

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

vs.

ERIE COUNTY, NEW YORK et al.

Defendants

**DECLARATION IN SUPPORT
OF FRCP 12(b)(6)
MOTION TO DISMISS**

Civil Docket No. 09-CV-0849

CHERYL A. GREEN, an attorney admitted to practice before this Court and the courts of the State of New York, declares under penalty of perjury that the following is true and correct, in accordance with 28 U.S.C. §1746:

1. I am the Erie County Attorney and represent the County of Erie, all elected officials and all Erie County employees acting in their official capacity in the above-captioned action pursuant to the Erie County Charter. The defendants named herein are collectively referred to as the “County Defendants”. As such, I am fully familiar with the facts and circumstances in this action.

2. I make this Declaration in support of the County’s Motion to Dismiss pursuant to FRCP 12(b)(6).

PROCEDURAL HISTORY AND STATEMENT OF FACTS

3. The facts as set forth herein are taken from the Complaint and the attached and incorporated documentation contemplated by the parties at the time the Complaint was filed,¹ the facts of which are assumed as true for purposes of this motion.

4. The Department of Justice (“DOJ” or “Department”) Civil Rights Division (“Division”) commenced an investigation (“Investigation”) against the County of Erie (“County”) on November 13, 2007 under the Civil Rights of Institutionalized Persons Act (“CRIPA”), 42 U.S.C. §1997 et seq., at the Erie County Holding Center and Erie County Correctional Facility (individually referred to as “ECHC” or “ECCF”, and collectively referred to as “Facilities”). Complaint, page 5, ¶20.

5. After several reasonable requests by the County in connection with the investigation, all of which were rejected by the Division, a “Findings Letter” (“Letter”) dated July 15, 2009 was issued by the Division to the Honorable Chris Collins, Erie County Executive, with a copy to Timothy Howard, Erie County Sheriff, Robert Koch, Superintendent - Erie County Sheriff’s Department, this Declarant as County Attorney, and Kathleen Mehlretter, Acting U.S. Attorney for the Western District of New York. Complaint, page 5, ¶20, Letter at pages 1-3.

¹ “When determining the sufficiency of a plaintiff’s claim for Rule 12(b)(6) purposes, consideration is limited to the factual allegations in plaintiff’s complaint, to documents attached to the complaint as an exhibit or incorporated in it by reference, to matters of which judicial notice may be taken, or to documents offered by the defendant that were either in plaintiff’s possession or of which plaintiff had knowledge and relied on in bringing suit.” Moll v. Telesector Res. Group, Inc., 2005 WL 2405999 *3-4 (W.D.N.Y. September 28, 2005)(citing Brass v. American Firm Technologies, Inc., 987 F.2d 142, 150 (2d Cir. 1993); *see also* Cortec Ind., Inc. v. Sum Holding L.P., 949 F.2d 42, 47-48 (2d Cir. 1991), *cert denied*, 503 U.S. 960, 112 S.Ct. 1561, 118 L.Ed.2d 208 (1992)).

6. The County wishes to note at the outset, and asks the Court to take judicial notice of, its concern with the fact that the Division suggests that the allegations in the Letter constitute legal “findings.” Black’s Law Dictionary defines “finding of fact” as “[a] determination by a judge, jury or administrative agency of a fact supported by the evidence in the record, usu[ally] presented at the trial or hearing.” BLACK’S LAW DICTIONARY 646 (7th ed. 1999). Thus, given that the Letter is made up of one-sided allegations based on a limited investigation by the Division, to call such allegations “findings” improperly suggests to the public that the allegations are findings of fact that were made by a neutral arbiter based on a complete factual record, which clearly is not the case herein.

7. On August 10, 2009 this Declarant, along with First Assistant County Attorney Kristin Klein Wheaton, traveled to Washington, D.C. with the intent of engaging in good-faith dialogue with the Division relative to its Letter. As in the past, the County invited the Division to provide parameters for the minimum constitutional standards to be applied to the County in connection with CRIPA only to be told that such a request simply was “not productive.” Post-meeting letters were exchanged between the Division and the County immediately thereafter which evidenced a continued willingness on the part of the County to submit to good faith discussions and setting forth reasonable requests, which were again rejected by the Division. See post-meeting letters dated August 11, 2009 and August 12, 2009 exchanged between the Division and the County attached as Exhibit A.

8. On September 10, 2009 the County, as promised to the Department, submitted a substantive response to the Letter which refuted the allegations therein. See County Responsive Letter dated September 10, 2009 attached as Exhibit B and Complaint, page 5, ¶20.

9. Significantly, in the Letter the Division took the inaccurate position that the County Defendants were non-cooperative. Complaint, page 5, ¶20, Letter at pages 1-3. Furthermore, by virtue of the filing of this Complaint, it is beyond cavil that the Department takes the inaccurate position that the County has not acted in good faith in its reasonable requests to be apprized of the minimum constitutional standards to be applied to the County in connection with the Division's Investigation.

