

Office of Independent Review

Annual Report

Los Angeles County Probation Department



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EXECUTIVE SUMMARY

The Office of Independent Review has been working with the Los Angeles Probation Department for a little over a year, performing independent oversight of its internal investigation functions and reviewing policies and procedures related to employee discipline and integrity.

When OIR took up its Probation responsibilities, the most acute challenges facing the Department in this realm were investigations of uneven quality, untimely investigations resulting in expired statutes of limitation, and disproportionate discipline. In the ensuing year, the Professional Standards Division (“PSD”) has progressed to the point where these problems, though they still arise occasionally, are no longer acute or chronic. As a result, the Division has been able to turn its attention to the creation of a professional internal investigations unit with a skilled cadre of investigators who, with OIR’s “real time” monitoring of cases and recommendations, have begun to produce a quality work product consistently. This is a high aspiration and results have not come easily, partly because Probation, unlike a conventional police agency, does not have a natural pool of experienced criminal investigators from which to select its internal affairs investigators.

Results have nevertheless shown a positive evolution. Investigations are now launched based only on concrete plausible evidence of policy violations and are no longer instigated by flimsy allegations. Also, discipline has not been precluded once during the past year because of an expired statute of limitations.

The progress in the quality and timeliness of investigations of juvenile camp child abuse cases was recently addressed in the Department of Justice’s (“DOJ”) final “Monitoring Report for the Memorandum of Agreement Between the United States and the County of Los Angeles Regarding the Los Angeles County Probation Department Camps,” issued on January 6, 2012. This report represents the culmination of DOJ’s four year evaluation of the Probation Department’s efforts to comply with a list of 41 agreed-upon areas requiring remedial attention.

The report stated that DOJ determined the County to be “in compliance” with 34 of the original 41 areas of concern. It still has reservations about seven areas and will continue to gather data about those. All areas of concern related to excessive force, other forms of child abuse, reporting of these incidents and the quality and timeliness of internal investigations, however, were among those areas deemed “in compliance.” In fact, for the last few months prior to publication of this report, the standard set by DOJ—a thorough investigation completed within

90 days and reviewed by supervisors in less than thirty additional days—has been met by the Internal Investigations Office (“IIO”) in almost every case to the expressed satisfaction of the DOJ monitors.

During OIR’s first year at Probation, we communicated extensively with the DOJ monitors and view their reports as an invaluable opportunity to see how the Department’s strengths and weaknesses appear to a knowledgeable third party. OIR is gratified to find that the DOJ recognized many of the same indicators of department progress that we had observed and further determined that OIR has had a beneficial impact on the Department:

Toward the end of the previous monitoring period, the quality of the IIO’s investigations was suffering. However, more conscientious oversight by IIO supervisors and regular, substantive input from the Office of Independent Review (OIR) has led to rigorous investigations that generally pursue all reasonable avenues of inquiry and that lead to conclusions that are well grounded in evidence. The OIR’s process for offering technical assistance at all stages of the investigation—from the initial triage process, to formulating a plan for inquiry, to communicating the findings in a written report—is an essential component to the County’s internal capacity to ensure the quality of investigations remains high, even after DOJ oversight concludes. (DOJ 5th Monitoring Report at page 68)

OIR will continue to foster a working relationship with the DOJ monitors and will urge the Department to maintain the standards it has achieved and build on the progress it has made under the memorandum of agreement.

Great challenges continue to face the Department’s efforts to enforce its own policies effectively. Severe misconduct is frequent enough to have resulted in the discharge of fourteen employees last year. The reasons for the discharges ranged from lying about an improper use of force against a client minor to defrauding a federal loan program to carrying on a covert relationship with a felon. Off-duty behavior resulting in arrests also continues to flourish. For example, in 2011, sixty-nine employees were arrested by other law enforcement agencies or were named suspects in a criminal investigation, almost half of them for driving under the influence.

There are other challenges that fall outside the disciplinary realm that distract Probation management and sap resources. These include the extraordinary rate of employees who cannot return to work or are working with restrictions. Currently, approximately 379 of the

Department's 5,632 employees are on some type of medical leave and are not physically able to return to work. Another 353 employees are on "work hardening" or "conditional assignment" status and are working on modified duty.

Also with Probation's unique responsibility for the incarceration of minors comes added potential liability. In fiscal year 2010/2011 alone, the Department was the subject of 56 new liability claims and the County paid out \$3.94 million on claims and lawsuits against Probation.

Nevertheless, in our brief exposure to the Department, we have observed enthusiasm and energy focused on confronting these challenges. In this report, we describe in more detail the Department's progress and the important tasks that remain to be done.

OVERVIEW of PROBATION DEPARTMENT'S PROGRESS

INTRODUCTION

The Office of Independent Review was asked by the Los Angeles County Board of Supervisors a year and a half ago to establish a civilian oversight presence within the Probation Department. On August 10, 2010, the Board unanimously approved the Chief Executive Office's request that the OIR expand its services to include "...providing oversight of all areas of the Probation Department's internal affairs operation." The mandate further specified that OIR's responsibilities were to include "assisting in the initiation, structuring, and development of ongoing internal investigations...to ensure that investigations are complete, effective, and fair; [and] monitoring ongoing investigations and reviewing completed investigations falling within the purview of OIR to ensure that content, disposition of employment issues, and recommended discipline are appropriate..." In October of 2010, the "two experienced OIR attorneys" called for by the Board's motion moved from their Sheriff's Department offices to the Downey headquarters of Probation. This move toward more permanent oversight was an outgrowth of the OIR survey report on the Probation Department five months earlier.¹

The OIR Probation team consists of four persons: two attorneys with experience in civilian oversight of law enforcement, one executive secretary with extensive knowledge of the Department, and one investigator with a background in internal affairs. We have modeled our

¹ This report, entitled "Evaluation and Recommendations Concerning Internal Investigations at the Los Angeles County Probation Department," is available at www.laoir.com

approach on that of OIR at the Sheriff's Department but tailored it to the challenges and needs of the Probation Department, emphasizing for instance a mentoring role with investigators and utilizing the skills of the OIR investigator for that purpose.

BACKGROUND

The Los Angeles Probation Department is the third largest department in the county (after Health Services and the Sheriff's Department). It's 5,632 employees are sworn peace officers and civilian support staff and managers who are responsible for the approximately 85,000 persons on court-ordered probation in Los Angeles County at any given time, including all juveniles on probation. The Department maintains three juvenile halls for arrested minors awaiting adjudication of their cases and fifteen juvenile camps for minors sent there by the courts following adjudication. All together, Probation houses approximately 2,300 incarcerated minors, many of them for periods of six months to a year.

The chief executive of the Department is known as the Chief Probation Officer. The Department is divided into Bureaus, each headed by a Bureau Chief who also acts as the final decision-maker for significant discipline cases. The institutions – the juvenile camps and halls – are headed by Directors and Superintendents who make most of the misconduct case referrals to the Internal Investigations Office ("IIO"). They also act as decision-makers for less significant discipline cases.

Significant violations of Department policy are investigated centrally by IIO. Less significant cases are often investigated by supervisors at the subject employee's workplace, sometimes with consultation from IIO.² IIO's fifteen investigators investigated 303 cases in 2011. A majority of IIO's case referrals come from the juvenile camps and halls and many of those concern questionable uses of force against minors. Probation staff are in close contact with detained minors at these institutions and must conform to a use of force policy that is much more restrictive than that which applies in adult jails. The remainder of IIO case referrals come from the variety of other Probation bureaus, including Adult Field Services, Juvenile Field Services and Placement Services.

² The Internal Investigations Office is the new designation for the entity within the Professional Standards Division that combines the functions of the former Child Abuse Special Investigations Unit (excessive force and other allegations involving staff interaction with incarcerated minors) and Internal Affairs (most other types of policy violations).

PROBATION DEPARTMENT'S PROGRESS IN RESPONSE TO ORIGINAL OIR RECOMMENDATIONS

In June 2010, at the conclusion of our survey, the most prominent challenges we observed facing the Probation Department were 1) employee misconduct on duty, 2) low quality investigations of misconduct, and 3) severe shortcomings in determining and imposing discipline. The underlying systems problems that created or exacerbated these challenges were lack of cohesion within internal investigations, lack of communication between IIO and other units, and lack of control over timeliness. When we returned to Probation in October 2010 and began to work full time with the Department, it became clear that there was an additional major challenge—employee misconduct off duty.

We also noticed that the Department had taken steps forward improving its ability to investigate misconduct and impose appropriate discipline. In the last year, we have observed first hand the Department consolidate and expand on some of these improvements. We have also experienced some frustrations and disappointments with tenacious problems that have held the Department back. The following list synthesizes how Probation has responded to the thirty-four recommendations in the June 2010 OIR report and measures the progress of the many projects and organizational changes that came out of those recommendations. We note that the Department actively embraced the great majority of the recommendations, even where execution has sometimes proved slow or difficult. It is also important to note that these thirty-four recommendations do not encompass the universe of relevant goals and promising initiatives that the Department and OIR have embarked upon during the last year, many of which are discussed later in this report.

Recommendations from the June 2010 OIR Special Report:

1. Establish a unified tracking system for all misconduct investigations.

A case tracking database, consolidating previous disparate systems used by the component units of Professional Standards Division, has been created and implemented by the Department. [See the section below on the Consolidated Case Tracking Database.]

2. Assign responsibility of case tracking and management to one entity with authority to ensure timely completion of cases.

This has been an ancillary benefit of the Department's reorganization of the Professional Standards Division and the transfer of the Performance Management unit to be part of PSD. [See number 10 below.]

3. Facilitate investigator access to case results and other feedback.

Because the internal investigators and the Performance Management (“PM”) unit are now within the same division, investigators are able to exchange information easily with the advocates of Performance Management. In addition, OIR provides an alternate feedback loop as well.

4. Provide an experienced review mechanism to ensure thorough and objective investigations.

We recommended that the Internal Investigations Office make the process of internal review of investigations more robust and improve the expertise of those doing the reviewing. Since then, several process changes have served these goals well. IIO has added a supervisor dedicated specifically to child abuse cases from the camps. A third staff member has been added to the criminal desk and given supervisory duties. IIO has implemented bi-weekly one-on-one reviews for each investigator to update supervisors on the status of ongoing investigations. OIR reviews each completed investigation and gives written feedback directly to IIO supervisors. The director of IIO and the senior director of the Professional Standards Division read select case files. The IIO investigator confers with investigators on interviewing skills and investigation strategy.

5. Provide adequate focused training.

Training resources remain scarce for IIO investigators, who could benefit from a wide spectrum of courses. On the plus side, IIO has moved toward using sworn personnel exclusively for investigations. This has raised the requirements for yearly mandatory training in order for each officer to comply with state standards. Investigators have also attended the use of force training required for camp and hall personnel. The IIO director has created a variety of relevant in-house training programs as well. OIR also facilitated two training sessions for IIO staff, utilizing experts in investigation techniques and appeals advocacy from the Sheriff’s Department and from County Counsel. These training programs focused on “proof issues”, evidence collecting and interviewing skills.

6. Eliminate affidavit procedure

Our position on affidavits remains the same: “Directing minors involved in an alleged child abuse incident to produce written affidavits is a counterproductive vestige of the past. The procedure is superfluous now that the Department has a dedicated child abuse investigation team that is capable of interviewing the minors within hours or days. In situations where a more immediate statement from the minor is deemed essential, the affidavit procedure should be replaced with an audio or videotaped interview conducted by a supervisor at the hall or camp facility.” Although the tendency, in certain cases, to request multiple affidavits from a complaining minor has all but disappeared, the habit of obtaining an initial affidavit is still

widespread. IIO has agreed to work with OIR to provide camp and hall managers with a better alternative, such as tape recording, with which they can be comfortable.

