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REVIEW OF THE SHERIFF'S COMMISSARY FUND AND FOLLOW-UP OF THE 2007 OPERATIONS AUDIT JANUARY 1, 2011 THROUGH MAY 31, 2012

DAVID J. SHENK
ERIE COUNTY COMPTROLLER

HON. DAVID J. SHENK
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DIVISION OF AUDIT & CONTROL
95 FRANKLIN STREET
BUFFALO, NEW YORK 14202

October 25, 2012

Honorable Members
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Honorable Members:

The Erie County Comptroller's Office has completed a review of the Erie County Sheriff's Commissary and Telephone Funds and a follow-up of the 2007 operations audit for the period January 1, 2011 through May 31, 2012. Our objectives were to: (1) review the Commissary and Telephone Funds, (2) compare Erie County's Commissary prices, telephone rates, and telephone commissions to those of other counties, (3) evaluate the current operations of the Commissary, and (4) follow-up on the findings and recommendations of the Audit and Review of the Operations of the Erie County Correctional Facility (Correctional Facility) issued in July, 2007 with respect to commissary operations and revenue generation.

In addition, we reviewed an anonymous letter received by our office regarding the handling of a grievance submitted at the Correctional Facility. The objectives of our review regarding this grievance were to substantiate the propriety or impropriety of the grievance and to determine whether grievances are being handled in accordance with prescribed policies and procedures.

Summary of Findings

- Expenditures of $299,363.14 from commissary profits and telephone commissions were for items or services normally paid from the General Fund and were not attributable to prisoner welfare. Additional expenditures of $479,416.59 were spent on items or services that may or may not be attributed to prisoner welfare.

- Medical service costs have increased dramatically since 2008 (up 247%) and some of the billed costs from the Erie County Department of Health (Health Department) appear questionable.

- Commissary rent reimbursement is understated by $4,920 per month.

- For the review period the Commissary had a net profit of $210,456.42.

- The Commissary appears to be operating efficiently and accurately.

- Erie County had the lowest prices of the items offered in comparison with other counties.

- The inmate telephone rates are comparable to local facilities. Erie County had a lower commission rate than some of the comparison counties; however we were the only county with a minimum annual guarantee.

- Inmate grievances generally were handled in accordance with the Sheriff's formal grievance process. The grievance logs were not always completed fully and some grievances were not processed timely.

Sincerely,

David J. Shenk
Erie County Comptroller

cc: Hon. Mark C. Poloncarz, Erie County Executive
Hon. Timothy B. Howard, Erie County Sheriff
Robert W. Keating, Director, Budget & Management
Erie County Fiscal Stability Board

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Background

The Sheriff has the discretion to operate a commissary In accordance with New York State Correction Law, Chapter 45. A commissary may be established, maintained and operated for making available for sale to prisoners items deemed proper and consistent with the health and welfare of the prisoners as well as with the security and general operation of the facility. The prices of any items offered for sale shall be fixed by the Sheriff to the extent that the commissary operation will be self-supporting and will provide a modest return above costs. Profits resulting from commissary sales shall be deposited in a separate bank account and shall be utilized only for purposes of prisoner welfare and rehabilitation. Commissary funds shall be maintained in a manner which will fully substantiate all purchases, sales and expenditures and which will be available for periodic audit by the Office of the County Comptroller.

In addition to on-site visitation, a telephone system is provided to the inmates to maintain contact with family and friends at home. In accordance with 7 CRR-NY §723.2, this system provides a controlled list of up to fifteen (15) phone numbers accessible to each inmate to self-dial at telephones in the housing units. The Sheriff's Office has a vendor contract in place to provide such telephone service utilizing collect calls, debit card calls, and prepaid collect calls.

Both 9 CRR-NY §7032 (Correction Law) and the Erie County Sheriff's Policy #04-10-00 (Sheriff's Policy) outline specific policies and procedures that must be followed to ensure that all inmates are provided access to each facility's grievance program. Such requirements include: procedures to ensure accessibility of grievance program to inmates, staff responsibilities for handling grievances, safeguards against reprisals, corrective action to be taken when a grievance has merit, use of appropriate documentation and time frames to ensure the timeliness and integrity of processing, and proper notification of grievance decision so that the inmate can decide either to accept the decision reached or appeal to the next level of review which ultimately can end with an appeal to the New York State Commission of Corrections' (COC) Citizen's Policy and Complaint Review Council (CPCRC).

Inmate Complaint

We received an inmate complaint letter dated March 28, 2012 alleging that the grievances at the Correctional Facility were not being properly handled. Our objectives to address this letter were to determine if the inmate had a bona fide grievance and whether grievances are being properly handled in accordance with prescribed policies and procedures.

The inmate's grievance never made it to the formal grievance process as it was deemed to be a non-grievable situation. An inmate complaint that does not qualify to continue as a formal grievance, such as this, is one that pertains to issues outside the ability of

the administration to control. In this case the inmate was complaining that the Commissary's prices were too high when the related national commodity prices are taken into consideration. A change in the price of a commodity does not necessarily mean a corresponding change in the price of the product. There is no correlation between the two. The Commissary's prices charged are based on the purchase price of the product from the vendor plus an appropriate mark-up. So, if the purchase price of a product goes up, the increase will eventually be passed on to the inmate despite the current commodity market price. Additional issues voiced in the complaint include:

a. Concerns about over pricing certain items. It appears that the prices charged at the Correctional Facility are reasonable when compared with other county correctional facilities and holding centers that we contacted. The inmate stated that prices have been increased on *"...only the items that are most frequently bought..."* in the Commissary. Our review found that this is not correct. During the course of the review period, twenty (20) of the items sold in the Commissary had price increases. Of the items with increases, only six (6) of the top twenty-five (25) items most frequently purchased had price increases (see *Twenty-Five (25) Most Purchased Commissary Items,* Exhibit 6, page 23*)*.

b. Concerns over not using the Commissary's profits for prisoner welfare and rehabilitation. It could be said that there are not sufficient rehabilitation programs available, but there is no specific requirement that says certain rehabilitation programs have to be in place and that those programs have to be paid out of the Commissary's proceeds. The inmate also alleges that the facility offers *"...no work or programs that pays the offenders housed here ..."* which is not correct. While inmates do not work for money while housed at the Correctional Facility, they are compensated with Pay Bags (see *Inmate Pay Bags and Payments,* page 19).

c. Concerns over clothing and linen that is supplied. Regulations require that personal health care items, clothing and bedding be provided, but there are no provisions on the material or type provided or the specific quality of these items.

d. Statement about the exaggerated price for a long john shirt could not be substantiated. Those shirts are purchased for $3.69 and are sold for $5.00. He also stated that inmates are not given long john pants. Thermal clothing and boots were purchased with $3,262.40 from the Telephone Fund for distribution to the inmates.

e. We saw no evidence of complaints and grievances regarding broken microwaves. However, we did note that twenty-four (24) microwaves were purchased for $8,332 from the Telephone Fund. Further, we located thirteen (13) new microwave ovens in the storage area of the Commissary that will be used to replace broken microwaves.

For the most part, it appears that the grievances are being properly addressed with respect to the Grievance Program as stated in the Correction Law and in the Sheriff's Policy. Because of the complexities and various steps associated with the grievance process, it is difficult to determine whether grievances are "being discarded". If a complaint raised by an inmate is deemed to be not grievable, then in reality, there was no formal grievance. Hence, to the inmate it might appear that their grievance was "discarded" if they fully do not understand how the process works.

Therefore, based on our review of the facts, the Correction Law, and the Sheriff's Policy, this grievance letter has no merit. We did not find a single item that could be found in favor of the inmate. Although his concerns are genuine, what he portrays as shortcomings cannot be supported. The minimum standards do not prescribe for the specific quality of the products offered.

Prior Year Recommendations

In our prior audit of operations of the Correctional Facility dated July 11, 2007 we made many recommendations, most of which dealt with the Commissary. We followed–up on the implementation of most of these recommendations in our current review, specifically those dealing with commissary operations and revenue generation.

1. General Fund Expenses Charged to Commissary Fund

In the prior audit we noted that the Commissary Fund was used for purchases normally paid from the General Fund. Accordingly, we recommended that the Commissary Fund be reimbursed for the amount of those purchases. Our current review disclosed that similar purchases were again made. During our scope period of January 1, 2011 through May 31, 2012, $3,022,008 in purchases was made from the combined Commissary/Telephone Fund. We found that $2,243,228 of purchases were acceptable; $479,417 were questionable in nature; and $ 299,363 were not acceptable (see the specific finding in *Purchases from the Commissary and Telephone Funds*, page 9).

2. Phone Commission Shortfall

Because our last audit disclosed a shortfall in telephone revenue due to lapses in inmate telephone service contract negotiations, we recommended that management ensure timely renegotiation of such contracts to prevent similar revenue shortfalls in the future. The last contract for inmate telephone service expired in November 2010; however there have been no lapses in the receipt of telephone commissions and the Sheriff's Office is receiving the appropriate percentage of telephone revenue as negotiated. A Request for Proposal (RFP) was issued in January 2012 for a new inmate telephone service contract.

3. Commissary Rent Reimbursement Overstated

Previously, we had found that the Commissary rent reimbursement paid to the General Fund was overstated as projected expenses were in excess of the actual annualized cost of operation.

Using the actual costs for 2011, we again reviewed the propriety of the rent reimbursement payment and based on our calculations determined that the Commissary rent reimbursement is now understated by $4,920 monthly or $59,042 annually (see *Commissary Rent Reimbursement*, page 14).

4. Commissary Operations

The prior audit mentioned the possibility of switching to a vendor operated commissary. As this appeared to be a prudent decision, we recommended that the Sheriff's Office continue to pursue this possibility.

Our current review has found that the Sheriff's Office has submitted an RFP and it appears that the necessary steps have been taken thus far to ensure that the commissary operations will be taken over by an outside vendor within the next year (see *Commissary Operations*, page 15).

5. Laundry Services

Similar to the commissary operations, we previously recommended that management of the Sheriff's Office establish a laundry operation at the Correctional Facility in the event that the commissary operations became privatized, thus freeing up space in which to establish the laundry facility.

The Sheriff's Office is currently in the process of trying to bring this concept to fruition. They have prepared a 2013 capital project request necessary to commence a laundry service at the Correctional Facility with the necessary capacity to handle the laundering of inmate clothing for both the Erie County Holding Center (Holding Center) and the Correctional Facility. Again, it appears that plans are in place to have the laundry operation in service by the end of next year. In addition, this operation will enable inmates to obtain hands-on experience that could lead to future employment upon release.

6. Commissary Funds not Transferred/No Monthly Financial Statements

Previously we noted that the cash funds of the Holding Center were not transferred to the Correctional Facility account as part of the combined Commissary Fund and that there were separate bank accounts maintained for each location. In addition, neither facility prepared financial statements on a monthly basis for either the Commissary or Telephone Funds. We recommended that the monies be transferred to eliminate duplicity and that the financial statements be prepared monthly for reconciliation and management decision making purposes.

