may request that the Office of Internal Affairs reconsider the hiring authority's original request for an investigation and may specify the information needed. The matter then returns to the Office of Internal Affairs' Central Intake Unit, whereby the Office of Internal Affairs will again consider the hiring authority's request and "shall provide the Hiring Authority the requested information or complete additional investigations as soon as operationally possible."<sup>50</sup>

The hiring authority must conduct the investigative and disciplinary findings conference with sufficient time to return the matter to the Office of Internal Affairs, because the hiring authority may need more information in the form of further investigation or interviews to make a decision concerning the alleged misconduct.

During the July through December 2020 reporting period, the Office of Internal Affairs reviewed 1,063 referrals from hiring authorities and determined that in 497 referrals, the hiring authority sufficiently documented the misconduct such that no further interviews or investigations were necessary for the hiring authority to make a determination concerning the alleged misconduct. The Office of Internal Affairs authorized the hiring authority in those 497 of 1,063 referrals to take direct action on employee misconduct allegations without pursuing a full investigation or an interview. We reviewed all 497 of the 1,063 cases for the limited purpose of determining whether the hiring authority conducted a timely investigative and disciplinary findings conference. We did not monitor all of these cases and did not wait for them to be closed for this limited review.

Of the 497 cases that the Office of Internal Affairs authorized the hiring authority to take direct disciplinary action without the need for an interview or investigation, the hiring authority did not conduct the investigative and disciplinary findings conference within 14 days of the Office of Internal Affairs' decision in 433 of these cases, or 87 percent. In 328 of 497 cases, or 66 percent, the hiring authority did not conduct the investigative and disciplinary findings conference within 30 days of the Office of Internal Affairs' decision. And in 129 of the 497 cases, or 26 percent of the cases, hiring authorities took more than 90 days to

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50. DOM, Section 33030.13.



conduct the investigative and disciplinary findings conference. Indeed, in 31 cases, the department took more than 200 days to conduct the investigative and disciplinary findings conference.

In one case, an officer allegedly assumed a post requiring quarterly firearms qualification without being so qualified. The Office of Internal Affairs returned the matter to the hiring authority to take disciplinary action on July 1, 2020. As of April 8, 2021 (281 days later), the hiring authority had not yet conducted the conference. The hiring authority discovered the possible misconduct on May 29, 2020, and must serve any possible disciplinary action on the officer within one year of the discovery of the alleged misconduct. Should the hiring authority request more information in the form of an interview or investigation from the Office of Internal Affairs to make a decision concerning the alleged misconduct, the Office of Internal Affairs would have very little time to collect and provide that information.

In a second case, an officer allegedly told a sergeant that the officer should not have to tell the sergeant how to do his job. The Office of Internal Affairs returned the matter to the hiring authority on July 15, 2020. The hiring authority did not conduct the investigative and disciplinary findings conference until April 9, 2021, 268 days later.

In a third case, an officer allegedly failed to properly secure an incarcerated person in a holding cell and then walked away. The incarcerated person escaped from the holding cell and attacked two other incarcerated persons who were being escorted by other officers, thereby requiring several officers to use force. Further, the officer allegedly did not complete an incident report before the end of his shift nor conduct required security checks. The hiring authority discovered the possible misconduct on June 25, 2020. The Office of Internal Affairs returned the matter to the hiring authority to take direct disciplinary action on August 12, 2020. As of April 8, 2021 (239 days later), the hiring authority had not yet conducted the investigative and disciplinary findings conference.

In a fourth case, outside law enforcement arrested an officer for driving under the influence of alcohol on July 12, 2020. The officer also allegedly lied to outside law enforcement when he denied drinking at all, failed to report the arrest to the prison, called the arresting officer a “wet back,” and called a citizen at the detention facility to which outside law enforcement took him a “bitch.” The Office of Internal Affairs returned the matter to the hiring authority to take direct disciplinary action on August 19, 2020. The hiring authority did not complete the investigative and disciplinary findings conference until February 5, 2021. At the conference, 170 days after receiving the case for direct action, the hiring authority decided to dismiss the officer.

In a fifth case, an officer allegedly did not conduct a handheld scan of an incarcerated person, resulting in the incarcerated person possessing a makeshift weapon that he used to assault a second officer. The Office of Internal Affairs returned the matter to the hiring authority on July 29, 2020, but the hiring authority did not conduct the investigative and disciplinary findings conference until 190 days later, on February 4, 2021.

