Roy W. Wesley, Inspector General

Bryan B. Beyer, Chief Deputy Inspector General

OIG | OFFICE *of the* INSPECTOR GENERAL

Independent Prison Oversight

November 2018

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

Semi-Annual Report
January–June 2018

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STATE of CALIFORNIA
OIG | OFFICE of the INSPECTOR GENERAL

Roy W. Wesley, Inspector General
Bryan B. Beyer, Chief Deputy Inspector General

Independent Prison Oversight

Regional Offices

Sacramento
Bakersfield
Rancho Cucamonga

November 8, 2018

Dear Governor and Legislative Leaders,

Enclosed is 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 27th *Semi-Annual Report*, as mandated by California Penal Code section 6133 (b) (1). This report addresses the California Department of Corrections and Rehabilitation's (the department) internal investigations and employee discipline cases that we monitored and closed between January 1, 2018, and June 30, 2018.

In this report, we conclude that the department performed well in several key aspects of internal investigations and the employee disciplinary process, including the timeliness at which it addresses and makes initial determinations regarding requests from hiring authorities, such as wardens, for internal investigations. Another highlight is the overall improvement of department attorneys' performances at hearings before the State Personnel Board in employee discipline cases.

Nevertheless, even though the department performed well in several areas, we found that it needs to improve the overall quality of its internal investigations and management of the employee disciplinary process. In the investigative phase of cases, we determined that the department did not perform sufficiently in 34 percent of cases we monitored while, as to the disciplinary phase, we found that the department did not perform sufficiently in 24 percent of the cases we monitored.

For example, we found that in almost all of its disciplinary cases, department attorneys omitted a required advisement to employees who were served with disciplinary actions (notices that they were being disciplined). We also found that, although the department almost always served disciplinary actions within the time frames required by law, it often delayed serving disciplinary actions on peace officers by not serving them within 30 calendar days of the decision to impose discipline, as required by the department's internal policy. This type of delay resulted in several cases whereby peace officers continued receiving their full salaries while they were on administrative leave and waiting for the department to serve them with a disciplinary action, including some cases in which peace officers were ultimately terminated from state employment. Significantly, we also found that the department neglected to update information in its computerized database regarding employee discipline cases, resulting in inaccurate information in state records.

Sincerely,

Roy W. Wesley
Inspector General

10111 Old Placerville Road, Suite 110
Sacramento, California 95827
Telephone: (916) 255-1102
www.oig.ca.gov

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"Scales of Justice" (cover and page 14): Graphic image designed by the U.S. Department of Justice; sourced via the Internet.

"Lady Justice" (page *ix*): Adapted from an illustration sourced via the Internet at www.vecteezy.com.

Lady Justice

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

(California Penal Code section 6126 (a))

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

(California Penal Code section 6133 (a))

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

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

— State of California
Excerpted from Penal Code sections

Definition of Select Terms Used in This Report	
Case Management System	The California Department of Corrections and Rehabilitation's computer program used to enter and maintain internal investigations and disciplinary case information.
Corrective Action	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.
Disciplinary Action	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."
DOM	Acronym of the department's operations manual. The full title is *California Department of Corrections and Rehabilitation Adult Institutions, Programs, and Parole Operations Manual* (Sacramento: State of California, 2018). Commonly known as the DOM, it is available on the Internet at **https://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/DOM/DOM%202018/2018%20DOM.pdf**.
Employee Disciplinary Matrix	The department's list and chart, which is not all inclusive, of causes for employee discipline with applicable penalty levels. The list and chart set forth the range of disciplinary penalties from official reprimand to dismissal (DOM, Sections 33030.16 and 33030.19).
Employee Relations Officer	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.
Employment Advocacy and Prosecution Team	A team of California Department of Corrections and Rehabilitation attorneys assigned to provide legal advice during internal investigations and to litigate employee discipline cases.
Executive Review	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 therefore, or a proposed settlement.
Hiring Authority	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.

Continued on next page.

Definition of Select Terms Used in This Report (continued)	
Investigative and Disciplinary Findings Conference	A meeting at which the hiring authority makes decisions regarding the findings and penalty in an employee discipline case. If a department attorney or an OIG attorney is assigned to the case, the hiring authority is required to consult with the respective attorney or attorneys.
Letter of Intent	A document served on an employee informing him or her that the investigation into the employee's misconduct was completed within one year and that he or she can expect disciplinary action to follow within a specified period after the letter of intent.
Office of Internal Affairs	The entity within the California Department of Corrections and Rehabilitation responsible for investigating allegations of employee misconduct.
Office of Internal Affairs Central Intake Unit	A unit of the Office of Internal Affairs consisting of special agents assigned to review referrals from hiring authorities regarding alleged employee misconduct.
Office of Internal Affairs Central Intake Panel	A collection of stakeholders led by the Office of Internal Affairs, which reviews hiring authority referrals regarding allegations of employee misconduct and is responsible for ensuring that 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.
Operations Manual	The department's prescriptive operations manual. See "DOM" entry, this table, facing page.
Special Agent	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.
State Personnel Board	A quasi-judicial board established by the California State Constitution that oversees merit-based job-related recruitment, selection, and disciplinary processes of state employees and employs administrative law judges to conduct hearings. The State Personnel Board also investigates and adjudicates alleged violations of civil service laws.
Vertical Advocate	A department attorney assigned to the Employment Advocacy and Prosecution Team.

San Quentin State Prison. Photograph courtesy of the California Department of Corrections and Rehabilitation.

Executive Summary

The Office of the Inspector General (OIG) is responsible for oversight of the California Department of Corrections and Rehabilitation's (the department) internal investigations and employee disciplinary process and reporting semiannually on our monitoring. To that end, OIG attorneys, experienced in various fields of the law, including civil rights litigation, criminal prosecution, administrative law, civil law, and criminal defense, monitor the department's management of its most serious internal investigations and the related employee discipline cases.

During the January through June 2018 reporting period, we found that the department's overall procedural performance—the department's compliance with the governing policies and procedures regarding steps to be followed and deadlines to be met in performing tasks—when performing internal investigations improved slightly, compared with the July through December 2017 reporting period, but its substantive performance—the overall quality of the department's performance, including whether there is identifiable harm or detriment to outcomes—declined. In addition, from January through June 2018, the department's management of the employee disciplinary process declined both procedurally and substantively from the prior reporting period of July through December 2017.

Overall, as to the investigative phase of cases, the OIG determined that the department performed sufficiently on a substantive basis in 66 percent of cases and, as to the disciplinary phase of cases, we determined that the department performed sufficiently on a substantive basis in 76 percent of cases. We also found particular areas in which the department can improve and, as to these, we offered specific recommendations in this report. We also noted instances in which the department performed notably well.

As part of our monitoring duties, the OIG monitors the performances of three departmental entities, whom we refer to as stakeholders. These three stakeholders handle different aspects of internal investigations and the employee disciplinary process: hiring authorities, the Office of Internal Affairs, and department attorneys. The department's hiring authorities are authorized to hire, discipline, and dismiss employees under their authority. Within the department, generally, a hiring authority is the undersecretary or general counsel, or any chief deputy secretary, executive officer, chief information officer, assistant secretary, director, deputy director, associate director, warden, superintendent,

health care manager, regional health care administrator, or regional parole administrator, as cited in the department's operations manual.[1]

The Office of Internal Affairs is another stakeholder in the process and comprises, primarily, investigators, who are referred to as special agents. These individuals are responsible for investigating allegations of employee misconduct and suspected employee criminal activity.

The third stakeholder is the Employment Advocacy and Prosecution Team, which is a group of attorneys from the department's Office of Legal Affairs who provide legal representation to the department during the investigative and disciplinary processes. These department attorneys are referred to as "vertical advocates."

[1] The departmental publication's official title is *California Department of Corrections and Rehabilitation Adult Institutions, Programs, and Parole Operations Manual* (Sacramento: State of California, 2018). It is commonly known as the DOM. Here, citing section 33030.4.

Hiring Authorities

For the reporting period of January through June 2018, we determined that hiring authorities performed well in the following areas:

- Preparedness for the investigative and disciplinary findings conferences.
- Determining the sufficiency of the investigation, investigative findings, and the appropriate discipline.
- Serving the disciplinary actions before expiration of the deadline to take disciplinary action.

However, we found that, although hiring authorities timely referred the majority of instances of suspected employee misconduct to the Office of Internal Affairs, they could improve their timeliness rate, as hiring authorities did not meet the requirement to submit the cases to the Office of Internal Affairs within 45 days of discovering the alleged misconduct nearly 25 percent of the time. Other areas we identified in which hiring authorities' performance displayed room for improvement include the timeliness of decisions regarding the sufficiency of investigations and the disciplinary findings, and serving disciplinary actions on peace officers within 30 days of the decision to take disciplinary action as policy requires. We report our findings and recommendations regarding these issues in more detail in subsequent sections of this report.

The Office of Internal Affairs

For the January through June 2018 reporting period, we found that the Office of Internal Affairs performed well in some respects, including in the following areas:

- Addressing hiring authority referrals of suspected employee misconduct within 30 days of the referral from a hiring authority.
- Entering required information into the department's electronic case management system.
- Completing administrative investigations at least 14 days before the deadline to take disciplinary action.
- Completing thorough investigations.

On the other hand, we identified areas in which we believe the Office of Internal Affairs could improve. One area is the overall timeliness of deadly force investigations, as the Office of Internal Affairs did not complete the majority of its deadly force investigations within the required time frame of 90 days.

In addition, we identified several areas in which the Office of Internal Affairs can improve relative to its handling of hiring authority referrals of suspected employee misconduct. We believe the Office of Internal Affairs should reconsider its approach to addressing referrals from hiring authorities regarding suspected employee misconduct by not identifying and attaching specific misconduct allegations to cases before beginning the investigation process. Historically, the Office of Internal Affairs determines the scope of an investigation at the onset of a hiring authority referral rather than as an investigation unfolds. Approaching investigations in this manner has, in some instances, unnecessarily limited investigations. For example, some special agents believed they could only work within the scope of the investigation as initially identified. Therefore, they did not investigate the underlying incident as a whole, but just the aspects of the incident associated with the allegations. In these cases, the special agents provided reports with incomplete information to hiring authorities, which prevented the hiring authorities from properly deciding the disciplinary action to take against the employee suspected of misconduct.

Additionally, the Office of Internal Affairs' current approach of assigning specific misconduct allegations to cases before the investigation begins has also led to some cases in which special agents did not investigate or uncover evidence beneficial to the employee suspected of misconduct, because the assigned special agent did not investigate the underlying incident in its entirety, but only some aspects of the incident, namely those connected with the scoped allegations. Instead, the OIG proposes that the Office of Internal Affairs not assign specific allegations to a case at the outset, but that the Office of Internal Affairs investigate the underlying incident in which an employee allegedly engaged in misconduct and the employee's role in the incident. In other words, the Office of Internal Affairs should not limit its investigations to only some aspects of an underlying incident associated with an employee's alleged misconduct.

Additionally, the Office of Internal Affairs returned about half of the hiring authority employee misconduct referrals it reviewed to hiring authorities to address allegations without opening any investigation, including even conducting an interview of the employee suspected of misconduct. The OIG believes this is a potential policy violation and not the best practice because hiring authorities must assess penalties based on mitigating and aggravating factors and, without obtaining the employees' versions of events or their positions regarding the suspected misconduct, the hiring authority does not have the requisite information before determining penalties. Therefore, the Office of Internal Affairs should, at a minimum, be conducting interviews of the employee suspected of misconduct in all cases.

Department Attorneys

Finally, the OIG found that, for the reporting period of January through June 2018, department attorneys performed well overall in several areas, including:

- Providing proper legal advice to special agents and hiring authorities.
- Representing the department during the litigation (or "appeal") process.

At the same time, we also identified that department attorneys could improve their preparation of disciplinary actions, referred to as "notices of adverse action," served on employees. Primarily, we found that department attorneys did not comply with a policy requiring the disciplinary action to contain an advisement that an employee being disciplined has the right to respond to an uninvolved manager regarding the proposed discipline before the discipline takes effect. As we discuss further in this report, this required language was absent from an overwhelming majority of disciplinary actions served; we recommend that department attorneys begin including this required language in disciplinary actions. We also found that the department as a whole, including department attorneys and employee relations officers, needs to update its case management system with information when an employee's disciplinary penalty has been modified from the penalty originally assessed by a hiring authority. The department's neglect in updating its case management system with the employee's final disciplinary penalty has resulted in outdated and inaccurate information in state records.

California Department of Corrections and Rehabilitation
Institutions and Parole Regions

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

Introduction

Background

California Penal Code section 6133 mandates the Office of the Inspector General to monitor and report on the department's internal investigations and employee discipline process. Whenever a hiring authority reasonably believes employee misconduct or criminal activity by an employee may have occurred, the hiring authority must timely submit a request to the Office of Internal Affairs Central Intake Unit requesting an investigation or requesting approval to address the allegations without an investigation.[2]

The Office of Internal Affairs Central Intake Panel is composed of stakeholders who meet weekly to review hiring authority employee misconduct referrals and ensure hiring authority referrals are managed consistently and assigned appropriately throughout the department. The Office of Internal Affairs leads these meetings, and department attorneys provide legal guidance to the Office of Internal Affairs. The OIG participates to monitor the process, to provide recommendations regarding Office of Internal Affairs' determinations regarding hiring authority referrals, and to determine which cases our office will monitor. Although the department attorney provides legal advice and the OIG attorney makes recommendations, the Office of Internal Affairs is responsible for deciding the action to take on hiring authority referrals. As to a hiring authority referral regarding suspected employee misconduct, the Office of Internal Affairs makes one of the decisions listed below:

- Decides to conduct an administrative investigation,
- Decides to conduct a criminal investigation,[3]
- Decides to conduct an interview only of the employee (or employees) suspected of misconduct,

[2] The Office of Internal Affairs may also open a case on its own, without a hiring authority's referral.

[3] While a criminal investigation is conducted to investigate whether there is a criminal law violation (leading to potential incarceration, criminal fines, or probation), an administrative investigation is generally conducted 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).

- Authorizes the hiring authority to take direct action against the employee regarding the alleged misconduct without any further input by the Office of Internal Affairs, or

- Rejects the case and no further action will be taken on the allegation or allegations.

The OIG monitors the Office of Internal Affairs' investigations or interviews of employees suspected of misconduct that meet our monitoring criteria, as set forth on the following page, and determine the adequacy of the investigative work conducted by the Office of Internal Affairs. If the department subsequently imposes discipline, we also monitor any related employee discipline cases emanating from the hiring authority's referrals to the Office of Internal Affairs. Our monitoring includes assessing the performance of the department's advocates who represent the department during the disciplinary process, including department attorneys and employee relations officers. Throughout our monitoring of these cases, we also assess the performance of department hiring authorities in addressing and managing the employee disciplinary process.

Scope and Methodology

The OIG monitors and assesses the department's more serious internal investigations of alleged employee misconduct, such as cases of alleged dishonesty, code of silence, unreasonable use of force, and criminal activity. The vast majority of cases we monitor also involves employees who are peace officers as they are held to a higher standard of conduct than those employees who are not peace officers. The table below lists criteria we use to determine which cases we will accept for monitoring:

Table 2. The Monitoring Criteria Used by the Office of the Inspector General

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

* *Madrid* v. *(Gomez) Cate*, 889 F. Supp. 1146 (N.D. Cal. 1995).

We also monitor and assess the hiring authority's disciplinary decisions. If the hiring authority sustains any allegation, we continue monitoring the quality of the department's legal representation and any subsequent employee appeal. In this report, we summarize our monitoring activities for both administrative and criminal investigations, as well as provide an assessment of the disciplinary process.

We assess the department's management of internal investigations and the employee discipline process based on the prescriptions found in its department operations manual.[4] For each case, we assess the performances of the hiring authority, the Office of Internal Affairs, and the department attorney, where applicable. We report each administrative case in two separate phases: the investigative phase and the disciplinary phase. The investigative phase consists of an investigation, if any, including those instances in which the Office of Internal Affairs decided to only conduct an interview of an employee suspected of misconduct, and the hiring authority's decision regarding whether the employee committed misconduct. The disciplinary phase consists of the hiring authority's determination regarding any penalty, the imposition of the penalty, and any appeal therefrom.

Our report also provides both a procedural and a substantive assessment for each phase of a case. Our procedural assessment of cases is based on the department's compliance with its policies regarding internal investigations and the disciplinary process. As part of our procedural assessment of the investigative phase, we assess whether the Office of Internal Affairs' special agents timely and sufficiently completed investigations in compliance with policy. The OIG understands that minor procedural errors do not necessarily render an assessment insufficient. However, we may negatively assess major or multiple departures from the process because such departures could cause breakdowns that lead to substantive insufficiencies.

Our substantive assessment of cases is based primarily on the OIG's expert opinion regarding the quality of the department's handling of a case from investigation, if any, to completion of any appeal process if a hiring authority takes disciplinary action. This assessment also considers whether there is identifiable harm or detriment to the case, although we may consider an assessment substantively insufficient even without the presence of any identifiable harm.

[4] Cited in footnote 1, this report, the DOM.

Case details are contained in the appendices published as a supplement to this report. Appendix A consists of cases in which both the investigative and disciplinary phases reached a conclusion. Therefore, this appendix includes cases for which the Office of Internal Affairs conducted an investigation or an interview of the employee suspected of misconduct; the hiring authority made decisions regarding the investigation and allegations; and, if the hiring authority imposed discipline on an employee, the conclusion of all appeals regarding the disciplinary action. This appendix also includes cases in which the Office of Internal Affairs did not conduct an investigation, but returned the case to the hiring authority to take action on the allegation or allegations because the Office of Internal Affairs deemed the facts sufficiently established. In those cases, we also report on whether the hiring authority imposed discipline and the resolution of any employee appeal therefrom. Lastly, Appendix A also includes cases in which the Office of Internal Affairs conducted an investigation, but the hiring authority did not sustain any misconduct allegations.

Appendix B reports only the disciplinary phase of cases because the OIG previously reported the investigative phase in those cases, but the litigation or appeal process from the disciplinary action had not yet been completed. Until the January through June 2017 reporting period, we reported the investigative phase separately once any investigation was completed, and the hiring authority made a decision regarding the allegations. We did not report the disciplinary phase until any appeal process was completed. The appeal process has now been completed in most of the cases in which we reported only the investigative phase. Therefore, we can now report the final outcome of those cases. Beginning with the January through June 2017 reporting period, we do not report a case until both the investigative and disciplinary phases are complete. Accordingly, since we have not been reporting cases piecemeal as of the January through June 2017 reporting period, very few cases remain that have only a disciplinary phase.

Appendices A and B also set forth the disciplinary penalties imposed. For each case, the OIG reports both the highest initial and the highest final penalties for any misconduct of any employee involved in the case. The initial penalty is the penalty the hiring authority selected and is always the highest penalty the hiring authority decided for any sustained allegation. The final penalty may be different because new information caused a hiring authority to change the penalty or enter into a settlement (a mutual agreement between the department and employee), and also includes a change to the penalty resulting from a State Personnel Board decision after hearing. The final penalty reported is also the highest penalty ultimately imposed for the misconduct of any employee involved in the case.

If the department conducted a criminal investigation, the case is reported in Appendix C. The OIG reports these cases once the Office of Internal Affairs completes its criminal investigation and either refers the case to a prosecuting agency, such as the California counties' district attorneys' offices, 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 determines there is insufficient evidence for a criminal referral.

Until the July through December 2017 reporting period, the OIG reported deadly force investigation cases in a separate volume of our *Semi-Annual Report* that also included critical incident cases, contraband surveillance watch cases, use-of-force incidents, and OIG field inquiries. Starting with the July through December 2017 reporting period, we are reporting on our monitoring of these areas in separately published reports. We are including administrative and criminal deadly force investigation cases in this report as the Office of Internal Affairs conducts these investigations and, if any discipline is imposed, the department is responsible for the handling of the disciplinary process in these cases. These cases are listed in Appendix D.

This report contains only those cases that concluded during this reporting period. In order to protect the integrity of the process, the OIG only reports cases after all proceedings are final.