In this review, we found that cash fund transfers are no longer a problem as the Commissary Funds of both facilities are now combined in one fund. In addition, there is now a separate account for the

Telephone Fund, where previously they were combined in one account. Further, monthly account reconciliations are prepared. Financial statements for the funds can be found in *Appendix 1* and *Appendix 2*.

7. Medical Service Costs

In our prior audit we noted that the Sheriff's Office did not maximize revenue by billing for all medical costs incurred. According to the Sheriff's Office, their medical costs have increased from $3,872,702 in 2008 (which was the last year the Sheriff's Office ran the Jail Management Medical Division) to $9,598,852 in 2011, after the Health Department takeover. It is anticipated that these costs will exceed $11,500,000 in 2012 (see *Medical Costs*, page 11).

Findings and Recommendations

1. Purchases from the Commissary and Telephone Funds

New York State 9 CRR-NY §7016.1 (c) requires that *"profits resulting from commissary sales shall be deposited in a separate bank account and shall be utilized only for purposes of prisoner welfare and rehabilitation."* The Sheriff's Office's Jail Management Division has a Commissary Fund (see *Commissary Operations*, page 15) and a Telephone Fund (see *Inmate Telephone Service*, page 25). For our testing purposes we reviewed and classified all expenditures from both funds as one of the following:

- *Acceptable* – Expenses relate to inmate rehabilitation and welfare. The total of these expenditures was $2,243,228.05.
- *Questionable* – Expenses may or may not relate to inmate rehabilitation and welfare. $479,416.59 of expenditures were considered to be questionable.
- *Unacceptable* – Expenses do not relate to inmate rehabilitation and welfare and should have been paid from the General Fund or other funding source. These expenditures totaled $299,363.14.

The expenditures by category are detailed in *Exhibit 1*.

Exhibit 1: Expenditures from the Commissary and Telephone Funds

	Acceptable	Questionable	Unacceptable	Total
Bank Fees	$51.00	$0.00	$0.00	$51.00
Checks for Inmate Trust Account	$38.00	$0.00	$0.00	$38.00
Commissary Items for Resale	$1,269,548.96	$0.00	$0.00	$1,269,548.96
Commissary Rent	$196,837.44	$0.00	$0.00	$196,837.44
Commissary Supplies	$6,721.00	$0.00	$0.00	$6,721.00
Counterfeit Money Deposited	$5.00	$0.00	$0.00	$5.00
Housing Unit Equipment & Furniture	$20,022.03	$0.00	$0.00	$20,022.03
Inmate Benefits: Clothing & Footwear	$3,262.40	$0.00	$0.00	$3,262.40
Items for Indigent Inmates	$5,809.59	$0.00	$0.00	$5,809.59
Items Given to Inmates	$156.25	$0.00	$0.00	$156.25
Mail & Property Bags, & Storage Boxes	$49,951.72	$0.00	$0.00	$49,951.72
Newspapers	$19,359.84	$0.00	$0.00	$19,359.84
Inmate Programs: Inmate Barber Shop	$1,972.74	$0.00	$0.00	$1,972.74
Items for Inmate Pay Bags	$20,392.07	$0.00	$0.00	$20,392.07
Law Library Supplies	$5,798.53	$0.00	$0.00	$5,798.53
Religious Services	$13,784.94	$0.00	$0.00	$13,784.94
SAC Supplies	$653.15	$0.00	$0.00	$653.15
Sheriff's Garage	$4,164.00	$0.00	$0.00	$4,164.00
Trustee Pay	$16,419.50	$0.00	$0.00	$16,419.50
Jail Management Computer System	$0.00	$87,512.00	$0.00	$87,512.00
K-9 Dogs, Training, & Vehicles	$86,995.00	$0.00	$21,000.00	$107,995.00
Maintenance & Repairs	$2,000.45	$0.00	$0.00	$2,000.45
Office Furniture	$0.00	$131,285.81	$6,655.76	$137,941.57
Patrol Vehicle Emergency Lighting	$0.00	$54,479.56	$0.00	$54,479.56
Patrol Vehicles	$0.00	$0.00	$271,707.38	$271,707.38
Postage Meter Rental & Supplies	$0.00	$10,757.88	$0.00	$10,757.88
Prisoner Transport Vehicles	$490,082.28	$0.00	$0.00	$490,082.28
Security: Equipment & Tools	$14,888.64	$432.39	$0.00	$15,321.03
Security: Guardsman Clock Repairs & Tapes	$0.00	$5,474.39	$0.00	$5,474.39
Inmate IDs	$0.00	$13,850.80	$0.00	$13,850.80
Log Books	$0.00	$12,923.76	$0.00	$12,923.76
Sensor Wire Electric Fence	$0.00	$162,700.00	$0.00	$162,700.00
Telephone Account Voided Check	$205.63	$0.00	$0.00	$205.63
Washing Machine & Dryer Purchases	$9,202.97	$0.00	$0.00	$9,202.97
Washing Machine & Dryer Repairs	$4,904.92	$0.00	$0.00	$4,904.92
Total	$2,243,228.05	$479,416.59	$299,363.14	$3,022,007.78
% of Total Purchases	74.23%	15.86%	9.91%	

Nearly 75% of the expenditures were for items or services that promote inmate rehabilitation and welfare.

As $299,363.14 in purchases were made that are not attributable to inmate rehabilitation and welfare, **WE RECOMMEND** that Sheriff's Office more closely scrutinize future expenditures of this nature to ensure that the Telephone and/or Commissary Funds are expended in a manner that clearly promotes inmate rehabilitation and/or welfare. If necessary, the Sheriff's Office should consult Budget and Management to seek appropriate guidance as to what may be expended from General Fund appropriations in lieu of inappropriate spending from Commissary Funds.

WE FURTHER RECOMMEND the Sheriff's Office review the $479,416.59 in questionable expenditures to determine whether they meet the basic criteria of the law with respect to purchases of items and service activities that promote inmate rehabilitation and/or welfare. To accomplish this, the Sheriff's Office should meet with the Budget and Management in order to budget for these questionable and unacceptable expenditures in the County's general fund, rather than spend the Commissary and Telephone Funds which are clearly earmarked for inmate benefit.

2. Medical Costs

Correction Medical Services

Medical costs, similar to overtime costs, continue to increase at the Sheriff's Office year after year, thus providing a significant double hit to budgeted expenditures. The medical costs of the Sheriff's Office Jail Management Division have increased from $3,872,702 in 2008 to $9,543,198 in 2011. Medical costs are expected to exceed $11 million in 2012.

Much of the increase is attributable to the mandates established by the Department of Justice (DOJ). Multiple inmate suicides and suicide attempts over the past few years prompted the DOJ to initiate an investigation into the conditions at the Holding Center and Correctional Facility in 2009, which resulted in a lawsuit filed against Erie County (County) alleging that conditions at the facilities violate the constitutional rights of the inmates. The lawsuit was subsequently settled through a Stipulated Settlement Agreement and Order Concerning Suicide Prevention and Related Mental Health Issues between the DOJ and the County in June of 2010, as well as a Stipulated Order of Dismissal between the parties in August 2011. Prior to these agreements, the Health Department took control over the medical services provided at the Holding Center and the Correctional Facility in 2009 following a health service study requested by the Health Department of the National Commission on Correctional Health Care (NCCHC).

As a result of the health study, NCCHC made staffing recommendations to hire a Health Services Administrator to arrange health care at both the Holding Center and Correctional Facility (Jail Management health care services); designate a physician to provide clinical supervision of care; reassign or designate a Registered Nurse (RN) as

Director of Nursing at the Holding Center and Correctional Facility; hire five and one-half (5.5) RN positions at the Holding Center and Correctional Facility; designate a central medical clearance/intake process at the Holding Center; clinical decisions made only by health staff and inmates to have direct access to health staff; and hire a medical records clerk at both the Holding Center and Correctional Facility.

The number of County employees being charged for work attributable to Jail Management Division has increased from 34 in 2009 to as many as 86 in 2011. These are not all full time equivalent positions, but none-the-less part of their time is allocated to Jail Management. Costs for these positions have gone from $1,732,228.73 in 2009 to $3,697,359.58 in 2011.

In addition, there are numerous personal service contracts for physician assistants, office assistants, nurse practitioners, a pharmacy consultant, a public health consultant, RNs, Licensed Practical Nurses (LPNs), and dentists all charged to jail management which in 2011 totaled $1,928,616. According to the Sheriff's Office, they have requested itemized billing from the Health Department, however they have not been provided with such. They merely receive interdepartmental billings from the Health Department without sufficient and appropriate support. We could not locate documentation that would require the hiring of all these medical personnel and accordingly we could not determine if all these positions were really appropriate and necessary. We did find an agreement with UB Family Medicine that provides for a Chief Medical Officer (CMO) of the County to provide medical care at adult, pediatric, and tuberculosis clinics; increases quality medical care at 1500 Broadway and provides clinical oversight of Jail Management health services. However, contrary to what is stated in the agreement regarding the various duties of the CMO, the majority of the costs associated with the CMO's performance are charged to Jail Management. As a result, we found that Jail Management was overcharged $44,560 in 2011.

WE RECOMMEND that the Sheriff's Office inform the Health Department of this billing error and have the Health Department apply the $44,560 overpayment as a credit against future billings generated by UB Family Medicine. Further, **WE RECOMMEND** that management of the Sheriff's Office meet with officials of the Health Department to ensure that the provisions of this contract are being adhered to strictly, and that the Sheriff's Office is not being arbitrarily charged for services over and above what is specified in the contract. If necessary, a new contract should be drafted with UB Family Medicine to clearly define the CMO's responsibilities and related costs associated with Jail Management health services oversight. The language of the current agreement clearly does not depict what takes place on a regular basis nor does it provide for the specific percentage break-out of costs which the Jail Management Division is being charged.

Lastly, **WE ALSO RECOMMEND** that the Sheriff's Office request that the Health Department provide detailed documentation to support the interdepartmental billing charges. At a minimum, this detail should include the number and type of contract personnel used and the related costs associated with each position.

Increased Labor Costs

RNs employed at the Holding Center are covered under the Teamsters Local 264 contract. There are three titles covered under this agreement—Deputies, Non-Deputies (clerical) and Medical Staff. The Teamsters most recent contract expired in 2003. Due to the Teamsters working under an expired contract, there have been no increases to salary. As a result the RN salary (salary grade 8) is not competitive with that of other health care facilities, and has made it very difficult for the Health Department to fill vacant nursing positions at the Holding Center. Under the terms of the expired contract, an RN at the Holding Center starts at $34,669 ($16.668 per hour), whereas an RN employed at the Correctional Facility, covered by the NYSNA bargaining unit[1], starts at $43,073 ($20.708 per hour). In 2010, County officials approached the Erie County Legislature about enacting a variable minimum for Teamster RNs, however the Teamsters Union would not agree to such a change as it impacted only one of the three units covered in the agreement.