The examples above demonstrate that for cases in which the Office of Internal Affairs decided the alleged misconduct was sufficiently well-documented in the materials the hiring authority provided to the Office of Internal Affairs, the department consistently delayed holding the investigative and disciplinary findings conference. This delayed any disciplinary action and shortened the time the hiring authority may have had to request additional investigation should he or she have decided the alleged misconduct was not sufficiently well-documented. Therefore, the OIG recommends the department implement and enforce a bright-line rule requiring hiring authorities to hold investigative and disciplinary findings conferences within 14 days of receiving the case from the Office of Internal Affairs, especially for those cases the Office of Internal Affairs has authorized the hiring authority to take direct disciplinary action.

## The OIG Added Value in Its Monitoring of Cases From July Through December 2020

The OIG assigns attorneys to monitor the department's internal investigations and employee disciplinary process. OIG attorneys are experienced in various fields of the law, including criminal prosecution, civil rights litigation, administrative law, civil law, and appellate litigation. Throughout our monitoring between July and December 2020, we contemporaneously monitored the performances of hiring authorities, Office of Internal Affairs' special agents, and department attorneys. During this reporting period, OIG attorneys positively impacted the Office of Internal Affairs' Central Intake Unit's processing of hiring authority referrals. Of the 138 cases the OIG monitored and closed between July and December 2020, OIG attorneys made a positive impact during the Central Intake process in 17 of the 138 cases, or 12 percent. We highlight a few of those cases below.

In one case, six officers allegedly failed to conduct a search of a holding cell, leaving an incarcerated person unattended. A seventh officer and an eighth officer allegedly deviated from policy when conducting standing counts. Initially, the Office of Internal Affairs declined to open an administrative investigation and instead returned the case to the hiring authority to take action without initiating an investigation or interviewing the officers. The OIG elevated the matter to management within the Office of Internal Affairs, and the manager decided to approve an investigation. After an investigation, the hiring authority sustained the allegations.

In a second case, outside law enforcement arrested an officer after he allegedly engaged in various acts of sexual activity with minors. The Office of Internal Affairs agreed to open an administrative investigation only after the OIG recommended doing so. During the investigation, the officer allegedly lied during an Office of Internal Affairs' interview. Thereafter, the hiring authority sustained the allegations and determined dismissal was the appropriate penalty. The OIG concurred. However, the officer retired before the disciplinary action could be served, and the hiring authority placed a letter in the officer's official personnel file, indicating that he retired pending disciplinary action.

In a third case, an associate warden allegedly mimicked and spoke mockingly in a Spanish-language accent to a second associate warden. A third associate warden allegedly provided false or misleading information to a chief deputy warden regarding the second associate warden, and also retaliated against the second associate warden and an office technician after the second associate warden and the office technician provided witness statements against the third associate warden in an Office of Internal Affairs' investigation. Thereafter, the chief deputy warden allegedly lied to the warden and allegedly sent inappropriate and sexually suggestive email messages to the second associate warden. The chief

deputy warden also allegedly made rude and demeaning statements to the second associate warden. Initially, the Office of Internal Affairs decided to not include the third associate warden as a subject. After the OIG elevated the matter to management within the Office of Internal Affairs, the Office of Internal Affairs agreed to include the third associate warden as a subject of the administrative investigation. After an investigation, the hiring authority sustained all allegations, except that the third associate warden provided false information to the chief deputy warden, and decided to impose a 25-working-day suspension on the first associate warden. After the hiring authority served the disciplinary action, the first associate warden and the hiring authority entered into a settlement agreement pursuant to which the hiring authority delayed commencement of the 25-working-day suspension for ten days. The hiring authority decided to impose a 60-working-day suspension on the chief deputy warden. However, the chief deputy warden retired before the hiring authority could serve the disciplinary action. The hiring authority placed a letter in the chief deputy warden's official personnel file indicating the chief deputy warden resigned pending disciplinary action. The hiring authority decided to demote the third associate warden to a supervising counselor position, but prior to implementation of the demotion, the hiring authority dismissed the third associate warden in two unrelated cases. The OIG concurred.

