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OIG | OFFICE *of the* INSPECTOR GENERAL

Independent Prison Oversight

April 2024

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

*Semiannual Report
July–December 2023*



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April 16, 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 38th 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 July 1, 2023, through December 31, 2023.

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

We rated each entity *sufficient*, *sufficient with recommendations*, or *insufficient*. Overall, the department performed sufficiently in 25 percent of cases (49 of 197) and sufficiently with recommendations in 45 percent of the cases (89 of 197) we monitored. The department performed insufficiently in 30 percent of cases (59 of 197) we monitored. Of the 197 cases we monitored and closed, we rated 49 cases *sufficient*, 89 *sufficient with recommendations*, and 59 *insufficient*. Hiring authorities failed to conduct an inquiry into alleged misconduct and refer matters to the Office of Internal Affairs without undue delay in 32 percent of cases (63 of 197) and timely referred matters in 68 percent of cases (134 of 197). We found hiring authorities' overall performance to be either *sufficient* or *sufficient with recommendations* in 78 percent of cases (84 *sufficient* and 70 *sufficient with recommendations* of 197). In this 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. We found the Office



of Internal Affairs' performance in investigating criminal allegations of misconduct to be *insufficient* or *sufficient with recommendations* in 11 of 24 criminal investigations during this reporting period.

We assigned the department's Employment Advocacy and Prosecution Team (EAPT) a *sufficient* rating in 126 cases, a *sufficient with recommendations* rating in 41 cases, and an *insufficient* rating in 30 cases. The single most common criticism of department attorneys was failure to handle the disciplinary process without undue delay (37 cases). We identified 19 cases in which department attorneys provided inadequate recommendations to hiring authorities. During this reporting period, we monitored 12 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 12, the State Personnel Board modified the penalty in five cases. Department attorneys were able to secure dismissals in five of the seven dismissal cases taken to hearing.

During this reporting period, administrative misconduct was alleged in 173 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 24 cases involved alleged criminal misconduct. No 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,



Amarik K. Singh
Inspector General

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LADY JUSTICE

The Inspector General

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

(California Penal Code section 6126(a))

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

(California Penal Code section 6133(a))

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

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

— State of California
Excerpted from Penal Code sections

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 or approve an interview of the employee accused of misconduct, 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.

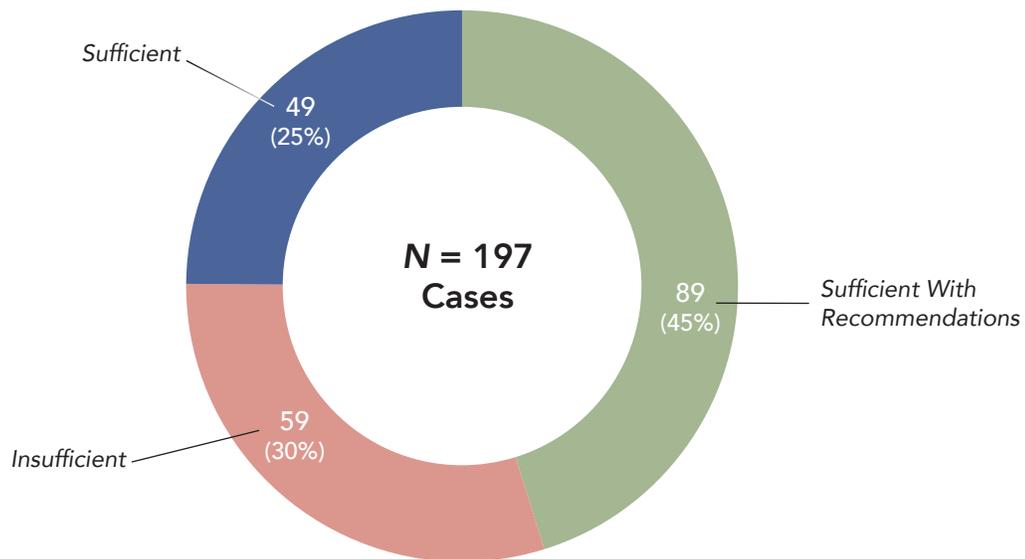
In general, a *sufficient* rating means that the OIG did not identify any significant deficiencies. A *sufficient with recommendations* rating means that the OIG found significant deficiencies, but the deficiencies did not appear to cause a negative outcome for the department or for the cases. An *insufficient* 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, 173 involved administrative allegations, and 24 involved criminal allegations. We rated 25 percent of the cases (49 cases) *sufficient*, 45 percent (89 cases) *sufficient with recommendations*, and 30 percent (59 cases) *insufficient*. This means approximately seven of 10 cases were not *insufficient*. On the other hand, it also means about three of four cases had significant deficiencies.

Figure 1. Ratings for Cases the OIG Monitored During the Period From July 1, 2023, Through December 31, 2023



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

The Hiring Authority

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

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

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

The hiring authority is required to review each case and conduct initial inquiries to ensure that enough information exists to determine whether there is a reasonable belief that the alleged misconduct occurred. *Staff misconduct* 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.

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

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

From July through December 2023, we found that hiring authorities failed to conduct an inquiry into alleged misconduct and refer matters to the Office of Internal Affairs without undue delay in 32 percent of cases

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*.

(63 cases), and timely referred matters in 68 percent of cases (134 cases). This was a noticeable decline from the last reporting period, when we found that hiring authorities timely referred allegations in 74 percent of cases. Hiring authorities continued a pattern of referring allegations late in almost one of every three cases. Of the 59 cases we rated *insufficient*, 22 involved untimely referrals of allegations. The following three case examples demonstrate this issue:

OIG Case No. 22-044064-CM

A lieutenant allegedly engaged in sexual acts with five incarcerated people. The department was informed of the lieutenant's behavior as early as March 2, 2019, when the prison's investigative services unit interviewed an incarcerated person who alleged the lieutenant had requested that she orally copulate him. However, the prison determined the allegation to be unsubstantiated. The prison conducted an interview with a second incarcerated person on May 10, 2021, who alleged that she had orally copulated the lieutenant. Again, the prison determined the allegation to be unsubstantiated. During the time between these two allegations, the officer allegedly had sexual encounters with two additional incarcerated people. The hiring authority did not refer the allegations of sexual misconduct to the Office of Internal Affairs until July 11, 2022, more than three years after the first allegation and more than one year after the second allegation.

The matter was referred five days after a fifth formerly incarcerated person published similar allegations on the internet. The formerly incarcerated person appeared in a social media video in which she alleged the lieutenant had touched her buttocks and exposed his penis to her. The video was brought to the investigative services unit's attention. Although the formerly incarcerated person's allegation was no more "substantiated" than those of the other incarcerated people because it was not supported by physical evidence or corroborating witnesses, the department finally recognized a pattern of allegations and referred the matter to the Office of Internal Affairs.

OIG Case No. 23-0058539-CM

On February 9, 2021, an officer had temporary custody of a patient from the Department of State Hospitals while the patient had been staying at an outside hospital. The officer allegedly exposed his genitals to the patient. On July 15, 2021, the officer squeezed a second patient's breasts and used her hand to stroke his genitals. On February 8, 2023, the officer squeezed a third patient's breasts and kissed her lips. The department first learned of the alleged misconduct on February 10, 2021, the day after the first alleged incident, when a sergeant interviewed one of the patients who alleged that the officer had exposed his penis to her. The sergeant provided the information to the prison's watch commander and the hospital's police department for further investigation. Meanwhile,

the officer remained employed by the department and continued working among patients. More than two years later, the prison's investigative services unit received three police reports on March 13, 2023, that contained the allegations of sexual misconduct. The hiring authority did not refer the matter to the Office of Internal Affairs until June 8, 2023, 848 days after the matter was discovered and 803 days after policy requires. Because of this delay, the deadline to file misdemeanor charges had passed.

OIG Case No. 23-0050586-DM

Between April 19, 2022, and April 21, 2022, a chief executive officer allegedly directed that a health program manager report her whereabouts while on duty in retaliation for a discrimination complaint she had filed against the chief support executive. The chief executive officer also ordered a lieutenant to review prison video surveillance and provide a report of the health program manager's whereabouts, in retaliation for the discrimination complaint she had filed against the chief executive officer. Although she learned of the alleged misconduct on April 21, 2022, the hiring authority did not refer the matter to the Office of Internal Affairs until February 9, 2023, 294 days thereafter and 249 days after policy required.

