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OIG | OFFICE *of the* INSPECTOR GENERAL

Independent Prison Oversight

October 2024

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

*Semiannual Report
January–June 2024*



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October 30, 2024

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

Dear Governor and Legislative Leaders:

Enclosed find the Office of the Inspector General's report titled *Monitoring Internal Investigations and the Employee Disciplinary Process of the California Department of Corrections and Rehabilitation*. This 39th semiannual report, which is pursuant to California Penal Code section 6126 (a) et seq., summarizes the department's performance in conducting internal investigations and handling employee discipline cases that we monitored and closed from January 1, 2024, through June 30, 2024.

We assessed the overall performance of the three entities within the department responsible for conducting internal investigations and managing the employee disciplinary process: hiring authorities (such as prison wardens), the Office of Internal Affairs, and department attorneys. We used three performance indicators, one for each entity, to determine the department's overall performance rating. The OIG's assessment is based on the department's adherence to laws, its own policies, and the OIG's considered opinion concerning what we believe constituted sound investigative practice and appropriate disciplinary processes and outcomes.

We rated each entity *sufficient*, *sufficient with recommendations*, or *insufficient*. Overall, the department performed sufficiently in 16 percent of cases and sufficiently with recommendations in 51 percent of the cases we monitored. The department performed insufficiently in 33 percent of cases we monitored. Of the 197 cases we monitored and closed, we rated 31 cases *sufficient*, 101 *sufficient with recommendations*, and 65 *insufficient*. Hiring authorities failed to conduct an inquiry into alleged misconduct and refer matters to the Office of Internal Affairs without undue delay in 31 percent of cases (62 of 197). We found hiring authorities' overall performance to be either *sufficient* or *sufficient with recommendations* in 79 percent of cases (65 *sufficient* and 90 *sufficient with recommendations* of 197). In this reporting period, we rated the Office of Internal Affairs' performance in administrative cases *sufficient* in 93 cases, *sufficient with recommendations* in 62 cases, and *insufficient* in 21 cases. We found the Office of Internal Affairs' performance in investigating criminal allegations of misconduct to be *insufficient* or *sufficient with recommendations* in eight of 21 criminal investigations during this reporting period.



We assigned the department's Employment Advocacy and Prosecution Team (EAPT) a *sufficient* rating in 111 cases, a *sufficient with recommendations* rating in 58 cases, and an *insufficient* rating in 28 cases. The single most common criticism of department attorneys was failure to handle the disciplinary process without undue delay (34 cases). We identified 20 cases in which department attorneys provided inadequate recommendations to hiring authorities. During this reporting period, we monitored 15 cases that were submitted to the State Personnel Board after a full evidentiary hearing, which is three more than the number of these cases we monitored in the last reporting period. Of those, the State Personnel Board modified the penalty in six cases. Department attorneys were able to secure dismissals in eight of the 11 dismissal cases taken to hearing.

During this reporting period, administrative misconduct was alleged in 176 cases, including cases in which a full investigation was conducted, the subject of the investigation was interviewed, and the department determined there was enough evidence to take direct action without an investigation. The remaining 21 cases involved alleged criminal misconduct. Six cases in this reporting period involved criminal investigations into the use of deadly force.

We encourage feedback from our readers and strive to publish reports that not only meet our statutory mandates, but also offer concerned parties a tool for improvement. For more information about the Office of the Inspector General, including all our published reports, please visit our website at www.oig.ca.gov.

Sincerely,

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

Amarik K. Singh
Inspector General

Contents

Illustrations	v
The Discipline Monitoring Unit	1
The Discipline Monitoring Report	1
The Department’s Investigative and Disciplinary Process	2
Assessing Departmental Stakeholders	3
The Hiring Authority	5
Hiring Authorities’ Performance in Timely Discovering and Referring Allegations of Employee Misconduct Slightly Improved	5
Hiring Authorities Continue to Delay Making Investigative and Disciplinary Findings and Too Often Make Unreasonable Decisions	8
The Office of Internal Affairs	15
Central Intake Panel	15
The Office of Internal Affairs Sufficiently Investigated Deadly Use-of-Force Incidents in All Cases, but We Did Have Recommendations in One Case	20
The Office of Internal Affairs Handled Most Criminal Investigations Sufficiently, but the OIG Identified Investigative Mistakes	22
The Office of Internal Affairs Continued to Perform Generally Well in Conducting Administrative Investigations	24
The Employment Advocacy and Prosecution Team	27
Vertical Advocates Could Improve Their Performance By Avoiding Delays and by Making Appropriate Recommendations to Hiring Authorities	27
Vertical Advocates Could Improve Their Performance by Making Timely Entries in the Case Management System and When Providing Recommendations to the Central Intake Panel	33
Vertical Advocates Continued to Secure Favorable Decisions From the State Personnel Board in Most Cases	35
Critical Incidents	37

The OIG Makes Recommendations in Several Ways	41
The OIG Recommends That the Hiring Authority and Department Attorney Work Together to Ensure That Investigative and Disciplinary Findings Conferences Are Held Without Undue Delay	42
The OIG Recommends That the Department Extend Its Body-Worn-Camera Video Retention Policy to Secure Important Evidence	45
Recommendations	49

Illustrations

Figures

1. Ratings for Cases the OIG Monitored During the Period From January Through June 2024 4
2. Decisions the Office of Internal Affairs Made on Referrals Involving Potential Staff Misconduct From January Through June 2024 18
3. The OIG’s Criteria for Responding to Critical Incidents During the Reporting Period From January Through June 2024 37

Tables

1. Monitoring Criteria Used by the Office of the Inspector General 17

Graphics

- The OIG’s Mandates vi



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

The Discipline Monitoring Unit

California Penal Code sections 6126 and 6133 mandate that the Office of the Inspector General (the OIG) provide oversight to the California Department of Corrections and Rehabilitation (the department). Our office monitors internal affairs investigations, both criminal and administrative, as well as the disciplinary process conducted by the department. The OIG's Discipline Monitoring Unit (DMU) is responsible for monitoring these processes, and this unit is staffed by attorneys who hold the classifications of Special Assistant Inspector General (SAIG) or of Senior Assistant Inspector General (SrAIG). SAIGs in DMU have a minimum of eight years of experience practicing law, and these attorneys come from diverse legal backgrounds including but not limited to criminal prosecution and defense, administrative law, prosecution and defense of peace officer disciplinary actions, and civil litigation in State and federal courts. DMU attorneys have a wealth of experience and can provide valuable, real-time feedback and recommendations to the department regarding the investigative and the disciplinary processes.

The Discipline Monitoring Report

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

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

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

The Department's Investigative and Disciplinary Process

The department's investigative process begins when the department discovers allegations of misconduct. If the hiring authority discovers an allegation of misconduct and determines there is a reasonable belief that misconduct occurred, he or she must refer the allegations to the Office of Internal Affairs' Central Intake Panel for review. The Central Intake Panel includes representatives of the Office of Internal Affairs, a department attorney from the department's Employment Advocacy and Prosecution Team (EAPT), and an attorney from the OIG. The Office of Internal Affairs processes the allegations and determines whether to open an investigation. If the Office of Internal Affairs does not open an investigation, it returns the case to the hiring authority either to reject it because no misconduct was found or to take direct action in the form of discipline or corrective action.

If the Office of Internal Affairs approves an investigation, the case is referred to a regional office, where it is assigned to a special agent who conducts interviews and gathers evidence. The special agent consults with an OIG attorney on cases that the OIG monitors and with a department attorney on cases EAPT designates for assignment. The special agent completes a report when the investigation concludes and forwards it to the hiring authority for review. The hiring authority meets with both the OIG attorney and the department attorney to discuss the disciplinary findings. The hiring authority makes a finding of **sustained**, **not sustained**, **exonerated**, **no finding**, or **unfounded** for each allegation.

When the hiring authority sustains at least one allegation, he or she determines the appropriate discipline by referring to guidelines listed in the department's disciplinary matrix. The department attorney drafts a disciplinary action, and the department serves the disciplinary action on the employee who committed misconduct. The employee can then request a predeprivation hearing, otherwise known as a *Skelly* hearing, which provides the employee with the opportunity to present facts or arguments in favor of reducing or revoking the discipline. After the disciplinary action takes effect, the employee can file an appeal with the State Personnel Board, through which an evidentiary hearing is later conducted. At the hearing, the department has the burden of proving the allegations in the disciplinary action by a preponderance of evidence.

Assessing Departmental Stakeholders

The OIG uses three performance indicators, to assess the department's performance in investigating and disciplining employees for misconduct.

