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**OFFICE OF THE
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY**

**NEW YORK STATE
COMMISSION OF
CORRECTION**

**OVERSIGHT OF
CORRECTIONAL
FACILITIES AND
HANDLING OF
GRIEVANCES AND
COMPLAINTS**

Report 2006-S-93

AUDIT OBJECTIVE

Our objective was to determine whether the New York State Commission of Correction (SCOC) is fulfilling its responsibilities for overseeing the operations of correctional facilities and handling grievances and complaints.

AUDIT RESULTS - SUMMARY

SCOC is responsible for overseeing all State and local correctional facilities in New York State. At the time of our audit, there were 73 State facilities (mainly State prisons) and 393 local facilities (county jails and local police lock-ups). SCOC has promulgated regulations governing the operation of correctional facilities and the treatment of inmates within the facilities, and relies on inspections to determine whether the facilities are complying with the regulations.

We found SCOC is not fulfilling its responsibilities for overseeing State correctional facilities. SCOC stopped inspecting DOCS prisons when its staffing levels were reduced during the 1990s. In addition, SCOC did not inspect the State's secure facilities for youths until 2007 and has not promulgated regulations governing their operations, even though it was supposed to begin overseeing these facilities in 1996. In our opinion, as a result of this lack of oversight, any unsafe or inappropriate practices at State correctional facilities are less likely to be detected and corrected. We recommend SCOC establish a system of oversight for these facilities.

SCOC officials replied to our draft report that they did not "stop" inspecting DOCS' correctional facilities. In fact, they have made numerous site visits annually to state facilities where inmates died, to facilities that requested a variance to house inmates above their rated capacity, or to double-cell inmates

in cells designed for single occupancy in maximum security facilities. SCOC officials also replied to our draft audit report that field staff visited each secure center for youths twice during 2007 to perform basic inspections.

SCOC has established various inspection goals for local correctional facilities and inspects these facilities regularly. However, SCOC is not meeting these goals fully, as some inspections were not performed on schedule and other inspections did not cover all of the required areas/standards. In addition, if significant violations are identified during the inspection process, SCOC staff is supposed to follow up with local officials to ensure that appropriate corrective actions are taken. However, we found SCOC did not always follow up in such circumstances. We recommend SCOC develop a comprehensive tracking system for the inspection process and use the system to ensure that its inspection goals are met and all required follow-up action is taken.

SCOC is also responsible for handling inmate complaints that cannot be resolved by correctional facilities officials (grievances) and for responding to written complaints made on behalf of inmates in correctional facilities or from local correctional facility inmates and that may be accepted by the Commission, bypassing the formal grievance procedure under certain circumstances (complaints). We found certain improvements are needed in SCOC's handling of grievances and complaints. For example, if inappropriate facility practices are identified during the investigation of a grievance or complaint, the facility officials are instructed to take corrective action. However, SCOC does not always follow up with facility officials to ensure that appropriate corrective action is, in fact, taken. We also found the complaint resolution process may not be subject to adequate

supervisory review, and grievances are not always resolved within the 45-business-day time frame adopted by SCOC. We recommend that a formal quality assurance process be developed for the handling of grievances and complaints.

SCOC officials agreed with several of our recommendations.

This report dated August 20, 2008, is available on our website at: <http://www.osc.state.ny.us>. Add or update your mailing list address by contacting us at: (518) 474-3271 or
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BACKGROUND

A correctional facility is any place used for the detention of persons charged with or convicted of a crime. The New York State Commission of Correction (SCOC) is responsible for overseeing all State and local correctional facilities in New York State. The State facilities include the prisons operated by the Department of Correctional Services (DOCS) and the secure facilities operated by the Office of Children and Family Services (OCFS). The local facilities include the jails operated by the counties and the jails or detention facilities (local police lock-ups) operated by cities, towns, villages, and other municipal entities.

As of December 31, 2006, there were 69 DOCS correctional facilities, 4 OCFS secure facilities, 77 county correctional facilities, and 317 local police lock-ups. Of the 77 county correctional facilities, SCOC advised us that, as a practical manner as regards the agency's mission, there are 73 jails operating and subject to inspection/evaluation. SCOC's stated mission is to provide a safe, stable, and

humane correctional system in New York State. To this end, SCOC has promulgated regulations governing the operation and construction of correctional facilities and the treatment of inmates within those facilities. To ensure that correctional facilities are complying with these regulations, SCOC conducts periodic inspections of the facilities. These inspections are authorized by Article 3 of the State Correction Law, which states that SCOC is to "visit, inspect and appraise the management of correctional facilities with specific attention to matters such as safety, security, health of inmates, sanitary conditions, rehabilitative programs, disturbance and fire prevention and control preparedness, and adherence to laws and regulations governing the rights of inmates." The frequency of the inspections is to be determined by SCOC.

SCOC is also responsible for investigating grievances and complaints about the treatment of inmates in correctional facilities. Other SCOC responsibilities include approving the construction of new correctional facilities and the expansion or renovation of existing facilities, and operating a training program for personnel employed by correctional facilities. SCOC is headed by three Commissioners, who are appointed by the Governor to statutory terms. One Commissioner serves as Chair and chief executive officer. Another Commissioner heads the Citizen Policy and Complaint Review Council, which reviews unresolved inmate complaints about local correctional facilities. The third Commissioner heads the Medical Review Board, which investigates inmate deaths and oversees inmate health care services. SCOC has a staff of 35 employees. For the fiscal year ended March 31, 2007, SCOC received a State appropriation of \$2.6 million.

AUDIT FINDINGS AND RECOMMENDATIONS

Oversight of State Correctional Facilities

SCOC relies on inspections to determine whether correctional facilities are complying with the regulations governing their operations. However, SCOC stopped inspecting DOCS correctional facilities when its staffing levels were reduced during the 1990s. In addition, SCOC was supposed to begin overseeing OCFS secure facilities in 1996. However, SCOC did not inspect these facilities until 2007. These inspections were done even though the regulations governing operations of the OCFS secure facilities had not yet been promulgated. As a result of this lack of oversight, there is less assurance that unsafe or inappropriate practices at DOCS and OCFS facilities will be detected and corrected. We recommend SCOC re-establish a system of oversight for DOCS facilities and establish a system of oversight for OCFS facilities, using these systems to ensure that the facilities are operating in a safe, stable, and humane manner.

DOCS Facilities

About 63,000 inmates are housed in the 69 DOCS correctional facilities. The treatment of these inmates and the operations of these facilities are governed by regulations promulgated by SCOC. For example, the regulations address such topics as maximum facility capacity, environmental safety, prisoner personal hygiene, prisoner health and library services, and the nondiscriminatory treatment of prisoners. SCOC is responsible for overseeing DOCS facilities to ensure that they comply with these regulations.

SCOC used to inspect DOCS facilities regularly to ensure their compliance with the regulations. However, SCOC stopped performing these inspections when its staffing

levels were reduced during the 1990s. In the fiscal year 1990-91, SCOC had 66 employees. In comparison, in the fiscal year 2006-07, SCOC had just 35 employees (22 of whom performed and supervised inspections, among their other duties).

According to SCOC officials, to manage this reduction in staff resources, SCOC management decided to stop inspecting DOCS facilities and focus instead on county correctional facilities and local police lock-ups because they posed a greater risk than the DOCS facilities. SCOC management believed DOCS facilities were less of a risk because they were subject to the oversight of the DOCS Central Office and less likely to be operated in an inappropriate manner. DOCS facilities are also subject to accreditation reviews performed by a national association of corrections-related organizations.

SCOC also took other actions in an effort to make the best use of its reduced staffing resources. For example, SCOC closed its training academy and took alternative steps to train correction officers. SCOC also transferred certain of its administrative functions to the Division of Criminal Justice Services. In addition, SCOC modified its inspections of local correctional facilities, either by addressing only a portion of the regulations in each inspection or by performing the inspections less frequently.

SCOC officials stated that, under the current arrangements, inspectors visit DOCS facilities only in certain special circumstances: (1) when a DOCS facility requests that its inmate population be allowed to exceed its rated capacity or (2) when there is an incident (such as inmate violence or inmate death) that needs to be investigated independently. SCOC also reviews the DOCS incident reporting system log on a daily basis Statewide. However, there are no inspections to determine whether DOCS facilities are complying with

regulations. According to SCOC officials, the last such inspection was performed in 1988. SCOC officials told us they receive daily reports on the inmate populations at DOCS facilities, but receive no other information from DOCS about operations at its facilities.

We acknowledge that staffing reductions required SCOC management to make decisions to discontinue inspecting DOCS facilities. However, without any inspection process, SCOC has less assurance that DOCS facilities are complying with SCOC regulations governing their operation. In addition, if SCOC is to accomplish its regulatory mission, it must provide an inspection capacity. Accordingly, we recommend that SCOC establish an ongoing formal risk assessment process for targeting scarce resources selectively, inspecting those facilities that have the greatest need for review. The ongoing, formal risk assessment process can be based on information obtained by SCOC, including the inspections and monitoring activities performed by DOCS Central Office. It could also be based on information obtained by SCOC inspectors when they visit DOCS facilities for the previously-discussed special circumstances.

OCFS Facilities

There are four OCFS secure centers: Brookwood Secure Center, Industry School, MacCormick Secure Center, and Tryon Girls Secure Center. The centers house youths who have been placed in the care of OCFS by family and criminal courts.

In a 1996 revision to Article 3 of the State Correction Law, SCOC was made responsible for overseeing OCFS secure centers. SCOC was to promulgate regulations for the care, custody, and treatment of center residents and inspect the facilities to ensure that they complied with the regulations. However, SCOC has not promulgated these regulations

and, in the absence of such regulations, did not inspect these facilities until 2007.