The Allegation Inquiry Management Section and Departmental Hiring Authorities Significantly Delayed Processing 16 Cases, Which Caused the Statute of Limitations to Expire Prior to or While the Central Intake Panel Was Processing the Cases

In this reporting period, we continue to observe a trend of cases being referred to the Office of Internal Affairs after the statute of limitations had expired. State law limits the time in which an employer can initiate a disciplinary action against an employee. Government Code section 19635 provides, in part, that no adverse action shall be valid against any State employee for any cause for discipline based on any civil service law unless a notice of the adverse action is served within three years of the cause for discipline upon which the notice is based. The time frame narrows for employees who are peace officers. In general, in those cases, Government Code section 3304(d) provides that no disciplinary action shall be undertaken against a peace officer for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the agency's discovery by a person authorized to initiate an investigation of the allegation.

In the last reporting period, we identified 37 cases in which hiring authorities identified allegations before the deadline to take disciplinary action expired but referred them to the Office of Internal Affairs' Central Intake Panel after the statute of limitations period had expired or was rapidly approaching expiration. In this reporting period, that number has significantly decreased to 18, less than half. However, in 16 cases,

the time in which the deadline to serve disciplinary actions had already passed. In two cases, the limitations period was still set to expire in fewer than 30 days. The OIG observed that, once again, delays in referrals to the Central Intake Panel were most often caused by delays from the Office of Internal Affairs' Allegation Inquiry Management Section in reviewing or investigating matters before referring them back to the hiring authority. Of the 16 cases that were referred after the deadline had passed for at least one allegation, the Allegation Inquiry Management Section had conducted an inquiry in 14 of them. While the shortest inquiry conducted of those 14 lasted 78 days, nine of the inquiries took at least 300 days to complete. The hiring authority, in turn, often delayed referring the case after receiving the report from the Allegation Inquiry Management Section. In all but two of the 14 cases with inquiries referenced above, the hiring authority took at least a month after the completion of the inquiry to refer the allegations to the Office of Internal Affairs. While the department must conduct inquiries with greater urgency, hiring authorities should also implement safeguards to ensure that they are able to refer allegations of misconduct as soon as possible to preserve their ability to impose discipline when appropriate.

The department has recently changed how it processes allegations of staff misconduct that involve incarcerated people and parolees. The department has transferred review of such allegations from the prisons and parole offices to a Centralized Screening Team, which is part of the Office of Internal Affairs. The department recognized that there was a backlog of serious allegations of staff misconduct. As a result, the department redirected Allegation Inquiry Management Section caseloads, effective August 20, 2023, to the Centralized Screening Team.

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

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

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

We found hiring authorities' overall performance to be either *sufficient* or *sufficient with recommendations* in 154 of 197 cases, or 78 percent of cases. Compared with the last reporting period, hiring authorities' overall performance was either *sufficient* or *sufficient with recommendations* in 158 of 192 cases, or 82 percent of cases. As explained below, delays in making disciplinary decisions are a recurring deficiency in hiring authority performance.

Hiring Authorities Frequently Held Untimely Investigative and Disciplinary Findings Conferences

Departmental policy requires that the hiring authority conduct the investigative and disciplinary findings conference no more than 14 calendar days after receipt of the final investigative report.¹ 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. 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.²

In this reporting period, hiring authorities failed to handle the investigative and disciplinary process without undue delay in 99 of 173 administrative cases, which is more than half. One of the most common types of delay 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. 21-0041776-DM

On November 6, 2021, an off-duty officer allegedly drove his personal vehicle while under the influence of alcohol, with two minor children and another adult in the vehicle. The officer allegedly crashed into another vehicle causing injuries to himself and multiple other people, which led to his arrest by outside law enforcement. The Office of Internal Affairs referred the matter to the hiring authority to take action on December 22, 2021. However, the hiring authority delayed conducting the investigative and disciplinary findings conference until October 31, 2022, 313 days after the referral and 299 days after departmental policy required. The department had decided to wait for the officer's criminal case, which involved felony charges, to resolve before making a decision. However, the hiring authority ultimately sustained the allegations and decided to dismiss the officer. However, the officer filed an appeal with the State Personnel Board and, prior to the hearing, the department entered into a settlement agreement with the officer allowing him to resign in lieu of dismissal. At the time of the settlement, the officer's criminal case was still pending, which demonstrates the futility of the delay.

OIG Case No. 22-0045359-DM

On July 7, 2022, an officer allegedly failed to ensure that her body-worn camera was on during her entire shift and failed to comply with the department's body-worn camera policy. The Office of Internal Affairs referred the matter to the hiring authority on November 2, 2022, to consider taking disciplinary action against the officer without an investigation. However, the hiring authority delayed conducting the investigative and disciplinary findings conference until September 5, 2023, 302 days later and 291 days after policy required. The investigative and disciplinary findings conference was held with only 14 days remaining before the deadline to impose discipline. If the hiring authority needed additional information that could only be obtained

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

through an investigation, there would likely not have been enough time to obtain it. In addition, although the OIG agreed with the hiring authority's decisions regarding the allegations and penalty imposed, the hiring authority wanted to impose discipline consistent with the previous hiring authority because she was not familiar with department's disciplinary guidelines. Therefore, the OIG provided the hiring authority with portions of the department's policy for reference.

OIG Case No. 22-0044572-DM

On August 19, 2022, an officer allegedly disabled an ex-girlfriend's vehicle, forcibly took her purse, drove while under the influence of alcohol, trespassed in the ex-girlfriend's home, and stole her prescription medication.

The hiring authority delayed conducting the investigative and disciplinary findings conference. The Office of Internal Affairs referred the investigative report to the hiring authority on February 13, 2023. However, the hiring authority did not conduct the investigative and disciplinary findings conference until May 8, 2023, 84 days after the referral, and 70 days after policy requires. In addition, the hiring authority unnecessarily delayed dismissing the officer via nonpunitive separation. The department knew on September 6, 2022, that the officer had been prohibited from possessing firearms pursuant to a criminal protective order. On October 12, 2022, the OIG recommended that the hiring authority serve the officer with a nonpunitive separation based on his inability to meet the minimum qualifications of the position. The hiring authority spoke to the officer and told the officer to address the firearms prohibition immediately but did not give the officer a deadline for doing so. The hiring authority did not serve a nonpunitive dismissal on the officer until October 31, 2022, 56 days after the officer failed to meet the minimum qualifications for the position. The nonpunitive dismissal was set to take effect on November 7, 2022, the minimum allowable days after service of the dismissal. However, before November 7, 2022, the officer obtained a modification to the prohibition, which allowed him to carry a firearm at the prison. The hiring authority withdrew the nonpunitive dismissal as a result. The officer was permitted to continue working in the mail room for another eight months, until he ultimately resigned on July 17, 2023. The officer had been working in the mail room during the entirety of the delay. Moreover, the hiring authority delayed serving the dismissal. The department did not serve the dismissal action until July 10, 2023, 63 days after the decision to dismiss the officer, and 33 days after policy required.

The OIG Invoked Executive Review in Two Cases This Reporting Period

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

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

OIG Case No. 22-0046321-DM

On April 11, 2022, an officer allegedly used profanity towards an incarcerated person, pushed the incarcerated person out of a doorway, failed to report that he had used force, and failed to search the incarcerated person. On April 13, 2022, the officer failed to activate his body-worn camera and submitted a false and misleading rules violation report. On March 23, 2023, the officer lied during an interview with the Office of Internal Affairs. A second officer and a third officer failed to report that they had observed the first officer push the incarcerated person and that they had failed to search the incarcerated person.

The hiring authority sustained the allegations against the first officer except that he had failed to activate his body-worn camera and imposed a 10 percent salary reduction for 25 months. The hiring authority sustained the allegations against the second and third officers that they had failed to search the incarcerated person—but not the remaining allegations—and issued letters of reprimand. The OIG concurred with the hiring authority's determinations but did not concur with the penalty against the first officer. The OIG recommended dismissing the first officer and recommended that the hiring authority add and sustain allegations that the first officer had lied in a rules violation report and had lied during an interview with the Office of Internal Affairs. The OIG elevated the matter to the hiring authority's supervisor. The hiring authority's supervisor agreed with the hiring authority.