The OIG continues to use standardized assessment questions to assess the three departmental stakeholders. We summarize our findings for each stakeholder holistically. The three indicators we use are listed below:

Indicator 1: Hiring Authority

Indicator 2: Office of Internal Affairs

Indicator 3: Employment Advocacy and Prosecution Team

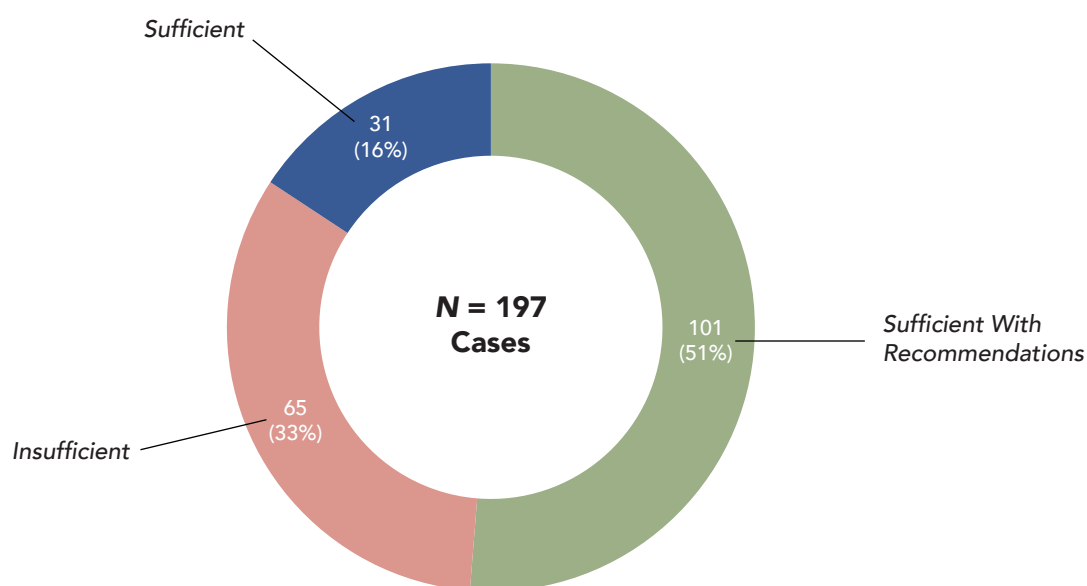
The OIG assigns each stakeholder a rating of *sufficient*, *sufficient with recommendations*, or *insufficient* to each applicable indicator, and an overall rating to the case.

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

Examples of a negative outcome might be that the department allowed the deadline to take disciplinary action to expire before disciplinary action could be taken; failed to dismiss an employee who should have been dismissed; or delayed an investigation or service of a disciplinary action, thereby causing an employee who had committed serious misconduct to spend an excessive amount of time on administrative time off or to be redirected from a post within the secure perimeter of a prison to the mail room. The OIG determines an overall rating for each case we monitor after considering the ratings for each indicator. The overall rating of a case is equal to the worst performance indicator. For example, if any of the three performance indicators is rated *insufficient*, we rate the entire case *insufficient*. Likewise, if the lowest rated performance indicator is *sufficient with recommendations*, we rate the entire case *sufficient with recommendations*.

In this reporting period we monitored and closed 197 cases. Of these, 176 involved administrative allegations, and 21 involved criminal allegations. We rated 16 percent of the cases (31 cases) *sufficient*, 51 percent (101 cases) *sufficient with recommendations*, and 33 percent (65 cases) *insufficient*. This means that most cases, about two out of three, were not *insufficient*. On the other hand, it also means that we identified significant deficiencies in the great majority of cases, 84 percent.

Figure 1. Ratings for Cases the OIG Monitored During the Period From January Through June 2024



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

The Hiring Authority

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

Hiring Authorities' Performance in Timely Discovering and Referring Allegations of Employee Misconduct Slightly Improved

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

The hiring authority is required to review each case and conduct initial inquiries to ensure that enough information exists to determine whether there is a reasonable belief that the alleged misconduct occurred. *Staff misconduct* is behavior that results in a violation of law, regulation, policy, or procedure, or actions contrary to an ethical or professional standard. *Reasonable belief* is established when facts and circumstances are known that make a reasonable person of average caution believe staff misconduct occurred.

The OIG monitors both the thoroughness of a hiring authority's inquiry of alleged misconduct and the timeliness of referrals sent to the Office of Internal Affairs. Departmental policy requires that hiring authorities refer suspected misconduct to the Office of Internal Affairs within 45 days of discovering the alleged misconduct.

From January through June 2024, we found that hiring authorities failed to conduct an inquiry into alleged misconduct and refer matters to the Office of Internal Affairs without undue delay in 31 percent of cases (62 cases), and timely referred matters in 69 percent of cases (135 cases). This is a slight improvement from the last reporting period when we found that hiring authorities timely referred allegations in 68 percent

The OIG provides interactive features in this report. Click on the small blue boxes labeled with the **OIG Case No.**, and you can access the complete case summary text on our website. The first occurrence is seen on this page, *right*.

of cases. However, hiring authorities continued a pattern of referring allegations late in almost one of every three cases. Of the 42 cases we rated the hiring authority as *insufficient*, 20 involved untimely referrals of allegations, nearly half. The following three case examples demonstrate this issue:

OIG Case No. 23-0051518-DM

In the following case, the delay to refer the case to the Office of Internal Affairs had a negative impact on the investigation. Two sergeants allegedly failed to act when they learned that an incarcerated person assaulted a second incarcerated person. Two additional officers failed to act when they observed the assault and failed to report it. The hiring authorities found insufficient evidence to sustain the allegations.

We concurred with the hiring authority's finding that there was insufficient evidence, in part, because a witness interviewed by the Office of Internal Affairs claimed to not remember relevant details about the incident because the event happened two years earlier.

We rated the hiring authority's performance as *insufficient* because the hiring authority unduly delayed referring the matter to the Office of Internal Affairs. The department discovered the misconduct on February 22, 2022, but did not refer the matter to the Office of Internal Affairs until February 23, 2023, 321 days after policy required, and over a year after learning of the alleged misconduct, at which time the deadline to impose discipline had already expired. It is important that hiring authorities refer allegations of misconduct without undue delay. Even if a witness only pretends to not remember details, lengthy delays make such a claim sound plausible and hiring authorities should always remember that it takes time to investigate cases. Time is of the essence.

OIG Case No. 23-0053042-DM

When hiring authorities delay referring misconduct to the Office of Internal Affairs beyond the statutory deadline to impose discipline, employees who may have deserved discipline elude accountability. An officer allegedly failed to properly secure an incarcerated person to a gurney while the incarcerated person was being transported in an emergency transportation vehicle. A second officer drove the vehicle and collided with a parked van on prison grounds. Both officers and two nurses failed to report the vehicle collision, and a sergeant failed to properly operate his body-worn camera. The second nurse lied during an investigatory interview with the Office of Internal Affairs. The first officer lied during an investigatory interview with the Office of Internal Affairs.

The hiring authority sustained the allegation against the first officer for his failure to secure the incarcerated person in a vehicle and for his failure to report the vehicle collision, but not the remaining allegation. The hiring authority sustained the allegation against the second officer for his failure to report the collision, but not the remaining allegation. The hiring authority found insufficient evidence to sustain the allegation against the sergeant. The hiring authority for the nurses exonerated both nurses for their failures to report the collision and found insufficient evidence to sustain the remaining allegation against the second nurse. The OIG concurred.

However, the hiring authority could not impose discipline for the first officer or the second officer because the deadline to impose discipline had expired. The hiring authority significantly delayed referring the matter to the Office of Internal Affairs until after the deadline to take disciplinary action had passed. The hiring authority learned of the misconduct on February 11, 2022, and referred the matter to the Office of Internal Affairs' Allegation Inquiry Management Section on March 11, 2022. On November 20, 2022, the Office of Internal Affairs' Allegation Inquiry Management Section submitted their report to the hiring authority. The hiring authority did not refer the matter to the Office of Internal Affairs for an administrative investigation until February 28, 2023, 100 days after receiving the inquiry report, 55 days after policy required and 17 days after the deadline to take disciplinary action expired. Had the hiring authority taken swift action after receiving the report, this outcome could have been avoided.

OIG Case No. 23-0060894-DM

In a final example, the hiring authority significantly delayed referring serious allegations of misconduct involving allegations that an officer entered false information in a rules violation report when he intentionally stated another officer assisted him in the search of an incarcerated person's cell, when the officer did not, and entered the incorrect date on the report.

The department learned of the alleged misconduct on January 5, 2023, but the hiring authority did not refer the matter to the Office of Internal Affairs until July 14, 2023, 190 days after the referral and 145 days after policy required. The hiring authority found insufficient evidence to sustain the allegation. The OIG would have concurred. However, the department conducted the investigative and disciplinary findings conference without consulting with the OIG.

We rated the hiring authority's performance as insufficient because the hiring authority delayed referring the matter to the Office of Internal Affairs, delayed conducting the investigative and disciplinary findings conference, and did not consult with the OIG regarding the investigative and disciplinary findings conference.

Hiring Authorities Continue to Delay Making Investigative and Disciplinary Findings and Too Often Make Unreasonable Decisions

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

Before holding the investigative and disciplinary findings conference, a hiring authority is required to review available evidence regarding the misconduct allegations.¹ At the conference, the hiring authority consults with the department attorney and the OIG attorney, if one is assigned. The hiring authority then determines whether there is enough evidence to make decisions regarding the allegations, and if the Office of Internal Affairs submitted a report, whether the report is sufficient or if additional investigation is necessary. If the hiring authority determines there is sufficient evidence or the investigative report is sufficient, the hiring authority makes findings pertaining to the allegations. If the hiring authority sustains any allegation, the hiring authority determines whether to impose corrective action or discipline and, if so, the specific action to be taken.

We found hiring authorities' overall performance to be either *sufficient* or *sufficient with recommendations* in 79 percent of cases. Compared to the last reporting period, hiring authorities' overall performance was about the same, either *sufficient* or *sufficient with recommendations* in 78 percent of cases. However, in 42 cases rated as *insufficient*, 35 involved delays in handling the investigative and disciplinary process and 13 involved cases in which we deemed the hiring authority's decision unreasonable. As explained below, delays in making disciplinary decisions continue to play a major role in hiring authority performance ratings.

Hiring Authorities Continue to Hold Untimely Investigative and Disciplinary Findings Conferences

Departmental policy requires that the hiring authority conduct the investigative and disciplinary findings conference no more than 14 calendar days after receipt of the final investigative report.² If the hiring authority made reasonable attempts to schedule the conference within 14 days and held the conference within 30 days of receipt of the case, we did not negatively assess a hiring authority for a late conference.