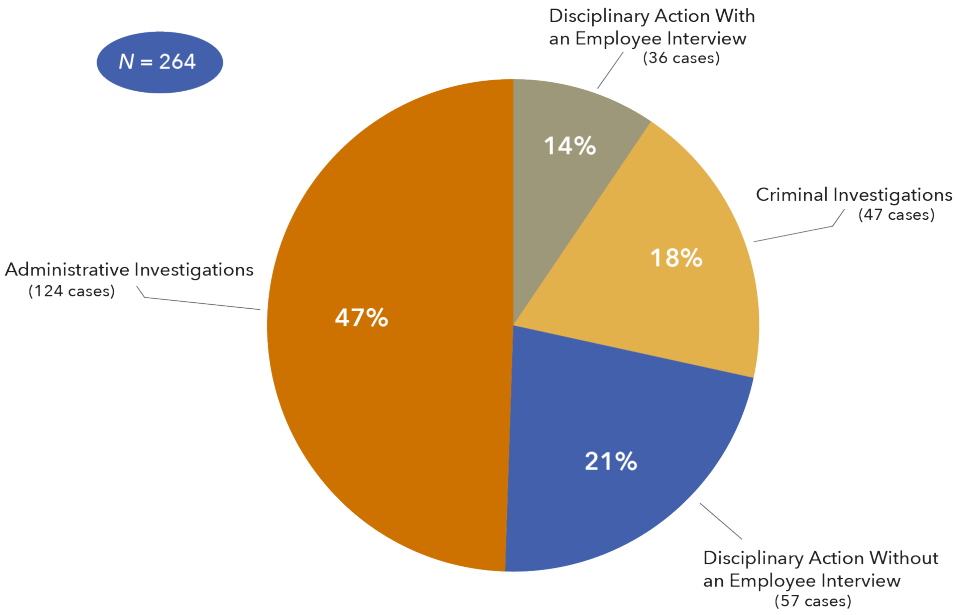
This report provides an assessment of 264 cases the OIG monitored and closed from January 1, 2018, through June 30, 2018. Administrative misconduct was alleged in 217 cases and includes cases in which the Office of Internal Affairs

- conducted an administrative investigation;
- conducted an interview only of the employee or employees suspected of misconduct, and
- deemed it sufficient for the hiring authority to take action against an employee regarding the allegations without an investigation.

Forty-seven cases we monitored and closed from January 1, 2018, through June 30, 2018, involved alleged employee criminal activity.

The figure below reflects the percentages of case types for cases the OIG monitored, closed, and is reporting for the January through June 2018 period. The percentages for the administrative and criminal investigations include use-of-deadly-force investigations, which amounted to 2 percent of the cases we are reporting.

Figure 1. Percentages of Cases the OIG Monitored and Closed

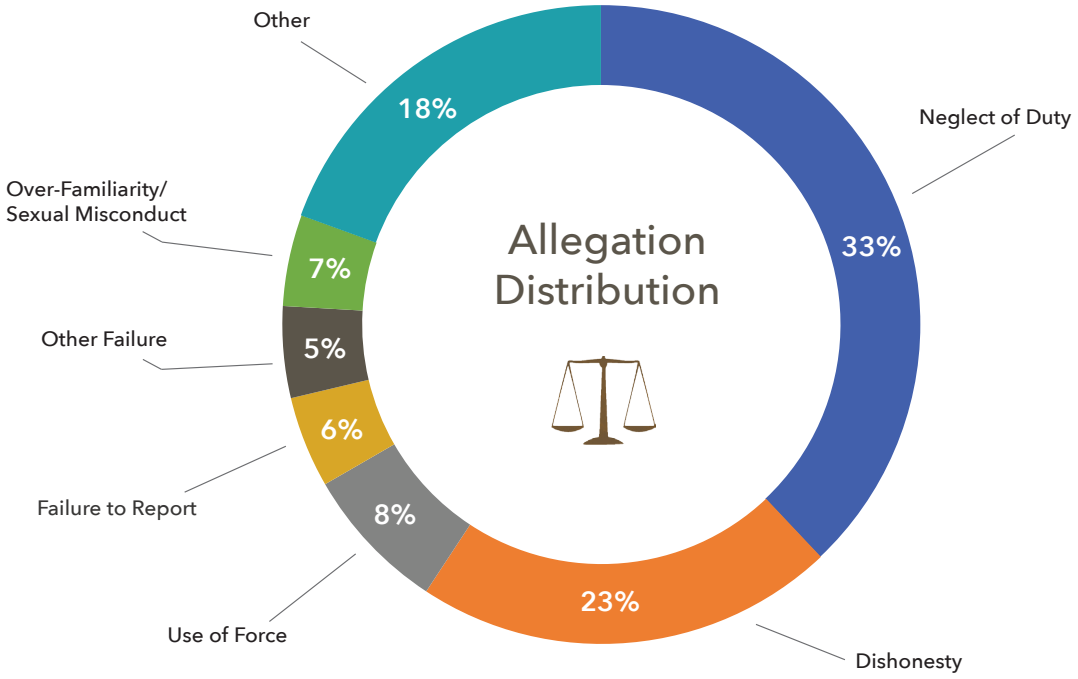


Source: Office of the Inspector General Tracking and Reporting System.

Of the cases we are currently reporting, 23 percent involved alleged dishonesty, 8 percent involved alleged unreasonable use of force, and 7 percent involved alleged over-familiarity and sexual misconduct with an inmate or person under the department's jurisdiction. The percentage of cases we monitored involving failure to report allegations also includes the failure to report a use of force.

The figure below shows the highest percentages of allegations by allegation type for cases we are currently reporting. Allegations classified as "other" include allegations such as insubordination, discrimination or harassment, and misuse of authority.

Figure 2. Percentages of Allegation Distribution in Cases the OIG Monitored and Closed



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

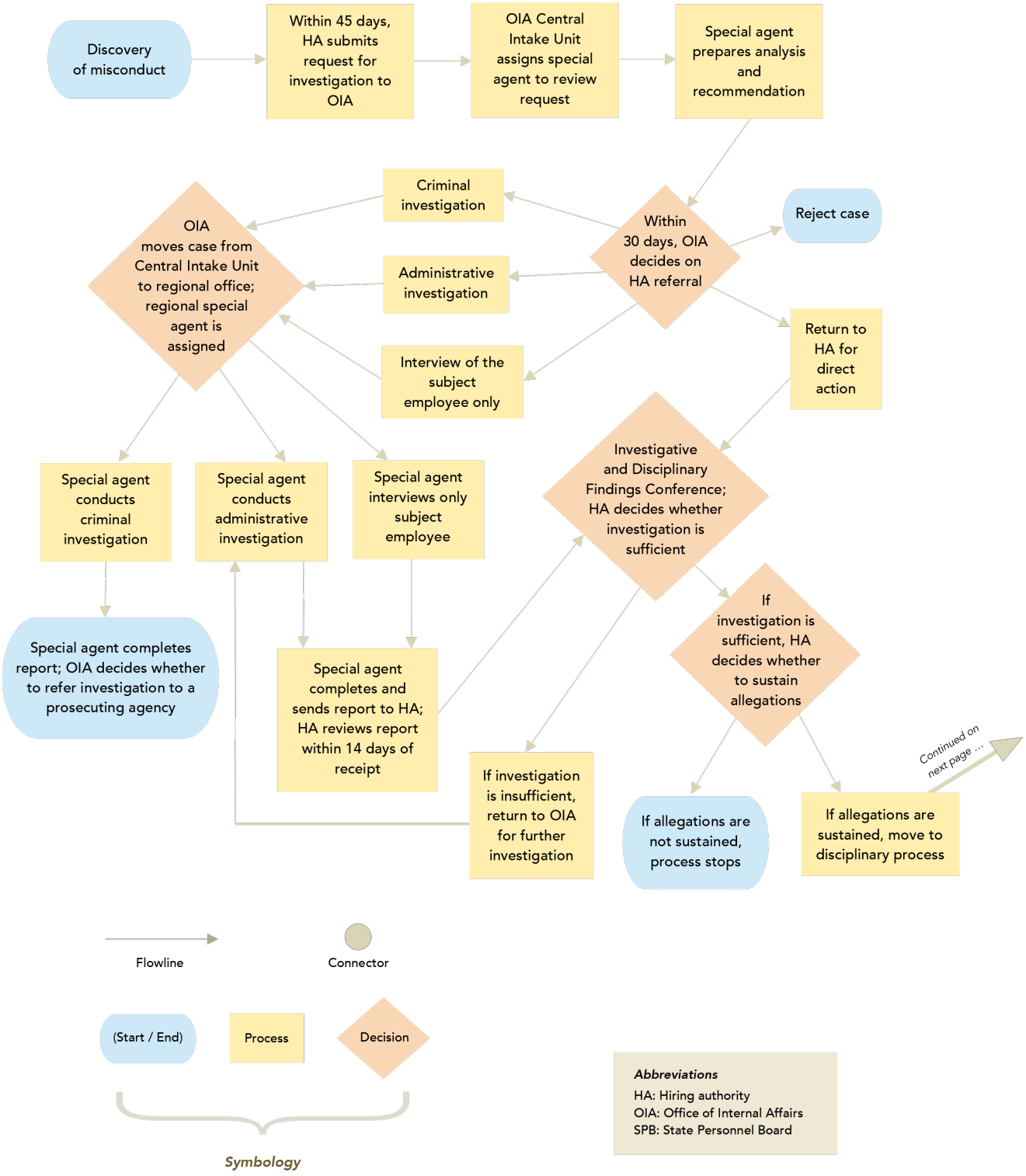
In addition, 235 of the cases we are currently reporting involved peace officers, and the other 29 cases involved only employees who were not peace officers. We monitor the cases with the most serious allegations of misconduct and also focus on employees who are peace officers because these individuals are held to a higher standard of behavior and ethics, and their actions were the core focus of the *Madrid* case,[5] which led to the statutes pursuant to which the OIG monitors the department's internal investigations and employee disciplinary process.

[5] *Madrid* v. *(Gomez) Cate*, 889 F. Supp. 1146 (N.D. Cal. 1995).

On the next two pages, we present a flowchart of the general steps that take place during the department's internal investigations and its employee disciplinary process. As can be garnered from a quick glance at the charts, a great number of steps are involved in developing these cases. Yet, it is important to note, these charts only contain general information regarding employee misconduct cases, as many permitted variations from the basic steps outlined can and often do occur. Additionally, it is also significant to note that the processes of other law enforcement agencies' management of employee discipline cases may differ significantly from those of the department's.

Figure 3. General Steps in the Department's Investigative and Disciplinary Phases

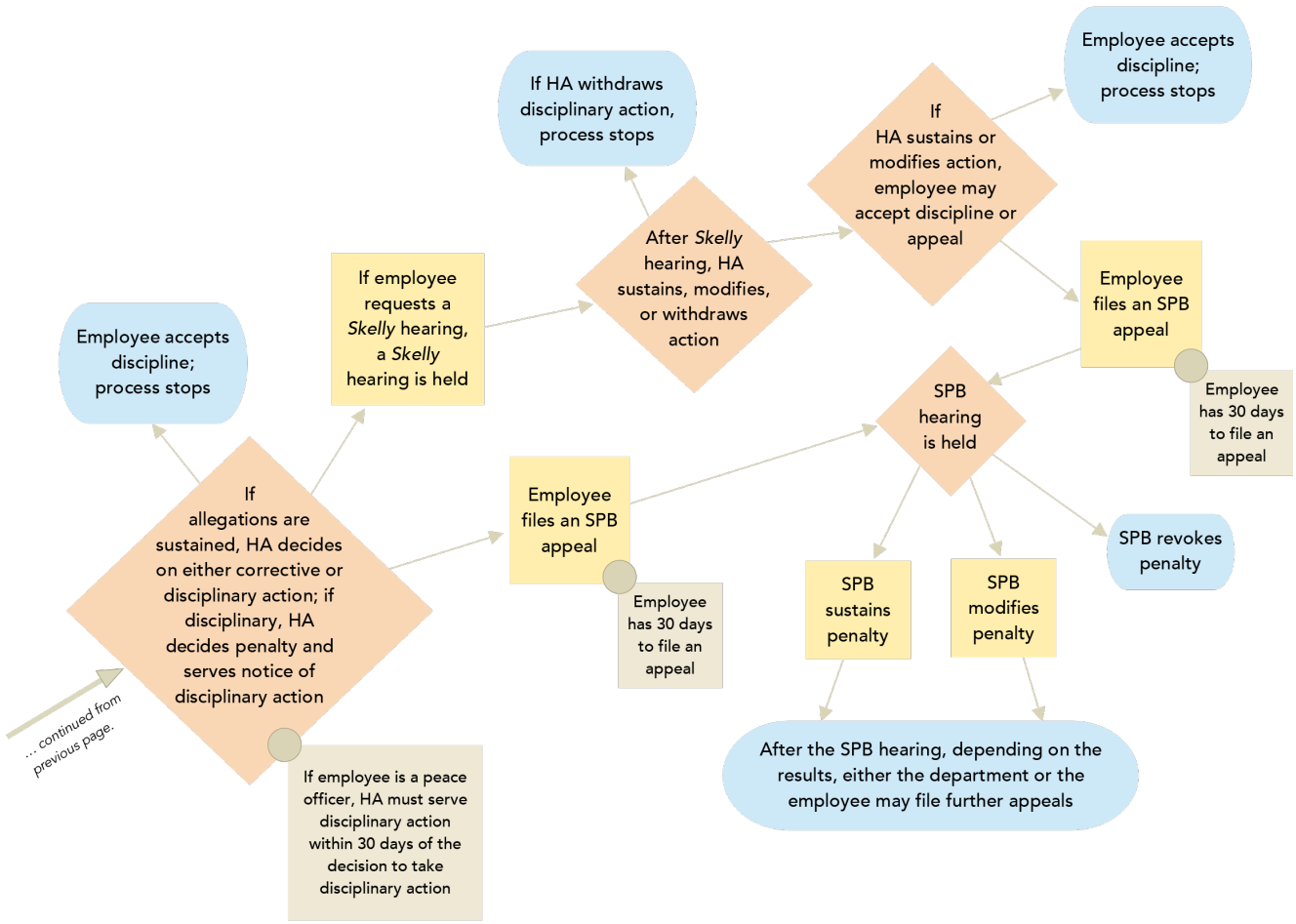
The Investigative Phase



Flowchart continued on facing page.

Figure 3. General Steps in the Department's Investigative and Disciplinary Phases (continued)

The Disciplinary Phase



Notes

If the employee is a peace officer, the investigation must generally be completed and the employee must be given notice of discipline within one year of the discovery of the alleged misconduct.

If the employee is not a peace officer, the investigation must be completed and the employee must be given notice of discipline within three years of the misconduct.

After service of the disciplinary action, the department may withdraw the action or enter into a settlement agreement with the employee to:

1. Modify the disciplinary action, including allegations and/or penalty, or
2. Revoke the disciplinary action.

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Monitoring Internal Investigations

Overall, the Department's Procedural Ratings During the Investigative Phase Improved From the Prior Reporting Period, but Its Substantive Performance Ratings Declined

The investigative phase begins when the hiring authority submits a case to the Office of Internal Affairs, or the Office of Internal Affairs opens a case on its own, and ends when the hiring authority determines whether the investigation is sufficient and whether to sustain any of the allegations. The hiring authority must refer all matters to the Office of Internal Affairs within 45 days of learning of potential misconduct.[6]

The investigative phase involves hiring authorities, Office of Internal Affairs special agents, and department attorneys, when assigned, and each entity contributes to the sufficiency assessment of this phase.[7] Staff in the Office of Internal Affairs and department attorneys are primarily assigned to one of three regional offices: northern region (Sacramento), central region (Bakersfield), and southern region (Rancho Cucamonga). Additionally, special agents and department attorneys are assigned to headquarters operations.

For cases we monitored and closed between January and June 2018, the department's management of the procedural aspects of the investigative phase improved slightly, rising from a 41 percent sufficiency rating in the July through December 2017 reporting period to a 47 percent sufficiency rating for the January through June 2018 reporting period. We base this procedural assessment on the department's compliance and our interpretation and analysis of the department's compliance with policy and procedures, and mainly assess the timeliness of various aspects of the investigative phase, such as timely referrals to the Office of Internal Affairs, completion of the investigation, and the investigative findings conferences.

Conversely, the substantive sufficiency rating declined significantly from the past reporting period, both on statewide and regional bases. We base our substantive assessment on our measured and expert opinions, which includes our assessment of the Office of Internal Affairs' initial determination regarding a hiring authority referral, the department's performance in conducting interviews, the thoroughness of its investigation, and hiring authorities' determinations. On the next two pages, the four figures reflect the procedural and substantive sufficiency assessment ratings on statewide and regional bases for the investigative phase during the past four reporting periods.

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[6] DOM, Section 33030.5.2, and the Office of Internal Affairs Memorandum dated June 20, 2014.

[7] The department does not assign an attorney to every investigation or disciplinary case.