In order to cover vacant shifts and ensure minimum staffing requirements are met, the Health Department has contracted with Maxim Health Services (Maxim) to provide contract RNs. The Health Department pays $53 per hour for these RNs, the cost of which is then passed on to Jail Management through interdepartmental billings. By receiving a variable minimum at a step 4 for Teamsters RNs, the beginning salary would be $42,973 ($20.66 per hour) and would be competitive with that of the NYSNA nurses. Assuming the cost of fringe benefits is equal to 63.5% of salary, a County-employed nurse would cost Jail Management $33.78 per hour (an hourly rate of $20.66 plus fringe benefits cost of $13.12 per hour), or a savings to Jail Management of 36.26%.

WE RECOMMEND that the Sheriff's Office meet with County management in order to continue the process to gain Legislative and Union approval to have a variable minimum to Step 4 covering the Teamster RNs at the Holding Center.

LPNs at the Holding Center (job title Holding Center Medical Aide) are also members of the Teamsters Union, while LPNs at the Correctional Facility (job title Correctional Facility Medical Aide) are members of CSEA Local 815. Holding Center Medical Aides (MA's) are at a Teamsters salary grade 7, with a starting salary of $32,173 ($15.468 hourly). Correctional Facility MA's are a CSEA salary grade 6. However, after receiving a variable minimum, their starting salary increased to a step 5, $35,841 ($17.231 hourly). As with the RNs, the Holding Center MA position's starting salary is not competitive with other health care facilities, or that of the Correctional Facility Medical Aides, which results in difficulty in filling the vacant positions. The Health Department also contracts LPNs to work at the Holding Center through Maxim.

[1] Previously the Holding Center was operated by the Sheriff's Office and the Correctional Facility by the County Executive. Erie County Local Law 5 of the year 2000 brought the Erie County Holding Center and the Erie County Correctional Facility under the Sheriff's Office Jail Management Division and was approved by the Legislature on August 31, 2000, then County Executive Joel Giambra on September 6, 2000, and voters via a proposition on November 7, 2000. Following the merger, the employees of each facility remained under their respective bargaining units post-consolidation.

The Health Department, and subsequently Jail Management, pays Maxim $43 per hour for contract LPNs to fill open shifts at the Holding Center. Filling the open positions (under the provisions of the current Teamster contract) with a step 2 variable minimum (starting salary of $36,057) would result in a cost of have a cost of $28.34 per hour ($17.335 per hour for wages and $11.008 for fringe benefits), resulting in a savings of $16.66 per hour or 37.02%.

As with the Holding Center RNs, **WE RECOMMEND** that the Sheriff's Office meet with County management in order to start the process to gain Legislative and Union approval to have a variable minimum for Teamster Holding Center Medical Aides at a step 2. If variable minimums are granted for the Holding Center RNs and LPNs, it would bring salaries to competitive levels and the County could save approximately $735,945 per year by hiring their own employees versus contracting for the identical positions. Further, dedicated County employees would provide continuity of care to the inmates which is lacking with the contracted-out/out-sourced medical staff that are not always used on a regular basis.

3. Commissary Rent Reimbursement

Since 2009, the rent reimbursement to the General Fund for commissary-related expenses has been budgeted at $147,628. We recalculated this amount for 2011 and found that the chargeback for the commissary operational expenses (rent reimbursement) is $206,670.72 and therefore is understated annually by $59,042. See *Exhibit 2* for details on our calculations.

Exhibit 2: Comptroller's Office Commissary Rent Reimbursement Calculation

COMMISSARY REIMBURSEMENT

Personnel	Annualized Cost[2]	% of Time	Holding Center	Correctional Facility	Total	Responsibilities/Comments
Correction Officer[3]	$68,128.38	100	$0.00	$34,064.19	$34,064.19	Commissary Officer
Correction Officer[4]	$97,000.71	100	$0.00	$48,500.36	$48,500.36	Commissary Officer
Correction Officer	$118,369.13	50	$0.00	$59,184.57	$59,184.57	Inmate accounts; vendor orders
Administrative Assistant	$116,518.00	10	$11,651.80	$0.00	$11,651.80	Vendor payments
Sheriff Deputy	$102,119.51	40	$40,847.80		$40,847.80	Transportation of commissary orders
Building Use						
Commissary	1177.87 sq ft	X $8.39		$9,882.33	$9,882.33	Space rental
Transportation						
Mileage twice weekly 104 trips X 44 miles round trip X $0.555 per mile			$2,539.68		$2,539.67	Transportation costs
Total Annual Commissary Rent Reimbursement Due					**$206,670.72**	

[2] Annualized Cost includes salary, allowances, overtime, and benefits for calendar year 2011.
[3] Prorated January to June 2011
[4] Prorated July to December 2011

Rent reimbursement to the General Fund for 2011 was shorted by $59,042 and thus far in 2012 through August, there is an additional shortage of $4,920 per month or $39,360 to date. From January 2011 through August 2012, the total underpayment from the Commissary to the General Fund was $98,402. Because the Commissary rent reimbursement amount has not been recalculated since 2008, potential underpayments of an estimated $40,000 and $50,000 for 2009 and 2010 respectively, the total amount of the underpayment for these four (4) years is estimated to be approximately $188,402.

WE RECOMMEND that $98,402.00 be paid to the General Fund from the Commissary Fund in order to reimburse Erie County for the understated space rental and employee costs for the twenty month (20) period January 2011 through August 2012. Further, **WE RECOMMEND** that for the balance of the 2012 budget year and forward, the Sheriff's Office reimburse the General Fund an additional $4,920 per month. Additionally **WE RECOMMEND** that the Sheriff's Office and the Budget Office meet to settle the past underpayment and calculate the amount of commissary rent reimbursement due annually during the budget process.

4. Financial Statements

As previously noted, the Jail Management Division maintains both the Commissary Fund and the Telephone Fund. A combined profit and loss statement for these two (2) funds for the period January 1, 2011 to May 31, 2012 can be found in *Appendix 1*.

The net decrease for these two funds was $(586,532.20) and the corresponding total ending balance as of May 31, 2012 was $802,942.71, as shown in *Appendix 2*.

5. Commissary Operations

The Sheriff's Office operates a commissary that is available for inmates housed at both the Holding Center and the Correctional Facility to purchase items such as food, hygiene products, and stationery items. A list of the items for sale in the Commissary with prices can be found in *Appendix 3*. The Commissary is physically housed and run out of the Correctional Facility, and operates using two (2) Correction Officers (one for the administrative duties and the other for supervision of the Inmate Trustees working in the Commissary), and an Erie County Sheriff's Deputy Transport Officer.

Inmates complete a commissary order form the day before their scheduled commissary day (or the weekend before in the case of weekend inmates). Inmates are allowed to order $60 each week from the Commissary, excluding telephone cards. Telephone cards are limited to eight (8) $5 cards ($40 total) weekly. The order forms are received and entered into the commissary module of Jail Management's computer system (Syscon). Once order entry is complete, the orders are printed and inmate workers, known as Inmate Trustees, fill each order. Completed orders are compiled by unit, and delivered to the housing units by the Trustees at the Correctional Facility or by a Sheriff's Deputy Transport Officer at the Holding Center.

Each inmate housed at the Correctional Facility and the Holding Center has a trust account. An inmate's family and friends can deposit money into this account, which is then used to make commissary purchases, as well as to pay court-imposed surcharges or facility-imposed disciplinary fines. An inmate is allowed to have a maximum balance of $200 in their trust account, unless they have more money on their person when they are arrested. Inmate Trustees at the Holding Center receive weekly credits to their trust account of either $3 or $6 (depending on their job) for each week they work. Inmates that work at the Correctional Facility, including those who work in the Commissary are compensated with "pay bags," for their work (see *Inmate Pay Bags and* Payments, page 19). An inmate is not allowed to overdraw his or her account. If there are not enough funds in their trust account to cover their commissary order, items are removed from their order until the order total is less than or equal to their account balance. Once the commissary orders are entered into Syscon, each inmate's order total is subtracted from their trust account balance (also maintained in Syscon). This amount is then deposited in the Commissary Fund's checking account. When an inmate is transferred between the Correctional Facility and the Holding Center, the funds in his/her account are transferred as well. Upon release from either facility, an inmate receives a check for their account balance.

In addition to ensuring that the inmate has a sufficient account balance for their purchases, Syscon ensures the following other limitations are followed when processing an inmate's order:

- Orders exceeding the $60/week maximum (excluding telephone cards) cannot be processed.
- Items ordered in quantities in excess of the imposed limits (see *Exhibit 3* for purchase limits).
- Syscon notifies the Correction Officer entering the commissary order if the inmate is diabetic and is ordering candy. If the inmate resides at the Holding Center the candy purchase is denied. The rejection is overridden if the inmate resides at the Correctional Facility.

Exhibit 3: Commissary Items with Purchase Limits

Commissary Item	Quantity Limit
Beef Ramen Noodles, 3 oz.	24 packs
Chicken Ramen Noodles, 3 oz.	24 packs
Macaroni & Cheese, 7.25 oz.	3 boxes
Macaroni, 1 lb.	3 bags
Mouthwash, 16 oz.	1 bottle
Rice, 15.8oz.	3 boxes
Sugar, 12 oz.	1 bag
Summer Sausage, 5 oz.	2 sausages
Sweet N' Low, 50 packs	2 bags
Telephone Cards ($5)	8 cards
Tuna Fish, 6 oz. pouch	4 pouches

The Inmate Trustees assigned to the Commissary are supervised by one (1) Correction Officer. Inmates who are incarcerated for theft-related crimes are not eligible to work in the Commissary. An inventory is completed monthly by the two (2) Correction Officers assigned to the Commissary to confirm that there is not theft occurring in the Commissary.

Inmates receive their orders from the unit officer and must review their order in front of the officer to determine if there are any discrepancies. If a discrepancy is discovered the inmate will receive the missing/damaged item(s) the next day (Correctional Facility inmates) or a credit to their trust account (Holding Center inmates). Once the inmate walks away, a claim regarding an order shortage or damaged items will not be accepted.

The Commissary Correction Officer responsible for the administrative duties is also responsible for ordering all of the items sold in the Commissary through outside vendors. Syscon maintains a perpetual inventory system. The Correction Officer enters shipments received into the inventory module in the quantity in which they are sold (for example one (1) pack of M&M's or three (3) Polident tablets are each entered as 1 item), as well as the cost. After the inmate orders are input in the system, the quantity sold for each item is automatically subtracted from the inventory.

Inmate Orders Appear to be Properly Entered and Reports Accurate.

Two commissary days during the period, September 20, 2011 and May 29, 2012 were selected for review. Individual inmate orders were traced to the *Inmate Daily Sales / Returns Report*. This report lists the inmate and the dollar amount of his/her commissary order. The total dollar amounts of the individual orders were traced to the *Trust General Ledger Sub Detail Report*. The daily debits and credits to inmate trust accounts are listed on the report. Totals of each item sold were traced to the *Merchandise Sales Report*. The report lists each commissary item along with the total

quantity sold (items with no sales are not listed on this report). Inmate credits from the subsequent day's *Inmate Daily Sales / Returns Report* were traced to the credits applied to the inmates' accounts. No exceptions were noted in these reports for either day tested.