1. Department Operations Manual, Section 33030.5.2 (hereafter: DOM), defines the hiring authority's disciplinary responsibility.

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

If the hiring authority sustained any allegations, the hiring authority also determined whether to impose discipline and, if so, determined the type of discipline to impose.³

In this reporting period, hiring authorities failed to handle the investigative and disciplinary process without undue delay in 111 of 176 administrative cases, which is more than 60 percent of cases and an increase from 99 cases in the last reporting period. One of the most common types of delays we observed was hiring authorities failing to conduct the investigative and disciplinary findings conference in a timely manner. The following are examples of cases in which the department delayed holding these conferences.

OIG Case No. 23-0054848-DM

On August 30, 2022, an officer allegedly failed to ensure he had his body-worn camera on his person and activated the entire shift and failed to sign his post order acknowledgment. The hiring authority sustained the allegations, except a poorly worded allegation, and imposed a 5 percent salary reduction for six months. The OIG concurred. The officer did not file an appeal with the State Personnel Board.

We rated the hiring authority's performance as *insufficient*. The hiring authority did not conduct the investigative and disciplinary findings conference until May 31, 2023, 35 days thereafter, and 21 days after policy required. The department learned of the misconduct on January 19, 2022, but the hiring authority did not refer the matter to the Office of Internal Affairs until April 4, 2023, 75 days thereafter and 30 days after policy required. The hiring authority's delays in referring the matter and conducting the conference paled by comparison, however, to the delay in serving the disciplinary action. The hiring authority decided to impose discipline but did not serve the disciplinary action until January 13, 2024, 227 days thereafter, and just six days before the deadline to take disciplinary action. The case exemplifies how delays throughout the disciplinary process can cumulatively jeopardize the ability to meet the deadline to take disciplinary action.

OIG Case No. 22-0045358-DM

On August 11, 2022, an officer allegedly failed to activate his body-worn camera throughout an entire shift and failed to notice when an incarcerated person damaged State property. A second officer played video games while on duty and failed to report that a third officer was asleep while on duty. The third officer slept while on duty. The three officers failed to monitor an incarcerated person's actions, which resulted in them not seeing that the incarcerated person created a hole in a wall and entered an office. The hiring authority sustained allegations

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

against all three officers and determined that salary reductions were the appropriate penalties.

The Office of Internal Affairs referred the matter back to the hiring authority to consider discipline without an investigation on November 2, 2022. However, the hiring authority did not conduct the investigative and disciplinary findings conference until July 19, 2023, 259 days thereafter and 245 days after policy required. The matter languished without an investigation and a disciplinary decision was not made until about one month before the deadline to impose discipline was set to expire.

OIG Case No. 22-0044892-DM

Finally, in one case, the hiring authority's delay of the investigative and disciplinary findings conference caused the deadline to impose discipline to expire. On June 21, 2022, an officer allegedly failed to wear a body-worn camera while on duty. The hiring authority sustained the allegation against the officer and imposed a 10 percent salary reduction for 12 months. However, the deadline to impose discipline expired before the hiring authority decided to impose discipline. Therefore, disciplinary action could not be taken.

The Office of Internal Affairs' Central Intake Unit referred the matter back to the hiring authority to consider imposing discipline on October 19, 2022. However, the hiring authority did not conduct the investigative and disciplinary findings conference until July 3, 2023, 257 days thereafter and 243 days after policy required. Moreover, the hiring authority and the employee relations officer did not communicate with the OIG and conducted the investigative and disciplinary findings conference without notifying the OIG. As a result, the hiring authority made a disciplinary determination without consulting with the OIG.

The OIG Invoked Executive Review in Three Cases This Reporting Period After Disagreeing With Hiring Authority Decisions

A hiring authority's decision to sustain allegations, whether to impose discipline, and the type of discipline to impose are perhaps the most critical function that the hiring authority plays in the disciplinary process. In this reporting period, unreasonable decisions played a significant role in negative assessments. In 42 cases in which we rated hiring authority performance as *insufficient*, 13 involved instances in which we found hiring authorities failed to make appropriate decisions about whether allegations should be sustained and if so, what penalties to impose.

When any stakeholder has a significant disagreement with the hiring authority's findings regarding allegations, penalties, or a proposed

settlement, the stakeholder can elevate the hiring authority's decision to the hiring authority's supervisor. Any stakeholder can continue to elevate the matter to an even higher level if desired. This process is referred to as executive review. If executive review is invoked, the hiring authority's supervisor is asked to review all the investigative materials. The stakeholders then meet to discuss the disagreement, and the hiring authority's supervisor makes a determination. The OIG invoked executive review in three cases we monitored and closed during this reporting period. EAPT also invoked executive review in one case. Below are summaries of those cases and the issues in dispute.

OIG Case No. 23-0053035-DM

An officer allegedly entered false information in official records when he documented that he counted the actual number of incarcerated persons in a housing unit, when he did not. A second and third officer failed to conduct visual coverage of counts during their shifts. The misconduct was discovered when a lieutenant reviewed surveillance footage while searching for evidence of contraband trafficking. The hiring authority sustained the allegations and imposed a 62-working-day suspension for the first officer and a 5 percent salary reduction for two months for the second and third officers.

The OIG did not concur with the hiring authority's decision to suspend the officer because the misconduct—falsifying official records—was serious and warranted dismissal. Therefore, we elevated the matter to the hiring authority's supervisor. At the higher level of review, the hiring authority's supervisor determined that dismissal was the appropriate penalty for the first officer. The OIG concurred. However, the first officer resigned before the dismissal action took effect. Therefore, the hiring authority placed a letter in the first officer's official personnel file indicating he resigned pending disciplinary action.

OIG Case No. 21-0041335-DM

In the second case we elevated, an off-duty officer allegedly drove dangerously on residential streets while chasing minors, jumped out of the vehicle, tackled one of the minors, and threatened to get his gun and shoot the minor. The officer also stole the minor's mobile phone, refused to return it, and chased the minor, causing the minor to fall. On March 1, 2022, the officer lied during an interview with the Office of Internal Affairs. The hiring authority sustained the allegations, except that the officer tackled and threatened to shoot the minor, and imposed a 10 percent salary reduction for 45 months.

The OIG did not concur with the decision to impose a salary reduction because the misconduct was egregious. We elevated the matter to the hiring authority's supervisor. At the higher level of review, the hiring authority's supervisor sustained the allegation that the officer tackled the

minor, added an allegation that the officer lied during an interview with the Office of Internal Affairs, and increased the penalty from a salary reduction to a dismissal. The OIG concurred. The officer filed an appeal with the State Personnel Board. Following a hearing, the State Personnel Board revoked the dismissal and imposed a six-month suspension.

We rated the hiring authority's performance as *insufficient* because the hiring authority did not sustain all appropriate allegations and did not select an appropriate penalty at the first investigative and disciplinary findings conference. In addition, the hiring authority delayed conducting the investigative and disciplinary findings conference.

OIG Case No. 23-0047877-DM

On September 17, 2022, an officer allegedly punched an incarcerated person in the face and back when the incarcerated person was restrained and alone inside a cell. The officer also allegedly failed to report all the force he used, and in his report failed to articulate an imminent threat prior to using force.

The hiring authority sustained the allegations the officer punched the incarcerated person and failed to articulate an imminent threat in his report, but not the remaining allegation, and imposed a 10 percent salary reduction for 36 months. The OIG did not concur with the penalty and elevated the matter to the hiring authority's supervisor. At the higher level of review, the hiring authority's supervisor dismissed the officer. The OIG concurred. However, the officer resigned before the disciplinary action took effect.

We rated the hiring authority's performance as *insufficient* because at the first investigative and disciplinary findings conference the hiring authority should have dismissed the officer for punching a restrained incarcerated person in the face and back as punishment for throwing an unknown liquid. Also, the hiring authority delayed referring the matter to the Office of Internal Affairs and significantly delayed conducting the first investigative and disciplinary findings conference.

OIG Case No. 23-0052239-DM

EAPT elevated a case we monitored during this reporting period as well. An officer allegedly provided false information in a rules violation report by documenting that an incarcerated person had punched him with a closed fist. On March 17, 2022, a second officer lied to the incarcerated person to induce him to waive his rights to review video evidence of the incident. On March 28, 2022, a lieutenant provided false information in a rules violation report log by documenting there was no video evidence of the incident, when in fact there was, and failed to review video evidence during the rules violation hearing. Despite the department attorney's

recommendation to sustain the allegations, the hiring authority found insufficient evidence to sustain the allegations. The OIG did not concur.

The department attorney elevated the matter to the hiring authority's supervisor, a decision with which the OIG concurred. At the higher level of review, the hiring authority's supervisor sustained the allegations against the first officer and that the lieutenant failed to review video evidence during the rules violation hearing, but not the remaining allegations. The hiring authority's supervisor dismissed the first officer and imposed a 5 percent salary reduction for six months on the lieutenant. The OIG concurred, except for the decision to not sustain allegations against the second officer. The first officer and the lieutenant each filed appeals with the State Personnel Board. Prior to an evidentiary hearing, the department entered into a settlement agreement with the lieutenant reducing the penalty to a letter of reprimand and an agreement to remove the disciplinary action from the lieutenant's official personnel file after 12 months. The OIG concurred with the reduction in penalty but not the portion of the settlement that allowed for the early removal of the disciplinary action from the lieutenant's official personnel file. The department entered into a settlement agreement with the first officer reducing the penalty from a dismissal to a 205-day suspension. The OIG did not concur with the settlement but did not seek a higher level of review.