7. Uphold a consistent principle of accountability and base line standards of integrity.

In the course of investigations of misconduct, it is important to uphold standards of integrity consistently by holding even cooperative witnesses accountable if they have violated policy. The practical pressures of seeking a provable conclusion, however, sometimes present a seemingly insurmountable dilemma: how do you encourage employees to come forward and be truthful about their colleagues if they may be subject to discipline themselves? OIR believes that the practical and principled approach to this problem is to hold all employees accountable for their past misconduct, but to view honesty and the courage to name misconduct for what it is as mitigating circumstances which may reduce discipline significantly. Implementing this principle requires a cultural change that we are currently broaching on a case by case basis.

8. Refer unsubstantiated cases for review and tracking.

Professional Standards has made a complete break from earlier practice of allowing IIO investigations that resulted in an “unsubstantiated” finding to receive no further review. Now, OIR reviews the unsubstantiated cases and the Bureau managers from which the case originated have the opportunity to review the case as well. Prompt review of an unsubstantiated case can result in reconsideration of the finding or supplemental investigation.

9. Devise ways to incentivize Probation Department employees to aspire to conduct internal investigations.

Professional Standards Division has received some vital support from the Department and successfully fostered the promotion of employees to a supervisor level. It has also conferred new responsibilities and autonomy on some staff who were not in line for promotion. Staff have successfully promoted out of the Division as well or transferred to coveted positions. Other incentives, however, have been hard to come by. Cell phones, portable computers, convenient vehicles for roll outs, and cameras to document evidence are a few of the devices that commonly complement the autonomy inherent in being an investigator and render the investigator more effective. To date, the Department has not found a way to provide these tools, essential to modern day investigators, to their IIO staff. The investigators remain housed in a windowless shed with unusually poor climate control. In light of this, their increasing professionalism is all the more admirable, but without attention to these basic needs, the Department is likely to hamper its future ability to recruit the best candidates into the Division.

10. Consider merging Child Abuse Special Investigations Unit with the Internal Affairs unit.

This was accomplished a year ago with clear benefits for unit cohesion, as well as consistency in standards, training, and report formats. Former Child Abuse investigators and Internal Affairs investigators have successfully cross-trained and now handle both types of cases.

During this period, the Department also grouped all of the policy compliance and discipline related units under the Professional Standards Division. These include Internal Investigations Office (which now combines the functions of the former Internal Affairs unit, the Child Abuse Special Investigations unit, and the Arrest Desk), Performance Management, which coordinates and issues discipline and defends it on appeal, and Staff Training. Professional Standards has added supervisor positions as well as clerical staff. It has also acknowledged the significance of the Arrest Desk, which tracks criminal cases against employees, by dedicating three investigators to it. This dedication of staff by the Department appears to us to be amply justified by the large volume of disciplinary matters generated by Department employees. The unification of these formerly disparate units under the Professional Standards umbrella is logical and facilitates constructive dialogue that raises skill and experience levels. It also helps with the implementation of uniform standards and methods for internal investigations and outcomes.

11. Improve availability of video evidence.

The main vehicle for accomplishing this goal is the slow-moving camera procurement project (aka the “Security Enhancements Project”) which will place hundreds of additional video cameras in the juvenile halls and in some of the camps. [See the section on Preservation of Evidence later in this report for more detail about the status of this project.]

12. The Department should modify its meaningless forty-five day internal deadline.

After assuring the Department of Justice that OIR would also be monitoring the progress and quality of internal investigations, Professional Standards successfully “renegotiated” the investigation time limits and established a more realistic timeline with which it has been able to comply consistently. All investigations are now expected to be complete within 90 days (barring extraordinary circumstances) and reviewed by a supervisor within 30 days after that.

13. The Department should closely review the bottlenecks identified in this report and take measures to assure complete and expeditious processing of internal affairs investigations.

Bottlenecks and backlogs that obstruct the timely flow of cases through the stages of investigation, review, discipline determination and issuing a discipline letter have previously

undermined the Department's ability to impose discipline in an effective manner. These problems can also further alienate managers and employees from the discipline process because even employees who are determined not to have violated policy are kept waiting for many months before learning the outcome. Both IIO and Performance Management have successfully eliminated unnecessary delays before cases are assigned to investigators or advocates. IIO managers have also focused on other sources of delay by giving investigators closer guidance in how to prioritize tasks and balance case loads. This attention is paying off and most cases are now completed and reviewed within their target timelines: ninety days and thirty days, respectively. Performance Management has been less able to reduce bottlenecks. Some of this is attributable to older cases that did not conform to the new timelines as well as some "last minute" cases investigated by Bureau personnel at the workplace. It is important to note that expired statutes of limitation, the "bottom line" on timeliness issues, have been all but eliminated and discipline letters sent out by PM in the last few days of the one-year period have been greatly reduced.

14. The Department should establish a policy addressing which personnel can "initiate investigations" so that POBR dates are accurately calculated.

The current and consistent practice of IIO is to assume that any supervisor has the authority to initiate an investigation. This is a prudent and cautious approach but OIR continues to recommend that that this policy be put in writing to avoid litigation on the subject.

15. Where subjects are high ranking personnel, the Department should develop more specific guidelines regarding which unit should handle investigations.

The Department has established a practice to refer all administrative investigations of managers at the rank of Bureau Chief or above to be performed by the County's Department of Human Resources and/or the Office of County Investigations administered by the Auditor Controller's office.

16. Establish policy that Internal Investigations managers are not to assign themselves investigations so that they can be freed to actively supervise the unit.

This policy has been implemented and adhered to.

17. Establish policy that all potential witnesses be interviewed. Internal guidelines and training should be developed requiring that investigative efforts to contact a witness are documented in the file so that a reviewer and decision-maker can easily ascertain the lengths to which an investigator went to pursue each investigative lead.

IIO's new format and report guidelines emphasize "showing your work" even if the investigator's efforts to find a witness or persuade a witness to agree to an interview are unsuccessful. OIR has recently observed successful efforts to locate hard-to-find witnesses and improved documentation of all these actions.

18. Adopt an early resolution mechanism—bypassing a formal investigation—in cases where an employee is willing to take responsibility for his or her actions.

This has been accomplished through implementation of the pre-disposition settlement agreement (PDSA) process. [See the section on PDSAs later in this report.]

19. Devise a more effective and substantive screening mechanism for requests for initiation of investigations so that the administrative investigative process is not used in lieu of effective management and supervision.

The IIO Director and her supervisors engage in a case triage process every two or three days to sift out appropriate investigation referrals from personnel management problems. OIR periodically observes this process. IIO supervisors have developed a consistent standard among themselves for what constitutes an appropriate referral.

20. Develop policy and training on how to handle requests for anonymity.

OIR has generally encouraged IIO to decline to take action on anonymous allegations where there is insufficient specific information to focus an investigation.³ We have also made ourselves available to be contacted directly by anonymous sources to discuss how they might mitigate the personal consequences of coming forward with their allegations

21. Number sequentially all complaints received to assist in centralized and accurate tracking.

The Department has not yet pursued this recommendation. The complaint forms themselves are still not numbered sequentially. However, IIO records and tracks (in an internal database) all complaints that allege excessive/unnecessary force. Complaints that allege excessive/unnecessary force and other misconduct (non-force cases) and result in a formal investigation are assigned an IIO number and tracked. Non-force related complaints that do not result in a formal investigation are not given an IIO number but are maintained by IIO in a binder.

22. We recommend that the Department require centralized tracking of Bureau level disciplinary investigations.

There is no centralized tracking yet of disciplinary investigations initiated and investigated by Bureau staff. If a Bureau investigation results in a substantiated finding, however, the case is

³ Where there is sufficiently specific information on which to base an investigation from an anonymous source, OIR encourages IIO to pursue corroboration from other sources.

sent to Performance Management and is numbered and tracked thereafter.

23. Develop and enforce internal guidelines that impose reasonable limits on the period between when an employee is notified of the Department’s intent to discipline and when the Department actually imposes discipline.

Performance Management has largely resolved its most acute problem – failing to serve initial discipline letters before the one-year statute of limitations expires or serving them on the last few days before expiration. Some cases, however, appear to stall after the initial “letter of intent” is served on the subject employee. Some delays are reasonable and ultimately serve to facilitate appropriate settlements. Other delays are due to timing backlogs in case processing that continue to plague Performance Management to some degree. This is partly a result of staff scarcity. PM has been able to hire skilled advocates in the past year, but the process is slow and the unit is still not staffed up to its full complement. We will continue to work with Professional Standards Division to streamline case processing and issue clear prioritizing guidelines to staff so that bottlenecks can be eliminated entirely. We will also continue to urge the Department to devote additional resources to this unit so that it can handle the high volume of significant disciplinary cases generated by the Department.

24. Implement a system to provide timely feedback from Performance Management to the investigative units regarding sufficiency of the evidence, choice of relevant policy violations and findings about policy violations.

This should include the results of any internal and external appeals. We recommend that the Department take a critical look at all cases scheduled for civil service hearings and develop a post-civil service debriefing process to learn the available lessons from the appeal.

A number of new processes address this communication and feedback issue. A weekly case problem Roundtable brings Performance Management and IIO managers together. The arrest desk, formerly part of PM, has become part of IIO. OIR further facilitates feedback by frequently discussing both investigation quality issues and civil service strategy issues with staff at every level in PM and IIO.

25. Export investigation information. We recommend that the Department take advantage of information learned during investigations and export that information to the proper Department stakeholders for purposes of training, risk management, supervision, policy development and other Department functions.

OIR has worked with bureau managers on issues exposed by discipline investigations.

Additionally, OIR reviews IIO investigations and provides written feedback to PSD management and, where relevant, to Bureau Chiefs. The weekly case roundtables [see # 29 below] and the training material presented by IIO and OIR to Department Managers often center on lessons derived from case investigations. OIR has discussed other mechanisms for exporting case lessons to Department managers and expects to pursue this dialogue more thoroughly in the coming year. OIR has proposed, for instance, that, for the most significant discipline cases, there be a final review by the Deputy Chief of Probation and other executives before a discipline decision is confirmed. Among the benefits of this procedure would be to inform top executives of the Department about any important information exposed in the course of investigations. The Department has accepted this recommendation in principle. OIR will report on its implementation in the future.

26. Require and facilitate creation of a disposition memo by the decision-maker for every case that results in discipline, formatted to require a record of case evaluation with regard to application of the Department's disciplinary matrix, aggravating and mitigating circumstances, as well as disciplinary background and professional record of the subject.

No formal documentation is in place to record the decision-maker's rationale. Decision-makers do, however, attend the weekly Roundtable meetings with IIO and PM manager's (and OIR) to discuss their disciplinary decisions/inclinations. OIR still believes that the creation of a disposition memo could be a valuable procedure that would produce a good record of the Department's reasoning behind imposed discipline and be a useful tool when decision-makers are called upon to defend disciplinary decisions in administrative hearings.

27. Discipline alternatives. The Department should consider creating alternatives to traditional punitive discipline (i.e. training, apology letters, etc.) in the appropriate cases.

OIR has introduced education-based discipline (EBD) to the Department. This system provides for remedial classes in lieu of unpaid suspension days. The Sheriff's Department, which developed EBD and has a wide variety of available EBD classes has agreed to allow Probation employees into its classes. Probation's Staff Training unit also provides a variety of classes that can be utilized for education-based discipline. Staff Training also recently designed a course called Optimal Decision-Making specifically created to be a core course for EBD. [See the section on EBD and PDSAs later in this report.]

28. Require accurate, detailed case logs in Performance Management.

There have been incremental improvements in this area, accelerating lately with the full implementation of the enhanced Performance Management System database. [See the section on the Consolidated Case Tracking Database later in this report.]

29. Implement a “round table” case evaluation and discipline decision-making process for significant cases. This process would be rigidly scheduled and include the decision-maker, designees from the investigative unit and PM, and a designated senior executive representing the Chief of Probation. This process would encourage on-time case evaluation and processing and help achieve a measure of transparency and consistency within the Department.

