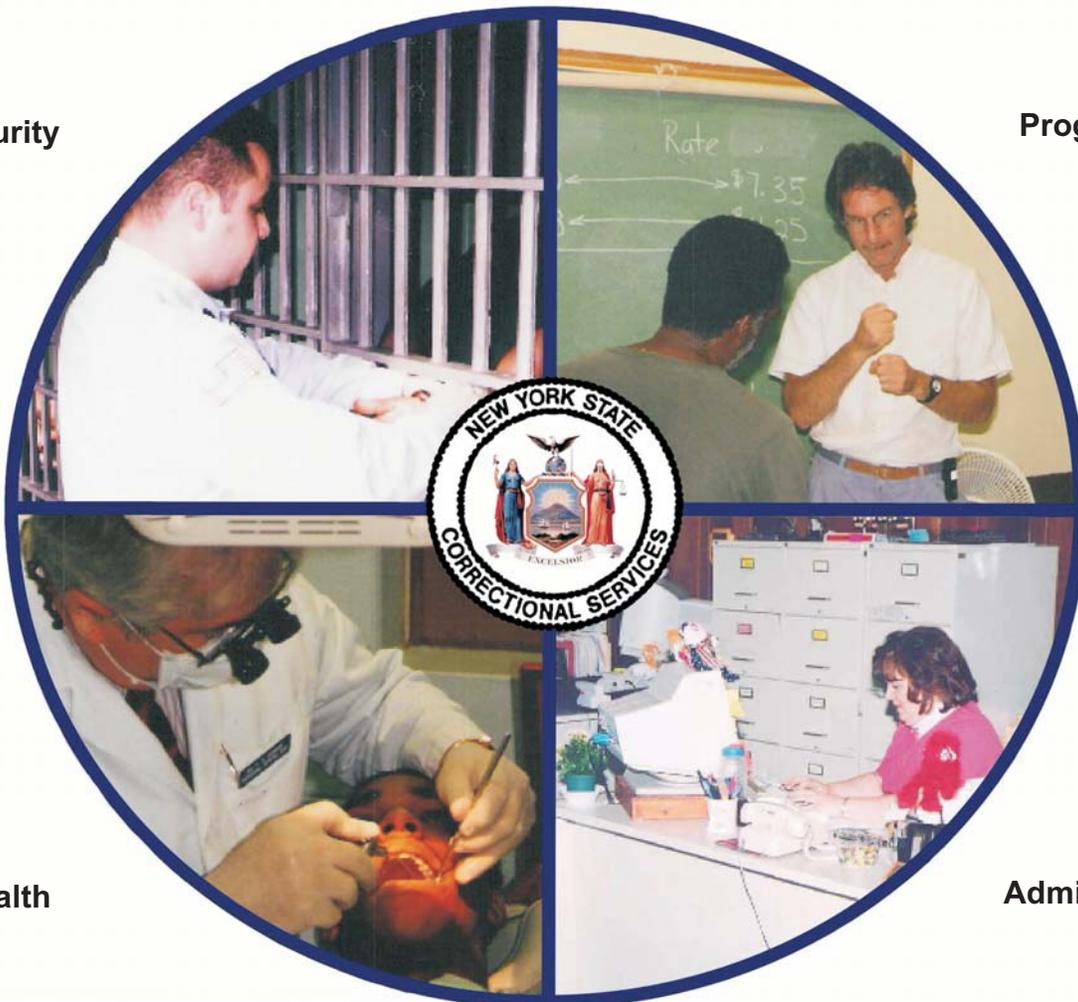

Prison Safety in New York

“Working together for public protection”

Security

Programs



Health

Administration

Glenn S. Goord
Commissioner

New York State
Department of Correctional Services

April 2006



STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES
THE HARRIMAN STATE CAMPUS
1220 WASHINGTON AVENUE
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GLENN S. GOORD
COMMISSIONER

April 2006

To the reader:

This Department's role in providing for the public's protection begins with the incarceration of felons. It continues through preparing them for release, since more than 90 percent of offenders will eventually leave our custody.

In between, the role of our 31,597 employees is far more than serving as the state's jailers.

It certainly begins with security. As of March 30, those ranks include 19,701 Correction Officers plus 1,935 uniformed supervisors working around the clock to maintain safe and secure prisons. Their efforts are augmented by 9,961 civilians who also play a major role in preparing inmates for release. There are the teachers, vocational instructors and counselors who try to impart the tools to help inmates be successful upon their release. Doctors and nurses, psychologists and psychiatrists treat the body and the mind. Secretaries, food service employees and power plant operators keep our prisons functioning like the cities behind walls that they are.

Overriding all else is a commitment to keep our employees and inmates safe. Employees have the right to finish their shifts unmolested and uninjured. Inmates have the right to come to prison *as* punishment and not *for* punishment, either from other inmates or prison staff.

That's what this report is about: providing safety and security for staff as well as inmates. This report is designed to give the public a look behind the imposing prison walls and ominous fencing systems that surround our 69 correctional facilities housing 62,980 offenders on March 31.

This report focuses on systems and procedures designed to avoid prison incidents, mass disturbances and riots. We write about the constant efforts of employees to make a safe system even more secure, as well as administrators who use their experience to write procedures and protocols that make prisons safer for staff, inmates and surrounding communities.

Events at Iraq's Abu Ghraib prison and elsewhere have led many to wonder how we in America treat inmates in our own prisons. Many rightfully ask what sorts of procedures are in place to protect them and safeguard their constitutional rights.

This report attempts to answer these and other questions about New York's prison system.

God Bless America,

Glenn S. Goord,
Commissioner

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I. Commitment to safe, secure and constitutional prisons

The New York State Department of Correctional Services acknowledges and accepts its legal, moral and ethical responsibility to:

- Provide a safe and secure environment for employees who work inside of prisons, ensuring they leave facilities safely each time they conclude their business;
- Provide for the humane and constitutional confinement of felons, in a safe atmosphere promoting rehabilitative programs that offer inmates the opportunity to return to society as productive and law-abiding members, and
- Provide protection for the thousands of outsiders who become part of the prison community on a daily basis. They include outside volunteers, inmate visitors and contractors, as well as employees of other state agencies, state legislators, judges and prosecutors.

Governor George E. Pataki understands that the fulfillment of these core responsibilities is extremely complicated, very expensive – and absolutely necessary. As a result, he consistently proposes and supports initiatives providing the Department with the tools necessary to foster a safe and secure correctional environment.

However, despite the dedicated and professional efforts of staff on a daily basis, the task remains a formidable one: prisons by their very nature are inherently tense environments for staff, inmates and visitors alike. The goal is to reduce tensions and therefore violence to the lowest levels possible. The public record shows New York is accomplishing that goal, with rates of inmate-on-staff and inmate-on-inmate violence at their lowest levels in a quarter-century.

New York state law mandates that the Department offer rehabilitative programs that allow inmates to avail themselves of the opportunity to prepare themselves to live as law-abiding citizens once they are released from prison.

The record shows that inmates released in 2003, the latest year for which full data are available, return to prison for the commission of new crimes within two years at a rate that is 42 percent lower than among inmates released in 1994.

That means fewer offenders released from prison are being convicted of new crimes against the people of New York state. That contributes to the historic reduction in crime that has been fueled in large part by Governor Pataki’s criminal justice policies since 1995.

The Department attempts to

meet its goals in a prison system whose physical appearance is, in many ways, more akin to a small college campus or industrial park than the proverbial “Big House.”

When many New Yorkers think of prisons, they imagine going “up the river” to maximum-security prisons like Sing Sing, made famous by movies such as 1930’s *The Big House*, which was actually filmed inside Sing Sing. These films show every prisoner living in a cell, marching in step during their few hours out of them. That was the state of America’s prisons in the 1930s and 1940s. Prison genre movies were often shot on the cellblocks inside the massive walls of the fortress-like penitentiaries then representative of America’s prisons.

History has shown that, even when those inmates were locked in individual cells virtually around-the-clock, a certain degree of violence still occurred when inmates were allowed to leave their cells for such limited activities as visits, showers or exercise.

Only 41 percent of inmates housed in cells

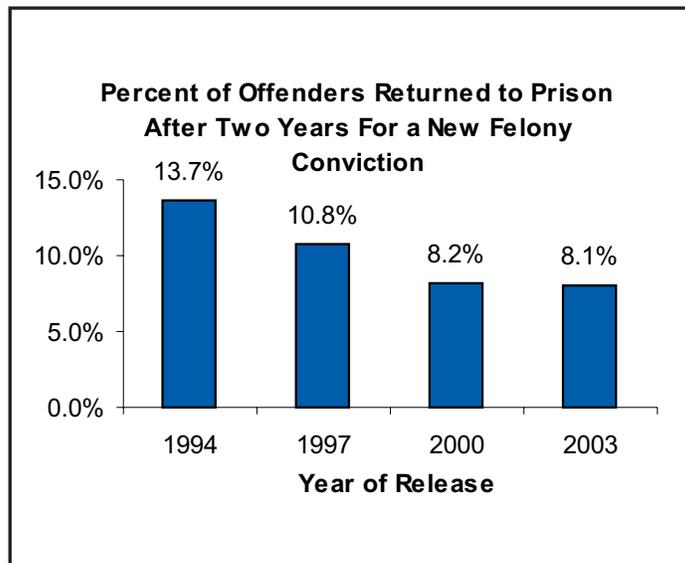
Of New York’s 63,028 inmates on Jan. 18, 2006, only 25,995 – or 41 percent – were housed in cells. The remaining 37,033 inmates were housed in multiple-occupancy dormitory rooms or military-style barracks. If the perimeter fences, rolls of razor wire and high-tech intrusion detection systems that surround many medium-security prisons were removed, the facilities would resemble office complexes or modest college campuses. Minimum-security prisons, such as work release facilities and outdoor work camps, have no secure perimeter at all.

Regardless of security level, inmates now leave their general confinement housing units every day to go to the mess hall, program areas, work assignments, infirmaries, law and general libraries, commissaries, group events and family programs. They also attend religious services and participate in outdoor as well as indoor recreation activities.

Providing security and safety are the primary responsibilities facing a trained, professional and dedicated work force. Violent

offenders are now let out of their maximum-security general confinement cells to interact for some 16 hours each day, compared to the 6-8 hours of daily out-of-cell time allowed during the era of the proverbial “Big House.” In lower security dormitories and open barracks, inmates can interact around the clock.

The Department believes that inmates are sent to prison *as* punishment and not *for* punishment. Their punishment is deprivation of liberty for a period set by law. It is the state’s responsibility to keep inmates, staff and visitors safe in a constitutional setting that offers



inmates the opportunity to prepare themselves for eventual release. Very simply, unsafe prisons will not be tolerated by Department administrators or employees, elected officials, or by the general public.

New York is serious about its responsibility to provide safe prisons. New York had 19,576 Correction Officers and 62,732 inmates at the end of 2005. By comparison, California had 28,000 Officers supervising 168,035 inmates, Texas had 23,720 Officers and 139,221 inmates, while Florida's 81,199 inmates were supervised by 12,096 Officers.

In each state, security staff must be assigned to provide coverage around the clock and to accommodate all the reasons for which staff can be off-duty or working but off-post. But New York's commitment to full inmate programming requires intensive security to provide coverage in all the areas inside and outside of prison where inmates participate in those programs.

Staffing is also intensive because of the increased need for Officers in open barracks- or dormitory-style medium- or minimum-security general confinement housing versus general confinement cell blocks in maximum-security prisons. That's because one Officer, for example, can monitor a 100-cell block after all inmates are locked in for the night. But in a lower security prison, one Officer may be responsible for a dormitory of just 50 to 60 inmates.

Programs promote prison security

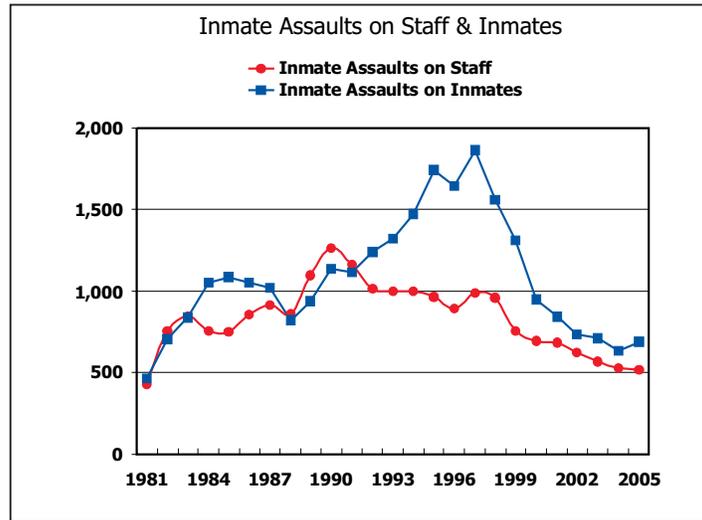
One of the ways to reduce prison tensions is to offer an array of rehabilitative programs that provide inmates with a positive use of their time.

Such intensive security staffing in New York augments programs by providing the secure setting in which they can operate safely. In turn, programs augment security by productively filling hours that inmates could otherwise devote to making weapons, planning an escape or a riot, or some other disruption of facility order that would threaten staff and inmates alike.

Approximately 95 percent of the 63,028 inmates under custody on Jan. 18, 2006, were eligible for programming. All were assigned to paid slots in academic, vocational, drug treatment, work and other program assignments.

Inmates are paid an average of one dollar each day. The payments are stipends that allow many otherwise indigent inmates to afford basic amenities through the commissary or other sources.

The annual inmate payroll is \$16 million. That excludes the



Division of Industries that employs 3,000 inmates on a sliding scale to make office supplies and other products for sale to New York state, its political subdivisions and eleemosynary groups.

Regardless of pay grade, many inmates send money home to support their loved ones.

Inmates who are not in paid programs fall into one of two categories:

- Inmates not program-mable generally include those ordered to be transferred out of prison for court appearances, plus those in disciplinary housing not involved in GED or other cell-study programs. There are approximately 4,700 inmates in disciplinary housing and 600 "out to courts" at any time.
- There are approximately 3,400 "unemployed" inmates at any given time. These generally are inmates who have just been transferred in from other prisons and have not yet appeared before program committees to receive paid assignments, inmates who have recently completed one paid program and are temporarily unemployed while awaiting reassignment to another paid program, plus inmates who have just been released from disciplinary confinement and will be appearing before program committees to be assigned to paid programs.

Program subjects include academic education, vocational training, substance abuse and alcohol treatment, sex offender counseling, alternatives to violence, parenting programs, and transitional services.

"... inmates are sent to prison as punishment and not for punishment ... It is the state's responsibility to keep inmates, staff and visitors safe in a constitutional setting that offers inmates the opportunity to prepare themselves for eventual release."

Some inmates are given facility work assignments, which include maintenance of prison grounds, working

in food preparation, running the laundry and cleaning buildings. Inmates are also assigned to work within the Division of Industries.

Inmate work programs teach inmates important lessons, regardless of the type of work being performed. For many inmates, it is the first time they are expected to report to a job at a regular time.

For others, it is the first time they had a job where performance mattered. Some also find it a new experience to work at a job where their performance may depend upon the same from others, and vice versa.

In short, regardless of the job, inmates are learning or reinforcing the basic work ethics they will need to find and retain gainful employment upon their release. □

II. World events spotlight America's prisons

The Department has long been a participant in the on-going public discussion surrounding New York state prisons and how they operate.

That decades-long discussion has included, among other topics, both the rise and fall of the inmate population, ensuring constitutional operations, maintaining sufficient prison capacity, sentencing reform, providing proper prison staffing, the operation of disciplinary housing units, offering inmates mean-

dered, what does that say about how we treat American prisoners here in our own correctional facilities?

This report represents the Department's answer, in one place, to that and other questions about its operations. This report is based upon a review of protocols and procedures, as well as a look at data across the system.

New York prison population drops while others rise

One of the "serious problems" some see is what they call the

burgeoning state prison populations around the nation and the attendant overcrowding of correctional facilities.

Across the country, the combined populations of state prison systems saw a 7 percent increase from 1,189,799 offenders on Dec. 31, 1999 to 1,274,656 on Dec. 31, 2004, the latest date for which national figures are available.

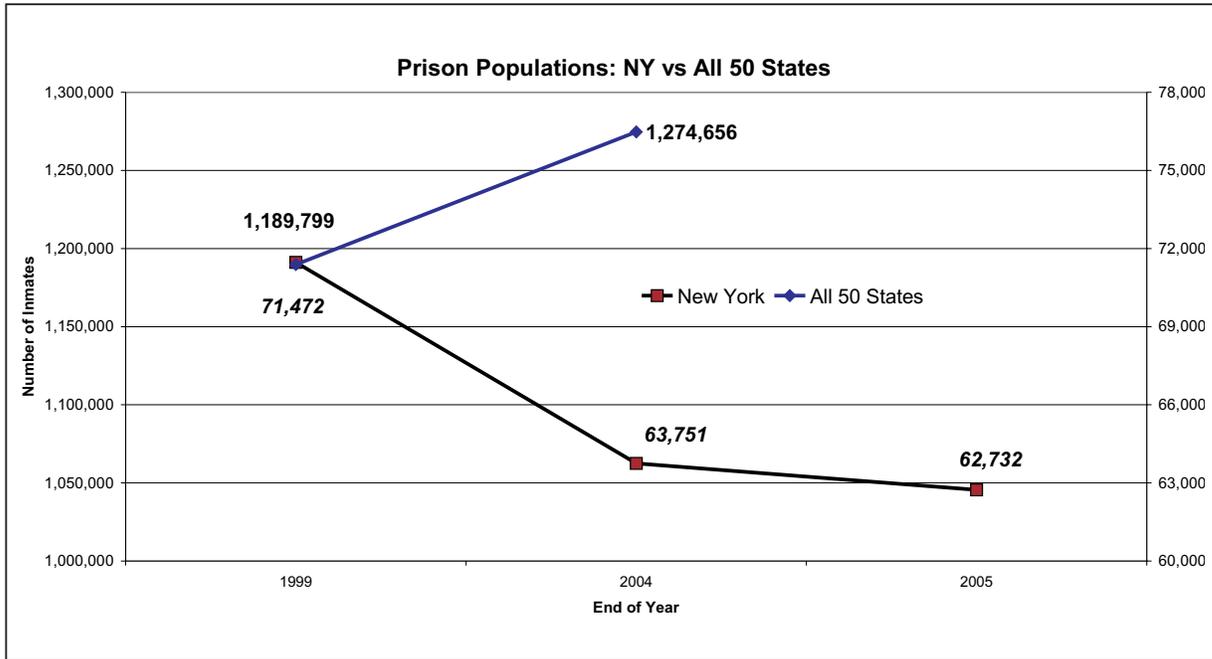
Governor Pataki's "right sizing" policies have, however, allowed New York to buck that trend in a major way.

major way.

The result is that New York's state prison population declined by 11 percent over the same period.

New York's under custody prison population declined from 71,472 inmates at the end of 1999 to 63,699 inmates on Dec. 31, 2004. Last year ended with 62,732 inmates – the sixth consecutive year that New York's under custody prison population declined from the year before.

"Right sizing" consists, first, of building the 4,950 maximum-security beds necessary to



ingful programs and the delivery of inmate medical and mental health care.

Revelations of the abuse and mistreatment of Iraqi inmates by American soldiers staffing the infamous Abu Ghraib prison approximately 20 miles west of Baghdad sent shock waves around the world in 2004. That shock continues with the continued release this year of new undated photos and videos of inmate abuse.

If that is how U.S. soldiers treat foreign prisoners overseas, many Americans won-



Correction Officers help safeguard staff and inmates from their posts in yard towers.

house violent offenders appropriately.

The “flip side” is to offer deserving nonviolent offenders the opportunity to earn early release through good behavior coupled with positive participation in rehabilitative programs.

As shown at right, that has allowed 71,578 nonviolent offenders to earn early release since Governor Pataki took office through last year. That allows New York taxpayers to avoid the construction of 5,396 lower-security prison beds.

Among those offended by the actions at Abu Ghraib were the employees of this Department, who are committed to housing offenders in a constitutional setting and offering them rehabilitative programs.

They are proud of the fact that New York operates its prison system in such a manner that no court has ever seen fit to issue system-wide conditions of confinement orders or to impose population caps. Those facts are even more striking when one realizes that taxpayers pay to teach inmates how to use the publicly funded law libraries available to them in virtually every prison around the state. Those law libraries often rival those found in the offices of most law firms. In addition, millions of tax dollars are appropriated annually to pay lawyers to represent inmates.

Prisoners’ Legal Services (PLS) spent taxpayer dollars in the 1980s to sue the Department in federal court. It argued that Fishkill Correctional Facility typified what PLS alleged were the unconstitutional conditions it said were rampant across the system.

Across the nation, many states have settled similar lawsuits out of a fear that a loss in court could lead to system-wide judicial orders.

This Department instead chose to take this case to trial. In a 62-page decision handed down in 1987, U.S. District Court Judge Louis L. Stanton upheld the Department’s operations on the facts, dismissing each and every charge levied by PLS.

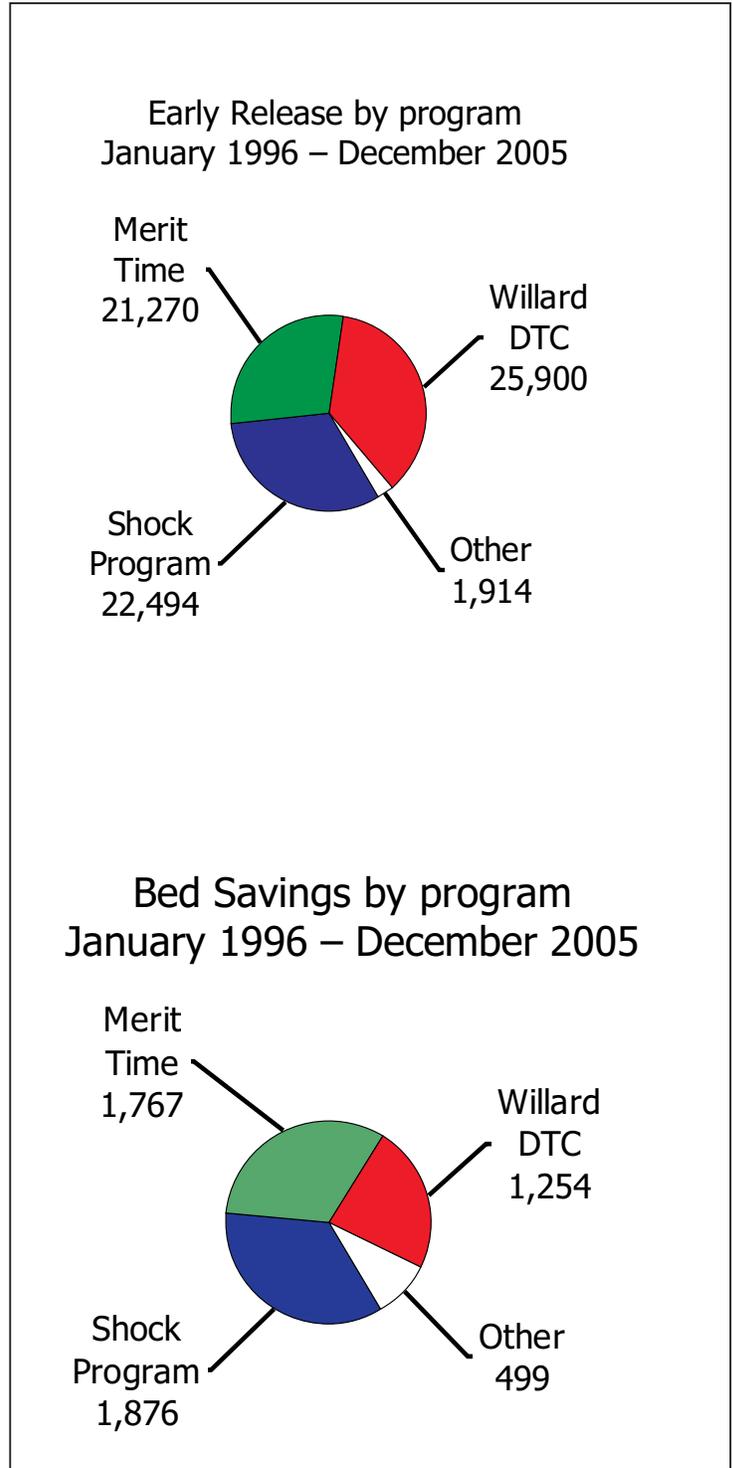
New York’s one of few accredited prison systems

Staff professionalism has contributed to New York’s being the first major prison system in the nation to see all of its prisons earn accreditation by the American Correctional Association (ACA). Eastern in Napanoch was the first in 1982. ACA accreditation means each New York prison meets or exceeds literally hundreds of nationally accepted standards for the operation, management and administration of correctional facilities.