WE RECOMMEND, that the Commissary Correction Officers continue the procedures and processes that are currently in place to ensure that the Commissary operates efficiently and accurately.

Commissary Inventory

The *Stock Detail Report* was printed and inventory was sampled. This report lists each item carried in the Commissary along with its average and current purchase prices and the selling price. Eleven items were selected for inventory verification. Only minor exceptions were noted, all of which were subsequently corrected.

WE RECOMMEND, that the Commissary Correction Officers continue to perform a monthly inventory of the commissary items, and investigate and resolve any differences noted.

Commissary Fund Checking Account

The Commissary Fund deposits are made timely to the checking account held at Alden State Bank. The account is reconciled accurately and timely by the Sheriff's Office staff. Adjustments to the general ledger account in SAP (the County's financial software program) are made timely. A copy of the bank account statement and reconciliation are submitted to the Comptroller's Office monthly. Funds are held in an interest-bearing checking account, with no monthly fees. The account balance as of May 31, 2012 was $376,195.34.

WE RECOMMEND, that the Sheriff's Office continue to reconcile the bank account monthly and provide copies of the reconciliation and bank statement to the Comptroller's Office.

Indigent Inmates

Inmates are considered indigent if they have a zero balance in their trust account. Monthly, indigent inmates are eligible to receive a 1.6 oz. clear stick deodorant (facility cost of $0.49) and 4 oz. combination shampoo and body wash (facility cost of $0.32). Each week indigent inmates are eligible for letter combos consisting of two (2) sheets of paper and two (2) stamped envelopes. An inmate at the Holding Center can request these items by signing the list in their housing unit each Wednesday. Indigent inmates request the hygiene products at the Correctional Facility by sending an Inmate Request Slip to the Commissary Correction Officer, and can sign-up for letter combos each Wednesday in their housing unit. It is confirmed that an inmate has a $0 balance in their trust account prior to any items being distributed. An inmate receiving deposits to his or her trust account and spending the entire amount at the Commissary, does not qualify as an indigent inmate. Items for indigent inmates are dispensed out of the Commissary.

For the review period, purchases for indigent inmates totaled $5,809.59 for the hygiene items.

Inmate Pay Bags and Payments

Inmate trustees at the Correctional Facility are compensated with pay bags. Pay bags with two different values – a $3 bag and a $6 bag are distributed. Most trustees receive a $3 bag weekly. Inmates that work jobs that are more labor intensive, such as those that work on the Service Action Corp (SAC) and Inmate Trustee Commissary Workers receive a bag with a $6 value weekly. Bags are packed by the Commissary Trustees and distributed from the Commissary at the Correctional Facility. Pay bags contain items such as pastries, snack foods, coffee/tea, hygiene items, tuna fish, and soup.

For the review period, purchased for inmate pay bags totaled $20,392.07.

Inmate trustees at the Holding Center are compensated with deposits to their trust account. Most inmates are credited $3 weekly; however those with more labor intensive jobs are compensated $6 weekly.

For the review period, $16,419.50 was paid to Holding Center trustees from the telephone commissions and commissary profits accounts.

6. Grievances

"In order to provide an effective and impartial procedure for the timely resolution of inmate complaints, the Erie County Sheriff's Office has established an inmate Grievance Program. All staff members are required to assist inmates in resolving complaints that inmates bring to their attention. If staff members are unable to resolve an inmate's complaint, they are required to assist the inmate in availing him or herself of the formal Grievance Process."[5]

A grievance is a complaint by an inmate concerning written or unwritten policies, procedures, rules, practices, programs or the action or inaction of any employee. All grievances must be in writing utilizing a grievance form maintained in each housing unit and made available to the inmates upon request. Facility staff members and supervisors are required to assist inmates in resolving their complaints informally whenever possible and to provide assistance in filing a formal grievance when the complaint cannot be informally resolved. Requests for grievance forms shall not be denied and only the Grievance Coordinator shall determine the merit of the grievance.

If a complaint cannot be resolved informally between the inmate and the housing officer, the area Sergeant will review the grievance and again attempt to resolve the issue with the inmate. If resolved, the inmate signs the grievance as accepting the resolution to the issue. When unable to resolve the complaint, the signed grievance form along with all interview documentation is forwarded to the Grievance Coordinator for processing.

[5] Policy # 04-10-00, Erie County Sheriff's Office Policy and Procedure

As per the Policy there will be no retaliation against inmates electing to file a formal grievance. This grievance must be filed within five (5) days of the act, occurrence or situation giving rise to the grievance.

The Grievance Coordinator has five (5) business days to provide a written decision on the merit of the grievance. If rejected, it goes back to the inmate with reason(s) for denial. If accepted for further processing, it is assigned a Grievance Tracking Number and recorded in a log book. The Grievance Coordinator has five (5) additional days to review the investigation report and interview documentation regarding the grievance before rendering a decision. If in favor of the grievant, meaningful relief or appropriate remedy is provided to the grievant and other inmates similarly situated. If denied, the inmate can either accept the decision or appeal to the Superintendent within two (2) days of receipt of the decision.

The Superintendent has five (5) business days to review the grievance and all investigative materials and render a decision in writing. If the decision is in favor of the grievant, meaningful relief or appropriate remedy is provided to the grievant and other inmates similarly situated. If denied, the inmate can either accept the decision or appeal to the COC within three (3) business days of receipt of the decision.

Within three (3) business days of the notice of appeal, the Grievance Coordinator must mail the appeal and all pertinent documents to the CPCRC and also providing the grievant with a written receipt indicating the date that the appeal was submitted.

The CPCRC has forty-five (45) business days after receipt of appeal to issue a written determination. If in favor of the grievant, the CPCRC shall direct the Superintendent to comply with the grievance and provide an appropriate remedy. The Superintendent shall submit verification of compliance to the CPCRC and include such verification in the grievance file. If the CPCRC denies the inmate's grievance they have exhausted the grievance process and have no further recourse.

We reviewed the grievances for the period of our review at both the Correctional Facility and the Holding Center and the results are provided in *Exhibit 4*.

Exhibit 4: Inmate Grievances

2011	Holding Center	Correctional Facility
Grievances	74	668
Resolved/Closed	31	197
Denied	43	471
Appeal to Superintendent	40	102
Denied	29	80
Resolved/Closed	11	22
Appeal to COC CPCRC	28	48
Untimely Processed	0	25
2012		
Grievances	17	133
Resolved/Closed	7	15
Denied	10	118
Appeal to Superintendent	8	9
Denied	6	9
Resolved/Closed	2	0
Appeal to COC CPCRC	6	2
Untimely Processed	3	2

The preparation and maintenance of the grievance logs at both facilities were reviewed in accordance with the administration and record keeping section of the Policy. We provide several comments and recommendations in order to help ensure compliance, completeness and continuity in adhering to the Policy and maintaining the grievance logs.

Twenty-seven (27) or 4%, of grievances were not processed in a timely manner at the Correctional Facility during the period of our review. During that same time frame three (3) or 4%, of grievances were not timely processed at the Holding Center.

WE RECOMMEND that the Superintendents and Grievance Coordinators at both facilities take the appropriate steps to ensure that all phases of the grievance process are handled in a timely manner. Should the inmates be untimely in proceeding with any step of the complaint process on their end, the grievance is closed out as "not returned". The same stringent adherence to the Policy should be applied to the jail management personnel as well.

Both facilities did not maintain the grievance logs completely. There were numerous incomplete entries for both years and at both facilities. While subsequent testing showed that there were no discrepancies for specific grievances that we traced to the actual grievance files, such testing would not have been necessary if the logs were completed properly and in accordance with the Policy.

WE RECOMMEND that Jail Management take the steps necessary to ensure that the individual Grievance Coordinators completely prepare the grievance logs in accordance with Sheriff's Policy #04-10-00 and 9 CRR-NY §7032. **WE ALSO RECOMMEND** that

the Superintendant, or his designee, periodically review the grievance logs to insure that they are completed accurately and timely.

7. Commissary Pricing and Items Comparison

Commissary Pricing

Commissaries are self-sustaining units that operate within the jail to sell items to the inmate population. These commissaries are allowed to set their own item prices per 9 CRR-NY §7016.1 (b) *"The prices of any item offered for sale shall be fixed by the sheriff, or other official in charge, to the extent that the commissary operation will be self-supporting and will provide a modest return above costs.* The Commissary's mark-ups by category are provided in *Exhibit 5.*

Exhibit 5: Commissary Item Mark-Up by Category

Category	Average Mark-Up
Batteries & Electronics	15.39%
Beverages	**44.22%**
Candy	20.42%
Clothing & Footwear	**34.13%**
Condiments & Spices	34.45%
Cookies, Crackers, & Baked Goods	**42.03%**
Cups, Bowls, & Utensils	54.76%
Dental Products	**179.93%**
Feminine Hygiene Products	19.45%
Food Items	**52.99%**
Hair Care Products	142.42%
Meat, Poultry, & Fish	**38.05%**
Miscellaneous	51.34%
Personal Hygiene Items	**46.21%**
Playing Cards, Games, & Puzzle Books	23.82%
Postage, Stationary, & Greeting Cards	**68.16%**
Religious Items	15.26%
Snack Foods	**53.73%**
Soap	33.75%
Sugar Free Items	**30.17%**
Vitamins & OTC Medications	26.84%
Overall	**55.40%**

Although some items appear to have an unusually high mark-up, the actual item prices are reasonable. For example, a toothbrush has a mark-up of 733.33%. The Commissary's cost is $0.06, and the selling price is $0.50.