OIR has proposed this procedure to Department leadership to formalize and document decision-making for the most severe forms of discipline including discharge, demotion and high suspensions. The proposal is currently under consideration.

30. Track “Arrest Desk” cases in a manner accessible to PM management, as well as IA and CASIU in real time. Require CASIU and IA to monitor the arrest cases periodically. This may provide a failsafe against the problems with expired statutes experienced recently with arrest desk cases.

Professional Standards has accomplished this by transferring the Arrest Desk into IIO and staffing it adequately. OIR also tracks arrest cases and confers with Arrest Desk staff frequently on accuracy and timeliness of case status information. [See also the section on the Arrest Desk later in this report.]

31. Department leadership should express and reiterate a clear commitment to consistent and professional internal investigations and accord the internal investigative units the resources and prominence commensurate with that message. Basic investigative support such as a professional and secure working environment, interview rooms, cellular phones, and vehicles should be provided to the investigative units.

This remains a work in progress with little advancement. [See also recommendation 9 above.] One very positive development, however, has been the filling of one additional support staff positions and one open investigator slots with highly motivated individuals. OIR continues to urge Department leadership to demonstrate its recognition of the significance of the internal investigative function.

32. Department leadership should foster an ethic of responsibility for unit managers, directors and bureau chiefs to embrace their role as ultimate decision-makers within the disciplinary system.

The weekly roundtable described in the paragraph below and the small group tutorials for institution directors have helped promote this philosophy. [See the section on Evidence for further discussion on this topic.]

33. The Department should find ways to provide increased transparency regarding its handling of allegations of misconduct, disciplinary decision making, and systemic issues.

Transparency – meaning, in this case, the dissemination of information about the disciplinary system – can aid the Department greatly in improving employee confidence in the discipline system and improving public confidence that the Probation Department is capable of policing itself. OIR has improved transparency in two significant ways. First, we publish case status quarterly charts that describe and track the progress of disciplinary cases.⁴ Second, at our request, the Professional Standards Division has convened a weekly “case problems” roundtable open to Department bureau chiefs or other managers who are grappling with disciplinary issues or for purposes of discussing case disposition in an expert forum composed of OIR attorneys, managers from Internal Investigations and Performance Management, and the head of Human Resources. A third project – a periodic internal disciplinary report issued by PSD listing and describing all disciplinary cases and their outcomes without identifying the subjects – is in the discussion stage. This type of report can help educate department managers about appropriate levels of discipline and provide other employees with a healthy alternative to the rumor mill.

34. The Department should seek permanent on-site independent review of its internal investigative and disciplinary functions to ensure continued reform, fair and thorough investigations and principled decision-making.

OIR is currently filling this role as a result of the actions taken by the Board of Supervisors, the CEO and the Department.

OIR pursues these stated goals of independent review by interacting with the key Department personnel at every stage of investigation, evaluation and decision-making in disciplinary matters. We enumerate some of these interactions below. Other OIR activities are discussed throughout the remainder of this report.

OIR confers directly with Professional Standards Division staff and managers on a daily basis, providing input and recommendations at every stage of the lifecycle of administrative discipline cases.

Triage – All case referrals and requests for investigation from other units within Probation are evaluated by Internal Investigations Office supervisors who accept a case for investigation, reject it and return it to the unit of origin for another form of resolution, or decide they need more information. An OIR attorney periodically sits in on these triage meetings.

⁴ OIR's Probation Camp Case Status Quarterly Reports can be accessed through www.laoir.com.

Investigation Strategy and Mentoring – At the request of an investigator or a supervisor, or when OIR has any particular concern about a case, OIR attorneys confer with IIO staff about legal and tactical issues and thoroughness. The OIR investigator is also available to discuss effective methods and occasionally accompanies investigators into the field.

Investigation Reports – OIR reviews completed IIO investigation reports and provides detailed written feedback to IIO supervisors and managers on issues ranging from the organization, relevance and sufficiency of the evidence to the choice of policy violations and the fairness of interview questions.

Feedback to Supervisors -- OIR talks directly with supervisors about problems or patterns we observe with particular investigators or investigation subject matter.

Systems Issues – OIR confers frequently with the Senior Director of PSD, the Director of IIO and the head of Performance Management about deadlines, bottlenecks and case flow as well as longer term goals to improve the disciplinary system.

Arrest Desk – OIR frequently provides guidance to the Arrest Desk staff who have weathered a large revision and expansion of their duties this year. We also sometimes help them establish a constructive working relationship with the police agencies with which they must interact.

Administrative Discipline Consequences of Criminal Arrest Cases – OIR makes recommendations on level of discipline or whether an arrest case is appropriate for a pre-disposition settlement agreement (PDSA).

Department of Justice Monitors – OIR has explained its role to DOJ and offered assistance in quantifying IIO's progress toward swift, high quality child abuse investigations.

Discipline – OIR reviews selected discipline letters and makes recommendations to Performance Management and to executive decision-makers about appropriate discipline levels.

Appeals – OIR confers with advocates for the Department on litigation and disposition at the appeal stage.

IMPROVING the INVESTIGATIVE PROCESS

PRESERVATION of EVIDENCE

Close examination of the case files, especially in use of force cases, has demonstrated to us that two forms of concrete evidence are often vitally important in reaching a principled conclusion about allegations of misconduct in the camp setting: video and medical evidence. In a significant fraction of cases emanating from the juvenile halls and camps, video evidence provided an important basis to help make a finding, tipping the balance as often in favor of an unsubstantiated finding (that is, no proof of misconduct) as a substantiated finding (proof of misconduct). This was true even where the action captured on video was peripheral to the incident, but when combined with other evidence, helped bring the case to a firm conclusion. In one case, for instance, where the alleged misconduct took place in a closed room outside the range of the camera, the subject employee claimed not to have been alone in the room with a minor but the video showed them both entering the room.

The Department long ago recognized the need for cameras in the institutions, but they have been installed piecemeal at particular camps or halls over the years. Currently, only a fraction of the institutions from which alleged child abuse incidents arise are equipped with any video surveillance cameras. In the institutions that have them, the cameras are often unreliable, poorly maintained or store video in a difficult-to-copy format that slows down investigations. In many other use of force/child abuse cases, where there is no video because the area of

the facility in question or the entire facility has no cameras, the case finding is necessarily less reliable or less likely to withstand challenge on appeal. Professional Standards has long embraced this concern and lobbied for more cameras. OIR has urged the Department to accelerate its efforts to obtain and install video cameras in more areas through its joint procurement project with the Department of Public Works. This thoughtful, deliberate but frustratingly slow process is currently scheduled to break ground on installation in April of 2012. It is important to note that, even when completed, this project will leave twelve functioning camps untouched by these improvements. In the meantime, Internal Investigations managers and staff have shouldered some responsibilities and self help to extract as much utility as possible out of the existing sparse video resources. They have developed knowledge of the various video surveillance systems and download challenges and have kept an eye on broken or obscured lens covers and taken action to have them cleaned or replaced. Performance Management advocates have received negative feedback from civil service hearing officers when the quality of video is bad because of poor equipment or maintenance and have a strong incentive to ensure these machines can produce a viable image.

Medical evidence in use of force cases is also important and generally easier to procure. A resident nurse is available at each of the camps and minors are escorted to a hospital for most injuries major or minor. Nevertheless, investigators have been inconsistent in tracking down medical documentation and including it in their case reports. OIR has insisted that interviewing the nurse who performed any relevant medical evaluation is indispensable and obtaining all medical documentation related to injuries is fundamental. Internal Investigations managers have agreed to make this a priority and investigators are now expected to track down and interview the nurse who had face to face contact with a minor following an incident. We are now seeing the medical component included more consistently in case investigation files.

Some incidents that may give rise to disciplinary investigations also create physical evidence at the scene. Bloodstains, broken objects and contraband can all help illustrate eyewitness testimony, but the practice of staff and supervisors at the Department's juvenile camps and halls has traditionally been to clean up any remains of a disruptive event as soon as possible. The Internal Investigations Office has recently begun to emphasize to camp and hall administrators the necessity of preserving the scene or physical evidence or, at the very least, taking pictures of the incident location and physical evidence. This is a central theme of the tutorial presentations discussed later in this chapter under "Specialized Training."

RECANTING

Minors sometimes recant their allegations about staff misconduct. OIR observed that this is in fact a fairly frequent occurrence shortly after a child abuse case is referred from a camp or hall to IIO. From one sampling of approximately thirty-five cases, for instance, six of them had been abbreviated investigations because the minor recanted. Of all the completed investigations OIR received in a recent six month period, twenty cases involved recanting minors. When a minor recants serious accusations about staff, this should be an occasion for increased caution and scrutiny. This has not been the rule, however. Interviews of recanting minors have tended to be extremely short and cursory. Additionally, where there is a recanting minor, the roll out has sometimes been delayed.

Once notified, IIO generally responds quickly to alleged excessive force cases, sending an investigator to the scene within one or two days. Cases where the complaining minor recants his or her allegations within a day or two of first making them appear to be the exception to the rule of timely IIO rollout. OIR noticed that, in several cases involving a recanting minor, the IIO investigator roll out to the facility, was delayed by approximately a week. We recommended to IIO management that investigators should roll as quickly to those cases as any others and should explore all possible reasons for the recanting and avoid any appearance in favor of a bias toward quick resolution. Additionally we recommended a number of specific actions investigators could take to increase the chance of obtaining a more complete picture of the reasons for the minor's original allegation as well as for the minor's purported change of heart. These recommendations included:

- Question the recanting minor more extensively (especially when there is a long delay between initial allegation and IIO interview) to determine if any influence by staff or other minors had caused the minor to change his mind or become uncooperative.
- Identify the person to whom the minor first disclosed his allegations and consider interviewing that person.
- Determine whether injuries on the minor or staff tend to contradict the minor's recanting.
- Take a balanced approach that considers the possibility that the recanting is the fabrication rather than the original allegations.

IIO is considering these recommendations, but, to the unit's credit, we have already seen some investigations of recanting cases with much more probing interviews of the minor.

SPECIALIZED TRAINING

Over the course of several months, the IIO Director and OIR discussed frequent mistakes and misunderstandings that Probation camp and hall managers made regarding decision-making after critical incidents or discovery of reportable suspected child abuse incidents. Evidence was not preserved; notification to IIO was late; SCARs (suspected child abuse reports) were not issued; contacts with law enforcement were not documented, etc. This indicated that the managers and supervisors at the camps and halls lacked a reliable understanding of Department policy, IIO criteria and the priorities dictated by consistent policy enforcement.

IIO supervisors had also observed these patterns and received many inquiries from camp and hall managers indicating that they and their staffs could benefit from more extensive dialogue on these matters. Department procedures were poorly understood. Each institution had different procedures. The IIO Director suggested that small group tutorials with camp and hall directors and supervisors were the best way to address the variety of issues. OIR participated in the preparation of materials for these tutorials and assisted the IIO Directors and Supervisors with some of the sessions, finding that camp administrators were eager to understand the needs of the Internal Investigations Office. OIR was particularly concerned about the need for scene and evidence preservation and prepared a computer presentation to assist with this effort.

Time will tell whether this training program improves compliance by institution management with procedures but it is already clear that the effort has improved the connection between institution management and Professional Standards Division.

EMPLOYEE MISCONDUCT

OVERVIEW of ON-DUTY MISCONDUCT

Two thirds of Probation Department employees are “sworn.” That means they have peace officer status under the California Penal Code with all the considerable rights and responsibilities that go with it. Only a small percentage of the Department’s probation officers carry guns on the job, but they are all empowered to engage in criminal investigations, gain access to confidential databases and make arrests. Even the non-sworn employees of the Department are often privy to confidential information about adults and juveniles on probation. The Department’s policies admonish all employees about the trust placed in them as members of a law enforcement agency and the potential consequences of violating that trust.