SCOC officials told us that they were working on the regulations but had been unable to complete them due to a lack of legal resources. They noted that, before the Governor's Office will review the standard, each minimum standard of care, custody, and treatment in the regulations must have an impact report agreed upon by both SCOC and OCFS. The officials said they hope to complete the standards during the fiscal year 2007-08. We acknowledge the difficulties of developing regulations in this area. However, SCOC has had more than ten years to complete the process. As a result of SCOC's lack of progress in this area, OCFS secure centers have received minimal oversight from SCOC. SCOC thus has less assurance the centers provide a safe, stable, and humane environment for the youths housed there. We recommend SCOC complete the regulations as expeditiously as possible. In the meantime, we recommend SCOC perform basic inspections at the centers to ensure that there is a minimally-acceptable level of care, custody, and treatment. SCOC officials stated that they have submitted the regulations to the Governor's Office of Regulatory Reform for promulgation pursuant to the State's Administrative Procedures Act. They expect the regulations will be promulgated during 2008.

Recommendations

1. Establish an ongoing and formal risk assessment process for targeting scarce resources selectively, making it possible to inspect those DOCS facilities that have the greatest need for review.

(SCOC officials replied to our draft report that they are already in compliance with the recommendation.)

Auditor's Comments: We believe compliance would be better addressed if, there was a formal assessment identifying specific risks that could keep SCOC from achieving its goals, objectives, and mission, or explaining how these risks are being mitigated.

2. Expedite the promulgation of regulations for OCFS secure centers. Until the regulations are promulgated, perform basic inspections at the centers to ensure that there is a minimally-acceptable level of care, custody, and treatment.

(SCOC officials replied that the regulations are completed and they are working with the Governor's Office of Regulatory Reform to initiate the promulgation process, expected to be completed during 2008. In addition, field staff visited each secure center twice during 2007 to perform basic inspections as recommended by the draft audit report.)

Oversight of Local Correctional Facilities

SCOC has established various inspection goals for local correctional facilities. We found that SCOC is regularly inspecting these facilities. However, SCOC is not meeting its inspection goals fully, as some inspections are not performed on time and other inspections are not complete. If significant violations are identified during the inspection process, SCOC staff are supposed to follow up with local officials to ensure that appropriate corrective actions have been taken. However, we found SCOC does not always follow up in such circumstances. We recommend SCOC develop a mechanism for tracking the inspection process and use it to ensure that its inspection goals are met and all required follow-up action is taken.

County Correctional Facilities

There are 77 county correctional facilities in New York State, including 10 operational New York City correctional facilities which are liable for inspection by the Commission, and two hospital prison wards. As of December 31, 2006, SCOC reports that there are 73 county correctional facilities in New York State, subject to inspection/evaluation. The operations of these facilities, and the treatment of the inmates in the facilities, are governed by regulations promulgated by SCOC. The regulations address topics such as security and supervision of prisoners, maximum facility capacity, fire safety, visitation procedures, access to legal services, prisoner grievances, discipline of prisoners, prisoner correspondence, allowance for good behavior, prisoner exercise, prisoner personal hygiene, prisoner health services, and the nondiscriminatory treatment of prisoners. SCOC is responsible for overseeing county correctional facilities to ensure that they comply with these regulations.

SCOC relies on inspections to determine whether the facilities are, in fact, complying with the regulations. The frequency of these inspections is to be set by SCOC, and it has been SCOC's goal to inspect county correctional facilities annually. When SCOC's staffing levels were reduced in the 1990s, SCOC retained the annual inspection goal but reduced the scope of each annual inspection. Previously, each inspection addressed all the regulations. Now, the regulations are addressed in four annual inspection cycles. Some regulations are addressed every year, some every other year, and others once every four years.

For example, the regulations relating to security and supervision of prisoners are addressed every year, while those relating to the discipline of prisoners are addressed every other year. Regulations relating to prisoner

correspondence are addressed every four years (in the second year of the facility's four-year cycle), and others relating to prisoner personal hygiene are addressed every four years (in the third year of the facility's four-year cycle).

After each inspection, SCOC staff prepares a report summarizing the results of the inspection. If significant violations are identified, corrective action is recommended. SCOC staff is expected to follow up on these recommendations to ensure that county officials take timely corrective actions.

To determine whether SCOC met its inspection goals for county correctional facilities, we reviewed all the county facility inspection reports prepared by SCOC for the period April 1, 2004, through January 23, 2007. We found that SCOC did not meet its inspection goals fully, as some facilities were not inspected each year, some inspections did not address all the regulations included in that annual inspection cycle, and many of the recommendations for corrective action were not followed up. As a result, SCOC had less assurance that all county correctional facilities were complying with regulations promoting safety, security, and the proper treatment of inmates.

During the period we reviewed, at least two annual inspection reports should have been prepared for each facility (the annual inspection cycle begins on April 1 and ends the following March 31). However, we determined that, for 12 of the facilities, only 1 inspection report had been prepared. Eight of the missing inspection reports related to the 2004-05 year, and four related to the 2005-06 year. SCOC officials disagree with our characterization. They replied that, for 8 of the 12 facilities, the inspections for each cycle year were done, but they were done late, sometimes combined with the inspection cycle in the subsequent year. For another

facility, the inspection report was delayed because the inspection staff was assigned to investigate a major incident at that facility. Nonetheless, the inspections were not done on schedule. SCOC officials did not provide any information for the other three facilities.

We also note that SCOC was at risk for not meeting the annual inspection goal again in the 2006-07 year, as just 31 inspection reports for that year were either completed or in progress as of January 23, 2007. Thus, a little over 2 months was left to initiate and complete the remaining 46 inspection reports for that cycle year (a total of 63 county inspection reports should be prepared each year as well as inspection reports for each of the 14 correctional facilities in New York City). In response to our findings, SCOC officials indicated that most of the inspections in our exceptions for the 2006-07 cycle year were either done or were scheduled to be done between January and March 2007. We question whether it is a good practice to leave a majority of the inspections to be performed in such a short time frame.

(SCOC officials replied to our draft audit report that inspections at 31 county correctional facilities were completed after our audit period. Most of them (17) were performed during the planned audit cycle; six were done less than 30 days after the cycle; and eight were completed within 90 days of the cycle. Twelve were not inspected later in 2007, because of a conversion from a fiscal inspection year to a calendar year.)

We found that some inspections did not address all the regulations included in that annual inspection cycle. To make this determination, we reviewed inspection reports for 25 randomly-selected county correctional facilities. The results are as follows:

- In the 2004-05 year, inspection reports had been prepared for 21 of the 25

facilities. However, just 15 of these 21 inspection reports addressed all the regulations included in that particular inspection cycle (cycle 1). The other 6 inspection reports did not address between 1 and 9 of the 14 regulations included in that cycle.

- In the 2005-06 year, inspection reports had been prepared for 22 of the 25 facilities. However, just 16 of these 22 inspection reports addressed all the regulations included in that particular inspection cycle (cycle 2). The other 6 inspection reports did not address between 2 and 13 of the 16 regulations included in that cycle.
- In the 2006-07 year (through January 23, 2007), inspection reports had been prepared for 7 of the 25 facilities. Six of these seven inspection reports addressed all the regulations included in that particular inspection cycle (cycle 3). The other inspection report did not address 11 of the 17 regulations included in that cycle.

In response to our audit findings, SCOC officials stated that a few of the regulations did not apply to some of the facilities during each inspection cycle. However, after eliminating the regulations that did not apply to some of the facilities, we noted that a significant number of regulations still had not been evaluated as expected. These regulations covered areas such as discipline, visitation, personal hygiene, and food services. For example, at the Anna M. Kross Correctional Facility, the 2006-07 evaluation did not include personal hygiene, discipline, visitation, commissary, exercise, non-discriminatory treatment, or education. At another four facilities, correspondence standards were not evaluated.

We noted that, if a regulation was not addressed in the appropriate inspection cycle, there was no indication it was addressed in the following year(s). However, if an entire inspection cycle was not done, it is combined with the subsequent year's inspection cycle. It thus appears that some county correctional facilities are not receiving complete annual inspection coverage from SCOC. The results for each facility are presented in Exhibit 1.

Corrective action was recommended in 24 of the reports we reviewed. These reports related to 19 different correctional facilities. SCOC staff are expected to follow up on these recommendations to ensure that timely corrective actions are taken. SCOC staff said that critical findings should be followed up on immediately, but follow-up on other findings can wait until the next cycle review without significant risk. We found that SCOC staff did not always follow up to ensure that correctional facilities take prompt corrective action on their recommendations. We identified seven facilities in our sample in which SCOC made recommendations, but did not follow up on the corrective actions by the facilities.

SCOC's tracking system is not comprehensive for monitoring the status of inspections at county correctional facilities and SCOC officials have admitted that the tracking system is obsolete. Such a system would show whether (1) each facility was inspected annually, (2) each inspection addressed all the regulations included in that annual cycle, and (3) follow-up action had been taken on each recommendation for corrective action. We recommend SCOC develop such a tracking system.

Local Police Lock-Ups

There are 317 local police lock-ups in New York State. The operations of these lock-ups and the treatment of the prisoners in the lock-

ups are governed by SCOC-promulgated regulations. SCOC relies on inspections to determine whether the lock-ups are complying with the regulations, and has set a goal of inspecting each lock-up biennially (every two years).

Each biennial inspection addresses all of the regulations relating to local police lock-ups, and SCOC staff prepare a report summarizing the results of each inspection. If significant violations are identified during an inspection, corrective action is recommended. SCOC staff are expected to follow up on these recommendations to ensure that timely corrective actions are taken by local officials.