Figure 4. Investigative Phase Sufficiency, Statewide

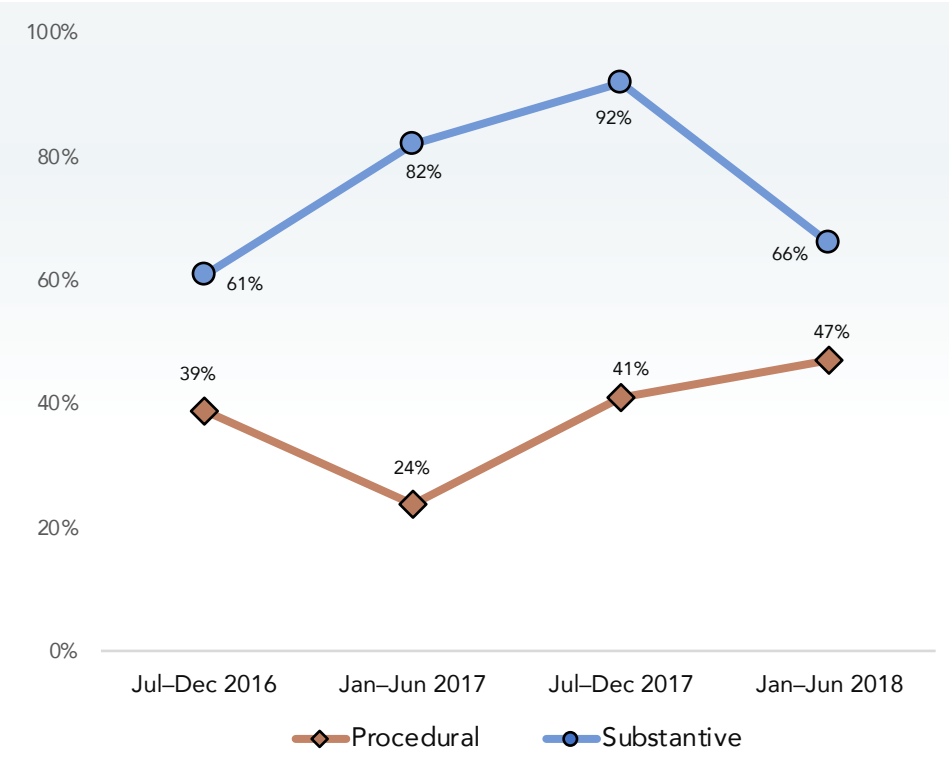


Figure 5. Investigative Phase Sufficiency, North Region

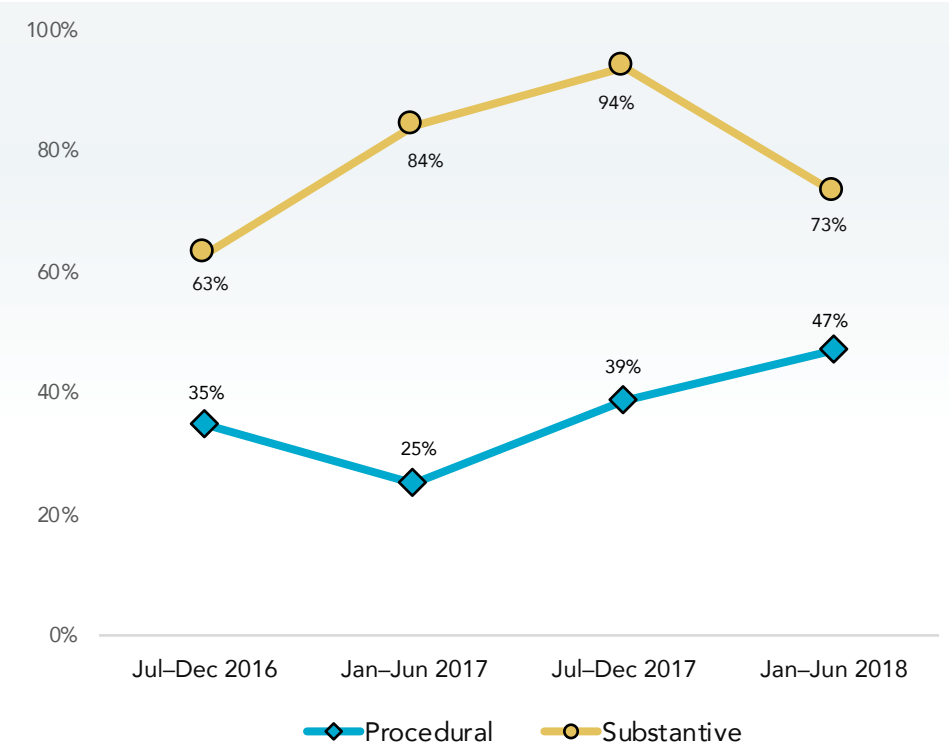


Figure 6. Investigative Phase Sufficiency, Central Region

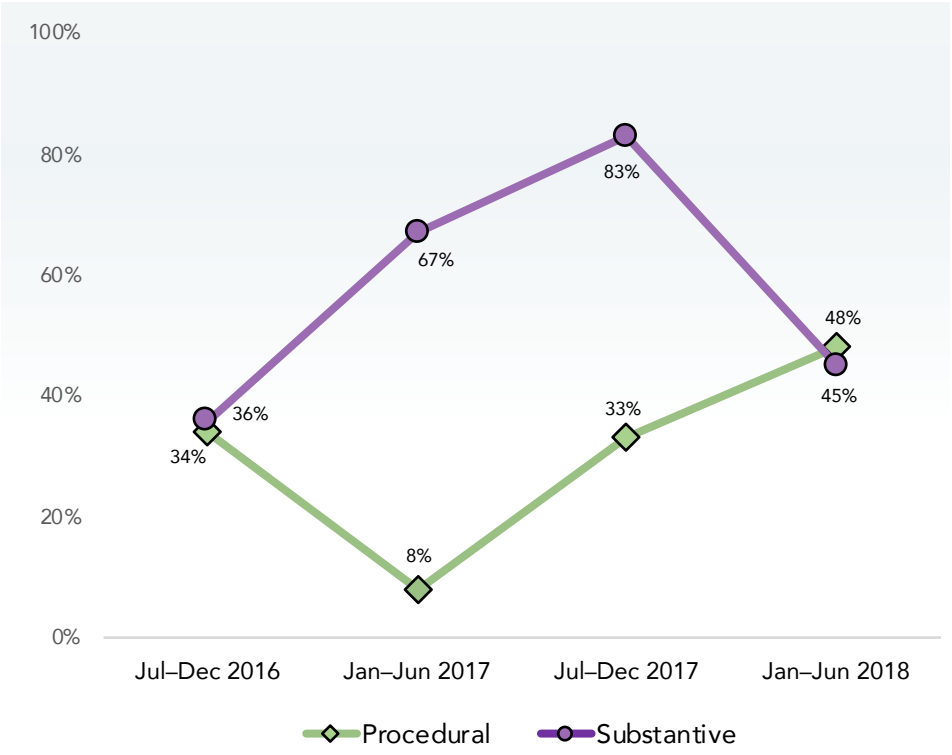
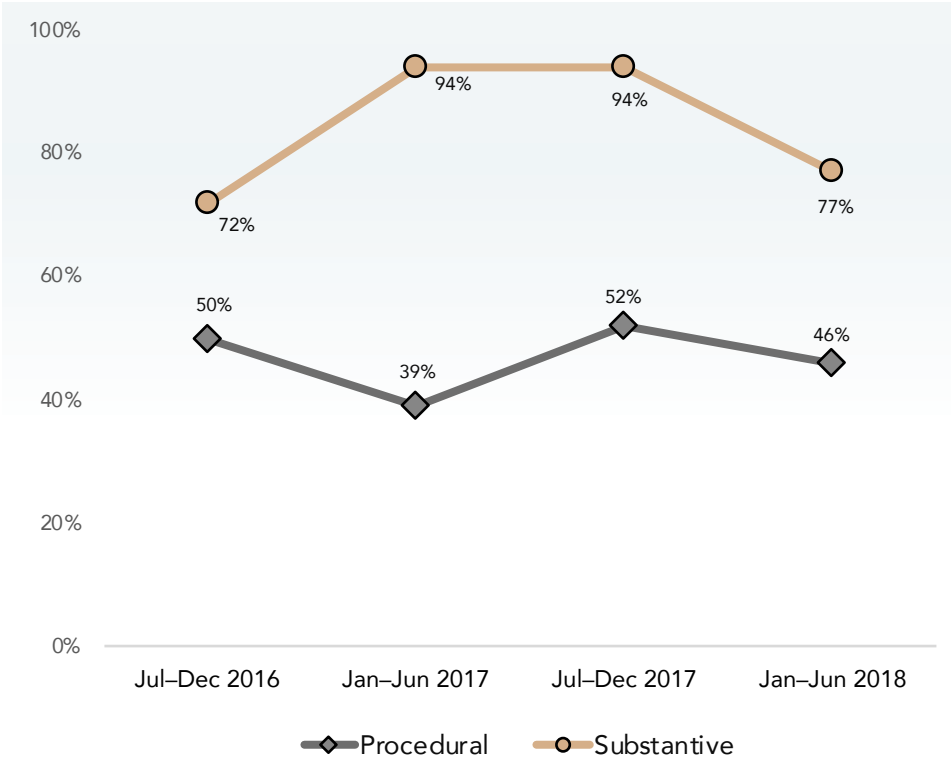


Figure 7. Investigative Phase Sufficiency, South Region



Source for Figures 4, 5, 6, and 7: Office of the Inspector General Tracking and Reporting System.

Of note: the department's northern and central regions' procedural assessment ratings improved since the most recent reporting period of July through December 2017, whereas the southern region's procedural performance declined from that time period. The substantive assessment rating declined across all three regions.

As observed previously in this report, overall, the department can stand to improve its performance during the investigative phase of cases. To illustrate, one example of a case in which the OIG assessed the department as insufficient in both procedural and substantive respects involved a criminal investigation in which an officer allegedly engaged in sexual acts with two inmates, accepted bribes from inmates, and conspired with inmates to smuggle tobacco and mobile phones into an institution. In this case, we found neither the hiring authority nor the Office of Internal Affairs performed diligently, resulting in an investigation that was not as thorough as it should have been. The delays started with the hiring authority, who waited five months after discovering the alleged criminal activity before referring the matter to the Office of Internal Affairs. Then, the Office of Internal Affairs did not complete the investigation until ten months after its Central Intake Unit sent the matter to a regional special agent to conduct the investigation. Finally, the special agent neglected to interview a second inmate with whom the officer allegedly engaged in sexual activity until almost seven months after learning the identity of that inmate, resulting in that inmate having trouble recalling specific dates of the alleged sexual activity, an adverse consequence. Moreover, during an interview, the special agent failed to ask an inmate to provide notes she claimed she had written documenting her sexual relationship with the officer. Had the special agent requested these notes, this evidence could have been provided to the district attorney's office. Fortunately for the department, the Office of Internal Affairs was still able to obtain sufficient evidence to refer the matter to the district attorney's office despite the incomplete investigation.

In another example, an officer allegedly asked a second officer to prepare, sign, and submit a request for exemption from income tax withholding form for him, and the second officer allegedly prepared, signed, and submitted the form for the first officer. Again, we found the department did not perform adequately on either procedural or substantive bases and, in this case, we assessed the hiring authority, special agent, and department attorney negatively. In the OIG's opinion, the special agent did not conduct a thorough investigation because during the officers' interviews, he neglected to ask how the officers could reasonably believe the information they provided on the tax form, which was signed under penalty of perjury, was true, and which included an attestation that the officer who was requesting the exemption did not

incur any tax liability in the prior year. The failure to ask these questions resulted in a failure to thoroughly investigate potential dishonesty allegations. Additionally, despite the lack of a thorough investigation, the department attorney should have recommended the hiring authority sustain allegations the officers were dishonest. The first officer allegedly lied when he completed the form attesting to the second officer's exemption from tax liability when he had no such knowledge. Also, the second officer allegedly lied when he asked the first officer to complete the form attesting the second officer had no tax liability for the prior and current years when in fact he did.

Although the hiring authority sustained allegations the officers neglected their duties, the hiring authority did not add allegations that the officers were dishonest. The hiring authority imposed only a 5 percent salary reduction for three months on each officer, when each could have been dismissed or suffered more significant penalties if dishonesty allegations had been added and substantiated. While the OIG agreed with the penalty based on sustained allegations for neglect of duty, we disagreed with the decision to not allege the officers were dishonest, which would have resulted in a more severe penalty, possibly dismissal. Even so, we did not seek a higher level of review due to an incomplete investigation. The officers did not file appeals with the State Personnel Board.

The foregoing are examples of how the department's inadequate handling of investigations can result in adverse consequences, such as memory loss, failure to obtain relevant evidence, and incomplete investigations. However, while the department's assessment ratings overall during the investigative phase were not up to par, the department did perform well during the investigative phase in some areas. For example, in all cases in which the Office of Internal Affairs conducted an investigation, the special agent made timely, complete, and accurate entries in the department's case management system. Additionally, in 99 percent of the cases we are reporting in which the Office of Internal Affairs conducted investigative activity in administrative cases, the special agent completed the investigation at least 14 days before the deadline to take disciplinary action. This includes those cases in which the special agent interviewed only the employee suspected of misconduct. Also, in our opinion, special agents completed adequate and thorough investigations in 95 percent of the cases in which the department conducted investigations and which we monitored and closed during the January through June 2018 reporting period.

The hiring authority was adequately prepared to address the sufficiency of any investigation and investigative findings in 99 percent of cases in which he or she made findings regarding investigations. Moreover, the hiring authority made an appropriate determination regarding the sufficiency of any investigation in 98 percent of cases. Also, in 99 percent

of cases, the hiring authority correctly identified the employees who should have been subjects of investigations, as well as the appropriate allegations, and in 94 percent of cases, made appropriate findings regarding the allegations.

Department attorneys also performed well in some areas during the investigative phase. Of the 151 cases in which a department attorney was assigned to an Office of Internal Affairs investigation, the department attorney provided appropriate legal advice to the special agents in 96 percent of those cases.

While Hiring Authorities Timely Referred the Majority of Misconduct Cases to the Office of Internal Affairs, They Could Still Improve

Of the cases the OIG is reporting for the January through June 2018 reporting period, hiring authorities timely referred suspected employee misconduct to the Office of Internal Affairs in only 77 percent of the cases. This percentage includes administrative cases and criminal investigation cases. However, this percentage does not include those cases in which the OIG is only reporting the outcome of the disciplinary phase, as we previously reported on the timeliness of hiring authority referrals in these cases in prior reports.

We assess the timeliness of hiring authority referrals based on procedures set forth in a memorandum the Office of Internal Affairs issued June 20, 2014, which provides that hiring authorities should refer matters of suspected misconduct to the Office of Internal Affairs within 45 days of discovering the alleged misconduct.[8] During this reporting period, the delays by hiring authorities in referring suspected employee misconduct ranged from 46 days after discovering the alleged misconduct, only 1 day later than expected, to 664 days, almost two years, after discovering the alleged employee misconduct. The 664-day delay appears to have been an anomaly as the next longest delay by a hiring authority was 190 days after the date of discovery.

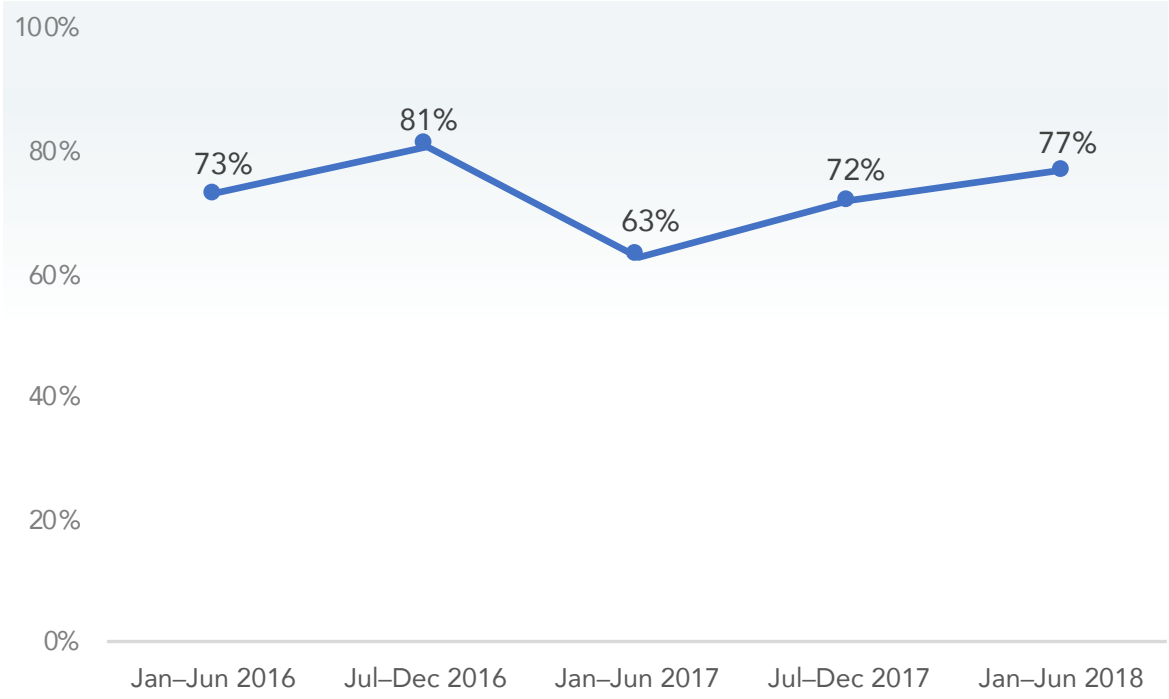
A case in which the hiring authority unnecessarily delayed submitting a referral to the Office of Internal Affairs highlights the importance of timely referrals and possible ramifications for delay. In this case, a department attorney's alleged misconduct started in 2015, spanned a year and a half, and included multiple acts of alleged dishonesty.

During this year and a half, the department attorney remained employed with the department and continued to perform inadequately. According to his immediate supervisor, the department attorney did not understand "simple legal issues," and the department attorney got by "with swagger" and would "bluff" his way through his discussions with his supervisor. The OIG repeatedly recommended that the hiring authority refer the matter to the Office of Internal Affairs for an investigation, but the hiring authority did not do so until nearly two years after learning about the alleged misconduct. The Office of Internal Affairs approved the matter for investigation just over two weeks later, but did not complete the investigation until one year thereafter. The hiring authority did not sustain the dishonesty allegations, but sustained other allegations, including failure to properly advise an associate director regarding an

[8] DOM, Section 33030.5.2, and the Office of Internal Affairs Memorandum dated June 20, 2014.

allegation and penalty, and failure to comply with the orders of a State Personnel Board administrative law judge. The OIG disagreed with the hiring authority's decision to not sustain the dishonesty allegations despite evidence supporting the allegations. However, given the deadline to take disciplinary action was extremely near, the OIG did not elevate the matter to the hiring authority's supervisor. The department served the department attorney with a 20-working-day suspension and later settled with him for a mere 12-working-day suspension, despite his very serious misconduct.

Figure 8. Percentages of Monitored Cases the Hiring Authority Referred to the Office of Internal Affairs Within 45 Days



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

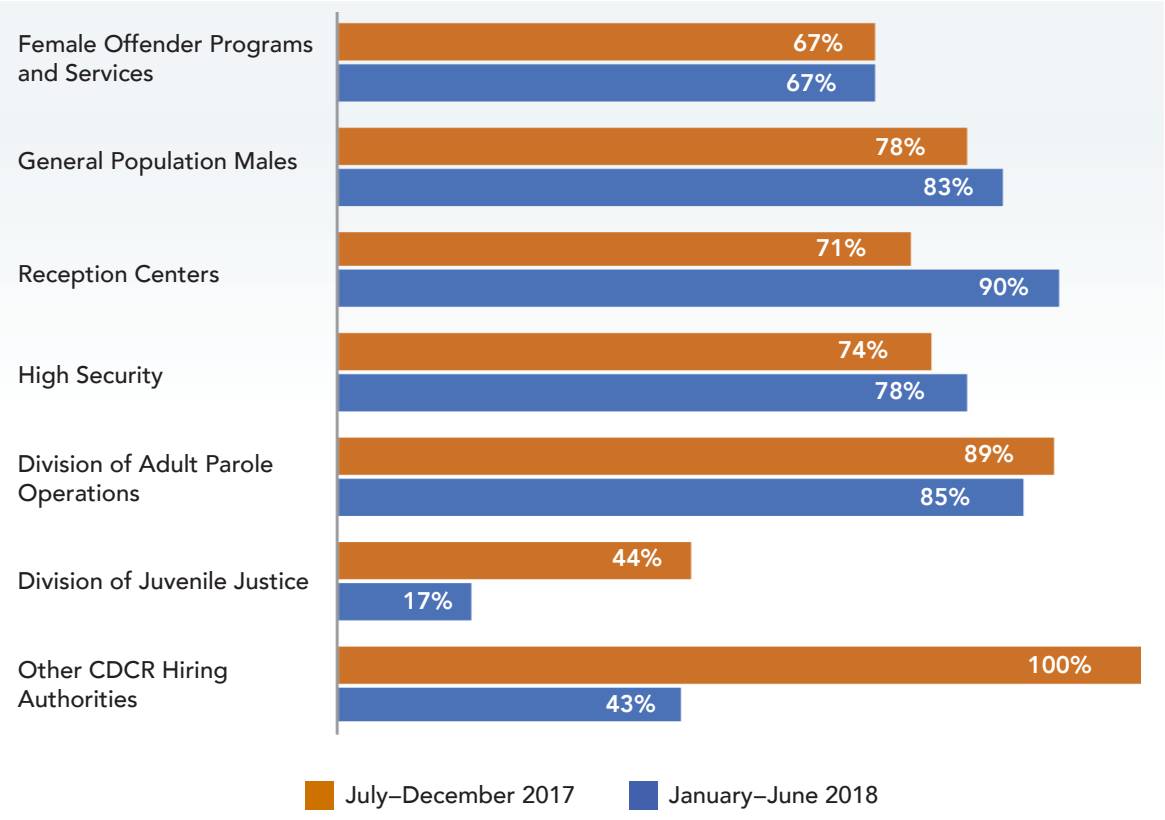
Unfortunately, some hiring authorities are still remiss in timely submitting matters to the Office of Internal Affairs, and as the foregoing demonstrates, such lack of diligence can result in unfortunate consequences. The figure above reflects the percentage of hiring authority referral timeliness statewide over the past five reporting periods.

We present specific information below regarding hiring authority employee misconduct referrals by "mission" categories as established by the department. The OIG reports the timeliness of hiring authority referrals by mission because 1) each hiring authority is responsible for timely referrals and 2) the department groups institutions

by mission, with a separate associate director assigned to oversee each mission type. The principal missions are Female Offender Programs and Services/ Special Housing, General Population Males, Reception Centers, and High Security. The Office of Internal Affairs also receives referrals from hiring authorities from the Division of Adult Parole Operations, the Division of Juvenile Justice, and other departmental divisions and offices.

Reception Center institutions' positive performance in timely referring suspected employee misconduct to the Office of Internal Affairs improved significantly, rising from 71 percent to 90 percent. The Division of Juvenile Justice's timely referrals declined significantly, falling from 44 percent to 17 percent. In the past reporting period of July through December 2018, the Division of Juvenile Justice submitted five of nine referrals timely, whereas during this reporting period, it submitted one of six timely. The figure below shows the comparison between the two periods, organized by mission:

Figure 9. Timely Hiring Authority Referrals by Mission: A Comparison



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

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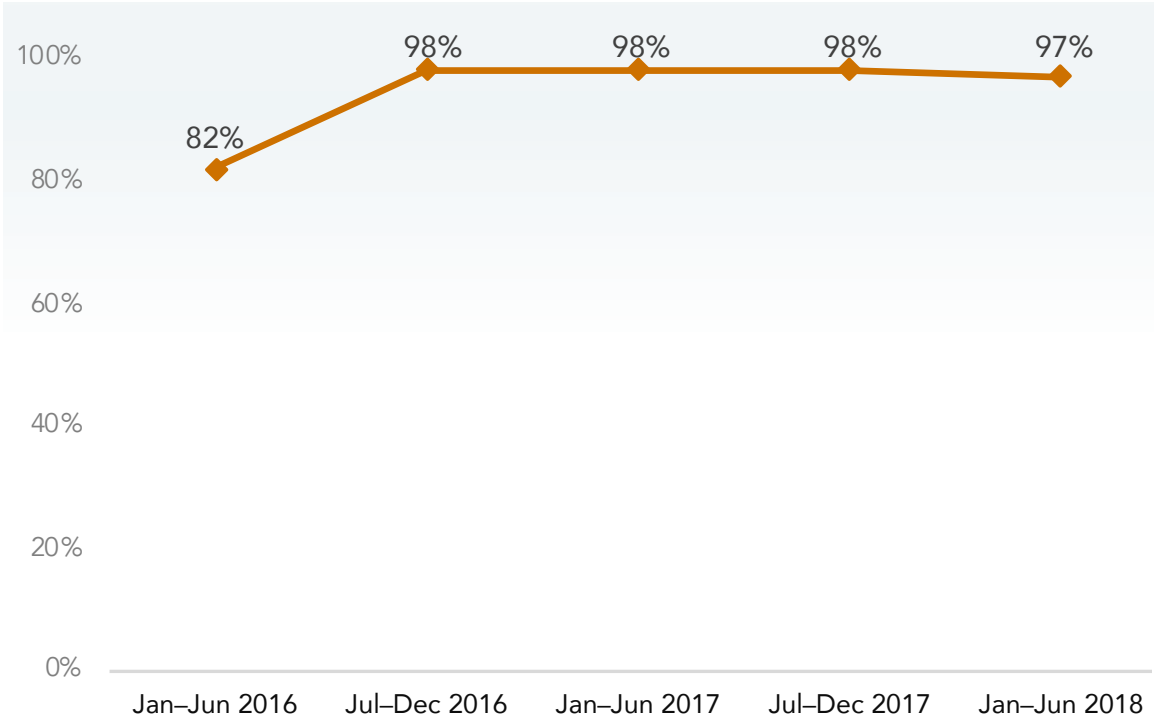
The Office of Internal Affairs Timely Addressed the Vast Majority of Hiring Authority Misconduct Referrals

Departmental policy requires the Office of Internal Affairs to make a determination regarding each hiring authority referral within 30 days of receipt. To that end, the Office of Internal Affairs Central Intake Panel meets weekly to review referrals and requests for investigation submitted from hiring authorities throughout the department. OIG attorneys review all of the referrals, attend each weekly meeting, provide recommendations to the department regarding the action to take, and identify those cases our office will monitor. Although the OIG and department attorneys participate in the Office of Internal Affairs Central Intake Panel meetings, the Office of Internal Affairs makes the final decision regarding the action to take on a hiring authority's referral.