For these reasons, the Department exerts its authority over many aspects of both the on-duty and off-duty activities of employees. This means that allegations of policy violations investigated by the Internal Investigations Office cover a very wide range. As discussed later in this chapter, the most common off-duty misconduct cases investigated by IIO are drunk driving incidents.

The most common allegations of on-duty misconduct investigated by IIO investigators fall into the following categories:

- Excessive or unnecessary use of force—Use of force incidents arise mainly from the halls and camps. Staff do not carry any impact weapons and are required to try to de-escalate provocations and challenges by minors. When staff do use force, they are expected to conform to their training in a set of force minimization techniques called “safe crisis management.” In the juvenile halls and three of the fifteen camps, staff are provided with pepper spray and may use it under highly restricted circumstances.
- Negligent supervision—In the halls and camps, staff must be vigilant to protect against minors attacking one another, organized fights or combat games, escapes, and avoidable accidents.
- Inappropriate relationships with probationers, which can range from biased (negative or positive) treatment of out-of-custody adult and juvenile probationers to providing contraband snacks or favors to incarcerated juvenile probationers to sexual contact with incarcerated juvenile probationers.
- Time card fraud or other misreporting of work hours and overtime.
- Making false or misleading statements in reports or to investigators about any of the above.

In this first year, OIR has made excessive uses of force and other forms of child abuse in the juvenile camps and halls a priority. The Department’s unique responsibility for housing and treating the 2,300 minors in its custody should dictate a high degree of vigilance against staff misconduct. These cases have understandably attracted the attention of the public, the press and the Department of Justice.

Best practices show that the standard to which all administrative investigations should aspire is to be thorough, effective and fair. We have been pleased to see improvement in the average quality of investigations since our 2010 survey. This applies to the strategy and execution of the investigations as well as the written expression of them – the investigator’s reports.

Early in 2011, OIR assisted IIO managers with a complete revision of the format of the

investigators' reports. The result has been clearer presentations of the evidence as well as more logically planned investigations. Also, to ensure that statute of limitations issues do not prevent the Department from imposing administrative discipline, per OIR's recommendation, IIO's investigative reports, which are then sent to the Performance Management unit for processing discipline, now contain a statute of limitations date prominently displayed on the final report. The IIO unit also now immediately calculates the one-year statute of limitations date in its internal record-keeping tool so that supervisors can keep track of this critical date.

To address timeliness of investigations, IIO implemented a "triage" process which is intended to make an early and swift decision about whether an allegation of employee misconduct should be investigated by the unit. The triage meetings are held regularly and are attended by OIR. In 2011, IIO investigated a total of 303 cases. Utilizing the triage process, an additional 203 cases were reviewed and "triaged out" of IIO, to be handled by the managers at the original referring unit.

Those cases that are identified as appropriate for an IIO investigation are immediately assigned to an investigator (a change from past practice). An additional supervisor and a rigid schedule of face-to-face case load status meetings between each investigator and all of the supervisors have also helped steer investigations more efficiently. In some cases OIR attorneys have met with individual investigators to discuss legal questions and investigative strategies. The OIR investigator has actively partnered with some IIO investigators in the field on cases and has mentored others back at the office. OIR has observed clear improvement in the output of some individual investigators and expects to see this trend continue. While OIR has been pleased with the quality of some investigations, we have observed gaps and shortcomings in others. This has been the case, for instance, with failures to interview medical personnel regarding injuries or to obtain missing medical records. However, where we have identified further work or interviews that we viewed as necessary before an investigation could be satisfactorily completed, we have found IIO to be very responsive in conducting the requested follow up. IIO investigators have also shown a general readiness to explore sources of evidence recommended by OIR during the course of an investigation. In one case, for example, where alleged staff negligence had allowed a minor to escape from custody during a sports event at a school outside the institution, OIR recommended that the investigator work with school personnel to determine whether any of the civilian spectators may have taken pictures or video of the game that might prove to be relevant to the escape allegations. The investigator pursued this avenue and located video footage that significantly clarified the evidence in the case and strengthened her ability to interview staff subjects fruitfully.

We have observed that IIO generally responds to alleged excessive force cases, sending an investigator to the scene within one or two days of receiving the referral. The investigator is thus able to interview the alleged victim minor and witness minors quickly, but then there is often a delay of several weeks before the investigator arranges interviews with the subject and witness employees and their union representatives. This form of delay can damage the effectiveness of investigations, increasing the chance of collusion among witnesses or of simple erosion of recall. Another significant source of delay is late notification to IIO by the camp or hall. Most delays can be traced to a misunderstanding of Department policies and IIO criteria by camp or hall staff or to a glitch in the institution's chain of command, e.g., an inexperienced acting manager fails to act on a complaint over a weekend or seek direction from higher up.

OIR has observed recently that the delays in interviewing employee witnesses are diminishing and the late notifications from the institutions are becoming less frequent. It is plausible that these incremental improvements are a result of initiatives by OIR and IIO management. OIR has consistently recommended that IIO make strong efforts to minimize interview delays and convey the message to employees and union representatives that it will implement a stricter scheduling practice. IIO supervisors are now giving clear, consistent guidance to investigators on the limits of reasonable accommodation for an employee's schedule. Additionally, the IIO supervisors are encouraged to talk directly to managers and supervisors at the institutions when accepting or rejecting a case referral to reinforce IIO's written guidelines for case referrals. The IIO Director has also addressed this issue with camp and hall managers through small group tutorials to improve understanding at the camps and halls of all things related to administrative investigations. Finally, at the urging of OIR and the DOJ monitor, IIO agreed to include referral delays as appropriate subject matter within the responsibilities of their investigators and instituted this through a change in the investigation report format.

Once completed, child abuse investigations very often result in an "unsubstantiated" finding. We have not been surprised at this result for two main reasons. First, many types of child abuse investigations are mandatory after a use of force and an injury or a complaint by a minor, even if the evidence of wrongdoing by Department employees is very minimal. Second, allegations of excessive force are much more likely to be substantiated where there is video surveillance evidence that contradicts the subject employee's version of the facts, yet only a fraction of the camps (5 of 15, currently) are equipped with any video cameras and the video systems at the three halls are obsolete, poorly maintained, and uneven in quality. [See the section on Preservation of Evidence earlier in this report for further discussion of this matter.]

Over the long run, we have seen an evolution of skill and technique in some areas, such as attention to medical evidence, effective use of video evidence during witness interviews, and general case organization. We have also seen investigators focus more on provable policy violations and exhibit more diligence in seeking out all the relevant witnesses in their cases. OIR input and assessment of these investigations aim at improving the quality of the investigations, the legitimacy of the results and ensuring that the Department's administrative process works effectively and efficiently.⁵ OIR will monitor closely the continuing progress we hope to see in the quality of investigations.

THE "ARREST DESK"

It is a well-established "best practice" in law enforcement agencies that department administrators take a strong interest in off-duty arrests of their personnel. Some types of criminal behavior such as theft or reckless or drunk driving have an obvious connection to propensities that could affect an employee's on-the-job performance and render the department vulnerable to liability or pose a potential threat of public harm. Other types of behavior that attract police intervention, such as domestic violence, child endangerment, and bar fights, may present a less direct nexus to the workplace, but still point to problems that management should attempt to address. Even when it decides not to impose administrative discipline as a result of an investigation, it may be important for the public interest as well as that of the employee for the Department to offer the employee referrals for counseling or treatment. These principals arguably apply even more acutely to a probation department, responsible for the welfare of thousands of incarcerated minors.

OIR recognized early that the Probation Department has an unusually formidable challenge in dealing with the off duty arrests of employees because Probation employees get arrested at a very high rate compared to other county law enforcement employees. In 2010, fifty-one employees were arrested or named as suspects for crimes ranging from violating restraining orders to drunk driving to shop lifting to defrauding the federal government. In 2011, the number of arrests was sixty-nine. In comparison, the Sheriff's Department experienced very similar numbers of total employee arrests in those two years, but the LASD has three times the number of employees that Probation has.

⁵ Visit www.laoir.com to see OIR's quarterly reports which memorialize detailed feedback to IIO on the quality and thoroughness of camp investigations.

In 2011, the Department heightened its attention to employee arrests and made important changes to how it handles them. Historically, the Performance Management unit (“PM”)⁶ maintained the “arrest desk”—which consisted of one staff member who monitored all off-duty misconduct cases. When the Department learned of an arrest—either through the employee himself, the arresting agency or notification from the California Department of Justice—the arrest desk personnel opened a file and monitored the criminal case until it had been adjudicated through the criminal justice system. If the District Attorney declined to file the case or if the criminal case was filed but resulted in a dismissal or not guilty verdict, the practice was to close the case with no further administrative action. If the criminal case resulted in a conviction, then the arrest desk would issue a discipline letter or initiate an investigation. The investigation would either be conducted “in-house” by the arrest desk staff member or be referred to an investigator from the Backgrounds Investigations unit.

Under this previous system, relatively few criminal cases actually received a rigorous administrative investigation. Moreover, the Department did not devote sufficient administrative resources to this area, sometimes with disastrous results. OIR reported in its June 2010 Special Report, that eighteen arrest desk cases had been inadvertently ignored in a desk drawer for a period of months. By the time the cases were rediscovered, most of them had expired statutes of limitation and could no longer be pursued for any kind of employee accountability.

The first change the Department made was to transfer the arrest desk responsibilities from Performance Management to the Internal Investigations unit. Since off-duty misconduct cases/arrests can potentially lead to administrative investigations, the move to the Internal Affairs unit was the logical and more practical place to transfer the cases.

Second, learning from past experience and recognizing the inherent challenges in assigning only one person to manage a considerable caseload, the Department decided to add additional resources to the arrest desk. The arrest desk is now staffed by three personnel: two trained investigators and one staff member who supervises the day-to-day operations. They have the resources to track down documents, seek input from arresting officers and prosecutors and conduct follow up interviews.

Another change made to the arrest desk relates to the timing of its active involvement in cases. As mentioned above, in the past, the arrest desk did not take any administrative action until the criminal case had been fully adjudicated in the court system. That is no longer the practice. Arrest desk cases are now triaged immediately and—before the resolution of a criminal case has been

⁶ The PM unit handles the processing of “substantiated” investigations. It recommends levels of discipline for those investigations, issues discipline letters and represents the Department in appeals.

reached—a determination is made whether an administrative investigation should be conducted. In some instances, per the request of the handling local prosecutor, no administrative investigative action is taken until a disposition has been reached in the criminal case.

The benefits of these changes to the arrest desk are already clear. In 2011, no administrative statutes of limitation expired before the Department could make a principled decision about whether to pursue administrative discipline. Trends in off duty misconduct can be detected early (see, for example, the section below on DUIs). IIO has developed better ways to obtain accurate, timely information about the status of criminal investigations and court cases. IIO investigators have also raised their skill level in evaluating criminal evidence.

Another significant change made to the arrest desk process is that cases are no longer automatically closed in instances where the District Attorney declines to file the criminal case or later dismisses it. Instead, the arrest desk now carefully assesses the police report and other evidence in each case and determines whether an administrative investigation is warranted. Indeed, in the following examples, after consultation with OIR, the arrest desk initiated investigations in cases even after learning the criminal case was dismissed or never filed.

Case One

A sworn employee was involved in an altercation with his wife. The wife was upset that the subject was speaking to his children from a previous marriage. After telling his wife that he no longer wanted to be with her, the employee subject allegedly threatened her with a knife and then threw a water bottle at her. The subject then allegedly pushed his wife causing scratch marks to her face. The wife then bit the subject on his arm and hit him with a dog leash. Both the subject and his wife were arrested. The DA declined to file the case because of insufficient evidence to determine who was the aggressor and neither desired prosecution. The arrest desk, however, determined that an administrative investigation was warranted because there were some unanswered questions regarding the altercation and the subject's alleged threat with the knife. The investigation is ongoing.

