

H. CARL McCALL  
STATE COMPTROLLER



110 STATE STREET  
ALBANY, NEW YORK 12236

STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

March 14, 2002

Mr. Glenn S. Goord  
Commissioner  
Department of Correctional Services  
Building #2 State Campus  
1220 Washington Avenue  
Albany, NY 12226-2050

Re: Report 2001-F-61

Dear Mr. Goord:

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, we have reviewed the actions taken by officials of the New York State Department of Correctional Services (Department) as of December 20, 2001, to implement the recommendations contained in our audit report, *Adirondack Correctional Facility Swapping Practices* (Report 99-S-21). Our report, which was issued on April 7, 2000, reviewed the Department's oversight of swapping practices at the Adirondack Correctional Facility (Adirondack).

**Background**

The Department operates 72 correctional facilities throughout the State, and employs nearly 19,000 correction officers to provide over the 70,000 offenders in its custody. Adirondack is a medium security facility in Raybrook, New York with an inmate capacity of 713. Adirondack has 317 total staff, including 192 correction officers.

For more than 25 years, the Department has allowed mutual shift swapping, a practice by which correction officers doing similar work agree to exchange work hours. Employers are specifically permitted by the provisions of Section 134 of the Civil Service Law and the Federal Fair Labors Standards Act to allow employees to exchange hours of work with other employees doing similar work in the same State institution. Department management allows the practice of swapping to improve employee morale, to reduce overtime and to reduce the use of leave by correction officers. While swapping was first used to provide time off for employees who had emergency needs, correction officers for a variety of personal reasons now use it. Section 135 of the Civil Service Law prohibits an employee from receiving extra salary or compensation for working swapped time.

At the time of our audit, the Department's central office did not formally recognize swapping as an official work practice and did not control its use. Individual Department facilities negotiate with their local union representatives to establish the terms of the swapping policies specific to their own facilities. Thus, there could have been different policies in place at each of the 70 facilities statewide. Department officials indicate that the system for swapping at some facilities was "open-ended," meaning that there was no set timeframe that the swapped time had to be repaid.

Until April 1999, Adirondack permitted such open-ended swapping based on the terms of its labor-management agreement. Swaps were recorded three ways at the Adirondack facility: in a swap book, on officers' time cards, and in the Daily Activity charts. Swapping is regarded as a privilege; an employee's abuse of the program can result in revocation of swapping privileges for that employee or revocation of the swapping agreement itself.

### **Summary Conclusions**

In our prior audit, we found that neither the Department nor Adirondack Facility management maintained oversight of swapping at the facility to ensure compliance with the Civil Service Law and to deter swapping abuses. We concluded that certain officers likely paid other officers to work their shifts in violation of the Civil Service Law and the facility's swap agreement. Also, there was evidence of forged time cards and abuse of leave accruals. At our request, the New York State Inspector General investigated the matter, concluded there was fraud and abuse and turned the matter over to the New York State Attorney General for prosecution. The case has since been settled.

Our follow-up review found that Department officials have made significant progress in implementing the recommendations contained in our prior audit report. The Department has established a comprehensive swapping policy, which incorporates best practices from existing correctional facility swapping agreements. The Department also has issued time and attendance directives to enhance the controls over these functions. Additionally, the Attorney General's Office has finalized settlement agreements with 8 of the 15 individuals found to be abusing their swapping privileges. The agreements call for recouping approximately \$196,000 for leave time and other fringe benefits abused, as well as, State taxes not paid.

### **Summary of Status of Prior Audit Recommendations**

Of the four prior audit recommendations, Department officials have implemented all of the recommendations.

### **Follow-up Observations**

#### **Recommendation 1**

*Act to eliminate the swapping abuses we identified at Adirondack Correctional facility and take appropriate disciplinary action against those individuals who were found to have abused swapping privileges.*

Status – Implemented

Agency Action – The Department has established a comprehensive swapping policy, which incorporates best practices from the existing correctional facility swapping agreements. Adirondack implemented the Intershift/RDO Swaps directive (#2223) on June 1, 2001.