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The Office of Internal Affairs

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

Central Intake Panel

Whenever the department has a reasonable belief that an employee committed administrative or criminal misconduct, the hiring authority must timely request an investigation or approval of a direct action from the Office of Internal Affairs. The hiring authority refers these matters to the Office of Internal Affairs' Central Intake Unit. Pursuant to departmental policy, Office of Internal Affairs special agents, department attorneys from EAPT, and OIG attorneys comprise a Central Intake Panel, which meets weekly to review the misconduct referrals from hiring authorities. The Office of Internal Affairs leads the meetings to ensure that the evaluation of referrals is consistent, and department attorneys provide legal advice to the Office of Internal Affairs. The OIG monitors the process on a weekly basis, provides recommendations to the Office of Internal Affairs regarding decisions on referrals, and determines which cases the OIG will monitor. The Office of Internal Affairs' special-agent-in-charge—not the panel—makes the final decision regarding the action the Office of Internal Affairs will take on each hiring authority referral.

The options for decision are as follows:

- To conduct an administrative investigation;
- To conduct a criminal investigation;
- To authorize the hiring authority to take direct action against the employee regarding the alleged misconduct without an investigation or interview of the employee (or employees) suspected of misconduct;
- To reject the referral without further action concerning the allegation or allegations because there is no reasonable belief misconduct occurred; or

- To reject the referral and return it to the hiring authority to conduct further inquiry.

During this reporting period, the Office of Internal Affairs has enacted changes regarding how it processes referred misconduct. Notable changes to the process are described below. The Office of Internal Affairs:

- No longer approves cases in which special agents conduct interviews only of employees alleged to have committed misconduct and not witnesses;
- Rejects matters so that they can be referred to the Office of Internal Affairs' Allegation Inquiry Unit (AIU) when the alleged misconduct falls under AIU's purview (e.g., involves the use of force);
- Defines the scope of an investigation generally instead of writing specific allegations to be addressed;
- Approves certain types of cases without a Central Intake Panel presentation including deadly force investigations, exigent investigations, appeals for reconsideration after a previous decision, and administrative investigations that follow a criminal investigation.

Table 1 on the next page presents the OIG's guide for determining which cases to accept for monitoring:

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

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

* [Madrid v. \(Gomez\) Cate \(N.D. Cal. 1995\) 889 F.Supp. 1146](#) (citation (URL) accessed on 4-3-24).

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

In the six-month reporting period of January through June 2024, the Office of Internal Affairs made decisions concerning 1,169 referrals involving potential staff misconduct, which the OIG also reviewed (see Figure 2 below). In reviewing those cases, the OIG disagreed with the Office of Internal Affairs' initial review in 273 cases. Of those 273 cases, the OIG found that the Office of Internal Affairs ultimately made a decision with which we disagreed in 184 of those cases, 67 percent of the

Figure 2.

**Decisions the Office of Internal Affairs Made
on Referrals Involving Potential Staff Misconduct
From January Through June 2024**

1,264	Total number of referrals OIA received
1,169	Total number of decisions OIA made on the 1,264 referrals
<i>Distribution of the 1,169 decisions OIA made that the OIG also reviewed . . .</i>	
338	Approved for administrative investigations
110	Direct action with a subject-only interview
346	Direct action without any interviews
288	Approved for criminal investigations
17	Rejected and returned to the hiring authority for further inquiry
37	Rejected for no misconduct
33	Transferred to OIA's Allegations Investigations Unit

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

Of the 1,169 referrals, the OIG disagreed with OIA's initial review in 273 cases. The OIG disagreed with OIA's final decision in 184 those cases.

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

time, which is an improvement over the previous reporting period. In the previous reporting period, it was 82 percent.

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

In this reporting period, the OIG found fault with the Office of Internal Affairs' performance during the central intake process in 55 of the 197 cases we monitored and closed. In nine of the cases, we found that the Office of Internal Affairs delayed processing cases. In 46 cases, we found that the Office of Internal Affairs made inappropriate determinations.

We do not always agree with the Office of Internal Affairs' decisions concerning hiring authority referrals. The OIG disagreed with the Office of Internal Affairs' initial determination in 23 percent of cases that our office monitored during this reporting period. This was slightly more often than in the last period in which we disagreed in 21 percent of cases. Disagreements were often due to the OIG's position that the Office of Internal Affairs conducted a faulty, speculative, or ill-informed analysis. Examples included the Office of Internal Affairs' failure to add appropriate allegations or identify all appropriate subjects. Disputes also included our disagreement with the department's decisions to not open full investigations and to instead return matters to hiring authorities to address misconduct allegations without an interview or an investigation.

The Office of Internal Affairs Sufficiently Investigated Deadly Use-of-Force Incidents in All Cases, but We Did Have Recommendations in One Case

The Office of Internal Affairs opens a deadly force investigation when an employee fires a deadly weapon with the intent to strike a person, or in some cases, an animal, or when an officer uses a tool such as a baton or a less-lethal round to intentionally strike a person in the head. The Office of Internal Affairs also occasionally opens a deadly force investigation when an employee fires a warning shot or unintentionally discharges a deadly weapon. The Office of Internal Affairs assigns special agents from the Deadly Force Investigation Team to conduct these investigations.

One special agent is responsible for conducting a criminal investigation, and another special agent is responsible for conducting an administrative investigation. The OIG monitors all deadly force investigations.

The department defines deadly force as any force that is likely to result in death. Any discharge of a firearm other than a lawful discharge during weapons qualification, firearms training, or other legal recreational use of a firearm is considered deadly force. Employees are only authorized to use deadly force when it is necessary to do one of the following:

- 1) defend the employee or other people from an imminent threat of death or great bodily injury;
- 2) apprehend a fleeing person for any felony that threatened or resulted in death or great bodily injury if the officer reasonably believes that the person will cause death or great bodily injury to another person unless immediately apprehended; and
- 3) dispose of seriously injured or dangerous animals when no other disposition is practical.

Officers are not to use deadly force on a person believed to pose a threat to themselves if an objectively reasonable officer would believe the person does not pose a threat of death or great bodily injury to anyone else. A firearm may only be discharged from or at a moving vehicle if the criteria for deadly force is met and it is reasonable to believe that such actions are intended to end an imminent threat to human life.

Between January and June 2024, the OIG monitored and closed six criminal cases that the Office of Internal Affairs investigated concerning the use of deadly force. We rated the Office of Internal Affairs' performance in investigating deadly force incidents in the current reporting period *sufficient* in five cases and *sufficient with recommendations* in one case. Below is a summary of the one case in which we rated the Office of Internal Affairs' performance *sufficient with recommendations*.

OIG Case No. 23-0055306-CM

On May 1, 2023, an incarcerated person attacked a second incarcerated person. An officer deployed seven less-lethal rounds to stop the attack without success. The second incarcerated person strangled the first incarcerated person, and the officer fired one round from a Mini-14 rifle which allegedly struck and killed the second incarcerated person.

We rated the Office of Internal Affairs' performance *sufficient with recommendations* because the special agent did not conduct an independent analysis or record measurements of the scene where the incarcerated person was shot, the distances between the shooting officer and the incarcerated people who were fighting, or lighting conditions and angles of the shots taken. Instead, the special agent relied on information provided by the prison's investigative unit. The special agent should have independently determined the shooting officer's vantage point, location, and the distance between the officer and the incarcerated person when the fatal shot was discharged. In addition, the special agent did not complete the investigation without undue delay. The special agent was assigned to the matter on May 1, 2023, but did not complete the investigation until March 28, 2024, 321 days later. The OIG recommends that special agents independently verify information while investigating deadly force incidents and complete investigations without undue delay.

The department requires special agents to complete criminal and administrative deadly force investigations for incidents occurring in a prison within 120 days. Investigations occurring outside a prison should be completed within 180 days. During the current reporting period, the Office of Internal Affairs did not complete the deadly force investigation by the deadline in just one of the cases monitored and closed by the OIG. The Office of Internal Affairs' Chief of Field Operations granted an extension in the case discussed above.

In two of the six aforementioned criminal deadly force investigations, probable cause was established to refer the matters to a district attorney for possible prosecution. In the remaining four cases, investigations failed to establish sufficient evidence for a probable cause referral.

The Office of Internal Affairs Handled Most Criminal Investigations Sufficiently, but the OIG Identified Investigative Mistakes

We found the Office of Internal Affairs' performance in investigating criminal allegations of misconduct to be *insufficient* or *sufficient with recommendations* in eight of 21 criminal investigations during this reporting period. In seven of those eight cases, the deficiencies we identified pertained to a lack of due diligence or delays of some sort. For example, we found delays in conducting interviews, in completing investigations, and in referring matters to a district attorney. The Office of Internal Affairs could improve in handling criminal cases without undue delay. We also identified deficiencies in how the investigations were conducted. Below are two examples of *insufficient* cases.

OIG Case No. 23-0055321-CM

In March of 2023, an officer allegedly made statements to two officers threatening to kill a fourth officer. The Office of Internal Affairs conducted an investigation, which failed to establish sufficient evidence for a probable-cause referral to a district attorney. The OIG concurred with the probable-cause determination. The Office of Internal Affairs also opened an administrative investigation, which the OIG accepted for monitoring.

We rated the case *insufficient* because the first special agent unnecessarily delayed conducting the first interview for more than three months and failed to ask the officer who was threatened whether he was in fear for his safety, an element necessary to prove the crime. The first special agent failed to complete the investigative report before a second special agent was assigned 278 days after the investigation began. The first special agent did not conduct the first interview until 98 days after being assigned to the case. The last interview was completed on October 4, 2023, but the special agent did not complete the draft investigative report before a second special agent was assigned on February 6, 2024. The second special agent completed the draft investigative report on February 15, 2024, 134 days after the last interview. The officer accused of threatening another officer had been placed on paid leave since April 4, 2023, resulting in the officer being paid his full salary while the first special agent delayed completing the investigation.