Exhibit 6: Twenty-Five (25) Most Purchased Commissary Items

Item	2011 Inmate Price	2012 Inmate Price	Inmate Price Increase	Comments	2012 Profit per Item Sold
Oodles Noodles Chicken, 3 oz.	$0.30	$0.30	$0.00		$0.11
Oodles Noodles Beef, 3 oz.	$0.30	$0.30	$0.00		$0.11
Sugar Free Kool-Aid, 1 ct.	$0.10	$0.10	$0.00		$0.01
Tea Bag, each	$0.05	$0.05	$0.00		$0.00
Bakers Choice, 2.8 -6.0 oz.	$0.75	$0.75	$0.00		$0.24
Envelope with Postage	$0.50	$0.50	$0.00		$0.05
Beef Sticks, 1 oz.	$0.60	$0.60	$0.00		$0.21
Summer Sausage, 5 oz.	$1.85	$1.85	$0.00		$0.43
Instant Rice, 15.8 oz.	$1.95	$2.25	$0.30	Vendor Price ↑$0.10	$0.70
Candy Mix/Hard Candy, 4.0 - 4.5 oz.	$0.70	$0.75	$0.05	Vendor Price ↑$0.05	$0.28
Microwave Popcorn, 3.0 oz.	$0.60	$0.60	$0.00		$0.24
Cheese (Jalapeno), 8.0 oz	$2.00	$2.00	$0.00		$0.53
Sweet n' Low, 50 packets	$2.00	$2.00	$0.00		$0.14
Snickers, 2.07 oz.	$0.70	$0.75	$0.05	Vendor Price ↑$0.09	$0.11
Small Tuna, 6.0 oz.	$1.70	$1.70	$0.00		$0.44
Whole Shabang Chips, 1.5 oz.	$0.65	$0.65	$0.00		$0.31
Vanilla Cream Cookies, 14.0 oz.	$1.55	$1.55	$0.00		$0.49
Large Potato Chips, 6.0 oz.	$1.40	$1.50	$0.10	Vendor Price ↑$0.03	$0.49
Sazon Spices, 8 ct.	$1.45	$1.45	$0.00		$0.43
Peanut Butter, 18.0 oz.	$2.15	$2.75	$0.60	Vendor Price ↑$0.58	$0.58
Corn Chips, 12.0 oz	$2.10	$2.10	$0.00		$0.55
Instant Coffee, 4.0 oz.	$3.50	$3.75	$0.25	Vendor Price ↑$0.04	$1.81
Instant Oatmeal, 10 ct.	$2.70	$2.70	$0.00		$0.65
Double Fudge Cookies, 14.0 oz.	$1.55	$1.55	$0.00		$0.49
Instant Coffee, 8.0 oz.	$7.50	$7.50	$0.00		$1.58

- Commissary Price Increased
- Vendor Increased Selling Price

Commissary Pricing Comparison

For comparison purposes, we requested and received commissary price lists from the following county jails:

- Cattaraugus County Jail
- Genesee County Jail
- Monroe County Jail & Monroe County Correctional Facility
- Niagara County Jail
- Orleans County Jail

There are seventy-eight (78) items sold in the Correctional Facility/Holding Center Commissary that are sold in at least one of the other commissaries. Of the seventy-eight (78) items, Erie County had the lowest price (or tied for the lowest price) on sixty-three (63) items. For the seventy-eight (78) comparable items, Erie County's price was on average 21.86% lower than prices at the other facilities.

Commissary Item Comparison

Erie County currently has 149 items available for sale in the Commissary. The number of items available for sale in the Commissary, as well as the composition of items was compared to five (5) comparison facilities are provided in *Exhibit 7.*

Erie County had the least number of items sold in the Commissary of the six (6) commissaries compared. The 149 items sold in the Commissary is less than one-half of the average of the number of items sold in the other five (5) commissaries, which was 292 items. Erie County sells below the average items sold in seventeen (17) categories, the average number of items sold in four (4) categories, and above the average number of items sold in two (2) categories.

Exhibit 7: Comparison of Commissary Items Available for Sale

	Erie County Holding Center & Correctional Facility	Facility A	Facility B	Facility C	Facility D	Facility E	Average	Erie County Compared to Average
Batteries & Electronics	3	6	0	4	4	0	3	0
Beverages	8	20	15	15	20	23	19	(11)
Candy[6]	12	22	19	18	24	31	23	(11)
Clothing & Footwear	21	33	28	62	79	60	52	(31)
Condiments & Dressing	6	8	4	9	17	4	8	(2)
Cookies, Crackers, & Baked Goods[7]	5	33	25	30	28	41	31	(26)
Cups, Bowls, & Utensils	3	2	3	2	5	3	3	0
Dental Products	5	12	4	11	10	9	9	(4)
Feminine Hygiene Products	4	1	0	0	3	1	1	3
Food Items	7	19	6	12	24	12	15	(8)
Glasses & Eye Care	0	6	1	0	8	1	3	(3)
Hair Products	10	20	10	8	19	27	17	(7)
Lotions, Toiletries, & Hygiene Products	14	21	12	16	20	12	16	(2)
Meat, Poultry, & Fish	4	11	9	7	11	6	9	(5)
Miscellaneous	5	3	1	2	9	3	4	1
Playing Cards, Games, & Puzzle Books	2	6	5	7	7	5	6	(4)
Postage & Stationary	17	33	27	16	37	25	28	(11)
Religious Items	1	3	1	0	3	0	1	0
Snack Foods	10	26	20	23	23	37	26	(16)
Soap	4	8	5	4	8	6	6	(2)
Sugar Free Items	5	6	6	2	6	10	6	0
Vitamins & OTCs	3	3	5	8	8	5	6	(3)
Total Items for Sale	149	302	206	256	373	321	292	(143)

8. Inmate Telephone Service

Inmates housed at the Holding Center and Correctional Facility have the ability to make telephone calls to individuals on their approved call list. Telephones are available for inmate use in their housing unit. There were seventy-four (74) inmate telephones at the Holding Center, ninety-eight (98) at the Correctional Facility, and two (2) at the Erie County Medical Center (ECMC) lock-up. There are three (3) payment options available to the inmates and their family/friends:

[6] Erie County sells a "Hard Candy Mix," where inmates will receive a package from an assortment of hard candy. Other facilities sell the same packages of candy, but sell each individually.
[7] Erie County sells "Baker's Choice." A variety of pastries are ordered and the inmate does not choose which he/she receives. Other facilities sell a variety of pastry choices.

- *Collect* – The inmate places the call with the charges being billed to the call receiver.

- *Debit* – The inmate places a call using a phone card purchased through the Commissary (sold in $5 increments, at a maximum of $40 weekly).

- *Prepaid* – The call receiver establishes an account with the telephone service provider. The cost of the call is debited from their account balance.

Inmate Telephone Rates Comparison

For the period of this review, Erie County has a contract with Public Communications Services (PCS) for inmate telephone service. The contract with PCS began November 22, 2005, and expired November 21, 2010, after a 3-year contract term, and two (2) 1-year extensions. Despite the contract being expired, telephone commissions were still received monthly in accordance with the terms of the original contract. An RFP was issued in January 2012 for inmate telephone service and a new vendor was selected effective August 1, 2012.

The rates for the three (3) calling types listed above during our review period can be found in *Exhibit 8*.

Exhibit 8: Inmate Telephone Rates

	Connect Fee	*Per Minute Charge*
Collect Local	$1.75	$0.10
Collect *Intra*Lata	$1.75	$0.20
Collect InterLata	$3.95	$0.40
Collect InterState	$3.95	$0.89
Collect International	$5.00	$1.00
Debit Local	$1.60	$0.10
Debit *Intra*Lata	$1.60	$0.20
Debit InterLata	$3.50	$0.40
Debit InterState	$3.50	$0.89
Debit International	$2.50	$1.00
Prepaid Local	$1.75	$0.10
Prepaid *Intra*Lata	$1.75	$0.20
Prepaid InterLata	$3.95	$0.40
Prepaid InterState	$3.95	$0.89
Prepaid International	$5.00	$1.00

Local calls are calls made within the geographical market area as defined by the telephone company. The United States is broken up into 197 local access and transport areas, or Latas. *Intra*Lata refers to calls made within the local calling area within the same state. *Inter*Lata refers to calls made within the Lata but occurring between two (2) different states. InterState calls occur between two (2) different states that are not within the same Lata. International calls are calls made between two (2) countries.

We requested telephone rates from five (5) comparable facilities. We received collect call rates for two (2) facilities.

Exhibit 9: Collect Call Rates for Comparison Facilities

	Facility B		Facility C	
	Connect Fee	*Per Minute Charge*	*Connect Fee*	*Per Minute Charge*[8]
Collect Local	$1.75	$0.10	$1.75	$0.10
Collect *Intra*Lata	$1.75	$0.20	$1.75	$0.20
Collect InterLata			$3.95	$0.40
Collect InterState			$3.95	$0.89
Collect International				

With the exception of the per minute charge for Facility C beginning after three (3) minutes have passed, the collect call rates are the same among Erie County and the two (2) comparison facilities. It does not appear that the Collect Call rates at the Holding Center and Correctional Facility are much different than those at other facilities.

Telephone Commissions

Local jails are able to negotiate a contract for inmate telephone service that results in the facility receiving a commission on inmate telephone calls. Like the commissary profits, commissions received on inmate telephone calls are to be expended on items and services that promote inmate rehabilitation and/or welfare. The contract with PCS provides the Sheriff's Office with a 47% commission on inmate calls, with a minimum annual guarantee of $500,000. Additionally, the Sheriff's Office received a one-time budget grant of $100,000.

During the course of the review period, the Sheriff's Office received $717,168.14 in inmate telephone service commissions, of which $507,362.80 was received in 2011.

Inmate telephone contracts were received from five (5) local jail facilities. The five (5) comparison facilities all have contracts through the same vendor, which is not the same vendor that Erie County utilized. The commission rates, annual minimum guarantee, and any additional contractual payments are available in *Exhibit 10*.

[8] Per minute charge begins after the first three (3) minutes.

Exhibit 10: Telephone Commission Rates and Contract Payments Comparison

	Facility A	Facility B	Facility C	Facility D	Facility E
Minimum Annual Guarantee	$0	$0	$0	$0	$0
One-Time Payment	$0	$0	$0	$40,000	$0
Commission Rate	44%	44%	66%	58%	44%

The average commission rate for the comparison facilities is 51.2%. Erie County's rate of 47% is below the average; however Erie is the only county that had an annual minimum guarantee. Three (3) of the comparison counties' rates were below Erie County's at 44%. Additionally Erie County had a $100,000 one-time budget grant, $60,000 more than Facility D's one-time signing bonus (the only other facility to receive a signing bonus).

Telephone Fund Checking Account

The Telephone Fund bank account is held at M&T Bank. The checking account is interest-bearing. The account is charged a $3 monthly fee in order to have check images printed with the bank statement. The checking account reconciliation and SAP adjustments are performed timely and accurately. Copies of the bank statement and bank reconciliation are submitted to the Comptroller's Office monthly. The ending balance for the Telephone Fund as of May 31, 2012 was $426,747.37.

WE RECOMMEND, that the Sheriff's Office continue to reconcile the bank account monthly and provide copies of the reconciliation and bank statement to the Comptroller's Office.

WE ALSO RECOMMEND that the Sheriff's Office contact M&T Bank to determine if the account is eligible for a waiver of the fee for check images.

Exit Conference

An exit conference was held on October 17, 2012 with the Erie County Undersheriff and the Acting Jail Superintendant. The contents of the report were discussed and they were in general agreement with our findings and recommendations.

We request that the Sheriff's Office prepare a written response to our office and the County Executive concerning the findings and recommendations. The final response should be submitted to our office, the County Executive, the Erie County Legislature, and the Erie County Fiscal Stability Authority.