Figure 10. Percentages of Cases with Timely Determinations Made by the Office of Internal Affairs Central Intake Unit



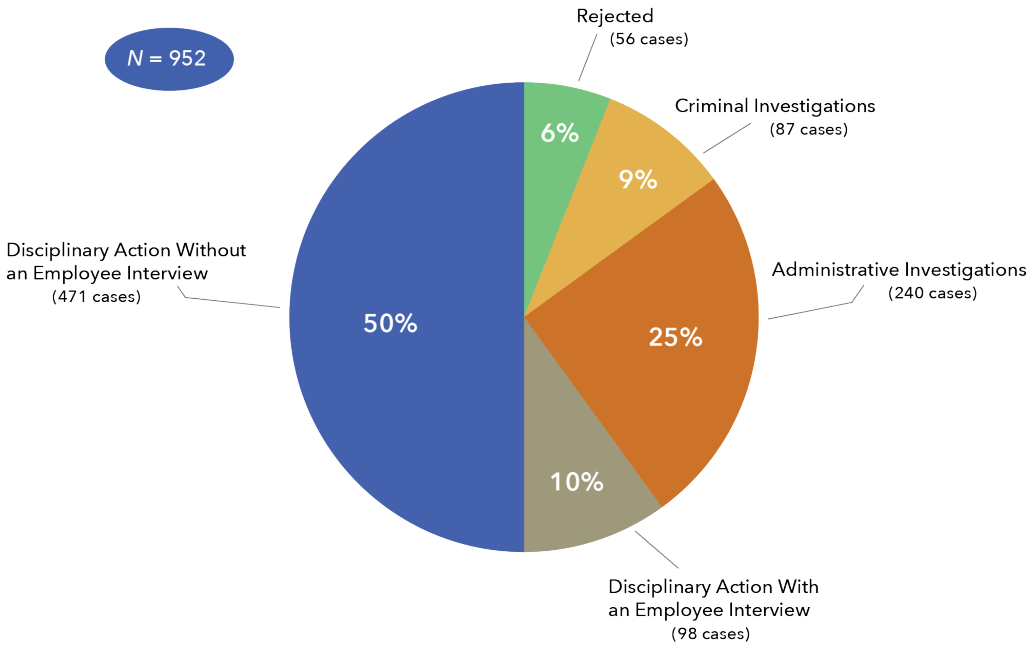
Source: Office of the Inspector General Tracking and Reporting System.

The Office of Internal Affairs made a timely determination regarding hiring authority referrals in 97 percent of the cases the OIG monitored and closed during the January through June 2018 reporting period (see figure above). A timely initial determination by the Office of Internal Affairs is critical to completing a timely investigation, and the Office of Internal Affairs performed extremely well in this area.

Between January 1, 2018, and June 30, 2018, hiring authorities submitted 992 matters to the Office of Internal Affairs concerning suspected employee administrative misconduct or employee criminal activity. Of this total, the Office of Internal Affairs made a decision on 952 referrals before June 30, 2018. Since the Office of Internal Affairs meets on a weekly basis to address the referrals, it planned to address the remaining 40 referrals after June 30, 2018, to give the Office of Internal Affairs Central Intake Unit special agents time to adequately review the cases.

Of the 952 cases, the Office of Internal Affairs returned 50 percent of the cases to hiring authorities to take action on employee misconduct allegations without pursuing any investigation. The Office of Internal Affairs approved interviews only for employees accused of misconduct, and not full investigations, in 10 percent of the cases. In 25 percent of the cases, the Office of Internal Affairs deemed it necessary to conduct full administrative investigations, which included not only interviewing the employees accused of misconduct, but also interviewing any witnesses and obtaining any additional documentary or forensic evidence. The Office of Internal Affairs opened 9 percent of the referrals as criminal investigations and rejected 6 percent of the cases as demonstrating insufficient evidence of employee misconduct or criminal activity. The figure below shows this distribution:

Figure 11. Percentages of Case Types as Decided by the Office of Internal Affairs Central Intake Unit From January Through June 2018

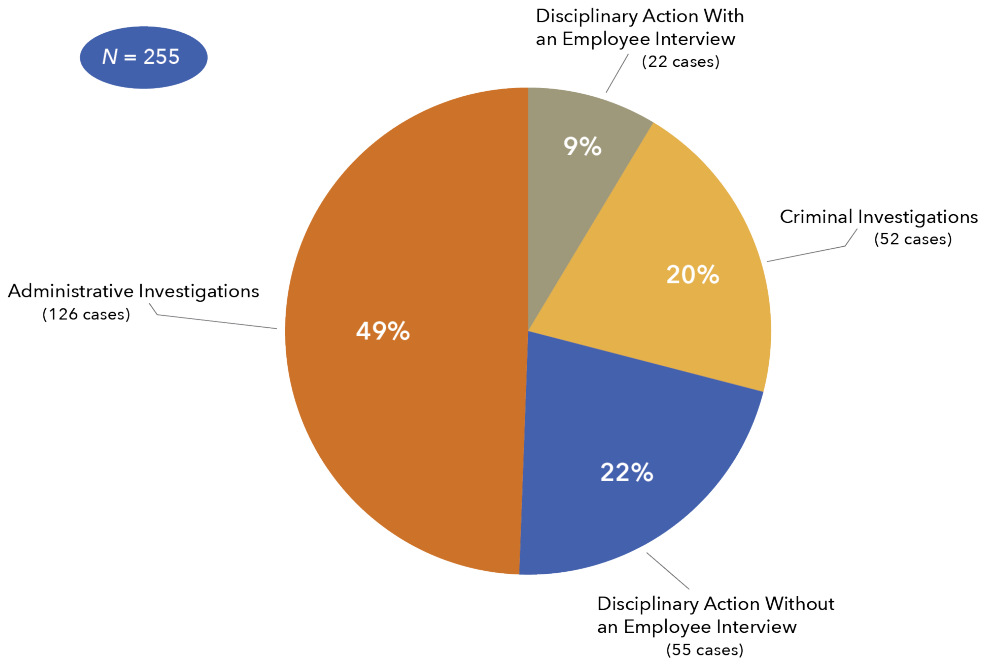


Source: The Office of Internal Affairs' CompStat Internal Affairs Summary Report.

The OIG only monitors cases involving more serious misconduct, and a higher percentage of those cases requires a full investigation, as opposed to an interview only of the employee suspected of misconduct. Of the 952 cases in which the Office of Internal Affairs Central Intake Unit made a decision regarding a hiring authority referral from January through June 2018, the OIG identified 255 of the cases for monitoring.[9] Of these 255 cases, 126 cases (49 percent) involved administrative investigations; 52 cases (20 percent) involved a criminal investigation; 22 cases (9 percent) were those for which the Office of Internal Affairs approved only an interview of the employee who was the subject of the investigation, and not a full investigation; and in 55 cases (22 percent) the OIG identified for monitoring, the Office of Internal Affairs determined sufficient evidence was available for the hiring authority to make a determination concerning the allegations or to take disciplinary action without conducting an investigation. The numbers of administrative and criminal investigation cases include those involving the use of deadly force, of which there were 11 administrative and 11 criminal investigation cases. The figure on the following page reflects these percentages:

[9] The OIG *began monitoring* these 255 cases which the Office of Internal Affairs approved for investigation or direct action in the January through June 2018 reporting period. Elsewhere in the report, we mention that we are reporting on 264 cases (235 involving peace officers and 29 cases involving peace officers) which the OIG *monitored and closed* during the January through June 2018 reporting period.

Figure 12. Percentages of Case Types the OIG Accepted for Monitoring From January through June 2018



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

Out of the 255 cases the OIG accepted for monitoring during the same period, the Office of Internal Affairs made a timely determination within 30 days regarding the hiring authority's referrals in 247 cases (97 percent).

The Office of Internal Affairs Central Intake Unit Needlessly Limits the Scope of Investigations, Resulting in Unnecessary Debate and Incongruent Findings

Once the Office of Internal Affairs receives a hiring authority's referral or request for investigation, it assigns the matter to a special agent from its Central Intake Unit to review, analyze the case materials, and make recommendations to the Central Intake Panel. The recommendations include a list of proposed case subjects and corresponding predetermined allegation categories, such as neglect of duty, insubordination, or dishonesty. The special agent uses these categories to prepare a written allegation describing the alleged misconduct, including the specific alleged misconduct date and the behavior at issue.

While the OIG and the department attorney provide feedback regarding the proposed allegations, the Office of Internal Affairs makes the final decision regarding the allegations assigned to a case or the allegations to be investigated. Significantly, it should be noted that the Office of Internal Affairs determines the allegations at a very preliminary stage and before all or most facts regarding the alleged misconduct are adduced and well before all or most available evidence is collected and often before the subject of the investigation has provided any evidence or information.

Once this decision occurs, the special agent's summary becomes a permanent record in the department's case management system. The case management system is the department's electronic database for internal investigations and employee discipline cases in which special agents, department attorneys, and employee relations officers document developments as a case progresses. Entries into the case management system include a list of the subjects and allegations, as well as summaries of the facts, special agent analyses, interviews, investigative activities, and investigative and disciplinary findings. The entries are permanent, and although they can be updated, once entered, they cannot be removed.

A glaring deficiency in this current procedure rests with the fact that this permanent record, which documents specific allegations and the predetermined misconduct categories, is based on incomplete information that has not been vetted and tested through proper and thorough investigation. Often times, hiring authorities are compelled to make a finding of "not sustained" for allegations merely because the Office of Internal Affairs did not properly draft the allegations during the central intake process. Because these are permanent records, they cannot be deleted or altered in the case management system.

Furthermore, the OIG, in our monitoring of these cases, has recognized that predetermining specific allegations has a limiting effect on the Office of Internal Affairs' special agents who are assigned to conduct the investigations that emanate from the central intake process. Many special agents have been not only reluctant to begin, but also sometimes refuse, to stray from the predetermined allegations originally identified, even when their investigations reveal additional information. When special agents strictly adhere to the allegations initially established, the investigations, at times, are sorely limited, with the result that potential additional provable misconduct, such as dishonesty involving peace officers, went undetected and, as such, unaddressed.

Likewise, when special agents only adhered to the allegations as initially determined, at times, doing so resulted in situations whereby potentially exculpatory information was not investigated, discovered, or collected by the Office of Internal Affairs. In contrast to the current process, we recommend that the Office of Internal Affairs investigate an incident or event in its entirety, and take the investigation where the evidence leads the special agents, and not limit them to investigating only specified aspects of the case as determined by the allegations established at the investigation's onset. The Office of Internal Affairs should investigate the incident and the behavior, not allegations.

As noted above, the Office of Internal Affairs' current process lends itself to the possibility that exculpatory evidence may be ignored or not discovered. Moreover, such a process may result in another negative impact on an otherwise exemplary or good employee, in particular the possibility of a permanent negative mark in the employee's records. For example, if an employee is accused of being dishonest, and a dishonesty allegation is entered into the case management system, but it is subsequently determined the alleged dishonest misconduct never occurred, the allegation remains in the case management system, putting that employee under a permanent cloud of suspicion that, at one time, he or she was accused of being dishonest. Additionally, the department may be required to divulge the existence of a dishonesty allegation concerning an officer, even if is eventually not sustained, to a defendant in a subsequent unrelated criminal prosecution if ordered to do so by a court.[10]

[10] *Brady* v. *Maryland* (1963) 373 U.S. 83, *Pitchess* v. *Superior Court* (1974) 11 Cal.3d 531, and California Evidence Code sections 1043 to 1047.

Additionally, the hiring authority and department attorney or employee relations officer[11] must work around this cumbersome system and draft new allegations that better correspond with what they learn through an investigation. Such a process frequently leads to a long list of unnecessary allegations that should not be permanently captured in an employee's record.

Additionally, the central intake process[12] is inefficient when the Office of Internal Affairs must fully prepare detailed allegations and assign a predetermined allegation category during the central intake process. This process often results in lengthy debates among the Office of Internal Affairs, the department attorney, and the OIG before beginning an investigation, unnecessarily delaying and burdening the process, as the parties work toward a good faith attempt to agree on a list of allegations based only on a partial factual record. This exercise is academic and does little to ultimately arrive at the proper decision, which the parties should base on a complete record established as the result of reviewing a thorough investigation.

We offer an alternative approach. To resolve the current deficiencies in the central intake process, we recommend eliminating the requirement that the Office of Internal Affairs Central Intake Unit specifically identify the allegations in each case and that it cease from identifying general conclusory misconduct allegations, such as dishonesty or neglect of duty. Under our proposal, hiring authorities would continue submitting matters involving alleged employee misconduct to the Office of Internal Affairs, and its special agents would continue to review and evaluate the hiring authority referrals. The special agent would also still be responsible for collecting all relevant documents, requesting additional information as needed, and directing the hiring authority to conduct additional inquiry as needed.

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[11] An employee relations officer is a person who is not an attorney, employed by an institution, facility, or parole region, and 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 department's attorneys.

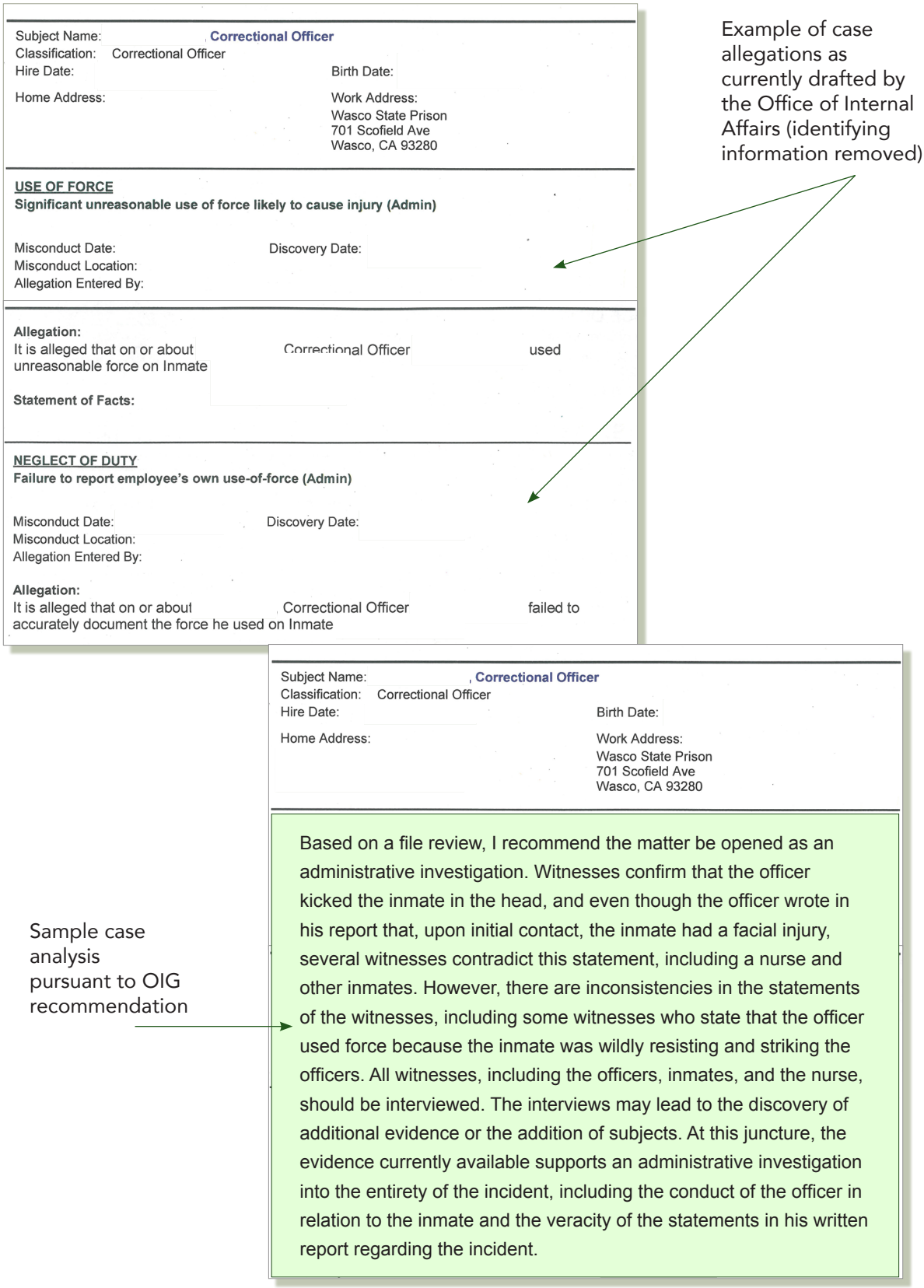
[12] We use the phrase "central intake process" to describe the process whereby the Office of Internal Affairs Central Intake Unit receives referrals from hiring authorities regarding alleged employee misconduct, and the manner in which it addresses and makes decisions regarding those referrals, including the manner in which the Office of Internal Affairs consults with the OIG and department attorneys during the process.

Office of Internal Affairs Central Intake Unit special agents currently recommend specific misconduct allegations in each case and also prepare an analysis regarding the hiring authority's referral. Consistent with the Central Intake Unit special agents' current practice of preparing an analysis regarding the hiring authority's referral, under our proposal, the Central Intake Unit special agent will prepare a thorough yet succinct analysis for the regional special agent who is subsequently assigned and who will conduct the investigation to use in preparing an investigative plan and initiating an investigation.

The Office of Internal Affairs Central Intake Unit special agent would no longer compose conclusory allegations that are sometimes poorly worded, limiting, and confusing. Based on the Central Intake Unit special agent's summary, the regional special agent assigned to conduct the investigation would be free to thoroughly investigate the matter based on evidence obtained during the investigation.

The figure on the following page shows an example of how the Office of Internal Affairs currently scopes an investigation by drafting specific allegations. We offer a suggestion for drafting new language for a case description and a case analysis that an Office of Internal Affairs Central Intake Unit special agent might compose instead, based on the OIG's recommendation.

Figure 13. Example of Current Scoping of Case Allegations and Proposed Alternative Case Analysis



Under our proposal, after the Office of Internal Affairs conducts an investigation and submits its investigative report to the hiring authority, the hiring authority would ultimately determine and prepare the allegations following a review of the entire investigation once all evidence has been gathered. In this way, only the allegations the hiring authority identified from the investigation would be sustained allegations, drafted, and become part of the employee's permanent record. This process would alleviate the current problems in the central intake process.

Another issue that has arisen in connection with the Office of Internal Affairs' scoping of allegations during the central intake process is that the process often leads to a limiting of the matters which the Office of Internal Affairs can question the subject of the investigation about in his or her interrogation or interview. Internal investigations conducted by the Office of Internal Affairs are governed not only by internal policies and procedures, but also and principally by the Public Safety Officers Procedural Bill of Rights Act, set forth in California Government Code section 3300 et seq. When conducting internal investigations, Office of Internal Affairs special agents are generally required to provide the employee who is the subject of an investigation with notice regarding the investigation and what will be discussed during the interview of him or her. In particular, Government Code section 3303 (c) states: "The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation."