To determine whether SCOC was meeting its inspection goals for local police lock-ups, we reviewed all lock-up inspection reports prepared by SCOC for the period April 1, 2004 through December 1, 2006. We found that many of the lock-ups were not inspected every two years. In addition, recommendations for corrective action were not always followed up.

A biennial inspection period began on April 1, 2004 and ended on March 31, 2006. Accordingly, each lock-up should have been inspected at least once during this period. However, there was no inspection report for 90 of the 317 lock-ups (28 percent) during the biennial inspection period ended March 31, 2006. Our review of the inspection reports from the next inspection period located 48 of the 90 reports for lock-ups which were done late. However, there was no inspection report for the remaining 42 lock-ups. It thus appears that many lock-ups are not inspected on a biennial basis. SCOC officials state that some of these lockups were newly-identified and others have disputed their categorization as a police lock-up.

We randomly selected 25 of the 317 lock-ups for more detailed review. We reviewed the

same time period (April 1, 2004 through December 1, 2006) and found the following:

- For 13 of the 25 lock-ups, the biennial inspection goal clearly was not met. For 5 of these lock-ups, there were no inspection reports in this 32-month period. For 4 of the lock-ups, there were 2 inspection reports, but the reports were not dated within 24 months of one another. For the remaining 4 lock-ups, there was only 1 inspection report, near the beginning or end of the 32-month period, so it was clear that more than 24 months had elapsed between inspection reports at these lock-ups. SCOC officials assert that most of these facilities were inspected within 30 months of the previous inspection.
- For 3 of the 25 lock-ups, the biennial inspection goal was met, as there were 2 inspection reports dated within 2 years of one another for each of these lock-ups.
- For 9 of the 25 lock-ups, we did not make a determination because the audit field work was completed before the biennial inspection period ended.

Thus, the biennial inspection goal was met for no more than 12 of the 25 lock-ups in our random sample. The results of this review are summarized in Exhibit 2.

There were recommendations for corrective action in three of the reports reviewed. These reports related to three different local police lock-ups. SCOC staff are expected to follow up on these recommendations to ensure that timely corrective actions are taken, but we found that SCOC did not do so for the recommendations contained in one of the reports relating to the Town of Saugerties Police Department lock-up. We note that

SCOC does not have a comprehensive tracking system for monitoring the status of inspections at local police lock-ups. Such a system would show whether (1) each facility had received its biennial inspection and (2) follow-up action had been taken on each recommendation for corrective action. We recommend SCOC develop such a tracking system.

Under Article 3 of the State Correction Law, SCOC is required to visit, inspect, and appraise the management of correctional facilities throughout New York State. To do this, SCOC needs to know that the facilities exist. However, we found SCOC was not aware of all the lock-up facilities operated by the New York City Department of Environmental Protection. In addition, SCOC officials told us that their staff occasionally discovers new or re-commissioned local police lock-ups by accident (e.g., by driving by them).

There is no centralized listing of all of the local police lock-ups throughout New York State, and no requirement for local police lock-ups to report their operation to any agency. We recommend SCOC require local police lock-ups to report their existence to SCOC.

Staff Field Days

A total of 22 SCOC staff (17 inspectors and 5 supervisors) perform or supervise inspections. SCOC officials have directed these individuals to spend a minimum of eight days per month in the field performing their official duties. SCOC maintains a Daily Staff Tracking Spreadsheet that summarizes field days by employee. Based on our review of these records for calendar year 2006, we determined that 11 of the 22 staff did not meet this requirement.

SCOC officials explained there may be several reasons why field staff are not meeting the requirement. For example, supervisors may spend more time in the office and staff with medical/forensic responsibilities only travel as needed. However, they added that some investigators may have more travel time in some months due to unforeseen conditions, such as spending time to investigate a prison escape. We recommend SCOC determine whether the monthly travel requirement should be revised to reflect the expectations of SCOC management more accurately.

Recommendations

3. Develop a comprehensive tracking system for monitoring the status of inspections at county correctional facilities. The system should show whether (1) each facility has received its annual inspection, (2) each inspection addressed all the regulations included in that annual cycle, and (3) follow-up action has been taken on each recommendation for corrective action. Use this system to determine whether all inspection and follow-up goals are being met, and take corrective action when they are not.

(SCOC officials replied to our draft report that they agree an enhanced tracking system is desirable. They said they have modified the Excel tracking utility to track, in real time, the type of information in the recommendation.)

4. Develop a comprehensive tracking system for monitoring the status of inspections at local police lock-ups. The system should include, but not be limited to, determining whether (1) each lock-up has received its biennial inspection, and (2) follow-up action has been taken on each recommendation for corrective action. Use this system to determine whether all

inspection and follow-up goals are being met, and take corrective action when these goals are not being met.

(SCOC officials replied to our draft report that they have implemented the recommendation.)

5. Require local police lock-up facilities to report their existence and operating status to SCOC.

(SCOC officials replied to our draft report that they were unaware of DEP's lock-ups. However, they have obtained a comprehensive listing of all of New York State's local police agencies from the Division of Criminal Justice Services and are in the process of surveying all agencies whose lock-up operation status is unknown.)

6. Determine whether the requirement that inspection staff spend eight days per month in the field should be revised to reflect the expectations of SCOC management more accurately.

(SCOC officials replied to our draft report that the eight-day field requirement continues to reflect valid management expectations for the inspectional staff. However, the performance programs of the Field Supervisors, the Training Coordinator, and the Forensic Medical Unit staff have been modified to delete this requirement in favor of more reliable indicators of their performance.)

Grievances and Complaints

Each year, SCOC receives thousands of grievances and complaints about the treatment of inmates in correctional facilities. By definition, "grievances" are made by inmates in local correctional facilities, while

"complaints" are made by anyone else (e.g., inmates in State correctional facilities, inmates' family members or friends, or advocate groups).

(SCOC officials replied to our draft report that complaints can also come from local correctional facility inmates and may be accepted and acted upon by the Commission, when such a complaint is judged to be urgent and compelling.)

We examined a sample of grievances and a sample of complaints that had been received by SCOC to determine whether they were handled in accordance SCOC's policies and procedures. We found certain improvements are needed. For example, if inappropriate facility practices are identified during the investigation of a grievance or complaint, the facility is instructed to take corrective action. However, SCOC generally does not follow up with facility officials to ensure that appropriate corrective action is, in fact, taken. We also found that the complaint resolution process may not be subject to adequate supervisory review, and grievances are not always resolved within the 45-business-day time frame adopted by SCOC. We recommend that a formal quality assurance process be developed for the resolution of grievances and complaints.

Grievances

According to Article 3 of the State Correction Law, SCOC is to establish procedures for the investigation of grievances of, and conditions affecting, inmates of local correctional facilities. The Law requires that the procedures include the receipt of written complaints, interviews of persons, and on-site monitoring of conditions. The intent of the Law is to ensure fairness, timeliness, and effectiveness in the inmate redress system.

To comply with this requirement, SCOC included a formal grievance process in its

regulations for county correctional facilities. In this process, written complaints from inmates must be investigated by the local correctional facilities, a written response must be provided to each complainant, and a review of the response by the facility's Chief Administrative Officer must be allowed if it is requested by the complainant. If the grievance is not resolved at the local level, the inmate may submit a written appeal to SCOC.

The appeals are reviewed by an SCOC Correctional Facility Specialist, who gathers facts, determines whether the correctional facility was in compliance with its regulations, and makes a recommendation to SCOC's Citizen's Policy and Complaint Review Council. The Council, which is chaired by one of SCOC's three Commissioners, consists of seven members who are appointed by the Governor. The Council was established by the Legislature to address the need for increased public participation in the oversight of local correctional facilities. After receiving the recommendation from the SCOC staff, the Council votes to either accept the grievance, or return it to the inmate advising him that the facility's response was correct.

SCOC's internal directives call for resolving all grievances within 45 days from the day the appeal is received by SCOC. The State regulations also require grievances to be resolved in 45 business days. SCOC officials should correct their internal directives.

If the Council denies the grievance no follow-up is required. However, the reason for the denial should be documented. If the Council affirms the grievance, the correctional facility is instructed to take corrective action and SCOC staff are expected to follow up with the facility to ensure that such action is taken.

A separate grievance process is in effect at DOCS correctional facilities, as State inmate

grievances are to be handled by the DOCS Inmate Grievance Resolution Committees rather than SCOC. There is no formal grievance process for OCFS secure facilities, because SCOC has yet to promulgate regulations for these facilities.

Between April 1, 2004 and December 9, 2006, SCOC received a total of 1,599 grievances. We randomly selected 50 of these grievances and reviewed the related files to determine whether the grievances were handled in accordance with SCOC's policies and procedures. SCOC officials could not find 2 of the sampled files, so we confined our review to the 48 remaining grievances in our sample.

We found that 36 of the 48 grievances were resolved within the 45-business-day time frame adopted by SCOC. In addition, 1 grievance, which was still being processed at the time of our review, had yet to reach the 45-business-day milestone. However, the remaining 11 grievances (23 percent) were not resolved within 45 business days, as summarized in the following table:

Subject of Grievance	In Process		Resolved	
	Number	Days	Number	Days
Medical Services			1	67
Discipline Procedures	1	61		
Staff Conduct	2	71 and 82	1	58
Legal Services			1	84
Food Services			1	65
Security and Supervision			1	56
Personal Hygiene			1	60
Physical Condition			1	51
Other			1	50
Total	3	61 to 82	8	50 to 84

An SCOC official explained that certain priority circumstances, such as high-profile investigations or major program initiatives,

combined with the limited number of staff, can have a negative effect on SCOC's ability to resolve grievances in a timely manner. A total of 43 of the 48 grievances were resolved by SCOC. In 3 of these 43 grievances, SCOC should have followed up with facility officials to ensure that appropriate corrective action was taken, either because the grievance was affirmed by the Citizen's Policy and Complaint Review Council or because the correctional facility violated certain grievance procedures (e.g., one of the facilities did not respond to the inmate's grievance within five days, as is required by the regulations). However, we found no indication SCOC had followed up with facility officials in these three instances. In addition, in one of the grievances that was denied by SCOC, the reason for the denial was not documented in the file.