In a fourth case, outside law enforcement arrested an officer after the officer allegedly stole merchandise from a store. The officer also allegedly lied to store security personnel concerning his name and date of birth. The OIG recommended the Office of Internal Affairs add a dishonesty allegation, which the Office of Internal Affairs adopted. The hiring authority sustained the allegations and determined dismissal was the appropriate penalty. The OIG concurred. However, the officer resigned before the department completed its investigation. Therefore, the hiring authority did not serve the officer with disciplinary action. The hiring authority placed a letter in the officer's official personnel file, indicating he resigned pending disciplinary action.

In a fifth case, a lieutenant allegedly grabbed a handcuffed incarcerated person by the back of the neck, pushed his face into a wall, placed his knee on the incarcerated person's back, and failed to report the use of force. Initially, the Office of Internal Affairs decided to send the case back to the hiring authority because it determined the hiring authority already had sufficient information to take disciplinary action without the need for further investigation or interviews. The OIG elevated that decision to an executive with the Office of Internal Affairs, and as a result, the Office of Internal Affairs also opened a criminal investigation. After the Office of Internal Affairs completed the criminal investigation, the hiring authority sustained the administrative allegations and determined dismissal was the appropriate penalty. The OIG concurred. However, the lieutenant retired before the disciplinary action could be served. The hiring authority placed a letter in the lieutenant's official personnel file, indicating he retired pending disciplinary action.

## Recommendations

For the July through December 2020 reporting period, we offer the following recommendations to the department:

Nº 1. The OIG recommends the department develop and implement a policy requiring that special agents with the Office of Internal Affairs conduct the first interview within 45 days of case assignment, except for cases in which the specific facts of the case warrant not immediately conducting an interview and that the warranted delay is approved by a manager with the Office of Internal Affairs.

Nº 2. The OIG recommends the department implement and enforce a bright-line rule requiring hiring authorities to hold investigative and disciplinary findings conferences within 14 days of receiving

1. an investigative report from the Office of Internal Affairs;
2. a report from the Office of Internal Affairs regarding its interview of an employee suspected of misconduct; or
3. a notice of approval from the Office of Internal Affairs to take direct action on employee misconduct allegations without an investigation or interview;

especially for those cases that the Office of Internal Affairs has determined the hiring authority already has sufficient information to take disciplinary action without the need for further investigation or interviews.

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STATE OF CALIFORNIA — DEPARTMENT OF CORRECTIONS AND REHABILITATION

GAVIN NEWSOM, GOVERNOR

**OFFICE OF THE SECRETARY**P.O. Box 942883  
Sacramento, CA 94283-0001

April 21, 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 (Department) submits this letter in response to the Office of the Inspector General's (OIG) draft *Monitoring the Internal Investigations and Employee Disciplinary Process of the California Department of Corrections and Rehabilitation* for the period of July through December 2020.

The Department has reviewed the draft report and would like to note the below, particularly in relation to the two indicators where the OIG's draft report rated the Department's performance as "poor":

**INDICATOR 4: THE PERFORMANCE BY HIRING AUTHORITIES IN DETERMINING FINDINGS REGARDING ALLEGED MISCONDUCT AND PROCESSING THE MISCONDUCT CASES**

Page 46:

*"Although the department does not have a clear policy governing when hiring authorities are required to conduct the investigative findings conference, we assessed hiring authorities based on a 14-day time frame pursuant to our interpretation of the Department Operations Manual."*

The Department disagrees with OIG's interpretation of the language in the DOM and created a requirement and subsequent deadline that is not determined in policy. Article 22 does not contain an express requirement that the conference be held within 14 days. Rather, section 33030.13 provides that the Hiring Authority shall review the investigative report and documentation no later than 14 calendar days after receipt of the report. It thereafter requires that the Hiring Authority consult with the Vertical Advocate and OIG when reviewing the investigation and making investigative findings. Section 33030.13.1 (governing investigative findings) does not provide a deadline by which the Hiring Authority is to make those findings. Article 22 provides that the investigative findings would be completed after the Hiring Authority has an opportunity to review the report, thus the consultation with the Vertical Advocate and OIG would occur as part of that whole process (not just the initial review process in the first 14 days).

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Page 47:

*“Delayed conferences often resulted in untimely service of disciplinary actions.”*

2

The Department believes this statement is misleading, as it could be construed that the delayed conferences are making disciplinary actions untimely as a matter of law – i.e., that the Department missed the statute of limitation, which is inaccurate. As written, it appears the OIG is holding the department accountable for a timeliness standard that does not exist.