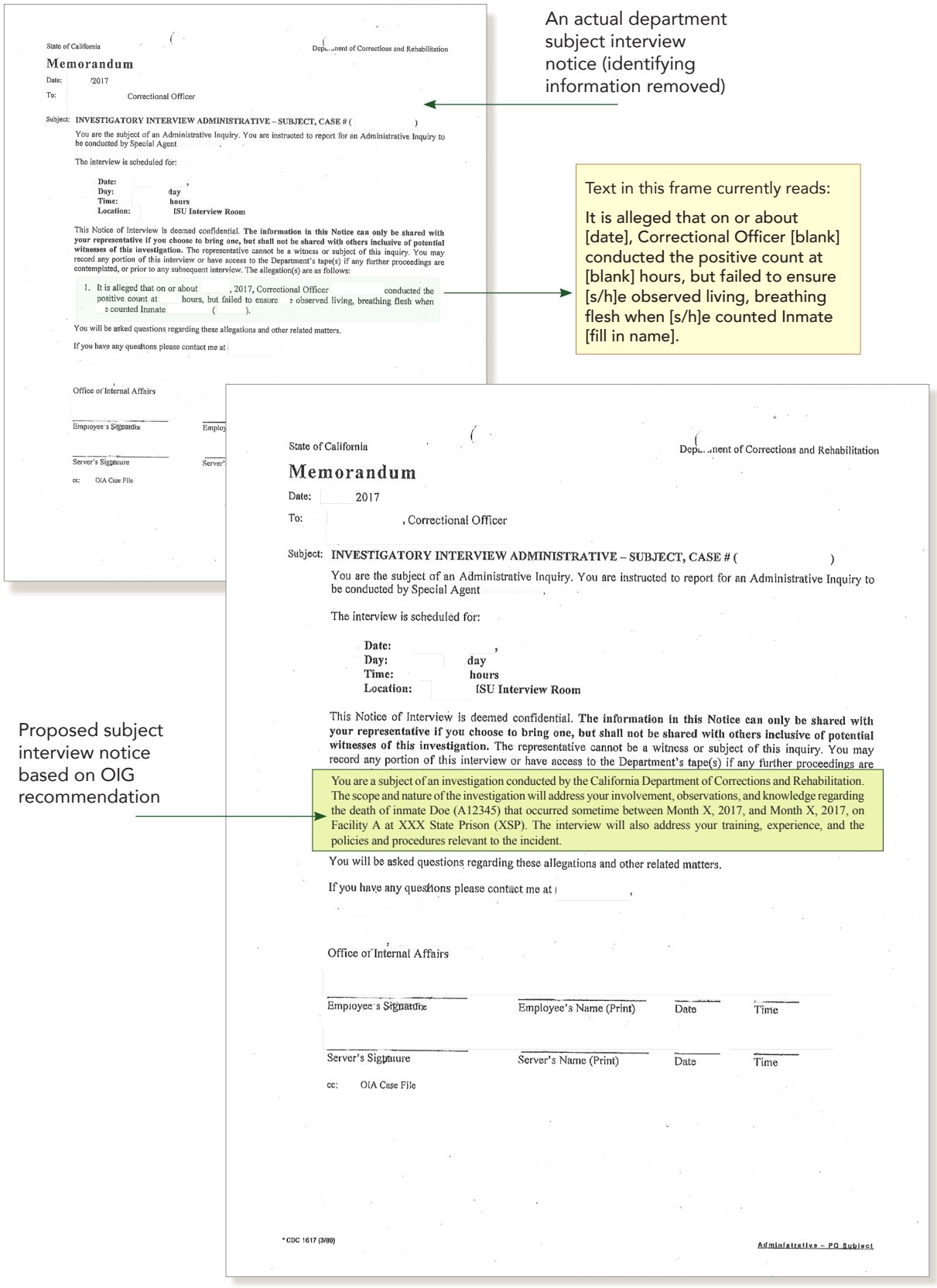
However, often the Office of Internal Affairs special agent assigned to conduct an investigation will simply take the narrowly scoped allegation drafted during the central intake process and insert it into the subject interview notice, thereby unnecessarily limiting the questioning that the Office of Internal Affairs can conduct of the subject during the interview. Instead of the special agent being able to fully question the subject of the investigation in order to gain a complete understanding of the incident and the employee's role in the incident, the Office of Internal Affairs is hampered by the manner in which it drafts subject interview notices, which information is taken directly from the allegations scoped during the central intake process.

Another reason for advising an employee who is the subject of an investigation with the "nature of the investigation" rather than providing a notice with the specific allegation or allegations against him or her is that a general notice is less accusatory and softens the impact of the employee receiving a notice that he or she is being accused of misconduct and is required to appear and submit to an interview regarding the alleged misconduct. The majority of employees whom the Office of Internal Affairs investigates retain employment with the department and are not terminated. Therefore, in the interest of promoting a good

relationship between the department and its employees, the Office of Internal Affairs should serve subjects of investigations with general notices, as required by law, rather than accusatory notices.

Therefore, in conjunction with the OIG's proposal that the Office of Internal Affairs not scope allegations during the central intake process or the investigation so as to avoid limiting the scope of its investigation, the OIG also proposes that the Office of Internal Affairs develop policies and procedures requiring special agents to draft and serve subject interview notices which conform to Government Code section 3303 (a) and advise the subject of the investigation of the "nature of the investigation" rather than setting forth specific allegation or allegations. On the following page, we include a copy of an actual subject interview notice (with personal information redacted) along with an example of a subject notice advising an employee of the "nature of [an] investigation."

Figure 14. Example of Current Subject Interview Notice and Proposed Subject Interview Notice With Suggested Change



Recommendation

The OIG recommends the Office of Internal Affairs eliminate the current practice of special agents identifying allegations at the beginning and during investigations and instead allow the hiring authority to determine the appropriate allegations upon the conclusion of the Office of Internal Affairs investigation and after the hiring authority has reviewed and considered all the evidence.

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The Office of Internal Affairs Should Approve Interviews of All Employees Accused of Misconduct Instead of Returning Cases to Hiring Authorities to Address Allegations Without Knowing the Employees' Positions

As outlined on page 30, the Office of Internal Affairs Central Intake Unit returned half the 952 hiring authority referrals it reviewed to hiring authorities to address allegations without conducting any investigation, including an interview of the employee accused of misconduct. The failure to at least interview the employee accused of misconduct potentially violates departmental policy and results in hiring authorities making determinations without fully addressing possible mitigating and aggravating factors. Consequently, the OIG recommends that in all cases, the Office of Internal Affairs approve at least an interview of any employee accused of misconduct even if a full investigation is not warranted.

DOM, Section 33030.18, requires that the hiring authority "shall" consider mitigating and aggravating factors in determining whether to increase or decrease the penalty within the penalty range outlined in the employee disciplinary matrix.[13] While mitigating factors rarely exonerate an employee, they may be used to reduce a penalty. Alternatively, aggravating factors may be used to increase a penalty even to the level of dismissal where dismissal is not included in the recommended penalty range.

[13] DOM, Section 33030.19. The Employee Disciplinary Matrix is the department's list, which is not all inclusive, of causes for discipline (such as dishonesty, code of silence, etc.) with applicable penalty levels. It includes a chart describing the range of disciplinary penalties from official reprimand to dismissal for each cause for disciplinary action.

When determining an employee disciplinary penalty, a hiring authority is required to consider the following mitigating factors:

- The misconduct was unintentional and not willful;
- The misconduct was not premeditated;
- The employee has a secondary and/or minor role in the misconduct;
- Based upon length of service, experience, policy directives, and the inherent nature of the act, the employee may not have reasonably understood the consequences of his or her actions;
- Commendations received by the employee;
- The employee was forthright and truthful during the investigation;
- The employee accepts responsibility for his/her actions;
- The employee is remorseful;
- The employee reported the harm caused and/or independently initiated steps to mitigate the harm caused in a timely manner.

Source: DOM, Section 33030.18, Mitigating and Aggravating Factors.

Likewise, in determining a penalty, a hiring authority is required to consider the following aggravating factors:

- The misconduct was intentional and willful;
- The misconduct was premeditated;
- The employee had a primary and/or leadership role in the misconduct;
- Based upon length of service, experience, policy directives, inherent nature of the act, the employee knew or should have known that his/her actions were inappropriate;
- Serious consequences occurred or may have occurred from the misconduct;
- The misconduct was committed with malicious intent or for personal gain;
- The misconduct resulted in serious injury;
- More than one act of misconduct forms the basis for the disciplinary action being taken;
- The employee was evasive, dishonest, or intentionally misleading during the investigation;
- The employee does not accept responsibility for his/her actions;
- The employee did not report the harm caused and/or attempted the conceal the harm through action or inaction;
- The employee has sustained other related adverse action(s).

Source: DOM, Section 33030.18, Mitigating and Aggravating Factors.

Without the benefit of obtaining information directly from the employee regarding these critical elements, such as whether the employee accepts responsibility for his or her actions or whether the employee is remorseful, the hiring authority truly cannot determine and apply these factors, and potentially violates policy. Moreover, it is right and just to allow employees to provide their version of events and to address the allegations, including providing possible mitigating factors, before having discipline imposed on them. Without the benefit of such information, the hiring authority may impose either unduly harsh or lenient discipline that will remain in the case management system, even if the allegations or penalty are changed later through either a *Skelly* (predeprivation) hearing[14] or appeal process. By obtaining the employee's statement in the first place, the hiring authority may avoid unnecessary delay and litigation, as well as undue stress on the employee.

In our July through December 2017 *Semi-Annual Report*, we pointed out the possible ramifications of the department's failure to interview employees accused of misconduct, regardless of policy requirements, before it imposes discipline. An example from the current reporting period concerning potential negative consequences was a case involving an officer who allegedly tested positive for marijuana. The Office of Internal Affairs returned the matter to the hiring authority to take action against the officer without conducting any investigation, including an interview of the officer. The hiring authority sustained the allegation and served the officer with a notice of dismissal. During the officer's *Skelly* hearing, the officer credibly denied knowingly using marijuana and presented an affidavit from an individual who attested that she had provided the officer with marijuana-infused chocolates without telling the officer the chocolates contained marijuana. Based on this information, the hiring authority entered into a settlement agreement withdrawing the disciplinary action, and the officer agreed to participate in random drug testing for 18 months. If, during the 18 months, the officer refused to submit to testing or tested positive for a controlled substance while at work, the hiring authority would be permitted to dismiss the officer. If the hiring authority had the benefit of the officer's statement before imposing discipline, the hiring authority could have made a more appropriate decision initially, and the officer would have avoided having a record tainted with a dismissal.

[14] *Skelly* v. *State Personnel Board* (1975) 15 Cal.3d 194.

Recommendation

The OIG recommends the Office of Internal Affairs approve and conduct interviews of employees suspected of misconduct in all cases, even in cases in which a full investigation is not warranted, including those the Office of Internal Affairs approves for "direct action" by a hiring authority.

The Office of Internal Affairs Limits OIG Monitoring by Not Advising the OIG When It Adds Allegations or Subjects During the Course of Its Investigations

During the January through July 2018 reporting period, the OIG addressed a concern with the department regarding our monitoring of its internal investigations. There are some cases that meet OIG monitoring criteria (such as dishonesty cases, unreasonable use-of-force cases, etc., as described on page 9 of this report), but which the OIG is not monitoring because the allegations or subjects of investigation that cause the cases to meet OIG monitoring criteria are added by the department after the commencement of the department's investigation. As noted previously, the Office of Internal Affairs decides on the scope of its investigations, including the allegations it will investigate and the subjects of the investigation, during its central intake process. The OIG reviews the cases during the central intake process and determines which investigations we will monitor based on the allegations and subjects as scoped by the Office of Internal Affairs. If the allegations and subjects as scoped by the Office of Internal affairs do not meet our monitoring criteria, the OIG will decide to not monitor an investigation.

Once the Office of Internal Affairs central intake process is complete, the Office of Internal Affairs assigns a special agent from one of its regional offices (or one of its headquarters operations teams) to conduct the investigation. During the course of the investigation, the special agents at times add additional allegations or subjects they will investigate to the cases. As such, there are some investigations that initially did not meet OIG monitoring criteria, but, because certain allegations and subjects were added during the investigation, those cases will now fall under the OIG monitoring criteria. However, the Office of Internal Affairs does not notify the OIG of the added allegations or subjects, thus preventing and frustrating the OIG from monitoring the cases or, at least, evaluating the cases for potential monitoring. We brought this matter to the attention of Office of Internal Affairs' executives during the January through July 2018 reporting period and requested that the Office of Internal Affairs provide the OIG notice any time it adds allegations or subjects after the central intake process and during the course of its investigations so that we can determine whether the investigation at issue now meets OIG monitoring criteria and allow us to make a decision as to whether to monitor the investigation. To date, the Office of Internal Affairs has not effectuated the OIG's request.

Recommendation

The OIG recommends the Office of Internal Affairs provide the OIG notice whenever it adds allegations or subjects to investigations after the central intake process or during the course of investigations.

The Office of Internal Affairs Timely Completed the Vast Majority of Its Investigations Before Deadlines to Take Disciplinary Action or to File Criminal Charges

Addressing administrative or criminal allegations before the deadline to either impose discipline or file criminal charges depends on a joint effort between the hiring authority and Office of Internal Affairs. On pages 25 through 27 of this report, we discussed the timeliness of hiring authority referrals to the Office of Internal Affairs. However, the Office of Internal Affairs plays a significant role in whether the department's investigations are timely completed. Pursuant to DOM, Section 31140.30, internal investigations "shall be conducted with due diligence and completed in a timely manner in accordance with the law, applicable MOU's [*sic*], and the OIA's Investigator's Field Guide."[15]

During this reporting period, we found that in the majority of cases, overall, the department addressed administrative and criminal cases before the deadline expired to take disciplinary action in administrative cases or the deadline to file charges in criminal charges expired. In particular, in 97 percent of cases we monitored and closed during the January through June 2018 reporting period, the Office of Internal Affairs completed either an administrative investigation, including an interview of the employee who was the subject of the investigation, or a criminal investigation, before the deadline expired. Of this number, the Office of Internal Affairs completed investigations at least three months before the deadline in 75 percent of the cases, and in 22 percent of these cases, completed the investigation with three months left before the deadline expired. However, the deadline expired in five cases we are closing during this reporting period, and in a sixth case, the Office of Internal Affairs completed the investigation on the last day possible. Three of the cases in which the deadline expired involved criminal investigations.

- In one of the criminal investigation cases, an officer allegedly engaged in sexual activity with an inmate, conspired to bring mobile phones into the institution, received bribes, and communicated with the inmate and his family members by telephone. The Office of Internal Affairs did not complete the investigation until five and one-half months after the deadline for filing charges for unlawful communication. However, the special agent conducted a thorough investigation, the investigative report provided an excellent summary of a complicated case, and the Office of Internal Affairs completed the investigation in time to refer the matter to the district attorney's office for other criminal charges.

[15] DOM, 2018.

- A second case also involved an Office of Internal Affairs criminal investigation regarding an employee allegedly engaging in sexual activities with inmates. The Office of Internal Affairs did not complete the investigation until more than four months after the deadline for filing charges for one of the incidents. The Office of Internal Affairs did not find sufficient evidence to refer the other remaining criminal allegation it investigated to the district attorney's office.

- In another criminal investigation case, a contract officer at a private contract facility allegedly communicated with an inmate by mobile phone, conspired with inmates and an inmate's acquaintance to smuggle a mobile phone into the institution, and allegedly engaged in sexual activity with an inmate. The Office of Internal Affairs did not complete the investigation until almost three months after the deadline for filing charges for some of the unlawful communications. However, the Office of Internal Affairs found sufficient evidence to refer the remaining allegations to the district attorney's office.

- In another case, the Office of Internal Affairs completed a criminal investigation, and the hiring authority was pursuing possible administrative action against a recreational therapist who allegedly engaged in sexual activities with inmates, conspired with an inmate to avoid paying court-ordered restitution, and conspired with inmates to introduce methamphetamine, mobile phones, food, and clothing into the institution. The recreational therapist also allegedly lied to the investigative services unit and the Office of Internal Affairs. The deadline to impose discipline for the earliest misconduct expired two months before the Office of Internal Affairs completed its investigation. Even so, the hiring authority sustained some allegations and decided to dismiss the recreational therapist.

- The final case in which the deadline expired involved a parole agent who allegedly sexually harassed a program technician, failed to report to the hiring authority what he believed to be a romantic relationship with the program technician—a potential violation of the department's nepotism policy—and lied. The Office of Internal Affairs did not complete the investigation in time for the department to take action on the earliest dates of alleged misconduct. However, the hiring authority sustained allegations the parole agent sexually harassed the program technician and lied, and dismissed the parole agent.

Ruger Mini-14 .223 caliber rifle

Types of Deadly Force Used

	Cases
Shots for Effect	7
Warning Shots	3
Head Strikes	3
Other	1
Total	**14**

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

Photographs courtesy of the Department of Corrections and Rehabilitation.

The Department Conducted Thorough Deadly Force Investigations, but Did Not Always Timely Complete Them

Between January and June 2018, the OIG monitored and closed nine Office of Internal Affairs use-of-deadly-force investigations. Appendix D contains the details of the nine use-of-deadly-force incidents we monitored and closed during this reporting period. On the facing page, the infographic lists the types of deadly force used. The figures do not reflect the total number of *times* departmental staff used deadly force, but instead reflect the number of *cases* in which each type of deadly force was used. The total is greater than the number of cases we monitored and closed because departmental staff may have used multiple types of deadly force in one incident.[16]

Pursuant to the department's deadly force investigation procedures, the Office of Internal Affairs must complete deadly force administrative and criminal investigations within 90 days of the incident and complete all interviews in criminal deadly force investigations within 72 hours.[17] The Office of Internal Affairs completed timely investigations in three of the nine cases.

As noted above, two types of delay can occur: a delay in completing all interviews in criminal deadly force investigations within 72 hours or a delay in completing a criminal or administrative deadly force investigation within 90 days of the incident. As far as cases in which the Office of Internal Affairs did not complete all interviews in a criminal deadly force investigation within 72 hours, two of the nine deadly force cases met this criterion, and the delays ranged from the Office of Internal Affairs completing all interviews within 30 days to the Office of Internal Affairs completing all interviews within five weeks of the incident. As for the cases in which the Office of Internal Affairs did not complete its investigation within 90 days of the incident, four of the nine deadly force cases met this criterion, and the delays ranged from the Office of Internal Affairs completing its investigation 106 days after the incident to just over 11 months after the incident.

Reasons for the delayed deadly force investigations varied from case to case; they included the need for numerous interviews, pending criminal

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16 For example, in one incident, an officer may discharge a shot for effect (intending to shoot a target, such as an inmate) and a warning shot (not intending to shoot a target, but a shot issued to get the attention of inmates who are engaging in prohibited behavior and to get them to stop). In this type of instance, even though it is only one deadly force case we monitored, it involved two uses of deadly force.

17 Office of Internal Affairs Deadly Force Investigations Team Procedures, June 6, 2007, Sections IV and VII (G) (5).

investigations, and witness unavailability. Overall, however, we found that despite the delays, the Office of Internal Affairs made efforts to act diligently in completing the majority of its deadly force investigations. In only one case, which was a criminal deadly force investigation, the special agent did not conduct any investigative activities for two months, during which time forensic results were still pending from a laboratory, and the special agent worked on drafting his investigative report.

Despite the delays in most deadly force investigations, we found that the department conducted thorough investigations in most of these cases. However, in one significant case, it did not. We negatively assessed the department for an inadequate administrative deadly force investigation in a case in which an officer was mowing his yard with a weed eater when he heard a motorcycle drive down his driveway. The officer provided details during a call to 9-1-1 and during an interview with the Office of Internal Affairs. The officer claimed the rider, who was a former parolee, had previously trespassed with his motorcycle on the officer's property and had fired shots at the officer. This time, the rider spun the motorcycle in the dirt near the officer's yard. During his call to 9-1-1, the officer stated, "I threw my weed eater at him" to create an obstacle, and the rider "spun around." However, the officer claimed that when he went to retrieve the weed eater, the rider had stopped in a nearby field, pointed the motorcycle in the officer's direction, and refused to leave. The officer grabbed a nearby rifle he used to protect his animals from coyotes and continued yelling at the rider to leave.

During his interview with the Office of Internal Affairs, the officer claimed that, instead of leaving, the rider revved the motorcycle engine and drove toward the officer, so the officer fired one round from his rifle into the ground, but the rider did not stop. The officer claimed he did not have time to raise the rifle to shoulder level, but fired a second round from his hip level, intending to strike the rider, but the officer claimed the rider abruptly turned and drove away. During the officer's telephone call to 9-1-1, the officer claimed he did not know whether he struck the rider. However, based on physical evidence, the second round struck the rider in the back, indicating the rider did not pose an imminent threat to the officer. Additionally, a witness, who also called 9-1-1, reported that the rider had appeared outside of the witness's house and had a "bullet hole in his back." The rider was seriously injured, but survived.

The OIG believed the special agent was not adequately prepared to conduct the administrative investigation because he failed to inspect the incident scene and did not obtain an accurate diagram of the area before interviewing the officer. Instead of obtaining a current diagram of the officer's property, including the location of his home, driveway, and surrounding area, the special agent used an outdated satellite image that showed a vehicle that was no longer onsite and buildings that had since

been dismantled and moved. Additionally, we believed the special agent did not adequately question the officer about inconsistencies between his statements about the injuries and the rider's actual injuries. However, despite these insufficiencies, the hiring authority appropriately sustained the allegation and imposed a suspension. The OIG agreed with the hiring authority's decision to impose a suspension instead of a dismissal because the use of force was not at an institution, and the penalty was within the department's disciplinary guidelines.

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Office of Internal Affairs Special Agents Performed Exceptionally Well in Several Cases

We noted several instances during this reporting period in which the Office of Internal Affairs' special agents performed exceptionally well. Below we briefly describe some of the more noteworthy cases.

- A supervising cook allegedly engaged in sexual acts with an inmate and conspired with and received bribes from inmates to bring mobile phones and narcotics into an institution. During the criminal investigation, the special agent conducted numerous interviews and discovered digital evidence that resulted in the filing of a criminal complaint.

- An officer allegedly conspired with and received bribes from inmates to bring mobile phones and methamphetamine into an institution, and also engaged in sexual activity with two inmates. The hiring authority promptly referred the matter to the Office of Internal Affairs after discovering the inmate had a mobile phone after the inmate met with the officer. Thereafter, the special agent served a search warrant for the officer, her home, and her mobile phone, which yielded significant evidence, and the special agent also obtained a confession from the officer. The officer resigned from employment with the department.