Case Two

While out-of-state, a sworn employee got into a fight with patrons at a restaurant. The subject allegedly pulled one woman's hair and left scratch marks on another woman's neck. Police officers were called and broke up the fight. The subject appeared to be intoxicated and witnesses stated that the subject was the aggressor. The involved parties refused to press charges and the subject was escorted off the property. Several hours later, the local

police agency was called to remove the subject from a casino for being disruptive during a floor show. When refusing to leave the premises, the subject identified herself as a Probation Department employee. Officers had to physically remove the subject from the area. She was then handcuffed, placed in a wheelchair and transported to a security office for processing. The subject was cited for trespassing and released. She did not notify the Department of her contact with law enforcement. The local police agency submitted the case for filing but due to a clerical error the court never received the submission. When the police agency was alerted to the error it decided not to resubmit the case. The arrest desk is conducting an investigation on this matter and will address the subject's unbecoming conduct including the alleged assault, the disturbance at the show, the improper use of her status as a Probation officer and the failure to notify the Department of the incidents.⁷

Case Three

In this case, a sworn employee was observed shoplifting a jacket in a store by undercover store security. When confronted by security about the stolen item, the subject dropped the jacket and walked away. The local police agency was called and responded to the incident. When questioned by officers, the subject eventually admitted that she had stolen the jacket from the store as well as additional items, including vitamins. The subject was cited for petty theft and released. The District Attorney filed criminal charges but later dismissed the case "in furtherance of justice." Because of the facts and nature of the allegations, the arrest desk decided to conduct a formal internal investigation, which is ongoing.

The arrest desk also now triages cases and evaluates whether it can seek a resolution prior to a formal administrative investigation (i.e. not interview the subject and witnesses) by utilizing the Pre-Disposition Settlement Agreement process.⁸ The final decision of whether a case is "PDSA worthy", however, rests with IIO, PM and the appropriate Bureau Chief. Also, per Department policy,⁹ OIR must be consulted on all PDSA cases. By identifying PDSA cases early on in the disciplinary process, the arrest desk can conserve its limited resources and the Department and the employee can often reach a swift, mutually agreed upon resolution.

⁷ According to Department policy, any employee who is "arrested or cited for a misdemeanor or felony offense" must report the incident to his or her immediate supervisor or the office/facility head "the next business day following the arrest or citation." The policy also provides that, "[a]ny police contact, excluding minor traffic infractions, must also be reported."

⁸ As discussed later in this Report, the PDSA process is an early resolution mechanism designed to streamline discipline cases.

⁹ See Probation Department "PDSA" Directive 1251 under the Pre-Disposition Settlement Agreement section in this Report.

The cases that typically hit the arrest desk “radar” first for the PDSA track are DUI cases since, in those cases, the related conviction (typically a “no contest” plea) is usually an indication of an employee who is willing to admit wrongdoing and accept responsibility (a key component in a PDSA).¹⁰ In 2011, the arrest desk successfully identified eighteen DUI cases as “PDSA worthy.”

OIR continues to monitor all criminal cases, including those mentioned above, and provides recommendations and regular feedback to the arrest desk personnel throughout the investigative process.

DRIVING UNDER THE INFLUENCE

Per Department policy, as a member of the law enforcement community, Probation employees are expected to “conduct themselves in a manner consistent with professional standards... and have a duty to the public to adhere to exemplary moral and ethical standards, and to project a professional image at all times. This standard applies to both on and off-duty conduct.” (Probation Department Policy Manual Section 601). Off-duty misconduct typically manifests as a law enforcement contact that results in an arrest. A violation of the Department’s standards can lead to disciplinary action up to and including discharge. In determining the level of discipline in an off-duty misconduct case the Department assesses the seriousness of the offense, whether the arrest or conviction calls into question the employee’s suitability for continued employment (e.g., payroll employee convicted of embezzlement) and whether the conduct brings discredit to the Department. OIR conducts “real time” monitoring of these cases as they progress through the criminal court system, reviews the Department’s administrative investigations for quality and timeliness and provides input to Department decision-makers before a final disciplinary action is taken.

In 2011, there were a total of sixty-nine off-duty misconduct incidents—twenty nine of which were arrests for driving under the influence. The number is alarming in relation to the size of the Department: 5,632 employees. In contrast, the Los Angeles Sheriff’s Department reported 29 DUI arrests for 2011 yet it has over 18,000 employees. This trend among Probation employees also runs counter to the steep statewide decline in DUI-related incidents over the last decade. One phenomenon in common with LASD is that there is no indication that a particular type of employee (i.e. sworn or non-sworn, female or male, etc.) is more likely to be arrested for DUI.

¹⁰ If a DUI case, however, involves significant aggravators (i.e. traffic collision, uncooperative with arresting agency, etc.) a formal investigation will be conducted.

The following chart is a breakdown of the 2011 Probation Department employee DUI arrests by category. It should be noted that, in 2011, no Probation Department supervisor or manager was arrested for driving under the influence. Also, there are three employees (two sworn and one non-sworn) who were arrested for the second time within five years.

Sworn	20	Male	20
Non-sworn	9	Female	9

Camp Assignment	8
Hall Assignment	13
Non-Camp/Hall Assignment	8

0-5 years of Service	11
6-15 years of Service	14
16 or more years of service	4

The twenty-nine DUI arrests in 2011 represent a slight decline from the previous year, but the number is still 25% higher than 2009 and 2008, the first year such figures were accurately tracked. When OIR identified this steady trend, we began to work with the Department to address the issue. In early 2011, the Chief Probation Officer announced in a video posted on the Department’s web portal, accessible to all employees, that he was concerned about the steady increase in DUI arrests and admonished employees that the conduct negatively impacts their personal life and career. He also stressed that the arrests reflected adversely on the Department and sent a bad message to the public. Shortly after this announcement, the Department launched a new program called “Changing Lanes” which aimed to educate employees about the legal and personal consequences of alcohol abuse. We applaud this internal communication campaign which has perhaps raised consciousness of the troubling

trend. To date, however, it does not appear to have put a major dent in employee alcohol-related arrests.

During the past year, in conferring on DUI disciplinary dispositions, OIR has urged that the presence of “aggravating circumstances,” such as collisions, belligerent behavior with the arresting officers, or refusal to take a blood alcohol test should result in significantly increased discipline. In most cases, the decision-maker has agreed to these recommendations, but the Department remains hampered by long precedent and by its written Guidelines for Discipline which traditionally have set the minimum baseline for a DUI at a three day suspension. OIR, Performance Management and Department executives have recently agreed upon the terms of a long overdue revision of all provisions of the Department’s Guidelines for Discipline but have also agreed to delay implementation until the County Department of Human Resources has the opportunity to implement for the first time a County-wide standardized Guideline for Discipline that will apply to all County departments. The County-wide Guideline is expected to take effect early in 2012, at which time OIR will ask Probation to revive the process to implement the new DUI guidelines significantly raising administrative discipline for first time DUIs.

The increase in discipline will send a strong message to employees that the Department considers a DUI arrest a serious off-duty offense and will impose serious consequences for the misconduct. Hopefully, this will also have a deterrent effect that improves decision-making and decreases arrests, as similar measures may have done at the Sheriff’s Department.¹¹ OIR is also committed to helping the Department develop more effective education and alternative deterrent strategies.

The Department recognizes that an employee who is arrested for DUI may have a substance abuse problem particularly if the employee has had two alcohol-related convictions within a relatively short time period. For “second time offender” cases, progressive discipline applies and, under the current discipline matrix, discipline ranges from a 15-day suspension to discharge. As in all cases, in assessing the appropriate level of discipline, the Department will consider mitigating and aggravating circumstances. What is unique in alcohol-related cases, however, is that in addition to the standard discipline package the Department is in a position to provide the employee with treatment to address his or her chemical dependency issue.

¹¹ After five years of steeply rising employee arrests for DUI at the Sheriff’s Department, a combination of increased administrative penalties and clear and frequent messages from commanding officers appear to have had an impact. LASD employee DUI numbers have leveled off and begun to decrease in the last two years.

In one case, for example, a sworn employee was convicted of his second DUI in five years.¹² In the second DUI incident, the employee was involved in a traffic collision and when approached by officers, identified himself as an LAPD officer. Although the employee was cooperative with officers in the field, he refused to submit to a chemical test—which was a violation of his conditions of probation for the first DUI. In a last attempt to rehabilitate the employee, with OIR’s concurrence, the Department settled the case for a 30 day suspension. In the settlement agreement, the Department agreed to include OIR’s recommendation to require the employee to attend Alcohol Education Classes and the Probation Department’s “Optimal Decision-Making” course. Also, for the next two years, the employee will be subject to random alcohol testing and is prohibited from driving for the County. If the employee’s driving privileges are not fully restored by the State after a certain period of time, then the Department has the right to review the employee’s suitability to maintain a sworn position. In addition, the employee agreed to be removed from his current position (a specialized unit) and not bid for any unit that requires on-duty driving until his driving privileges are fully restored.

Even with first-arrest cases where either the evidence or the subject has flagged a substance abuse problem, OIR has urged the department to develop an internal capability to diagnose and treat these problems when the subject is cooperative. Currently, probation managers can only guess at the role that chemical dependency might have played in a particular DUI or other off-duty incident. Sharing the Employee Support Services infrastructure offered to the Department by the Sheriff’s Department would allow Probation to diagnose the problem and prescribe a course of treatment. OIR will continue to monitor DUI cases and provide constructive input on the level of discipline and settlement terms.

DISCHARGE CASES

The Probation Department has not been reluctant to discharge employees who commit serious misconduct. In 2010, twenty-seven employees were discharged; in 2011, the total was fourteen. In the past, the Department’s challenge has been to make principled and consistent decisions about discharges and to make appropriate decisions withstand the appeals process.

In the past year, the Department has made some significant changes in how it handles these cases. Those changes, in turn, help ensure that the Department’s decision to discharge an employee is not eroded at the appeal phase of the disciplinary process. First, recent investigations are of higher quality and investigators are required to do follow up work if IIO

¹² The employee had received the standard three day suspension for the first DUI conviction.

supervisors or OIR identify significant gaps in the evidence. Second, decisions to terminate an employee are now subject to greater scrutiny by Department executives, Performance Management and OIR. The weekly Roundtable as well as OIR's open door policy on discussions of case resolutions promote active dialogue about all significant discipline cases before a final decision is made. Third, Skelly (internal due process review) officers are now encouraged to put their conclusions in writing.

Because the Probation Department is responsible for a potentially volatile and vulnerable population of clients and because Department members must maintain standards of integrity commensurate with a law enforcement agency and the protection of the public, many types of employee misconduct can result in severe discipline up to and including discharge. Here follow synopses of a sample of recent discharge cases. They illustrate some of the more frequent and significant ways in which employees have flouted Department policies and put their careers, their clients and/or the public at risk.

Case One

A sworn employee was terminated for having a romantic relationship with a convicted felon who was on active parole. A representative from a state prison contacted the Department to report that the subject employee was romantically involved with one of its inmates and had been visiting the inmate (a gang member known as "Criminal" who has a "COP KILLER" tattoo prominently displayed on his shaved head). The Department initiated an investigation and during the administrative interview, the subject stated that she first met the inmate when he was a minor client of the Probation Department and housed at a camp where she was assigned. She stated that while he was detained at the camp their relationship was "professional in nature." She admitted that after he was released from camp they established a relationship after she saw him at a shopping mall. During the time they developed a relationship he was arrested, convicted and served jail time for felony false imprisonment and felony evading the police. The subject employee admitted to visiting the inmate while he was in state prison and there was evidence (in his cell) that she sent the inmate letters and provocative photographs of herself. The employee continued to date the inmate when he was released on parole and became pregnant with his child. While the administrative investigation was pending, a local police agency contacted the Department and notified it that during a parole compliance check the employee was in the company of the parolee. OIR concurred with the Department's decision to discharge the employee. The employee has appealed the discipline.