Page 51:

*Section re: “For cases the OIG monitored and closed from July through December 2020, the OIG determined that the department proposed an unreasonable course of action, and the OIG subsequently sought review by departmental executives in one case.”*

The OIG’s elevation of this case occurred in the prior review period. The final decisions by the Undersecretary were made in January and February of 2020, and the modification of the penalty by the Undersecretary occurred in April of 2020. With regard to the penalty modification, it is important to note that the Department had a concern about leaving institutional employees – who would be coming back to the institution – without health insurance during a pandemic. Further, the Department’s decision was within policy.

3

The sole event that occurred during this review period was the settlement of the discipline while the appeals were pending before the State Personnel Board in early July 2020. The Department elected to settle the matter because every use of force subject matter expert that the attorney could locate opined that the force used was consistent with how the officers had been trained. As such, the Department believed there was significant risk that the State Personnel Board could revoke the discipline in its entirety. The Department’s decision to settle the matter, in light of the information learned from the subject matter experts, was prudent and within policy.

The Department previously substantively responded to OIG’s criticisms in this matter, however, it is important to note that the use-of-force incident was reviewed by at least five Department executives and four Department attorneys, as well as the OIG’s attorneys, and many had different opinions of the use of force incident and the sufficiency of the evidence that the officers had been dishonest. The fact that reasonable minds can differ as to the propriety of the force and sufficiency of evidence demonstrates the fundamental problems with the evidence in this matter.

INDICATOR 5: PERFORMANCE BY DEPARTMENT ATTORNEYS IN PROVIDING LEGAL ADVICE WHILE THE OFFICE OF INTERNAL AFFAIRS PROCESSED EMPLOYEE MISCONDUCT HIRING AUTHORITY REFERRALS AND CONDUCTED INTERNAL INVESTIGATIONS

Page 54:

4

*“The department assigned attorneys to some of the cases in which the Office of Internal Affairs conducted administrative investigations, but it did not assign them to criminal investigations.”*



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Page 3

The OIG’s statement that the Department “did not assign [attorneys] to criminal investigations” mischaracterizes the role of the department’s attorneys and results in an apparent improper criticism. The Department’s attorneys are to provide legal advice during administrative investigations and disciplinary matters. The scope of the role for the Department’s attorneys is set forth in Article 22 of DOM. The Department’s policies, that were created and adopted pursuant to the *Madrid* Court’s orders, contemplate that the Department’s attorneys would provide advice in disciplinary matters, not legal advice to the Department regarding investigations that are focused on criminal prosecution, which are ultimately referred to the District Attorneys’ offices. When a criminal investigation uncovers evidence of conduct that would support discipline, the disciplinary matter is split from the criminal matter, at which time the Department’s attorney provides advice regarding any necessary further investigative work to support the administrative action.

4

#### INDICATOR 6: THE PERFORMANCE OF DEPARTMENT ATTORNEYS AND EMPLOYEE RELATIONS OFFICERS IN PROVIDING LEGAL REPRESENTATION DURING LITIGATION

Page 56-57:

*“In one case, the department attorney did not provide the OIG with a draft of a disciplinary action or consult with the OIG before serving an amended disciplinary action on an officer.”*

The Department does not believe that this criticism falls within the OIG’s indicator, thus is not a proper basis for a poor rating. The OIG’s indicator relates to the employee’s (either attorney or ERO) providing legal representation. The representation is provided to the Department. As such, the representative’s communication with OIG does not relate to his/her/their representation of the Department in discipline against an employee and before the State Personnel Board.

5

*“In a third case, the department attorney failed to draft the disciplinary action at all and instead, waited for the officer to retire. The employee retired 82 days after the decision to take disciplinary action and 52 days after policy required the disciplinary action to be served.”*

Because of the vagueness of the above-statement, the Department assumes that it refers to a matter arising out of the Central region. The Department disputes the characterization of the events in this matter; specifically characterizing the attorney’s conduct as a neglect of their obligations under the policies. The attorney timely prepared and delivered the draft Notice of Adverse Action to the Hiring Authority. The Hiring Authority believed that the employee presented a credible threat of violence against the Hiring Authority and all the witnesses who provided statements against the employee. If discipline was served, the employee would have the identity of all witnesses who provided statements against him. The Hiring Authority was deeply concerned for the safety and security of the Department’s employees, and knew that the subject employee would be retiring. Even without serving the Notice of Adverse Action, the findings and discipline to be imposed would remain in the Department’s records. Thus, the Hiring Authority made the decision to put the safety of the Department’s employees first. The

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representative from the OIG unofficially agreed that the Hiring Authority's decision was the most prudent course of action.