Also accredited by the ACA are the Department’s Training Academy for security personnel, the Oneida Food Production Center which provides meals for prisons across the state, the Division of Industries and the Department’s Central Office headquarters in Albany.

In addition, New York remains the only state in the nation where the Chicago-based Joint Commission on Accreditation of Healthcare Organizations has accredited every prison unit operated by the state Office of Mental Health.

Accreditation is more than an award certificate to be framed and mounted on a facility wall. It represents the commitment of individual staff members to a code of conduct and professional



standards that leads to safer and more secure prisons operated in a humane and constitutional manner.

To reinforce the Department’s policies mandating the secure and constitutional operation of its prisons in the aftermath of Abu Ghraib, Commissioner Goord attached a letter to all employee paychecks in May 2004. The letter outlines his expectation of their commitment to professional standards. (A copy of this letter appears as [Attachment A.](#))

Searching for answers, not excuses

That letter could not include the entire record of initiatives

and improvements the Department has developed and implemented over the years as one of the premier correctional systems in the nation.

This report cannot do so, either. Instead, it is intended to review the highlights of Governor Pataki's initiatives and the Department's record in the area of prison safety. A far lengthier tome would be necessary to detail all efforts to improve operations of the state's prisons.

This report acknowledges the violence that occurs in prison. Believing that even one act of violence is too many, it does not minimize that which occurs.

This report is intended to promote public awareness and understanding of prison safety and security by presenting statistics and data that welcome analysis.

It avoids the anecdotal vignettes and anonymous sources that are the hallmark of reports issued by prison critics.

Instead, this report documents the details of many, but certainly not all, of the Department's ongoing efforts to achieve the safest correctional environment humanly possible.

In spite of these processes, serious incidents with terrible consequences can and do occur in prison.

That's because there are no silver bullets or magic wands to eliminate incidents in prisons that house the state's worst felons, 57 percent of whom are serving sentences for violent crimes.

But prison incidents can take many forms – inmate-on-inmate, inmate-on staff, staff-on-inmate and even staff-on-staff misbehavior. Furthermore, outside visitors and contractors may also be involved in incidents.

The state takes every one of these incidents seriously. It must understand why as well as how each of these incidents occurred. Only then can it know what each incident might mean for the safety and security of those within an individual prison or across the entire system.



Albany Training Academy (above) is accredited, as is the Food Production Center at Oneida (below).



That demands investigation to determine what actually happened, and not to simply accept the easy answers, such as those suggested in scenarios such as these:

- It might, for example, be easy to write-off every confrontation between inmates as the result of the increased percentage of inmates incarcerated for violent offenses. But that would ignore the facts that the raw number of inmate-on-inmate assaults is down, as is the rate of such incidents per thousand inmates.
- It would be simple to ascribe any fights among inmates as an increase in gang-related activity – but that would contradict the fact that fewer inmates are being disciplined for gang-related activity based upon “tickets” being written by front-line Officers and other staff.

This report will look at the steps the Department takes from the first day an inmate enters the system to provide a safe work environment for staff, a constitutional place of confinement for inmates, and secure access for visitors. □

III. Reception: Protecting the system, planning inmates programs

The Department's reception process is far more than the blind acceptance of custody of thousands of felons. It is a careful process designed to evaluate individual inmate background as well as any dangers presented to the system or inmates by their incarceration.

Inmate criminal and social histories assist in determining the security level in which inmates need to be housed. They also identify inmate medical and mental health needs. A battery of tests also provides information on inmate aptitudes, social skills and mental health.

The process also determines which rehabilitative programs will be most beneficial in preparing inmates for release upon completion of their sentences. Reception includes extensive education testing in both English and Spanish to determine reading and math levels. Testing of those who are not English-dominant determines placement in English as a Second Language programs. Psychological testing determines any intellectual limitations.

All of these considerations are designed to increase safety and security for inmates and staff alike. While reception to placement in a general confinement prison may take as little as a few days, it can run into months for those inmates with complex needs or considered to be victim-prone.

The Department uses court sentencing and other documents during the reception process to calculate and explain release dates to inmates. Inmates are also informed of the programs in which their positive participation will be mandatory. They are also advised of what constitutes the acceptable behavior generally expected of them during their incarceration. That way, inmates know "up front" what is expected of them in terms of good conduct and positive program participation to become eligible for release on the earliest possible date.

Gathering security information on inmates

Once an offender is sentenced, the county assembles various documents that will accompany the inmate upon transfer to state prison.

That transfer occurs only after all records and paperwork for the newly-sentenced felon are completed on the local level. The

Clarifying confusing sentencing laws

Explaining potential release dates to inmates can be as confusing as explaining them to the public.

That's because inmates come to prison with sentences that are indeterminate, determinate or even a combination of both. Knowing the differences is crucial to understanding the future of sentencing in New York.

Please turn to page 7

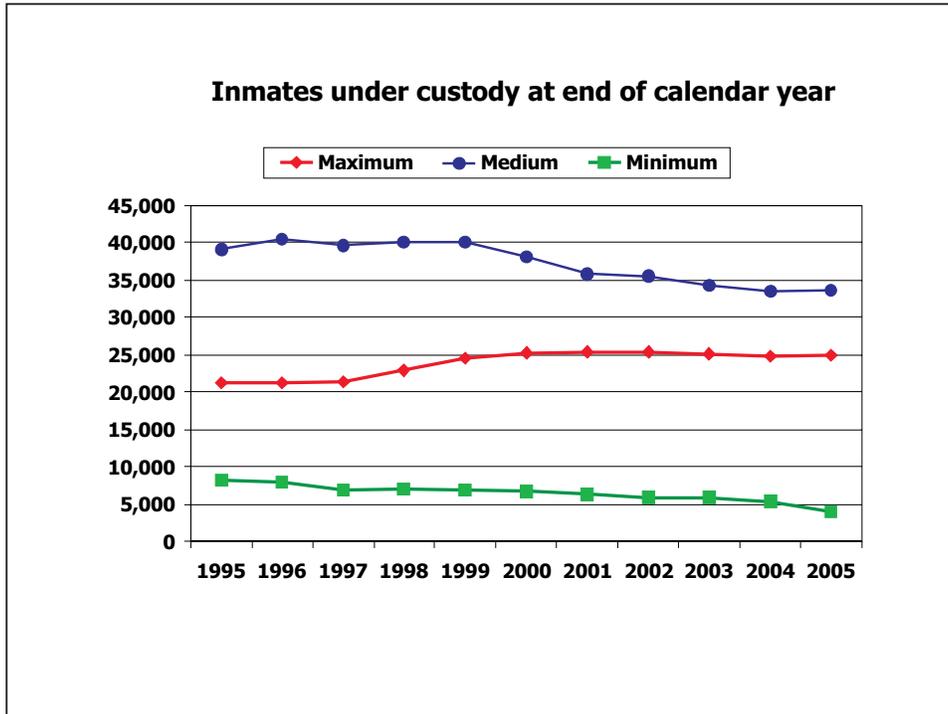
county then notifies the Department by computer that the offender is ready for transfer into state custody. Counties deliver all such "state ready" offenders to a designated Department reception center for initial processing, screening, testing and classification.

Documents delivered with inmates to the reception center include pre-sentence reports and criminal history records. Also included are detailed summaries of medical and psychiatric records, which ensure continuation of any legally prescribed medications. Reports also detail any past assaults or other violent acts, attempts at suicide or escape by an inmate while in the custody of any other correctional facility. All of this is set forth in Correction Law section 601.

The pre-sentence report is the single most important document provided to the

Department. It describes in detail the circumstances of the current conviction as well as the prior criminal history of the inmate, together with other background information. It may also include information about the crime victim as well as an assessment of the offender's character. Among other things, corrections officials use this document to assess what specific program needs the inmate must address during confinement. The matters that must be covered in a pre-sentence report are listed in Criminal Procedure Law section 390.30. The law also prohibits the Department from releasing that report to the public.

A sentence of state imprisonment commences when a prisoner is sentenced to a determinate or indeterminate term of in-



carceration of one year or more for the commission of a felony and is transported to one of the Department's reception centers.

To ensure an inmate is given credit for all time served, counties submit another pivotal piece of paper. It certifies the number of days an offender has served in the county jail on the offense prior to transfer to state custody. The Department will use those "jail days" in computing the offender's release dates. It is an important security concern that inmates know they will serve every day of their judicially-imposed sentences – but not one day more. In fact, if an offender's release date is on a weekend, state law requires that release be moved back to Friday.

Each inmate is interviewed as part of the reception process. That includes explaining to inmates that they may request protective custody status to separate them from the general population if the inmate can demonstrate the potential for being victim-prone. The interview process also identifies any real or potential enemies the inmate may have in prison. For example, if the inmate previously testified against another inmate in a criminal matter, the other inmate is identified as an enemy. That information is recorded in the Department's centralized computer system. That alerts staff that the newly-arrived inmate and known enemy need to be housed in different prisons.

Inmates can also be considered for involuntary protective custody if the Department thinks the inmate is victim-prone, regardless of the inmate's opinion. An offender known to be a police informant, for example, could be placed in involuntary protective custody even if the offender opposed such placement. The same could occur if a police officer comes to prison. An inmate convicted of committing a high-profile crime could also be considered prone to attack by other inmates looking to become notorious on their own.

Inmates are also given an orientation manual that explains basic Department operations. It outlines what they can expect in prison and what is expected of them. The manual generally advises inmates of prison rules and regulations, and the Department's general expectation of inmate conduct, adherence to rules and program participation.

Classification levels protect staff, inmates

Inmate evaluations at reception help to decide initial security classification for each inmate. That is a major step in ensuring the safety of each offender, as well as staff, the general public and the inmate population as a whole. The Department looks at a number of factors in making this determination, such as the length of the inmate's sentence, the inmate's prior criminal record, prior incidents of escape or absconding and the nature of the underlying offense.

In general, New York state prisons are classified as maximum-, medium- or minimum-security. The classification is based upon the physical layout and characteristics of each prison, plus the mission assigned to it.

On Jan. 18, 2006, the 63,028 inmates under custody included 23,812 inmates housed in all areas of maximum-security prisons, 34,893 on the grounds of medium-security prisons and 4,323 within minimum-security prisons.

Clarifying sentences

Continued from page 6

New York adopted determinate sentencing in 1995 under changes proposed by Governor Pataki. His goal was to lengthen jail terms for violent offenders, deny them discretionary parole and impose periods of post-release supervision. His goal was to restore "truth in sentencing" by using determinate sentencing to replace the complicated and confusing indeterminate sentencing structure.

Determinate sentencing requires judges to set a specific term of incarceration, from which inmates can earn a one-seventh reduction through good behavior. Such a sentence tells offenders, crime victims or their survivors the truth about the minimum sentence an offender must serve. A person receiving a seven-year determinate sentence, for example, is not eligible for release until after serving a full six years, or 85 percent of the sentence imposed. Inmates who choose to misbehave or fail to participate in assigned programs will remain in prison for the full sentence.

Having the option of earning a reduced sentence provides inmates with substantial reason to behave and participate positively in assigned programs. Thus, the option of "good time" is as much a safety issue for employees as it is a privilege to be earned by deserving inmates.

By contrast, the indeterminate sentencing structure is far more complicated.

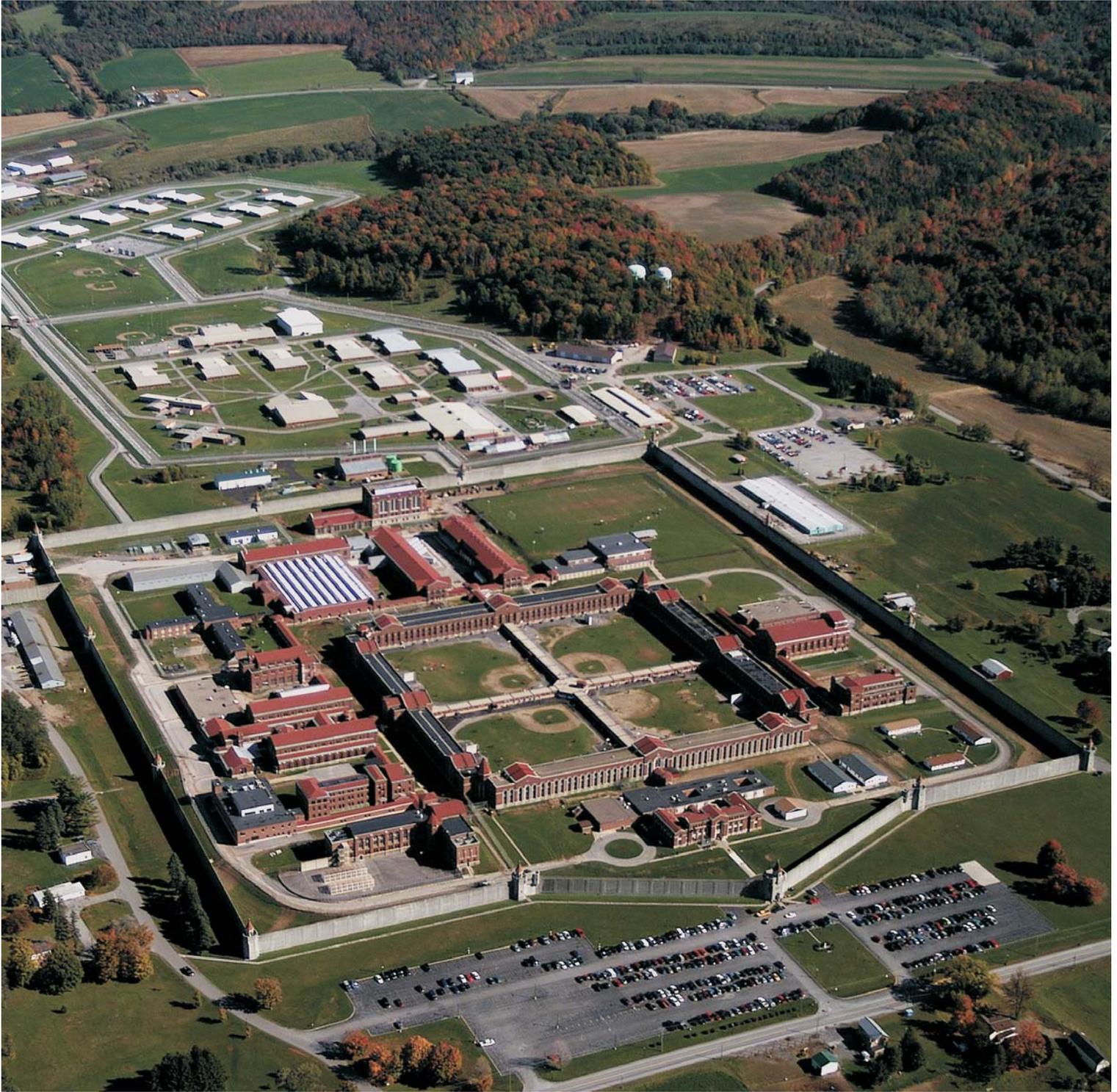
Indeterminate sentences include a minimum period of incarceration (after which an inmate is eligible for discretionary parole) and a maximum sentence (upon which the law requires release). Exclusive of offenders sentenced to life terms, the minimum indeterminate sentence is usually one-third or one-half the maximum sentence, based upon the offender's prior criminal record. Sentences such as 2-6 years or 5-10 years are therefore common.

Indeterminate sentences are also complicated by what are known as conditional release dates. Under the law, inmates who have not lost good time may be released at their conditional release date – two-thirds of their maximum-sentences – without the approval of this Department or the Board of Parole.

Thus, when an offender receives an indeterminate sentence, no one knows if the offender is going to be released by vote of the parole board after serving only the minimum sentence, at the conditional release date of two-thirds of the maximum sentence, or upon completion of the full maximum sentence.

The indeterminate sentencing law is even different for an inmate serving a sentence with a maximum of life. No

Continued on page 9



Maximum-security Attica and its signature walls and towers are shown in the foreground. Inmate movement occurs inside of cell blocks, other buildings and the above-ground tunnels forming a “plus” sign in the yard. Cluster of buildings immediately behind Attica is Wyoming, a 740-bed medium-security prison. At top of photo is the 740-bed later addition that doubled Wyoming’s population. Wyoming is surrounded by fences, razor wire, electronic monitors and surveillance video cameras. There, inmates move across open ground, often unescorted. They are housed in military-style barracks.

Maximum-security prisons normally house general confinement inmates in single-occupancy cells. Each cell has sanitary facilities enabling the prison to be locked down at night to virtually eliminate any need for inmate-to-inmate or inmate-to-staff contact. Maximum-security prisons have secure perimeters such as walls or multiple wire fences topped and

banked with layers of razor ribbon, plus multiple electronic monitoring systems and video recording cameras. Security perimeters are augmented by armed guard posts.

Within the prison, inmates move in groups supervised by Correction Officers through enclosed tunnels that connect such areas as housing units, program areas and mess halls. Gates

control those tunnels so that virtually any area can be closed off in the event of an incident. Most maximum-security prisons also have the built-in capability to fire chemical agents into congregate areas such as the mess hall and outdoor recreation yard. Each of these components are designed to provide maximum safety for staff as well as inmates from potential violence by inmates.

Inmates housed in maximum-security include those serving the longest sentences, making them the most likely to want to escape. A number of them are serving so many years that good behavior and a potential sentence reduction are not incentives for them to follow prison rules. They also include offenders who have committed serious misbehavior in lower-security prisons, plus those who are considered escape risks for their conduct in state or other correctional facilities.

Medium-security prisons have secure perimeters consisting of two fencing systems banked and topped with razor wire as well as intrusion and other alarm systems. Inmates are generally housed in multiple-occupancy housing units, similar to college dormitories or military-style barracks. They exit their housing units, sometimes under supervision and sometimes not, and walk across open prison grounds to program areas, the mess hall and other destinations.

The population of medium-security prisons is split almost in half, with 50.6 percent convicted of nonviolent felonies.

Inmates are eligible for medium-security placement when they are within six years of release. However, misbehavior, poor program participation, crime of commitment and other

factors can bar inmates from medium-security placement at the Commissioner's discretion. In fact, many inmates convicted of violent felonies serve their entire sentences in maximum-security prisons.

Minimum-security prisons generally do not have a secure perimeter. They consist of the same dormitory- and barracks-style housing found in medium-security prisons. Minimum-security facilities are designated as work release facilities, outdoor work camps or Shock Incarceration facilities.

Inmates are barred from minimum-security placement if they have been convicted of arson or a sex offense, have a history of escape or leading a riot, have outstanding warrants or orders of protection against them, their alien status is unclear or they are Mariel Cubans, or have a history of violence against authority or a pattern of impulsive violence. Inmates must be within two years of release to enter a camp or work release facility, or within three years of release to enter Shock Incarceration.

In addition to maximum-, medium- and minimum-security general confinement housing, the Department also operates select, specialized sub-units within certain facilities. These are designed to house and meet the needs of segments of the inmate population whose background and characteristics raise at least initial concerns about the inmate's ability to be properly and safely housed in a general confinement setting.

Inmates can remain in the following units as long as they are considered victim-prone and do not themselves become a threat to other inmates housed therein:

Clarifying sentences ...

Continued from page 7

conditional release date (two-thirds of the maximum) can be computed on a life sentence. So on a 25 years to life sentence, for example, the offender must serve all 25 years of the minimum. After that, release will only occur by an affirmative vote by the parole board. No one can predict when – or even if – that will occur.

It is therefore no surprise that the complexity of indeterminate sentencing confuses and angers the public.

It reacted angrily, for example, when Joel Steinberg was released from prison in 2004. The public was outraged that he had served “only” 16-2/3 years of what it thought was a 25-year sentence for battering and finally murdering his six-year-old daughter in 1987.

In 1988, a judge gave Steinberg an indeterminate sentence of 8-1/3 to 25 years, then the harshest sentence possible for his crime. Many headline writers, at that time and since, fell victim to the complexities of indeterminate sentencing by writing “Steinberg gets 25 years.”

In reality, the sentence that Steinberg received meant he would become eligible for parole in 1996 after completing his minimum sentence of 8-1/3 years. But instead of releas-

ing him, the parole board exercised its discretion by voting to deny him release in 1996, 1998, 2000, 2002 and 2004.

Then, despite the wishes of the Department and the parole board, the indeterminate sentencing law required his release on his conditional release date because he had not lost any good time.

By law, that occurs upon completion of two-thirds of the maximum sentence. For Steinberg, that came in 2004 when he completed 16-2/3 years of his 25-year maximum sentence.

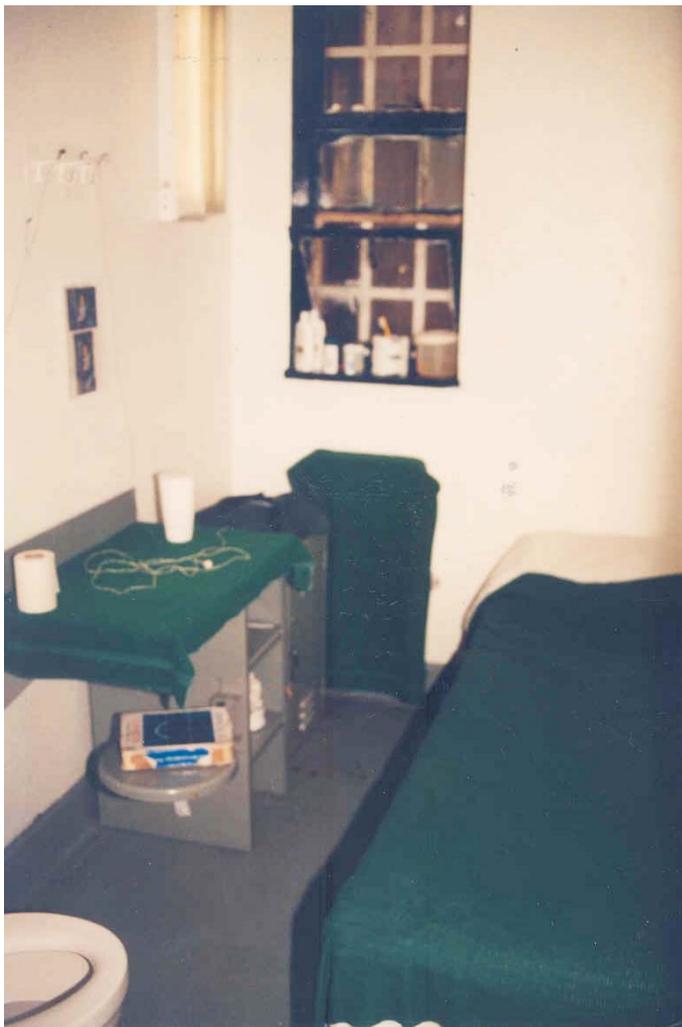
Had Governor Pataki's 1995 determinate sentencing laws been in effect when Steinberg committed his crime in 1987, he would still be behind bars today.

Had he received the same 25-year maximum as a determinate sentence in 1988, Steinberg would have been required to serve more than 21 years before becoming eligible for a one-seventh reduction in his sentence.