The OIG further elevated the matter to the deputy director, who agreed with the OIG's recommendations to dismiss the first officer and to add and sustain dishonesty allegations that the first officer had lied in a rules violation report and during an interview with the Office of Internal Affairs. However, the first officer retired before the disciplinary action could be served. Therefore, the hiring authority placed a letter in the first officer's official personnel file indicating he had retired pending disciplinary action. After *Skelly* hearings for the second officer and the third officer, the hiring authority determined that both officers had acted appropriately because the first officer assumed control of the incarcerated person, and any intervention by the second and third officers to search the incarcerated person would have aggravated the

situation. Therefore, the department withdrew the disciplinary actions against the second and third officers and instead issued letters of instruction. The OIG concurred.

We determined that the department’s handling of the case was *insufficient* because the hiring authority delayed referring the matter to the Office of Internal Affairs, did not sustain all appropriate allegations or select the appropriate penalty at the first investigative and disciplinary findings conference, and delayed serving the disciplinary action. The Office of Internal Affairs’ Allegation Inquiry Management Section lieutenant delayed conducting and completing the inquiry. Furthermore, the department attorney did not appropriately advise the hiring authority about the allegations and penalty and should not have withdrawn from representing the department until the case concluded.

OIG Case No. 23-0049193-DM

In the other case we elevated, two officers were allegedly involved in a domestic dispute. The first officer scratched and slapped the second officer, and the second officer called the first officer derogatory names, violently threw plants around the apartment, and held a knife to his abdomen making “suicide by cop” statements. The second officer had been dishonest before the domestic dispute when he told a supervisor he needed to leave his post to take his wife to the hospital. After the domestic dispute, the second officer was again dishonest when he lied to outside law enforcement that the first officer had punched him and caused injuries to his abdomen, and when he denied making “suicide by cop” statements.

The hiring authority sustained the allegation against the first officer and imposed a five percent salary reduction for two months. The OIG concurred with the finding but not with the penalty. The first officer did not file an appeal with the State Personnel Board. The hiring authority sustained the allegations against the second officer, except for a poorly worded allegation and an allegation that he lied to law enforcement when he said the first officer had punched him and imposed a 90-working-day suspension. The OIG did not concur with the penalty and elevated the matter to a higher level of review. At the higher level of review, the deputy director agreed with the OIG and dismissed the officer. However, the officer resigned before the disciplinary action could be served. Therefore, the hiring authority placed a letter in the officer’s official personnel file indicating he had resigned pending disciplinary action.

We rated the department’s handling of the case *insufficient* because the hiring authority delayed referring the matter to the Office of Internal Affairs, did not select the appropriate penalty at the first investigative and disciplinary findings conference, and delayed serving the disciplinary action.

OIG Case No. 21-0041709-DM

An off-duty sergeant allegedly bit his ex-girlfriend on the neck and jaw and tried to break her fingers while she was holding their child. The sergeant also allegedly refused to answer questions and lied to and cursed at outside law enforcement. The hiring authority sustained the allegations and dismissed the sergeant. The OIG concurred. The OIG found that the department had significantly delayed serving the dismissal action while the sergeant was on administrative leave.

Before the evidentiary hearing, the sergeant offered to settle the case for a three-month suspension, and the hiring authority showed willingness to reverse his decision to dismiss the officer. However, the Employment Advocacy and Prosecution Team recognized the seriousness of the sergeant's misconduct and elevated the decision to the hiring authority's supervisor. Thereafter, the Employment Advocacy and Prosecution Team successfully convinced the hiring authority's supervisor to refuse a settlement agreement that would have restored the sergeant to his position. The sergeant filed an appeal with the State Personnel Board. After the hearing, the State Personnel Board upheld the dismissal.

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 are as follows:

- To conduct an administrative investigation;
- To conduct a criminal investigation;
- To conduct only an interview of the employee (or employees) suspected of misconduct and no other investigative activity;
- To authorize the hiring authority to take direct action against the employee regarding the alleged misconduct without an investigation or interview of the employee (or employees) suspected of misconduct;

- To reject the referral without further action concerning the allegation or allegations because there is no reasonable belief misconduct occurred; or
- To reject the referral and return it to the hiring authority to conduct further inquiry.

The following table is the OIG’s guide for determining which cases to accept for monitoring:

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

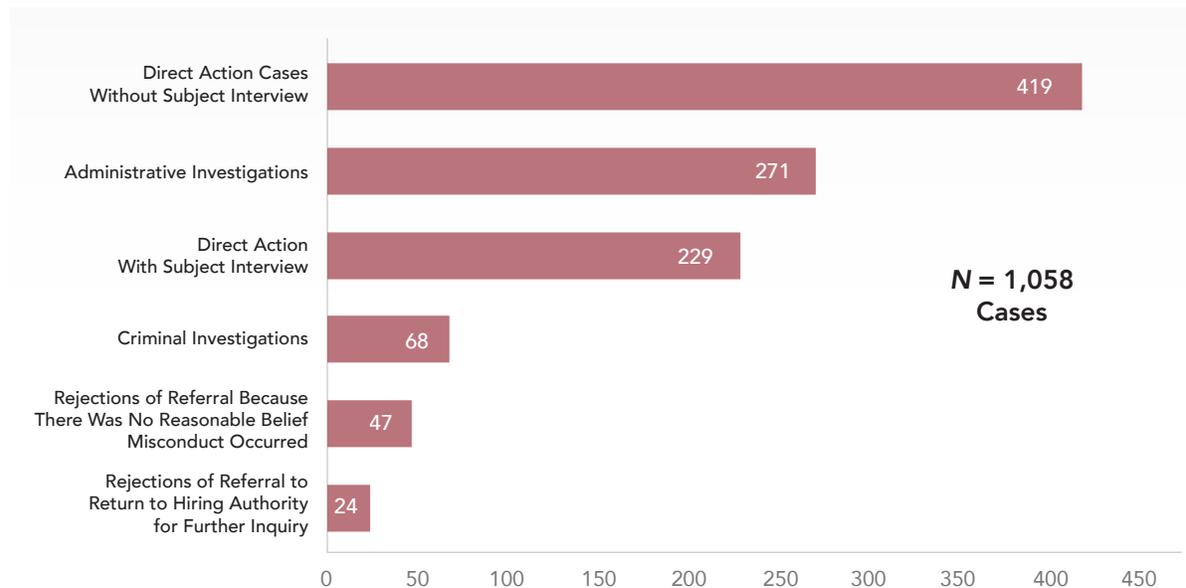
<i>Madrid-Related Criteria</i> *	OIG Monitoring Threshold
Abuse of Position or Authority	Unorthodox punishment or discipline of an incarcerated person, ward, or parolee; or purposely or negligently creating an opportunity or motive for an incarcerated person, ward, or parolee to harm another incarcerated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

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

In this reporting period, the OIG monitored 88 percent of cases that had been opened by the Office of Internal Affairs that we identified as falling within these criteria. Because the above-listed seven categories typically constitute the most serious cases, the OIG strives to monitor as many of such cases as possible while taking into account staffing and attorney caseloads. On occasion, we monitor cases that fall outside these criteria. However, about 25 years ago, in the class-action lawsuit, *Madrid v. Gomez*, the federal court found, among other things, that department officials 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 July through December 2023, the Office of Internal Affairs made decisions concerning 1,058 referrals involving potential staff misconduct, which the OIG also reviewed during the central intake process (see Figure 2 below). In reviewing those cases, the OIG disagreed with the Office of Internal Affairs' initial review in 195 cases. Of those 195 cases, the OIG found that the Office of Internal Affairs had made a decision with which we disagreed in 160 of those cases, a significant figure of 82 percent.

Figure 2. Distribution of Case Types Resulting From the Office of Internal Affairs' Decisions During the Central Intake Process From July 1, 2023, Through December 31, 2023



Source: The Office of the Inspector General.

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

In this reporting period, the OIG found fault with the Office of Internal Affairs' performance during the Central Intake process in 55 of the 197 cases we monitored and closed. In 14 of the cases, we found that the Office of Internal Affairs delayed processing cases. In 41 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 21 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 19 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. Of the 21 percent of cases with which the OIG disagreed, one of the most common causes of disagreement was the Office of Internal Affairs' decision not to add all appropriate allegations supported by a reasonable belief that misconduct occurred.