OIG Case No. 23-0049921-CM

Another case in which we identified investigative deficiencies involved an officer who allegedly conspired with an incarcerated person to bring mobile phones into a prison and brought mobile phones into a prison for financial gain. The officer also allegedly unlawfully communicated with the incarcerated person. The Office of Internal Affairs conducted an

investigation and found sufficient evidence for a probable-cause referral to a district attorney based on the officer's unlawful communications with the incarcerated person. The OIG concurred with the probable-cause determination. The Office of Internal Affairs also decided to return the matter to the hiring authority to address administrative allegations after an interview of the officer. The OIG accepted the case for monitoring.

We rated the Office Internal Affairs' performance *insufficient*. The Office of Internal Affairs did not open a concurrent administrative investigation to ensure the deadline to take disciplinary action did not expire for two money transfers that took place between the officer and the incarcerated person, and the special agent delayed conducting interviews of the incarcerated person and the officer, which caused the deadline to expire. Also, the special agent did not use available Internet resources to obtain critical information before interviewing the officer.

The Office of Internal Affairs Continued to Perform Generally Well in Conducting Administrative Investigations

In the last reporting period, we rated the Office of Internal Affairs' performance in administrative cases *sufficient* in 101 cases, *sufficient with recommendations* in 56 cases, and *insufficient* in 16 cases. In this reporting period, we rated the Office of Internal Affairs' performance *sufficient* in 93 cases, *sufficient with recommendations* in 62 cases, and *insufficient* in 21 of the administrative cases we monitored. The most common reason we rated a case *insufficient* was due to excessive delays in completing the investigation. We also rated several cases *insufficient* because Office of Internal Affairs' special agents failed to use effective interviewing techniques.

Below are three cases that involved insufficient performance by the Office of Internal Affairs. In one case, the special agent delayed seven months to conduct interviews and nine months to complete the investigation. During the delay, the department unnecessarily paid a parole agent's salary and lost the ability to impose discipline on a parole agent supervisor because the deadline to take disciplinary action had expired. In another case, the special agent failed to confront an officer with evidence that he lied to outside law enforcement during an interview. The hiring authority ultimately did not sustain the allegation, and the OIG disagreed with the hiring authority's decision. Finally, in a third case, the special agent failed to confront an officer with video evidence contradicting his understanding of the correct use of metal detection during searches of incarcerated people. This failure deprived the hiring authority of evidence that could have supported sustaining an allegation that the officer failed to properly use a hand-held metal detector. The three cases are summarized below.

OIG Case No. 22-0042452-DM

A parole agent allegedly failed to document or investigate outside law enforcement's arrest of a parolee under his supervision. The parole agent also falsely documented three field visits to the parolee when the parolee was incarcerated. A parole agent supervisor allegedly failed to verify the parolee's custody status and update the parolee's supervision status after his release from custody.

The Office of Internal Affairs promptly assigned a special agent to investigate the matter. However, the special agent did not conduct the first interview in the case until 220 days after assignment. Three weeks later, the special agent attempted to schedule an interview with the parole agent but learned that the parole agent had retired two weeks earlier. The parole agent's retirement meant that the special agent could no longer compel the parole agent to interview. The special agent

completed the investigation more than nine months after assignment to the case.

The hiring authority sustained allegations against the parole agent and determined dismissal was the appropriate penalty. Thus, the department unnecessarily paid the parole agent's salary during the special agent's delay. The hiring authority also sustained allegations against the parole agent supervisor. However, it was determined at the investigative and disciplinary findings conference that the deadline to impose discipline on the parole supervisor had expired during the investigation. As a result of the special agent's delay in completing the investigation, the hiring authority could only impose corrective action, rather than discipline, on the parole agent supervisor.

OIG Case No. 22-0045809-DM

Outside law enforcement detained an officer after the officer allegedly pushed his girlfriend several times to keep her from entering a shared bedroom. The officer was issued a restraining order preventing him from possessing firearms as a result. The officer also lied to an outside law enforcement dispatcher when the officer said the incident between him and his girlfriend was never physical.

The Office of Internal Affairs assigned a special agent to investigate the matter. During the interview of the officer, the OIG recommended the special agent ask questions about the officer's allegedly dishonest statements to outside law enforcement. However, the special agent did not effectively use the recording of the call to the outside law enforcement dispatcher or any available body-worn-camera video footage to effectively confront the officer about these statements, which were inconsistent with the statements he provided to the special agent during his interview. The special agent's failure to successfully confront the officer with this available evidence prevented a thorough investigation into the officer's alleged dishonesty.

The hiring authority sustained the allegation that the officer pushed his girlfriend several times, but not the remaining allegations, and imposed a 10 percent salary reduction for 24 months. The OIG did not concur with the hiring authority's decision to not sustain the allegations that the officer lied to outside law enforcement.

OIG Case No. 23-0065989-DM

Two officers allegedly failed to conduct random clothed and unclothed body searches on incarcerated people as they left a building to get their medications. One of the officers also failed to properly use a hand-held metal detector while searching the incarcerated people. Subsequently, an incarcerated person assaulted a second incarcerated person with a makeshift weapon.

The special agent did not use effective interviewing techniques when interviewing the officers. The special agent asked leading questions, asked questions too quickly, and confronted the officers unsuccessfully with video evidence. When the special agent and the officers watched video surveillance footage of each incarcerated person searched with a metal detector, the special agent asked, “How’s that one, decent?” “Is this alright?” “You good with that one?” and “Good?” The special agent asked the officer who used the metal detector, “Do you think you did a thorough job in using that wand?” without asking pertinent follow-up questions. The special agent also asked the officer who used the metal detector what he does when incarcerated people approach him carrying items of clothing, including shirts and jackets, during metal detection. When the officer answered with a thorough explanation of how he stops incarcerated people and separately searches clothing items using the metal detector, the special agent failed to confront the officer with body-worn-camera footage and video surveillance footage showing that the officer failed to separately search these items. The special agent’s failure to confront the officer with video evidence contradicting his understanding of the correct use of metal detection deprived the hiring authority of evidence that could have supported sustaining the allegation that the officer failed to properly use the hand-held metal detector.

The hiring authority found insufficient evidence to sustain the allegations. The OIG concurred except for the allegation that the officer failed to properly use the hand-held metal detector. Video evidence showed the officer place the metal detector too far from incarcerated people to allow for the detection of metal items, showed that the officer failed to use the metal detector separately on clothes carried by incarcerated people, and that the officer did not stop or slow down the line of incarcerated people as they exited.

The Employment Advocacy and Prosecution Team

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

Vertical Advocates Could Improve Their Performance By Avoiding Delays and by Making Appropriate Recommendations to Hiring Authorities

During this reporting period, we assigned EAPT a *sufficient* rating in 111 cases, a *sufficient with recommendations* rating in 58 cases, and an *insufficient* rating in 28 cases. Once again, our single most common criticism of department attorneys was their failure to handle the disciplinary process without undue delay. We found 34 instances in which department attorneys had failed to handle the disciplinary process without undue delay. Our second most common criticism was that the department attorneys made poor recommendations to hiring authorities during investigative and disciplinary findings conferences. Examples of cases illustrating some of the above deficiencies are detailed below.

Failure to Handle the Disciplinary Process Without Undue Delay

The most common deficiency in this reporting period was department attorneys' failure to handle the disciplinary process without undue delay. The disciplinary process includes consulting at the investigative and disciplinary findings conference, drafting the disciplinary action for service, and attending *Skelly* hearings. Even though it is of the utmost importance to complete these steps, department attorneys delayed the disciplinary process, often by taking too long to draft and provide the disciplinary action to the hiring authority. Below are two examples:

OIG Case No. 22-0045926-DM

On October 10, 2022, an officer allegedly harassed and used derogatory language against an incarcerated person, unnecessarily placed his knee on the side of the incarcerated person's head and lied in his report when he stated he had inadvertently placed his knee on the incarcerated

person's head. A second officer and a third officer lied in their reports when they stated they were unable to see the use of force by the first officer. A sergeant failed to stop the first officer's derogatory language used toward the incarcerated person. On January 24, 2023, the second officer lied in his interview with the Office of Internal Affairs. On January 30, 2023, the first officer lied during his interview with the Office of Internal Affairs.

The hiring authority sustained the allegation against the sergeant and imposed a 5 percent salary reduction for 30 months. The hiring authority sustained the allegations against the first officer and the second officer and dismissed both officers. The hiring authority found insufficient evidence to sustain the allegation against the third officer.

Although policy requires service of disciplinary actions within 30 days after the hiring authority's decision, the department did not serve the disciplinary action on the first officer who was dismissed until July 12, 2023, 106 days later and 76 days after policy required, primarily because the department attorney did not complete the draft disciplinary action until 77 days after the decision to dismiss the officer. The delays continued for the second officer and the sergeant. The department attorney completed the draft disciplinary action for the second officer who was also dismissed on July 10, 2023, 90 days after the decision to dismiss. The department served the second officer on August 24, 2023, 105 days after policy required. The department attorney completed the draft disciplinary action on the sergeant 101 days after the hiring authority's decision. The department served the sergeant on August 3, 2023, 98 days after policy required.