That means he would not have become eligible for release until 2009. That's 13 years after he first became eligible for release in 1996 under indeterminate sentencing.

As of mid-February, 22,054 inmates were serving determinate sentences while 40,625 were serving indeterminate sentences. □

- Clinton Correctional Facility operates the 258-bed Assessment and Program Preparation Unit (APPU) housing offenders who might be considered victim-prone in prison. Half the inmates housed here are sex offenders. Others include former judges, police officers, informants and transsexuals. Among other things, this discrete unit affords selected inmates an ample opportunity to adjust to prison life in a controlled but not unduly restrictive environment. The ultimate goal is to transition these offenders into general confinement placement.



This is a cell in an older maximum-security prison.

- Approximately 340 inmates are in voluntary protective custody at any given time while another 160 are in involuntary protective custody. Most are held in one of the 14 designated protective custody units: Attica (36 beds), Auburn (38), Clinton (80), Collins (110), Cossackie (42), Downstate (24), Elmira (59), Five Points (26), Great Meadow (34), Green Haven (42), Mid-State (32), Oneida (43), Sing Sing (30) and Wende (26). In addition, facilities can house protective custody inmates in Special Housing Units or in other isolated areas.

- Approximately 900 beds are designated for inmates in need of all types of mental health treatment and specialized services. Because of these disabilities, they cannot function within the general population. These units offer different types and levels of care to meet inmate mental health needs. As with mental health patients on the outside, the goal is to mainstream these individuals back into the general population.
- Clinton also houses the 216-bed Merle Cooper Program, a therapeutic community to help inmates deal with issues regarding their criminal behavior.
- Eastern has a 31-bed unit dedicated to the care of the sensorially disabled. In addition, while there are no set bed limits or dedicated units such as Eastern's, the needs of sensorially disabled inmates can also be met in specialized programs at Albion, Arthur Kill's drug treatment program, Bedford Hills, Five Points, Lakeview's Shock Incarceration program, Sullivan, Taconic, Wende, Woodbourne and

Wyoming.

- Special Needs Units to meet the needs of mentally retarded/developmentally disabled inmates are located at Arthur Kill (50 beds), Sullivan (64) and Wende (52).

The separation of victim-prone inmates from the general population is a major step in protecting them from violence. It is also a crucial part of maintaining good order within a prison. □



This is a generic medium-security barracks where inmates are housed in open cubicles.

IV. Constantly improving, inmate health care meets standards

The Department recognizes its responsibility to provide inmates with adequate health care. It is the constitutional and humane thing to do.

It is also the smart thing to do. The fact inmates know quality care is available goes beyond health concerns to help reduce prison tensions and anxieties that would rise if such care was not accessible to all inmates.

It is also the smart thing to do since most inmates will someday be released from prison. It makes sound public health care sense to address inmate medical concerns during their incarceration.

The delivery of prison medical care starts with the one million visits inmates make each year to sick call.

Most penologists agree that, as a group, inmates fell below community averages in seeking appropriate medical treatment on the outside. People incarcerated tend not to have had medical insurance and tend to come from groups, such as substance abusers, who are discriminated against when they do seek medical care. That means they often bring advanced and complex medical needs with them into prison. New York's record shows improved medical care has led to steep declines among inmates in HIV/AIDS related deaths and the incidence of tuberculosis, plus dramatic increases in resources devoted to inmates in need of medical and mental health services.

The Department has reorganized the delivery of inmate health care since 1995 into a system-wide approach to improve availability and efficiency. Inmates are moved frequently among prisons for security, program and other reasons. That makes it essential that all necessary health care is available throughout the state and that care is uniform and consistent.

Primary health care is provided by state employees utilizing primary care treatment guidelines for many common health problems. A statewide network of approximately 1,000 community-based specialists provides specialty consultations. Telemedicine equipment in more than 50 prisons is used to conduct approximately 5,000 consultations each year.

The Department ensures that inmate/patients receive health care that is comparable to that provided in the community. It does so through contracts with a licensed utilization review provider which reviews requests for consultations and hospitalization against the same criteria used in the community. Internally, the Department uses a Quality Improvement (QI) process with each facility as well as in central office in Albany. Senior utilization review nurses and infection control nurses collect data



Prison health care provides inmates with quality in-house and community care.

on care which is provided to the QI committees.

Since 1995, hospital bed days per year have been reduced by 51 percent, from 37,500 to 18,500. Over the same period, consultations with specialists have increased 327 percent, from 30,000 to 128,000.

Mental health services are provided by the state Office of Mental Health (OMH). The Department has provided an ever-increasing spectrum of service settings for the delivery of OMH services, including treatment in the general population and for crisis care. Treatment of inmates in Special Housing Units is enhanced with the addition of special Behavioral Health Units at the Sullivan and Great Meadow correctional facilities.

Inmates with mental illness who have difficulty functioning in general population can be housed in special units such as intermediate care programs. Discharge planning for those with serious mental illness has been enhanced through a special unit at Sing Sing.

Spending doubles on inmate medical care

The inmate population totaled 66,750 inmates when Governor Pataki took office in 1995. It rose to 71,472 at the end of 1999, before declining 11 percent to 62,732 inmates at the end of 2005.

Meanwhile, inmate medical care data for Fiscal 1996 versus Fiscal 2006 show that:

- Total inmate medical care appropriations have increased 103 percent, from \$149 million in Fiscal 1996 to \$303 million in Fiscal 2006.
 - \$254 million has been spent to build or renovate prison medical facilities.
 - Inmate HIV/AIDS-related deaths have declined by 93 percent, from 258 in 1995 to 17 in 2005, due in part to the fact that:
 - More than 15,000 inmates are tested voluntarily each year for HIV status. Earlier detection can make treatment more effective, thereby increasing longevity.
 - In a sample of 4,000 incoming inmates in 2003, the HIV seropositivity rate among males was 4.8 percent, a 75 percent drop from the 18 percent found in the first sample conducted in 1988. For women, the rate dropped from 19 percent to 11.4 percent, a decline of 42 percent. That results in an overall inmate infection rate of 5.1 percent in 2003, versus 17.1 percent in 1988.
 - There has been an 83 percent decrease in the rate per 100,000 inmates of active TB cases diagnosed in DOCS, with only nine cases last year versus 54 per 100,000 in 1996.
 - Based upon a state Department of Health blinded seropositivity study of 3,936 incoming inmates in 2003, it is estimated that 13.3 percent of males and 24 percent of females have evidence of Hepatitis C infection. Based upon the current population, that projects a pool of 9,500-10,000 infected inmates. The only previous study was conducted of 4,022 incoming inmates during 2000-01. That found an infection rate of 13.6 percent among males and 23.1 percent among females.
 - 1,358 inmates have started treatment for Hepatitis C since medication became available. 409 inmates started treatment in 2005. Treatment is based upon regularly updated clinical care guidelines that are based upon recommendations from the Federal Centers for Disease Control (CDC) and the National Institutes of Health (NIH).
 - Inmates with chronic Hepatitis C, for whom treatment is not indicated under care guidelines based upon recommendations from the CDC and NIH, are monitored regularly. Those with normal liver function are tested every 6-12 months. Those with elevated liver functions are monitored every 8-12 weeks.
 - In 2001, 42 inmate deaths resulted from liver disease, including 19 suffering from Hepatitis C. In 2004, the latest year for which complete data are available, there were 24 inmate deaths from liver disease, 18 of whom had Hepatitis C.
 - Completion of treatment for Hepatitis C is important. In the past, inmates were required to complete treatment while they were in prison because there was no public funding of treatment in the community and one of the drugs is given by injection.
 - A new program, The Hepatitis C Continuity Program, has been developed that allows for the completion of treatment and continuity of medical care when the inmate is released to the community. Originally, this program only applied to inmates released to the New York City area, but has recently been expanded to include the rest of New York state.
 - The Department is also purchasing more than 600 Automated External Defibrillators (AEDs) to augment the 96 now in use system-wide. This means additional facility staff will need to be trained in their operation and use.
- Mental health spending increases 300 percent**
- Highlights of inmate mental health care data in Fiscal 1996 versus Fiscal 2006 show:
- A 300 percent increase in the Department's mental health and psychotropic drugs appropriations, from \$5.6 million to \$22.5 million.
 - A 58 percent increase in the mental health caseload (from 4,893 to 7,722.) That means about 12 percent of inmates have been diagnosed as in need of such services, compared to a national average of 15 percent of all prison inmates.
 - A 400 percent increase, from 440 cases annually to 2,200 last year, in discharge plans prepared by the Department and OMH that are coordinated with local mental health care providers for inmates leaving the prison mental health caseload.
 - A 78 percent increase in OMH's staff assigned to prisons (from 231 to 412.)
 - A 56 percent increase in Department mental health staff (from 79 to 123.)
 - A 47 percent increase in Department beds held for critical mental health care (from 616 to 904), in addition to 200 beds at OMH's secure Central New York Psychiatric Center.
 - 30 Intermediate Care Program beds were added at Great Meadow Correctional Facility in 2005.
 - Behavioral Health Units opened in 2005 at Great Meadow with 38 beds and at Sullivan Correctional Facility with 64 beds.
 - The Department's first OMH satellite unit in a medium-security prison housing female offenders opened at Albion Correctional Facility in 2005.
 - Nearly 123,000 Departmental employees have been trained on mental health topics since such training began in 1995. During 2005, 21,544 received the one-hour inmate suicide prevention program and 678 received the eight-hour program.
 - New York remains the only state in the nation where the Chicago-based Joint Commission on Accreditation of Healthcare Organizations (JCAHO) has accredited every prison OMH unit. □

V. Promoting good behavior serves staff, inmates alike

Inmates may have had co-defendants on the street. They may have been members of street gangs. They may well have relied upon those cohorts for support on the streets, and then, once arrested, blamed them for their criminal behavior.

Such finger pointing ends when inmates come to prison. Each inmate does time alone. What happens with each in prison is based solely upon their individual actions. There is no latitude given to blame others for their own decisions, no responsibility for their actions to be laid at the feet of others. Inmates soon learn they alone are solely responsible for the decisions they make about their prison conduct. It is one of their first steps in preparing to return to society while augmenting prison safety.

The Department knows that tangible rewards for individual good behavior can serve as an enormous incentive for inmates in general to obey the rules and to refrain from engaging in misbehavior.

When behavior can affect the length of time an inmate remains incarcerated, then individual incentives become very powerful and meaningful.

There are a host of prison programs that make good behavior more than just its own reward: they not only prepare inmates for release, but promote prison safety and security as well.

Meriting early release

Recognizing the need for such incentives as a means to maintain order and protect staff as well as inmates, Governor Pataki proposed a merit time law in 1997 that the Legislature enacted later that year.

It allows inmates whose underlying crimes are nonviolent to reduce their minimum sentences through good behavior and positive program participation. The reduction can be as much as one-third off an indeterminate sentence and one-seventh off a determinate sentence. Conversely, inmates who commit serious disciplinary infractions or fail to participate positively in programs are ineligible for merit time.

The Department promulgated regulations telling inmates exactly which rule infractions and disciplinary penalties are serious enough to warrant disqualification for merit time. For example, inmates are disqualified from receiving merit time following a guilty finding for assault on another inmate, assault on

staff or other non-inmates, a sex offense, a weapons charge, a drug charge, or an unhygienic act such as throwing feces or urine at staff. Inmates are also deemed ineligible if they receive disciplinary sanctions of 60 days or more, or a punishment resulting in a recommended loss of good time.

In addition to the disciplinary requirements, inmates must participate positively in assigned programs. They must also meet one of the following program standards: obtain a GED, complete a substance abuse treatment program, earn a vocational certificate after six months of programming, or complete 400 hours of community service.



Comprehensive Alcohol and Substance Abuse Treatment programs, like this one at Marcy, offer group meetings and personal intercommunication, positive exchanges that benefit individual inmates and prison safety alike.

As of Dec. 31, 2005, the merit time program generated 21,269 inmate releases prior to their court-set parole eligibility date. The Department also calculates that the demand for prison space is 1,767 beds less than it would have been had merit time not been enacted. These 21,269 inmates were re-

leased an average of 6.16 months prior to their court-set parole eligibility dates. Using an average annual incarceration cost of \$29,000 per inmate, the operational savings for the Department as of the end of last year totaled approximately \$314 million.

Hence, not only has this program fostered a much safer correctional environment, it has also resulted in significant monetary savings to taxpayers. (A copy of Department Directive 4790, entitled “Merit Time,” appears as [Attachment B.](#))

Good time off the ‘max’

Inmates can also earn time off the number of years set as their maximum sentences. Since inmates serving sentences of life do not have a fixed number of years in their maximum sentences, these 12,211 inmates are not eligible for this program.

The amount of good time off the max that an inmate can earn depends upon whether an inmate’s term is controlled by an indeterminate or a determinate sentence. In the case of indeterminate sentences, good time equal to one-third of the maximum sentence is allowed. Inmates serving determinate sentences can earn a reduction of up to one-seventh.

These sentence reductions may be granted for good behavior and positive performance of assigned duties or for progress and achievement in an assigned treatment program. Conversely, they may be withheld, forfeited or reduced for bad behavior, violations of institutional rules or failure to perform properly in the duties or program assigned.

Earning Eligibility for release

During the reception process, each inmate learned what programs were necessary for the inmate to prepare for eventual release. The Department sought an incentive to promote improved inmate behavior while they worked to complete those program options. In 1987, the state created the Earned Eligibility Program (EEP), which Governor Pataki expanded upon in 2003.

Under EEP, eligible inmates – those serving minimum sentences of eight years or less – are urged to work toward completion of appropriate programs and to follow prison rules. If they do so, they receive certificates of earned eligibility.

EEP does not reduce the length of a sentence, as do merit time off the minimum sentence and good time off the maximum sentence. Instead, possession of an EEP certificate significantly increases the likelihood of a favorable parole board decision. Inmates with an EEP certificate can only be denied parole release if it can be affirmatively shown that they cannot be expected to live within the law if released.

Nearly 215,000 inmates, or 68 percent of the 316,705 inmates eligible for EEP since 1987, were awarded certificates through September 2005, the latest date for which complete data are available. The actual release rate for those nearly 215,000 inmates earning EEP certificates is 66 percent. By comparison, the release rate was only 36 percent among those eligible for EEP who did not receive such certificates, either due to misbehavior or failure to participate in program assignments.

Combining EEP-eligibles issued certificates with those who weren't, the overall release rate is 57 percent among all inmates eligible for such certificates.

Prior to EEP, the overall rate of release for these same inmates was 50 percent. Therefore, it can reasonably be said that EEP has contributed to nearly 22,000 more releases at first parole eligibility (57 percent) than would have otherwise been expected to occur without it (50 percent).

For inmates, that is a strong incentive to behave and involve themselves in programs. For the prison system, that means thousands of inmates with reasons to behave and not jeopardize the safety of staff or other inmates. For the public, the fact that one-third of EEP eligible inmates are being denied certificates shows the Department is not rubber-stamping early release applications.

Geography encourages good behavior

A record of good behavior and program involvement is important for other reasons as well. One reason can be seen by looking at a map showing the location of the state's correctional facilities. (A copy of the Department's map locating correctional facilities appears as [Attachment C](#).)

While more than 90 percent of state prison beds are located north of New York City, the five boroughs are home to 55 percent of inmates. Eleven percent come from its immediate suburban counties and 34 percent from the rest of upstate New York.

In general, inmates prefer to be confined in those facilities that are closest to their homes to facilitate visits from loved ones.

As another way of providing inmates with an incentive to behave, the Department has instituted a "closer to home" or "area of preference" transfer policy. The general premise of this policy is that an inmate spends some specified period of time in an initial general confinement facility. Inmates are eligible to transfer to a facility

closer to home provided that they maintain positive disciplinary and program records.

Hence, this serves as a strong incentive for inmates to follow the rules.

Family Reunion necessitates good behavior

A positive record of behavior is also important for an inmate's eligibility to participate in the Department's Family Reunion Program. The goal of this program is to provide selected legally-married inmates and their family members the opportunity to be together for 36-44 hours on prison grounds.

Such extended visits take place in mobile home-like units with limited access within the perimeters of selected maximum-security and certain large, medium-security facilities. As



Religious programming provides inmates with a positive outlet. Here, Roman Catholic Cardinal Edward Egan celebrates Mass at Arthur Kill.

a precondition for participation, an inmate must be participating in assigned programs and cannot have had any recent disciplinary problems. Since this program affords inmates the opportunity to share private moments with family members in a secure setting, this also serves as an enormous incentive to behave.

Last year, nearly 8,300 inmates had visits with 6,680 legally-married spouses, 3,822 children, 1,761 parents, 788 siblings and 802 other relatives in program sites at Attica, Auburn, Bedford Hills, Clinton, Collins, Downstate, Eastern, Elmira, Fishkill, Great Meadow, Green Haven, Shawangunk, Sing Sing, Southport, Sullivan, Wallkill, Wende and Woodbourne. At Downstate and Southport, the only inmates who can participate in the program are cadre. These are the inmates assigned to such facility operation tasks as the mess hall, laundry, grounds maintenance and cleaning details.

Honor housing has its rewards

A prerequisite for admittance into any honor housing unit is a positive disciplinary record. Ten maximum-security prisons have nearly 1,500 cells in honor blocks while there are almost 1,600 beds in honor housing at 18 medium-security prisons.

Inmates whose behavior allows for honor housing placement receive additional benefits that can include, depending upon facility, access to late-night recreation, additional television viewing hours, more liberal hours to use collect call-only phones, additional commissary buys, expanded on-unit cooking privileges, use of clothing washer and dryer machines, additional yard privileges and additional hours of shower operations.

Honor housing is also separate from the general population where conduct is not always so honorable. In maximum-security prisons, honor housing may offer larger cells than those in general population.

Time tolls for misbehavior

Departmental inmate programs – be they academic, vocational, treatment or work assignments – are designed to prepare inmates for eventual release. In addition, they keep inmates positively involved as a means to reduce the number of prison incidents and overall violence. As a result, it is vital that inmates remain positively involved in these programs.

But there are always those inmates who do not heed that message and choose to refuse programs or break prison rules. When an inmate is found guilty of a serious disciplinary infraction, one of the penalties that may be imposed by the hearing officer is a recommended loss of good time for a specified period of time.

That loss of good time will catch up with inmates as they near their release dates.



Disciplinary hearings like this one decide if good time will be lost for misbehavior.

Four months prior to an inmate's conditional release date, a prison Time Allowance Committee convenes to consider the inmate's institutional record. It will determine if some or all of the inmate's permissible good time should be granted or withheld.

Of the 10,400 inmates appearing before Time Allowance Committees in 2005, failure to program was a factor contributing to the loss of good time for 1,641 of them, or 16 percent. The Department has made itself clear to inmates: for the safety of staff and inmates, as well as to prepare inmates for release, they will be penalized if they refuse to participate in programs.

For inmates who have exhibited bad behavior during the initial stages of their sentences, but thereafter maintained a positive record, the Time Allowance Committee may choose to restore good time despite the earlier infractions.

The theory behind that restoration is simple. If inmates think they cannot make up for misbehavior during the early days of their incarceration, there is no incentive for them to behave for the rest of their incarceration. They then become threats to institutional safety and security.

Therefore, if an inmate's subsequent behavior and program participation outweigh early misbehavior, the Time Allowance Committee can vote to restore some or all lost good time.

Just as the Department has an array of programs designed to foster good behavior, it equally needs a format to fairly punish inmates who fail to program properly or refuse to follow prison rules.

That's the second half of the equation in maintaining prison security and safety for staff and inmates alike. □

VI. Sanctions for inmate misbehavior protect other inmates, staff

The array of inmate rewards and benefits for positive behavior represents one-half of the equation employed by correctional administrators to maintain a safe correctional environment. Equally important are the sanctions and penalties that may be imposed upon inmates who choose to misbehave.

Inmate violence is more likely to be directed at other inmates than at prison staff. In 2005, for example, there were 517 inmate-on-staff assaults, but 686 inmate-on-inmate assaults. By comparison, there were 962 inmate-on-staff assaults in 1995 when Governor Pataki took office, compared to 1,741 inmate-on-inmate assaults that year.

The inmate population dropped from 68,489 in December 1995 to 62,732 in December of last year. That means the rate of inmate-on-staff assaults fell from 14 incidents per 1,000 inmates in 1995 to eight last year. Similarly, the rate of inmate-on-inmate assaults fell from 26 incidents per 1,000 inmates in 1995 to 11 last year.

Thus a disciplinary system designed to prevent assaults and other disruptive behavior, and to punish it when it occurs, is more beneficial to inmates than to staff since the former is more often victimized by inmates than the latter.

But in New York, even one prison assault is considered too many. The Department requires an organized system to evaluate inmate misbehavior and to impose fair and consistent punishment.

Filling that role is the three-tiered disciplinary system. When applied reasonably and with fairness and equanimity, the disciplinary system assists in the protection of the health, safety and security of all persons within a correctional facility.

By helping to maintain institutional order, the disciplinary system allows rehabilitative programs to operate in a secure setting. The more programs can operate at a normal level, the more inmates are occupied in positive ways that improve security. Thus, security augments programs just as programs improve security.

Some of the basic precepts of the disciplinary system include:

- There is no “one size fits all.” Disciplinary options must be appropriately varied to fit such factors as the particular circumstances involved, the overall behavior history of the inmate and the prevailing atmosphere of the facility. An inmate’s misbehavior, for example, could draw a more severe punishment if it occurs while a facility is undergoing many incidents and disruptions than if the same offense occurred during a time of institutional quiet.

- Punishments must be commensurate with the offense. Disciplinary action is taken in such measure and degree as is necessary to regulate an individual inmate’s behavior and to achieve compliance by the entire inmate population with required standards of behavior.

- Sanctions must be fair. Disciplinary action must be administered in a completely fair, impersonal and impartial manner and must be consistent.

- As justice should be swift and sure, so, too, should inmate discipline. Disciplinary measures rely upon certainty and promptness for their effect on the general population, more so than their severity which affects only the individual inmate.

- Disciplinary action must never be arbitrary or capricious or administered for the purpose of retaliation or revenge.



This is a purpose-built, double-occupancy SHU cell with the top bed removed. Door at left rear leads to exercise yard. Door to right accesses shower. Staff control both doors. Desk and toilet areas are at right out of photo.

Three-tiered inmate disciplinary system

The Department uses a three-tiered disciplinary system in order to ensure punishments are commensurate with misbehavior. In the most general terms, there is no charge of misconduct that “always” or “automatically” falls into any tier category. In each case, the charge will reflect the facts of the individual incident and the threat posed against the orderly operation of the prison.

Tossing a paper cup at staff, for example, will not bring the same level of assault charge as that filed against an inmate for physically attacking an employee. But even the tossing of the

paper cup could bring varying charges: it could be viewed differently if it occurred in a one-on-one situation versus in front of a group of inmates with the intention of provoking the group to attack the employee.

The Department's disciplinary system begins with Tier I, dealing with the most minor of infractions. The disciplinary hearing is conducted by a Sergeant. The maximum penalty is a 13-day loss of privileges.

Next are Tier IIs for more serious offenses. Hearings are conducted by a Lieutenant, formal charges are placed and witnesses can be called. The most severe penalties imposed are 30 days in keeplock and/or loss of privileges.

Generally speaking, maximum-security keeplock sentences are served in general confinement cells. Inmates are locked in around-the-clock except for an hour's exercise each day or unless they have visitors or require medical care. Keeplock inmates are afforded more property and privileges than those housed in Special Housing Units (SHUs) discussed below. In lower-security prisons, where inmates are housed in barracks and dormitories, keeplock sentences can be served in an SHU under its rules.

Tier IIIs are for the most serious offenses, such as assaults on staff or other inmates. These hearings are typically convened by Captains or above and involve the full due process allowed under the disciplinary system. Penalties can include SHU confinement, extended loss of privileges and the loss of good time.