The Office of Internal Affairs Sufficiently Investigated Deadly Use-of-Force Incidents in Most Cases

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

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

The department defines deadly force as any force that is likely to result in death. Any discharge of a firearm other than a lawful discharge during weapons qualification, firearms training, or other legal recreational use of a firearm is considered deadly force. Employees are only authorized to use deadly force when it is necessary to do one of the following: 1) defend the employee or other people from an imminent threat of death or great bodily injury; 2) 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 July and December 2023, the OIG monitored and closed seven administrative cases and two 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 seven cases and *sufficient with recommendations* in one of the nine cases. As a comparison, in the January through June 2023 reporting period, we rated every one of the 10 deadly force investigations in that period either *sufficient* or *sufficient with recommendations*. However, the Office of Internal Affairs' performance was not perfect. Below is a summary of the one case in which we rated the Office of Internal Affairs' performance *insufficient*.

OIG Case No. 22-0044289-DM

On July 4, 2022, an off-duty officer was cited by an outside law enforcement agency after the officer allegedly discharged approximately 10 rounds from a personal shotgun into the air from the backyard of his residence. The officer also allegedly lied to outside law enforcement that his family member had discharged approximately 20 rounds from the shotgun. The Deadly Force Review Board found that the officer's use of deadly force violated policy. The hiring authority sustained the allegations and determined dismissal was the appropriate penalty. The OIG concurred. However, the officer resigned before the disciplinary action took effect. The hiring authority placed a letter in the officer's official personnel file indicating he had resigned pending disciplinary action.

We rated the Office of Internal Affairs' performance *insufficient* because the Office of Internal Affairs delayed the investigation by unnecessarily seeking permission from the district attorney's office to interview the officer. The Office of Internal Affairs waited for a deputy district attorney to be assigned to the criminal case so it could obtain permission to proceed with the administrative investigation. However, no permission was necessary to proceed. The Office of Internal Affairs assigned a special agent on September 1, 2022. On December 21, 2022, the deputy district attorney told the special agent that the district attorney's office had no opinion about whether the department could conduct its own administrative investigation. A special agent eventually interviewed the officer on March 8, 2023. The investigation consisted of a single interview, and the special agent submitted a six-page report to the Deadly Force Review Board on April 19, 2023, more than seven months after the special agent was assigned.

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

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

The department found that employees violated the department's deadly use-of-force policy in four of the seven administrative cases we monitored and closed. We concurred with the department's findings that the use-of-force policy had been violated in all four cases. One of the cases involved the officer who had allegedly discharged approximately 10 rounds from a personal shotgun into the air from the backyard of

his residence, which was discussed earlier in this report. In another case, the hiring authority imposed a salary reduction on an officer who had negligently discharged a round from his personal firearm into a neighbor's apartment, and the OIG concurred. The remaining two cases are discussed below.

OIG Case No. 22-0044574-DM

An off-duty officer allegedly negligently discharged his firearm in a restaurant bathroom, failed to immediately report the incident to local law enforcement, failed to immediately report the incident to his hiring authority, lied to local law enforcement officers during their official investigation of the incident, and lied during an Office of Internal Affairs interview. The hiring authority sustained the allegations and dismissed the officer. The OIG concurred. The officer filed an appeal with the State Personnel Board. However, pursuant to a settlement agreement, the officer resigned in lieu of dismissal. The OIG disagreed with the settlement because the department did not require the officer to agree to never seek employment with the department in the future.

We assessed the department's performance *insufficient* because the hiring authority delayed serving the dismissal action and allowed the officer to resign in lieu of dismissal without requiring the officer to agree to never seek employment with the department in the future. In addition, the department attorney delayed drafting the notice of dismissal and improperly recommended that the hiring authority accept the settlement offer from the officer to retire in lieu of dismissal without requiring the officer to agree to never seek employment with the department in the future. The department attorney also failed to include the OIG in the discussion with the hiring authority regarding the recommendation to accept the settlement offer from the officer.

OIG Case No. 22-0045262-DM

On October 22, 2022, an off-duty officer allegedly discharged a firearm while holstering the firearm in a waist holster, which resulted in a round striking the officer in the thigh, lied to law enforcement during the investigation, and carried a concealed firearm while off duty without a permit or departmental authorization. The hiring authority sustained the allegations except for dishonesty to outside law enforcement and imposed a five percent salary reduction for 25 months. The OIG concurred. However, the officer retired prior to the completion of the investigation. Therefore, the hiring authority did not serve the officer with disciplinary action. The hiring authority placed a letter in the officer's official personnel file indicating he had retired pending disciplinary action. We rated the department's performance *sufficient with recommendations* because we found the hiring authority delayed conducting the investigative and disciplinary findings conference.

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 11 of 24 criminal investigations during this reporting period. In seven of those 11 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 its handling of criminal cases without undue delay. However, we also identified deficiencies in how the investigations were conducted. Below are two such cases.

OIG Case No. 23-0048815-CM

A youth counselor allegedly conspired with four wards to have a fifth ward assaulted. The Office of Internal Affairs conducted an investigation, which failed to establish sufficient evidence for a probable-cause referral to the district attorney. The OIG concurred with the probable-cause determination. The Office of Internal Affairs decided to return the matter to the hiring authority to address administrative allegations after conducting an interview of the youth counselor. The OIG accepted the administrative investigation for monitoring.

We rated the case *insufficient* because the special agent scheduled the interview of one of the wards involved in assaulting the fifth ward immediately after the interview of the fifth ward. The two wards were still housed in the same housing unit, which houses only a small number of wards. The ward involved in assaulting the fifth ward noticed the fifth ward had been brought to the interview location. When returning to the housing unit, the ward who had assaulted the fifth ward attacked him again in the hallway. The practice of interviewing the two wards, one right after the other jeopardized the safety of the ward who had been assaulted. Better approaches to handling the interviews would have been to ensure that the wards were sequestered, that the interviews were not held consecutively, that different staff escorted the wards, and that the interviews were held at times and locations that reduced the likelihood of assault.

OIG Case No. 23-0058539-CM

Another case in which we identified investigative deficiencies involved an officer accused of sex crimes against patients of the Department of State Hospitals, a case previously mentioned in this report. We rated the Office Internal Affairs' performance *sufficient with recommendations* because the Office of Internal Affairs did not use a photograph lineup

when interviewing witnesses. A photograph lineup is an investigative method in which an investigator shows a witness a series of photographs, typically six. Ideally, the photographs depict several individuals with similar physical characteristics, and the suspect's photograph is included among them. These are then shown to the witness to determine whether the witness can identify the correct suspect. Instead, the special agent provided witnesses with a single photograph of the officer for the purpose of suspect identification. Better practice is to prepare and present a series of photographs containing one photograph of the officer and photographs of other individuals. The OIG recommends using an array of photographs to reduce the risk of misidentifying the suspects.

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 89 cases, *sufficient with recommendations* in 50 cases, and *insufficient* in 26 cases. In this reporting period, we rated the Office of Internal Affairs' performance *sufficient* in 101 cases, *sufficient with recommendations* in 56 cases, and *insufficient* in 16 of the administrative cases we monitored. The most common reason we rated a case *insufficient* was due to excessive delays in completing the investigation or other delays, including those caused by the Allegation Inquiry Management Section of the Office of Internal Affairs.

Below are two cases that involved *insufficient* performance by the Office of Internal Affairs. In one case, the hiring authority could not make an informed decision because the Office of Internal Affairs had declined to conduct an investigation. That case is summarized below.

OIG Case No. 22-0045293-DM

An officer allegedly entered a count of incarcerated persons into a departmental database before conducting the count. The OIG recommended that the Office of Internal Affairs approve an interview of the officer, but the Office of Internal Affairs declined to do so and returned the matter to the hiring authority to make findings and consider discipline without the benefit of an investigation. The OIG also recommended that the Office of Internal Affairs approve an allegation that the officer was dishonest by documenting that he had conducted a count when he had not.