- An officer allegedly communicated with inmates by telephone, conspired with inmates to bring marijuana and mobile phones into an institution, and received a bribe from an inmate. The hiring authority promptly referred the matter to the Office of Internal Affairs and also timely notified the special agent after discovering new evidence. The special agent promptly obtained a search warrant for the officer, her home, and her mobile phone, which revealed significant evidence. This officer also resigned.

- An officer allegedly engaged in sexual acts with an inmate, conspired to bring mobile phones into an institution, received bribes, and communicated with the inmate and his family by telephone. Although the hiring authority did not timely refer the matter to the Office of Internal Affairs, the special agent conducted a thorough investigation and produced a report that provided an excellent summary of a complicated case with sufficient time to refer the matter to a district attorney's office.

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Monitoring the Employee Disciplinary Process

Overall, the Department's Procedural and Substantive Ratings During the Disciplinary Phase Declined from the Prior Reporting Period

From a procedural perspective, for the cases the OIG monitored and closed during the January through June 2018 reporting period, we found the department performed sufficiently throughout the disciplinary phase in 50 percent of the cases. From a substantive perspective, the department performed sufficiently in 76 percent of the cases. Both of these ratings are lower than those observed during the past two reporting periods.

Consistent with our assessment methodology in the investigative phase, we base our procedural assessment for the disciplinary phase on how well the department complies with its own policies. This assessment includes whether it prepares legal documents in compliance with policy, as well as whether the hiring authority timely served disciplinary actions. During the disciplinary phase, only hiring authorities and department attorneys are involved since the Office of Internal Affairs has already completed its work. In some cases, the department may not assign an attorney but instead an employee relations officer, who is not an attorney, will perform as the department's advocate. We assess the performance and advocacy work of both department attorneys and employee relations officers.

We again base our substantive rating on our expert opinion of the hiring authority's or department attorney's substantive performance and management of the disciplinary phase. This assessment includes whether the department attorney provided appropriate legal advice to the hiring authority, prepared adequate and legally sufficient documents, and adequately prepared for and represented the department during any State Personnel Board appeal proceedings.

The four figures on the following two pages reflect the department's performance during the disciplinary phase from both procedural and substantive perspectives. The assessments are also broken down by region, and we show that performances in all three regions declined compared with those observed in the past reporting period.

Figure 16. Disciplinary Phase Sufficiency, Statewide

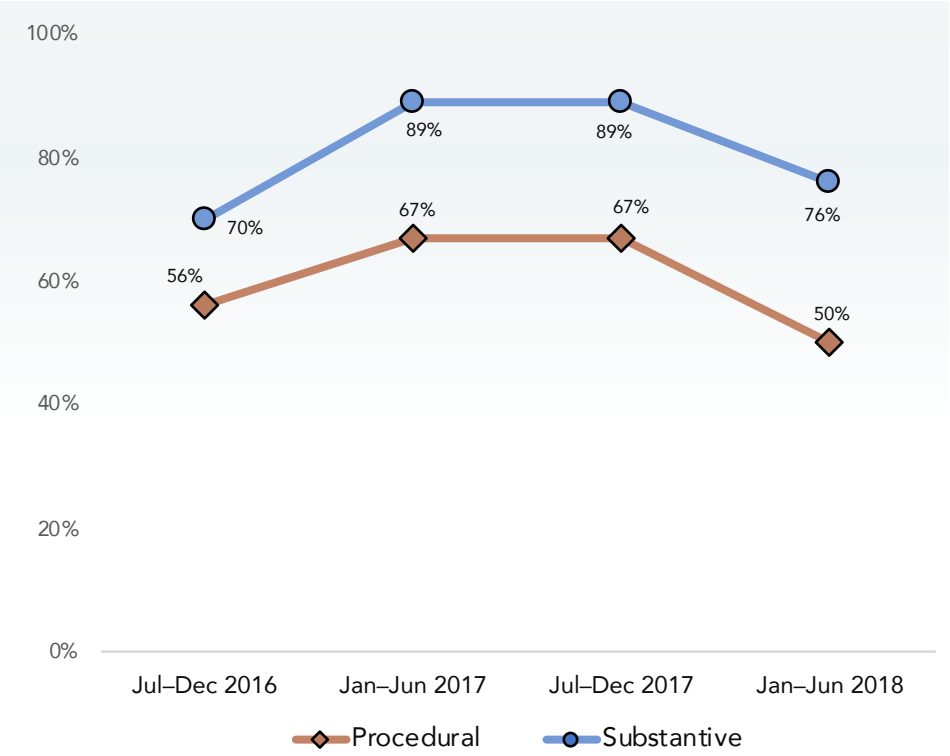


Figure 17. Disciplinary Phase Sufficiency, North Region

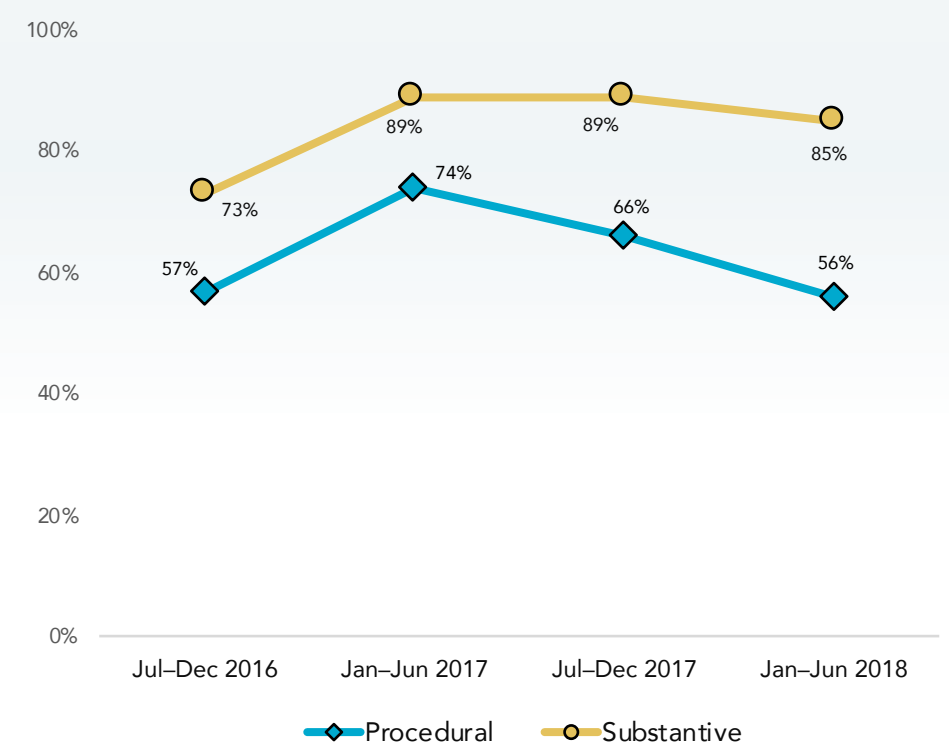


Figure 18. Disciplinary Phase Sufficiency, Central Region

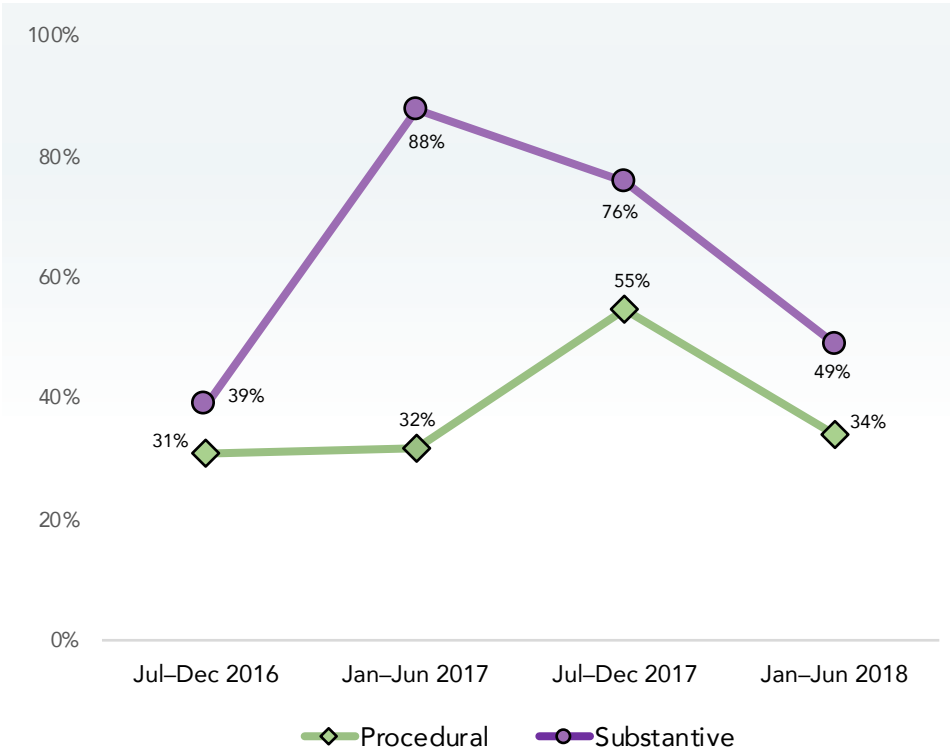
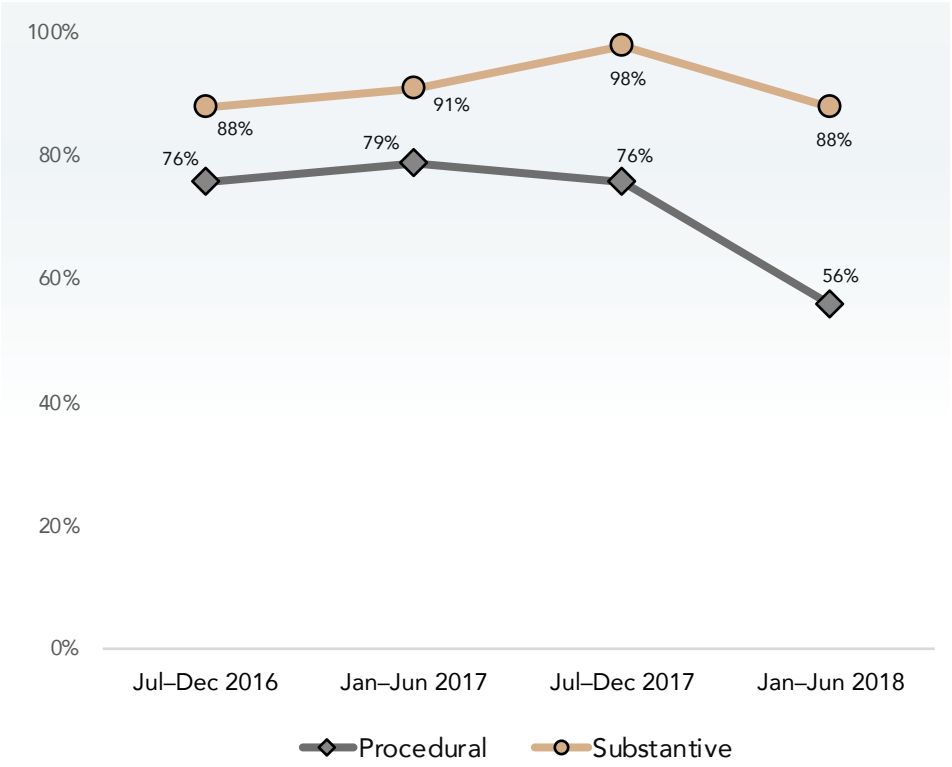


Figure 19. Disciplinary Phase Sufficiency, South Region



Source for Figures 16, 17, 18, and 19: Office of the Inspector General Tracking and Reporting System.

Similar to the investigative phase, we found the department performed very well in certain areas of the disciplinary phase. For example, in cases for which a department attorney was assigned, he or she provided appropriate legal advice to the hiring authority regarding the type of discipline to impose in 90 percent of the cases. Furthermore, in 88 percent of the cases when a hiring authority imposed discipline, we found that the hiring authority made an appropriate determination regarding the type of discipline to impose on an employee.

However, we did note several cases where the department did not perform well during the disciplinary phase. One example is the case referenced on pages 22 and 23 regarding an officer signing an income tax withholding form for another officer. We assessed the department negatively for both the investigative and disciplinary phases. In addition to the issues referenced in that section regarding how the department performed during the investigative phase, we also identified inadequacies during the disciplinary phase. For example, despite evidence the officers were dishonest, the department attorney did not advise the hiring authority to add dishonesty allegations to the case. Additionally, the hiring authority chose not to allege the officers were dishonest and consequently, only imposed salary reductions on the officers rather than dismiss them or impose another significant penalty, which would have been more appropriate given the facts of the case. Moreover, the department attorney did not prepare legally sufficient disciplinary actions because the documents referenced inapplicable causes for discipline, failed to include sufficient facts, failed to include the correct statutes governing peace officer confidentiality, and did not advise the officers of their right to respond to a manager who was not involved in the misconduct.

In a second case example, two officers allegedly counted a mannequin as an inmate after the inmate escaped from his cell and hid in bushes on the exercise yard. In the OIG's opinion, the department attorney should have advised the hiring authority to find that the officers were not just negligent, but grossly negligent. However, the department attorney did not make this recommendation, nor did the hiring authority make this finding. Instead, the hiring authority merely found that the officers failed to perform within the scope of their training, indicating the mannequin was "so life-like appearing" that "anyone" would have believed it was a "living, breathing person." Additionally, the hiring authority only imposed 5 percent salary reductions for two months on each officer, despite the fact that an inmate had escaped from his cell. We believed a more severe penalty was warranted based on the severity and consequences of the officers' misconduct. Ultimately, the hiring authority even reduced the penalty for one of the officers. The OIG again did not

agree because we still believed the penalty reduction was inconsistent with the severity and consequences of the misconduct.

A third case involved an officer who allegedly made inappropriate, derogatory, and sexually harassing comments to inmates, allegedly fondled the buttocks of three inmates while placing them in restraints, simulated a sex act while conducting a clothed body search of an inmate, and lied during an interview with the Office of Internal Affairs. We believed the department attorney should have recommended the hiring authority allege the officer lied based on the interview with the Office of Internal Affairs, but the department attorney failed to do so, and the hiring authority should have added the allegation. The department attorney then neglected to include in the disciplinary action the correct statutes governing peace officer confidentiality and notice advising the officer of the right to respond to a manager. Moreover, as we discuss subsequently in this report, the hiring authority then failed to timely serve the disciplinary notice until 56 days after making the decision to impose discipline. This delay violated the department's policy requiring service within 30 days of the decision. Ultimately, despite these failures, the hiring authority correctly decided to dismiss the officer, but the officer retired before the department could impose the disciplinary action.

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Hiring Authorities Took Too Long to Determine Investigative Findings and Penalties

For the cases the OIG monitored and closed during the January through June 2018 reporting period, hiring authorities conducted timely investigative and disciplinary findings conferences in only 73 percent of cases, a 2 percent drop from the timeliness rating we noted for the July through December 2017 reporting period.

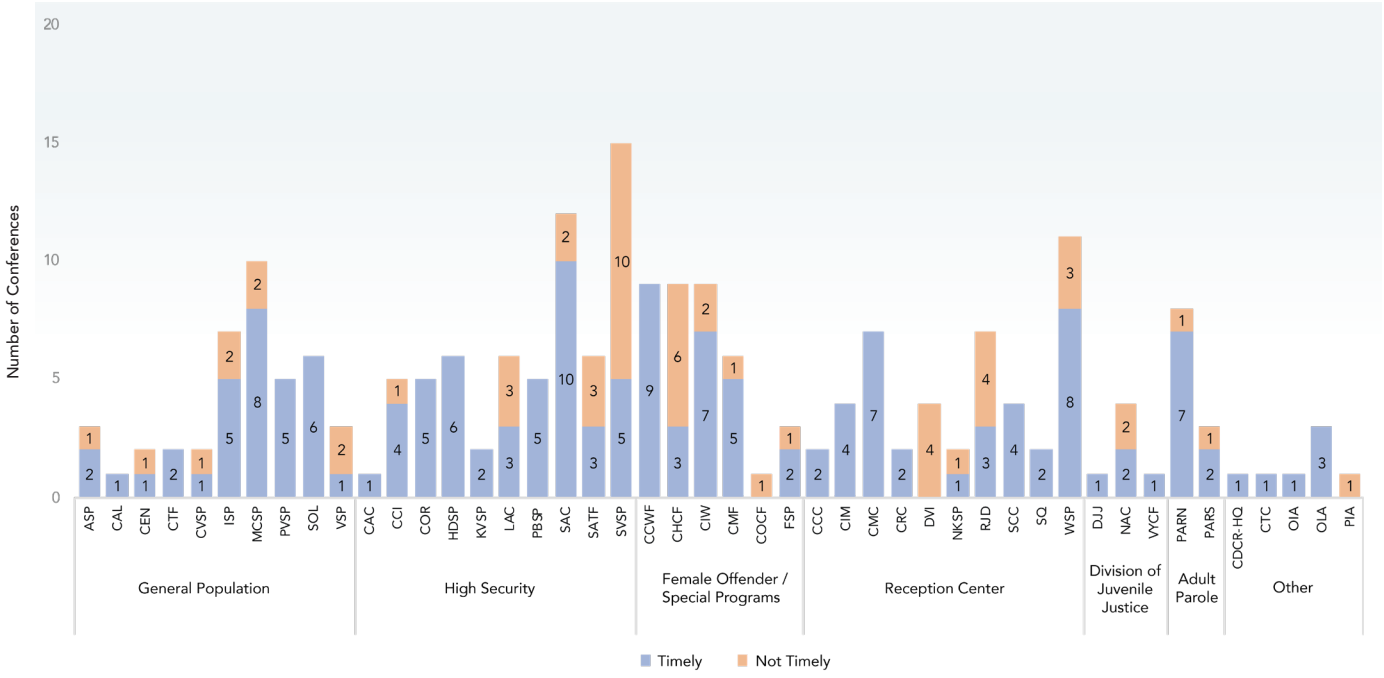
After the Office of Internal Affairs returns a case to a hiring authority, either after investigation or for the hiring authority to address the allegations without an investigation, the hiring authority must consult with the assigned OIG and department attorneys within 14 days to address the sufficiency of any investigation, the findings regarding the allegations, and the appropriate penalty, if any.[18] Typically, the hiring authority makes all of these determinations at the same time. However, even if more than one consultation is required, the OIG renders only one assessment for this consultation.

Additionally, if the only insufficiency in the disciplinary phase is an untimely disciplinary findings conference, we do not assess the disciplinary phase as insufficient if we already assessed the investigative phase as insufficient based on an untimely investigative findings conference. The figure on the next page shows the timeliness of the investigative findings conferences for the current reporting period.

We also found that the timeliness of conducting conferences varies widely from institution to institution. As some institutions may address only one case, a percentage of 100 percent or zero percent could be misleading; therefore, we show the total numbers to better identify those institutions that performed well and those that did not.

[18] Although the consultation should typically occur with 14 days of the junctures specified above, at times there is good cause due to participants' unavailability for the consultation to occur later, but usually no later than 30 days.

Figure 20. Timeliness of Investigative and Disciplinary Findings Conferences by Mission



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

The OIG Sought Executive Reviews in Five Disciplinary Cases in Which the Department Made Unreasonable Findings

If a hiring authority makes a decision that either we or the department attorney believes is unreasonable, then either we or the department attorney may decide to bring that decision to the attention of the hiring authority's supervisor (e.g., an associate director), with the goal of having the department review the decision with an eye toward whether the hiring authority made a just and proper determination.[19] If the supervisor also makes what we consider to be an unreasonable decision regarding the issue presented to him or her, the matter may be raised to higher levels, such as to a director or the Secretary of the department.

A stakeholder may seek a higher level of review[20] during either the investigative or disciplinary phases, depending on the disagreement. For example, if a significant disagreement arises regarding whether an investigation is sufficient or whether the hiring authority should sustain allegations, a stakeholder may seek a higher level of review in the investigative phase. However, if the issue pertains to a penalty, the stakeholder would elevate the decision during the disciplinary phase.

For the cases we monitored and closed during the January through June 2018 reporting period, the OIG sought a higher level of review in five of them. The department ultimately made what we believe to be appropriate decisions in two of the five cases. In another of the five cases, the department correctly decided an allegation, but not the penalty. In another of the five cases, in our opinion, the department did not make the correct decision at all. In the fifth case, the department ultimately reached a settlement agreement with the sergeant. Although the OIG did not agree with the settlement, the OIG withdrew its request for a higher level of review because the sergeant acknowledged his wrongdoing, the penalty was severe, and, as part of a settlement, the sergeant agreed to never seek a supervisory role in the department again.

The OIG uses the executive review process judiciously so as to maintain the integrity of the process. We believe the process is a valuable tool to raise significant issues to higher levels within the department. The following table summarizes the cases in which the OIG sought executive review regarding the decisions of hiring authorities.

[19] DOM, Section 33030.14.

[20] We use the phrases "higher level of review" and "executive review" interchangeably throughout this report.