SHU confinement is the most restrictive imposed in prison. It is a group of cells separated from the general population. Inmates in SHU are confined to their cells for 24 hours per day but are offered showers and one hour of daily outdoor exercise. SHU inmates may also be allowed out of their cells for medical and legal visits, plus one non-legal visit each week. The items of property for an inmate in SHU are severely limited.

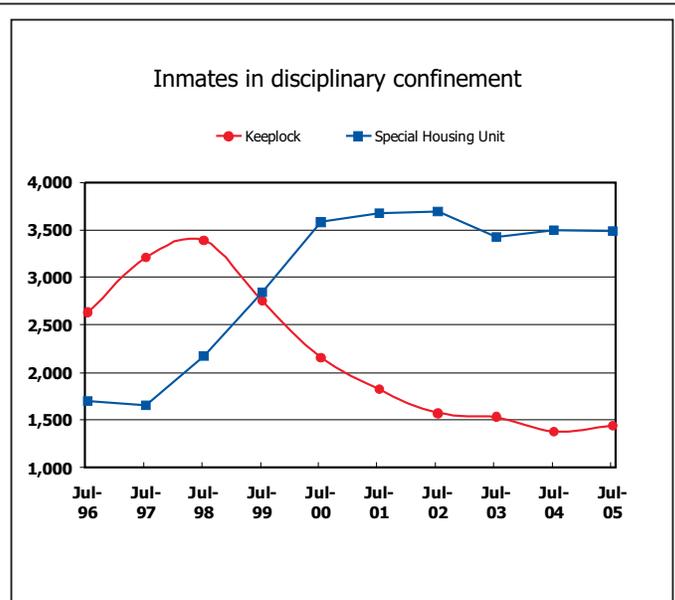
While in SHU, inmates receive extensive counseling services and are visited regularly by mental and medical health services staff, chaplains and the security supervisors required to make daily rounds on the unit. Inmates are also offered various cell-study courses and some receive GED programs. In addition, inmates can possess a combined total of five books, magazines or newspapers from the general library plus a total of 15 volumes from the law library.

Since 58 percent of disciplinary confinement beds are now in purpose-built, double-occupancy cells, such housing is not the "solitary confinement" so popular in prison movies of the past century. The new double-occupancy cells also have built-in showers controlled by staff. They also have a door in the back wall of the cell, controlled by staff, that opens into an enclosed outside exercise area. (See photo on page 16.)

Having in-cell access to showers outdoor exercise eliminates two of the main points of contact between staff and inmates that lead to confrontations in disciplinary housing units.

SHUs also provide a basic protection not unlike that sought by the general public. The public wants to be protected by the incarceration of dangerous, violent, and predatory felons. Simi-

Continued on page 19



SHU expansion protects staff, inmates

Special Housing Unit (SHU) capacity was severely lacking when Governor Pataki took office in 1995.

That was in large part due to the massive infusion of nonviolent drug offenders into the prison system in the 1980s and early 1990s. Thousands of medium-security beds in military-style barracks were added during that period through the construction of two dozen new prisons to house basically nonviolent drug offenders.

Separate SHUs with individual cells were constructed at those prisons to accommodate the expected numbers of inmates requiring separation for misbehavior. The size of the SHUs was projected and the units built based upon the initial capacity of those new prisons. But an increasing inmate population would require more than 6,000 of those beds in prison barracks to be double-bunked. At some prisons, 500 bed annexes were also added. No new SHU cells were built at any of these prisons.

As a result, the Department had only 2,266 SHU beds as the prison population reached 69,108 inmates in December of 1997. But there were 5,271 inmates in disciplinary confinement.

As medium-security SHUs filled with misbehaving inmates, their overflow spilled into the SHUs in maximum-security prisons. When they became full, maximum-security prisons had to devote hundreds of general confinement cells as extended SHU or keeplock space. Attica was representative of other maximum-security prisons. In December 1997, fully 20 percent of its general confinement cells had been given over to housing inmates serving disciplinary confinement.

That gridlock in maximum-security general confinement caused the backup of thousands of "state readies"

in county jails. The Department was unable to take custody of significant numbers of offenders who required maximum-security confinement.

It was not uncommon during that period for some inmates to be released early from SHUs for no reason other than to make room for newly-committed SHU inmates. That sent a message to inmates that, despite their conduct, SHU time would be cut to make room for other inmates. Besides sending the wrong message to inmates, the policy had an extremely negative impact on employee morale.

When he took office, Governor Pataki moved immediately to implement his promise to lock up violent offenders for longer sentences and to end their privilege of discretionary parole. With the enactment of his determinate sentencing law, violent felony offenders would serve longer sentences. But he knew that would require more maximum-security beds.

Governor Pataki tied his sentencing initiatives to the largest single maximum-security prison construction project in state history. It consisted of 4,950 beds in 2,475 double-occupancy cells. They included 3,100 beds in 1,550 double-occupancy cells for disciplinary housing.

That allowed thousands of inmates serving disciplinary housing sentences in general confinement cells to be “swapped” into the new SHUs. That relieved pressure on SHUs in both maximum- and medium-security prisons. Attica, which in December 1997 devoted 450 general confinement cells to disciplinary housing, now has only 77 inmates in such confinement. For counties, it meant the state could accept custody of the thousands of offenders backed up in their jails.

The new space sent word to inmates that the Department now had the space necessary to lock up those who violated prison rules. There would be no more “time cuts” for lack of space.

Pataki completes record cell expansion

The Governor’s construction plan consisted of:

- Free-standing maximum-security SHUs of 200 beds in 100 double-occupancy cells, dubbed S-Blocks, on the grounds of these eight medium-security facilities: Ca-

yuga, Collins, Fishkill, Gouverneur, Greene, Marcy, Mid-State and Orleans. A ninth was constructed on the grounds of the minimum-security Lakeview Shock Incarceration Correctional Facility.

- 1,500 beds in 750 double-occupancy cells at the maximum-security Upstate Correctional Facility. Twelve hundred beds are designated as SHU space. The remaining 300 beds are general confinement, housing cadre inmates.
- 1,500 beds in 750 double-occupancy cells at the maximum-security Five Points Correctional Facility. It is the opposite of Upstate. It has

1,400 beds for general confinement inmates in this fully programmed prison. Only 100 of its beds are designated for SHU use.

- At the maximum-security Southport Correctional Facility, 150 beds in 75 double-occupancy cells were added to house inmate cadre. The pre-existing 789 single-occupancy cells are all designated for SHU use.

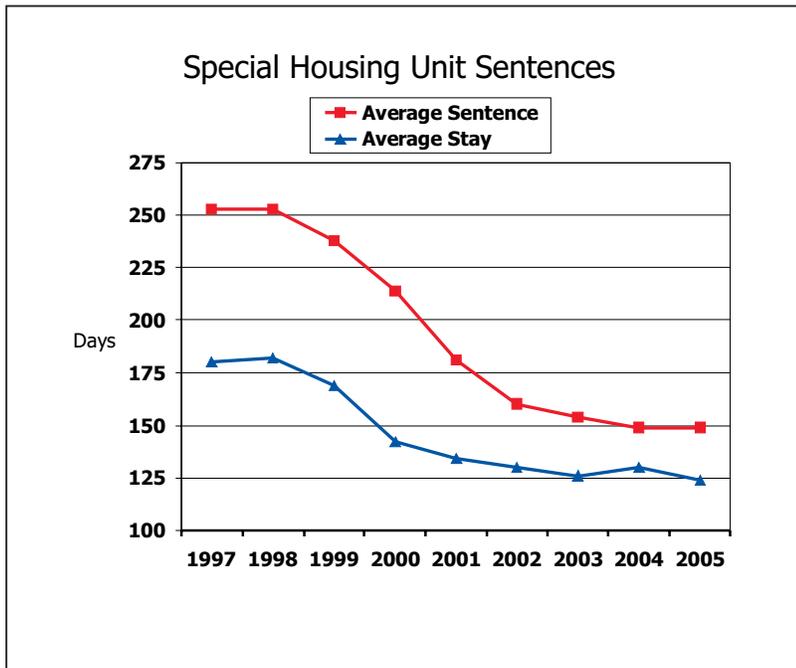
With the opening of all the new beds, the Department had 5,366 beds designated for

disciplinary housing – 3,100 in new double-occupancy cells (58 percent) and 2,266 in preexisting single-occupancy cells.

By December 2005, the number of inmates in disciplinary status stood at 4,680. That’s 11 percent fewer than the 5,271 confined in December 1997, the year before the new SHU beds began coming on line.

That disproved the critics who had charged that the Department would leave the 5,271 inmates where they were and “drum up charges” to fill the new beds with 3,100 more inmates – bringing the total in disciplinary confinement to more than 8,300 inmates.

Instead, the new beds had the effect forecast by the Department: inmates got the message that sufficient disciplinary housing space is now available to immediately lock up those who choose to break prison rules – without granting unearned “time cuts” to other inmates just to free up an SHU cell for new arrivals. □



Continued from page 17

larly, the general inmate population wants those offenders who continue to be disruptive, dangerous or violent behind bars to be locked up. An inmate who is confined to an SHU – the proverbial “prison within a prison” – is not out assaulting inmates, attacking staff or endangering prison operations.

That makes prison safer for staff and inmates alike.

Eight states use lock down more than New York

Analysis disproves the critics who allege that New York leads the nation in locking inmates down around the clock.

Historically, the most reliable data on restricted inmate housing around the nation was contained in *The Corrections Yearbook*, published annually by the Criminal Justice Institute, Inc. in Middletown, CT. Unfortunately, it ceased publication with its 2002 edition that included data for January 1 of that year. Though dated, it still offers the latest reliable national compilation of such data.

It reported New York had 5,025 inmates in near round-the-clock lock down in disciplinary confinement, administrative segregation plus protective custody on that date. That was 7.5 percent of the Department’s population. Elsewhere on that date:

- 9,136 inmates were locked down in those three categories in Texas, nearly twice the number in New York. (California did not report figures for that date, but had reported a comparable total of 8,775 on Jan. 1, 2001 for the 2001 yearbook.)
- 7.6 percent of the prison population was locked down in Colorado, 9.1 percent in Hawaii, 7.6 in Illinois, 8.5 in Missouri, 8 percent in South Dakota and 9.3 percent in Tennessee.

Thus, the latest data show two states lock down greater numbers of inmates than New York and six others lock down higher percentages of inmates than does New York.

Inmates earn their way in, out of SHU

Just as inmates know their individual misconduct earns them placement in an SHU cell, they have learned that improved conduct can serve as the key, out of it.

The Department recognizes it is important to retain incentives for inmates to behave while they are serving their prison sentences – even while they are in the SHU.

On Oct. 1, 2003, in a broad-based effort to encourage positive adjustment and establish clear-cut behavioral goals for inmates assigned to SHU, the Department implemented a Standardized Discretionary Review Procedure (SDRP) at 37 facilities with SHUs. This new initiative was similar to the pilot Progressive Inmate Movement System (PIMS), already in effect at the S-Blocks and certain other facilities. (A copy of the PIMS procedure appears as [Attachment D](#).)

PIMS allowed for modification of restrictions as inmates demonstrated a positive adjustment to SHU confinement. For this new SDRP initiative, the anticipated benefits included:

- Establishing incentives for positive adjustment for in-

mates in SHU;

- Providing line staff input into discretionary review decisions;
- Giving inmates a stake in maintaining a positive adjustment and attitude in SHU and providing a time-reduction incentive for inmates serving long SHU dispositions;
- Fewer misbehavior reports and hearings for inmates in SHU;
- Less conflict between SHU staff and inmates, and
- Consistency in discretionary review procedures throughout the state.

The new Standardized Discretionary Review Procedure required formation of a committee composed of a member of the facility executive staff who serves as the chairperson, guidance and counseling staff (usually an SHU counselor), and an SHU security supervisor or designee. They meet on a monthly basis to review the eligibility for discretionary reviews of inmates assigned to special housing. SHU staff has direct input into all discretionary review decisions. The committee makes recommendations to the superintendent who can accept, modify or reject any such recommendations. (A copy of the Standardized Discretionary Review Procedure policy appears at [Attachment E](#).)

Inmates who have an SHU sentence of 90 days or more and who have satisfied a 30-day post-adjustment period are eligible for review after serving one-half of their SHU time. If justified, inmates can receive a reduction of up to one-half of their remaining time, or one-quarter of the original sentence.

The average disciplinary *sentence* was 238 days in 1998, the year the Governor’s new SHU beds began coming on line. The average *time served* on those sentences was 184 days. Most of the 54-day reduction came in unearned forced time cuts due to lack of space.

Last year, the average SHU sentence was 149 days – three months shorter than the 1998 average.

In addition, inmate conduct in the SHU has improved to the extent that those 149-day *sentences* last year resulted in an average *time served* of only 124 days as inmates earn early SHU release – with no time cuts just to make room for other inmates.

The Department believes this data show that:

- The certainty of facing SHU confinement for misbehavior contributes to generally improved inmate conduct, reflected in the imposition of shorter-term sentences.
- The SHU time cuts are directly related to improved inmate behavior generated by both the Progressive Inmate Movement System and the Standardized Discretionary Review Procedure.
- The downward trend in the number and length of SHU sentences becomes even more dramatic in light of the fact that the percentage of inmates serving sentences for violent offenses increased from 53 percent in 1998 to 57 percent last year.

Misbehavior can draw added sentence

Another important sanction for serious inmate misbehavior is the prospect of facing outside prosecution on additional criminal charges. By law, the conviction of a prison inmate on a new felony offense must lead to an additional sentence of imprisonment to be served consecutively. Hence, inmates clearly have a strong interest in avoiding any new prosecutions.

Concerned about crimes committed by inmates, Governor Pataki created the Inmate Criminal Prosecution Task Force in 1996. Through the end of 2005, 4,991 cases of inmate misconduct were referred for felony criminal prosecution. More than 2,500 led to convictions, nearly 2,200 of them for felonies. Minus open cases, that is a conviction rate of 56 percent.

Further, New York accounted for 119, or 14 percent, of the 840 inmate assaults prosecuted in prison systems nationwide in 2001, the latest year for which data is available from *The Corrections Yearbook*.

Staff injured protecting inmates

Many of these assaults and other crimes were inmate-on-inmate. Thus, their prosecution is designed to protect inmates more so than staff. Some staff are victims of assaults and other crimes committed by inmates. Staff are also injured when trying to protect inmates from injury by other inmates.

Between 1995-2004, 9,148 staff injuries were sustained during inmate-on-staff assaults, when staff broke up or defended inmates in inmate-on-inmate attacks, during attempted or actual inmate escapes, while dousing fires set by inmates or during other prison incidents.

Of those injuries, 8,215 were reported as minor, 928 as moderate and five as serious. "Minor" is defined as those requiring no treatment or treatable in facility infirmaries, "moderate" as requiring out-patient treatment at an outside hospital, and "serious" as any injury requiring hospitalization, or death.

One of those "moderate" injuries led Governor Pataki to present the Department's highest award in 2002 to a Coxsackie Corrections Sergeant.

The Medal of Honor citation noted that Sgt. Jeffery D. Haines was stabbed in the wrist while trying to stop an inmate's attack on another inmate with an 11-inch homemade knife.

The citation noted Sgt. Haines' "fearless actions put his own

life in jeopardy to prevent further injury or perhaps death" to the inmate victim. The citation concluded, "This courageous and unselfish act epitomizes the dedication and professionalism of the Department's uniformed staff."

The inmate entered guilty pleas in Greene County to attempted assault and promoting prison contraband, drawing an additional 3-1/2 to 7 years in prison. Administratively, the Department Tier III hearing conviction led to a loss of 48 months of good time, four years in SHU plus loss of phone, commissary and package privileges.

Correction Officer Dale G. DuBrey was awarded the Department's second-highest honor, the Medal of Merit, for saving an inmate from himself on Jan. 11, 1999.

Officer DuBrey observed flames and smoke coming from an inmate's cell at Clinton Correctional Facility. After Officer DuBrey unlocked the cell, the inmate refused his orders to exit it. Despite the effects of smoke, Officer DuBrey wrestled the inmate out of the cell. The fire was extinguished before it could spread and endanger staff as well as inmates.

A Tier III hearing resulted in the inmate being convicted of arson, self-harm, refusing a direct order and the loss/damage of state property. He was given six months in keeplock, plus the equivalent loss of recreation, package and commissary privileges. He was also required to pay \$143.01 in restitution.

Liaisons with all district attorney offices have been established to engender cooperative working relationships in prosecution of these cases. In addition, Department Directive 6910, entitled "Criminal Prosecution of Inmates," was promulgated to provide a coordinated approach to the criminal prosecution of inmates who commit penal law violations. (A copy of that Directive appears as [Attachment F](#).)

The Directive provides that, with the objective of maintaining a safe working and living environment and curtailing violence, it is the Department's policy to seek criminal prosecution of inmates who commit felony violations of any state or federal penal code. Facility and Central Office staff are re-

quired to cooperate fully with the state police, district attorneys, the Attorney General's office, U.S. Attorneys and all other federal, state and local police or investigative officials who may be instrumental in bringing a felony case to successful prosecution and conviction. □



A gallery of cells at Sing Sing, the state's second oldest prison.

The myth of the New York 'super-max'

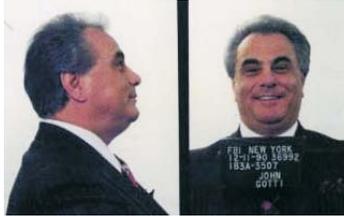
Many outside critics persist in muddying the factual waters by claiming that New York operates Southport or Upstate correctional facilities, or both, as "super-max" prisons.

Those who make that claim demonstrate their lack of understanding of the "super-max" concept. It is designed to instill powerlessness in inmates through incapacitation, and to eliminate any chance for them to affect their prison conditions. By contrast, New York's disciplinary housing system is designed to instill responsibility and urge inmates to take positive control of their lives.

The differences are far more than semantic.

Across the nation, "super-maxes" have some basic commonalities that do not exist in any of the disciplinary housing units located in 40 of New York's 69 prisons:

- Any inmate can be placed in a "super-max" solely because of crime of commitment. That means prison conduct has nothing to do with placement. In New York, an inmate's under-custody misconduct earns 99.9 percent of disciplinary confinement. (See exception under "Department monitors gangs, members" on page 35.) In New York, it is crucial that inmates understand that their placement will, by and large, be determined by their individual prison conduct. That is a tool designed to promote good prison behavior.
- Inmates enter "super-maxes" with no idea of how long they will be incarcerated there, meaning their future conduct will have no impact on their future placement. In New York, each inmate is sent to disciplinary housing for a specified period of time. That does more than let inmates know their sentences. It allows inmates, staff and outsiders to weigh whether or not inmates are receiving fair and equitable punishment for similar misconduct.
- "Super max" inmates generally cannot earn privileges or reduce confinement time through good behavior. In New York prisons, SHU inmates can earn both additional privileges and confinement reductions. That's because it is important to send the message that disciplinary sentences are imposed to improve behavior, not simply for the sake of punishment.
- Virtually every inmate in a "super-max" is housed in a single-occupancy cell to increase isolation. In New York, 58 percent of disciplinary housing unit beds are located in purpose-built, double-occupancy cells. Many others serve disciplinary



sentences keeplocked in their single-occupancy cells on open general confinement galleries where they can easily communicate with other inmates. Inmates in New York's disciplinary housing also interact with a host of security, counseling, medical and mental health staff on a regular basis.

Each of those differences between "super-maxes" and disciplinary housing units are institutionalized at every one of New York's 40 prisons with SHUs. Upstate and Southport simply operate as large disciplinary housing units. But they generally follow the same rules and regulations as those that apply in 38 smaller disciplinary housing units in other maximum- and medium-security prisons around the state.

New York City mob leader John Gotti is probably the most well-known example of a "super-max" inmate. On the day his life sentence was imposed in 1992, he was immediately flown to a federal "super-max" prison because of his crimes. He remained in that status with minimum privileges virtually until the day he died of natural causes.

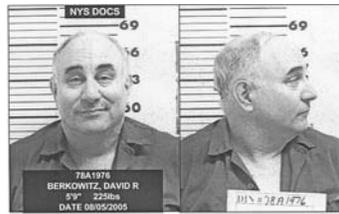
That can be contrasted with the Department's treatment of David Berkowitz, one of New York's most high-profile serial killers. He terrorized New York City in 1976-77 as the "Son of Sam," shooting six people to death and wounding seven others.

He was sentenced in 1978 on six counts of murder, nine counts of attempted murder and six counts each of assaults and possession of a weapon. Collectively, those sentences added up to a term of 133-1/4 years to life. Under sentencing laws in effect at the time, his minimum became 25 years, the longest of those imposed. That made his actual sentence 25 years to life.

Berkowitz was received into the system like any other inmate. He was not considered an institutional threat and therefore did not require isolation. There were, however, concerns he could be victim-prone because of the notoriety of his crime. He was therefore placed in Clinton Correctional Facility's APPU where he left his cell daily to participate in programs with the other 257 inmates on that unit.

With time, the notoriety of his crime passed. Since 1987, he has been housed in the general population at the Sullivan Correctional Facility.

If Southport and Upstate are to be misrepresented as "super-maxes," logic suggests the same misnomer should apply to the 38 smaller disciplinary housing units operated at other prisons across the state. Not even the most vocal critics extend their definitions to label them as "super-maxes." □



VII. Prison protocols provide safety, security for all

The Department’s March 30 work force of 31,597 employees included 19,701 Officers plus 1,935 uniformed supervisors that include Sergeants, Lieutenants and Captains. The 9,961 civilian staff includes teachers, counselors, vocational instructors, health care workers, chaplains, secretaries, maintenance workers and support staff.

The DOCS Employees’ Manual explains that the mission of the Department is twofold:

- The constitutional operation of facilities that are safe for employees and inmates and that provide security for the communities surrounding state prisons.
- The humane confinement of offenders and the offering of programs that will contribute to their successful return to the community upon release.

The manual further provides that all employees shall cooperate in maintaining the security and good order of the facility. Each employee shall maintain an attitude and posture of alertness at all times. When supervising inmates, employees shall not allow their attention to be diverted in any way that interferes with the supervision of inmates. The manual further provides that employees must be constantly alert to detect and remove fire hazards, contraband, or any material or device that might be used to attempt an escape.

Staff is constantly alert to detect inmates engaged in any improper activities. Employees must exercise the utmost vigilance to detect any violation or infraction, including improper sexual conduct, and to enforce compliance by inmates with Department and facility rules. Hence, regardless of the specific nature of any individual employee’s job responsibilities, all employees are on notice that safety and security are a part of everyone’s job duties.

New York has a record of staffing its prisons for the workload assigned to its employees, rather than basing staffing upon a calculation driven solely by the inmate capacity of any prison.

That commitment was never more obvious than since the prison population began dropping in the 21st Century. The Department said that while the declining population would lead to staffing reductions, they would be moderated by a close look at staffing to ensure all necessary posts and jobs were retained.

The chart above shows the population began dropping in 2001 from 2000 levels. It declined by 12 percent through March

State	Officers	Inmates	Ratio
California	28,000	168,035	1:6
Texas	23,720	139,221	1:6
Florida	12,096	81,199	1:7
New York	19,576	62,732	1:3

of this year. Correction Officer staffing was at its highest in 2001, but attrition did not begin to take effect there until 2002, a year after the inmate population reduction had begun. Even then, only a 5 percent attrition has occurred among Correction Officers through March of this year. That’s less than half the decline in the inmate population.

It is that commitment to safe and secure operations, rather than to any simplistic staffing formulas, that leads to an Officer-to-inmate ratio of one Officer to three inmates in New York, compared to one Officer to seven inmates in Florida and one Officer to six inmates in both California and Texas.

New York’s intensive staffing levels may in part explain the modest 3.3 percent turnover rate in 2002 for Officers leaving the Department for all reasons. That’s compared to a 9.3 percent turnover rate among all New York state employees, according to the State Department of Civil Service.