Therefore, we conclude that SCOC sometimes does not handle grievances in accordance with its policies and procedures. As a result, the inmate redress system may not always be as fair, timely, or effective as intended. We note that SCOC does not have an internal review process for ensuring that grievances are handled in accordance with its policies and procedures. We recommend SCOC develop and implement such a quality assurance process.

We also note that, when violations are identified during the investigation of grievances, the facilities are not required to report back to SCOC about their corrective actions. We recommend that facilities be required to make such reports, and that SCOC routinely verify the reported improvements in the next inspections of those facilities.

Complaints

If an inmate in a local correctional facility files a written complaint about his or her treatment at the facility, a response to the

inmate will indicate the complaint has to be treated as a through the grievance process. However, if a complaint is judged to be urgent and/or compelling, the letter can be accepted for inquiry and resolution regardless of whether the inmate is in a state or local facility. SCOC gets involved only if the matter cannot be resolved at the local level, and the inmate files an appeal with SCOC.

However, if someone other than an inmate in a local correctional facility sends a written complaint about an inmate's treatment directly to SCOC, the matter is treated as a "complaint." The person making the complaint may be a friend or relative of the inmate, a member of an advocate group, a DOCS inmate, or someone else, and the facility in question may be either a State or a local correctional facility. If an inmate in a local correctional facility sends a complaint directly to SCOC, without first filing the complaint with his or her correctional facility, SCOC will inform the inmate that the complaint must first go through the facility's grievance process.

The complaint process is not regulated by statute. The only guidelines are SCOC's internal policies and procedures for the handling of complaints. According to these policies and procedures, each new complaint is to be assigned to an SCOC employee, who performs an initial review and categorization of the complaint within one business day. The staff is then expected to investigate the matter and respond to the complainant within 30 days.

If the staff believes the complaint is unfounded or if the staff refers the complaint to another agency, no follow-up is required. However, the reason for these decisions should be documented. If the staff believes the complaint is justified, officials at the correctional facility should be contacted and instructed to take corrective action.

Between April 1, 2004 and December 9, 2006, SCOC received a total of 7,829 complaints. We randomly selected 50 of these complaints and reviewed the related files to determine whether the complaints were handled in accordance with SCOC's policies and procedures. SCOC officials could not find 4 of the sampled files and told us they had purged 5 others, so we confined our review to the 41 remaining complaints in our sample.

We found that, for all 41 complaints, a response was sent to the complainant within the 30-day time frame adopted by SCOC. We also found that the complaints were otherwise handled in a manner that was consistent with SCOC's policies and procedures. However, we identified two significant weaknesses in these policies and procedures.

First, if the SCOC staff believes the complaint is justified and refers the matter to the facility administrator for redress, no further follow-up is required. The staff is not expected to follow up with facility officials to ensure that appropriate corrective action is taken, and the facility is not required to report back to SCOC about its corrective actions. Instead, the complaint is simply closed. In the absence of such follow-up, there is no assurance that appropriate corrective actions will, in fact, be taken.

Second, there is no provision for either supervisory or other independent review in the complaint resolution process. A complaint may be reviewed, and a determination made, by a single individual acting alone. As a result, the determinations may not always be appropriate. For example, it appears that the following two complaints were not handled in the most appropriate manner:

- Inmates making complaints are routinely instructed to first use their

facility inmate grievance resolution process. However, one of the complaints in our sample was from an inmate who had repeatedly indicated (in repeated submissions of the same complaint) that he had used the local grievance process. Nonetheless, SCOC, in its responses to the inmate, continued to instruct him to use the local grievance process.

- In one of the complaints in our sample, SCOC told the complainant that it was not pursuing the matter because the complaint had also been sent to the Department of Health and SCOC did not want to duplicate that agency's investigation. However, the Department of Health had already informed SCOC that it was not investigating the matter because it believed SCOC was the responsible agency. Nonetheless, SCOC closed the complaint without doing any investigation.

SCOC officials told us internal reviews are done periodically to ensure that complaints are handled appropriately. However, these reviews are not documented (e.g., by a reviewer's initials in the files). We recommend that SCOC's policies and procedures be amended to include a provision for the supervisory review of complaint resolutions and the documentation of this review. We further recommend that complaint resolutions be subject to periodic quality assurance reviews, and these reviews be documented.

In addition, when inappropriate facility practices are identified during the investigation of complaints, we recommend that the facilities be required to report back to SCOC about their corrective actions, and that SCOC staff be required to follow up with the facilities when such reports are not provided in a timely manner. We further recommend

that the reported improvements be verified by SCOC in its next inspections of those facilities.

Performance Measurement and Record Retention

SCOC recently started compiling grievance and complaint data for performance measurement purposes, after it was directed by the Governor's Office to do so in 2005. The performance measurement data provided by SCOC for 2005 and 2006 compared the number of grievances and complaints received and resolved in each year. While the data provided some insight into the number of grievances and complaints received, and the number of open cases, it did not provide any comparative trend analysis across individual institutions. SCOC officials claim they have compiled complaints and grievance data by facility for at least a decade prior to 2005.

We determined that SCOC has been unable to produce such trend analysis data because of weaknesses in its data management software. For example, the software is outdated and there is little documentation for the database. In the absence of such trend analysis data, SCOC is less able to differentiate between the facilities with good practices, which could serve as best practice models, and the problem facilities that require additional attention. SCOC officials told us that they plan to replace the software within 18 months. We recommend SCOC develop the ability to collect trend analysis data for grievances and complaints, and begin producing such data.

In addition, New York State records retention rules allow SCOC to destroy grievance and complaint files three years after their final resolution. However, we found SCOC is destroying these records two years after resolution, because it does not have the space to store the voluminous paper files. We recommend SCOC work with the State

Archives Retention and Records Administration to develop a manageable records retention policy for SCOC. We further recommend that SCOC seek additional outside storage facilities, if necessary.

Recommendations

7. Update the internal directives to reflect the State regulations.

(SCOC officials replied they will issue a staff directive that reiterates the grievance processing period is 45 business days.)

8. Develop and implement an internal review process for ensuring that grievances and complaints are handled in accordance with SCOC policies and procedures, and document the review.

(SCOC officials replied to our draft report that each grievance prepared by the staff is reviewed for quality of work and pre-approved at two additional levels. They added that they will issue a supervisory staff directive requiring quarterly review of a sample of complaint files for timeliness and quality of work.)

Auditor's Comments: We did not find evidence of two additional levels of review for grievances. SCOC officials should check periodically to determine whether the reviews are done and require some evidence of it.

9. Follow up the identification of inappropriate facility practices during the investigation of a grievance or complaint by:

- requiring facility officials to report back to SCOC about their corrective actions,

- requiring SCOC staff to follow up with the facilities when such reports are not provided in a timely manner, and
- verifying each facility's reported improvements in the next inspection of the facility.

(SCOC officials replied to our draft report that they will implement the first two segments of this recommendation. The third segment is already in place.)

Auditor's Comments: Although SCOC officials indicate that it is part of their annual inspection process to verify each facility's improvements in the next inspection, we did not see any evidence of this practice in the files we reviewed.

10. Amend SCOC's policies and procedures to include a provision for the supervisory review of complaint resolutions and the documentation of this review.

(SCOC officials replied to our draft report that they will implement this recommendation.)

11. Develop the ability to collect trend analysis data for grievances and complaints, begin producing such data, and use the data to conduct comparative analyses by individual institutions, regionally and Statewide.

(SCOC officials replied to our draft report that they are collecting and analyzing data regarding performance by each facility that will provide information on workload and workflow. However, comparisons among the facilities are not reliable or consistently comparable on the basis of their complaint and grievance rates.)

Auditor's Comments: The response to our draft report is not in line with earlier comments by SCOC officials that they

were in the process of replacing their software and planned to develop the ability to produce trend analysis data regarding grievances and complaints. Notwithstanding these plans, SCOC officials should gather information that can be used to analyze each facility's performance over time and enable them to identify those that are not handling grievances and complaints in a timely manner.

12. Work with the State Archives Retention and Records administration to develop a manageable records retention policy for SCOC, and seek additional outside storage facilities if necessary.

(SCOC officials replied to our draft report that their record retention policy conforms to the requirements of the State Archives and Records Retention Administration. They added that the auditors' conclusion was based on their confusion with the requirements for collective bargaining agreement grievances.)

Auditor's Comments: To resolve the difference, we requested additional information regarding SCOC's record retention policy. An SCOC official replied in an email dated June 3, 2008 that "It turns out that the SCOC's in-house retention schedule indeed does not agree with what the agency in the past filed with the State Archives. Our retention schedule lists two (2) years for state/local complaints and for local grievances. Please find attached documentation from the Archives for your work papers. We are under the impression that the audit team cited retention requirements for personnel grievances in the draft audit report and that should be checked again, but the retention period nonetheless should be three years. **We agree** (emphasis added) and our response to

recommendation No. 12 should be that the agency will adhere to the three year retention period going forward.”

AUDIT SCOPE AND METHODOLOGY

We audited the actions taken by SCOC to oversee the operations of correctional facilities and respond to grievances and complaints about the treatment of inmates. Our audit covered the period April 1, 2004 through January 23, 2007. In our examination of SCOC’s oversight of correctional facilities, we focused on SCOC’s inspections of the facilities and determined whether the inspections were performed in accordance with the requirements contained in Article 3 of the New York State Correction Law. In our examination of SCOC’s response to grievances and complaints, we determined whether SCOC has handled grievances and complaints in accordance with its policies and procedures.