Table 3. Summary of Executive Review Cases

Case	Summary	Department Position	OIG Position	Disposition
1	An officer allegedly kept a rental vehicle without paying for it, subsequently suffering a misdemeanor vehicle theft conviction.	The hiring authority decided to sustain an allegation of failure of good behavior, but to not add a dishonesty allegation.	The OIG disagreed and recommended further investigation to interview the officer and confront the officer with the rental agreement and other documentation. The hiring authority did not agree, and the OIG elevated the matter to the hiring authority's supervisor, who agreed with the OIG.	After further investigation, the hiring authority sustained allegations the officer committed vehicle theft. The officer suffered a misdemeanor conviction for vehicle theft, and the hiring authority dismissed him. The officer did not file an appeal.
2	An officer allegedly improperly accessed confidential inmate information, took pictures of the information with a personal mobile phone, distributed the information to a friend, lied to both a sergeant and the Office of Internal Affairs during an interview, and submitted a false memorandum. During his interview with the Office of Internal Affairs, the officer stated he came to realize, "I'm gonna be in trouble for this," and although he considered revising his memorandum, concluded, "it's probably already too late."	The hiring authority sustained the allegations, except for a dishonesty allegation, and identified a 10 percent salary reduction for 24 months as the penalty.	The OIG did not concur with the decisions to not sustain dishonesty and impose a salary reduction rather than dismissal, and elevated the matter to the hiring authority's supervisor.	At the higher level of review, the hiring authority's supervisor agreed with the OIG, sustained all allegations, and dismissed the officer. The officer filed an appeal, after which the department settled the case, allowing the officer to resign in lieu of dismissal. The OIG agreed because a dishonest officer would no longer work for the department.
3	An officer allegedly drove a vehicle while under the influence of alcohol, struck a parked vehicle, left the scene, and lied to outside law enforcement.	The hiring authority sustained the allegations and imposed a 10 percent salary reduction for 24 months.	The OIG did not concur with the penalty and sought a higher level of review because dismissal was the more appropriate penalty.	The hiring authority's supervisor agreed with the sustained allegations and imposed a 49-working-day suspension. Although the OIG did not persuade the hiring authority's supervisor to dismiss the officer, we did not seek a higher level of review because the penalty was within the department's disciplinary guidelines. After the officer's *Skelly* hearing, the hiring authority entered into a settlement agreement modifying the suspension to a 10 percent salary reduction for 24 months, followed by a 5 percent salary reduction for 1 month. The OIG did not concur because there were no changed circumstances warranting the modification, yet did not seek a higher level of review because the modification caused a substantially similar financial repercussion.

Continued on next page.

Table 3. Summary of Executive Review Cases (continued)

Case	Summary	Department Position	OIG Position	Disposition
4	An officer allegedly informed inmates that a particular inmate was a "baby killer" and disclosed the inmate's criminal history to other inmates, gave a second inmate a "wedgie"* on two occasions, disobeyed a captain's order to stop harassing the second inmate, threatened a library technical assistant to keep her from reporting the officer's misconduct, and disobeyed the captain's order to stop harassing the library technical assistant. The officer also allegedly told the second inmate, "you may find yourself in a bad situation, like beat up, in the hole, or without property," and called him a *"pobrecito"*† in a demeaning tone.	The hiring authority sustained the allegation that the officer called the inmate a *pobrecito* and that he disobeyed a captain's order, but not the remaining allegations, and imposed a 24-working-day suspension.	The OIG did not concur with the decisions to not sustain the allegation that the officer gave the second inmate a wedgie or the penalty and sought a higher level of review. The hiring authority's supervisor also did not sustain the allegation that the officer gave the inmate a wedgie, but added an allegation for threatening the library assistant, and dismissed the officer. The OIG did not concur with the decision to not add the allegation, but did concur with the penalty. After a *Skelly* hearing, the hiring authority's supervisor requested and obtained further investigation from the Office of Internal Affairs and, after considering the additional information, modified the penalty to a 48-working-day suspension. The OIG did not concur with the penalty modification and sought a higher level of review, at which time, a deputy director did not change the penalty. The OIG elevated the case another level to a director because the department defied the principles of progressive discipline. The officer had a prior disciplinary action for a similar allegation for which he received a 105-working-day suspension, but in this instance, the department decided to impose a significantly lesser penalty of a 48-working-day suspension.	The director agreed to add an allegation that the officer gave the inmate a wedgie and imposed a 60-working-day suspension. The OIG concurred with the added allegation, but not the penalty. The officer filed an appeal with the State Personnel Board. Following a hearing, the State Personnel Board upheld the suspension. The officer filed a petition for rehearing, which the State Personnel Board denied.

* Forcibly yanking a person's underwear upwards from the back, often performed as a prank or form of bullying. Source: **https://merriam-webster.com/dictionary/wedgie**.

† A Spanish term meaning "poor thing," which is used to express pity. Source: **www.spanishdict.com/translate/pobrecito**.

Continued on next page.

Table 3. Summary of Executive Review Cases (continued)

Case	Summary	Department Position	OIG Position	Disposition
5	A sergeant allegedly forcefully pulled an inmate's wrist restraints through a food port, causing injury to the inmate's wrists, completed a false report, and participated in a code of silence with two officers to not report the force. Two officers allegedly submitted dishonest reports and participated in a code of silence with the sergeant to not report the force, and one of the officers allegedly wrote an incomplete report. The sergeant also allegedly lied during his interview with the Office of Internal Affairs.	The hiring authority sustained the allegations against the sergeant and dismissed him. The hiring authority sustained the allegation against the first officer for submitting an incomplete report and verbally counseled her. The hiring authority found insufficient evidence to sustain the remaining allegations against the first officer and all of the allegations against the second officer. The sergeant filed an appeal with the State Personnel Board. Prior to the State Personnel Board proceedings, the department attorney recommended that the hiring authority enter into a settlement with the sergeant to reduce the penalty to a demotion and suspension without pay for four months. The department attorney recommended the settlement because the first officer said she would not testify at the State Personnel Board hearing due to concerns other officers would retaliate. The hiring authority decided to enter into the settlement.	The OIG did not agree with the settlement because the department attorney had not prepared the witness for testimony or determined what actions could be taken to alleviate the officer's concerns, and requested a higher level of review. Prior to the higher level of review, the OIG recommended that the hiring authority instruct a manager to meet with the officer to discuss her concerns.	An associate warden met with the officer, and the officer said she was willing to testify. The hiring authority decided not to enter into a settlement, and the higher level of review was canceled. At the State Personnel Board hearing, the department attorney recommended a settlement reducing the penalty to a one-year suspension without pay, demoting the sergeant to officer, and the sergeant agreed that in the future he would be dismissed and would waive his appeal rights if similar allegations were sustained against him. The OIG did not concur and sought a higher level of review. After further negotiations, the department added a settlement term that the sergeant agreed to never seek promotion again. The OIG did not concur, but did not seek a higher level of review because the sergeant acknowledged his wrongdoing, the penalty was severe, and the sergeant agreed to never seek a supervisory role in the department again.

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

During this same period, a department attorney sought a higher level of review in one case, which was discussed previously in the section addressing timeliness of deadly force investigations. We outline it in more detail below.

- An officer fired two rounds at a former parolee who was riding a motorcycle on the officer's property. In this case, the hiring authority agreed with the OIG to add an allegation of battery. However, the department attorney did not agree that such an allegation could be proven and sought a higher level of review based on the position the officer was merely "discourteous" toward the rider. The hiring authority's supervisor agreed to add the battery allegation and imposed a 44-working-day suspension. The officer filed an appeal with the State Personnel Board. After a hearing, the State Personnel Board upheld the findings and penalty.

The Department Did Not Always Adequately Prepare Disciplinary Actions

A large majority of disciplinary actions served on employees lacked adequate notice advising them of their right to respond to the proposed discipline before the discipline took effect. Moreover, some of those disciplinary actions also referenced incorrect or incomplete legal authority.

A "disciplinary action" is a notice served on an employee advising him or her about the nature of the sustained misconduct, including facts to support the allegations, and advising the employee of the discipline to be imposed as a result of the misconduct.[21] The disciplinary action must also include specific advisements to the employee of the right to challenge the discipline. Pursuant to the DOM, Section 33030.22 (8) (a) (v), one of the advisements a disciplinary action must include is a notice of the right to "respond to a manager who was not involved in the investigation of the action currently being taken against the employee," in compliance with the requirements outlined in *Skelly* v. *State Personnel Board* (1975) 15 Cal.3d 194. State Personnel Board Rule 52.6(a)(5) also supports the inclusion of this advisement. The department failed to comply with this policy in 84 percent of cases, despite the OIG's recommendation to include such language. Of the total number of cases with incomplete language in the disciplinary actions, 23 percent also referenced incorrect or incomplete statutory law governing peace officer confidentiality.

The failure to include required language in disciplinary actions does not, on its own, result in an insufficient assessment. However, regardless of the assessment, the OIG has consistently recommended to the department that its attorneys include language advising the employee of the right to respond to an uninvolved manager in all disciplinary actions. Yet the chief counsel has taken the position that department attorneys do not need to include this language, notwithstanding the department's own unambiguous policy.

[21] A disciplinary action is sometimes referred to as a "notice of adverse action."

The failure to provide required notices to an employee being served with disciplinary action could result in a finding that the employee's rights were violated. Such a finding could result in withdrawal of the disciplinary action, payment of retroactive pay and benefits, and reinstatement of any dismissed employee. Complying with this policy is as simple as establishing standard language to include in all disciplinary actions and, as such, we are surprised at the chief counsel's reluctance to direct department attorneys accordingly and to provide training to the department's employee relations officers regarding the need to include appropriate language.

Recommendation

The OIG recommends the department amend internal procedures to require that department attorneys include language in all disciplinary actions advising employees of their right to respond to a manager who was not involved in the investigation.

Although the Department Timely Served the Majority of Disciplinary Actions, It Consistently Delayed Service of Them in Cases Involving Peace Officers

As noted previously, the OIG is reporting on 264 cases we monitored and closed during the January through June 2018 reporting period. Of the 264 cases, 217 were administrative cases whereby an employee or employees faced potential discipline, and 47 cases involved alleged employee criminal activity. As to those cases where the hiring authority decided to impose disciplinary action, in the vast majority of the cases, 98 percent, the department timely served disciplinary actions or letters of intent within the confines of the law.

In particular, hiring authorities served disciplinary actions at least three weeks before the deadline to take disciplinary action in 78 percent of the cases being reported. In 11 percent of the cases in which hiring authorities decided to impose discipline, the hiring authorities served the disciplinary actions within three or fewer weeks of the deadline. Due to impending deadlines in another 9 percent of the cases, the hiring authorities needed to serve letters of intent to the employees in order to preserve the deadline. A letter of intent advises an employee of allegations to be sustained and the nature of the discipline the hiring authority intends to impose.[22]

The Department Consistently Delayed Service of Disciplinary Actions on Peace Officers

During the January through June 2018 reporting period, the OIG monitored and closed 217 disciplinary cases, independently identifying whether the department prepared and served disciplinary actions in compliance with both the law and the department's policies. We observed that the department delayed serving disciplinary actions on peace officers, violating its own policy.

If a hiring authority sustains allegations, the hiring authority must decide whether to issue corrective action or discipline. If a hiring authority decides to impose discipline, either an employee relations officer or a department attorney composes the disciplinary action.

[22] *Sulier* v. *State Personnel Board* (2004) 125 Cal.App.4th 21.

Generally, the department must not only take disciplinary action against a peace officer no later than one year after the department learned of the alleged misconduct, but also within three years of the misconduct.[23] The department's policy requires that the department serve such actions on peace officers within 30 days of the hiring authority's decision to take disciplinary action.[24] The hiring authority makes this decision at a disciplinary findings or penalty conference.

In the cases we monitored and closed between January and June 2018, we found the following:

- The department served disciplinary actions in 139 of the 217 disciplinary cases (64 percent).
- Of the 139 cases in which the department served a disciplinary action, the department delayed serving the action in 40 of them (29 percent).[25] These delays ranged from 32 to 163 days after the hiring authority decided to take disciplinary action.
- A department attorney prepared the disciplinary actions in 38 of the 40 cases involving delayed service (95 percent). An employee relations officer drafted the disciplinary actions in the remaining two cases.

The department's Employment Advocacy and Prosecution Team chief counsel has advised department attorneys that the hiring authority does not actually "decide" to take disciplinary action until the hiring authority signs the departmental form memorializing the decision made at the penalty conference, provided the form is signed within ten days of the conference. Under the chief counsel's guidance, the department must serve disciplinary actions within 30 days from the date the hiring authority signs the departmental form documenting the penalty

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[23] If the employee is a peace officer, pursuant to California Government Code section 3304, the department must provide notice to the officer of the intent to take disciplinary action within one year from the date of discovery of the misconduct by an uninvolved supervisor. Except in cases of fraud, Government Code section 19635 provides that no punitive action shall be valid against any state employee, including peace officers, for any cause for discipline based on any civil service law, unless notice of the punitive action is served within three years after the cause for discipline first arose.

[24] DOM, Section 33033.22, provides that an employee relations officer, in consultation with the department attorney, shall ensure the following: "If the subject 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." Departmental policy does not require the department to serve disciplinary actions on nonpeace officers within a specified time after the hiring authority's decision to take disciplinary action. The OIG has noted this policy resulted in disparate treatment and an increased delay in the department's service of disciplinary actions in cases that involved nonpeace officers. We plan to explore this disparity in more depth in the future.

[25] The delays referenced herein pertain to departmental policy, not the one-year and three-year deadlines to take disciplinary action.

decided at the penalty conference rather than the conference date itself. Additionally, service must occur no later than 40 days from the conference date.

- In applying the chief counsel's interpretation, the department delayed service in 29 of the 139 disciplinary cases (20 percent), with delays ranging from 32 to 153 days.

The department's delayed service of disciplinary actions violated policy and resulted in additional cost to the department, and ultimately the taxpayers,[26] delayed action intended to address significant unacceptable performance, and adversely affected the accused peace officers as they continued to live under clouds of suspicion and uncertainty regarding their employment.

- In one case, a hiring authority decided to dismiss a captain for amphetamine and methamphetamine drug use, but the department did not serve the disciplinary action on the captain until 61 days after the hiring authority's decision. During the delay, the captain remained on paid administrative leave.

- In a second case, a hiring authority decided to dismiss a lieutenant who endangered employees, disclosed confidential information, and violated other departmental policies, but the department did not serve the disciplinary action on the lieutenant until 62 days after the hiring authority's decision. During the delay, the lieutenant remained on paid administrative leave.

- In a third case, a hiring authority decided to take disciplinary action against three officers who did not follow the controlled use-of-force policy, but the department did not serve the disciplinary actions on the officers until 163 days after the hiring authority's decision.

- In a fourth case, a hiring authority decided to take disciplinary action against a lieutenant and a sergeant, both of whom neglected to determine the status of a suicidal inmate and send the inmate for a mental health evaluation, and also against an officer who falsified the inmate's holding-cell log. The department did not serve the disciplinary actions until 99, 105, and 97 days, respectively, after the hiring authority's decisions to take disciplinary action.

[26] A hiring authority may place an employee on paid administrative leave pending service of a disciplinary action. DOM, Section 33030.27.

- In a fifth case, the hiring authority found a sergeant had engaged in discriminatory misconduct and identified dismissal as the appropriate penalty. The department did not serve the disciplinary action on the sergeant until 111 days after the hiring authority's decision. After a hearing, the State Personnel Board revoked the disciplinary action in its entirety based on the administrative law judge's credibility determinations concerning the witnesses who testified at the hearing. During the delay, the sergeant remained under the cloud of racial discrimination accusations.

The Department Attorneys' State Personnel Board Litigation Skills Have Improved

The OIG recommended and encouraged the chief counsel of the Employment and Advocacy Prosecution Team to focus on providing trial advocacy training to its department attorneys. As a result, the department has informed the OIG it has implemented some of the recommended training, including sending department attorneys to courses provided by outside agencies (including prosecutorial organizations), providing in-house trial advocacy training, and developing practical references for department attorneys to use. It appears the training may have had positive results since, during this reporting period, the OIG found that department attorneys performed well overall in representing the department during State Personnel Board proceedings in some cases. In 90 percent or more of the cases in which the employee subject to a disciplinary action filed an appeal with the State Personnel Board, the department attorney timely and thoroughly prepared witnesses for hearing, moved evidence into evidence at hearing, and properly used objections during hearing. We summarize three commendable performances by department attorneys below.

- An officer allegedly told an inmate, "that's why n——s don't deserve nothing" in response to the inmate's question about an earlier comment, inappropriately disconnected power to the inmate's cell, and lied to a sergeant and during his interview with the Office of Internal Affairs. The hiring authority sustained the dishonesty allegations and dismissed the officer, following which the officer filed an appeal with the State Personnel Board. Prior to the hearing, the department attorney obtained additional evidence and successfully challenged the officer's claim that the department had violated his rights, resulting in the State Personnel Board denying the officer's motion to dismiss.

- A supervising counselor allegedly asked a counselor and a staff services analyst to falsify an official document, told the staff services analyst to tell another employee the documents were served on a date on which they were not served, and lied during her interview with the Office of Internal Affairs. The nonsupervisory counselor allegedly served official documents knowing the date of service was incorrect. The hiring authority sustained the allegations, and dismissed the supervising counselor and issued a salary reduction to the counselor. Both individuals filed State Personnel Board appeals. During a prehearing settlement conference, the department attorney demonstrated a high degree of

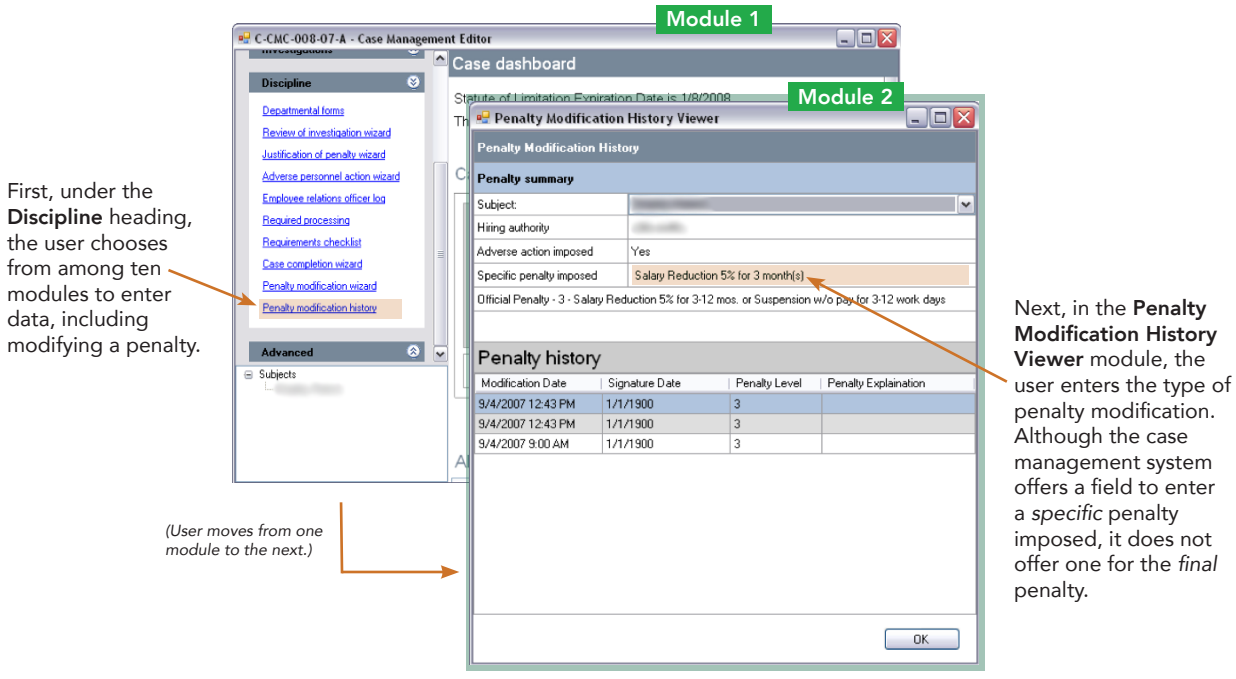
professionalism and zealously represented the department in the face of mounting pressure from the administrative law judge. Ultimately, the hiring authority settled both cases, with the OIG concurring.

- Two lieutenants allegedly entered false information on timesheets. The hiring authority sustained allegations against one of the lieutenants and dismissed the lieutenant. The lieutenant filed an appeal with the State Personnel Board. The department attorney prepared an exceptionally well-written legal brief for the State Personnel Board. Following a hearing, the State Personnel Board upheld allegations of gross negligence and willful disobedience, but not the dishonesty allegation, and imposed an 18-month suspension.

The Department Neglected to Update Its Case Management System With Final Outcomes in Discipline Cases, Resulting in Outdated and Inaccurate Information in State Records

The department maintains an electronic case management system into which departmental staff enter information regarding internal investigations and disciplinary actions. Departmental policy requires special agents, department attorneys, and employee relations officers to enter data into the system regarding the department's investigations and disciplinary actions.[27] At each institution, an employee relations officer is responsible for completing the discipline section of the case management system. During our oversight process, we identified a concern with the department's case management system because it does not allow staff members to denote, display, and extract the final specific penalty in discipline cases. A primary reason is that the case management system has no specific field designated to capture the final specific penalty. We further identified that the department's employee relations officers inconsistently entered the final specific penalty into what is referred to as the "penalty modification history viewer" or the "case activity chronology," and inconsistently uploaded related documents, all of which resulted in inconsistent, vague, and unreliable information.