The annual turnover rate among Correction Officers nationally was 17 percent in 2002, according to the latest data available from *The Corrections Yearbook*, which also lists Officer turnover rates of 23 percent in Texas, 18 percent in Florida and 17 percent in California.

Security is a daily challenge

On a day-to-day basis, security staff face an enormous and ongoing challenge to foster the safest and most secure correctional environment possible. The prevention of possible disturbances is accorded enormous priority. Security staff know that most disturbances can be prevented if staff can interpret and act on changes in institutional atmosphere and inmate behavior patterns. This in turn requires staff to understand the key identifiers, to monitor them and to understand what is normal under the totality of the circumstances.

Inmates who are considered high profile are closely moni-

March 31 of:	Inmates	Officers	Ratio
1994	65,677	17,965	1:3.66
1995	67,814	18,814	1:3.60
1996	68,366	18,841	1:3.63
1997	69,465	19,320	1:3.60
1998	69,305	19,801	1:3.50
1999	70,287	20,070	1:3.50
2000	71,423	20,299	1:3.52
2001	69,507	20,410	1:3.41
2002	66,976	19,812	1:3.38
2003	66,369	19,279	1:3.44
2004	64,794	19,160	1:3.38
2005	63,307	19,163	1:3.30
2006	62,980	19,701	1:3.19

tored. These include inmates with a history of disruptive behavior and those who have possessed serious contraband such as weapons. Some have attempted to lead mass demonstrations, work stoppages or other banned activities inside of prison. They also include inmates who have a history of escape or possession of escape paraphernalia, as well as inmates who have taken hostages or killed while in prison. It also includes those known or suspected to be attempting to run outside criminal enterprises from inside their prison cells.

Security staff are aware that effective communication with the inmate population is important in the prevention of potential disturbances. It is therefore important to know which inmates are regarded as religious or organizational leaders, which inmates are members of authorized facility committees as part of the grievance process or as members of the Inmate Liaison Committee elected to represent the population with each facility's executive staff.

There are a host of indicators that may signal the onset of potential trouble. Some may appear innocuous at first glance. For example, a significant spike in the quantity of nonperishable items purchased from the commissary could mean more than hungry inmates. It could mean they are hoarding food because a food strike is imminent. Inmates donning extra sweatshirts and jackets may not just be cold. They could be donning protection for a mass fight in the yard where the use of cutting and stabbing weapons is expected.

The details of all of the many different Department security protocols and procedures for the prevention of disturbances are highly confidential. They will not be published here. Suffice it to say that facility security staff are assigned a wide array of tasks and monitoring responsibilities designed to alert them to the potential for trouble at the earliest juncture, before it can escalate into something more serious.

The impact and success of these regimens can be seen in the fact that the last major prison disturbance occurred in July 1997 – almost nine years ago – at the Mohawk Correctional Facility. That is not to say that an incident cannot occur at any moment. But the record indicates that staff do an excellent job on a daily basis of recognizing and dealing with potential sources of violence.

Contraband detection an on-going process

Contraband can include such items as drugs, weapons, money, cell phones, keys, maps, unauthorized medication, racist or gang-related literature and conviction information about other inmates.

One category – weapons – poses the most serious challenge to institutional security and the safety of staff and inmates alike. The more successful staff is at identifying, locating and confiscating weapons, the safer and more secure each institution will be.

This responsibility is extremely formidable because inmates can be extremely ingenious at fashioning a weapon from just about anything.

For example, inmates have been known to sharpen the handle of a toothbrush to use it as a stabbing weapon. They have also melted razor blades into the bristles to wield the toothbrush as a slashing weapon.

Another deadly weapon is a sock – after placing a rock or lock inside the toe. A common weapon is the sharpened lid from a food can purchased through the facility commissary. Even the

plastic rim from a pair of eyeglasses has been sharpened to fashion a weapon.

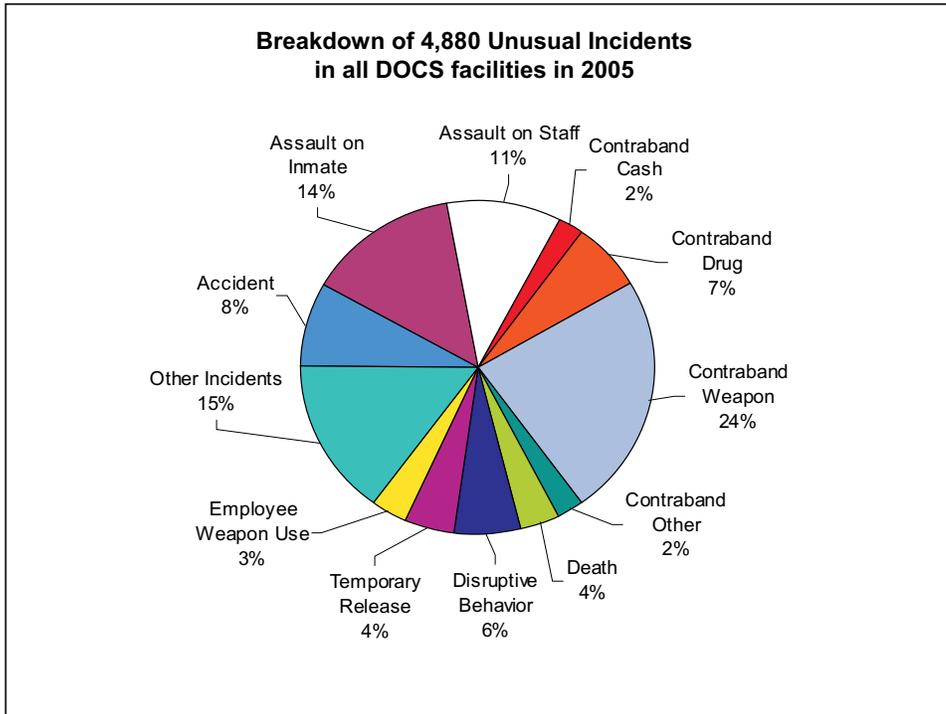
Given that ingenuity, it is not a large step for inmates to sharpen into a shank just about every piece of metal, wood or glass that can be found in a prison, especially in a vocational shop, Division of Industries program or a construction site on prison grounds.

Inmates will also attempt to steal and make weapons from any of the myriad of tools and implements that are necessary for day-to-day facility operations and infrastructure maintenance. On a college campus or in a large office building, diners think nothing of entering a cafeteria for a meal. In a prison, every implement used in the kitchen or mess hall to prepare, serve or eat a meal is a potential weapon.

Security staff must be relentless in their ongoing efforts to identify, locate and confiscate contraband. As new potential sources of contraband are identified, the Department's headquarters in Albany endeavors to keep facilities aware of new threats.

In many cases, that contraband includes articles that are perfectly legal on the street:

- Footwear companies are always looking for ways to



produce new products that offer extra options for consumers. One produced a line of running shoes in which the heel slid open to conveniently carry house keys while jogging. In prison, that hollowed out heel could contain a razor-type weapon, drugs, money or several other types of contraband.

- The same applies to “can safes” available to the general public – empty aluminum cans encircled with well-known brand labels. They are sold empty and designed to be filled with valuables and hidden in plain sight.
- A personal security device available to consumers is a simple-looking ballpoint pen – but one capable of delivering a shock of 100,000 volts.
- An office supplier once produced what looked like a standard ball-point desk pen. But it did double duty: pulling apart the two ends of the pen unsheathed a three-inch steel blade, designed to be used as a letter opener.

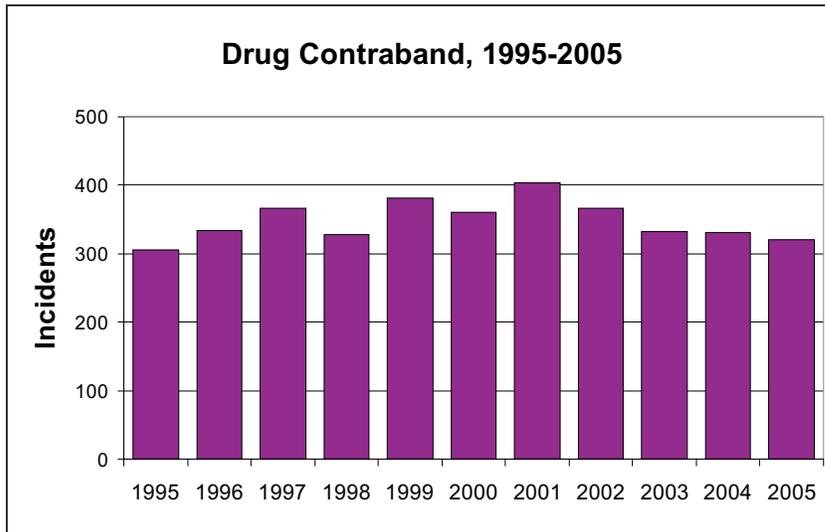
It is important that all security staff be aware of the marketing of these legal and legitimate products. All necessary information is relayed to security staff at lineup at the beginning of each day’s three, eight-hour shifts at each prison. To reach most employees, the information is repeated at pre-shift lineups for 72 hours.

Body searches preserve inmate privacy

Inmates are not only ingenious at acquiring weapons and other contraband. They are equally adept at concealing them on their persons, in their living quarters and in common areas throughout the prison.

For example, inmates attempt to conceal drugs wrapped in plastic in their mouths. It is not unusual for an inmate to secrete a taped shank or a razor blade in the rectum. Inmates may also attempt to hide contraband within their hair, beards or clothing. Female inmates oftentimes secrete contraband within the vaginal area.

Security staff rely upon a number of processes to combat and detect efforts by inmates to obtain and secrete contraband.



frisks, mouth searches, or strip searches/strip frisks.

The pat frisk and the strip frisk represent the front line in the ongoing crusade to remove oftentimes dangerous contraband from the possession of inmates.

Both are dependent upon the professionalism and thoroughness of the frisking Officer. A superficial pat frisk or strip frisk procedure may allow contraband to evade detection, thus compromising safety and security for staff and inmates alike.



search of the inmate’s clothing.

There are certain circumstances when a pat frisk must be performed. These include upon entrance to a visiting room or prior to an interview by a Department official, member of the Board of Parole or other official visitor. There are other circumstances when it is discretionary to conduct a pat frisk. These include when going to and returning from housing areas or outside work details, and en route to and from program and recreation areas.

Strip searches/strip frisks require inmates to undress. They are conducted when an inmate is transferred from one facility to another, and after an inmate has had a contact visit with a visitor. They are also conducted upon reception into a disciplinary housing unit.

Among them are proper, professional and appropriate searches of inmates as a key element in discovering contraband. Employees are taught and constantly reminded that while they must be thorough in the conduct of such searches, they must also be sensitive to the dignity of the inmate being searched.

Personal searches may consist of metal detector searches, pat

frisks, mouth searches, or strip searches/strip frisks.

A pat frisk is defined as a search by hand of an inmate’s person and clothing while the inmate remains fully clothed, except that the inmate is required to remove coat, hat, and shoes. Inmates are required to run their fingers through their hair and spread fingers for visual inspection. The search also includes a

For a male inmate, the procedure involves the inmate having his mouth searched, running his hands through his hair, allowing his ears to be visually examined, lifting his arms to expose his armpits, lifting his testicles to expose the area behind his testicles, and bending over and spreading his buttocks to expose his anus to the frisking Officer. For females the procedures are similar except that females must also squat to expose the vagina.

Strip frisks must be conducted by an Officer or employee of the same sex as the inmate being searched. They must also be conducted in clean, heated areas, sufficient to provide comfort for disrobed individuals, and they must also ensure privacy. In addition, when inmates remove their clothing, clothes must not be placed on the floor.

Strip frisks are conducted in areas designed to eliminate observation by the general population. During such frisks, staff presence is limited to those necessary to perform the task.

Still photographs during frisks are strictly prohibited. The strip frisk/search may be recorded via a fixed video system. Staff may be required to videotape a strip frisk if inmates indicate they will actively resist the frisk, or if the use of physical force may become necessary. Strict controls and reporting procedures are in place to ensure all policies are followed.

Directive 4910 requires each facility to prepare a monthly monitoring report detailing strip frisk/strip search activities. This report requires supporting documentation be provided each time one of the following occurs: a strip frisk/strip search is conducted based on probable cause (any such strip frisk based on probable cause must be approved by a supervisor), more than one Officer is present and able to view the frisk, and when force is used to conduct the strip/search frisk.

This monthly report also requires the dates inspections were completed by supervisory staff of areas designated for strip frisks/searches. The report ensures, among other things, that each facility has established designated strip frisk areas that are heated to a level of human comfort, have appropriate floor coverings, and offer a place off the ground for clothing. This report also requires all strip frisk/search grievances to be investigated. Copies of all grievances filed by inmates and subsequent investigations of them are to be included in the report.

All of these reports and supporting documentation are retained at the facility and reviewed periodically by Central Office personnel in Albany to ensure compliance.

Strip searches or strip frisks may be videotaped only upon authorization of a Sergeant or higher ranking supervisor. A videotape recording of any strip search or strip frisk shall be clearly marked with the date of the frisk, the inmate's name, Department identification number and the location where the frisk oc-



Staff check BOSS chairs to ensure accurate readings.

curred.

The video must be immediately delivered into the custody of the Deputy Superintendent for Security. Videotapes of strip frisks or strip searches are not viewed by anyone except as expressly authorized by the Deputy Superintendent for Security or higher authority.

Recordings of strip frisks or strip searches that do not depict an incident are retained for a minimum of 90 days. If a grievance has been filed on a strip frisk or strip search that was recorded, but does not depict an incident, the tape will be retained until the grievance is resolved.

The Deputy Superintendent for Security will ensure that all strip search or strip frisk videotapes are erased after the established retention periods.

Equipment improves searches, lessens intrusion

The Department recognizes that, for everyone's safety, it must invest in state-of-the-art search equipment and other security-related equipment. The marketplace offers a veritable plethora of competing equipment, each touting its products as far superior to the competition. But history has shown that if products or technologies are adopted without proper testing, results other than those intended can sometimes occur.

Such was the case with a piece of high-tech equipment marketed on the premise that it was a "human presence detector." Promotional literature promised that for \$6,000 to \$15,000 per unit, prison systems could detect a human presence through any material at a distance of up to 500 meters.

The units were able to detect presence in no more than 30 percent of tests conducted by the Department. The Department's experience led to similar tests conducted by other prison experts with similar results. The Department never purchased any of these machines.

The existence of such dubious claims is among the reasons why potential product purchases must first be carefully examined by the Department's Product Evaluation Committee (PEC). It ensures extensive equipment tests are conducted within operational settings by experienced security personnel in order to assess the product's performance capabilities and applicability to the corrections environment.

The BOSS Chair pictured above is a device that cleared this PEC screening process. Chairs equipped with the Body Orifice Scanning System are designed to help locate metal on an inmate's person. The fully-clothed inmate is directed to sit in the BOSS chair. If an inmate has metal secreted within the rectum or vaginal area, or otherwise hidden within the waist or genital area, the BOSS chair will detect it.

There are 99 BOSS chairs located in all the Department's correctional facilities, except for a few minimum-security prisons. Every maximum-security facility has two or more BOSS chairs. Each unit costs \$2,792. Hence, to date, the Department has spent \$276,408 in the acquisition of this important product.

Metal detector searches are also extremely important in the overall effort to remove contraband, particularly weapons, from the inmate population. Inmate metal detector searches are similar to what Americans are now familiar with before boarding commercial air carriers. They can be accomplished by means of a hand scanner passed around the body or by walking through a stationary detector.

The Department has spent \$407,000 for the purchase of handheld metal detectors and has ensured their distribution throughout all correctional institutions. There presently are more than 1,100 units in the Department's facilities at a cost of \$370 per unit.

Intercepting and confiscating contraband

Extraordinary efforts are expended to remove contraband from the inmate population. Comparable efforts are also made to intercept contraband before it is introduced into a facility, intentionally or not, through inmate visitors or incoming mail and packages.

Most inmates will eventually be released from prison. It is therefore crucial to try and maintain inmate family ties during incarceration. Even in those cases where an inmate is not likely to ever be released from prison, visitation can still be extremely important as an incentive for the inmate to obey the rules to facilitate visits.

As a result, the Department considers visitation by loved ones to be an extremely important aspect of an inmate's incarceration. That's why the Department encourages them and 771,092 inmate visitors were accommodated in 2005.

The Department spends \$1.3 million annually to provide free bus service to transport visitors to upstate prisons, augmenting the commercial transportation services available to them.

When visitors arrive at state prisons, they use visitation centers established by the Department as a place for them to change clothes, eat and prepare themselves and children for visits.

That being said, New York prisons are no different than those

across the nation that discover contraband entering prisons through visiting rooms or packages intended for inmates.

The initial processing of a visitor prior to the inmate visit is therefore an extremely important aspect of contraband control.

All visitors to a correctional facility must pass through a metal detector. The Department uses 229 walk-through metal detectors to process both inmates as well as visitors. Since each unit costs \$4,900, the Department has spent \$1.12 million for these security devices.

In terms of visitor processing, if there is any difficulty in clearing a visitor by the use of the walk-through metal detector, then a hand-held scanner is used in an attempt to isolate the problem area. Handbags, briefcases or other containers must also be searched.

The ability to successfully screen for the presence of any metal is crucial. There have been occasions when a bullet or a knife has been smuggled into a prison. If a bullet makes its way into the hands of an inmate, it is not an extraordinarily difficult matter for the inmate to then craft a device from which the bullet could be fired. Obviously, such a possibility is a nightmare scenario for correctional employees.

For a host of reasons, everyone has traditionally been barred from bringing cell phones into prisons. This year, there is a new reason. A private company is marketing a self-protection device that looks like a cell phone – but is in fact a handgun capable of firing a .22-caliber round.

Once a visitor clears processing, typical visitation protocols allow for a fair degree of physical contact between inmate and visitor. A visitor and an inmate may kiss and embrace at the beginning and end of any contact visit.

It is during that contact that any contraband not detected during initial processing, may be physically passed from the visitor to the inmate. In some instances, the contraband may be contained in a balloon hidden in the visitor's mouth, and then transferred during a kiss. In the alternative, the balloon containing the contraband may be secreted within a body cavity, removed during a bathroom visit and then passed to the inmate in the visiting room.

There is no limit to the schemes devised by inmates and visitors by which they attempt to introduce contraband into the prison. Once contraband is introduced into the visiting room, it will only be discovered if the assigned security staff either observe it being passed or discover it during a routine search of the inmate at the conclusion of the visit.

While the processing of visitors



Staff inspected and logged 584.663 inmate packages in 2005 to protect against incoming contraband.

through the metal detector units is effective in identifying any metal objects, non-metallic items will not be detected. This is an enormous concern. Plastic switchblade knives, which have been confiscated by the Department, can be deadly weapons.



Security staff use an ion scanner to detect the presence of contraband.

Drugs, of course, would not be detected by metal scanners.

The Department has for the past two years been piloting a new device called an ion scanner in an effort to prevent drug smuggling by visitors.

Ion technology involves the collection of particles and vapors using ion mobility spectrometry for identification and detection. This process detects and identifies the particles discharged by many substances, such as drugs, that are absorbed or cling to the surface of other materials such as skin or clothing.

Minute traces of these particles are collected from skin or clothing by a hand-held vacuum or manual swipe method using a wand with a small cloth filter.

The ion scanning device shown above is passed over and may come into contact with an individual's hands, areas of clothing, personal items such as purses and handbags, or other articles that may retain microscopic traces of illicit substances.

Visitors who are found to test positive for having come into contact with drugs, or who refuse to be tested, will not be allowed entrance to the facility.

If an inmate tests positive or refuses an ion scanner test, then there is probable cause for a strip frisk and sufficient reason for urinalysis testing, a search of the inmate's living quarters, and the placement of the inmate on a special watch.

The Department has two ion scanners costing \$44,518 apiece.

One is assigned to the Elmira region while the other is used in the Green Haven region and at Sing Sing.

A team including a Sergeant and two Correction Officers moves with each unit on an unannounced schedule to visit facilities in the region.

Once they enter a prison, the team operates under the supervision of the facility Superintendent.

with illegal gangs, extortion and strong arm activities by certain segments of the inmate population.

In addition, inmates who ingest excessive quantities of drugs can become overdose victims. Since 1996, 27 inmates have died from overdosing on illegal drugs. Numerous other inmates had to be taken to outside hospitals for treatment of drug overdoses from which they recovered.

Therefore, any documented presence of illegal drugs in prison is a cause for concern. Last year alone, the Department conducted 79,101 inmate drug tests. Of those, 3.6 percent produced results positive for the presence of drugs.

Packages are another source by which contraband can be introduced into a prison. Last year alone, visitors brought 211,175 packages that had to be scanned before being released to inmates. In addition, inmates last year received an additional 373,488 packages through the mail. Each one of them had to be examined as well.

An inmate's ability to receive packages from outside sources, such as family members, is a privilege that is viewed as an important aspect of prison life. Many inmates are indigent and their only funds are the dollar a day they earn working at prison jobs. Packages allow loved ones to provide basic amenities beyond the necessities provided by the state to all inmates. For inmates of greater means, packages allow them to wear approved non-prison clothing and possess more property in their cells or other living areas.

Thus the fear of losing package privileges serves to promote good behavior. In the context of the disciplinary system, loss of packages for a specified period is one of an array of possible sanctions that a hearing officer may impose upon inmates found guilty of misbehavior.

To assist in the search for contraband within those packages, the Department

has purchased 60 x-ray machines at an individual cost of \$28,637. □



Security staff conducted 79,101 inmate drug tests last year.

VIII. Maintaining a professional security force

Uniformed personnel bear the brunt of security responsibilities in New York's prisons.

By contrast, all employees in the U.S. Bureau of Prisons undergo Correction Officer training, whether they will ultimately be assigned to fill security positions or serve, for example, as teachers or counselors.

The Department's 9,961 civilian employees therefore do not undergo security training, but do bring the training and certification necessary for their job titles. They are responsible for carrying out and recognizing many of the secure protocols noted in this report.

But it is the 19,701 Officers and 1,935 uniformed supervisors who present the first line of defense in New York prison security.

As a result, this section deals only with the training of those employees hired into the Civil Service security title of Correction Officer, many of whom will earn promotion to Sergeant, Lieutenant and then Captain. Promotions above that rank have qualifications required to earn appointment by the Commissioner.

Close screening of Officer recruits

To ensure that it only employs the most qualified individuals, the Department follows two separate and distinct, but equally important, avenues in the hiring of Officers:

- An intricate screening and selection process for Officer recruit candidates.
- Meaningful, initial and annual training requirements for those applicants eventually hired.

Correction Law section 7 specifies that no one can be appointed to the position of Correction Officer unless that person has reached the age of 21. Furthermore, Correction Law section 22-a provides that no person convicted of a felony can be appointed as a Correction Officer. For any individual convicted of a misdemeanor, this same statute provides that it is within the discretion of the Commissioner as to whether or not such person should be hired.

Individuals who wish to be hired as Correction Officers must first take and pass a competitive examination that is administered by the Department of Civil Service. After the exam is scored, a list of eligible candidates is then certified by the Department of Civil Service for use by the Department.

Reachable candidates are then contacted to undergo the for-

mal screening process which includes an in-depth background review, a medical examination, and a psychological screening process. For appointment, candidates must have earned either a high school diploma or GED. They must also be residents of New York.

The background check must be thorough since Correction Officers are also peace officers in New York state. That means that these individuals possess special powers even when not on duty in a correctional facility, such as the power to make arrests for crimes committed in their presence.

As part of the background check, each candidate is fingerprinted to ascertain whether there has been any prior involvement with the criminal justice system. In con-

ducting this review, the Department is not restricted to conviction information. For example, a candidate may have had the records for a previous arrest sealed in accordance with the pertinent sealing provisions of state law. The Department is legally entitled to access the sealed records and examine the underlying facts as part of its employment application screening process. This is set forth in Criminal Procedure Law section 160.60.