COUNTY OF LOS ANGELES
PROBATION DEPARTMENT
DIRECTIVE

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**SUBJECT: RELATIONSHIPS INCONSISTENT WITH
PROBATION DEPARTMENT EMPLOYMENT**

It is the policy of the Probation Department that employees conduct themselves in a manner consistent with professional standards governing County employment, and the stated expectations of the Chief Probation Officer. As a member of the law enforcement community, Probation Department employees have a duty to the public to adhere to exemplary moral and ethical standards, and to project a professional image at all times. These standards apply to both on and off duty conduct.

It is the policy of the Probation Department that employees shall not knowingly establish or maintain any personal, social, or business associations with identified criminal street or prison gang members or organizations, incarcerated individuals, registered sex offenders, and/or felons who are on parole or formal probation, unless expressed written permission is received from the employee's Bureau Chief. The restriction against association does not apply to close family members defined as a grandparent, parent, legal spouse, siblings, or any child for whom our employee is the parent, step-parent or legal guardian.

Within 30 calendar days of this policy issuance, or within 30 calendar days of return to work for employees on any form of extended leave, or within 30 calendar days of becoming aware of a potential association issue, and as part of the background check process for new-hires, employees are to disclose in writing to their manager any associations they may have with the above described individuals or groups including when those associations involve family members. Employees who fail to disclose associations inconsistent with Probation Department employment may be subject to disciplinary action up to and including discharge.

Employees who find themselves unwittingly within circumstances inconsistent with employment, such as locations where controlled substances are illegally distributed or consumed and/or areas where gang members congregate, are to remove themselves from these circumstances as soon as reasonably possible, and report such circumstances in writing to their manager within one workday. Employees are also to notify their manager in writing within one workday if they visit a prison or jail for non-work related purposes. The manager shall notify their Bureau Chief and Performance Management.

Questions or comments about this policy should be directed to your Bureau's Special Assistant.



Robert B. Taylor
Chief Probation Officer

MANUAL HOLDERS: CROSS-REFERENCE YOUR MANUALS TO THIS DIRECTIVE WHERE APPROPRIATE

Case Two

In this case, a sworn employee was stopped by police officers for a traffic violation. During the traffic stop, the officer observed two male passengers inside the vehicle and asked for their identification. The identification check revealed that one male was a gang member on active parole. The other passenger had an extensive criminal record and also had a marijuana pipe in his possession. During the administrative investigation, the subject employee admitted that the parolee was her boyfriend, that she was aware that he was on parole and that he was the father of her child. The Department decided to discharge the employee for violating Department policy prohibiting relationships inconsistent with Probation Department employment.

Case Three

In 2011, the Department discharged a sworn employee for being convicted of a felony charge.¹³ While waiting in line to use the ladies bathroom at a nightclub, the sworn employee engaged in a physical altercation with other patrons. During the fight, the employee grabbed a wine glass and struck one victim over the head shattering the glass causing severe lacerations to the victim's face and neck. The victim was permanently disfigured. Witnesses stated that the employee was the aggressor and appeared to be intoxicated when the incident occurred. The employee was charged with two felony counts of assault with a deadly weapon and pled no contest to the charges. The employee is now serving a four year sentence in state prison.

Case Four

The Department fired a non-sworn employee after learning that—in her 2007 pre-employment application—she failed to disclose a prior conviction for welfare fraud. When the employee applied for employment, she was not on probation and her criminal record was under an alias. After the pre-employment background process, the employee had been approved for hire. During the administrative investigation, the subject employee admitted that she served jail time for the crime but stated she forgot to mention the conviction in her application because it occurred approximately thirty years ago. The employee's appeal to the discharge is pending.

Case Five

A non-sworn employee, with approximately twenty years with the Department was terminated for making inappropriate comments to female adult clients that were sexual in nature and for sexually assaulting another female client. Female clients, under the subject employee's supervision, had filed complaints against the employee stating that he made sexually suggestive comments to them that made them uncomfortable. For instance, the employee told one female client, "Don't bend down like that in front of me, baby." While under his supervision in the field,

¹³ Within days of being served the Department's letter of intent to discharge the employee resigned.

the employee told another female client, "We are going to have some fun for the next couple of weeks". As this investigation was pending the Department became aware of another alleged incident where the employee lured a female client to a private room and forced her to perform oral copulation. The Department imposed a 30-day suspension for the inappropriate comments and has issued the employee a letter of intent to discharge for the sexual assault. OIR conferred with the IIO director at the outset of this investigation and urged that the investigator research prior female clients to determine if the alleged acts fit a larger pattern of behavior by the employee. This effort yielded an important ancillary witness to one of the alleged incidents.

Case Six

In 2011, a sworn employee was indicted by a federal grand jury for defrauding the federal government of approximately \$18,000 in student loans. While the Department was monitoring the case, the employee pled guilty to the charge and per a plea agreement is required to pay full restitution and was sentenced to serve jail time which will be followed by a period of supervised release. The employee resigned from the Department immediately after she pled guilty to the charge.

TEACHER MISCONDUCT

In early 2010, a teacher assigned to one of Probation's juvenile camps was arrested on six counts of child endangerment charges filed by the District Attorney's office. An investigation had shown that the teacher had deliberately arranged competitive fights among the students in his classroom, taking time to lay down the ground rules for them and refereeing each bare knuckled match. The teacher was barred from Probation facilities and a criminal case ensued, resulting in his plea of no contest to felony child abuse charges. He was sentenced to six months in county jail and stripped of his teaching credential.

Unfortunately and somewhat surprisingly given the prominent negative publicity the case received as well as the known presence of video cameras in many classrooms, this was not the last instance of significant misconduct by a teacher in the camps and halls.

OIR published its first quarterly case status report of Probation Camp cases in July of last year. In the course of assembling the report, we observed a disproportionately high number of misconduct allegations that related to teachers in the camp classrooms. Three out of the seventeen cases addressed in the quarterly report were initiated based on allegations

that teachers had engaged in violations of policy ranging from selling incarcerated minors contraband to using unnecessary force on them or arranging and condoning fights between them. Moreover, two of the three investigations have resulted in a finding of “substantiated” by the Probation Department. In the months since that report, teachers have continued to be frequent subjects in Department investigations of misconduct at the juvenile halls and camps.

These cases present unique challenges to the Probation Department. All camp and hall classroom teachers work for the Los Angeles County Office of Education (“LACOE”). They are not employees of the Probation Department and therefore cannot be disciplined by Probation. As employees of, in effect, a contract vendor to the Probation Department, they are nevertheless subject to Department rules. They can also be excluded from Department facilities. When a substantive allegation causes an investigation to commence, the usual procedure is to ask LACOE administrators to remove the subject teacher from any direct contact with Probation minors during the pendency of the investigation. If the allegations are substantiated by the investigation, LACOE is informed of the results and, in a majority of cases, asked to remove the teacher permanently from any Probation related assignments. LACOE has been cooperative with requests of this nature. This system fulfills the primary objective of safeguarding the children under the Department’s care but it does not address some of the other objectives of investigations. This is because teachers do not always cooperate with the Department’s investigation. Unlike Probation Department employees, they can refuse to be interviewed, depriving Probation of important evidence and making it more difficult to reach a confident finding based on the evidence. The Department can and does choose to err on the side of substantiating the allegations when it comes to uncooperative teachers, which protects the minors, but can leave the Department unsure of what actually happened in the classroom and unable to make procedural or policy changes that might remediate the problem or reduce its recurrence.

This state of affairs can be discouraging to Probation investigators, but this year the Professional Standards Division unequivocally reaffirmed its right and responsibility to investigate allegations against LACOE teachers, even though it can neither force them to cooperate nor charge them with insubordination if they refuse to do so. We are encouraged that PSD has shown persistence and creativity in pursuing these important investigations and in trying to improve the quality of the resulting evidence. In pursuit of this goal, the head of the Professional Standards Division has recently negotiated an agreement with the LACOE executive in charge of internal affairs. Under the agreed procedure, investigations of teachers at Probation facilities will be carried out by a team of one Probation IIO investigator and one

LACOE investigator acting in concert on all witness interviews and other information gathering. Even the subject teacher interview will be conducted jointly, with the LACOE investigator taking the lead. This protocol is expected to improve the working relationship between the two agencies and maximize the opportunity to gain cooperation from the subject. We hope that these incremental improvements will also improve the deterrent effect of accountability.

Currently there are five active investigations employing this joint protocol. We are hopeful that they will produce better evidence and improved accountability where appropriate. The stakes are high for this experiment, as the incidence of significant allegations against teachers in the camps and halls has not abated. Recently, for instance, a case referral from a juvenile camp was launched when camp personnel (LACOE and Probation staff) viewed a surveillance video from inside the classroom that appears to depict the minors using choking techniques on each other while the teacher passively watches. At one point, one of the minors surprises another from behind, puts his arm around the second minor's neck and lifts him off the ground. At this point a voice that has been attributed to the teacher yells encouragement to the attacker. The victim falls to the ground and appears to be unconscious. The teacher remains at his desk throughout the episode. Other minors try unsuccessfully to revive the unconscious minor, then grab his feet and drag him away on the carpet causing "rug burn" to his face. The incident was captured on the classroom video. A suspected child abuse report (SCAR) was filed but deputies from the nearest Sheriff's station determined that the matter was not criminal in nature and recommended that the Probation Department handle the incident administratively. A LACOE administrator's dissatisfaction with this result prompted her to go the station and present the video to station personnel which prompted the station to take a report and assign the case to a detective. With the concurrence of IIO, OIR then contacted the Special Victims Bureau of the Sheriff's Department and a detective agreed to meet with OIR and the managers of PSD and IIO. After reviewing the videotape and discussing the incident with PSD and OIR attorneys, the Special Victim's Bureau detective agreed to provide the station investigator guidance with the child abuse investigation. Felony child endangerment charges were recently filed against the teacher by the District Attorney's office.

It is important to note that there are many dedicated teachers who perform admirably in the challenging environment of the camps and halls. Not all allegations against teachers have been substantiated and Probation personnel have a responsibility to try to ensure that teachers are provided adequate security and given no reason to be intimidated by the minors. One reason often cited for some major problems in the classroom is the frequent presence of substitutes (25% by LACOE's estimate) who do not have long term knowledge of the minors. OIR has

discussed this issue as well as the general persistence of teacher-related allegations with Probation executives and urged them to engage their partner agency, LACOE, in discussions about how to reduce the critical mass of substitutes.

Part Four

CHANGE in PROCESS

CONSOLIDATED CASE TRACKING DATABASE

This past year, OIR worked closely with IIO and the Department's Information Systems Bureau staff to modify and expand its current discipline database so that all misconduct investigations can be tracked from "cradle to grave" in one centralized, unified database. The Department considered procuring entirely new software such as the Sheriff's Department's Personnel Performance Index or commercial off-the-shelf products. The Probation Department ultimately decided to rely on an upgrade of the existing database then used by Performance Management, called the Performance Management System (PMS), modified to encompass the needs of IIO and the Arrest Desk as well as the recommendations of OIR. This enhancement was accomplished quickly and effectively by ISB the Department's in-house computer services bureau. The modified database now includes critical information that helps the Department take timely administrative action at each phase of the disciplinary process. The modified database is also now accessible to all Department stakeholders including IIO personnel, Performance Management staff and advocates. It contains an employee's employment and disciplinary history and can help managers identify systemic issues. It will also serve as an accumulating department-wide database of discipline that can give managers a framework to ensure consistency in imposed discipline.