Figure 21. Example of the Department's Case Management System for Data Entry



Source: The department's Office of Internal Affairs' case management system manual, v. 3.0.

[27] DOM, Section 31140.19.

The department's case management system is composed of different modules accessed via a case management editor, allowing the user to enter data. These include a justification-of-penalty editor for the initial penalty, the penalty modification history viewer for penalty modifications, and the case activity chronology. The figure on the preceding page offers an image of the case management editor overlaid with a second image of the penalty modification history viewer to illustrate the data entry process. The system also includes functions allowing the user to complete departmental forms and upload documents. An employee relations officer enters data concerning the initial penalty range and specific penalty imposed into the justification-of-penalty editor, as well as any modification to the penalty including the date, penalty level, and explanation into the penalty modification history viewer. Finally, the employee relations officer can also enter data concerning any general or specific case activity into the case activity chronology as well as upload related documents to the case.

The OIG acknowledges the department is developing a new case management system that may address the structural inadequacy concern. After we met with departmental management to discuss case examples demonstrating existing problems, the department issued a reminder to its system users to enter all pertinent information into the case management system. Nevertheless, the department's failure to correct existing records and provide training to employee relations officers, coupled with its staff members' continued practice of inconsistently entering information, all result in an incomplete disciplinary record. The process also results in a reliance on or dissemination of incorrect information and creates problems with extracting accurate data needed to respond to promotional inquiries, background checks conducted by law enforcement agencies,[28] litigation requests, district attorney inquiries,[29] and reviews pertaining to carrying concealed weapons.

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[28] Departmental staff who seek employment with another law enforcement agency may be subject to a background check. Every peace officer candidate is subject to employment history checks through contact with all past and current employers over a period of at least ten years. Title 11, *California Code of Regulations*, section 1953.

[29] A district attorney may request records to comply with disclosure obligations imposed by the U.S. Supreme Court in the case of *Brady* v. *Maryland* (1963) 373 U.S. 83. The *Brady* rule provides that the prosecution's suppression of evidence favorable to an accused upon request violates due process wherein the evidence is material to guilt or punishment. The prosecution's failure to disclose exculpatory evidence may result in the reversal of the defendant's conviction. Exculpatory evidence includes information that may tend to impeach a prosecution witness's credibility.

The OIG identified the following as a result of our oversight:

- The department served a disciplinary action in 139 of the 217 disciplinary cases that the OIG monitored and closed. Of the 139 cases in which the department served a disciplinary action, either the department or the State Personnel Board modified the penalty in 83 of them (60 percent).

- Departmental staff made no entries into the penalty modification history viewer, case activity chronology, nor indicated any documents had been uploaded into the system pertaining to the final specific penalty in 32 of the 83 cases with a modified penalty (39 percent).

- The employee relations officer did not enter the final specific penalty into the penalty modification history viewer in 75 of the 83 cases with a modified penalty (90 percent).

The OIG determined that employee relations officers inconsistently entered the final specific penalty into the case management system and, in some cases, made no entry regarding a penalty modification or a final specific penalty. The following are examples:

- In one case, after the department dismissed a sergeant, the State Personnel Board revoked the dismissal. The employee relations officer made no entry into the case management system to reflect the State Personnel Board's revocation of the disciplinary action nor did the employee relations officer upload the decision into the case management system. According to information in the case management system, the sergeant is still dismissed.

- In a second case, after a *Skelly* hearing,[30] the department revoked a salary reduction and imposed no other penalty against an officer. The employee relations officer neglected to make any entry into the case management system to reflect that the department ultimately imposed no penalty against the officer. However, according to information currently in its case management system, the department levied a salary reduction when, in fact, the disciplinary action had been revoked.

[30] *Skelly* v. *State Personnel Board* (1975) 15 Cal.3d 194.

- In a third case, the department served a captain with a notice of dismissal, but thereafter entered into a settlement agreement with the captain. The department attorney made an entry into the case management system documenting receipt of a settlement, but neither the department attorney nor the employee relations officer made any entry regarding the final specific penalty nor did they upload the settlement agreement into the case management system. Absent this information, one might believe the department had entered into a settlement that would allow the captain to return to work when, in fact, the department only agreed to permit the captain to resign in lieu of dismissal.

Recommendations

The OIG recommends the department expedite developing its new case management system and providing training for employees who enter information in the new system on how to use the new system to ensure they consistently enter information regarding the final specific penalty.

The OIG recommends the department correct inaccurate and incomplete information in the case management system, including the final specific penalty in each case, even for those cases that have been closed.

The OIG Contributed in Its Monitoring of Cases

OIG attorneys closely monitored the performances of special agents, department attorneys, and hiring authorities throughout the course of our oversight of the department's internal investigations and employee disciplinary process. In so doing, we made a positive impact on the department's management of several cases we monitored and closed during this reporting period, a few of which are noteworthy.

- An officer tested positive for codeine during a random drug test, but provided a reasonable explanation for the positive result. Additionally, the officer was accused by the hiring authority of being dishonest during his interview with the Office of Internal Affairs. The hiring authority intended to dismiss the officer. However, the officer's explanation for the positive test result would have significantly mitigated the penalty from a dismissal. Therefore, the OIG recommended the special agent consult a physician to determine whether the test results were consistent with the officer's explanation. The department attorney also made the same recommendation. After much consultation, the Office of Internal Affairs conducted the interview. The physician confirmed the test results were consistent with the officer's explanation, and the hiring authority issued a salary reduction instead of dismissing the officer. The officer did not file an appeal.

- Next is the case previously mentioned in which an officer shot a former parolee who was riding a motorcycle on the officer's property. The officer claimed he shot the former parolee while the former parolee was riding the vehicle toward him. However, the bullet's entrance wound was on the former parolee's back, indicating that he was instead fleeing and thus not a threat when the officer fired. The department's Deadly Force Review Board[31] found the officer's use of force did not comply with policy. The department attorney recommended applying employee disciplinary matrix allegations consistent only with discourteous treatment, improper access to confidential information, and failure of good behavior. The recommended penalty based on these matrix allegations ranged from a letter of reprimand to a 12-working-day

[31] An entity of the California Department of Corrections and Rehabilitation consisting of experts in the use of force by law enforcement personnel and responsible for conducting reviews of deadly force investigations conducted by the Office of Internal Affairs.

suspension. We recommended the hiring authority add an allegation of battery due to the seriousness of the misconduct, potential lethal consequences, and penalty range based on an allegation of battery. The hiring authority agreed, but the department attorney did not agree and sought a higher level of review. During the higher level of review, an assistant chief counsel also advised the hiring authority that an allegation of battery could not be added because the district attorney's office did not file a criminal complaint. The assistant chief counsel claimed an allegation of discourteous treatment was sufficient. However, we believed shooting a person in the back is more than "discourteous treatment." We also pointed out that applicable civil battery provisions were available as recourse, with which the hiring authority's supervisor agreed, and imposed a 44-working-day suspension. The officer filed an appeal with the State Personnel Board, which upheld the penalty.

- A lieutenant who allegedly verbally abused his wife and her teenage daughter allegedly told outside law enforcement officers, "I am a captain at [an institution]; you need to treat me with more respect," and "you are treating me like an inmate." The lieutenant misrepresented himself as a captain. The lieutenant also allegedly told the outside law enforcement officers they were "arrogant" and to sit down, and refused to comply with outside law enforcement requests. We recommended the hiring authority apply a disciplinary matrix allegation of domestic violence, which again would carry a higher penalty than the initial allegations, but the employee relations officer did not believe that verbal abuse could rise to the level of domestic violence. The OIG provided the employee relations officer with the applicable legal authority (statute and case law) defining domestic violence, following which the hiring authority agreed with our assessment and imposed an appropriate penalty of a 10 percent salary reduction for 18 months. After the lieutenant's *Skelly* hearing, the department entered into a settlement agreement, reducing the penalty to a 10 percent salary reduction for 14 months and agreeing to remove the disciplinary action from the lieutenant's official personnel file upon completion of anger management and substance abuse courses because the lieutenant expressed remorse at the *Skelly* hearing. The OIG concurred except for agreeing to remove the disciplinary

action from the lieutenant's official personnel file. The OIG did not seek a higher level of review because the penalty remained within departmental guidelines.

- An officer allegedly argued with his girlfriend and struck her with a pool cue. The officer also allegedly lied to both outside law enforcement and the Office of Internal Affairs. The officer had prior cases involving similar allegations, including physically assaulting another woman. Neither the officer's girlfriend nor the other woman would cooperate with the Office of Internal Affairs' investigation, but we recommended the special agent obtain a copy of the girlfriend's request for a domestic violence restraining order, which could be used to help prove the allegations. The special agent obtained the records, which contained statements consistent with those statements made to outside law enforcement, convincing the department attorney that the department could prevail in litigation. The hiring authority sustained appropriate allegations and decided to dismiss the officer. The officer, however, resigned before the dismissal took effect.

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Recommendations

Recommendations to the Department for the January Through June 2018 Reporting Period

№ 1. The OIG recommends the Office of Internal Affairs eliminate the current practice of special agents identifying allegations at the beginning and during investigations and instead allow the hiring authority to determine the appropriate allegations upon the conclusion of the Office of Internal Affairs investigation and after the hiring authority has reviewed and considered all the evidence.

№ 2. The OIG recommends the Office of Internal Affairs approve and conduct interviews of employees suspected of misconduct in all cases, even in cases in which a full investigation is not warranted, including those the Office of Internal Affairs approves for "direct action" by a hiring authority.

№ 3. The OIG recommends the Office of Internal Affairs provide the OIG notice whenever it adds allegations or subjects to investigations after the central intake process or during the course of investigations.

№ 4. The OIG recommends the department amend internal procedures to require that department attorneys include language in all disciplinary actions advising employees of their right to respond to a manager who was not involved in the investigation.

№ 5. The OIG recommends the department expedite developing its new case management system and provide training for employees who enter information in the new system on how to use the new system to ensure they consistently enter information regarding the final specific penalty.

№ 6. The OIG recommends the department correct inaccurate and incomplete information in the case management system, including the final specific penalty in each case, even for those cases that have been closed.

Revised Recommendation from the January Through June 2017 Reporting Period

№ 7. The OIG recommends that the department develop a policy for a deadline by which it should complete internal investigations. We also recommend—in deference to the department's concern that there will be some cases in which a determined deadline cannot be met, particularly in more complex investigations—that the department develop criteria for exceptions to the deadline. Therefore, the OIG recommends that the department develop a policy for a deadline for the completion of internal investigations with a provision for those cases which require an exception to the deadline.

Recommendations for the July Through December 2017 Reporting Period

Table 4. OIG Recommendations, July Through December 2017

Description of Recommendation	The Department's Response	OIG's Assessment of the Department's Response
Nº 1. The OIG recommended the Office of Internal Affairs assign Office of Internal Affairs Central Intake Unit special agents to conduct employee interviews in cases in which only an employee interview was approved.	As part of the *Madrid* court-ordered process described in Article 14, DOM 31140 et seq., the Central Intake Unit (CIU) agents serve as the conduit to ensure all investigative requests are assessed in a fair and consistent manner. OIA's regional agents conduct the subject only interviews that pertain to their respective region. Article 14 requires that all CIU case reviews be completed within 30-days of receipt. In a recent *Semi-Annual Report*, the OIG indicated CIU improved its compliance with this 30-day requirement from 82 to 98 percent.	**NOT IMPLEMENTED** The department did not directly address our recommendation in its response. Our recommendation contemplated that the department alter its current policies and practices to assign its Central Intake Unit special agents to conduct interviews of employees suspected of misconduct in cases the Office of Internal Affairs approves for "direct action with a subject only interview." In light of our recommendation in the current report for the January through June 2018 period that the Office of Internal Affairs approve and conduct interviews of employees suspected of misconduct in all cases, the OIG acknowledges that the adoption of this recommendation will result in an increased workload for the Office of Internal Affairs. As such, we continue to recommend that Office of Internal Affairs Central Intake Unit special agents be assigned to complete interviews of employees suspected of misconduct.

Continued on next page.

Table 4. OIG Recommendations, July Through December 2017 (continued)

Description of Recommendation	The Department's Response	OIG's Assessment of the Department's Response
Nº 2. The OIG recommended case allegations be drafted by the Office of Internal Affairs' special agent assigned to conduct the investigation or employee interview. The allegations should be drafted in consultation with the department attorney in designated cases and with the OIG attorney in monitored cases.	The current process for adding and scoping of allegations during the Central Intake process was an original *Madrid* Reform, reviewed, and approved by the *Madrid* court. The central intake unit ensures consistent evaluation of requests for investigation throughout the state. That uniformed evaluation process ensures allegations are evaluated and scoped consistently throughout the state, and ensures a fair and impartial process for all employees. The process includes consultation with the OIG, the Employee Advocacy and Prosecution Team, and the hiring authority during the central intake process. Current practice also allows for significant disagreements during the central intake meeting to be elevated within the OIA chain of command to the Chief Headquarters Operations and if necessary the Deputy Director. **Comments/Proof of Practice:** Current policy and practice provides the authority to regional special agents assigned to investigations to add allegations as appropriate during and at the end of the investigative phase. This is generally done after consultation with the stakeholders. Allegations may be added and drafted at three different points during the investigation: 1. When the case is received in central intake, allegations are drafted after consultation with the OIG and EAPT attorneys. 2. When the investigation is assigned to a regional special agent, they may add allegations as appropriate, usually after obtaining additional investigative information. When there is an assigned attorney from the OIG or EAPT, they are consulted for their input regarding allegations. 3. Once a case is moved to the HA, they may add allegations as appropriate. This is usually completed in consultation with the assigned attorneys. Current process provides the CDCR Office of Legal Affairs (EAPT) to have final decision making input along with the HA on what allegations are included in an administrative adverse action.	**NOT IMPLEMENTED** If the department adopts our recommendation in the current report that the Office of Internal Affairs not identify allegations in cases it investigates, then this recommendation is no longer applicable. However, if the department does not adopt our recommendation, the OIG continues to recommend, for the reasons articulated in our prior report, that the Office of Internal Affairs Central Intake Unit special agents not assign or draft specific allegations for cases and thus limit the scope of investigations, and instead require the regional special agent assigned to conduct the investigation to draft the allegations in consultation with the department attorney in designated cases and with the OIG attorney in monitored cases.

Continued on next page.

Table 4. OIG Recommendations, July Through December 2017 (continued)

Description of Recommendation	The Department's Response	OIG's Assessment of the Department's Response
Nº 3. The OIG recommended the Office of Internal Affairs open an investigation or conduct an employee interview when that is the recommendation of the Employment Advocacy and Prosecution Team department attorney or of the OIG attorney at the Office of Internal Affairs Central Intake meeting.	It is OIA's goal to review, evaluate, and consider stakeholder concerns or recommendations and attempt to resolve any disagreements whenever possible. The OIG and EAPT attorneys are an important and integral part of the Central Intake Process, and OIA encourages debate and discussion. OIA values the positions of all stakeholders and endeavors to reach a fair and just decision based on a reasonable belief standard. When serious disagreements occur, the OIG or EAPT panel member can document their disagreement and elevate the Central Intake decision to the Chief of OIA Headquarters Operation. If necessary, the Chief's decision can be elevated to the OIA Deputy Director. CDCR and the OIG are currently engaged in hiring consultants to review the *Madrid* reforms including the central intake process, disciplinary process, and OIG oversight role. **Comments/Proof of Practice:** OIA's Central Intake decisions are based on a thorough analysis of facts and information submitted by the respective HA, via the CDCR 989 (Confidential Request for Internal Affairs Investigation/Notification of Direct Adverse Action). Moreover, OIA's decisions are guided by additional information received and/or obtained by Central Intake special agents, reviewed by senior special agents, and a special agent in charge. Those recommendations and decisions are discussed with stakeholders, resulting in a very low percentage of disagreements at panel. The current process, which was approved by the Federal Court has resulted in central intake decisions that have been consistently supported through the disciplinary process.	**NOT IMPLEMENTED** If the department adopts our recommendation in the current report that the Office of Internal Affairs conduct interviews of all employees suspected of misconduct, then the part of this recommendation regarding the Office of Internal Affairs approving recommendations of employee interviews in all cases where recommended by the department attorney or the OIG attorney is no longer applicable. However, if the department does not adopt our recommendation, the OIG continues to recommend, for the reasons articulated in our prior report, that the Office of Internal Affairs open an investigation or conduct an employee interview in all cases when that is the recommendation of the department attorney or the OIG attorney at the Office of Internal Affairs Central Intake meeting.

Continued on next page.

Table 4. OIG Recommendations, July Through December 2017 (continued)

Description of Recommendation	The Department's Response	OIG's Assessment of the Department's Response
Nº 4. The OIG recommended the department implement a policy of conducting an independent investigation, to include at a minimum an interview of the affected employee, in cases based on reports by outside law enforcement. The OIG opinion is this policy is required to comply with the California Labor Code section 432.7.	The department's interpretation of Labor Code section 432.7 differs from the OIG. **Comments/Proof of Practice:** OIG concludes that a police report constitutes an arrest report and thereby prohibits the department from taking action based solely on the report. Assuming a police report constitutes an arrest report, Labor Code section 432.7 could only be violated when the department takes adverse personnel action based solely on the report. However, a police report contains other information (i.e., testimonial, documentary, and physical evidence) to prove the commission of an alleged crime/misconduct, which in addition to the report are used to form the basis for the adverse action and are introduced as evidence in an evidentiary hearing. Therefore, a police report would not be solely used to take adverse action and the use of a police report, which contains independent testimonial, documentary, or physical evidence, is permissible for taking action based on the report and the independent information/evidence it contains.	**NOT IMPLEMENTED** The department continues to state that its interpretation of California Labor Code section 432.7 differs from the OIG's position. However, the department oversimplifies the OIG's legal position regarding the applicability of California Labor Code section 432.7 to the department's employee discipline cases. The OIG continues to recommend, for the reasons articulated in our prior report, that the department implement a policy of conducting an independent investigation, to include at a minimum an interview of the affected employee, in employee disciplinary cases based on outside law enforcement reports.

Recommendations for the January Through June 2017 Reporting Period

Table 5. OIG Recommendations, January Through June 2017

Description of Recommendation	The Department's Response	OIG's Assessment of the Department's Response
Nº 1. The OIG, once again, renewed its recommendation that the department implement a policy change requiring investigations be completed within six months of assignment.	The department recognizes the importance of timely completion of investigations and agrees the faster the investigation is completed, the better for all stakeholders. The volume of cases, available resources, and the varying complexity of the cases investigated preclude a policy requiring completion of all investigations within six months of assignment to a regional office. OIA endeavors to complete all investigations as soon as practically and operationally possible, and in many instances completes them faster than six months. However, due to many different factors, some investigations are completed sooner than others. For example, complicated cases involving multiple subjects, investigations of crimes or complicated administrative cases, and other factors outside of the special agents' control (i.e., tolling requests made by outside law enforcement agencies or prosecuting attorneys, the obtainment of case-related reports, video, photographs, or other evidence from outside law enforcement) often cause case delays. Nevertheless, many of OIA's cases (i.e., DFITs, ATO staff redirections, and other cases opened exigently) are often completed well within six months. **Comments/Proof of Practice:** OIA completes investigations within the statutorily required time frames. The Office of Internal Affairs endeavors to complete all investigations as soon as practically and operationally possible. However, due to many factors, some investigations are completed sooner than others. Factors such as complicated cases involving multiple-subject employees, criminal investigations or complicated administrative investigations, and other factors such as tolling due to an ongoing criminal investigation, often cause delays. Nevertheless, many cases are completed well within six months.	**NOT IMPLEMENTED** Although the department acknowledges the importance of timely completion of internal investigations, it has not created a policy for a deadline by which it is to complete the investigations. The OIG continues to stress the importance and necessity of the implementation of a deadline and is, therefore, putting forth a new recommendation regarding this issue, on page 88 of this report.

Continued on next page.

Table 5. OIG Recommendations, January Through June 2017 (continued)

Description of Recommendation	The Department's Response	OIG's Assessment of the Department's Response
Nº 2. The OIG recommended that the department develop guidelines and exceptions to departmental cell entry policies and procedures for the Office of Internal Affairs' special agents conducting criminal investigations to prevent the loss and destruction of evidence.	Office of Internal Affairs' special agents are not trained to conduct this type of entry, which must be performed by sworn institutional staff. Absent an emergency, an inmate's cell cannot be entered except in compliance with the department's controlled use-of-force policy.	**NOT IMPLEMENTED** Office of Internal Affairs special agents are sworn staff. Therefore, we are perplexed by the department's reluctance to institute a policy or procedures which would allow Office of Internal Affairs special agents prevent the destruction of evidence in criminal investigations and which would allow for special agents to be trained in this regard.

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

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OFFICE *of the* INSPECTOR GENERAL

Roy W. Wesley
Inspector General

Bryan B. Beyer
Chief Deputy Inspector General

STATE *of* CALIFORNIA
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