To achieve our objective, we interviewed SCOC officials and reviewed relevant laws, rules, regulations, and SCOC policies and procedures. We also reviewed SCOC management reports, inspection reports, and files for grievances and complaints. In some instances, we selected samples of inspection reports and samples of grievances and complaints. Details about our sampling methodology are presented in the body of the report.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State’s accounting system; preparing the State’s financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority

voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

AUTHORITY

The audit was performed pursuant to the State Comptroller’s authority as set forth in Article V, Section 1, of the State Constitution and Article II, Section 8, of the State Finance Law.

REPORTING REQUIREMENTS

A draft copy of this report was provided to SCOC officials for their review and comment. Their comments were considered in preparing this final report, and are included as Appendix A. Appendix B contains comments by the State Comptroller that address selected matters contained in SCOC’s response.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Chairman of the New York State Commission of Correction shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

CONTRIBUTORS TO THE REPORT

Major contributors to this report include Carmen Maldonado, Robert Mehrhoff, Roger C. Mazula, Marianne Boyer, Alexander Marshall, Raymond Barnes, Paul Wu, and Dana Newhouse.

Exhibit 1

New York State Commission of Correction Audit Test Results for County Correctional Facilities				
County Correctional Facility	Inspection Reports			Number of Reports with Regulations Not Addressed
	2004-05	2005-06	2006-07	
Broome County Jail	Yes	Yes	No *	0
Cayuga County Jail	Yes	Yes	Yes	0
Chautauqua County Jail	Yes	Yes	No *	0
Columbia County Jail	Yes	Yes	No *	0
Cortland County Jail	Yes	Yes	Yes	0
Delaware County Jail	Yes	Yes	No *	0
Essex County Jail	No	Yes	No	1
Genesee County Jail	No	Yes	Yes	0
Greene County Jail	Yes	No	No *	1
Hamilton County Jail	No	Yes	No *	1
Herkimer County Jail	Yes	Yes	No	0
Lewis County Jail	Yes	Yes	Yes	1
Madison County Jail	Yes	Yes	Yes	1
NYC – AM Kross Center	Yes	Yes	No *	2
Onondaga County Penit	Yes	Yes	No	0
Orleans County Jail	Yes	Yes	No *	0
Otsego County Jail	Yes	Yes	No *	0
Putnam County Jail	Yes	Yes	No *	2
Rensselaer County Jail	Yes	Yes	No *	0
Saratoga County Jail	Yes	Yes	No *	0
Schenectady County Jail	Yes	Yes	No	0
Seneca County Jail**	Yes	Yes	No	2
St. Lawrence County Jail	Yes	Yes	Yes	0
Suffolk County Jail	Yes	Yes	Yes	1
Warren County Jail**	No	Yes	No	1
Totals				13
Notes: *The inspection reports we reviewed during 2006-07 cover the period through January 23, 2007. SCOC officials assert that they have either done or scheduled inspections of many of these county correctional facilities in early 2007, after our scope period.				
**SCOC officials advised that the old Warren County Jail was closing during 2004-05 and that the new Seneca County Jail was under construction during 2006-07.				

Exhibit 2

New York State Commission of Correction Audit Test Results for Local Police Lock-Ups			
Local Police Lock-Up	Biennial Inspection Goal		
	Met	Undetermined	Not Met
Alexandria Bay	X		
Canton Village PD		X	
Elmira Heights PD			X
Garden City Village PD**		X	
Hamburg Village PD		X	
Irvington PD*			X
Kenmore PD	X		
Long Beach City PD			X
Monticello			X
MTA Beacon Station**			X
NYCHP PSA #4*			X
NYCHP PSA #9 *			X
NYCTP District #32			X
NYPD 100 PCT.		X	
NYPD 34 PCT.*			X
NYPD 40 PCT.*			X
NYPD 46 PCT.		X	
NYPD 72 PCT.		X	
NYPD 90 PCT.		X	
Old Westbury PD			X
Oneida City PD		X	
Saugerties Town PD*			X
Tonawanda City PD	X		
Watertown PD		X	
Wellsville PD*			X
Totals	3	9	13
Abbreviations: PD – Police Department PCT – Precinct MTA – Metropolitan Transportation Authority NYCHP PSA – New York City Housing Police Public Safety Area NYCTP – New York City Transit Police NYPD – New York City Police Department Notes: *SCOC officials assert seven of the local police lock-ups listed above as not being inspected within two years were inspected, at most, two and one-half years apart. **SCOC officials stated that they had only recently discovered the Garden City Village and the MTA Beacon Station lock-ups.			

APPENDIX A - AUDITEE RESPONSE



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December 21, 2007

Ms. Carmen Maldonado, Audit Director
State of New York
Office of the State Comptroller
110 State Street
Albany, New York

RE: New York State Commission of Correction
*Oversight of Correctional Facilities and
Handling of Grievances and Complaints (2006-S-93)*

Dear Ms. Maldonado:

The Commission is in receipt of your letter dated November 15, 2007 covering the draft audit report captioned above. We understand that the Commission's response to this draft will be included as an appendix to your final report. Please find the Commission's response set forth below.

Audit Results – Summary (p.2)

State Facilities

In its review of the draft audit report's summary statement that "SCOC is not fulfilling its responsibilities for overseeing State correctional facilities," the Commission found that the audit report either failed to note or dismissed a significant amount of Commission oversight activity in state correctional facilities. While the Commission did curtail its inspectional activity in state correctional facilities when its staffing levels were reduced in the 1990's, it did not "stop[ped] inspecting DOCS prisons . . ." altogether. The Commission's Forensic Medical Unit has investigated all problematic Department of Correctional Services (DOCS) inmate deaths throughout the period of the 1990's through the present, making an average 24 extended site visits annually over the audit period to state facilities where inmates had died, inspecting them, interviewing correctional and health care staff and reporting on conditions of confinement. Moreover, in each of the years covered by the audit Commission staff visited all of the 16 state correctional facilities authorized, by variance from Commission regulations, to house inmates above their rated capacity to inspect conditions of confinement. Further, Commission inspectors visited and inspected an additional 14 DOCS facilities during each year where DOCS had been authorized to double-cell inmates in cells designed for single occupancy in maximum security

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Comments
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* See State Comptroller's Comments, page 35

facilities. The Commission also reviews DOCS' serial unusual incident reporting and its monthly and annual reports on grievance program activity.

With regard to the remaining state facilities, i.e., the four Secure Centers operated by the Office of Children and Family Services, these facilities had in past years not been the subject of a regular inspection program, largely due to the unavailability of promulgated regulations establishing minimum standards for these facilities. Nevertheless, the Commission undertook in 2007 to visit each of the OCFS facilities as a prelude to a standards-based inspection program, to inspect their security plant, to examine their policies and procedures and to review their incident logs. Each facility was visited twice in 2007.

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Comment
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In summary, then, while the Commission since 1992 has not been afforded the human resources to operate a detailed inspection program in all of the 69 DOCS facilities housing its 63,000 inmates, oversight of DOCS has not been "stopped" as asserted in the draft audit report, rather focused on crowded facilities operating with variance relief, facilities wherein an inmate has died, on maximum security facilities where conditions of confinement are not ideal and on the valid complaints of inmates submitted to the Commission.

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Comment
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Local Facilities:

The draft audit report declares that, while the Commission "has established various inspection goals for local correctional facilities and inspects these facilities regularly. . . . SCOC is not fully meeting these goals, as some inspections were not performed on schedule and other inspections did not cover all of the required areas/standards." The report summary section goes on to claim that the Commission "did not always follow-up" in circumstances where violations were found.

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Comment
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The draft audit report's focus of concern with the Commission's attainment of its inspectional program goal in local facilities appears to be on whether the Commission has adhered to its inspection schedule, i.e., to visit and inspect each county jail annually and each police department lockup biennially. The same nearly exclusively temporal concerns were associated in the draft report with follow-up of recommendations. It is virtually axiomatic that the Commission, as a very small field services oversight agency with a large, geographically dispersed statewide mandate, must periodically alter its priorities and adjust its schedules in response to shifting conditions both in the agency and in the field. Superseding incidents take a priority and often impact planned inspections, and other events and needs in the nation's fourth largest correctional system often intrude on routine operations in a manner that cannot be ignored.

For these reasons, the annual cyclical evaluation completion periods are properly viewed as objectives to be pursued rather than arbitrary boundaries beyond which the Commission's programs are deemed to have failed. These aims are not to be confused with the Commission's goal, which is to evaluate all county correctional facilities against selected standards elements in a cyclical period, a period which may be extended weeks or even one or two months in a widely dispersed institutional system due to exigent circumstances. Purely temporal concerns cannot properly be seen as the primary determinant of success, particularly when it can be shown that

* See State Comptroller's Comments, page 35

the work was actually performed, tardy though it may have been on occasion. Such a fixation confuses means with ends. The Commission's concerns with its field inspection programs go more properly to questions of whether objective, independent scrutiny is brought to bear on institutional systems on a repeat cyclical basis and whether standards violations are detected when they arise.

Notwithstanding that the Commission disputes the premise of draft audit report's criticism of the local facility inspectional program, real-time knowledge of the inspection status, facility compliance status and follow-up completion for every facility is certainly desirable, and the draft audit report's recommendation for development of an automated tracking system for this purpose is well-founded. The Commission has modified its existing Excel spreadsheet tracking utility to encompass this recommendation.

Complaints and Grievances:

The draft audit report does not clearly differentiate between *complaints* and *grievances* by and/or on behalf of inmates. In New York both the state and local correctional systems are required to operate and maintain formal inmate grievance programs. A "grievance" is a formal written complaint, submitted to a facility-based program, concerning written or unwritten facility policies, rules, programs or the conduct of officials having charge of the institution. Complaints are informal written submissions directly to the Commission by or on behalf of inmates on any subject from any correctional facility, including state correctional facilities.