At the initial investigative and disciplinary findings conference, the hiring authority found the investigation *insufficient* and requested that the Office of Internal Affairs interview the officer to determine whether he had completed the count of incarcerated people and to ascertain his intent when he entered the count into a departmental database without having completed it. The Office of Internal Affairs declined the hiring authority's request and stated the Central Intake Unit normally approves an interview and an integrity allegation when there is proof that the officer did not complete the count. Although the officer had documented the count of incarcerated people, walked into a building, and begun walking alongside cells, presumably to complete the count, there was no evidence that the officer had actually completed the count because his body-worn-camera recording ended shortly after he had walked into the building. There was a reasonable belief that the officer had falsely documented the count of incarcerated people and, without an interview of the officer, there was no evidence he later completed the count. The Office of Internal Affairs' decision to decline the interview

request prevented the hiring authority from making an informed decision concerning the officer's misconduct.

Ultimately, the hiring authority sustained the allegation and imposed a five percent salary reduction for 12 months. The OIG concurred with the decision to sustain the allegation but recommended adding and sustaining an allegation that the officer had falsely documented the completion of the count, which the hiring authority rejected. After a *Skelly* hearing, the hiring authority entered into a settlement agreement with the officer reducing the penalty to a five percent salary reduction for six months. The OIG did not concur with the settlement.

OIG Case No. 21-0041226-DM

An officer allegedly engaged in an overly familiar relationship with an incarcerated person. The officer possessed a personal mobile phone on prison grounds and possessed three prepaid phone cards, which matched prepaid phone card account numbers in the incarcerated person's address book found inside the incarcerated person's cell.

We rated the Office of Internal Affairs' performance *insufficient* because the investigation had been delayed for one year and eight months pending the officer's return from workers' compensation leave. The officer offered medical reasons to excuse the officer from the interview as well as from work. The special agent also did not consult with the officer's attorney regarding whether accommodations could be made to complete the officer's interview until the OIG recommended doing so. Moreover, the special agent did not follow up with the officer about obtaining an updated medical excuse after the officer had advised she would obtain one on January 26, 2023. The special agent did not contact the officer's attorney to explain that the investigation was ongoing and offer a final opportunity to conduct an interview before submitting the investigative report. Finally, in the interview with the incarcerated person, the special agent failed to use interview techniques that could have precluded the incarcerated person from denying knowledge of information written in his personal address book.

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The Employment Advocacy and Prosecution Team

The Employment Advocacy and Prosecution Team (EAPT) is the third stakeholder that DMU monitors during the investigative and disciplinary processes. EAPT attorneys, known as *vertical advocates*, provide legal recommendations to both the Office of Internal Affairs and to hiring authorities. Generally, the same vertical advocate represents the department throughout the entire investigative and disciplinary process. The OIG monitors the vertical advocate's performance, performs real-time feedback during the investigation and litigation 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 126 cases, a *sufficient with recommendations* rating in 41 cases, and an *insufficient* rating in 30 cases. Once again, our single most common criticism of department attorneys was their failure to handle the disciplinary process without undue delay. We found 37 instances in which department attorneys had failed to handle the disciplinary process without undue delay. Our second most common criticism was that department attorneys had failed to make timely entries into the case management system. We largely based the *insufficient* case ratings on department attorneys' 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. The 37 cases in which the department attorney failed to handle the disciplinary process without undue delay represent 32 percent of cases in which department attorneys were involved in the disciplinary process. Below are two examples:

OIG Case No. 22-0043049-DM

An officer allegedly failed to wear a mandatory protective mask, was discourteous and used profanity toward an incarcerated person, used unnecessary force when he pulled on the incarcerated person's shirt to retrieve handcuffs, used racially discriminatory language, threatened the first incarcerated person, used racially discriminatory language when speaking to a nurse, and failed to respond to and report that he had observed a second incarcerated person push the first incarcerated person. A second officer allegedly failed to wear a mandatory protective mask, failed to respond to and report that he had observed the second incarcerated person push the first incarcerated person in a cell, and failed to report that he had observed the first officer use unnecessary force. A lieutenant allegedly failed to initiate an incident package after discovering that the first officer used unnecessary force on the first incarcerated person. The hiring authority sustained the allegations against the first officer except that he failed to respond and report that he had observed the second incarcerated person push the first incarcerated person in a cell and determined, contrary to the department attorney's advice, that dismissal was the appropriate penalty. The hiring authority sustained the allegation that the second officer failed to report that he had observed the first officer use unnecessary force, but not the remaining allegations, and imposed a 10 percent salary reduction for 20 months. The hiring authority sustained the allegation against the lieutenant and imposed a five percent salary reduction for 12 months.

Although policy requires service of disciplinary actions 30 days after the hiring authority's decision, the department did not serve the disciplinary action on the officer who was dismissed until June 21, 2023, 100 days later and 70 days after policy requires, primarily because the department attorney did not complete the draft disciplinary action until June 16, 2023. The delays continued for the other officer and the lieutenant. The department served the second disciplinary action on July 12, 2023, 121 days after the hiring authority's decision and 91 days after policy requires. The department served the third disciplinary action on November 2, 2023, 234 days after the decision and 204 days after policy requires. Again, the department attorney caused the delay by not completing the draft disciplinary action until October 11, 2023.

OIG Case No. 22-0044071-DM

Outside law enforcement arrested an officer for battering his girlfriend, possessing psilocybin mushrooms, and endangering children who were present. The officer also failed to secure and lock two firearms. Moreover, the officer lied about the incident during an interview with the Office of Internal Affairs. The hiring authority sustained the allegations and dismissed the officer. The OIG concurred.

The department attorney did not provide a draft disciplinary action to either the OIG or the hiring authority until 63 days after the decision

to dismiss the officer, and the department served the dismissal action seven days later. The officer filed an appeal with the State Personnel Board. However, the department entered into a settlement agreement allowing the officer to resign instead. The department should have expedited service of the dismissal action because the allegations against the officer were serious, and he had been reassigned to the mail room. The department attorney also should have advised the hiring authority to require that the officer agree, as part of the settlement, to never again seek employment with the department in the future.

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 10 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. Below are two examples:

OIG Case No. 21-0041096-DM

Four officers allegedly punched and kicked an incarcerated person causing injuries that required medical treatment at an outside hospital. The officers did not report the force they used. The hiring authority sustained the allegations against the four officers, except for two poorly worded allegations, and determined that dismissals were the appropriate penalties. However, the fourth officer retired before the investigation was completed. Therefore, the hiring authority did not serve the officer with disciplinary action. Moreover, the first officer retired before the disciplinary action could be served. The hiring authority placed a letter in the first officer's official personnel file indicating he had retired pending disciplinary action.

The department attorney recommended settlement agreements reducing the remaining two officers' penalties from dismissals to suspensions without sufficient justification. The department attorney recommended that the hiring authority enter into settlement agreements with the second and third officers due to unreliable witness statements and the lack of available witnesses. However, sufficient evidence still supported the hiring authority's decision to dismiss the four officers because a second incarcerated person offered testimony that he saw the officers punch and kick the incarcerated person and because the first sergeant stated that three of the four officers had told him that one of the officers used excessive force during the incident. Furthermore, an

officer discovered that the incarcerated person suffered injuries with no indication that the injuries were caused by another incarcerated person, and the first sergeant stated he had heard commotion near a holding cell and saw the officers lift the incarcerated person off the ground. Nevertheless, prior to a hearing, the department entered into settlement agreements with the second officer and the third officer, reducing each of their penalties to a four-month suspension and transferring them to a different prison. The OIG did not concur.

OIG Case No. 22-0046319-DM

On September 10, 2022, an officer allegedly falsified a locker search receipt when he listed an incarcerated person's property as broken during a search and backdated the search receipt to August 28, 2022, the date of the search. The officer was also discourteous and used profanity towards the incarcerated person when the incarcerated person asked about his property. The hiring authority sustained the allegations, except for poorly worded allegations, and imposed a 10 percent salary reduction for 45 months. The OIG did not concur with the penalty because the officer behaved dishonestly.

The officer filed an appeal with the State Personnel Board. Prior to a hearing, the officer withdrew the appeal. We found the department attorney's performance was *insufficient* because the department attorney did not give appropriate advice regarding the penalty. The department attorney should have recommended dismissal as the appropriate penalty based on the officer's dishonesty.

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 investigation. However, despite the critical nature of this assessment, department attorneys failed to make entries into the case management system that included this analysis in 15 cases we monitored.

In the last reporting period, we found 13 cases that lacked timely entries, so there is still room for improvement. In seven of the 15 cases, the assessment was late, and in eight of the 15 cases, the assessment was not entered at all. Below are two such cases.