One of the most important changes to the database is that it now records all misconduct investigations including cases that result in an "unsubstantiated" finding. Previously, IIO,

Performance Management and each Department unit/location maintained its own separate internal tracking log of investigations. If an investigation resulted in a “substantiated” finding, PM (the unit charged with imposing discipline and advocating on behalf of the Department in appeals) would be forwarded the case for further administrative action.¹⁴ All “unsubstantiated” cases, however, remained with IIO or the unit/work location and any valuable information that could be gleaned from the investigations remained buried in a file cabinet. Now, in the current database, if an employee’s record shows a series of unsubstantiated cases for similar misconduct—though there may not have been sufficient evidence to prove a policy violation—the frequency and nature of the allegations can help the Department identify a training issue or pattern of employee behavior that the employee’s manager should stay apprised of.

Another feature added to the database, at the urging of OIR, was a field that calculates the one-year statute of limitations date which applies to sworn personnel.¹⁵ Related to that feature is an entry that identifies when a sworn officer has a pending criminal case and alerts a database user that the one-year statute date is tolling, that is, held in abeyance. These new features are critical to the discipline process and help the Department ensure compliance with statutory requirements.

The new database can also now generate reports that combine multiple criteria (e.g. subject matter, time frame, job title, disciplinary outcome, etc.) which can help the Department identify specific potential issues. If, for instance, the Department is interested in learning about on-duty misconduct, it can initiate a query that contains a specific allegation (e.g., negligent supervision), discipline outcome, job title of the subject and a location. The results can then be compared with data from other locations to determine whether there is any noticeable trend which may point to a need for additional training or whether discipline for the offense was applied uniformly.

The Department’s Information Systems Bureau has provided training on the Enhanced Performance Management System to IIO and PM staff. PM staff have been using the enhanced program for all new cases and rebuilding their database of older cases. IIO, however, has not yet made the transition to the new consolidated system. OIR has consistently encouraged them to input their case tracking data into the new system so that all pertinent information about case referrals, initiation, and investigation as well as outcome will be in the system, allowing all Professional Standards units to work off the “same page.” IIO continues to maintain

¹⁴ Under the Department’s discipline matrix, formal discipline includes: letter of warning, letter of reprimand, suspension (1-30 days), demotion and discharge.

¹⁵ Pursuant to Government Code sections 3300 – 3312, California’s Public Safety Officers Procedural Bill of Rights Act (“POBR”), the one-year statute clock to complete an investigation commences when a person authorized to initiate an administrative investigation becomes aware of the alleged misconduct.

a stand-alone internal tracking log of cases and investigative outcomes (substantiated and unsubstantiated) but this information cannot be accessed by any other unit or Department stakeholder. For instance, all “unsubstantiated” cases continue to live and die within the IIO unit alone (although the investigation file is reviewed by OIR and is available for review by the workplace manager). We are hopeful that IIO will soon find a way to devote the employee time necessary to make the transition and that the new case tracking database will become a more powerful management tool for the Department.

PRE-DISPOSITION SETTLEMENT AGREEMENTS

In some situations, it is appropriate and beneficial to streamline the investigative process and provide a way for the Department to resolve disciplinary cases swiftly, so long as the integrity of the disciplinary process is not compromised. OIR introduced the Department to an early resolution procedure called “Pre-Disposition Settlement Agreements” (“PDSA”) which the Department adopted in early 2011.¹⁶ Per the PDSA process, under certain circumstances, cases can be resolved (i.e. “settled”) before a formal investigation is initiated or completed.

A case is suitable for a PDSA if all of the following apply:

- The facts are straightforward and not in dispute
- It is unlikely significant new facts would be revealed by conducting a full investigation
- The employee takes full responsibility for the misconduct
- The alleged misconduct is of low to moderate seriousness (including criminal cases)
- The proposed discipline would not exceed 15 days suspension

Conversely, cases where there are allegations of excessive force or other cases where there are conflicting statements by witnesses as to the events in question are almost never suitable for PDSA disposition. Also, incidents where the employee’s manager or Bureau Chief are simply not comfortable resolving the case without a full investigation or where the employee him or herself is not interested in this type of disposition should not be resolved through a PDSA.

A request to resolve a pending case utilizing the PDSA process can be initiated by the subject employee, the employee’s union representative, the subject’s Bureau Chief or manager, Professional Standards personnel or OIR. Once the offer is presented to the employee, he or she is given at least five days to consider the offer and consult with anyone they choose, including a union representative.

¹⁶ This process has been used by the Los Angeles County Sheriff’s Department with reported success since 2004.

COUNTY OF LOS ANGELES
PROBATION DEPARTMENT

DIRECTIVE

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SUBJECT: PRE-DISPOSITION SETTLEMENT AGREEMENTS

It is the policy of the Los Angeles County Probation Department to review allegations of staff misconduct and take appropriate corrective action in a fair and timely manner. As part of this philosophy, the Department has implemented Pre-Disposition Settlement Agreements (PDSA).

A PDSA may be offered at any point prior to the completion of a formal internal investigation.

WHO CAN INITIATE A PDSA?

A PDSA may be initiated by the following:

- Employee who is the subject of the investigation
- Employee's representative
- Employee's Manager or Bureau Chief
- Internal Investigations or Performance Management staff
- Office of Independent Review

WHAT ALLEGATIONS ARE ELIGIBLE FOR A PDSA?

A PDSA shall be considered as a resolution for those cases where the facts appear to be straightforward and the misconduct would result in lower level discipline such as letters of warning or reprimand, or suspensions up to and including 15 days. A PDSA shall not be considered in cases where the allegations of misconduct, if substantiated, would result in more than a 15-day suspension or a demotion or a discharge.

HOW DOES A PDSA WORK?

An employee who wishes to settle his or her case - before an investigation has been initiated or completed - may approach their Manager and request a PDSA meeting. The Manager may also approach the employee to discuss a PDSA and explain why he/she believes a PDSA is an appropriate method to resolve the case. This initial meeting shall not result in a finalized agreement.

Before extending a PDSA settlement offer specifying discipline to the employee, the Manager must send, via e-mail, a PDSA proposal to the Internal Investigations Manager. The email should be addressed to the Internal Investigations email address at: IA@probation.lacounty.gov. If Internal Investigations confirms that the case is "suitable" for a PDSA, then, the Manager discusses appropriate discipline/disposition with the Office of Independent Review. Internal

MANUAL HOLDERS: CROSS-REFERENCE YOUR MANUALS TO THIS DIRECTIVE WHERE APPROPRIATE

**DIRECTIVE:
PAGE 2**

Investigations and a Bureau Chief or designee must approve the PDSA. Once the PDSA is approved, the Manager will meet with the subject employee, discuss the allegations and proposed discipline, and determine the employee's willingness in utilizing a PDSA to resolve the pending misconduct case. The Manager will give the employee a deadline (minimum of five (5) business days) to respond to the offer.

A PDSA meeting is not an investigatory interview and, therefore, the Manager shall **NOT** ask the subject employee questions about the alleged misconduct (ensuring that no Peace Officer's Bill of Rights issues arise). After the PDSA meeting, the subject may consult his/her representative. If the employee is interested in the PDSA, he/she will be asked to sign the agreement, acknowledging responsibility for his/her actions. The executed PDSA waives the subject's right to appeal the imposed discipline.

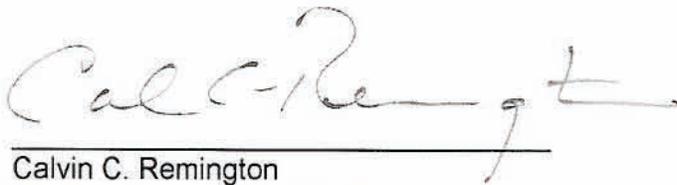
WHAT ARE THE BENEFITS OF A PDSA?

A PDSA resolves administrative cases early in the disciplinary process, thus saving time and conserving investigatory resources. Early resolution may result in an employee returning to his/her original work assignment if he/she had been temporarily reassigned pending completion of a formal internal investigation. A subject's early acceptance of responsibility for the misconduct will be considered a mitigating factor when determining the appropriate discipline. In addition, as part of the Settlement Agreement, the employee may be offered an Education-Based Discipline Plan - an alternative to serving the imposed suspension days.

A PDSA is not intended to replace the investigation process and each employee who is the subject of an investigation maintains his/her right to the full investigation process. Employees also retain any and all rights as outlined in their respective MOUs including the rights to Skelly and Civil Service hearings, where applicable, if they choose not to accept a PDSA. If a PDSA offer is rejected, this does not preclude any future settlement of the case following completion of the investigation.

A PDSA is intended as an alternative to the traditional investigative and disciplinary process which offers benefits to both management and the employee.

If you have questions regarding this Directive, please contact the Internal Investigations Manager at (562) 940-3739.



Calvin C. Remington
Chief Deputy Probation Officer

The PDSA process benefits both the Department and the employee. For the Department, the process is time-efficient, can significantly reduce the IIO caseload and conserve investigative resources. Early resolution of these cases also decreases the number of appeals and provides an opportunity to include creative or constructive elements in a discipline package, such as requiring retraining for the subject employee or an apology to the complaining party.

In 2011, the Department presented approximately twenty PDSA offers to employees. A vast majority of those PDSA offers were made to employees who had been convicted (pled guilty or no contest) to an off-duty misdemeanor driving under the influence charge. Those cases were identified early in the administrative process as “PDSA worthy” because the arrest and subsequent criminal convictions left little to dispute about the facts and employee’s acceptance of responsibility for the misconduct. Not all criminal cases will trigger a PDSA offer to an employee, however. In cases of violence, for instance, or where there are unanswered questions about the facts or significant aggravators related to an arrest (e.g., uncooperative with the arresting officers or seeking favor by displaying a Probation identification/badge) a formal administrative investigation, which includes an interview with the subject employee and witnesses, will be initiated.

By screening cases and identifying some of them as “PDSA worthy” early in the administrative process, early resolution of an administrative case may result in a swift return of the employee to his/her original work assignment if he/she has been temporarily placed “off line” pending the completion of a formal investigation. This can minimize the disruption and bitterness engendered by the discipline system and free internal investigators to concentrate on more significant or difficult cases. In addition, as part of a PDSA, the employee may be offered an Education-Based Discipline plan [See EBD section below] and agree to attend training or relevant courses in lieu of serving the imposed suspension days.

A significant fraction of the other internal affairs cases (non-criminal) can also be resolved early using the PDSA process. In one case, for example, a local police agency contacted the Department to report that it had an unpleasant encounter with an off-duty Probation employee (a sworn officer). According to the police agency, the employee came into the station demanding release of her vehicle which had been impounded. After being told that the vehicle could not be released until she provided current proof of registration and license plates, the employee became upset and loud. The employee then told the desk staff that she was a Probation officer and did not display plates on her car for fear of retaliation from clients. The desk staff explained again that she needed to present the required materials before release of the vehicle.

Eventually, the employee returned to the station with the required information and license plates. In this case, an investigation was initiated and during the employee interview she readily admitted that she was upset (but not loud) during the exchange and that she did tell the police agency that she was a Probation employee. Based on the admissions (and before disposition of the matter), after concurrence from OIR, the employee was presented a PDSA offer and in lieu of serving a three day suspension the employee agreed to write an apology letter to the law enforcement agency and attend the Probation Department's new "Optimal Decision Making" course.¹⁷

OIR has promoted the use of the PDSA procedure to Department executives because it is a good fit for Probation. The Probation Department experiences an unusually high volume of disciplinary investigations, but in many cases the alleged misconduct is relatively straightforward and, if proved, likely to yield a reprimand or low suspension. Examples of this type of misconduct would include discourtesy, inadvertent loss of Department equipment and non-chronic tardiness. Managers or employees can request to resolve those cases using the PDSA process and can reach an outcome that is swift and effective while still holding employees accountable for violating Department policy.

Some off duty arrests, while much more serious, also provide an early resolution opportunity through PDSA because the evidence is very strong and the subject employee is anxious to take responsibility, resolve the administrative part of the case, and take advantage of the "deal" offered through the PDSA process. These can be good candidates for a PDSA. This relieves the Internal Investigations Office and Performance Management of the need to do relatively rote but time-consuming case processing and helps the Department make do with the relatively scarce resources currently devoted to discipline investigations.