Furthermore, non-criminal information that is uncovered which may reflect negatively on a candidate's character and fitness to be a Correction Officer is also relevant. For example, prior employment with another state agency that led to an unfavorable termination might bear on character and fitness. In such a scenario, pursuant to Civil Service Law section 50, the Department would submit a formal request to the Department of Civil Service, asking that the candidate be disqualified on this basis.

The medical examination component is also conducted by the Department of Civil Service. It is used to determine whether the candidate meets certain physical criteria. The aspects of a person's physical record examined include height and weight, speech, vision including color vision, hearing, the cardiovascular system, the respiratory system, neurological health, and musculoskeletal health.

Candidates must also be free of any medical condition that would prevent them from working mandatory unscheduled overtime. Finally, the presence of certain conditions might render a candidate medically unsuitable. For example, a candidate with diabetes must provide evidence of satisfactory medical control. Similarly, a candidate with any type of epilepsy or seizure disorder must provide evidence of being seizure-free for at



Trainees at the Academy in Albany.

least one year, with or without medication.

All candidates must also undergo the psychological screening process required by Correction Law section 8. Three psychological instruments are administered to each candidate. In addition, an interview with a licensed psychologist is part of the process. Persons may be deemed ineligible for appointment if they suffer from psychotic disorders, serious character disorders, or other disorders which could hinder their job performance. Any candidate who is determined to be psychologically unfit may appeal that determination to a three-member independent advisory board. It consists of a licensed psychologist, a licensed psychiatrist and a representative of the Department of Civil Service.

The interviewing psychologist evaluates each candidate on 12 rating dimensions which are considered to be reflective of overall psychological functioning and adjustment. The 12 dimensions are termed "Anticipated Performance Problems on

Essential Job Elements for Public Safety Officer Positions." These elements were derived from an analysis conducted by California's Peace Officer Standards and Training Commission. The elements consist of social competence, teamwork, adaptability and flexibility, conscientiousness and dependability, impulse control and attention to safety, integrity and ethics, emotional regulation and stress tolerance, decision-making and judgment, assertiveness and persuasiveness, avoiding substance abuse and other risk-taking behavior, problem solving and learning and, finally, communication skills.

The Department is required to report annually to the Governor and the Legislature on the conduct of the program. It must also report on the results of the program in improving the quality of Correction Officer candidates.

Intensive training begins at Albany Academy

Those candidates who successfully undergo the background investigation, the medical examination and the psychological

"Bidding" controls Correction Officer assignments

Despite the public perception that the Department assigns individual Correction Officers where it needs them, the reality is that they "bid" positions based upon seniority.

The "bid" process was negotiated decades ago between the Governor's Office of Employee Relations (GOER) and the Correction Officers' collective bargaining agent.

Simply stated, the "bid" system mandates that a vacancy must be filled by the most senior Officer who wants it.

That mandatory, seniority-based "bid" system results in difficulties when trying to staff a prison system that extends from Lake Erie and the Canadian border to New York City. They occur when trying to match the location of employee residences with the location of vacant jobs:

- Officer recruits, the least senior in the system, leave the Training Academy and face mandatory on-the-job training far from home. They are assigned to facilities where the most vacancies routinely occur: Bedford Hills, Fishkill, Downstate, Green Haven and Sing Sing, all in the lower mid-Hudson region. Many of them transfer out of those prisons to ones closer to home as soon as they gain the seniority to do so. Their old jobs are back-filled from successive recruit classes and the process begins anew.
- Prison staffing in upstate areas reflects the local work force that is overwhelmingly white. Most have few, if any, minority staff. Staffing in state prisons in New York City reflects the fact that racial minorities make up a substantial percentage of its work force. Racial minorities account for 89 percent of Edgecombe's work force and 88 percent at both Fulton and Lincoln.
- On paper, the numbers of female Officers appears more promising. The Department has 2,072 female

Correction Officers but only 1,616 Officer jobs in prisons housing female offenders. That means if they had the seniority and chose to, female Officers could more than fill every security job at prisons housing female inmates. But only 519 female Officers choose to transfer into prisons housing female offenders. That means males must fill the remaining 68 percent of those positions at prisons housing females.

On Jan. 1, 2006, the Department's work force of 32,179 employees was 75 percent white. Among the 19,615 Correction Officers, 84 percent were white. But among the 2,072 female Officers, 54 percent were non-white.

The Department believes its work force should more accurately reflect the makeup of the inmate population, which is 51 percent black, 27 percent Hispanic and 20 percent white. The Department is always open to ideas on meeting that goal within the parameters of equal opportunity and equal employment laws.

Over the years, it has been suggested that black and Hispanic Officers be provided inducements to transfer into upstate prisons, just as female Officers should be rewarded for transferring into prisons housing females. In every case, those proposals were successfully blocked by employees who saw any incentives as violations of equal protection or equal employment opportunity laws.

For its part, the Department has for years intensively promoted and advertised upcoming Correction Officer exams offered by the Department of Civil Service, especially to attract females, blacks and bilingual Spanish-speaking candidates. The Department hopes that by increasing the racial minority and female representation in its security work force, it will attract more minority Officers choosing to work at prisons outside of urban areas and female Officers choosing to work in prisons housing female offenders.

screening process are then appointed to the Training Academy as Correction Officer recruits.

The Albany Training Academy program is accredited by the American Correctional Association as meeting nationally accepted standards for the training of security personnel.

The Training Academy experience spans an eight-week period during which candidates are taught a whole array of academic courses, physical techniques, and weapons familiarity, in order to prepare them to become Correction Officers.

For example, they must learn such things as proper use of force, unarmed defensive tactics, CPR and first aid, the proper way to search an inmate's cell, how to use a baton, and how to conduct pat and strip frisks. They must demonstrate physical strength and agility skills. In addition, they must qualify with the service revolver and also fire the shotgun and the AR-15 rifle. Furthermore, they must be exposed to chemical agents to experience firsthand the physical effects of this substance on the human body.

The academic courses cover a litany of topics that are necessary for the effective performance of a Correction Officer's job. They include but are not limited to report writing, note taking, the importance of correct inmate counts, decision making, facility communication, tool and key control, suicide prevention, special needs of female offenders, diversity management, cultural awareness, dealing with mentally ill inmates, and recognizing abnormal behavior.

At the end of each week, an examination is administered to the recruit class. If a recruit fails an examination, the recruit is afforded one additional opportunity to receive a passing grade for the module by taking another examination. Recruits are terminated if they fail the second examination for any particular module. Also, a recruit will be terminated upon failure of any two of the initial eight module examinations, without regard to the outcome of a second examination.

Recruits must also qualify on the firing range with the revolver. A recruit will be afforded multiple opportunities to achieve a passing grade on the range but recruits will be terminated if they ultimately fail to qualify.

Finally, those candidates who graduate from the Training Academy become probationary Correction Officers. They are assigned to correctional facilities for a three-week period of on-the-job training.

Officer recruits are closely monitored during a one-year probationary period. A probationary employee has very limited job retention rights. The appointing authority, in this case the Department, will terminate those employees whose job performance is determined to be unsatisfactory. This is accomplished without having to resort to arbitration and other involved due process-type measures that arise once an employee success-

fully completes probation and achieves permanent status.

It is for this reason that the Department repeatedly stresses the critical importance of supervisors using this probationary period to meticulously evaluate their probationary employees and recommend the termination of any individual whose performance does not meet expectations.

Annual training keeps security staff up to date

A vibrant, well-trained and professional work force is the most important consideration in operating a safe and humane correctional system. As a result, the Department recognizes the critical importance of regularly reinvesting in the work force by providing a carefully structured and relevant curriculum as part of its annual training program.

All security staff must receive no less than 40 hours of annual training. Some of the training must cover topics that are mandated by law and arise because of the peace officer status accorded to security staff. Thus, security staff must re-qualify on the range with the revolver. They also receive refresher training on such topics as escape pursuit, use of force, the baton and use of chemical agents.

A significant portion of annual training is dedicated to those topics that are identified by the Department as a priority. For example, training is presently being provided in connection with the Prison Rape Elimination Act.

Finally, certain mandatory courses must be provided at least once during an Officer's career. They include drug

awareness, the Americans With Disabilities Act and the prevention of sexual harassment.

Mandatory topics comprise a substantial proportion of each year's annual 40-hour allotment. There is also some leeway so that topics of immediate importance can also be inserted within the curriculum for a particular year. Presently, top priorities are suicide prevention and first aid including the use of Automated External Defibrillators (AEDs) shown above. Correction Officers, oftentimes the first responders to an incident, are taught that they must apply CPR, AEDs and first aid as required.

There are other topics which, because of their significance, are mandated to be provided once each year. These include escape pursuit, fire and safety drills, suicide prevention, and dealing with tuberculosis and blood-borne pathogens.

Certain additional topics are provided on a periodic basis. For example, evidence collection, aggravated harassment of an employee and emergency control procedures are required once every three years. By the same token, crime scene preservation and cultural diversity are required once every five years.

In order to permit security staff to absent themselves from their regularly assigned posts to attend training, the Department has filled 369 Officer relief positions. Their job is to provide the necessary coverage for those staff who are on-duty but off-post to attend training. □



Proper use of the Automated External Defibrillator is part of recruit and ongoing staff training.

IX. Internal monitoring promotes prison safety

Department administrators know that continual feedback, introspection, monitoring and evaluation are critical in the overall effort to operate safe and secure prisons. Facility managers must have first-hand knowledge of what is taking place within their institutions on a daily basis.

Prison executive teams know there is no substitute for the time-tested practice of regular rounds and direct interaction with staff and the inmate population. That is a time when staff and inmates can raise issues and concerns directly with facility managers in a meaningful and positive manner. Invariably, this will require some follow-up action by the executive staff to demonstrate to staff as well as inmates that communication flows both ways. It also provides executive staff with a first-hand look at exactly what is going on within the institution.

On its face this may sound straightforward and uncomplicated. But the reality is that “making rounds” can be as physically demanding as it can be time-consuming.

The sheer size of the prison system makes “walking and talking” a daunting task. A physical inventory shows the Department’s 69 prisons include 4,059 buildings containing 38.3 million square feet of space. That does not include the acreage worked on 13 prison farms across the state.

Medium-security prisons such as Fishkill include 93 buildings while there are 82 at Collins. Maximum-security Auburn has 79 and Sing Sing is right behind with 78 structures.

In addition to the inmate housing areas, facilities also contain such locations as a mess hall, gymnasium, classrooms, vocational shops, infirmary, dental area, pharmacy, commissary, chapel, mosque, a disciplinary housing unit, mental health unit, industry area, outdoor recreation yard, general library, law library, and many other areas of inmate access. The executive team must also visit and oversee staff located in areas not accessible to the inmate population.

This aspect of correctional administration is quite labor intensive and potentially exhausting. But Department managers know that it is crucial in order for facility management to keep its hand on the pulse of the facility. It is necessary to detect and defuse any issues of inmate and staff concern before they can fester into something more problematic.

Furthermore, frequent facility site visits are also important for high-ranking Central Office staff, including the Commissioner and his executive team, so that they too can stay on top of and audit facility operations. This responsibility takes on even added significance with the time and effort required to schedule and coordinate visits and rounds in 69 prisons across the state.

It is for that reason the Department holds facility supervisors responsible for making rounds. Several areas of prisons are required to have log books where visiting staff are required to sign in. Supervisors are required to sign in red ink so the record of their visits stands out.

Superintendents, for example, are expected to be present for the day shift and rounds are an integral part of their duties.

However, they are equally expected to monitor operations by making unannounced rounds on afternoon and overnight shifts, as well as on holidays and weekends.

Superintendents and their executive team members are required to visit disciplinary housing units at least once each week while Captains visit them every single day.

Secure posts are inspected by Sergeants on at least a bi-weekly basis and monthly by watch commanders.

Inmates support, use grievance procedures

While such direct interaction with the inmate population generates significant feedback, there are numerous other avenues that likewise generate helpful intelligence about institutional conditions.

But none are more elaborate or significant than the Inmate Grievance Program. Its legitimacy and credibility with inmates stems in part from the fact that they elect two inmates at each prison to be part of the official grievance resolution program.

That allows this unique program to do more than afford inmates a simple and orderly opportunity to seek redress for their complaints.

Inmates use the grievance program because they have come to accept it as fair and legitimate – in large part because they know they are represented in the process by other inmates. Giving inmates the alternative of taking pen to paper to file a grievance enhances institutional security and safety.

In the aftermath of the 1971 Attica riot, the Legislature created the McKay Commission to look into a number of factors, including the riot’s underlying causes. The McKay Commission concluded that a major cause of inmate tension had been the lack of a nonviolent means of resolving inmate grievances.

Similarly, the 1972 report by the New York State Select Committee on Correctional Institutions and Programs noted that grievance machinery must be provided to assure minimum standards of fairness. It suggested the handling of an individual grievance may be the best way to prevent it from becoming a widespread complaint and possibly a source of general tension and difficulty in the institution.

As a result, and because relief in the courts was deemed neither a workable nor a desirable solution, the Legislature in 1975 enacted Correction Law section 139, creating the Inmate Grievance Program.

This required the Department to establish grievance resolution committees in each prison and to promulgate rules and regulations establishing their unified procedures for the fair, simple and expeditious resolution of inmate complaints. The regulations specify that this program is not an adversary process. They further provide that the concepts of mediation and conflict resolution are to be utilized to obtain resolutions.

A grievance is defined as a complaint about the substance or application of any written or unwritten policy, regulation, procedure or rule of the Department or any of its program units, or the lack of policy, regulation, procedure or rule.

At each facility, a five-member Inmate Grievance Resolution Committee (IGRC) consists of two voting inmates, two voting staff members, and a nonvoting chairperson. The fact that inmates serve as voting members establishes the legitimacy of the program in the eyes of the inmate population. Equally important, these inmate representatives are elected by the general population to represent them for six-month terms.

Appeals from decisions at the facility level are sent to the Central Office Review Committee (CORC) which consists of designees of each of the Department's five Deputy Commissioners. Other Central Office personnel may sit in on CORC meetings but only the representatives of the Deputy Commissioners may vote.

While the prison population has declined from 68,489 inmates in December 1995 to 62,732 inmates at the end of last year, the number of grievances rose from 37,067 in 1995 to 45,345 last year.

While inmates most often grieved staff conduct and then medical issues as their top concerns in the 1990s, those issues were flipped in grievances filed beginning in 2002. Last year, medical issues accounted for 18 percent of grievances followed by 16 percent for staff conduct, 7 percent about housing, 5 percent concerned package rooms and 4 percent involved disciplinary housing. All other issues garnered a smaller share of complaints.

The action requested last year in inmate grievances was accepted wholly or in part 33 percent of the time, giving credence to a substantial percentage of inmate complaints.

The Department also realizes that, inside as well as outside of prison, justice delayed is often viewed as justice denied. The average time to resolution of a grievance has been reduced from 66 days in 2000 to 57 days last year. Those numbers document that the Department takes grievances and their resolution seriously.

Facility administrators and grievance staff are constantly reminded not only of the critical importance of conducting thorough investigations into each grievance, but also the importance of doing so within the specified time frames required by the regulations. This message has been repeatedly delivered to facility superintendents by Commissioner Goord and his executive staff.

The Inmate Grievance Program generates unparalleled feedback on day-to-day operations throughout the system. Each grievance is assigned a numeric code according to the subject matter of the complaint. There are 50 subject codes in order to

allow close tracking of each area. They include such topics as correspondence, the phone home program, vocational programs, media review, religion, the family reunion program, dental, medical, strip frisk, pat frisk, package room, commissary, inmate accounts, laundry, law library, general library, grooming standards and staff conduct.

All facilities must keep accurate information on the numbers of grievances that are filed each month and their subject

matter and report such information to Central Office.

Central Office uses that information to monitor grievance activity throughout the entire system. For example, Central Office is able to examine total grievance activity at each facility for each month and then compare each total to the prior month's total to see if there has been an increase, a decrease or no change. Central Office will do the same thing on statistical totals for the entire year.

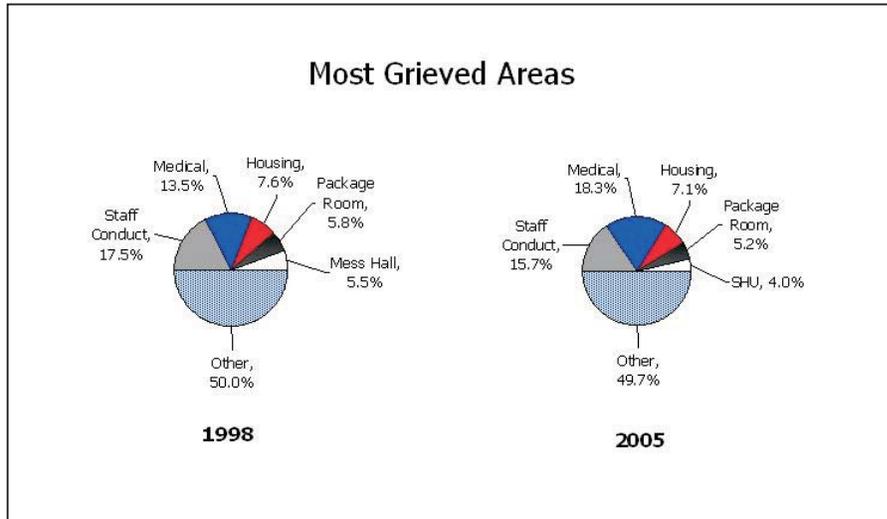
It will also look at the specific categories of grievances to see if there are any anomalies which may warrant concern. For example, a sudden, sharp increase in a facility's monthly total for mess hall grievances may raise an immediate alarm. That's because food is a significant issue for the inmate population. In the face of such a sharp increase, facility and Central Office staff will quickly investigate such complaints.

Data are also used to compare the level and types of complaints being filed at comparable prisons. Tracking how facilities compare to their peers often allows facilities to help one another. It allows prisons with low numbers of grievances in a particular area to offer suggestions to those with higher numbers on how to change policies and procedures to reduce grievances.

The grievance program has shown itself to be a more legitimate barometer of inmate complaints than are inmate surveys generated by outside groups.

For example, the Correctional Association of New York State testified in Los Angeles in February 2006 before the self-appointed Commission on Safety and Abuse in America's Prisons. It reported on the preliminary results of a questionnaire it sent to 12,125 New York state prison inmates.

According to the Correctional Association's testimony, it sought their detailed complaints on a variety of prison matters. While inmate grievances filed with the Department must include the name of grievants so that a personal response can be issued, the Association promised to cloak its respondents in anonymity in exchange for their "candor."



Even with that offer of anonymity, the Association said it obtained only 609 responses. By comparison, inmates signed their names to 872 complaints filed each and every week last year under the Inmate Grievance Program. (See chart below.)

Those comparative numbers suggest inmates view the Department's grievance program as a far more legitimate and credible venue to air and resolve their real concerns than an anonymous survey conducted by even an inmate lobbying group.

Video surveillance monitors staff, inmates

The Department is meticulous in video recording what happens inside of prisons to provide a visual record of events. Videotapes have been used both to exonerate and to condemn the actions of employees as well as inmates.

The use of videotaping technology has been wholeheartedly embraced, not just in New York but by correctional systems throughout the country. The Department has made and continues to make a major capital investment in the installation and operation of fixed videotaping and recording systems.

Since 1994, the Department has spent in excess of \$35 million for the installation of these fixed systems. In addition, the Department also makes ample use of handheld videotaping capabilities in order to record certain events.

The Department's policy on handheld videotaping provides that incidents, activities and searches may be videotaped to provide documentation for use in disciplinary or criminal proceedings and to record actions of inmates and staff.

The incidents and activities that may be videotaped include but are not limited to:

- Use or expected use of force during cell/room extractions and/or entries;
- Use or expected use of chemical agents;
- Unauthorized inmate activity (where it can be reasonably expected that serious security violations may result or where physical force may be necessary);
- Movement of inmates to and from disciplinary housing or mental health units;
- Movement of inmates during transportation or preparation for same, and

- Any other activity as directed by the watch commander or higher ranking authority.

Inspector General is 'in-house cop'

New York State Correction Law section 112 empowers and mandates the Commissioner to investigate all matters connected with the state's correctional facilities.

Since 1972, the Commissioner has designated the Department's Inspector General to fulfill that role by conducting inquiries and investigations. The Inspector General, like all members of the Department's executive staff, reports directly to the Commissioner.

The Department recognizes that criminal behavior, staff or inmate abuse, employee misconduct and/or corruption, threaten its ability to provide a safe, humane and lawful environment. Thus, such malfeasance will not be tolerated.

It is the role of the Inspector General to conduct investigations and, where warranted, to develop and present the evidentiary bases to support administrative, disciplinary proceedings and/or criminal prosecutions against transgressors, which may include staff, inmates, visitors, contractors and any other individuals who are afforded access to a correctional facility.

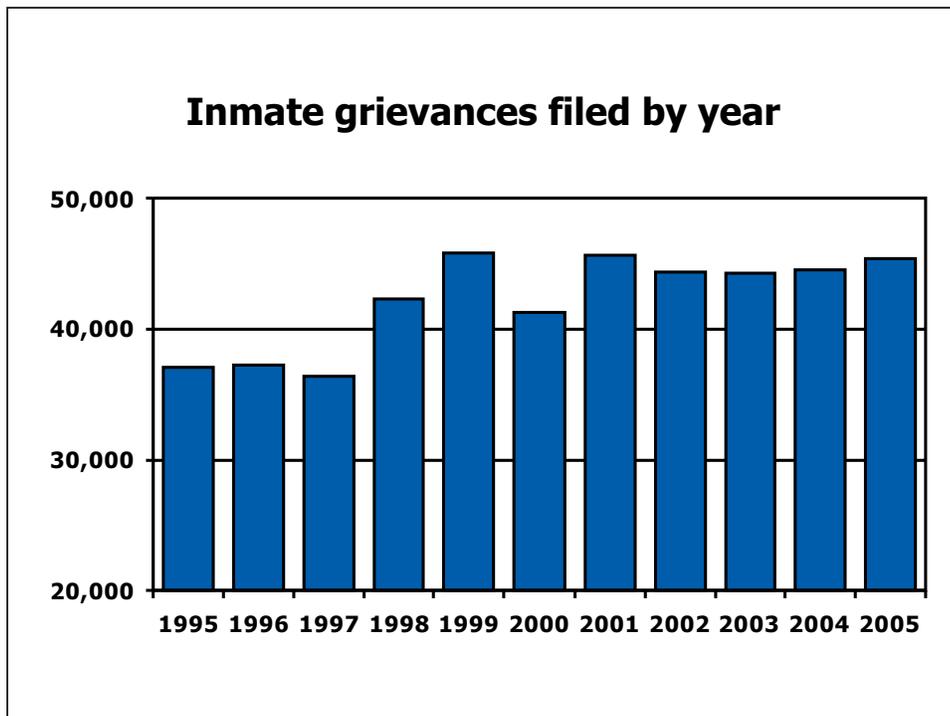
The Inspector General is also the Department's liaison with all other police and law enforcement agencies on the federal, state and local levels.

Most police dramas cast Internal

Affairs-type units as the wearers of the proverbial black fedoras. In prison, the Inspector General is viewed by most inmates as the unit that will investigate employees and inmates whose conduct may jeopardize the safety of staff and inmates alike. The vast majority of employees are dedicated and hard-working professionals who welcome the Inspector General's efforts to safeguard their workplace by rooting out misconduct wherever it might be found.

The Inspector General's office is comprised of 100 employees deployed in several units with a Deputy IG overseeing each unit. These are the units that focus exclusively on internal prison matters:

- The Internal Affairs Division last year investigated 1,367 allegations involving employee and inmate vio-



lations of the Department's Rules and Regulations and the Penal Law.