Appendix 1 – Combined Profit & Loss Statement for January 1, 2011 to May 31, 2012

	Commissary	Telephone	Total
Revenues			
Commissary Sales	$ 1,714,821.84	$ -	$ 1,714,821.84
Postage & Copies Sales	2,440.58	-	2,440.58
Inmate Telephone Commissions	-	717,647.39	717,647.39
Voided Check from Telephone Funds	205.63	-	205.63
Interest Income	253.99	106.15	360.14
Gross Revenues	**$ 1,717,722.04**	**$ 717,753.54**	**$ 2,435,475.58**
Commissary Items Purchased for Resale	$(1,269,548.96)	$ -	$ (1,269,548.96)
Commissary Rent	(196,837.44)	-	(196,837.44)
Commissary Supplies	(6,721.00)	-	(6,721.00)
Net Revenues	**$ 244,614.64**	**$ 717,753.54**	**$ 962,368.18**
Expenditures			
Bank Fees	$ -	$ 51.00	$ 51.00
Checks for Inmate Trust Accounts	-	38.00	38.00
Counterfeit Money Deposited	5.00	-	5.00
Housing Unit Equipment & Furniture	-	20,022.03	20,022.03
Inmate Benefits	10,089.64	68,450.16	78,539.80
Inmate Programs	12,744.70	50,440.23	63,184.93
K-9 Dogs, Training, & Vehicles	-	107,995.00	107,995.00
Maintenance & Repairs	561.00	1,439.45	2,000.45
Office Furniture	-	137,941.57	137,941.57
Patrol Vehicles	-	271,707.38	271,707.38
Patrol Vehicles Emergency Lighting	-	54,479.56	54,479.56
Postage Meter Rental & Supplies	10,757.88	-	10,757.88
Prisoner Transport Vehicles	-	490,082.28	490,082.28
Security	-	210,269.98	210,269.98
Syscon Jail Management System	-	87,512.00	87,512.00
Voided Check - Funds in Commissary Acct	-	205.63	205.63
Washing Machines & Dryers Purchases	-	9,202.97	9,202.97
Washing Machines & Dryers Repairs	-	4,904.92	4,904.92
Total Expenditures	**$ 34,158.22**	**$ 1,514,742.16**	**$ 1,548,900.38**
Account Net Increase/(Decrease)	**$ 210,456.42**	**$ (796,988.62)**	**$ (586,532.20)**

Appendix 2 – Combined Fund Balances as of May 31, 2012

	Commissary	*Telephone*	*Total*
Beginning Balance January 1, 2011	$ 165,738.92	$ 1,223,735.99	$ 1,389,474.91
Commissary Sales	$ 1,717,262.42	$ -	$ 1,717,262.42
Telephone Commissions	-	717,647.39	717,647.39
Interest Income	253.99	106.15	360.14
Total Deposits	$ 1,717,516.41	$ 717,753.54	$ 2,435,269.95
Expenses	$(1,507,265.62)	$(1,514,536.53)	$(3,021,802.15)
Net Account Increase / (Decrease)	$ 210,250.79	$ (796,782.99)	$ (586,532.20)
Adjustment Due to Voided Check	$ 205.63	$ (205.63)	$ -
Ending Balance May 31, 2012	$ 376,195.34	$ 426,747.37	$ 802,942.71

Appendix 3 – Erie County Commissary Price List as of May 1, 2012

Candy	
3 Musketeers, 2.13 oz.	$0.75
Baby Ruth, 2.1 oz.	$0.75
Candy Mix 4.0 - 4.5oz	$0.75
Hershey Almond Bar, 1.45 oz.	$0.75
M&M's Peanut, 1.74 oz.	$0.75
M&M's Plain, 1.69 oz.	$0.75
Milky Way, 2.05 oz.	$0.75
Reese's Peanut Butter Cups, 1.5 oz.	$0.75
Snickers Bar, 2.07 oz.	$0.75
Starburst, 2.07 oz.	$0.75
Twix Caramel Cookie Bar, 1.79 oz.	$0.75
Twizzlers Strawberry, 2.5 oz.	$0.75
Beverages	
Creamer Canister, 12.0 oz.	$1.60
Hot Cocoa Mix, 1.0 oz.	$0.25
Instant Coffee, 4.0 oz.	$3.75
Instant Coffee, 8.0 oz.	$7.50
Lemonberry Drink Mix, 12 oz.	$2.00
Orange Breakfast Drink Mix, 12 oz.	$2.10
Pure Granulated Sugar, 12.0 oz.	$1.05
Tea Bag, each	$0.05
Food Items	
Beef Ramen Noodles, 3.0 oz.	$0.30
Chicken Ramen Noodles, 3.0 oz.	$0.30
Instant Oatmeal, 10 count	$2.70
Macaroni & Cheese, 7.25 oz.	$0.75
Macaroni, 16.0 oz.	$1.30
Rice, 15.8 oz.	$2.25
Spaghetti Sauce, 10.0 oz.	$1.70
Meat, Poultry, & Fish	
Beef Hickory Stick, 1.0 oz.	$0.60
Sliced Pepperoni, 3.5 oz.	$2.25
Summer Sausage, 5.0 oz.	$1.85
Tuna Fish Pouch, 6.0 oz.	$2.70
Snacks	
Caramel Popcorn, 3.53 oz.	$0.80
Cheddar Cheese Spread, 8 oz.	$2.00
Corn Chips, 12.0 oz.	$2.10
Jalapeno Cheese Spread, 8.0 oz.	$2.00
Microwave Popcorn, 3.0 oz.	$0.60
Potato Chips, 6.0 oz.	$1.50
Pretzels, 11.0 oz.	$1.85
Salted Peanuts, 2.0 oz.	$0.55
Sunflower Seeds, 2.0 oz.	$0.55
The Whole Shabang Chips, 1.5 oz.	$0.65

Cookies, Crackers, & Baked Goods	
Baker's Choice, 2.8-6.0 oz.	$0.75
Chocolate Chip Cookies, 12.0 oz.	$1.55
Double Fudge Cookies, 14.0 oz.	$1.55
Snack Crackers, 12.0 oz	$2.05
Vanilla Cream Cookies, 14.0 oz.	$1.55
Condiments, Dressings, & Spices	
Creamy Peanut Butter, 18.0 oz.	$2.75
Garlic Powder, 2.5 oz.	$1.20
Mayonnaise, 12.0 oz.	$2.00
Picante Sauce, 10.0 oz.	$2.00
Sazon Seasoning, 8 count	$1.45
Strawberry Jelly, 20.0 oz.	$2.75
Sugar Free Items	
Cool-Off Drink Mix, each	$0.10
Hard Candy, 1.75 oz.	$0.75
Hot Chocolate, 1.0 oz.	$0.30
Strawberry Wafer, 2.75 oz.	$0.70
Sweet 'N Low, 50 packets	$0.70
Dental Products	
Aim Mouthwash, 16 oz.	$2.20
Polident Tablets, 3 tablets	$0.25
Toothbrush Holder, each	$0.45
Toothbrush, each	$0.50
Toothpaste, 2.7 oz.	$1.35
Feminine Hygiene Products	
Sanitary Napkins, 24 count	$2.70
Sanitary Napkins, each	$0.17
Summer's Eve Douche, 4.5 oz.	$1.65
Tampons, 10 count	$2.55
Soap	
Coast Soap, 4.0 oz.	$1.20
Dial Soap, 4.0 oz.	$1.35
Kirk's Castile Soap, 4.0 oz.	$1.25
Tone Soap, 4.25 oz.	$1.20
Hair Care Products	
5" Pocket Comb, Black, each	$0.30
9" Comb, Assorted Colors, each	$0.60
Dandruff Shampoo, 12.0 oz.	$1.50
Do-Rag, Black, each	$2.10
Extra Hold Styling Gel, 16.0 oz.	$2.00
Hair Brush, each	$1.55
Lusti Bergamot, 4.0 oz.	$1.50
Plastic Shower Cap, each	$0.25
VO5 Conditioner, 15.0 oz.	$1.75
VO5 Shampoo, 15.0 oz.	$1.75
Vitamins and OTC Medications	
Cough Drops, 30 count	$0.90
Multiple Vitamins, 100 count	$2.30
Tums, single roll	$0.95

Personal Hygiene Items	
Baby Oil, 4.0 oz.	$1.50
Baby Powder, 4.0 oz.	$0.95
Chapstick, each	$0.95
Cotton Swabs, 90 count	$1.25
Emery Boards	$0.95
Goodsense Sunscreen, 30 SPF, 4.0 oz.	$3.25
Lady's Speed Stick, 1.4 oz.	$2.15
Magic Shave Cream Tube, 6.0 oz.	$3.25
Men's Speed Stick, 2.0 oz.	$2.15
Next 1 Cocoa Butter Lotion, 15.0 oz.	$2.50
Noxzema Skin Cream, 2.0 oz.	$1.90
Petroleum Jelly, 4.0 oz.	$1.00
Toilet Tissue, 2 ply, each	$0.65
Vaseline Intensive Care Lotion, 3.0 oz.	$2.90
Postage, Stationary, & Greeting Cards	
Black Pen, each	$0.35
Carbon Paper, each	$0.15
Greeting Card with Postage, each	$1.80
No Clasp Envelope, 9.5 x 12.5	$0.30
Stamped Envelope, each	$0.45
Webster II Pocket Dictionary, each	$3.00
Writing Pad, 8.5 x 11, 50 sheets	$1.15
Cups, Bowls, & Utensils	
Cereal Bowl with Lid, 24 oz.	$0.85
Plastic Knife, Fork, & Spoon Set, each	$0.30
Tumbler with Lid, 22 oz.	$0.55
Clothing & Footwear	
Men's Sneakers	$8.80
Shower Shoes	$3.25
Thermal Top, XL, White, each	$5.00
Tube Socks, White, pair	$1.35
Women's Sneakers	$5.80
Playing Cards, Games & Puzzle Books	
Pinochle Cards	$1.65
Poker Cards	$1.65
Batteries & Electronics	
Energizer Batteries, 4 pack	$3.50
GPX Clear Ear Buds	$3.25
Sony Walkman, Clear	$25.00
Religious Items	
Prayer Rug	$6.95
Miscellaneous	
All Ultra Detergent, 2.0 oz.	$0.50
Hanky, each	$0.75
Hinged Soap Dish, Clear, each	$0.45
Washcloth, White, each	$0.65

Appendix 4 – Auditee's Response

APPENDIX 4

TIMOTHY B. HOWARD
SHERIFF

MARK N. WIPPERMAN
UNDERSHERIFF

COMPTROLLER'S RECEIVED
12 OCT 19 PM 2:33

ADMINISTRATIVE OFFICES
TEN DELAWARE AVENUE
BUFFALO, NEW YORK 14202-3999
(716) 858-7618
FAX: (716) 858-7680

POLICE SERVICES
ONE SHERIFF'S DRIVE
ORCHARD PARK, NEW YORK 14127
(716) 662-8554
FAX: (716) 662-8477
WEBSITE: http://www.erie.gov/sheriff

SHERIFF OF ERIE COUNTY

October 19, 2012

Hon. David J. Shenk
Erie County Comptroller
Erie County Office Building <Room 1100>
95 Franklin Street
Buffalo, New York 14202-3972

Dear Comptroller Shenk,

This letter is being sent pursuant to your request that the Sheriff's Office respond to your October 2012 "Review of the Sheriff's Office Commissary fund and follow-up of the 2007 operations audit – January 1, 2011 through May 31, 2012." I have attached the following response on behalf of Sheriff Timothy B. Howard.