OIG Case No. 23-0054800-DM

An officer allegedly pushed an incarcerated person in the back twice with his hand as the incarcerated person was walking away from the officer, thereby forcing the incarcerated person to the ground. The department attorney did not enter the date of the reported incident, the date of discovery, or the deadline for taking disciplinary action into the case management system. The department attorney also failed to timely conduct the initial case conference or review the special agent's draft investigative report. Although the investigation consisted of a single interview, that of the officer, the department attorney did not attend. Ultimately, the hiring authority did not sustain the allegation.

OIG Case No. 22-0042902-DM

An officer allegedly grabbed an incarcerated person by the neck and slammed him into a wall and a railing before throwing him onto the ground. A second officer failed to intervene. Both officers, and a third officer lied in their reports about the incident and lied during their Office of Internal Affairs investigative interviews.

The department attorney assigned to the case, was only one day late in making an entry into the case management system about the deadline for taking disciplinary action. The hiring authority sustained allegations and dismissed all three officers.

However, after the officers filed appeals with the State Personnel Board, we identified additional deficiencies. For example, the department attorney did not keep the OIG apprised of the department attorney's search for an expert witness before the evidentiary hearing and did not keep the OIG apprised of witness preparation meetings. The department attorney also failed to lodge obvious objections during the direct examination of two expert witnesses called by the officers' attorney. When an expert witness testified in an extended narrative the department attorney failed to lodge an objection for lack of foundation, for offering irrelevant testimony, and for providing an inappropriately long response. The department attorney also failed to object to questions directed to a second expert witness that were outside his area of expertise. After the hearing, the administrative law judge found the officers credible. Therefore, the State Personnel Board revoked the dismissals.

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

One of the more frequent criticisms of EAPT in this reporting period occurred at the inception of the disciplinary process. Department attorneys are tasked with reviewing cases referred by hiring authorities to the Office of Internal Affairs' Central Intake Unit. The Central Intake Unit makes decisions about which cases will be opened and the allegations and the subjects that will be approved. As such, it behooves department attorneys to identify issues that shape the scope of the investigation, to be prepared for the Central Intake Meeting, and to identify appropriate subjects and allegations. We found 14 instances in this reporting period in which department attorneys did not make appropriate recommendations during this process. The following two cases are examples.

OIG Case No. 22-0044213-DM

Allegedly, an officer inappropriately performed an unclothed body search on a transgender incarcerated person. When the matter was considered by the Central Intake Panel, the OIG recommended that the Office of

Internal Affairs approve an investigation of the officer to establish the officer's knowledge of the incarcerated person's gender identification and search preference. The officer made an ambiguous statement about his familiarity with the incarcerated person before the case was submitted to the Office of Internal Affairs. We believed that the officer's familiarity with the incarcerated person was a critical issue in establishing the officer's intent and state of mind. However, the department attorney failed to join the OIG in recommending an interview of the officer. The Office of Internal Affairs returned the matter to the hiring authority to make findings without the benefit of an interview.

The hiring authority sustained the allegation and issued a letter of reprimand. The officer filed an appeal with the State Personnel Board.

Following a hearing, the State Personnel Board revoked the letter of reprimand finding insufficient evidence. In doing so, the State Personnel Board held that the department failed to prove that the officer was familiar with the incarcerated person's gender identification and search preference.

OIG Case No. 23-0050982-DM

An officer allegedly stole a necklace from the storage area where incarcerated people's property is kept and provided it to an incarcerated person who did not own the necklace. Thereafter, a second incarcerated person battered the first incarcerated person, causing the first incarcerated person to have visible blood on his face. The officer observed the blood but did not report the battery to his supervisor. The officer also lied to a lieutenant by telling the lieutenant he had reported the first incarcerated person's battery and injuries to a sergeant. The officer allegedly lied to an Office of Internal Affairs special agent by telling the special agent that he had reported the battery and injuries to a sergeant. When the matter was considered by the Central Intake Panel, the department attorney failed to recommend that the Office of Internal Affairs approve an additional allegation that was supported by the evidence: namely, that the officer did not obtain medical attention for the incarcerated person who was battered, despite his duty to do so. However, upon recommendation by the OIG, the Office of Internal Affairs approved the allegation, which the hiring authority later sustained.

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 a department attorney had to litigate the case before an administrative law judge at the State Personnel Board. During this reporting period, we monitored 12 cases that had been submitted to the State Personnel Board for a decision after a full evidentiary hearing had taken place, which is two more than the number of cases in the last reporting period. Of those 12, the State Personnel Board modified the penalty in five cases. Department attorneys were able to secure dismissals in five of the seven dismissal cases taken to hearing.

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 July through December 2023, the following critical incidents required OIG notification:

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

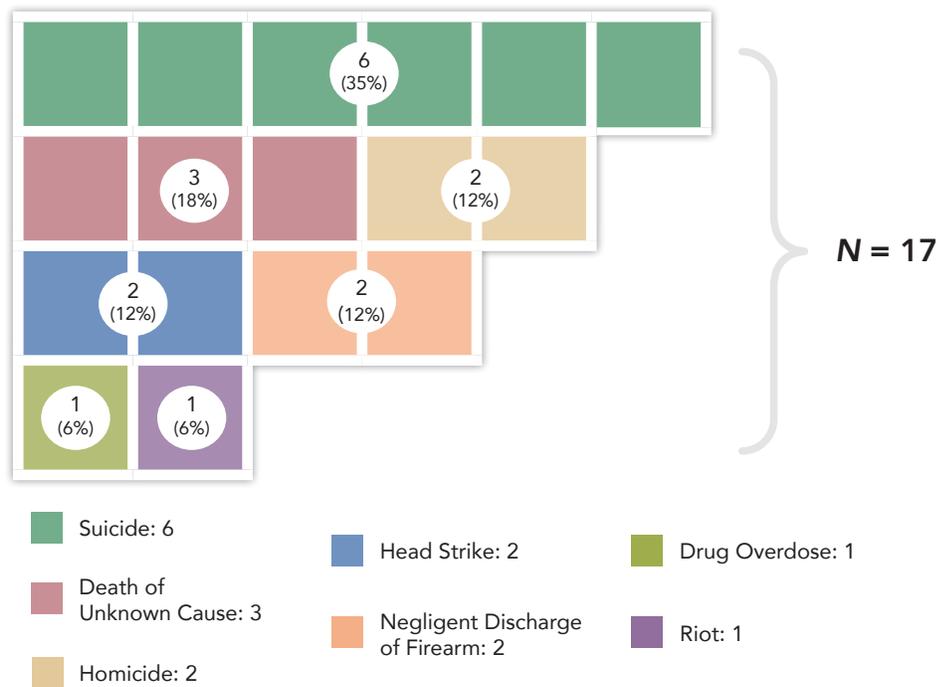
- Any staff member’s use of deadly force (i.e., any use of force that is likely to result in death, including any discharge of a firearm, including warning shots and unintended discharges) or if an incarcerated person is struck in the head with a baton or impact munitions regardless of the extent of 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 61 critical incident cases. Hiring authorities identified potential employee misconduct and made referrals to the Office of Internal Affairs in 17 of them and imposed corrective action, such as a letter of instruction or on-the-job training, in 17 of them. Six of the 17 incidents referred to the Office of Internal Affairs involved suicides. The other incidents included three deaths of unknown causes, two homicides, two head strikes, two negligent discharges of firearms, one overdose, and one riot. The Office of Internal Affairs opened disciplinary cases for 16 incidents, and the OIG monitored 10 of them.

Figure 4. Distribution of Critical Incidents Referred to the Office of Internal Affairs During the Reporting Period From July 1, 2023, Through December 31, 2023



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

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

The hiring authority made timely referrals in five of the 10 disciplinary cases. In six of the 10 referrals, video-recorded evidence assisted the hiring authorities in identifying potential misconduct. The hiring authority referred potential misconduct to the Office of Internal Affairs within 45 days in two of those six cases. Video-recorded evidence assisted hiring authorities in identifying and ruling out allegations of misconduct but did not expedite the referral for potential misconduct to the Office of Internal Affairs in four cases.