The first officer retired before the disciplinary action took effect. The hiring authority placed a letter in the first officer's official personnel file indicating that he retired pending disciplinary action. The sergeant and the second officer each filed an appeal with the State Personnel Board. Prior to the State Personnel Board proceedings, the department entered into a settlement agreement with the sergeant reducing the penalty to a 5 percent salary reduction for 15 months because the sergeant accepted responsibility and there was a low likelihood of recurrence. The department entered into a settlement agreement with the second officer and accepted the officer's resignation in lieu of dismissal. The OIG concurred with the settlements. The department should have expedited service of the dismissal actions because the allegations against the officers were serious and resulted in unnecessary additional pay. The department attorney also should have advised the hiring authority to require that the second officer agree, as part of the settlement, to never again seek employment with the department in the future and should have provided the OIG an opportunity to review the prehearing settlement conference statement and to be present for the settlement discussions.

OIG Case No. 22-0045355-DM

On September 30, 2022, an off-duty officer allegedly slapped his wife's face, causing a red mark, and threw his pants and belt at his stepdaughter, hitting her arm. The officer lied to outside law enforcement when he denied touching anyone and improperly stored five firearms in his residence, four of which were loaded with ammunition. On March 23, 2023, the officer lied during his interview with the Office of Internal Affairs.

Although policy requires conducting the investigative and disciplinary findings conference within 14 days after the Office of Internal Affairs completes its investigation and refers the matter to the hiring authority, the department attorney was not prepared, which caused a delay in conducting the investigative and disciplinary findings conference until 94 days after the referral and 80 days after policy required. At the investigative and disciplinary findings conference, the hiring authority sustained the allegations, except that the officer threw his pants and belt at his stepdaughter and dismissed the officer. The OIG concurred.

The department attorney did not provide a draft disciplinary action to the hiring authority until 81 days after the decision to dismiss the officer, and the department served the dismissal action seven days later and 58 days after policy required. The officer filed an appeal with the State Personnel Board. However, pursuant to a settlement agreement, the officer resigned in lieu of dismissal and agreed to never seek employment with the department in the future. The OIG concurred with the settlement. The department attorney's delay prevented the department from conducting the investigative and disciplinary findings conference and serving the disciplinary action within required time frames. As a result, the department unnecessarily paid the officer's salary while the matter languished pending the officer's dismissal.

Inappropriate Recommendations to the Hiring Authority

In addition to delaying the disciplinary process, we found that department attorneys sometimes did not provide appropriate recommendations or legal advice to hiring authorities during investigative and disciplinary findings conferences or when settling cases. Hiring authorities depend on department attorneys to counsel them about crucial disciplinary decisions concerning employees who work under them. Nevertheless, there were 20 cases in which department attorneys made inappropriate recommendations during investigative and disciplinary findings conferences and nine cases in which department attorneys made inadequate recommendations regarding settlement proposals. This is double the number of such cases as in the last reporting period. Below are three examples:

OIG Case No. 24-0074492-DM

On September 3, 2022, an officer allegedly fell asleep while on duty and failed to maintain direct and constant supervision of an incarcerated person on suicide watch. The officer falsely documented that he checked on the incarcerated person when he did not. A second officer failed to report that the first officer was sleeping. The hiring authority sustained the allegations, dismissed the first officer, and issued a letter of reprimand to the second officer. The OIG concurred.

After a *Skelly* hearing, the department entered into a settlement agreement with the first officer reducing the penalty from a dismissal to a 10 percent salary reduction for 45 months. The OIG did not concur with the settlement. We found the department attorney's performance was insufficient because at the investigative and disciplinary findings conference, the department attorney recommended not sustaining the dishonesty allegation against the first officer despite the officer admitting to the Office of Internal Affairs he falsified his observations of the incarcerated person. The department attorney also recommended that the hiring authority enter into a settlement agreement with the first officer without sufficient justification.

OIG Case No. 23-0053007-DM

On March 10, 2023, a sergeant allegedly failed to ensure yard officers under his supervision monitored an exercise yard which resulted in an incarcerated person lying motionless and undetected after a fatal attack by a second incarcerated person, and six officers failing to monitor the exercise yard. The sergeant and six officers failed to observe the attack on the incarcerated person by a second incarcerated person. The sergeant, three of the six officers, and two additional officers failed to immediately perform life-saving measures on the incarcerated person. Two officers, and a ninth officer failed to immediately activate personal alarm devices. Two of the officers failed to sign their post orders.

The hiring authority sustained the allegations that the sergeant and the first, second, third, fourth, sixth, and a seventh officer failed to monitor the exercise yard which resulted in an incarcerated person lying motionless and undetected after a fatal attack by a second incarcerated person and the second and third officers failed to sign their post orders, and not the remaining allegations. The hiring authority imposed the following:

- a 5 percent salary reduction for 36 months for the sergeant,
- a 5 percent salary reduction for 12 months for the first officer,
- a 10 percent salary reduction for 12 months for the second officer,
- a 5 percent salary reduction for six months for the third officer,
- a 10 percent salary reduction for 12 months for the fourth officer,
- a 5 percent salary reduction for six months for the sixth officer, and
- a 5 percent salary reduction for six months for the seventh officer.

The OIG concurred with the findings on the allegations but did not concur regarding the penalties.

The sergeant and the officers filed appeals with the State Personnel Board. Prior to the State Personnel Board hearing, the department entered into settlements reducing the penalties as follows:

- a 5 percent salary reduction for 25 months for the sergeant
- a 5 percent salary reduction for nine months for the first officer
- a 10 percent salary reduction for 10 months for the second officer
- a 5 percent salary reduction for three months for the third officer
- a 10 percent salary reduction for eight months for the fourth officer
- a 5 percent salary reduction for three months for the sixth officer, and
- a 5 percent salary reduction for three months for the seventh officer.

The OIG did not concur with the settlements.

The department attorney's performance was insufficient because the department attorney should have recommended the hiring authority impose proper penalties and should not have recommended settlement agreements reducing the penalties. The OIG determined that officers intentionally failed to properly monitor the incarcerated people by gathering near a gymnasium to avoid rain. Therefore, the motionless incarcerated person remained undetected on the ground for 36 minutes after the fatal attack. Had the department attorney provided appropriate advice, the hiring authority may have imposed an appropriate penalty. The department also delayed serving the disciplinary actions.

OIG Case No. 23-0054317-DM

On January 30, 2023, an administrator allegedly showed a subordinate employee a video containing racial slurs and other inappropriate language on his State-issued mobile phone.

The hiring authority sustained the allegations that the administrator misused a State-issued mobile phone, but not the remaining allegation, and issued a letter of instruction. The OIG did not concur with the hiring authority's decisions because the hiring authority did not sustain all allegations supported by the evidence, in particular, an allegation the administrator used his phone to show an office technician an offensive video.

The department attorney's performance was insufficient because the department attorney failed to make appropriate recommendations to the hiring authority during the investigative and disciplinary findings conference. The department attorney failed to recommend that all allegations be sustained, that the hiring authority add and sustain a dishonesty allegation, and that the appropriate penalty was dismissal. The

administrator admitted to the Office of Internal Affairs that he used his State-issued mobile phone and accepted responsibility for what was found on the phone. However, the administrator had no plausible explanation why other offensive content was on the phone and denied showing the offensive video. In addition, the office technician stated that the administrator showed the offensive video, which was partially corroborated by another witness. Nevertheless, the department attorney advised against sustaining the allegations on the grounds that the department could not meet its burden of proof.

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

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

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

It is critical that department attorneys immediately assess the statute of limitations and any tolling exceptions so that they can provide appropriate advice to special agents about the amount of time they have to complete their investigations. However, despite the critical nature of this assessment, department attorneys failed to make entries, or failed to make timely entries, into the case management system that included this analysis in 17 cases we monitored. In the last reporting period, we found 15 cases that lacked sufficient or timely entries, indicating there is still room for improvement.

In seven of the 17 cases, the assessment was late, and in 10 of the 17 cases, the assessment was not entered at all. Delayed or absent entries also sometimes accompany other deficiencies.

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

One of the more frequent criticisms of EAPT in this reporting period occurred at the inception of the disciplinary process. Department attorneys are tasked with reviewing cases referred by hiring authorities to the Office of Internal Affairs' Central Intake Unit. The Central Intake Unit makes decisions about which cases will be opened and the allegations and the subjects that will be approved. As such, it behooves department attorneys to identify issues that shape the scope of the investigation, to be prepared for the Central Intake Panel meeting, and to identify appropriate subjects and allegations. We found 13 instances in this reporting period in which department attorneys did not make appropriate recommendations during this process. The following two cases are examples.

OIG Case No. 24-0071902-DM

On November 7, 2023, an officer allegedly put his hands in his wife's face, pinned his wife to the couch, and pulled her hair. The hiring authority found insufficient evidence to sustain the allegation. The OIG did not concur but did not seek a higher level of review.

We rated the department attorney's performance as *insufficient* because the department attorney failed to recommend that the Office of Internal Affairs' Central Intake Panel approve an administrative investigation to interview the officer's wife to obtain a statement from her. The Office of Internal Affairs only approved an interview of the officer. At the investigative and disciplinary findings conference, the department attorney failed to recommend the hiring authority sustain the allegation that the officer physically assaulted his wife. Although the Office of Internal Affairs did not approve an interview of the wife, a district attorney filed criminal charges against the officer because of the incident, even though criminal cases have a higher burden of proof.

OIG Case No. 23-0050985-DM

In another case, two officers allegedly failed to conduct security checks on incarcerated people, and falsely documented doing so. The first officer, and a third officer, failed to conduct security checks. The first officer falsely documented that the checks had been conducted. On another date the first officer and the second officer allegedly failed to conduct checks and falsely documented doing so.