The Attorney General's Office initiated prosecution against 15 Adirondack officers who abused their swapping privileges. In lieu of prosecution, formal settlement agreements have been reached with 8 of the 15 officers. Some of the officers have agreed to roll back retirement credits, as well as, pay back leave time and other benefits that were improperly obtained. Other officers have agreed to file amended State tax returns for income earned, but never reported. The remaining 7 officers have also agreed to settle, and their settlement is being finalized. The details of those settlements are currently being negotiated.

A review of the agreements indicates that the State will recoup approximately \$196,000, as follows:

- Approximately 3,282 days of credits to the State retirement system;
- Approximately \$163,000 of leave time and other fringe benefits;
- Between \$7,200 and \$8,300 in State tax dollars owed for income earned, but never reported. The officer's have admitted to receiving \$47,600 in 1997, \$48,600 in 1998, and \$25,300 in 1999. These estimates do not take into consideration any penalties to be levied or any accrued interest; and
- Forfeiture by three officers of a total of 170 leave days (annual, personal, and/or sick). If the officers do not have a sufficient number of leave accruals, they have agreed to pay an average of \$147 for each day of leave owed or approximately \$25,000.

**Recommendation 2**

*Establish a comprehensive swapping policy, which incorporates best practices from existing correctional facility swapping agreements.*

Status – Implemented

Agency Action – The Department has established a comprehensive swapping policy, which was implemented by the Adirondack on June 1, 2001. Training sessions were provided to the Time and Attendance Lieutenant (or designee appointed by the Superintendent) of all facilities in August of 2001. The training reviewed the swap policy in detail and discussed implementation of the automated statewide system. In addition, the Department's Security Staffing Unit periodically reviews facility swap reports.

As part of our follow up, we visited three facilities (Ogdensburg, Gouverneur, and Walkill). All have implemented the new Swapping Directive (#2223). Each facility uses swap slips, which are data entered into the time and attendance system by the timekeeper for monitoring purposes. The time and attendance system allows the facilities to monitor the scheduling of swaps owed by correction officers. The Time and Attendance Lieutenant reviews their respective swap reports.

### **Recommendation 3**

*Institute controls to ensure that facility employees sign their own time cards.*

Status – Implemented

Agency Action – The Department’s Record of Attendance directive (#2205) requires that Adirondack ensure that each employee attest that all entries on their time card are correct by signing the card and submitting it to a supervisor. The supervisor ensures that each time card is accurate and signed by the employee. The supervisor then signs the time card and submits it to the timekeeper for posting to the timekeeping system. In addition, each facility has an Internal Control Committee, which reviews employee time cards, either monthly or quarterly, depending on the facility.

### **Recommendation 4**

*Establish a policy that requires a regular review of employees' leave accruals to detect unusual or inappropriate leave usage.*

Status – Implemented

Agency Action – According to Department officials, Adirondack has implemented the Department’s Attendance Control Program directive (#2202), which was reissued on November 2, 2001. This directive requires the Attendance Control Officer to review, on a daily basis, the attendance records of all employees who have not reported for scheduled duty or who report late for duty during the previous 24-hour period. The review must include the following:

- The number of absences or latenesses that occurred during the previous nine months for security staff;
- Whether the number of absences or latenesses exceed the predetermined guidelines; and
- Whether further action is warranted.

Adirondack, as well as other facilities, are required to use a progressive disciplinary approach, which is based on the number of absences or latenesses that occur during the previous nine months. Discipline occurs, only if deemed appropriate by the Deputy Superintendent, when there are nine absences or latenesses within nine months.

In addition, Adirondack has established a time and attendance committee consisting of the Deputy Superintendent of Administration, the Deputy Superintendent of Security, Principal Clerk, and the Time and Attendance Lieutenant. The committee meets bi-weekly to review all absences to ensure that proper documentation of absences has been received and that proper procedures are being followed to monitor these absences.

Major contributors to this report were Ron Skantze and Jeffrey Dormond.

We thank the management and staff of the Department of Correctional Services for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

William P. Challice  
Audit Director

cc: Don Felter  
Deirdre A. Taylor