One noteworthy incident we monitored occurred in May 2023 (OIG Case N^o 23-0055269-CI). An officer discovered an incarcerated person hanging from a noose around his neck in a cell. Three officers removed the incarcerated person from the cell. The three officers, an additional officer, and four nurses performed life-saving measures and administered six doses of an opiate antidote. Paramedics arrived and continued life-saving measures until a paramedic pronounced the incarcerated person dead. The department's Mortality Review Committee determined the cause of death was asphyxiation by hanging and the manner of death was suicide. The hiring authority identified potential staff misconduct because two officers allegedly had failed to properly conduct required welfare checks on incarcerated people, and a third officer failed to summon assistance when he discovered the incarcerated person hanging from a noose. Therefore, the hiring authority referred the matter to the Office of Internal Affairs for an investigation. The Office of Internal Affairs approved an investigation, which the OIG accepted for monitoring.

We rated the department's handling of the case *insufficient* because of the above-noted deficiencies. The incarcerated person could have been discovered still alive if the welfare checks had been properly conducted. Even after finding the incarcerated person unresponsive, a third officer failed to immediately summon medical assistance. It is imperative for the safety and security of the prisons, incarcerated population, and staff that welfare checks are conducted properly, and emergency assistance is summoned without delay. After all, the purpose of such policies is to preserve life. Despite the severity of these failures, the hiring authority delayed referring the matter to the Office of Internal Affairs for an investigation.

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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 their inception to their conclusion. For example, in any given case, SAIGs may recommend that the Office of Internal Affairs approve certain allegations and interview certain witnesses. SAIGs may also recommend that the department attorneys include or exclude certain language in a disciplinary action or in documents filed with the State Personnel Board. Finally, SAIGs may recommend 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, as part of our new 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 on a monthly basis throughout the reporting period.

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

The OIG Recommends That Office of Internal Affairs' Special Agents Refrain From Asking Leading Questions, Wait for a Complete Response to a Question Before Asking an Interviewee Another Question, and Ask All Relevant Questions of an Interviewee Before Disclosing Information From an Investigation

The Office of Internal Affairs' special agents interview both witnesses and subjects in administrative and criminal investigations. During two of the investigations, we monitored during this reporting period, special agents asked leading questions in investigative interviews. We identified two such cases for discussion, but the use of leading questions has been a recurring issue in the investigations we monitor. Leading questions are framed in a way that suggests a particular answer or guides the respondent toward a specific response. Investigators' practice of asking leading questions could compromise the accuracy and reliability of the information obtained during the investigation. Leading questions could also undermine the credibility of the person being interviewed. Furthermore, the use of leading questions could lead to a biased investigation and be perceived as an attempt to shape the investigation rather than allow interviewees to freely express their thoughts and experiences. Two case examples are discussed below.

OIG Case No. 23-0055301-DM

In one case, a lieutenant allegedly failed to conduct a thorough review of body-worn camera video footage of an incident and falsely reported that officers did not search cells. A later review of the video footage revealed that the officers did, in fact, search the cells. The Office of Internal Affairs approved the case for investigation and conducted an interview of the lieutenant. During the lieutenant's investigative interview, the Office of Internal Affairs' special agent asked the lieutenant leading questions such as whether errors were made due to heavy workload, or whether the lieutenant missed portions of the video due to fast forwarding. The special agent asked the lieutenant, "Do you think that mandatory overtime has anything to do with why you missed this?" This leading question was problematic because it contained a potential defense for the alleged conduct. The lieutenant agreed with the special agent and stated the mandatory overtime was the reason why he had failed to conduct a thorough review of the body-worn camera video footage. Rather than asking the lieutenant a leading question suggesting a defense for the conduct, the special agent should have asked the lieutenant why he believes he overlooked the video footage that showed the officers searching the cells. The OIG rated this case *sufficient with recommendations* due to the special agent's use of leading questions.

OIG Case No. 22-0046945-DM

A sergeant allegedly wrestled with and struck his girlfriend, thereby causing several cuts and abrasions on her arms and a bruise behind her left ear. The Office of Internal Affairs approved the case for investigation and conducted an interview of the sergeant's girlfriend. During the sergeant's girlfriend's investigative interview, the Office of Internal Affairs' special agent prefaced a question by stating that prior incidents of domestic violence are what caused the sergeant's girlfriend to end her relationship with the sergeant. The sergeant's girlfriend corrected the special agent by stating that the prior incidents of domestic violence are not what caused them to end their relationship. Rather than making assumptions, the special agent should have asked the sergeant's girlfriend what caused them to end their relationship. The OIG rated this case *sufficient with recommendations* due to the special agent's use of leading questions.

As discussed above, leading questions are problematic because they suggest a particular answer or encourage a specific response. We also monitored a case in which the special agent did not ask leading questions, but disclosed to an officer the contents of a related police report before asking all the interview questions. The role of the special agent is to collect information rather than disseminate information. Disclosing information to an interviewee before asking all the relevant questions may compromise and influence the interviewee's answers. Disclosing details to interviewees may also lead to a biased investigation because doing so may encourage interviewees to modify their statements based on the information.

OIG Case No. 22-0044888-DM

The OIG also monitored a case in which the special agent asked questions before the witness or employee had an opportunity to finish answering the previous question. Allowing witnesses or employees to finish their answers before asking another question is important to ensure completeness and accuracy of information. Interrupting a witness may also be perceived as biased. Therefore, permitting witnesses or employees to complete their answer before being asked another question helps to ensure that the information being collected is as unaltered as possible and contributes to a positive and cooperative investigative process. This case is discussed below.

An officer was arrested by outside law enforcement after he pushed his spouse during an argument. The Office of Internal Affairs approved the case for investigation and conducted an interview of the officer. During the investigative interview, the Office of Internal Affairs' special agent sometimes asked questions of the officer before the officer could finish answering the previous question, which precluded the officer from providing a complete answer. Moreover, the special agent disclosed to

the officer what a neighbor and other witnesses had told police on the day of the incident. The neighbor had given a statement in support of the officer's spouse. The special agent read the neighbor's statement to the officer and then asked the officer whether the neighbor had any motive to be dishonest. The special agent should have first asked the officer whether the neighbor had any motive to be dishonest before disclosing what the neighbor had told police. Doing so would have given the officer an opportunity to state whether the neighbor had any bias against him before learning what the neighbor had told police. Additionally, the special agent should have finished asking the officer questions about the details of the incident before disclosing the witness' statements. This method would have allowed the special agent to gather information from the officer without the officer knowing what the witnesses had told police. The OIG rated this case *sufficient with recommendations* due to the special agent not allowing the officer to complete his answers before being asked another question and for disclosing information to the officer from the police report before the special agent finished asking questions.

The OIG is concerned when the Office of Internal Affairs' special agents use these interviewing techniques during investigations due to the potential for bias and inaccurate information, and these interviewing techniques undermine the credibility of the witnesses and employees. Hiring authorities depend on the information gathered during the investigation to make findings regarding the allegations against employees at the investigative and disciplinary findings conference. To achieve fair and just results in the disciplinary process, the Office of Internal Affairs' special agents should use better interviewing techniques to ensure that accurate, unbiased, and complete information is provided to the hiring authorities.

Accordingly, we recommend that special agents refrain from asking leading questions, wait for a complete response to a question before asking the interviewee another question, and ask all relevant questions to the person being interviewed before disclosing information that had been gathered from the investigation.

The Department Should Provide Advice on a Newly Enacted California Law to Guide Employees on Expectations for Off-Duty Cannabis Use and to Ensure That Employees Are Receiving Proper Cannabis Testing

As of January 1, 2024, Assembly Bill (AB) 2188 created new law that likely impacts the department. Prior to the enactment of California Government Code section 12954 through AB 2188, employers in California were generally allowed to discipline an existing employee when an individual tested positive for the use of cannabis that occurred when the employee was not at work. Employers used drug testing methods that screened for nonpsychoactive cannabis metabolites³ in addition to active tetrahydrocannabinol (THC). While active THC is a chemical that indicates current impairment and can cause psychoactive effects, nonpsychoactive cannabis metabolites only indicate that someone has used cannabis in the last few weeks.⁴ AB 2188 now bans most California employers from testing for nonpsychoactive cannabis metabolites. Nevertheless, employers may still test for active THC to determine whether employees are under the influence of cannabis while on the job.⁵ Currently, the department only tests for nonpsychoactive cannabis metabolites.