I did find a few inaccuracies in the review and some other factual information and updates that were not mentioned but are relevant to the report. We respectfully disagree that 25.84% of the commissary or telephone fund purchases were "questionable" or "unacceptable." We believe the accurate number based on the attached response will show that less than (<) 5% of the purchases are "questionable."

I would like to thank you and your staff for taking the time to review our commissary and telephone programs and for making several recommendations. The Sheriff's Office is always willing to work with the Comptroller's Office and Budget and Management to ensure our financial operations are in the best interest of the Erie County taxpayers and follow any applicable laws.

In closing, I would like to mention that your staff was very professional and courteous during their audit. We welcome any future audits that you feel are necessary to protect the integrity of our commissary and telephone accounts.

Sincerely,

Mark N. Wipperman
Undersheriff

cc: Erie County Sheriff Timothy B. Howard
Hon. Mark C. Poloncarz, Erie County Executive
Honorable Members – Erie County Legislature
Robert W. Keating, Director, Budget & Management
Erie County Fiscal Stability Board

ECSO RESPONSE TO SUMMARY OF FINDINGS:

1) INMATE GRIEVANCE CRITISIM

In my review of the Comptroller's report, it was determined that there were some minor inaccuracies regarding the inmate grievance program. Specifically, the Commission of Correction allows twenty-four (24) hours for a grievance to be resolved informally. Once the twenty-four (24) hours has expired, or the inmate indicates that he does not accept the informal resolution offered, it is forwarded to the Grievance Coordinator, and assigned a number. The Grievance Coordinator then has five (5) business days to review the grievance and render a decision. The report notes that the Grievance Coordinator only assigns a number after the grievance has been accepted for processing, *which is not the case*. All grievances that are not informally resolved *are assigned a number regardless of the decision on the merits* of the grievance. Furthermore, the report indicates that the Grievance Coordinator has "five additional days to review the investigation report and interview documentation regarding the grievance before rendering a decision." *This is not the case*.

It should be noted that the grievance programs at both facilities are routinely audited by the Commission of Correction, and have been found to be in compliance with the provisions of Part 7032 of the Minimum Standards. Any time a grievance is found to have been untimely processed, the responsible supervisor (or Grievance Coordinator when applicable) is held accountable.

We agree that, at times, the grievance log books are not completely filled out. The high volume of grievances that are received at both facilities make the task of logging and tracking grievances quite labor intensive. To that end, as part of the implementation of the *new* Commissary system, the housing unit kiosks will have the ability for inmates to file and electronically submit grievances. This will increase the accuracy of the tracking of same, as it will become an automatic part of the process, rather than something that must be documented manually after the fact.

Again, considering the high volume of grievances that are submitted and processed, it is my opinion, and that of the Commission of Correction, that the program is sound, and appropriately monitored. That being said, and as mentioned above, the Erie County Sheriff's Office is in the process of implementing a means for inmates to file grievances electronically, which will allow for a more error-proof means of documenting and tracking them.

2) SHERIFF'S OFFICE COMMISSARY

In August 2012, Sheriff Timothy B. Howard negotiated a new multi-year contract with Keefe Commissary Network to provide commissary services at the Erie County Holding Center and

Erie County Correctional Facility. Keefe has invested approximately **$500,000** in technological upgrades, kiosks, computers and high-speed wiring at the Holding Center and Correctional Facility *at no cost to the taxpayer.*

HIGHLIGHTS:

(A) All pricing of commissary items *stayed the same or went down for the inmates*

(B) Inmates now have over **300** choices of commissary items – upgraded from **80**

(C) **New** kiosks in every inmate housing unit

(D) **New** electronic grievance filing and processing on kiosks

(E) Best debit card release program in the industry

(F) Expanded Healthy Section – healthier items for inmates to purchase

(G) Keefe maintains 24 hour order and delivery program

3) SHERIFF'S OFFICE INMATE PHONE SERVICE

In August 2012, Sheriff Timothy B. Howard negotiated a new multi-year contract with ICS Solutions to provide inmate phone service. Sheriff Howard secured a $700,000 contract signing bonus while lowering the rate an inmate or their family will pay to communicate with each other.

This was great news for Erie County taxpayers.

It must be noted that Niagara County Sheriff James R. Voutour also signed a new inmate phone contract in 2012. The Niagara County Sheriff's Office received a **$40,000** signing bonus compared to the Erie County Sheriff's Office **$700,000** bonus. Niagara County gets 58% of the pay phone gross compared to Erie County's 60+%.

HIGHLIGHTS:

(A) The new contract reduces the calling rates for inmates, families and friends

(B) ICS will install a brand new phone system with state of the art models on all housing unit

(C) More calling account options for inmates to reach family and friends <vice-versa>

(D) Free training to all personnel

(E) Voice biometrics installed to prevent inmates from getting false/bogus charges

(F) New inmate voice mail system so family members can leave messages

4) UNACCEPTABLE PURCHASES - $299,363.14

RESPONSE/JUSTICIATION FOR **$6,655.76 = office furniture**:

(A) Comptroller Shenk indicated in his report that this furniture purchase was "not attributable to inmate rehabilitation and welfare."

(B) The Sheriff's Office disagrees and feels this section of the report should be modified. This purchase was made to facilitate improvements in inmate welfare and rehabilitation.

(C) The Sheriff's Office was asked by the former County Executive and his staff in the Fall of 2010 to relocate our Executive Offices, Administrative operations and a portion of our Jail Management Offices out of 10 and 40 Delaware Avenue over to the vacant Ticor Building.

(D) This move was being done so the existing space at 10 and 40 Delaware Avenue could **be converted into an expanded jail health and mental health triage center.**

(E) Sheriff Timothy B. Howard agreed to this relocation and transfer – stating it was the right thing to do. However, the County offered no financial assistance with this relocation. We were on our own.

(F) Sheriff Howard and his staff had *numerous* meetings with the former County Executive's space utilization team and architects to expedite this move.

(G) Once Sheriff Howard 'signed off' on the final architectural plans for the new Sheriff's Ticor Headquarters, we began to facilitate the move.

(H) The furniture was a one-time purchase to get us up and operating at our new Ticor Headquarters. We did not want to disrupt or delay our inmate population from receiving their expanded health and mental health triage center.

(I) County Executive Mark Poloncarz subsequently advised us that the Ticor move proposed by the former administration was a paper move only – there was never any money to get Ticor "office ready."

(J) The furniture could not be returned as too much time had lapsed – again – at no fault to the Sheriff's Office. It was then used to replace outdated Sheriff's Office furniture – much of which was former military/county surplus.

CLOSING STATEMENT:

This one-time telephone money purchase was directly related to inmate health and welfare. The Comptroller's report should be amended based on the aforementioned.

The Sheriff's Office welcomes the opportunity to work with Budget and Management in the future if a similar request to transfer operations is made.

RESPONSE/JUSTIFICATION FOR **$21,000 = K9 Dogs, training & vehicles.**

(A) One of the leading problems *for any* correctional institution in the United States is to deter and prevent the introduction of contraband, drugs and dangerous instruments into the facility. The Erie County Sheriff's Office fights this daily battle at the both the Erie County Holding Center and Erie County Correctional Facility.

(B) One of the best tools to combat the aforementioned problem is the use of trained "passive" K9 dogs. <Passive = non-aggressive dogs that "sit down" immediately when they "sniff out" suspected drugs, paraphernalia or other dangerous contraband.>

(C) The highest percentage of smuggling attempts to introduce drugs or contraband into our facilities result from inmate visitation. <Friends/family attempt to pass illegal packages to the confined inmates.> We are mandated to provide visitation by the NYSCOC.

(D) To keep our inmates safe and deter the trafficking of contraband and drugs into our facilities, several K9 dogs were purchased. Some replaced former Jail Management and Road Patrol K9s that were officially retired because of age and/or health issues.

(E) Part of the expense of maintaining K9 detection dogs is training, vehicles and equipment.

(F) *All Sheriff's Office K9 dogs <police services included>* will respond and work inside the facilities when needed. Their work is critical to keep our inmates safe and deter contraband, drugs and weapons from entering our facilities.

CLOSING STATEMENT:

The Sheriff's Office K9 program has a direct impact on inmate safety and welfare. We believe the money that is allocated toward K9 training, vehicles and equipment is a great investment in keeping our inmates safe and free from contraband, drugs and other dangerous instruments. The telephone account is the number one reason why our K9 program continues to exist.

It should be noted that the Sheriff's Office will consult and seek appropriate guidance on any future purchases in this area when there is a possibility of using General Fund appropriations in lieu of phone or commissary funds. Much of this will depend on our 2013 allowances and future budgets. **Requesting the $21,000 is moved to the "ACCEPTABLE" column.**

RESPONSE/JUSTIFICATION FOR **$271,707.38 = Patrol Vehicles**

A very important fact was overlooked in this portion of the review. Erie County Sheriff's Office Patrol Vehicles transport inmates 24/7/365 – to courts, hospitals, clinics and other venues. To place a handcuffed inmate – sometimes secured by a waist-chain and leg shackles – in the rear of a patrol vehicle that averages 150,000 miles – and - enclosed with a security wall – is placing an inmate into a very dangerous environment. To call these new vehicle purchases "unacceptable" is disingenuous – they absolutely have a direct impact on the welfare and safety of inmates. **Requesting the $271,707.38 is moved to the "ACCEPTABLE" column.**

OTHER FACTS:

May 2011 = the former County Executive informed the Sheriff's Office that would be part of a $2.6 million dollar efficiency grant awarded by the Erie County Fiscal Stability Authority.

Based on this promise, the Sheriff's Office did not request any "new vehicle" funding in their 2012 budget request. We anticipated using grant money to purchase a new fleet of cars.

The Sheriff's Office has not purchased new patrol vehicles in over two (2) years. The patrol fleet currently is averaging **over 150,000 miles** and some vehicles are being operated with over 200,000 miles. The vehicles are unsafe and in bad condition.

(A) Ford Motor discontinued production of the Crown Victoria police interceptor.

(B) The Sheriff's Office did bid and subsequently purchased six (6) Tahoe's for the Jail Management Division.

(C) January 2012 = County Executive Mark Poloncarz informed the Sheriff's Office that the promised efficiency grant was not approved and no grant money would be awarded.

(D) The Sheriff's Office has been working diligently since receiving the news from CE Poloncarz to locate funding to replace a fleet of unsafe vehicles currently being operated by the men and women of the Sheriff's Office patrol services division.

(E) An emergency decision was made to detail four (4) of the new Tahoe's that arrived to patrol services to help somewhat with the vehicle crisis.

CLOSING STATEMENT:

The Sheriff's Office is finally in the process of purchasing and equipping new vehicles for the patrol services division. We hope the Comptroller, Legislature and other members of Erie County government support our action and emergency decision that was made to provide a few safe vehicles to our deputies and inmates that are secured in the rear of these vehicles.