Page 58:

Section re: *"The Department Delayed in Processing Dismissal Cases, Resulting in the Payment of Approximately \$174,578 to Ultimately Dismissed Employees During the Delays."*

7 It is unclear from OIG's report whether all of the employees for whom these costs were calculated were on Administrative Time Off. If the employees were not on ATO during the period between when the decision was made and when the discipline was served, there is no loss to the Department. If the employee was working, the Department received services from the employee. If OIG's report includes individuals who were not on ATO, those individuals should be removed from the calculation.

Page 68-69:

8 *"Under the OIG's interpretation of the Department Operations Manual, the hiring authority should conduct the conference within 14 days of the Office of Internal Affairs' decision to return the case to the hiring authority."*

As stated above in response to Indicator 4, the Department disagrees with OIG's interpretation of the language in the DOM and believes there is no set timeframe for conducting the disciplinary conference after the hiring authority receives the case from the Office of Internal Affairs.

Thank you for the opportunity to review and comment on the draft report. If you have further questions, please contact me at (916) 323-6001.

Sincerely,

DocuSigned by:  
*Kathleen Allison*  
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KATHLEEN ALLISON  
Secretary

## The Office of the Inspector General’s 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 the OIG’s draft report titled *Monitoring the Internal Investigations and Employee Disciplinary Process of the California Department of Corrections and Rehabilitation*. The numbers below correspond with the numbers we have placed in the margin of the department’s response.\*

1. The OIG stands by its interpretation of the department’s policy regarding the requirement that the hiring authority conduct the investigative and disciplinary findings conference within 14 days of receiving the investigative report. DOM, Section 33030.13, states, “As soon as operationally possible, but no more than fourteen (14) calendar days following receipt of the final investigative report, the Hiring Authority shall review the investigative report and supporting documentation. The Hiring Authority shall consult with the Vertical Advocate, for all designated cases, and the SAIG, for all cases monitored by the BIR when reviewing the investigation and making investigative findings.”

A reasonable interpretation of the language of this section requires the hiring authority to not only review the final investigative report and supporting documents, and consult with the department attorney and the OIG “when reviewing the investigation . . .” as spelled out in the policy explicitly, but also **to complete his or her findings based on the investigation within 14 days of receipt of the investigative report**. Although this last clause is not stated directly, it is reasonable to infer it. Otherwise, setting a time frame for review that does not include a determination of findings is pointless. The OIG has previously recommended the department amend the time frame set forth in this section if it believes that 14 days is an inadequate period to review the materials, to consult, *and* to make a determination of findings. However, the department has ignored this recommendation and has continued to unreasonably assert that DOM, Section 33030.13, does not require its hiring authorities

\* Page numbers referenced in the department’s response have changed in the final version of this report due to reformatting.

make investigative findings within 14 days of receiving the investigative report. Nevertheless, we will continue to apply our reasonable interpretation that the hiring authority must review the materials, consult with department attorneys and the OIG, and make findings within 14 days of receipt of the investigation.

2. The department argued that the OIG is “holding the department accountable for a timeliness standard that does not exist.” As explained on page 48 of the report, pursuant to policy, the department must serve disciplinary actions on officers within 30 days of the hiring authority’s decision to take disciplinary action. DOM, Section 33030.22, requires that department attorneys “shall ensure” when drafting a disciplinary action, that “[i]f the subject employee is a peace officer, he or she is being served with the Notice of Adverse Action within thirty (30) calendar days of the decision to take disciplinary action.” Accordingly, the OIG is holding the department accountable to the department’s own timeliness standard. The department’s unfounded fear that the public will interpret this criticism as the department not serving disciplinary actions prior to the expiration of the statute of limitations is baseless. The department is held to a timeliness standard under its own policy as well as the law. This section of the OIG report highlights cases in which the department violated its own policy.
3. As the OIG explained throughout its semiannual report, the OIG reports on cases closed during the applicable reporting period. A case is not closed until the conclusion of all appeals. As the department pointed out, the department settled the matter during this reporting period “while the appeals were pending before the State Personnel Board,” meaning the OIG appropriately reported on this case during the July through December 2020 reporting period, when the case finally resolved. The OIG also included this case in OIG Sentinel Case No. 20–04, *The Department Made an Egregious Error in Judgment and Relied on Poor Legal Advice When It Did Not Sustain Dishonesty Allegations and Dismiss Two Officers in a Use-of-Force Case*.
4. The OIG acknowledges that the department does not assign attorneys to criminal investigations and, accordingly, does not evaluate the department negatively as such.
5. Policy requires department attorneys to provide a copy of draft notices of disciplinary actions to the OIG under DOM, Section 33030.22, so the OIG can provide consultation concerning the draft document. Moreover, the department must