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The draft audit report states that when the investigation of either a complaint or grievance reveals violations of law or state regulations respecting the treatment of inmates or the management of correctional facilities, the facility authorities are instructed to take corrective action, however, the Commission did not always follow-up with facility officials to ensure that appropriate corrective action was taken. The draft audit reports goes on to maintain that up to 23% of a sample of grievances processed by the Commission and the Council exceed the 45 business-day time frame for resolution set by the Commission's regulations. Finally, the draft report questions whether complaint and grievance processing is subject to adequate supervisory review and recommends a formal quality assurance process as a remedy.

With respect to the 45-business day regulation for issuance of grievance determinations, uniform adherence to this temporal framework has and continues to be problematic for the Commission, its staff and the Citizen's Policy and Complaint Review Council. The failure of some local correctional facility administrations to conduct and document adequate facility-level investigations often delays the appearance of a grievance on the Council's agenda, thereby invoking a structural delay governed by the meeting schedule. Moreover, health services grievances, the largest single grievance category, are so complex as to often make rapid resolution impossible. Lengthening of the processing time as set by the regulation is impractical given the average length of jail stays.

Insofar as follow-up of violations are concerned, the history of violations by a local correctional facility administration is compiled and examined as part of the planning and

* See State Comptroller's Comments, page 35

preparation for every annual facility evaluation and this includes any violations arising from complaints and grievances.

As for complaint and grievance quality assurance, each grievance prepared by the staff is reviewed for quality of work and pre-approved at two additional levels, first by the Deputy Director of Operations, then by a staff attorney in the Office of Counsel. The Commission will ask its field supervisors to review a sample of closed complaint files for timeliness and quality of work.

Background (p. 3)

The draft audit report makes reference to “prisons operated by the counties,” and the “jails . . . operated by cities, towns, villages and other municipal entities.” Although the term-of-art “penitentiary” is sometimes applied to three (3) free-standing upstate county institutions and one New York City institution reserved to those inmates serving definite sentences of one year or less, there are no county facilities properly referred to as “prisons.” These are “jails.” All 57 upstate and Long Island counties and the City of New York operate jails which have a specified definition (Correction Law Article 20). All but three jurisdictions incorporate housing of definite sentence-servers within their jails. Police departments operate detention facilities defined as “lockups” when used for pre-and post-arraignment detention (Correction Law Article 3; 9NYCRR Part 7501) and “police station jails” when used for other police detention.

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Comment
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The number of county correctional facilities as set forth in the draft audit report is inaccurate. There are 63 upstate and Long Island free-standing jails/penitentiaries. There are 10 New York City jails operating as of December 31, 2006. Four additional New York City jails are closed, another was sold. There are 73 jails operating and subject to inspection/evaluation as jails in New York.

Audit Findings and Recommendations (pp. 3-15) ***Oversight of State Correctional Facilities***

DOCS Facilities (p. 4)

The draft audit report asserts that the Commission “stopped performing . . . inspections [of DOCS facilities] when its staffing levels were reduced in the 1990s (p.4, para. 1),” and “under the current arrangements, inspectors visit DOCS facilities only in special circumstances (p.4, para. 5).”

The Commission submits that these assertions dismiss a significant amount of Commission oversight activity in state correctional facilities. While the Commission did curtail its inspectional activity in state correctional facilities when its staffing levels were reduced in the 1990’s, it did not “stop[ped] inspecting DOCS prisons . . .” altogether. The Commission’s Forensic Medical Unit has investigated all problematic DOCS inmate deaths throughout the period of the 1990’s through to the present, making an average 24 extended site visits annually over the audit period to state facilities where inmates have died, inspecting them, interviewing correctional and health care staff and reporting on conditions of confinement. Moreover, in each

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Comment
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* See State Comptroller's Comments, page 35

of the years covered by the audit, Commission staff visited all of the 16 state correctional facilities authorized by variance from Commission regulations to house inmates above rated capacity to inspect conditions of confinement and to enforce the conditions set as prerequisites for granting of the variance relief. Further, Commission inspectors visited and inspected during each audited year an additional 14 maximum security facilities where DOCS has been authorized, under special conditions set by the Commission, to double-cell inmates in cells designed for single occupancy.

In addition to the actual site visits conducted, Commission managers receive and review the system-wide 24-hour serial unusual incident log every day from the DOCS Central Office. Commission staff receive, review and log nearly 3,000 written complaint letters annually from inmates confined in DOCS facilities with follow-up with facility management on behalf of the complainants in an average 25% of cases. The Commission reviews in detail the monthly and annualized tabulation of the activity of the DOCS Inmate Grievance Program as required by Correction Law.

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Comment
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In most years, therefore, notwithstanding repeat visits for multiple inmate deaths investigated in the same DOCS facilities, Commission staff is positioned to enter, have an inspectional presence, observe operations and interact with management and staff in 54 of the 69 state correctional facilities annually. Oversight has not been "stopped" as asserted in the draft audit report, rather focused on crowded facilities operating with variance relief, facilities wherein an inmate has died, on maximum security facilities where conditions of confinement are not ideal and on the valid complaints of inmates submitted to the Commission. While this approach may not afford the comprehensive inspectional capacity characterized by the draft audit report as essential to the Commission's regulatory mission, it grows out of an assessment of relative risk by experts in this field, i.e., senior agency management. We suggest that it is substantially more than the virtual abandonment of DOCS facilities indicated by the auditors and a prudent use of scarce resources under the circumstances.

OCFS Facilities (p.5)

With regard to the remaining state facilities, i.e., the four Secure Centers operated by the Office of Children and Family Services, these facilities had in past years not been the subject of a regular inspection program, largely due to the unavailability of promulgated regulations establishing minimum standards for these facilities. Nevertheless, the Commission undertook in 2007 to visit each of the OCFS facilities as a prelude to a standards-based inspection program, to inspect their security plant, to examine their policies and procedures and to review their incident logs. Each facility was visited twice in 2007.

Recommendations (p. 5)

1. "Establish an ongoing and formal risk assessment process for selectively targeting scarce resources to . . . those DOCS facilities that have the greatest need for review."

The Commission believes that its present approach and posture with respect to DOCS facilities comports with this recommendation.

* See State Comptroller's Comments, page 35

2. "Expedite the promulgation of regulations for OCFS secure centers. Until the regulations are promulgated, perform basic inspections at the centers to insure that there is a minimally acceptable level of care, custody and treatment."

The Commission has completed the regulations and is working with the Governor's Office of Regulatory Reform to initiate the promulgation process, expected to be completed during 2008. The Commission has implemented a rigorous incident-reporting requirement for the Secure Centers and the Commission's field staff visited each secure center twice during 2007 to perform basic inspections as recommended by the draft audit report.

Oversight of Local Correctional Facilities

County Correctional Facilities (p.6)

The draft audit report states that there are 77 county correctional facilities including 14 in the City of New York; one of which was sold. In fact there are **10** operational New York City correctional facilities which are liable for inspection by the Commission. There are two hospital prison wards, which are small secure units within hospitals, which while technically correctional facilities, are imbedded in facilities governed by Article 28 of the Public Health Law. As a practical matter as regards the agency's mission, there are 73 county correctional facilities in New York State.

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Comment
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The draft audit report asserts that, in a review of all county correctional facility inspection reports during the period April 1, 2004 through January 23, 2007, SCOC "did not fully meet its inspection goals as some facilities were not inspected *each year* (emphasis added), and some inspections did not address all the regulations included in that inspection cycle. The draft audit report notes that, in a review of all of the county inspection reports for the period April 1, 2004 through January 23, 2007, only one(1) inspection report had been prepared for each of 12 facilities, whereas two (2) such reports were expected (p.6). While the draft audit report notes that Commission officials disagreed with this assertion, the auditors nevertheless continued to insist that the inspections were "missing" and/or not done on schedule (p.7).

A review of the Commission's work products respecting these 12 facilities revealed the following:

Facility Reported Missing/Cycle	Actual Evaluation	Remarks
Dutchess County Jail 04/05	6/20/05	Completed 80d. late
Genesee County Jail 04/05	10/04/05	04/05-05/06 Combined
Livingston County Jail 04/05	05/02/05	04/05-05/06 Combined

* See State Comptroller's Comments, page 35

Ulster County Jail 04/05	07/13/05	New facility slated to open – old facility evaluation abbreviated
Westchester County Jail 04/05	08/30/05	Both facilities evaluated together
Westchester County Pen 04/05	08/30/05	
Yates County Jail 04/05	08/08/05 Combined	04/05-05/06
Chenango County Jail 05/06	06/12/06	Newly constructed Facility-05/06-06/07 Combined
Erie County Holding 05/06	02/27/06	Site work done; Report delayed by major incident investigation

In seven (7) of the 12 cases cited, Commission line supervisors or managers altered the timing and/or methodology of the field evaluation. In another, two facilities are co-located, under the same management and consequently evaluated as one. In a ninth facility, the site evaluation was completed, but the need to investigate a major incident assumed priority over completion of the evaluation report. Only three (3) of the 12 reports could not be found

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Comment
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While it may be fairly stated that 12 evaluations were not completed *as expected*, the preliminary findings are misleading to the extent that they suggest that these cyclical evaluations were *not performed at all*, a far different state of affairs than the actual condition, which is that the evaluations were indeed completed, but at different intervals between evaluations than projected because of justifiable managerial decisions to alter timing or methodology. The Commission suggests that pointing out this distinction would result in a more accurate treatment of these variations.