5) QUESTIONABLE PURCHASES - $481,413.39 / NO BUDGET MONEY AVAILABLE

RESPONSE/JUSTIFICATION FOR:

(A) Sensor Wire Electric Fence - $162,700 = this was a project that was needed to ensure inmate safety at the Correctional Facility and was turned down in capital budget requests. The Sheriff's Office had no other option but to use telephone money. *<deters inmates from getting severely injured by the security razor wire.>*

(B) Log Books - $12,923.76 = logs books are used on every housing unit in the Holding Center and Correctional Facility. They are a very important tool that records/documents inmates' health, welfare and rehabilitation needs & requests.

(C) Inmate IDs - $13,850.80 = identification bracelets are a great investment for all inmates to ensure they are not delayed in facility movement, medical call, court appearances, etc. The County has never provided us with proper revenue to purchase them.

(D) Guardsman Clock Repairs and Tapes - $5,474.39 = this was a one-time expenditure that the Sheriff's Office had to make to ensure compliance to New York State mandated security checks for those inmates on the housing units and detoxification dorms. It is worth noting that the Sheriff's Office had discontinued the "Guardsman Clocks" and went to a more modern and efficient service. The County would not provide funding.

(E) Office Furniture - $131,285.81 = this was a one-time replacement project for the Erie County Correctional Facility which <like item "a"> was repeatedly denied as a capital improvement. This expenditure was launched after a pattern of complaints from inmates and personnel getting injured from the existing furniture that was in place, much that was 25+ years old. A decrease in complaints + lawsuits has since been noted.

(F) Jail Management Computer System - $87,512.00 = these are payments to "Syscon Justice Systems" to keep our Jail Management Computerized system operational. This is the ***exact*** system which was recommended by prior County Executive and DISS administrations. The County has never provided necessary funding.

(G) Equipment and Tools - $432.39 = the Sheriff's Office made an emergency purchase of several "cut down" knives to be used in incidents of attempted inmate suicide – the existing knives were dull and had to be replaced immediately.

(H) Postage Meter - $10,757.88 = this money used to mail inmate letters.

(I) Office Supplies and Equipment - $1,996.80 = this money used to purchase paper for inmates.

CLOSING STATEMENT:

The Sheriff's Office believes that based on the above justifications and the lack of any other revenue source being provided, these items deserve to be placed into the "ACCEPTABLE" category. They all have a direct impact on inmate safety, welfare or rehabilitation. The Sheriff's Office is opened to meeting with Budget and Management to target new funding sources for all of the above.

6) MEDICAL SERVICE COSTS HAVE INCREASED DRAMATICALLY SINCE 2008

SHERIFF'S OFFICE RESPONSE/JUSTIFICATION:

(A) The Erie County Department of Health has provided medical services at both the Erie County Holding Center and Erie County Correctional Facility for several years. The Health Department has complete control over all medical and pharmaceutical expenditures.

(B) The Sheriff's Office was ultimately responsible for paying all of the medical services and pharmaceutical bills.

(C) Sheriff Howard and his staff did request that the budget line dealing with medical services be transferred out of the Sheriff's Budget and be given to the Health Department since they provide the services and have total control of all expenditures.

(D) The Health Department has recently taken over the budget line as described above.

(E) The Sheriff's Office has suggested ways to cut medical service and pharmaceutical costs (i.e. = needless ambulance and emergency room transports, alternative pharmaceutical practices/purchases) that would save taxpayers a lot of money.

CLOSING STATEMENT:

The relationship and communication between the Sheriff's Office and the Health Department has improved. We believe the medical service and pharmaceutical cost issue will be appropriately handled by the Health Department.

The Sheriff's Office will immediately address the $44,560 overpayment to the Health Department that was noted on page 12 of Comptroller Shenk's report.

7) INCREASED LABOR COSTS

It should be noted that the Sheriff's Office has taken a proactive approach in collective bargaining negotiations and has attended all sessions working closely with labor relations in an

attempt to reach a new agreement that will address several labor issues including the Teamster RN and Medical Aides.

8) COMMISSARY PURCHASES VS TELEPHONE FUND PURCHSES

The Erie County Sheriff's Office operates two separate accounts – (1) Commissary Profits and (2) Telephone Revenue. Money spent from both accounts is done in accordance to rules/laws listed in the New York Codes, Rules and Regulations <NYCRR> and/or the New York State Commission of Correction. <NYSCOC>

Comptroller Shenk's report did not accurately separate what purchases were paid for by commissary funds or what purchases were paid for by telephone funds. We feel that this is a mistake because the NYCRR and the New York State Commission of Correction have separate and distinct rules, regulations and guidelines on how commissary and telephone money can be spent.

We recommend that the Comptroller's Office consult with the New York State Commission of Correction to ascertain their policies and guidelines in relation to Commissary and Telephone Fund purchases.

9) COMMISSARY RENT REIMBURSEMENT

Comptroller Shenk's report stated that the commissary rent reimbursement is understated by $4,920 per month. The Sheriff's Office recommends that the Comptroller's Office consult with the New York State Commission of Correction regarding commissary rent.

10) PATROL VEHICLE EMERGENCY LIGHTING - $54,479.56

The Sheriff's Office has taken steps to ensure this one-time "questionable" purchase is properly done in the future.

FINAL STATEMENT

Unfortunately, the Sheriff's Office has been a target of vicious rumors and false allegations regarding the commissary and telephone accounts by some members of the Erie County Community Corrections Board. Hopefully, Comptroller Shenk's report and our response will prevent future rumors and false allegations as both accounts are lawfully maintained and benefit the safety, health, welfare and rehabilitative needs of the inmates. Lastly, it should be noted that the Sheriff's Office has annually requested and been denied budget increases or capital budget money to fund many of these projects mentioned in this report. <END>

TIMOTHY B. HOWARD
SHERIFF

MARK N. WIPPERMAN
UNDERSHERIFF

SHERIFF OF ERIE COUNTY

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OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK

TITLE 9. EXECUTIVE DEPARTMENT

SUBTITLE AA. STATE COMMISSION OF CORRECTION

CHAPTER I. MINIMUM STANDARDS AND REGULATIONS FOR MANAGEMENT OF COUNTY JAILS AND PENITENTIARIES

SUBCHAPTER A. MINIMUM STANDARDS AND REGULATIONS

PART 7016. COMMISSARY AND INMATE ACCOUNTS

Current through July 15, 2012

* Section 7016.1.* Commissary.

(a) **In the discretion of the sheriff** or chief administrative officer, a commissary may be established, maintained and operated for the purpose of making available, for sale to prisoners, items deemed proper by such officials and consistent with the health and welfare of the prisoners and the security and general operation of the facility concerned.

(b) The prices of any items offered for sale **shall be fixed by the sheriff**, or official in charge, to the extent that the commissary operation will be self-supporting and will provide a modest return above costs.

(c) Profits resulting from commissary sales *shall be deposited in a separate bank account* and shall be utilized only for purposes of prisoner welfare and rehabilitation.

(d) Commissary accounts shall be maintained in a manner which will fully substantiate all purchases, sales and expenditures, and definite arrangements shall be made for periodic audit of the commissary accounts by the office of county auditor, county treasurer or other county officer in a similar capacity.

(e) Nothing in this section shall be construed as exempting commissary operations in a county jail or a county penitentiary from compliance with the provisions of any applicable county or State statute, resolution, rule, regulation, etc.

END OF DOCUMENT

Appendix 5 – Auditors' Response

Inmate Grievance Critisim [sic]

We found several instances of grievances not accepted due to the inmate attempting to file a grievance pertaining to a non-grievable issue that were not numbered and included on the grievance log (including the grievance mentioned in this report). Accordingly, the Sheriff's response is inconsistent with how some grievances are processed. We recommend that the Policy be reviewed with the affected staff members, as this policy is not being consistently applied.

Unacceptable Purchases - $299,363.14

Office Furniture - $6,655.76

While we understand the Sheriff purchased this furniture with the intent of using the furniture for Jail Management personnel, the law does not provide an exception to the restriction on requiring purchases from these funds to be "utilized only for purposes of prisoner welfare and rehabilitation." Because this expenditure does not satisfy the purchase requirements of the law, it will remain as an unacceptable purchase.

K-9 Dogs, Training, & Vehicles - $21,000

In 2011 the Sheriff's Department purchased five (5) dogs trained in narcotics detection and one (1) dog dual trained in narcotics detection and patrol. Four (4) of the narcotics detection trained dogs were assigned to Jail Management, bringing the total of K-9s in the department to five (5) – three (3) at the Holding Center and two (2) at the Correctional Facility. One (1) narcotics detection trained dog and the dog dual trained in narcotics detection and patrol are utilized in the Sheriff's Road Patrol Division. While in some circumstances these dogs may occasionally be used in the Jail Management facilities, they are not routinely used there, and therefore it is not appropriate for these dogs to be fully funded from the Commissary and/or Telephone Funds. As the two (2) K-9s are not regularly and routinely used in Jail Management, the cost for their purchase remains as an unacceptable purchase.

Patrol Vehicles - $271,707.38

The Patrol Vehicles were purchased with the intent of using them for the Jail Management Division. Upon delivery the Sheriff decided that they would best be used by the Road Patrol Division. As with the Office Furniture, the intent of the purchase is not relevant when considering if a purchase was appropriate, if the items purchased are utilized in a manner not consistent with the requirements of the law. Because these vehicles are not being used by the Jail Management Division, they will remain as an unacceptable expenditure.

Questionable Purchases - $481,413.39 / No Budget Money Available

The purchases in this category were used for the safety and security of the inmates and the facilities. While these purchases were directly or indirectly used for the benefit of the inmates, most such as the inmate ID, logbooks, and cut down knives, pertain to the daily operations of the facilities. These items should be budgeted for and purchased through the General Fund. The Sensor Wire Electric Fence and the Jail Management Computer System are capital expenditures and the appropriate budget requests should be made for these types of expenditures during the budget process.

Office Supplies and Equipment - $1,996.80

This purchase was moved to the Inmate Programs: Law Library Supplies under the Acceptable category.

Commissary Purchases vs Telephone Fund Purchases

We accurately reported on this issue as we were unable to find any laws or regulations providing different restrictions for purchases through the Telephone Fund. The Sheriff's Office agreed to provide our office with a copy of the applicable law, however we have yet to receive such from them. Given that the Commissary and Telephone Funds were previously combined by the Sheriff's Office (placing the same restrictions on both Funds) and that they are both derived from inmate purchases, we believe that the restriction requiring purchases to promote inmate welfare and rehabilitation applies to both Funds.

Commissary Rent

The Commissary Rent Reimbursement is an operating expense of the Commissary that reimburses the County for providing the space and the employees required to run the Commissary. The expenses associated with the normal operation of the Commissary are an allowable expenditure of the Commissary Fund, similar to the purchase of supplies for the Commissary and items for resale. This reimbursement has been an annual operating expense of the Commissary.