10. At all times the Department was aware that the New York State Department of Correctional Services (otherwise known as the "Commission of Corrections" and referred to hereafter as "COC"), which is the state regulatory agency for all matters pertaining to inmate conditions at local jails in New York, had initiated its own investigation into the Facilities. Indeed, the Department acknowledged that it received extensive cooperation from the COC in its Investigation. Complaint, page 5, ¶20.

11. Despite the fact that the COC supervises and controls issues such as inmate care, custody, discipline, health, safety, employment, and grievances, just to name a few items, issues that the Department currently contends the County Defendants fail to "adequately provide" under the alleged "constitutional" standards articulated in the Letter and Complaint, the COC has not alleged any such similar constitutional violations in its complaint filed September 22, 2009 in Erie County Supreme Court. Significantly, the COC, as the state agency that regulates the Facilities, filed its Complaint on September 22, 2009, after having logged 527 man-hours in the Facilities since January of 2009, or the equivalent of 10 weeks of time. See The New York State Commission of Correction v. Timothy B. Howard, Index No. 2009-011216 (Erie Sup.Ct.) attached as Exhibit C; see also, New York Correction Law §§ 40 *et seq.* and 9 N.Y.C.R.R. part

7000 *et seq.*; Complaint. It is respectfully requested that this Court take judicial notice of the pleading filed by the COC in connection with this Motion To Dismiss.

12. Plaintiff filed the subject Complaint on September 30, 2009 seeking to enjoin the County Defendants from allegedly depriving persons incarcerated at the Facilities of rights, privileges, or immunities secured and protected by the Constitution of the United States. Complaint, page 2, ¶1. Significantly, the obscurity of the allegations in the Complaint make it nearly impossible to discern, with any reasonable certainty, what constitutional “rights, privileges, or immunities” are allegedly being violated by the County Defendants. Complaint, pages 5-10, ¶¶17-29.

13. The instant motion is brought to dismiss the Complaint in its entirety.

I. CRIPA IS UNCONSTITUTIONAL AS APPLIED

14. As set forth in the memorandum of law filed herewith, Department’s attempt to apply CRIPA against the County Defendants in the instant lawsuit is unconstitutional.

15. Several specific conditions precedent under CRIPA restrict the ability of the Department to initiate a civil rights action to redress “systematic deprivations or constitutional rights of institutionalized persons.” See S. REP. NO. 96-416 at 1, reprinted in 1980 U.S.C.C.A.N. 787, 787; H.R. REP. 99-897 at 9, reprinted in 1980 U.S.C.C.A.N. 832, 833. It is respectfully requested that this Court take judicial notice of the referenced Senate and House reports relative to the enactment of CRIPA for purposes of this motion. The legislative history of the statute confirms that CRIPA was intended to be a narrowly targeted statute providing the Department with jurisdiction over only the most flagrant, egregious, and pervasive patterns or

practices of conduct depriving inmates of their constitutional rights.

16. The House Committee Report on CRIPA emphasized that CRIPA enforcement was to be targeted only at conduct that was a “part of a ‘pattern or practice’ of [the] denial [of constitutional rights] rather than an isolated or accidental incident.” H.R. REP. NO. 99-897, at 11 (1980)(Conf. Rep.). CRIPA enforcement should therefore be limited to “cases where unconstitutional or illegal practices are widespread, pervasive, and systematic, and adversely affect significant numbers of institutionalized individuals.” *See* S. REP. NO. 96-416, at 29 (1979).

17. “[M]inor or isolated acts or injuries are not intended to be the subject of litigation under [CRIPA].” Similarly, [t]he adoption . . . of the language ‘egregious or flagrant’ establishes a standard for the Department’s involvement that reflects a Congressional sensitivity to the fact that a high degree of care must be taken when one level of sovereign government sues another in our Federal system. This is a higher standard than that required of plaintiffs other than the United States. Id.

18. Indeed, examples of the types of correctional facilities that CRIPA was intended to target included : a facility in which “[g]roups of four men were regularly confined in 6-by-6-foot cells with no ventilation, no hot water, and sewage leaks;” a facility in which there were “40 stabbings, 44 serious beatings, and 19 violent deaths” in a three year period; and a facility in which “cattle prods were used to keep inmates standing or moving” and in which inmates were “confined naked for up to three days, without hygienic materials, heat, or adequate food” in a “6-by-6-foot cell with no light, toilet, sink, bed or mattress.” *See*, S. REP. NO. 96-416, at 12 (1979).

19. CRIPA was never intended to permit the Department to impose mandates against local jurisdictions and taxpayers that amount to what the Division views as “best practices” rather than constitutionally imposed standards. Significantly, the legislative history of CRIPA specifically notes that CRIPA authority should be exercised by the Department “to represent the national interest in securing *constitutionally* adequate care for institutionalized citizens,” and that the Department does not “directly represent any institutionalized plaintiffs.” *See*, H.R. REP. NO. 99-897, at 13 (1980)(Conf. Rep.)(emphasis added). Furthermore, CRIPA was intended to “give States the primary responsibility for correcting unconstitutional conditions in their own institutions and to attempt to reach an agreement on the necessary remedies to correct the alleged conditions through informal and voluntary methods.” *Id.*

20. Indeed, “[i]n the face of good-faith efforts by appropriate State and local officials to comply with constitutionally required minima . . . [it is] preferable to give such officials the opportunity to fashion their own specific solutions.” *See*, S. REP. NO. 96-416, at 32 (1979).