The draft audit report goes on to note that the Commission was “at risk” for not meeting the annual inspection goal again in the 2006-07 inspection year, as just 31 inspection reports for that year were either completed or in progress as of January 23, 2007 (p.7). The Commission reviewed the Commission’s work product files for the period January 23, 2007 through June 2007, a period ending not more than 90 days after the planned conclusion of the inspection cycle. The following county correctional facility inspections were completed during the period:

Facility	Inspected	Remarks
Cattaraugus CJ	January 2007	New Facility
Delaware CJ	January 2007	
Essex CJ	January 2007	

* See State Comptroller's Comments, page 35

Facility	Inspected	Remarks
Niagara CJ	January 2007	
OBCC-New York City	February 2007	
VCBC-New York City	February 2007	
Washington CJ	February 2007	
Wyoming CJ	February 2007	
Albany CJ	March 2007	
Chautauqua CJ	March 2007	
Clinton CJ	March 2007	
AMKC-New York City	March 2007	
RNDC-New York City	March 2007	
Ontario CJ	March 2007	
Otsego CJ	March 2007	
Saratoga CJ	March 2007	
Seneca CJ	March 2007	New Facility
Dutchess CJ	April 2007	
Monroe-Henrietta	April 2007	
Monroe CJ	April 2007	
Rockland CJ	April 2007	
Warren CJ	April 2007	
Westchester DOC	April 2007	
Herkimer CJ	May 2007	
Jefferson CJ	May 2007	
Orange CJ	May 2007	
Broome CJ	June 2007	
Onondaga CJ	June 2007	
Rensselaer CJ	June 2007	
Steuben CJ	June 2007	

Of the 31 county correctional facilities inspected after the OSC field audit period, 17 were inspected during the planned audit cycle. Six more facilities were inspected less than 30 days after the end of the inspection cycle, and Commission management modified the timing of the remaining eight facilities, completing them within 90 days of the end of the planned cycle. Twelve (12) facilities not listed were inspected later in 2007, pursuant to a 2006 management decision to convert its fiscal inspectional year to a calendar year.

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The draft audit report notes that some inspections did not address all of the regulations planned into that annual cycle. Within a random sample of 25 county correctional facilities, the draft audit report cited six (6) inspection reports in 2004-2005 that did not address all of the regulations included in that cycle. Six (6) inspection reports were also missing regulations from the 2005-2006 cycle, and one (1) report was missing regulations in 2006-2007. Commission management's discussion with the agency's field supervisors strongly suggests that a very large portion of these "missing" regulations represent inspection management by exception, i.e., some regulations, such as chemical agents relate to practices not employed at many of the inspected facilities, while others were not mentioned if the facility was found in compliance. This is a non-

* See State Comptroller's Comments, page 35

standard inspection reporting practice, however, and Commission staff has been instructed to affirmatively include all of the regulations in future reports, whether or not compliance was found.

One facility was cited as having had 13 regulations omitted in 2005-2006 and 11 of 17 omitted in 2006-2007. That facility is the Hamilton County Jail. The 2005 site visit to Hamilton County Jail revealed that the facility had regressed into an atypical, unconventional operation in non-compliance with nearly all *Minimum Standards* such that no meaningful evaluation could be done and enforcing compliance with all regulations at once was not a realistic possibility over a short course. Commission managers and staff began in 2006 with inspection and compliance assistance in fundamentals of security/supervision and provided a correction officer Basic Training. It should be noted that the average annual inmate count in this jail is five (5) inmates.

The draft audit report asserts that corrective action was recommended in 24 of the county correctional facility inspection reports reviewed by the auditors. The Commission acknowledges that there were seven (7) facility inspection reports in which satisfactory evidence of follow-up of identified issues could not be found (p.8).

The draft audit report indicates that the Commission's tracking system for monitoring the status of inspections is not comprehensive. The Commission has modified its Excel tracking system to show (1) whether each facility was inspected annually; (2) whether each inspection addressed all of the regulations included in that annual inspection cycle, and; (3) whether documented follow up action had been taken on each recommendation for corrective action (p.8).

Local Police Lockups

The draft audit report states that the auditors examined all of the Commission's reports of biennial inspections of police lockups for the period April 1, 2004 through December 1, 2006, found that "many" of the lockups were not inspected every two years as planned and that Commission recommendations were not always followed up (p.8). Specifically, the draft audit report asserts that "there was no inspection report for 90 of the 317 lockups," each of which should have been inspected during the period April 1, 2004 through March 31, 2006.

The Commission reviewed its files for the same period and found that only 31 of the 317 police lockups were not evaluated in either 2004-2005 or in 2005-2006, not 90 as reported in the draft audit report. Specifically,

- 31 lockups were not evaluated in either 2004/2005 or in 2005/2006;
- 30 lockups were evaluated in 2004 and again in 2006, although not necessarily within the precise 730-day temporal window imposed by the audit methodology, in all cases not exceeding a re-visit interval of 27 months.
- 6 lockups were evaluated in 2005 and are scheduled to be re-evaluated in 2007;

<p style="text-align: center;">*</p> <p style="text-align: center;">Comments 2, 6</p>

* See State Comptroller's Comments, page 35

- 16 lockups are currently disputing whether they meet the Commission's definition of a police lockup, or whether standards promulgated as applicable to city, town and village facilities are applicable to state-operated facilities, e.g. the Metropolitan Transportation Authority.
- 7 lockups are newly identified and have not been scheduled or are very recently scheduled for evaluation.

The draft audit report goes on to note that, of the 107 police lockups inspected by the Commission during the first eight months of the 2006-2007 inspection year, 42 of them had not been inspected during the previous inspection cycles of 2004-2005 or 2005-2006. The Commission's review of its records on these 42 lockups revealed only 24 of the 42 lockups had not been so evaluated:

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- 24 of the 42 cited lockups were evaluated in 2006/2007 but not in either 2004/2005 or 2005/2006;
- 16 of the 42 cited lockups were evaluated in 2004 and again in 2006, although not necessarily within the precise 730-day temporal window imposed by the audit methodology;
- one of the 42 cited lockups was evaluated in 2006 and previously evaluated in 2005 - it received an annual evaluation;
- one of the 42 cited lockups claimed to have been deactivated in 2004-2005; this status was disallowed in 2006.

It should be noted that during the period January-June 2007, i.e., a period ending not more than 90 days after the 2006-2007 planned inspection year, and not including those intentionally extended to December 31, 2007, the Commission visited and inspected 75 additional lockups for a 2006-2007 total of 182 facilities, 115% of its lockup inspectional responsibility for the inspection year.

The draft audit report offers the results of an examination of a sample of 25 lockup inspection reports from among the three inspection years by asserting, "for 13 of the 25 lockups, the inspection goal was clearly not met." This implies that 13 of the 25 lockups were not inspected at all (p.9). In fact only six were not so inspected. Two (2) of those six were newly discovered by the Commission (and are so noted in Exhibit 2 of the draft audit report) and had yet to be scheduled. Six (6) others were inspected, albeit not within the planned two-year temporal window, but none of the six received inspections more than 27 months apart. One is erroneously listed as not having been inspected every two years (Elmira Heights PD). For nine (9) other lockups in the sample, their status could not be determined because the OSC audit field work was completed before the biennial inspection period ended. Five (5) of the nine facility inspections listed as "not determined" were subsequently completed, four of them not later than June 2007, an interval not exceeding 27 months. One was inspected in December 2007. Four (4) had not been inspected, rather were part of a cohort intentionally extended to a period ending December 31, 2007.

* See State Comptroller's Comments, page 35

As is the case with county correctional facility inspections, the Commission agrees that an enhanced tracking system is desirable. The Commission modified its Excel tracking system to better detail the inspection and inspection follow up status of police lockups.

The draft audit report points out that there is no requirement for local police lockups to report their existence to the Commission. Even if there were such a requirement, it does not address situations wherein the Commission and a police agency operating a lockup are unknown to each other in the first instance. It is correct to point out that there is no Commission-based centralized listing of all police lockups throughout New York State. In February 2006 the Commission embarked on a project to survey all New York State police agencies with the goal of developing such a centralized listing. The Commission continues to follow-up in the field on ambivalent or unclear responses.

In its discussion of staff field days (p.9) the draft audit report asserts that the Commission employs 17 inspectors and five (5) supervisors to perform or supervise inspections. In fact, during the period covered by the OSC field audit, the Commission actually employed 14 inspectors and four (4) supervisors to perform and supervise inspections. Other staff include a full-time training coordinator, three (3) forensic medical investigators, one Forensic Unit supervisor and one facilities planning specialist.

Recommendations

3. Develop a comprehensive tracking system for monitoring the status of inspections at county correctional facilities. The system should show whether (1) each facility has received its annual inspection; (2) each inspection addressed all the regulations included in that annual cycle; and, (3) follow up action has been taken on each recommendation for corrective action. Use this system to determine whether all inspection and follow-up goals are being met, and take corrective action when these goals are not being met.

The Commission has modified its existing Excel tracking utility to track in real time whether each facility has received its annual inspection; which regulations were examined in each inspection, and; whether follow up action was taken on recommendations arising out of the inspection.

4. Develop a comprehensive tracking system for monitoring the status of inspections at local police lockups. The system should show whether (1) each facility has received its annual inspection; (2) each inspection addressed all the regulations included in that annual cycle; and, (3) follow up action has been taken on each recommendation for corrective action. Use this system to determine whether all inspection and follow-up goals are being met, and take corrective action when these goals are not being met.

The Commission has modified its existing Excel tracking utility to track in real time whether each facility has received its annual inspection; which regulations were examined in each inspection, and; whether follow up action was taken on recommendations arising out of the inspection.