We found the department attorney's performance to be insufficient because the department attorney failed to recommend that the Office of Internal Affairs approve allegations that the third officer did not conduct security checks. The Office of Internal Affairs approved the allegation after the OIG recommended doing so. That was not the only deficiency we noted. We also found that the department attorney miscalculated the deadline for taking disciplinary action as 57 days after the deadline expired, failed to provide the OIG with a meaningful opportunity to review the draft prehearing settlement conference statements, and failed to provide the OIG with an opportunity to review responses to the officers' discovery requests and the settlement agreements.

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

In general, we found that EAPT continued to perform well in cases in which a settlement agreement was not reached, and when a department attorney had to litigate the case before an administrative law judge at the State Personnel Board. During this reporting period, we monitored 15 cases that had been submitted to the State Personnel Board for a decision after a full evidentiary hearing had taken place, which is three more than the number of cases in the last reporting period. Of those 15, the State Personnel Board either modified the penalty or did not uphold all allegations in six cases. Department attorneys were able to secure dismissals in eight of 11 dismissal cases taken to hearing.

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Critical Incidents

The OIG also assesses the department’s response to critical incidents such as uses of deadly force, unexpected deaths, and hunger strikes. In the six-month reporting period of January through June 2024, the following types of critical incidents, set forth in the table below, required OIG notification.

Figure 3. The OIG’s Criteria for Responding to Critical Incidents During the Reporting Period From January Through July 2024

- Any staff member’s use of deadly force (i.e., any use of force that is likely to result in death, including any discharge of a firearm, including warning shots and unintended discharges) or if an incarcerated person is struck in the head with a baton or impact munitions regardless of the extent of injury.
- Death of an incarcerated person or any serious injury to an incarcerated person that creates a substantial risk of death or results in a loss of consciousness, concussion, or protracted loss or impairment of function of any bodily member or organ. (Note: The OIG does not require that the department report to our office incarcerated person injuries—apart from death—resulting from or connected with incarcerated people engaging in athletic activities.)
- Death or great bodily injury to any departmental staff member if the death or injury occurs in the performance of his or her duties or if the death or great bodily injury has a connection to his or her duties.
- Suicide by any individual in the legal custody or physical control of the department.
- All allegations of sexual misconduct or sexual harassment an individual in the legal custody or physical control of the department makes against a departmental staff member.
- Any time the department places or extends an incarcerated person on, or removes from, contraband surveillance watch, or any time the department transports an incarcerated person who is on contraband surveillance watch to an outside hospital.
- Any riot or disturbance within a prison that requires assistance from multiple facilities or yards or from anyone designated as a “Code 3” responder or any riot or disturbance within a prison that requires the assistance of off-duty staff, neighboring prisons, or mutual aid.
- Any time the department determines an incarcerated person to be on hunger strike, any time an incarcerated person concludes a hunger strike, or any time the department transports an incarcerated person on hunger strike to an outside hospital.
- Incidents of notoriety or significant interest to the public, including incarcerated-person escapes.
- Any other significant incident identified as such by the Inspector General or the Chief Deputy Inspector General.

Source: The Office of the Inspector General.

The OIG does not monitor every critical incident the department reports to us, but we do monitor serious incidents that are more likely to give rise to allegations of misconduct. The OIG reviews critical incidents by evaluating potential causes, assessing the department's response, and determining whether the incidents involved potential employee misconduct. The OIG may recommend that a hiring authority refer allegations from the incidents to the Office of Internal Affairs for investigation. If a hiring authority identifies potential misconduct and refers the matter to the Office of Internal Affairs, the OIG typically monitors the case.

During the current reporting period, the OIG monitored and closed 100 critical incident cases. Hiring authorities identified potential employee misconduct in 26 cases and made referrals to the Office of Internal Affairs in 18 of them but imposed corrective action, such as a letter of instruction or on-the-job training, in only seven. In one case, the hiring authority initially identified potential misconduct but failed to timely preserve surveillance video. Therefore, no referral was made. Six of the 18 incidents referred to the Office of Internal Affairs involved head strikes and another five involved overdoses. The other incidents included two suicides, one natural death, one instance of an incarcerated person suffering serious or great bodily injury, one warning shot, one fatal vehicle collision, and one premature release of an incarcerated person.

Of the 100 critical incidents we monitored, the OIG identified significant deficiencies that occurred during the critical incident in 16 cases and significant deficiencies that occurred after the critical incident in 20 cases. In 14 cases, we found that the department did not adequately consult with the OIG regarding the critical incident. In another 14 cases, the department did not follow the recommendations of the OIG.

One noteworthy incident we monitored occurred in March 2023 (OIG Case № 23-051199-CI). An officer responded to a call for assistance from an incarcerated person in a double cell and activated an alarm. A second officer and a nurse started life-saving measures on the second incarcerated person and the outside emergency medical response number was called. A sergeant administered two doses of an opiate antidote, and the incarcerated person was transported to the triage and treatment area, where life-saving measures were continued until an outside physician declared the incarcerated person dead.

The coroner determined the cause of death was a combined toxic effect of multiple drugs and the manner of death was accidental. The department's Mortality Review Committee determined the cause of death was cardiac arrhythmia and atherosclerotic disease and the manner of death was unexpected and natural. The department's Mortality Review Committee found medical staff insufficiently documented the time line of the incident and found medical staff failed to give the appropriate doses of an opioid antidote and provided training. The custody hiring

authority did not identify any potential staff misconduct. The OIG identified that the incarcerated person suffered an initial overdose the day before his death and the department failed to investigate both the first overdose incident, which may have prevented the incarcerated person's death, but also the circumstances surrounding the incarcerated person's second overdose and death. In addition, the OIG identified discrepancies regarding the time line for events and lack of adequate reports. The OIG recommended the hiring authority refer the matter for investigation. The hiring authority disagreed and only provided training to a lieutenant.

We rated the department's handling of the case *insufficient*. Firstly, the incarcerated person was transported to an outside hospital for treatment because the incarcerated person overdosed on a drug. After the overdose, officers failed to initiate an investigation and failed to search the incarcerated person's cell to locate any contraband items related to the overdose. The incarcerated person was treated at the outside hospital for the first overdose and the department returned the incarcerated person to the same cell officers failed to search for evidence related to the overdose. The incarcerated person then overdosed on drugs again and died as a result. The department may have prevented the overdose death had officers initiated an investigation into the incident and searched the incarcerated person's cell after the incarcerated person's first overdose. Secondly, the department failed to retain and review the incident video footage which could have assisted in any investigation, in violation of their video retention policy, which requires retention of video footage whenever a death occurs.

In addition, we found that officers and nurses failed to accurately document the time line of events after the incarcerated person was found to be unresponsive. The incident report and other case records inconsistently identified the time officers called for the medical emergency with a discrepancy of 11 minutes. Depending on actual the time of discovery, the call to initiate emergency medical services may have been substantially delayed.

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The OIG Makes Recommendations in Several Ways

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

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

The OIG Recommends That the Hiring Authority and Department Attorney Work Together to Ensure That Investigative and Disciplinary Findings Conferences Are Held Without Undue Delay

In this reporting period, the OIG found that the department's hiring authorities unduly delayed the investigative and disciplinary process in 111 cases. In, 93 of those cases, the hiring authority unduly delayed conducting the investigative and disciplinary findings conference. Once the Office of Internal Affairs refers a case back to the hiring authority review, the hiring authority is responsible for determining whether sufficient evidence supports the misconduct allegations and if so, the appropriate penalty. This decision is made at the investigative and disciplinary findings conference.

Departmental policy requires the hiring authority to review evidence, including any investigative reports and exhibits, within 14 calendar days of receipt from the Office of Internal Affairs. In those cases in which a department attorney and an OIG monitor are assigned to a case, the department attorney and OIG monitor are to be consulted within 14 days. The Department Operations Manual, Section 33030.13, states that

as soon as operationally possible, but no more than fourteen (14) calendar days following receipt of the final investigative report, the Hiring Authority shall review the investigative report and supporting documentation . . . consult with the Vertical Advocate . . . and the SAIG, for all cases monitored by the [OIG].

Investigative and disciplinary findings should be expeditiously handled. It is imperative that hiring authorities review investigative reports and evidence without undue delay and promptly make findings regarding allegations of staff misconduct. The department's policy ensures timely resolution of circumstances that surely weigh heavily on the minds of staff members under investigation. Office of Internal Affairs investigations can often take several months to complete, during which time the staff member alleged to have engaged in misconduct is left in suspense, wondering what the outcome will be—a situation that can negatively impact morale, especially for those who are ultimately cleared of wrongdoing. In addition, delays in the process can result in undue pressure on the department attorney who may be called upon to prepare a disciplinary action that must be served before the deadline to take disciplinary action expires, which for peace officers is generally one year.

In this reporting period, the OIG found that in 25 cases, the investigative and disciplinary findings conference was delayed at least 60 days beyond the 14-day policy requirement and in four cases, the investigative and

disciplinary findings conference was delayed more than 200 days—more than six months.

We have often found that the investigative and disciplinary findings conferences are not coordinated and scheduled until the OIG initiates discussions to schedule the conference. In one case (OIG No. 23-0054797-DM), the investigative and disciplinary findings conference was not completed until 105 days after policy required and the conference was only scheduled when the OIG contacted the hiring authority and the department attorney to request scheduling. By then, 87 days had passed since the Office of Internal Affairs submitted its report to the hiring authority. In a second case (OIG No. 22-0043595-DM), the Office of Internal Affairs referred an investigative report involving an alleged negligent discharge of a firearm to the hiring authority. Once again, after 35 days had passed since the referral, it fell to the OIG to contact the hiring authority and department attorney to request scheduling a conference because no action had been taken. In yet another case (OIG No. 23-0054793-DM), the investigative and disciplinary findings conference was not completed until 67 days after policy required. The conference was not scheduled until after the OIG monitor raised the issue 49 days after the investigative report was provided to the hiring authority.