This new law includes exemptions for certain sectors, including employees in the building and construction trades and employees working for entities that receive federal funding.⁶ However, there is no clear exemption for peace officers, including correctional officers. From the early drafts of the bill in 2022, peace officers were never enumerated as an exemption. In addition, a 2021 State Personnel Board precedential decision—one of the specified reasons for the introduction of California Government Code section 12954—suggests that legislators reviewed the possibility of an exemption for peace officers, but then ignored any reference to peace officers in the language of the bill.⁷ This State Personnel Board decision held that “safety sensitive” employees should not be disciplined for off-duty cannabis use.⁸ There is a rational inference that legislators, who referred to this State Personnel Board decision as a

3. Nonpsychoactive cannabis metabolites are small intermediate or end products stored in the body after tetrahydrocannabinol (THC) is metabolized.

4. Section 1 of Assembly Bill (AB) 2188.

5. California Government Code, section 12954, subdivisions (a)(1)(A) & (B).

6. California Government Code, section 12954, subdivisions (a)(2) and (e).

7. Assembly Third Reading, as amended April 7, 2022, Megan Lane, consultant for the State Assembly, Labor and Employment Committee; Assembly Committee on Appropriations, as amended May 11, 2022, Irene Ho, Consultant for Appropriations; Concurrence in Senate Amendments, as amended August 25, 2022, Megan Lane, consultant for the State Assembly, Labor and Employment Committee; CA B. An. S.B. 700, 4-26-2023, California Bill Analysis, Senate Committee on Labor, Public Employment, and Retirement, Consultant Dawn Clover.

8. *Darrin Harper v. California Department of Transportation*, Case No. 20-0978. March 4, 2021.

reason to introduce this law, considered the State Personnel Board’s full five-page analysis, including a paragraph in the decision supporting an exemption for correctional officers. Therefore, the lack of any explicit reference to peace officers in the plain language of the statute suggests an intent *not* to exempt these officers.

California Governor Gavin Newsom approved AB 2188 on September 18, 2022. However, as the new law makes clear,⁹ this code section did not become operative until 2024 to allow at least one year for employers to implement suitable testing procedures.¹⁰ Unfortunately, the department did not adequately prepare or modify its testing practices before AB 211 went into effect. Recent administrative investigations monitored by the OIG and February 2024 conversations between the OIG and the department’s Substance Abuse Testing Section (SATS) confirm that the department has historically relied on urinalysis, or urine tests, to determine whether employees have used cannabis.¹¹ For investigations into cannabis use stemming from incidents that occurred before 2024 and investigations into other types of drug use, the department still relies on urinalysis.¹² According to Quest Diagnostics, a laboratory that the department has used, urinalysis detects only nonpsychoactive marijuana metabolites and does not detect active THC.¹³ Instead, blood and saliva tests can determine active THC and provide a better alternative in the face of this new legislation.¹⁴ As of February 22, 2024, a departmental legal directive is still pending.¹⁵

The Office of Internal Affairs has been waiting for legal direction from department attorneys and delayed opening several administrative cases in the hopes of receiving legal guidance on Government Code section 12954 and its impact on the investigative and disciplinary process of cannabis cases. To date, there is still no clear guidance from the department on the implementation of a new testing process since the passing of this law in September 2022. It appears that the department was unprepared for the execution of this law, which went into effect on January 1, 2024. It is crucial for the department to advise its employees

9. California Government Code, section 12954, subdivision (g).

10. California Bill Analysis, Senate Committee, 2021–2022 Regular Session, Senate Judiciary Committee, CA B. An., AB 2188 Assembly, June 21, 2022.

11. The OIG spoke briefly with the department’s Substance Abuse Testing Section Manager Jenny Le and Chief Hong Giudice on February 8, 2024, about testing practices.

12. The department’s Substance Abuse Testing Section Manager Jenny Le and Chief Hong Giudice, February 8, 2024.

13. [Quest Diagnostics: Identifying Marijuana Use](#).

14. See also [PharmChek: Drug Testing for Marijuana: How to Address Challenges With THC Toxicology](#). “Testing for active Delta-9 is more reliable than testing for metabolites, but it comes with strict time constraints for snapshot testing methods like blood and saliva. Blood samples only provide an accurate picture for around 24 hours, and saliva has about the same time limit.”

15. The department’s Substance Abuse Testing Section Manager Jenny Le and Chief Hong Giudice, February 8, 2024. The department’s Substance Abuse Testing Section Manager Jenny Le, February 22, 2024.

about how exactly this new law applies to them. It is also imperative for the department to ensure that it is using the proper kind of testing on its employees to comply with this newly enacted law.

The OIG Recommends That Department Attorneys Provide the OIG With a Draft of the Prehearing Settlement Conference Statement for Review Prior to Filing It With the State Personnel Board and With Sufficient Time to Review and Provide Feedback to the Department Attorney

In this reporting period, the OIG found a pattern where the department attorney failed to consult with the OIG by providing the SAIG with a copy of the prehearing settlement conference statement for review prior to filing with the State Personnel Board.¹⁶ Of the 197 cases the OIG monitored, employees filed appeals with the State Personnel Board in 44 cases. Of those 44 cases, the OIG did not receive the conference statements before filing in five cases (11 percent).

When an employee receives a disciplinary action, he or she may file an appeal with the State Personnel Board for an evidentiary hearing. Before the hearing, the State Personnel Board holds a prehearing settlement conference with the parties. The purpose of the prehearing settlement conference is to meet and negotiate a settlement, if possible. The State Personnel Board requires all parties to file a prehearing settlement conference statement 12 days prior to the conference.

The Department Operations Manual requires that the department attorney confer with the SAIG on all cases the OIG monitors. Additionally, the Chief Counsel Directive (2012) outlines the department attorney's responsibilities, which include providing a copy of the prehearing settlement conference statement to the SAIG five calendar days before serving the opposing counsel to allow feedback from the SAIG.

The SAIG reviews the statement to determine whether it contains the required information, including, but not limited to, a summary of stipulated facts, a time estimate, the identity of each witness, the subject matter on which the witness is expected to present evidence, a brief statement of each witness's expected testimony, an appropriate expert designation, a list of documentary evidence, and a statement of significant evidentiary issues.¹⁷ A failure by the department attorney to follow the requirements associated with filing a prehearing settlement conference statement may result in the exclusion of evidence at the evidentiary hearing.

16. OIG Case N° 22-0041996-DM; OIG Case N° 22-0044502-DM; OIG Case N° 22-0045931-DM; OIG Case N° 22-0046153-DM; and OIG Case N° 22-0044888-DM.

17. Although not required, the OIG will recommend that the department also include the following statements: 1) "CDCR reserves the right to call any witnesses listed in the appellant's prehearing settlement conference statement" and 2) "CDCR reserves the right to move into evidence any documents listed in the appellant's prehearing settlement conference statement."

When the department attorney neglects to provide the OIG with an opportunity to review the prehearing settlement conference statement prior to filing, the OIG is prohibited from executing our statutory duty to monitor the department's performance of the disciplinary process. Moreover, late review of the department's prehearing settlement conference statement may inhibit the SAIG from preparing for the conference. In all cases cited herein, the SAIG monitored the case, for more than one year, from the investigation through the disciplinary process. At no time was the department attorney unaware that a SAIG had been assigned to monitor the case.

In one case (OIG Case N° 22-0044888-DM), the SAIG received the prehearing settlement conference statement on the day of the conference. In another case (OIG Case N° 22-0045931-DM), at the request of the SAIG, the department attorney provided the prehearing settlement conference statement after it had already been filed stating he had forgotten to send it to the SAIG.

It is the responsibility of the department attorney to proactively consult with the SAIG rather than wait for the SAIG to request legal documents for review.

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Recommendations

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

- We recommend that Office of Internal Affairs' special agents refrain from asking leading questions, wait for a complete response to a question before asking an interviewee another question, and ask all relevant questions of an interviewee before disclosing information from an investigation.
- We recommend that the department provide advice on a newly enacted California law to guide employees on expectations for off-duty cannabis use and to ensure that employees are receiving proper cannabis testing.
- We recommend that department attorneys provide the OIG with a draft of the prehearing settlement conference statement for review before filing it with the State Personnel Board, and with sufficient time to review and provide feedback to the department attorney.

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

*Semiannual Report
July–December 2023*

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STATE *of* CALIFORNIA
April 2024

OIG