- The Narcotics Unit last year conducted 357 investigations into the flow of narcotics into correctional facilities by inmates, visitors or staff, as well as their distribution and use within correctional facilities.
- The Sex Crimes Unit last year investigated 314 allegations of sexual misconduct. That included 118 allegations of staff-on-inmate misconduct of a sexual nature plus 47 of sexual harassment. It includes 77 cases of unauthorized staff-on-inmate contact being investigated to determine if improper sexual contact/harassment occurred. There are also 27 cases of inmate-on-inmate sexual misconduct. The remaining 45 allegations involve non-inmate contact such as staff-on-staff and incidents occurring outside of correctional facilities. (See discussion of the federal Prison Rape Elimination Act under Section X of this report.)

Staff who are recruited to become IG investigators receive specialized training in investigative techniques and the development of cases. Staff from other Departmental units provide instruction as part of the training of new investigators, including Counsel's Office, the Bureau of Labor Relations, and the Office of Inmate Discipline.

Department employees face sanctions if they refuse to submit to questioning by investigators in relation to any official investigation into the performance of their duties. However, if the answers to a question may potentially incriminate the employee, then their answers are by law cloaked with use and derivative use immunity in relation to any subsequent criminal proceeding. On the other hand, the answers can and will be used against the employee in relation to Departmental charges when appropriate.

In performing their day-to-day investigative responsibilities, investigators will go to extraordinary lengths not only to protect the identities of staff and inmates who willingly provide information about alleged wrongdoing, but to also disguise, wherever possible, even the fact that an interview has even taken place.

No tolerance for sexual abuse of inmates

Commissioner Goord is adamant that staff and inmates both remain safe and secure in prison. One of the key elements in attaining that goal is to ensure that no sexual contact occurs between staff and inmates. It has always been the Commissioner's opinion that since inmates cannot give free consent to participate in sexual relations, all such contact with staff should be a crime.

In fact, it was the Department which first proposed legislation back in the mid-1980s to criminalize any and all sexual relationships between staff and inmates. At that time, a consensual sexual relationship between an employee and an inmate was not defined as a crime. The Department's position has always been that given the paramount authority employees exercise over inmates who are dependent upon staff for the fulfillment of every basic human need, the law should not counte-

nance such behavior under any circumstances. In the same manner that a person is legally incapable of consenting to a sexual relationship who is less than 17 years of age, mentally disabled, mentally incapacitated or physically helpless, the same should hold true for an inmate.

In 1996, Governor Pataki signed legislation which accomplished this result. It specifies that an inmate is legally incapable of consenting to a sexual relationship with a Department employee. The law defines "employee" as anyone who performs professional duties in a correctional facility consisting of providing custody, medical or mental health services, counseling services, educational programs, or vocational training for inmates.

While the enactment of this law greatly fortifies the ability of the Department to enforce its zero tolerance policy, the Department is seeking further changes to make it even more effective. The Department has proposed two bills that have been pending before the Legislature for the past few years.

The first would criminalize such behavior between an inmate and any Department employee, not just those who exercise some type of direct authority over the inmate. This bill would also criminalize such behavior with any outside volunteer.

The second bill would add a provision to the Correction Law making it an affirmative duty for any employee who has any knowledge or a reasonable belief of any type of a sexual relationship taking place between an inmate and another employee to report such information to the facility Superintendent. Failure to do so would subject such employee to disciplinary action. The Department remains hopeful that the Legislature will act favorably on these two proposals in the current legislative session, so that every reasonable safeguard will be taken to protect inmates.

Following the enactment of the 1996 amendment, the Department's Inspector General's Office became one of the first prison-based investigative bodies in the nation to establish a Sex Crimes Unit. Investigators assigned to this unit specialize in cases related to sexual misconduct within the system. All criminal investigations are conducted in conjunction with the New York Division of State Police and, when appropriate, local district attorneys.

Since the inception of this unit, 75 cases of staff-on-inmate sexual abuse have been referred for outside prosecution. Of these 75 cases, 38 have resulted in criminal convictions, including 17 felonies and 21 misdemeanors. Another six cases resulted in non-criminal dispositions such as a violation adjudication or adjournment in contemplation of dismissal. Sixteen cases led to acquittals, dismissals or determinations not to prosecute, and 15 cases are presently pending.

To make its zero tolerance policy unequivocally clear to the entire work force, the Department has created a mandatory training lesson plan for every Department employee entitled "Prevention of Sexual Abuse of Inmates." As part of this lesson plan, a videotape is played that includes the identification of three Department employees. Because of their having en-

gaged in sexual relationships with inmates, each went from being employees of the Department to being inmates under its confinement.

The Department continues to regard any type of inappropriate relationship between an employee and an inmate as a egregious act of misconduct, even if there is no allegation of any sexual behavior having taken place. This could include, for example, the exchange of gifts or non-sexual favors.

These cases, as well as those that are initiated due to one or more sexual allegations, but did not result in a criminal prosecution or conviction, are pursued by the Department's Bureau of Labor Relations. It conducts administrative proceedings that seek to terminate the offending employee. For calendar years 2003-05, 113 employees were administratively disciplined for misconduct involving improper dealings with inmates. Sixty-five have resulted in employee termination or resignation. Under state and federal privacy statutes, the Department is prohibited from releasing information contained in employee personnel files.

Department monitors gangs, members

Different states have wholly different philosophies when it comes to addressing prison gangs and their membership.

In some states, gang members are locked up upon reception just for their outside gang affiliation, very often in around-the-clock administrative segregation similar to disciplinary housing in New York prisons.

In other states, they are housed together and allowed to congregate openly in yards and mess halls.

Some states talk about exact numbers of gang memberships by individual prison as well as across their systems.

New York's approach is consistent with its policy, as stated herein, that inmates come to prison alone, do their time alone, and are solely responsible for their own actions. The policy is also consistent with rules demanding that inmate treatment be based upon their prison conduct, not upon their status prior to commitment.

Simply stated, inmates are disciplined in New York only for gang activity in correctional facilities, not for simple gang membership on the outside. The only exceptions have been the half-dozen inmates locked up in the past decade for their street roles as leaders of violent gangs. That was done to prevent them from inciting gang activity in prison.

The Department is aware of which inmates are gang members and their affiliation through pre-sentence reports, descriptions of the crime of commitment, reception interviews, police arrest reports and intelligence from county jails and other law enforcement sources. Constant monitoring of the inmate population discloses emerging gangs, new memberships and changing alliances once offenders are incarcerated.

The Department knows, for example, that there are roughly a dozen main gangs with members across the system. There are also regional gangs attracting inmate members from their parts of the state. There are also local gangs operating as predators within some facilities just as there are those who attempt to con-

trol drug and other contraband traffic within particular prisons.

The Department closely monitors those inmates to determine if they are actively involved in gang-related activity. If they are not, they remain in general population where they are monitored but otherwise treated the same as non-gang inmates.

It would not serve the Department's security interests or prison safety to alert gangs as to how many of its members have been identified or where they are located. It would frustrate security to give inmates information they could use to strengthen their own ranks or to destabilize other gangs.

Therefore, for security reasons the Department does not publicly release its data on gangs and memberships used daily to monitor their activity inside of prison.

Instead, the Department has declared such gang activity to be in violation of Departmental rules. Individuals will be punished for acting as a member of a gang. Gangs are not allowed to recruit, they are not allowed to circulate their literature and they are not allowed to display their colors. They are not allowed to organize or to hold meetings of their membership.

Correction Officers know that their first line of defense against major gang activity is to interdict individual behavior before it mushrooms into group activity. They know it is their obligation to write disciplinary tickets against individual inmates who participate in unapproved behavior or activity. Not only does that result in punishment for such activity, but it alerts the system that this inmate is a gang member, a status that will remain with the inmate regardless of future prison transfers.

If a prison incident occurs and gang-related activity can be documented, an additional disciplinary charge of gang activity can also be added against individual inmates.

In any of these cases, individual inmates are held responsible if they are found to be acting as members of gangs. Inmates face the full array of discipline, from disciplinary confinement and loss of good time to loss of privileges and movement to a prison further from home.

As a result of monitoring and disciplinary sanctions, New York has seen a decline in inmate disciplinary convictions for gang activity.

Inmate convictions on disciplinary tickets for gang activity written by staff, mostly Correction Officers, peaked at 1,896 in 1998. That number dropped by 38 percent to 1,173 convictions last year. Since the average daily population declined from 69,885 inmates in 1998 to 63,357 last year, that means the rate of such disciplinary convictions dropped from 27 per 1,000 inmates in 1998 to 19 last year.

Monitoring inmate program participation

The goal of the Department's Program Services component is to meet every inmate's identified program needs prior to release. Program Services' 3,510 staff includes teachers, counselors, vocational instructors and substance abuse treatment staff.

The identification of inmate needs begins at the reception center with a review of the pre-sentence report, past history, standardized testing and an interview with a counselor.

The Department and others have conducted extensive re-

search to determine the types of programs that best provide inmates with the tools necessary to successfully reintegrate into the community upon release from prison.

That's led to the Department's core program priorities of offering inmates academic education, vocational training, substance abuse treatment, aggression replacement counseling and sex offender counseling.

In addition, every inmate is required to complete the three phases of Transitional Services. Phase I focuses on adjustment to incarceration, developing a plan to address program needs, maintaining relationships with family members, making good decisions and beginning the process of obtaining documents that will be necessary for reentry such as a birth certificate and social security card. Phase II includes courses on health, self-development, communication skills and conflict management. Phase III addresses career development, transition to ex-offender status, money management and family reintegration.

Although needs vary among inmates, approximately 75 percent of them require at least three of these core programs. Inmates are advised of these needs while in reception.

Thereafter, inmates meet every three months with their assigned counselors who track their progress relative to meeting each program need. Counselors enter that data on the guidance and counseling computer system. Quarterly computer codes indicate if an inmate has completed a needed program, is currently participating in one, refuses to participate or is unavailable due to discipline, medical, or some other reason.

These computer codes form the basis of a comprehensive evaluation system allowing the Department to monitor how well the system as a whole, and individual facilities in particular, are doing in reaching the program goals of all inmates prior to their release.

Every three months, the Department generates a report which looks closely at every inmate released during the previous quarter to determine if program needs were met and if not, why not.

The graphic above records the Department's progress in meeting the needs of inmates who were released in the fourth quarter of 2003 versus the same period in 2005. The graphic

shows the percentage of inmates who had completed or participated in a needed program at the time of their release from prison.

The graphic shows great progress has been made over the past two years since this monitoring process was established. But these percentages also document just as clearly that work still needs to be done, especially in terms of programming inmates in vocational training and transitional services.

The Department also wants to improve academic education, although it is extremely difficult for inmates to meet the goal of obtaining a GED. It would be difficult to make up as much as 12

years of elementary and secondary education if that was an inmate's sole program during an average prison term of 3-4 years.

That goal becomes even more difficult when inmates are at the same time trying to meet program goals in vocational training, sex offender treatment, substance abuse treatment, aggression counseling and transitional services.

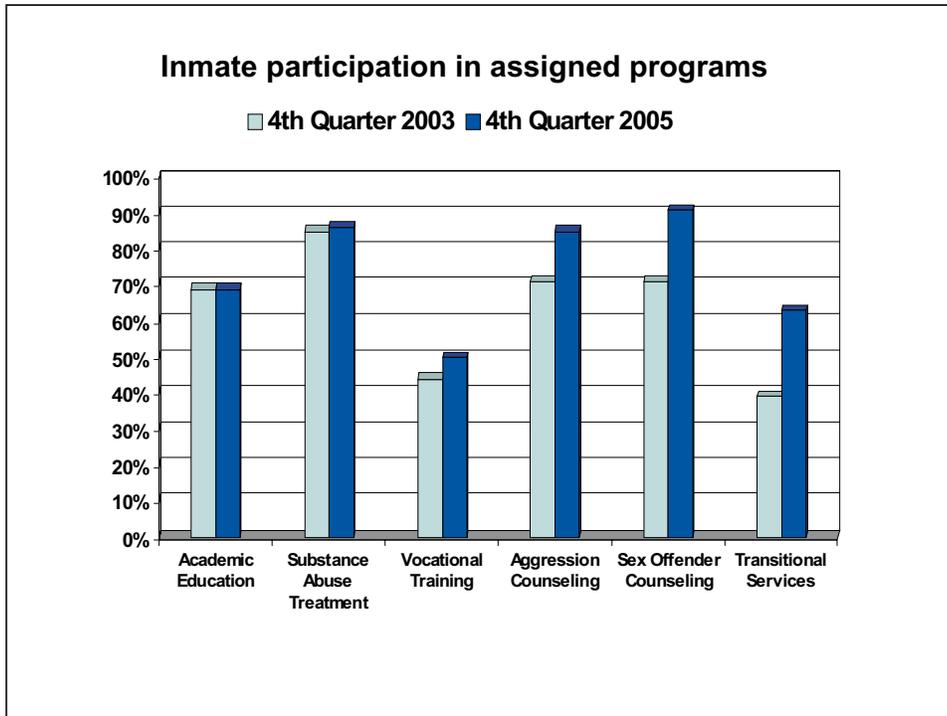
Thus, time remains the true culprit

behind inmates not finishing all required programs prior to their release. The Department is looking at ways to more efficiently schedule inmate time and programs to maximize their completion of needed requirements.

Critics who don't understand prison program scheduling argue that the Department has program "waiting lists" because not all inmates who need a particular program have yet received it. Anyone who understands college course scheduling knows why the critics are wrong.

Senior-level electives, for example, do not need classroom space for freshman until those freshman complete lower-level courses and become seniors. Similarly, inmates have a multiplicity of needs that require scheduling them for several successive programs. There only has to be – and there are – vacancies in a particular program when an inmate is programmed for it.

There need not be space in a vocational program, for example, for an inmate who is currently enrolled in a required alternative to violence, academic or sex offender treatment program. It is as inaccurate to say prisons have program "waiting lists" as it would be to argue that colleges have "waiting lists" because there are no seats in senior classrooms for freshmen. □



X. External scrutiny enhances transparency

No less an authority than the U.S. Supreme Court has ruled that the general public has a limited right of access to the nation's prisons because of their need for internal security to safeguard staff and inmates alike.

The record shows, however, that New York has chosen to make its prisons far more transparent than the minimum required by the nation's highest tribunal.

The starting point for outside access is found in Correction Law section 146. This provision of law identifies a number of government officials who are authorized to visit all correctional facilities at will and without notice. The list of officials includes, but is not limited to, all members of the Legislature, all county and supreme court judges, the judges of New York's highest court, the Court of Appeals, and members of the State Commission of Correction. Even pastors with congregations in the prison community have such rights of access.

In New York there are a total of 212 members of the state Senate and Assembly. Each and every one of these elected representatives is entitled to make an unscheduled visit at will to any correctional facility. Furthermore, the Department's protocols for visits by members of the Legislature allow for each member's aides to also participate in any visit.

In terms of the judiciary, there are approximately 460 judges who are eligible to visit correctional facilities at will. In fact, one of the rules of the Office of Court Administration is that each judge who sits in a criminal term must visit a correctional facility at least once each year.

District attorneys and assistant district attorneys from all 62 counties in the state have access to state prisons. Federal prosecutors, of course, also have the prerogative of investigating any reports they receive alleging federal crimes or human rights violations committed in state prisons.

Tax dollars pay for some inmate letters

Visits from any of those officials could result from letters sent by inmates using taxpayer-financed postage. Federal court decisions mandate that the states provide inmates with postage to communicate in writing with certain people and entities.

It costs New York taxpayers \$340,000 annually to provide inmates with a weekly free postage allowance equivalent to five domestic first-class, one ounce letters. They are considered privileged correspondence and therefore cannot be read by prison staff except in exigent circumstances.

Inmates can use that free postage to communicate with:

- Any American federal, state or local government official, department or agency; any official of a nation, state or tribe of which the inmate is a citizen, or the Correctional Association of New York State, an inmate lobbying organization.
- Any attorney, approved legal representative, representative employed or supervised by an attorney, or any legal services organization.
- Medical personnel such as physicians, dentists or hospitals.

Unless privileges are lost due to misbehavior, inmates also have the right to place a telephone call to virtually any individual or entity willing to accept a collect call from them, provided the number is listed on the inmate's telephone registry.

State commission wields broad powers

The independent State Commission of Correction (SCOC) has broad powers to not only visit state and local correctional facilities and issue reports, but to also promulgate regulations that establish minimum standards for the management and operation of such correctional facilities.

These regulations are found in Chapter V of Title 9 of the New York Code, Rules and Regulations. They cover such topics as environmental health and safety, policies and procedures, prisoner personal hygiene, maximum facility capacity, sanitation, chemical

agents, health services, academic education and library services.

If the Department wishes to exceed capacity within any of its facilities, it must first apply to the SCOC and obtain its permission in the form of a variance. In the case of double-bunking at certain medium-security facilities, the SCOC, in issuing its variance, will establish detailed reporting requirements as well as enhanced staffing requirements. (A copy of the SCOC's 2005 variance allowing the Department to operate double-bunking for an additional one-year period appears as [Attachment G](#).)

Correction Law Article 3 deals exclusively with the powers, functions and duties of the SCOC. Its authority is originally derived from Article 17, Section 5 of the state constitution. In addition to the power of any member or employee of the SCOC to



Press tours the Monterey Shock Incarceration program. Eighty-five percent of media requests for prison access have been approved during the past decade.

“be granted access at any and all times to any correctional facility or part thereof,” they must also be granted access “to all books, records, and data pertaining to any correctional facility deemed necessary for carrying out the commission’s functions, powers and duties.”

Among other things, the SCOC can close any correctional facility which it determines to be unsafe or unsanitary or which has failed to comply with its regulations.

The SCOC also has within it a medical review board. It is responsible for looking into the circumstances surrounding the death of any inmate of a correctional facility. This board can also order an autopsy on the body of any deceased inmate, even if one has already been performed.

County Law section 674 requires the county coroner to perform an autopsy whenever there has been an inmate death. This autopsy requirement is applicable in all circumstances, including those where the cause of death is completely devoid of any question or suspicion. That would even include when an inmate expires in an outside hospital after a long struggle with cancer. However, state law allows autopsies to be waived in cases where the family has a religious objection and there is no doubt that the death is due to natural causes.

Pursuant to Correction Law section 16, the Department is obligated to reimburse the local coroner’s office for all reasonable expenses related to the performance of an autopsy.

Extensive oversight by other state agencies

Another avenue of oversight into correctional operations in New York state emanates from the Office of the State Comptroller (OSC). In short, the Comptroller can review financial records to ensure taxpayer dollars are accounted for and expended in the manner proscribed by law.

The powers of the Comptroller are very broad and are set forth in the state constitution as well as the State Finance Law. The Comptroller has oversight over all fiscal concerns of the state and may audit any account in which the state has an interest.

The Comptroller also operates and maintains, and may revise and modify, a state accounting and financial reporting system. OSC also has subpoena power to require any person to appear on any matter within the scope of an inquiry or investigation and to produce any relevant books or papers.

Throughout the years, the Comptroller’s Office has conducted numerous audits into many diverse aspects of prison operations. Some audits have been relatively narrow in scope, while others have been extremely broad-based.

Some have focused on a single individual or correctional facility. A number have focused on the functions or actions of a specific Central Office unit, while others were system-wide in scope. The end result of the audit process is the generation of a final report that is accessible to the general public, both on paper and from the Comptroller’s website.

Examples of OSC audits are those entitled: Inmate Application Systems Security Controls, Administration of Workers’ Compensation Laws, Contract with MCI WorldCom for the In-

mate Call Home Program, Contract with the Osborne Association: Billings for Job Placement Services (for inmates), Health Care Services Provided to Inmates Outside of Correctional Facilities, Sing Sing Correctional Facility: Selected Payroll Practices, Industries Program, Comprehensive Alcohol and Substance Abuse Treatment Program, and Oversight of Statewide Pharmacy Operations.

Another oversight entity that is empowered to look into potential wrongdoing is the Office of the State Inspector General (OSIG). While the Department has an Inspector General whose duties were discussed in Section IX of this report, the OSIG has broader responsibilities and reports directly to the Governor.

The OSIG is charged with receiving and investigating complaints from any source concerning allegations of fraud, criminal activity, conflicts of interest or abuse in any covered agency, which includes this Department. The OSIG can also determine whether disciplinary action, civil or criminal prosecution or further investigation by an appropriate federal, state or local agency is warranted.

In fulfillment of its responsibilities, the OSIG has the power, among other things, to subpoena and enforce the attendance of witnesses, to administer oaths or affirmations and examine witnesses under oath, or to require the production of any books and papers deemed relevant to any investigation. It can require any Department employee to answer questions concerning any matter related to the performance of official duties.

There are numerous other governmental entities that may have occasion to make a site visit or inspection of a correctional facility. For example, the Department of Labor may conduct an investigation into an employee complaint alleging an unsafe work condition. The state or a county health department can make an inspection of the food service area. The Department of Environmental Conservation can make a site inspection in connection with a spill of any alleged hazardous material. Local fire departments can also review fire response plans.

All of these individuals and agencies also share one other commonality: they can publicly release the results of their tours or investigations without any clearance by – or even the knowledge of – this Department.

Prison gates open to outside review

Site visits and inspections are made in connection with the Department’s commitment to the prison accreditation process. As noted earlier, all of the Department’s facilities are accredited by the American Correctional Association (ACA). Each facility must undergo the arduous review process by ACA auditors once every three years during which time the facility is examined for compliance with a whole panoply of operational standards.

A similar process is applied for the mental health units within correctional facilities that are operated by a separate state agency, the Office of Mental Health. The entity conducting the optional audits is the Chicago-based Joint Commission on Accreditation on Healthcare Organizations (JCAHO).

Both the ACA and JCAHO can speak volumes by simply withholding their accreditation of New York facilities. Instead,

each has respectively found Departmental and OMH operations to meet their standards. It is not unusual for auditors to advise prison staff that their operations exceed standards.

Researchers, media welcome in prisons

There are also numerous other entities and individuals who are afforded access to prisons and Departmental records as a matter of discretion and sound public policy.

For example, it is Department policy to promote research in the field of corrections and to support professional studies of Departmental operations. Accordingly, research involving inmates, staff and Departmental operations is authorized and conducted in accordance with Department Directive 0403, entitled "Research Studies and Surveys." (A copy of that Directive appears as [Attachment H](#).)

The Department also operates an Internet home page at www.docs.state.ny.us. "Inmate Lookup" records 3.5 million "hits" monthly from those seeking information on anyone who has been in state prison since the early 1970s, unless a conviction was expunged by a court or sealed by law.

The balance of the site records 350,000 "hits" each month. It includes mailing addresses and driving directions to each prison. It also offers general information on the agency, job openings and upcoming Civil Service examinations. It maintains a list of Department research documents available to the public and a form to obtain copies of them, as well as copies of press releases and agency publications (including this report and its attachments).

The site also provides 36 key Department directives, which detail operating procedures and administrative regulations that apply across the prison system. Those directives include specifics on access to Departmental records, sex abuse prevention, inmate religious programs and practices, applying for medical parole, visiting inmates, inmate general and privileged correspondence, applying for clemency, academic and vocational programs, Hispanic and cultural affairs services, the outside volunteer program, correctional facility tours and how to mail or bring in packages intended for inmates. More Directives of interest to the public will be added.

The Department's Public Information Office also provides an on-call person to respond to media inquiries during off-hours including evenings, weekends and state holidays. It also maintains an Internet e-mail list to alert the media statewide or regionally of prison incidents, press releases and reports.