In each of the above three examples, department attorneys had been assigned to advise hiring authorities and shepherd cases through the investigative and disciplinary phases. The department's policies place the burden on the hiring authority to complete timely investigative and disciplinary findings conferences. However, because the department attorney's work is substantially impacted by the results of the conference, the OIG recommends that department attorneys work collaboratively with hiring authorities to ensure investigative and disciplinary findings conferences are promptly coordinated and completed. The OIG has found that in most cases, simply following up with the hiring authority and initiating discussions to coordinate the investigative and disciplinary findings conference can significantly contribute towards securing a punctual conference.

While some department attorneys are proactive in initiating discussions for the coordination of the investigative and disciplinary findings conference, not all department attorneys have been so diligent. In one case (OIG No. 23-0063998-DM), the investigative and disciplinary findings conference was not completed until 106 days after policy required. The hiring authority did not schedule the conference until after the department attorney suggested doing so, 70 days after the investigative report was provided to the hiring authority. While the department attorney was more proactive than the hiring authority, the conference was still conducted just three days before the deadline to take disciplinary action expired.

The OIG recommends that when a hiring authority fails to timely schedule the investigative and disciplinary findings conference, as the 14-day policy requirement deadline approaches, department attorneys should proactively contact the hiring authority and the OIG to recommend scheduling. If the department attorneys communicate earlier and more often, significant delays and their attendant problems may be avoided. To that end, the OIG also recommends that the department establish policies or guidelines requiring department attorneys to contact stakeholders to ensure that these conferences are completed within the time frames set by policy and without undue delay.

The OIG Recommends That the Department Extend Its Body-Worn-Camera Video Retention Policy to Secure Important Evidence

The OIG has noticed a concerning trend of hiring authorities failing to include all relevant video evidence when referring matters to the Office of Internal Affairs. As previously mentioned in this report, failure to secure video evidence before investigations begin can hinder the thoroughness of an investigation and can negatively impact investigative and disciplinary determinations.

In 2021, the department implemented the Body-Worn Camera (BWC) Technology Expansion program. The purpose of the BWC technology expansion was to enhance public safety and facility security by providing the ability to utilize audio or video recording technology to conduct investigations and after-the-fact reviews. BWC technology was intended to assist staff in completing use-of-force reviews, decrease staff allegations of excessive or unnecessary force, and help to identify nefarious incarcerated person activities.⁴

The department's policy states the following:

All audio or video footage shall be retained for a minimum of 90 days. All audio or video footage depicting staffs' use of force shall be retained for a longer period of time.⁵

The following events shall require the recorded data to be preserved for a longer period of time as potential evidence in an investigation, or an administrative, civil, or criminal proceeding:

- Any use of force incident
- Riots
- Suspected felonious criminal activity
- Any incident resulting in serious bodily injury, great bodily injury, and all deaths
- All PREA allegations
- Allegations of inmate misconduct (i.e., serious rules violation reports by staff)

4. Memo: Implementation Plan for the Body-Worn Camera Technology Expansion. Initially implemented at the Richard J. Donovan Correctional Facility; California Institution for Women; California State Prison, Corcoran; Kern Valley State Prison; California State Prison, Los Angeles County; and Substance Abuse Treatment Facility and State Prison, Corcoran.

5. The current policy does not specify any time period beyond the 90 days.

- Allegations of staff misconduct by an [incarcerated person], employee, visitor, or other person
- Incidents that may potentially be referred to the District Attorney's office
- An employee report to supervisor of on-the-job injury
- [Incarcerated person] claims with the Department of General Services, Office of Risk and Insurance Management, Government Claims program

In this reporting period, the OIG found that when hiring authorities referred matters to the Office of Internal Affairs for an investigation, there was a pattern in which body-worn-camera video footage or audio-video surveillance system (AVSS) video footage was not properly retained per policy, or the cases did not include body-worn-camera footage of involved staff. Sometimes, after the matter was referred to the Office of Internal Affairs for investigation, the special agent assigned to investigate the matter determined that additional video footage was possibly missing. However, due to the passage of time and the retention policy, the video footage was no longer available. Below are some examples of this phenomenon from this reporting period. These are not isolated instances of the department's failure to retain body-worn-camera footage and AVSS video footage. We have previously identified similar concerns in other reports.⁶

OIG Case No. 23-0052239-DM

An incarcerated person submitted an allegation of staff misconduct alleging that an officer provided false information in a rules violation report by documenting that the incarcerated person had punched the officer with a closed fist. A second officer lied to the incarcerated person to induce him to waive his rights to review video evidence of the incident. Additionally, a lieutenant provided false information in the rules violation report log by documenting there was no video evidence of the incident and failed to review video evidence during the rules violation hearing.

The Allegation Inquiry Management Section took 287 days to complete their inquiry before the matter was referred to the Office of Internal Affairs for an investigation.⁷ The Office of Internal Affairs' Allegation Inquiry Management Section lieutenant failed to request body-worn-camera footage that could have proved or disproved the allegations against the second officer. Five days after the special agent was assigned, he requested the additional body-worn-camera footage for the second officer, but the investigative services unit advised that the video footage

6. See Monitoring of the Staff Misconduct Investigation and Review Process, 2023 Annual Report.

7. Referred to AIMS on April 27, 2022, and report completed on February 8, 2023.

was no longer available because it was past the 90-day retention period.⁸ As a result of not having the body-worn-camera footage, the hiring authority determined there was insufficient evidence to sustain the allegations against the second officer.

In this case, the video footage was not retained beyond 90-days per policy; however, due to the nature of the allegations, the body-worn-camera footage should have been retained for a longer period of time because the case involved allegations of incarcerated person misconduct and an allegation of staff misconduct.

OIG Case No. 23-0064002-DM

An incarcerated person submitted an allegation of staff misconduct alleging that an officer used unnecessary and excessive force on him. The officer allegedly applied pressure to the incarcerated person's wrist and put him on the ground when there was no imminent threat and failed to report it. The officer also brought a personal mobile phone into the secured perimeter and improperly deactivated his body-worn camera. Three additional officers failed to report observing the first officer's use of force and improperly deactivated their body-worn cameras.

The hiring authority did not attach all relevant body-worn-camera video footage with the referral to the Office of the Internal Affairs. The Office of Internal Affairs' Allegation Inquiry Management Section obtained AVSS and body-worn-camera footage for the officer who used force but not the other officers who allegedly observed the force. However, because this case involved an allegation of staff misconduct and unnecessary use of force, the department should have retained all the video footage beyond the 90-day retention policy. As a result, the video footage for the three additional officers was destroyed.

OIG Case No. 23-0057677-DM

Two officers were ordered to escort an incarcerated person from a program office back to his assigned housing unit after a sergeant had interviewed the incarcerated person for alleged safety concerns and determined that the incarcerated person's housing concerns were without merit. During the escort, the two escorting officers, and four additional officers, allegedly heard the incarcerated person say that he had safety concerns and if the officers forced him back into his regular housing unit, an immediate fight would ensue with his cellmate. The officers ignored the incarcerated person's concerns, placed him back into his cell, and an immediate fight ensued.

8. Once the retention period has expired, the department destroys the existing video.

In this case, when the hiring authority submitted a request to the Office of Internal Affairs for an investigation, the hiring authority did not attach body-worn-camera video footage for three of the six officers involved. The Office of Internal Affairs' Central Intake Unit special agent reviewing the matter for approval requested further body-worn-camera footage for the two officers conducting the escort and a third officer who documented in his report he assisted in the escort. Fortunately, this request was made prior to the expiration of the 90-day retention period.

OIG Case No. 23-0059434-DM

An officer allegedly used unnecessary force on an incarcerated person by slamming the incarcerated person to the floor from his position on a gurney when there was no imminent threat or need to remove the incarcerated person from the gurney and made false statements in the report that he was taking actions to assist the incarcerated person to be placed into a seated position when that was not the case.

The hiring authority did not provide the body-worn-camera footage of the officer accused of misconduct. Instead, the only body-worn-camera footage sent with the request to the Office of Internal Affairs was from one of the witness officers. The special agent assigned to the investigation requested and received the body-worn-camera footage of the officer accused of the misconduct and additional relevant body-worn-camera footage from additional officers who were witnesses.

The OIG recommends that the department modify its policy and extend body-worn-camera and AVSS-camera video retention from 90 days to one year to safeguard all potentially relevant video-recorded evidence to assist in the investigation and findings in disciplinary cases because 90 days is not enough time given department time frames for referring misconduct and initiating investigations.⁹

9. To illustrate the problem, consider the following scenario that would not violate current department policy: if a hiring authority refers a matter on the 45th day after discovery of the misconduct, the Office of Internal Affairs' Central Intake Panel approves an investigation on the 30th day after the hiring authority's referral, and a special agent is assigned on the 10th day after the case is approved for investigation, that would leave the assigned special agent just five days to request any additional video footage before its destruction.

Recommendations

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

- We recommend that the department establish policies or guidelines requiring department attorneys to contact stakeholders to ensure that investigative and disciplinary findings conferences are completed within the time frames set by policy and without undue delay.
- We recommend that the department extend its body-worn-camera video retention policy to secure important evidence.

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

*Semiannual Report
January–June 2024*

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STATE *of* CALIFORNIA
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OIG