Consistent with OIR's monitoring responsibilities the PDSA directive requires that OIR be consulted on each proposed agreement. Also, to ensure fairness and uniformity, OIR has met with Department managers to explain the purpose and mechanics of the PDSA protocol. Since the "institutions" – the Probation Camps and Halls – are the largest source of disciplinary cases, OIR attorneys have also assisted the IIO Director in making presentations to Camp and Hall directors and other managers to explain the PDSA process. We also prepared a computer presentation to help orient Department managers to this new case settlement tool.

¹⁷ Under the PDSA-EBD process, the discipline remains in the employee's record and can be used in the future for progressive discipline. The "Optimal Decision Making" course is an eight-hour course created to compliment the Department's EBD approach and is taught by the Department's Training unit.

EDUCATION-BASED DISCIPLINE

In 2011, for some cases, the Probation Department began to move away from traditional discipline (i.e. suspension days) to a discipline model that is remedial and less punitive. Under the new discipline model called, Education-Based Discipline (“EBD”),¹⁸ rather than serving unpaid suspension days at home, a subject employee can accept an EBD plan and serve the suspension days by attending relevant training or classes, etc. There must be a nexus between the conduct for which the employee is being disciplined and the EBD class. If the employee accepts the proposed EBD plan, the employee waives his or her right to appeal the discipline but suffers no financial loss for the imposed discipline. The employee’s record, however, will continue to reflect the imposed discipline which can be used in the future for purposes of progressive discipline. The ultimate goal of the new disciplinary approach is to address the employee’s misconduct in an effective way and reduce the likelihood that the conduct will reoccur.

Not all cases are suitable for EBD. Employees, for example, who have committed egregious acts that warrant severe disciplinary action (e.g. demotion, discharge) will not be offered an EBD plan. All employees who are offered a PDSA, however, will be eligible for a companion EBD plan.

In addition, the following applies to the EBD process:

- All EBD classes are on-duty;
- If an employee accepts EBD, he/she must complete all conditions of the EBD agreement within the specified time period, or will be required to serve the full suspension and loss of pay;
- The employee is encouraged to participate in the process and to propose his/her own plan. However, the Department makes the final decision on discipline and EBD plans;
- The employee’s rights are preserved while he/she chooses between suspension or EBD. The employee has the right to seek representation to assist in reviewing an EBD proposal;

OIR continues to help the Department navigate its way through this new disciplinary approach, monitors all EBD cases and makes recommendations for EBD plans.

¹⁸ Education-Based Discipline is a system that was created by Sheriff Baca and implemented at LASD in May 2009. This past year, Probation Department stakeholders have been trained extensively on the EBD program.

TAKING DISCIPLINARY ACTION: The Process, the Problem and the Resolution

The Department invests significant time and resources in processing employee misconduct cases and issuing discipline. The purpose of the disciplinary process is to rehabilitate employees and correct undesirable behavior. This helps the Department maintain a productive workforce. Not all employees, however, can be rehabilitated. When progressive discipline has not worked or when an employee has committed a serious act (on-duty or off-duty) that deems him/her unsuitable as a member of the Probation Department then discharge may be appropriate and necessary.

Discharge cases, like all other cases, begin as investigations. Investigators gather evidence, interview the subjects and witnesses and eventually draft a report summarizing their findings. OIR reviews all IIO investigations and where appropriate recommends additional action be taken (e.g. interview additional witnesses, obtain medical evidence, etc.) prior to finalizing each investigation. Recommendations are then sent to a Bureau Chief—who functions as the Department decision-maker—for final review and approval. OIR provides feedback and recommendations to Department stakeholders before a letter is drafted by Performance Management and served on the employee.

If the discipline is appealed by the employee then, in the final phase of the administrative process, Department advocates or contract attorneys defend the Department's disciplinary decision at Civil Service. In some circumstances, there may be a practical reason to settle a case before proceeding to a hearing (e.g. newly discovered evidence, witness unavailability, etc.). But absent special circumstances, when the Department has made a principled decision and is able to show adequate proof and evidence to support the charges there is rarely a good reason to deviate from its initial disciplinary decision—especially in a discharge case. However, as discussed below, in 2011, the Department rescinded a discharge case even though there was no new evidence or special circumstances to warrant the change. OIR was not consulted about the change in discipline and learned later that the change was prompted by a “change of heart” from the original decision-maker.

The case involved a non-sworn employee who was convicted of making annoying phone calls to his former girlfriend. The employee's former girlfriend had filed two domestic violence restraining orders against the employee. The restraining orders prohibited the employee from contacting her by telephone, mail or email and ordered him not to come within 100 yards of her. During the time period the restraining orders were in effect, the ex-girlfriend filed incident reports with the

local police department complaining that the employee was in violation of the orders by making excessive phone calls and texts. A search warrant for phone records proved that over 100 calls made in a period of five days came from the employee's cell phone. The criminal investigation also revealed that the employee had placed advertisements on a popular website posing as his ex-girlfriend soliciting a five man "gang bang" with chubby, hairy men.

The employee gave interested males his ex-girlfriend's home address. The woman reported that several men came to her home and that one male attempted to enter her house when she refused to open the door. Also, in violation of the restraining orders, the employee went to his ex-girlfriend's home and verbally accosted her.

In the criminal matter, as part of a plea negotiation, the violation of the restraining order charge was dismissed and the employee pled no contest to making annoying phone calls/sending texts.

The Department conducted an investigation and, in his administrative interview, the subject employee admitted to getting within 100 feet of his ex-girlfriend on one occasion but denied making excessive calls or sending texts to her while the restraining order was in effect. He also denied knowing anything about the advertisements.

When the investigation was completed, OIR learned that the Department was considering issuing a written reprimand to the employee and requested a meeting with the Bureau Chief and other Department executives, including PM personnel. After discussing the evidence, the nature of the facts and the employee's short tenure as a Probation Department employee, the Department's decision-maker agreed with OIR's recommendation to discharge the employee.

On the morning of the civil service hearing, however, the decision-maker was prepared to testify that he no longer supported a discharge. There was no new evidence that warranted this change and no justifiable reason for the decision-maker's change of heart. But concerned that his testimony would be fatal to the Department's position on appeal, Department executives offered a 30-day suspension and a return to his original assignment—a decision OIR would have opposed had it been consulted. In an effort to avoid this problem in the future, OIR has met with IIO, PM personnel and executives and reiterated its monitoring role. The Department has now committed to keeping OIR informed of all intentions to make significant changes in discipline decisions at any stage of the procedure, including the civil service appeal process and settlements.

This case also prompted OIR to recommend to the Department that it establish a formal process for reviewing cases that result in significant discipline (i.e. more than 20 days suspension). In this process, the employee's Bureau Chief would be responsible for presenting the case and defending his/her disciplinary recommendation to top Department executives, namely the Deputy Chiefs and the Chief Deputy. The handling IIO investigator and the IIO supervisor would be present and provide information about the case, as needed. PM personnel would be present as well and provide the Department executives with advice regarding appropriate discipline and would identify any potential challenges with the case on appeal. OIR would also be present to make a recommendation regarding level of discipline. The purpose of the process is to ensure that top executives are informed of the most significant discipline cases and have an opportunity to endorse, veto or modify the final discipline decision. Also, the process empowers Bureau Chiefs to present their disciplinary recommendations but requires them to come prepared with principled reasoning—a skill that will benefit the Bureau Chief when he or she testifies at a hearing and defends the Department's disciplinary action. OIR continues to work with the Department on creating this new forum.

Part Five

PROFILES

MICHAEL GENNACO came to OIR from the Office of the United States Attorney, where he served as Chief of the Civil Rights Section. In that position, Mr. Gennaco was responsible for overseeing all police misconduct, hate crimes, and involuntary servitude investigations and prosecutions for the Central District of California. He also served as the federal civil rights liaison for community and public interest groups and federal and local law enforcement agencies. Prior to working at the U.S. Attorney's Office, he served for ten years as a trial attorney with the Civil Rights Division in Washington, D.C. While there, Mr. Gennaco successfully prosecuted an LAPD officer for using excessive force and false arrest and was involved in prosecuting numerous other hate crimes and police misconduct cases. Mr. Gennaco also served for two years in the Division litigating voting discrimination cases.

Mr. Gennaco is a graduate of Dartmouth College and received his Doctorate of Jurisprudence from Stanford Law School. He has also taught as an adjunct professor at American University Law School, George Washington University School of Law, Loyola Law School, and Chapman College of Law.

ROB MILLER is the Deputy Chief Attorney at OIR-Probation and a founding member of the Office of Independent Review. He came to the OIR from a fifteen-year career in the Los Angeles County District Attorney's Office. His assignments there included central felony trials, juvenile crimes, environmental crimes, OSHA death cases and administration. He prosecuted 70 jury trials for crimes ranging from murder and kidnapping to toxic dumping and corporate

fraud. He has taught evidence, environmental crimes prosecution, and investigation techniques at seminars sponsored by the California District Attorneys Association, OSHA, the AFL-CIO and the Western States Project.

Mr. Miller attended law school at UCLA and received his undergraduate degree from Stanford University. He was a research fellow of the University of California Institute on Global Conflict and Cooperation and received a MacArthur Foundation grant in Rome for research on terrorism.

CYNTHIA HERNÁNDEZ joined OIR in 2008 after practicing law at the union-side law firm of Gilbert & Sackman in Los Angeles, where she specialized in representing private and public sector labor unions and was responsible for arbitrating discharge and contract disputes. Ms. Hernández began her law career as a trial attorney at the National Labor Relations Board where she investigated unfair labor practices committed by employers and labor organizations. In 2001, she was appointed by the United Nations International Criminal Tribunal for Rwanda to defend Rwandan detainees who were charged with genocide, crimes against humanity and war crimes for the atrocities that occurred in Rwanda in 1994. Ms. Hernández received her J.D. degree from USC Law School in 2000. While in law school, she served as an extern for US District Court Judge, Consuelo Marshall. In 2006, USC's La Raza Law Students Association selected Ms. Hernández as the recipient of its annual "Inspirational Alumnus Award." As an undergraduate, Ms. Hernández attended UC San Diego, Universidad de Guadalajara, Mexico and the University of Nairobi, Kenya, East Africa. In 1993, she earned a M.A. in Education from Claremont Graduate School. She was a bilingual educator before becoming an attorney and speaks Spanish and Swahili.

BENJAMIN GARCIA, the OIR's investigator, retired in 2010, from the Los Angeles County Sheriff's Department after proudly serving 33 years. During his career with the Sheriff's Department, Mr. Garcia worked assignments in custody, patrol, investigations and training. He was promoted to the rank of Sergeant in 1992 and spent his last ten years with the Department's Internal Affairs Bureau (IAB). While at the IAB, Mr. Garcia conducted personnel administrative investigations involving sexual harassment allegations, force/shooting incidents and general misconduct issues. He also trained many of the newly assigned IAB sergeants in the policy and procedures of conducting administrative investigations under the guidelines set forth in California's Peace Officers Bill of Rights.

LUCY GUTIERREZ has been a Los Angeles County employee for over ten years. Ms.

Gutierrez started her county career as a secretary at the Department of Health Services then promoted to the Probation Department where, for six years, she was assigned to work with the Probation Camps Bureau. In that assignment she was responsible for collecting, reviewing and monitoring camp data. Ms. Gutierrez was promoted again and transferred to the Department of Mental Health where she spent a short time as the secretary to the Data Intergration and Business Intelligence Division Chief. She returned to the Probation Department in May 2011 and joined OIR and assists two attorneys and one investigator. She maintains the criminal and internal investigations database, triages and tracks and manages the incoming criminal and misconduct cases and provides secretarial support for the unit.