consult with the OIG before determining the imposition of, or amendment to, a penalty (DOM, Sections 33030.20–33030.25). The department attorney provided poor legal advice to the department when the department attorney excluded the OIG from the process, not only violating departmental policy, but also preventing the OIG from carrying out its mandate under Penal Code section 6126 to monitor the disciplinary process.

6. Without asking the OIG for the case number, the department incorrectly assumed that a third case exemplifying a department attorney's poor performance for failure to draft and serve the disciplinary action prior to the employee's retirement involved a case out of the central region. It did not. For this example, the OIG found no justification for the department attorney's poor performance. Unrelated to the department's response, the OIG has corrected the rank of the employee involved in this case from *officer* to *associate warden*.
7. In this report, we criticized the department because it delayed serving dismissal actions on employees and unnecessarily paid the employees during the delays. This is the fifth consecutive report in which the OIG identified significant delays in serving dismissal actions. The thrust of the department's response to this criticism seems to be that some of these would-be dismissed employees provided "services" to the department during its delays and that payments of State funds to these would-be dismissed employees during that time period should not be included in the totals cited.

The department seems unconcerned with a would-be dismissed employee continuing to be paid during delays as long as the employee is working a regular post as opposed to being placed on administrative time off. The department is ignoring the obvious point that employees who it deems to have committed serious enough misconduct warranting dismissal from State service are continuing to work during delays, thereby unnecessarily exposing the department to further liability should they commit further misconduct on the job. Furthermore, these employees should not be rewarded with taxpayers' dollars any longer than necessary, regardless of whether they are working a regular post or on administrative time off.

In our report covering the July to December 2018 reporting period, we recommended that the department reassess its internal review process so that it can detect and prevent delays in processing disciplinary actions. In our report covering the January to June 2019 reporting period, we recommended the department implement a policy requiring that department

attorneys and employee relations officers provide all disciplinary actions to the hiring authority within a specific number of days after the investigative and disciplinary findings conference. We renewed this recommendation in our next *Discipline Monitoring Report*. The department has chosen to not implement these recommendations, even while it continues to poorly process dismissal actions. Our reporting in the last five reports has demonstrated that the department has continued to fail to exercise due diligence in serving dismissal actions. These failures along with the department’s recent response to this report establish that the department does not have sufficient concern regarding the timely service of dismissal actions.

8. DOM, Section 33030.13, states, “As soon as operationally possible, but no more than fourteen (14) calendar days following receipt of the final investigative report, the Hiring Authority shall review the investigative report and supporting documentation. The Hiring Authority shall consult with the Vertical Advocate, for all designated cases, and the SAIG, for all cases monitored by the BIR when reviewing the investigation and making investigative findings.” Rather than addressing its extreme delays in conducting investigative and disciplinary findings conferences, the department instead chooses to assert that its policy does not specify a time frame in which the disciplinary findings conference should be held. The OIG stands by its interpretation based on a plain reading of this DOM section which specifies that the hiring authority must review the report within 14 days, and must consult with the OIG and the department attorney “when reviewing” the investigation and making investigative findings. However, the department’s response that “there is no set timeframe for conducting the disciplinary conference after the hiring authority receives the case from the Office of Internal Affairs” provides further support for the OIG’s recommendation that the department implement and enforce a bright-line rule which clearly articulates that hiring authorities must hold investigative and disciplinary findings conferences within 14 days.

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

*Semiannual Report  
July–December 2020*

OFFICE *of the* INSPECTOR GENERAL

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STATE of CALIFORNIA  
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**OIG**