5. Require local police lockup facilities to report their existence and operating status to SCOC.

It is unclear as to how the Commission can reliably enforce a requirement made of police agencies whose operating lockup's existence is unknown in the first instance. The Commission has obtained a comprehensive listing of New York State local police agencies from the Division of Criminal Justice Services and is presently in the process of surveying all agencies whose lockup operation status is unknown.

6. Determine whether the eight days per month in the field requirement for inspection staff should be revised to accurately reflect the expectations of SCOC management.

Discussion with agency managers subsequent to the OSC field audit indicates that the eight-day field requirement continues to reflect valid management expectations for the inspectional staff. However, the performance programs of the Field Supervisors, the Training Coordinator and the Forensic Medical Unit staff have been modified to delete this requirement in favor of more reliable indicators of the performance of these staff members

Grievances and Complaints

The draft audit report notes that "grievances are made by inmates in local correctional facilities" while "complaints are made by everyone else." In fact, complaints may also come from local correctional facility inmates and may be accepted and acted upon by the Commission, bypassing the formal grievance procedure only when such a complaint is judged to be urgent and compelling.

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Grievances

The draft audit report details the results of an examination of a random sample of 48 local inmate grievances processed by the Commission (pp. 11-12). The draft audit report maintains that up to 23% of this sample of grievances processed by the Commission and the Council exceeded the 45 business-day time frame for resolution set by the Commission's regulations.

With respect to the 45-business day regulation for issuance of grievance determinations, uniform adherence to this temporal framework has and continues to be problematic for the Commission, its staff and the Citizen's Council. The failure of some local correctional facility administrations to conduct and document adequate facility-level investigations requires that they be repeated by Commission staff. While this failure of a local facility administration to conduct an investigation of a grievance adequate to adduce facts sufficient to issue a determination is in itself a violation of Part 7032, this very violation serves to delay the determination past the 45 business-day limit, particularly when even a very modest delay can cause the appeal to fail to appear on the Council's agenda, thereby invoking a structural 30-day period of delay until the next Council meeting. The Commission and the Council have also found that the increasingly complex health services issues subject to grievance appeals nearly always require production of medical records, which are virtually never supplied in the first instance, even though medical services is the most frequently grieved, leading the next most frequent category 2.3 to 1. Given the average length of stay of county jail inmates, the Commission cannot, as a matter of policy,

* See State Comptroller's Comments, page 35

extend its time-to-determination requirements through regulatory change to resolve these difficulties and so its is expected that this quandary shall remain within a record of timeliness that may fairly be regarded as approaching the best that may be expected under the circumstances cited. It should also be noted that the Citizen's policy and Complaint Review Council does not refer grievances to other agencies having jurisdictions as noted in the draft audit report (p.11).

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The draft audit report states that when the investigation of either a complaint or grievance reveals violations of law or state regulations respecting the treatment of inmates or the management of correctional facilities, the facility authorities are instructed to take corrective action, however, the Commission did not always follow-up with facility officials to ensure that appropriate corrective action was taken. Insofar as follow-up of such violations are concerned, the history of violations by a local correctional facility administration is compiled and examined as part of the planning and preparation for every annual facility evaluation and this includes any violations arising from complaints and grievances.

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Finally, as for complaint and grievance quality assurance, each grievance prepared by the staff is reviewed for quality of work and pre-approved at two additional levels, first by the Deputy Director of Operations, then by a staff attorney in the Office of Counsel. The Commission will ask its field supervisors to review a valid sample of closed complaints for timeliness and quality of work.

The draft audit report maintains that, "if an inmate in a local correctional facility files a written complaint about his or her treatment at the facility, it is treated as a grievance." This is not correct in all cases. Letters of complaint from state and local correctional facility inmates are returned to those inmates with instructions to file a grievance, unless the complaint is judged to be urgent and/or compelling, in which case the complaint letter is accepted for inquiry and resolution, regardless of whether the inmate is in a state or local facility. Family, friends and advocates of inmates may also file written complaints with the Commission and these are not returned for grievance filing, as the complainants do not have access to facility grievance programs.

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Performance Measurement and Record Retention

The draft audit report asserts that the Commission only "recently started compiling complaint and grievance data for performance measurement purposes, after it was directed by the Governor's Office to do so in 2005." This assertion is incorrect. The Commission has compiled complaint and grievance data by facility and by complaint/grievance category for at least a decade prior to 2005. In 2005, the Director of Criminal Justice directed the Commission (and all of the other New York criminal justice agencies) to fold their variable performance data into a unified system maintained, analyzed and reported by the Division of Criminal Justice Services. The draft audit report faults this performance measurement program as not providing "any comparative trend analysis across individual institutions." The draft audit report cites "weaknesses in its (the Commission's) data management software." The Commission disagrees.

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* See State Comptroller's Comments, page 35

First, the vast majority (>92%) of grievances are unfounded and are denied as such by the Citizen's Council. This is also true of informal written complaints. Trend analysis of meritless complaints and grievances across individual facilities to determine problematic practices or conditions would seem to be of doubtful value. Second, the contents of the individual complaints and grievances are most often highly personalized and subjective. A complaint is not a fact. Conclusions drawn from mass analysis of thousands of complaints and grievances without controlling for those anomalies would be of questionable reliability. Finally, comparison of the sheer numbers of grievances and complaints between facilities does not account for prolific complainants and grievants who can single-handedly inflate figures to a point of statistical nonsense. It is worth noting that, statewide in 1997, there were 50.295 grievances/1,000 inmates. In 2007, that rate was 50.260/1,000 – no difference. In any event, Commission facility specialists review the numbers of grievances and the prevailing categories as part of the preparation for every annual facility inspection.

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With regard to complaint and grievance file retention periods, the three-year New York State records retention rule cited in the draft audit report pertains to state employee collective bargaining agreement grievances, not to the two-year retention of inmate complaints and grievances maintained by the Commission, which is part of the Commission's established records retention schedule and which is not in conflict with any other state regulation.

Recommendations

7. Update internal regulations to reflect state regulations.

The Commission will issue a staff directive which reiterates the grievance processing period as 45 business days.

8. Develop and implement an internal review process for insuring that grievances and complaints are handled in accordance with SCOC policies and procedures, and document the review.

Each grievance prepared by the staff is reviewed for quality of work and pre-approved at two additional levels, first by the Deputy Director of Operations, then by a staff attorney in the Office of Counsel. The Commission will issue a supervisory staff directive requiring quarterly review of a sample of complaint files for timeliness and quality of work.

9. When inappropriate facility practices are identified during the investigation of a grievance or a complaint:
 - require facility officials to report back to SCOC about their corrective actions;
 - require SCOC staff to follow-up with the facilities when such reports are not provided in a timely manner, and;
 - verify each facility's required improvements in the next inspection of the facility.

The Commission will implement the first two segments of this recommendation. The third segment is already a feature of planning and preparation for annual inspections.

* See State Comptroller's Comments, page 35

10. Amend SCOC's policies and procedures to include a provision for the supervisory review of complaint resolutions and the documentation of this review.

The Commission will issue a supervisory staff directive requiring quarterly review of a sample of complaint and grievance files for timeliness and quality of work.

11. Develop the capability to produce trend analysis data for grievances and complaints, begin producing such data and use this data to conduct comparative analyses by individual institutions regionally and statewide.

The Commission's performance measurement program measures complaint and grievance workflow. The Commission believes that self-reported, personalized, subjective complaints are a spurious data source useful for little more than measurement of workload and workflow. Local correctional facilities are not reliably or consistently comparable on the basis of their complaint and grievance rates. There is no geographic regional comparability of any kind, nor are there statewide normative factors for grievances and complaints to use as a baseline.

12. Work with the State Archives Retention and Records administration to develop a manageable records retention policy for SCOC, and seek additional outside storage facilities if necessary.

The Commission has a written comprehensive records retention policy that conforms to the requirements of the State Archives and Records Retention administration. The recommendation is based upon a confusion of inmate grievances with state employment collective bargaining agreement grievances.

APPENDIX B - STATE COMPTROLLER'S COMMENTS

1. SCOC officials express concerns that the report does not properly reflect their activities at DOCS' facilities because we did not recognize the site visits made in response to certain events, such as the death of an inmate or requests to house inmates above their rated capacity. The report accurately describes these activities on pages 4 and 5. We also note that the Medical Review Board, which investigates inmate deaths and oversees inmate health care services, was not the subject of this audit.
2. We have revised the Audit Results-Summary and/or the report to reflect information in SCOC's response.
3. SCOC officials misquote our report. We state that inspections were stopped, which is correct. The other activities performed by SCOC at DOCS' facilities were reflected in the section of our report titled DOCS Facilities.
4. We acknowledge the Commission has limited resources to perform oversight for a large geographically dispersed statewide mandate and, therefore must periodically alter priorities and schedules. We did not report a failure of oversight. We do report that SCOC is not fully meeting its inspection goal.
5. SCOC's response to our draft report provides the same information regarding the evaluations that were not done "as expected." These results are reflected on page 7 of our report.
6. Our report states that there were no inspection reports for the "remaining 42 lock-ups." SCOC did not provide any reports for these 42 lock-ups.
7. The numbers in SCOC's response do not appear in the draft report as issued.
8. SCOC officials describe the process for following up with facility officials instructed to take corrective action. However, as stated in our report on page 13, SCOC did not provide any evidence that such a process was followed for the three grievances, noted during our audit, in which the facility was instructed to take corrective action.
9. SCOC officials replied to our draft report that their record retention policy requirements were in conformance with the State Archives, and that the auditors' incorrectly reported that records for inmate grievances had to be retained three years. They added that the inmate grievance retention period was only two years. To resolve this issue we requested SCOC officials provide documentation to support their response. In an email dated June 3, 2008, an SCOC official replied "We agree and our response to Recommendation No. 12 should be that the agency will adhere to the three year retention period going forward."