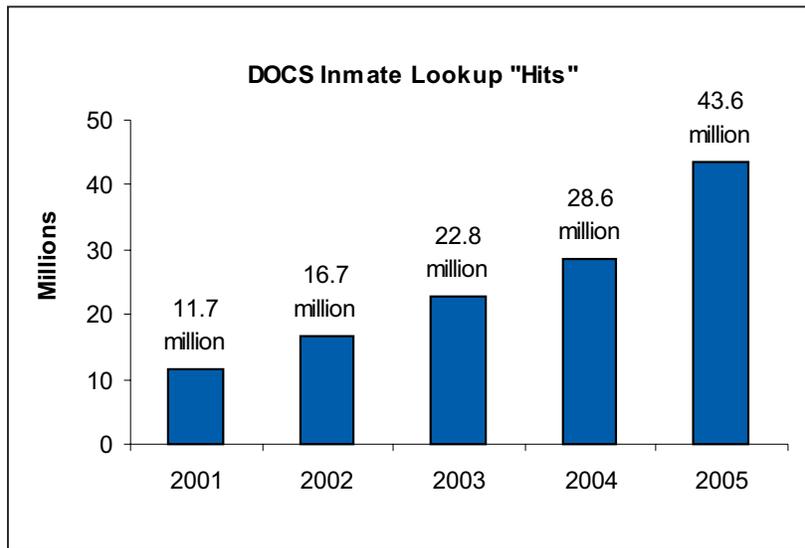
Another example of outside scrutiny is the considerable media access that the Department permits inside of prisons. The Department supports media access even though the United

State Supreme Court has consistently ruled that there is no media right of access to prisons beyond the limited access afforded the general public.

There are states that cite court decisions to justify denying media access to all inmates or to only offer for interviews those inmates selected by prison officials. Some do not allow media to bring cameras or tape recorders into their prisons. Others require media to show how an intended story advances prison goals before they will approve coverage of programs or operations.

But the relevant Department directive provides that "it is the policy of New York State to make its prisons accessible to media via prearranged facility tours and access to inmates and programs." (A copy of Directive 0401, "Release of Information to the News Media," appears as [Attachment I](#).)

Media interviews are arranged through the Public Information Office (PIO). But Directive 0401 makes clear that media access does not require disclosure to the PIO of the subject of an inmate interview or other prison story.



Media is allowed to bring in and use the tools of the trade – including audiotape recorders as well as still and video cameras – on prison tours, while covering programs or during the interview of inmates selected by the media.

To maintain the confidentiality of the interview, security staff monitor interviews from a distance, often from outside the open doorway into the interview room. Staff are advised their presence is to monitor security protocols during the in-

terview, not to eavesdrop on it.

Even that longstanding policy cannot guarantee physical safety. Murderer Kenneth Kimes took a freelance reporter hostage during an interview in October 2000 at Clinton Correctional Facility. In 1988, killer Willie Bosket was being interviewed in the visiting room of Shawangunk Correctional Facility when he bolted over a table and stabbed a Correction Officer.

Despite those incidents and court decisions allowing the Department to restrict media access, any general confinement inmate may be interviewed one-on-one for later use.

More than 2,100 media requests for prison access were received between 1995-2005. Of those, 85 percent were approved.

Virtually all of those disapprovals fell within these circumstances when a media interview request will automatically be disapproved:

- requests for the “live” broadcast of interviews on radio or television;
- requests for a third-party presence, such as the inmate’s attorney, family member or another inmate;
- requests for inmate press conferences, defined as the simultaneous presence of more than one media outlet;
- requests for access onto a medical care unit;
- requests for interviews with inmates in disciplinary status, or
- requests that are designed to help an inmate conduct an outside business from inside prison.

CANYS afforded access to visit

The Correctional Association of New York State has statutory authorization to visit correctional facilities in New York. The same law allowing them to visit prisons requires that any reports it issues be submitted to the Legislature, not to the Department.

The Correctional Association is allowed to visit all areas of a facility. The Correctional Association identifies to the Department those private citizens who comprise the membership of both its visiting committee, which at any time consists of more than 60 individuals, as well as its women in prison project. These individuals, as well as the Correctional Association’s board of directors and executive committee staff, can make site visits to correctional facilities.

Because of its limited role as an inmate lobbying organization, the Association’s mission is often at odds with that of the Department, which bears the actual responsibility of safeguarding staff as well as inmates around the clock.

Twice in its February testimony before the self-appointed Commission on Safety and Abuse in America’s Prisons, the Association highlighted fundamental differences between itself and the Department:

- The Association asserted that this Department should be required to respond in writing to its reports and to explain how it will implement remedial plans where needed.
- The Association prefaced its presentation by conceding it “realistically could not investigate (its statistical data) to confirm their validity,” but was relying upon it anyway to make sweeping generalizations about the prison system and its operations.

First, it is not the Department’s concern that a bicameral Legislature chooses not to respond with one voice to Association reports. It does, however, concern the Department that a lobbying group would even suggest that an agency of state government should be required to routinely spend tax dollars to respond to its agenda.

Secondly, the Association might find the Legislature, this Department and others more responsive to its reports if the Association stood four-square behind the accuracy and credibility of its data and findings, rather than publicly distancing itself from them.

Courts demand FOIL transparency

Access to the inner workings of a prison is also accomplished by application of the Freedom of Information Law (FOIL) which is set forth in Article 6 of the Public Officers Law.

In enacting this law the Legislature declared that government is the public’s business and that the public, individually and collectively and represented by a free press, should have access to the records of government in accordance with the provisions of this article. In applying this law, the courts have consistently ruled that FOIL itself is to be read liberally and its exceptions to be read narrowly.

This Department remains aggressive in meeting its responsibility under FOIL.

The Department’s Central Office responded to 2,376 written FOIL inquiries last year – or roughly 10 each work day. That does not include the FOIL requests filled by 69 prisons around the state.

It also does not take into account the very limited cases in which the Department’s Public Information Office requires the media to provide written FOIL requests. If reports or data are clearly disclosable under the law, no written request is usually required.

In general, written requests are only required if the requestor is seeking a long list of data or documents. A written request is also required if the requestor wants the Department to consider creating a document. While FOIL does not require the creation of any documents, the Department sometimes does so if it believes the result will be a document of legitimate and widespread public interest.

The central tenet of FOIL is to afford access to existing agency records unless some compelling reason, such as a threat to safety or security, might justify the agency withholding or redacting the document.

As defined in FOIL, record means any information kept, held, filed, produced or reproduced by, with, or for an agency or the state legislature, in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes.

Any person, including an inmate, can make a FOIL request. So long as the request “reasonably describes” the sought-after documents, the agency is then legally obligated to assemble all of the responsive documents, regardless of the voluminous nature of the request, and then determine if they should be turned over, or withheld in whole or in part.

The Department remains in compliance with two landmark court decisions on FOIL – even though it believes the mandate for transparency is onerous in one case, and the public disclosure mandated in the second could threaten prison safety.

The first case was the decision of New York’s highest tribunal, the Court of Appeals, in its 1986 *Konigsberg v. Coughlin* decision. It opened the door to allowing bored inmates to make

extensive requests for no other reason than to tie up staff time and state resources.

Inmate Harold “Boom Boom” Konigsberg was serving a sentence for murder stemming from his role as a loan shark and a ruthless enforcer for organized crime.

He submitted a “fishing expedition” of a FOIL request in which he sought “to inspect and review any and all files of records kept on me and my number of identification of the New York State Department of Correctional Services which is identification number 71-A-0224.”

In response, the facility inmate records coordinator (IRC) advised the inmate that he had to reasonably identify the documents sought, and that he could do this by closely tailoring his request and stating the name of the document if known, or the type of content, and the approximate date. The IRC also furnished him with the names of several folders that were “accessible” to him. Dissatisfied with this response, inmate Konigsberg appealed the matter to New York’s highest court.

As part of the defense, the Department pointed out that more than 2,300 pages of records had to be assembled, which were estimated to comprise 95 percent of the records being sought. Furthermore, it was noted that most of the facility’s inmate records contained material that was exempt from disclosure under FOIL and that it was necessary, in order to avoid oppressive and disruptive administrative burdens and backlogs, that the person handling the FOIL request know the specific records being sought.

Despite these formidable logistical complications, the Court of Appeals agreed with the inmate’s contention that the records had been “reasonably described.” In the court’s words, the description used by the inmate – “all files” – enabled the agency to locate the records in question.

The second case involves a 1992 decision by the Appellate Division, Third Department, in a case entitled *Matter of Buffalo Broadcasting Company Inc. v. N.Y.S. Department of Correctional Services*.

A television station sought FOIL access to Departmental videotapes of a major incident occurring in a disciplinary housing unit.

The Department’s policy is to restrict access to such units, which are the most secure in any prison. The intent of the Department’s policy is to restrict the dissemination of information on how security staff lawfully execute policies and procedures in the event of a disturbance there.

The Department contended disclosure of the videotapes would create concerns for the personal safety of inmates and correctional personnel. In rejecting this contention, the court ruled that the depictions sought to be withheld were of scenes witnessed by the general inmate population and the techniques, weapons and equipment used by Officers and officials as shown on the tapes were not only observable by the inmates but completely conventional in nature.

The Department also sought to withhold certain videotapes of inmates on the basis of personal privacy violations. How-

ever, the court ruled that “an inmate in a state correctional facility has no legitimate expectation of privacy from any and all public portrayal of his person in the facility.” Instead, only to the extent that particular videotapes showed inmates undergoing strip frisks or other possible display of nudity, could such tapes be withheld.

As this report makes clear, the Department makes abundant use of both fixed and handheld videotaping system as a means of monitoring certain areas within a facility and also to historically document and preserve significant events and incidents that transpire therein.

The Department agrees that, for purposes of FOIL, a videotape should be treated as a record in the same manner as any routine paper document. This means that videotapes that are reasonably described may have to be reproduced if they fall within the parameters for release under FOIL.

However, the Department believes this case falls into one of the limited categories in which a FOIL exception should have been granted. The Department believes, with all due respect to the court, that jurists erred in ordering the release of footage detailing the Department’s security procedures and policies in response to a violent incident in a disciplinary housing unit.

Taxpayers fund extensive inmate law libraries

The courts have recognized a need to provide inmates with access to certain out-of-prison resources unrestricted by the taxpayers who must finance them.

That occurs, most notably, through the Department’s network of law libraries. (A copy of Department Directive 4483, “Law Libraries, Inmate Legal Assistance and Notary Public Services,” appears as [Attachment J](#).)

In the landmark case of *Bounds v. Smith*, the United States Supreme Court ruled that inmates have a constitutional right of access to the courts. This right requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with either [1] adequate law libraries or [2] adequate assistance from persons trained in the law.

In New York, taxpayers have traditionally financed both.

The Department remains steadfast in its commitment to maintain a strong and vibrant law library network. There are 93 law library collections of varying sizes, depending on the specific facility and the inmate population to be serviced.

Unquestionably, the caliber of New York’s collections greatly exceeds the threshold established by *Bounds*. For example, in addition to standard criminal, penal and correctional law volumes, the Department also includes family law titles and immigration resources within its collections.

Nearly \$2.5 million was spent in Fiscal 2005-06 to maintain all the law libraries, including the updates of the law book and periodical collections, and also the supply of pens, paper and photocopying services.

In all maximum- and medium-security facilities, the collections are substantial and contain federal and state case law from 1960 forward.

They also include full sets of *United States Code Annotated*

and *McKinney's Consolidated Laws of New York*, plus *West's Federal Forms* and *West's McKinney's Forms*. In addition, federal and state digests, *Shepard's Citations* (federal and state) and *New York Jurisprudence* help the inmate researcher in finding cases on point and ensure vital updating of these cases. Key titles of *New York Codes Rules and Regulations* are among the holdings and are especially useful to inmates who are pursuing post-conviction remedies.

Also, legal research guides, self-help works such as *A Jailhouse Lawyer's Manual*, treatises on criminal law including appellate practice, evidence, police misconduct and drug testing, as well as legal writing guides, provide invaluable tools to inmates who are preparing their own legal papers. Finally, the *New York Law Journal* and the *New York State Register* are part of the periodical holdings. (A copy of a listing of the various legal publications and collections which comprise the holdings of a maximum-security facility law library appears as [Attachment K.](#))

The Department also maintains a relationship with the New York state library in order to augment prison collections. Inmates are able to access legal materials not held within a facility's collection by plugging into this resource entitled the Prisoner Services Project.

Trained inmate law clerks are integral to the operation of the law library program, both to assist inmates in preparing their own legal papers and to maintain the law library collections. Inmates must have earned a minimum of a GED to participate in the Department's legal research course. Spanish-speaking inmates are encouraged to take the course to ensure that monolingual Hispanic inmates are able to receive assistance from a trained law clerk in their own language.

At the conclusion of the course, a standardized examination is administered, which is graded by a law librarian, who is also an attorney. Inmates who pass this course then staff the Department's law libraries and provide legal assistance services to their peers. Between 350 and 400 inmates earn legal research certificates each year.

Through the law library program, inmates also have ready access to important auxiliary services. These include notary public services, plus the free pens, pencils, writing supplies and modestly-priced photocopying services that courts also require states to provide.

Inmates who are able to visit the law libraries may type their own documents. Inmate law clerks provide typing services for inmates who cannot type and are submitting legal papers to a

court that requires documents to be typewritten. The law libraries are also equipped with microfiche readers to facilitate inmate use of records and briefs and other resources sent in this format by the state library. "Fill-in-the blank" legal forms are available as well.

Taxpayers provide some inmate attorneys

Although the Department's law library program is quite extensive, by no means is it the exclusive means by which inmates can gain access to the judiciary. There are legal entities whose sole purpose is to provide legal representation to indigent inmates. These legal groups are also supported, at least in part, by taxpayer funding.

In New York the two principal legal organizations which provide such services are Prisoners' Legal Services of New York and the Prisoners' Rights Project of the Legal Aid Society.

There are also *pro bono* panels of lawyers who make themselves available to step in and provide legal representation to indigent inmates after a lawsuit is filed. This is especially prevalent in all of New York's federal district court jurisdictions where it is not uncommon for many of New York's most prestigious law firms to provide such representation.

Despite the fact these other legal avenues are

available, New York has not in any way diminished its commitment to the maintenance of a strong law library collection and network.

This is notable because this commitment was forged in the wake of the *Bounds v. Smith* decision many years ago. Since *Bounds*, however, the Supreme Court issued a more recent landmark decision called *Lewis v. Casey*. It provided clarification and ruled that "*Bounds* does not guarantee inmates the wherewithal to transform themselves into litigating engines capable of filing everything from shareholder derivative actions to slip and fall claims."

Rather, "[the tools it requires to be provided are those that the inmates need in order to attack their sentences directly or collaterally, and in order to challenge the conditions of their confinement," the court explained.

Lewis also clarified that inmates must be afforded either access to a law library or access to assistance from persons trained in the law. Despite the fact that *Lewis* made clear that only one of the two is required, New York continues to provide both.

Because they are so rare, inmates garner media attention



Taxpayers provide inmates with both extensive law libraries such as the one shown here as well as attorneys for personal matters.

when they win financial awards or even Pyrrhic victories in the courtroom. But as few as those wins are, the judicial record is replete with thousands of instances where inmates filed frivolous or knowingly false actions. Those are among the reasons why the federal courts now require inmates to exhaust their administrative remedies before filing lawsuits.

There are also cases where judges have ruled inmates filed bogus actions in an attempt to coerce or blackmail the Department into giving them special or undeserved treatment.

One of the classic cases in that regard involved the infamous "Long Island Lolita." Amy Fisher was 17 in 1992 when she shot her 30-something lover's wife in the head. Fisher ultimately received a sentence of 3-1/2 to 10-1/2 years for first-degree assault. She was released in May 1999.

Before that, she filed an action in federal court accusing Albion Correctional Facility employees of rape and other Fourth, Fifth, Thirteenth and Fourteenth Amendment violations.

Federal Western District Judge Richard J. Arcara of Buffalo wrote in his July 16, 1997, decision:

"The Court notes that it frequently receives requests for injunctive relief from prison inmates, especially requests for transfers from one prison to another. The majority of these requests are frivolous, and are resolved on the papers without a hearing. The Court held a hearing in this case, however, because the allegations of rape and sexual abuse stated in the complaint are extremely serious, and because plaintiff's counsel represented to the Court that plaintiff had substantial corroborating proof to support their claims.

"Rape or sexual abuse of inmates by correction officers is abhorrent and cannot be tolerated or condoned. Prison officials must be diligent in preventing such misconduct and punishing those who transgress. Nevertheless, in this case, Fisher's allegations of rape and sexual abuse do not bear up under close scrutiny. Unfortunately, it appears that she and her mother are trying to manipulate the system by capitalizing on this sensitive and important issue.

"Simply put, the Court finds Fisher's allegations of rape to be highly suspect and unsupported by the record currently before the Court. The evidence tends to show that this lawsuit is part of a 'plan' by Fisher to make false allegations against correction officers in order to either obtain a transfer out of Albion to a facility closer to home, or to assist her somehow in obtaining parole."

Federal scrutiny helps protect inmates

In addition to all of the other remedial avenues available to inmates, the federal government can also intercede on their behalf under the Civil Rights of Institutionalized Persons Act (CRIPA).

This law authorizes the Attorney General of the United States to conduct investigations and litigation regarding conditions of confinement in state or locally operated institutions.

The Special Litigation Section of the Civil Rights Division within the Department of Justice investigates covered facilities to determine whether there is a pattern or practice of violations of inmates' federal rights. The Section was created in 1980.

According to the Justice Department's CRIPA web site, the Special Litigation Section has investigated more than 300 facilities in 39 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the Territories of Guam and the Virgin Islands. It is further noted that as a result of the CRIPA efforts of the Department of Justice, tens of thousands of institutionalized persons who were living in dire, often life-threatening conditions, now receive adequate care and services.

The official web site also explains that Section staff are involved in a broad array of activities that range from reviewing complaints and conducting investigations to monitoring and enforcing court orders, litigating large, complex institutional reform cases, and writing amicus briefs on issues of national import. In addition, Section staff work closely with nationally renowned experts to evaluate institutional conditions by touring facilities, observing relevant practices and procedures at the facilities, evaluating records, and interviewing residents, staff, and other individuals knowledgeable about the conditions at the institutions.

Furthermore, the web site notes that the Section has concentrated on obtaining widespread relief where possible. For example, the Section has entered into consent decrees covering 20 juvenile correctional facilities in Puerto Rico, 13 juvenile correctional facilities in Kentucky, 31 juvenile facilities in Georgia, all four mental retardation facilities in Virginia, eight men's prisons in Michigan, five women's prisons in Arizona, two women's prisons in Michigan, and a number of jails throughout Mississippi.

It also explains that the Section has filed a number of enforcement and civil contempt motions to require state officials to comply with consent decrees and other court orders.

New York has been involved over the years in some CRIPA investigations, including one that examined the delivery of medical care at the Green Haven maximum-security prison. However, New York has never been sued by the Justice Department or required to enter into a system-wide consent decree to correct or address any systemic conditions.

In addition to CRIPA actions, for system's such as New York's that also receive federal funding, jurisdiction is conferred upon the Office of Civil Rights within the Justice Department to investigate any inmate complaint that alleges discrimination on the basis of race, national origin or religion, or a violation of the Americans with Disabilities Act.

Implementation of the Prison Rape Elimination Act

It is difficult to count or prosecute unreported crimes.

No less an authority than the U.S. Department of Justice notes in its periodic Uniform Crime Report data of index crimes that it only lists reported offenses across the nation. No one, of course, has the means to quantify unreported crime.

This Department is compelled to follow where the U.S. De-

partment of Justice leads. This report notes that the Department's Inspector General last year investigated more than 165 reports of staff-on-inmate sex offenses and 27 cases of inmate-on-inmate sex offenses. There will be those who assail these numbers as being under-representative of what they believe occurs behind prison walls and fences. It is left to the skeptics to reveal their standard for citing and then documenting any incidents beyond those reported.

For its part, as detailed under "No tolerance for sexual abuse" in Section IX of this report, the Department has proposed legislation that would hold employees accountable for failing to report incidents of improper conduct between staff and inmates. Another bill would expand the current law criminalizing sexual relations between inmates and certain staff to criminalize such conduct by any employee.

The Department is also using the federal Prison Rape Elimination Act of 2003 to initiate new tools to combat sexual violence in prison. It is advising inmates of the existence of that law in an initiative that includes step-by-step directions urging the victims of attempted or actual sex abuse to report it.

The Department determined that the orientation manual at every facility, not just at reception centers, should contain a detailed chapter on the prevention of sex abuse.

The chapter presents a clear warning to all inmates and staff that such conduct will not be tolerated and will result in criminal prosecution. This chapter explains in both English and Spanish the Department's basic policy, defines sexual abuse, gives instruction on what to do if another person threatens the inmate, suggests practical steps to protect oneself, and lists the steps to be taken to report any incidents that do occur. (A copy of this chapter appears as [Attachment L](#).)

At the same time, the Department also promulgated a number of new directives to formalize what had been long-standing Department policy and procedure. They include Department Directive 4027A, "Sexual Abuse Prevention & Intervention - Inmate-on-Inmate," and Directive 4028A, "Sexual Abuse Prevention & Intervention - Staff-on-Inmate." (A copy of each appears respectively as [Attachment M](#) and [Attachment N](#).)

Congressional action complicates prison security

It is a rare event for the U.S. Congress to pass a special law that only affects inmates. Yet that is precisely what it did in September of 2000 when it enacted the Religious Land Use and Institutionalized Persons Act (RLUIPA).

This law sets forth that "No government shall impose a sub-

stantial burden on the religious exercise of a person residing in or confined in an institution unless the government demonstrates that imposition of the burden [1] is in furtherance of a compelling governmental interest, and [2] is the least restrictive means of furthering that compelling governmental interest."

In essence, RLUIPA affords claimed inmate religious practices extraordinary protections against day-to-day security protocols. It also places inmates in a special category that is not extended to everyday citizens.



Courts require inmates, even while in disciplinary housing, be able to maintain contact with the outside world via material from both law and general libraries.

Prior to RLUIPA, for example, the U.S. Supreme Court ruled in *Turner v Safley* that when a prison regulation impinges upon an inmate's constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests.

Under that standard, the Department enforced a one-inch beard rule because of its security need to ensure that inmates could not conceal within them such contraband as drugs or razor blades.

By contrast, the new RLUIPA standard significantly raises the bar. Its sets a new test for determining whether governmental action affecting claimed religious beliefs will be upheld or invalidated.

Under RLUIPA, the Department must implement a standard that compels only the least intrusive action by inmates to gain compliance with prison goals that conflict with their religious observances.

For example, the Department can no longer enforce its one-inch beard rule.

Under RLUIPA, the Department is required to allow any inmate to grow his beard in excess of one inch in length if the inmate professes membership in a religion that requires it, such as Muslims, Jews and Rastafarians.

That's because under RLUIPA, the court argues that the Department can order inmates to comb through their longer beards to show they are not concealing contraband. Thus, allowing the search rather than trimming a beard becomes the least-compelling means for inmates to exercise their religious rights while still complying with the Department's security need to interdict contraband.

The court took no judicial notice of the fact its ruling would require all Officers to carry, use and then constantly clean combs to the detriment of performing their other security duties. It also did not address the fact that inmates can claim membership in such religions to simply avoid trimming their beards as all other inmates must. □

Attachments

- A** **Commissioner's letter to employees dated May 12, 2004**
- B** **Merit Time Directive 4790**
- C** **Map locating correctional facilities dated October 2002**
- D** **Progressive Inmate Movement System dated May 1, 2001**
- E** **Standardized Discretionary Review Procedures – SHU dated Aug. 26, 2003**
- F** **Criminal Prosecution of Inmates Directive 6910**
- G** **State Commission of Correction double-bunking variance dated Aug. 24, 2005**
- H** **Research Directive 0403**
- I** **Media Directive 0401**
- J** **Law libraries, Inmate Legal Assistance and Notary Public Services Directive 4483**
- K** **DOCS maximum-security law library holdings dated Feb. 17, 2006**
- L** **Orientation module for the prevention of sexual abuse in prison dated June 15, 2005**
- M** **Sexual abuse prevention & intervention: Inmate-on-Inmate Directive 4027A**
- N** **Sexual abuse prevention & intervention: Staff-on-Inmate Directive 4028A**

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