21. The initiation of a civil action under CRIPA, as enacted, incorporated the strict procedural safeguards enunciated during the Congressional debate as set forth in the preceding paragraphs to prevent overreaching by the federal government into state affairs that are beyond the Department’s jurisdictional purview. The most significant of these safeguard provisions are the pre-suit certifications required under 42 U.S.C. §1997b.

22. Regardless of the certification by the Attorney General in the present case, a review of the Complaint, on its face, evidences that the Department did not comply with such requirements. Complaint.

23. Furthermore, the Division's stated position that the County is not entitled to any explanation of the constitutional standards that the Division believes are applicable to the Facilities, unless the County first provides unfettered access to the Facilities, contradicts the express intention of Congress to encourage the Department to give state and local officials a meaningful opportunity to undertake voluntary remedial efforts to the extent that such efforts are necessary.

II. THE GOVERNMENT HAS FAILED TO PLEAD FACTS SUFFICIENT TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED AS TO ANY OF THE DEFENDANTS

24. As set forth in the memorandum of law filed herewith, the Plaintiff Complaint is so devoid of meaningful allegations as applicable to support a claim under CRIPA that it has failed to plead any facts upon which relief can be granted.

25. Because there are no specific factual allegations linking any of the defendants to the alleged conduct, and none of the sparse unrelated incidents support a finding of a custom, policy, or practice adopted by any of the defendants, the government has failed in its obligation to adequately plead constitutional violations and its complaint should be dismissed as a matter of law.

WHEREFORE, defendants request an order dismissing plaintiff's complaint in its entirety, or alternatively allowing defendant(s) to answer within thirty (30) days after the order on this motion is entered, and that the Court grant such other and further relief as it deems just and proper, including an award of attorney's fees and costs under 42 U.S.C. § 1997a(b) if warranted.

DATED: Buffalo, New York
October 21, 2009

CHERYL A. GREEN, Erie County Attorney
Attorney for Defendants

By: /s/ Cheryl A. Green
Cheryl A. Green
Erie County Attorney, of Counsel
Office and Post Office Address
95 Franklin Street, Suite 1634
Buffalo, New York 14202
(716) 858-2200
Email address: cheryl.green@erie.gov

CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2009 I electronically filed the foregoing with the Clerk of the District Court using its CM/ECF system, which would then electronically notify the following CM/ECF participants on this case:

Aaron Saul Fleisher
Aaron.fleisher@usdoj.gov

Alyssa Connell Lareau
Alyssa.lareau@usdoj.gov

Charles W. Hart, Jr.
Charles.hart@usdoj.gov

Daniel H. Weiss
Daniel.weiss@usdoj.gov

Kathleen M. Mehlretter
Kathleen.mehlretter@usdoj.gov

Mary Pat Fleming
Mary.pat.fleming@usdoj.gov

Zazy Ivonne Lopez
Zazy.lopez@usdoj.gov

And, I hereby certify that I caused the foregoing to be mailed, by the United States Postal Service, first class mail, to the following non-CM/ECF participants:

NONE

/s/ Kristin Klein Wheaton
Kristin Klein Wheaton
95 Franklin Street, Room 1634
Buffalo, New York 14202
Telephone: (716) 858-2207
Email address: kristin@erie.gov

Exhibit “A”



U.S. Department of Justice
Civil Rights Division

RECEIVED

AUG 12 2009

ERIE COUNTY
DEPARTMENT OF LAW

SYC:DHW:ZIL:AF:AL:BJ:NA:mrh
DJ 168-53-41, 168-53-42

Special Litigation Section - PHB
950 Pennsylvania Avenue, NW
Washington, DC 20530

August 11, 2009

Cheryl A. Green
County Attorney
Erie County
69 Delaware Avenue
Buffalo, NY 14202

RE: Investigation of the Erie County Holding Center and
the Erie County Correctional Facility

Dear Ms. Green:

The Department of Justice (the "Department") appreciates Erie County's commitment to resolving the deficiencies identified in our July 15, 2009 findings letter regarding the Erie County Holding Center ("ECHC") and Erie County Correctional Facility ("ECCF"). At our August 10, 2009 meeting in Washington, D.C., the County and the Department agreed to a structured process to facilitate a prompt and appropriate resolution to this matter. This letter memorializes the agreement we reached regarding the structure of that process. The Department and the County agreed to the following terms:

- The Department and the County will engage in good-faith negotiations to conclude agreement on an appropriately tailored, court-enforceable consent decree to be filed in the United States District Court for the Western District of New York. The Department and the County will reach agreement on the terms of that decree by November 15, 2009.
- The County will provide the Department and its consultants access to ECHC and ECCF in order to conduct interviews of staff and inmates and to observe facility operations during all shifts.

- A representative of the County Attorney's Office may accompany Department staff and consultants during interviews of managerial staff,¹ but may not be present for interviews with inmates.
- The County will provide the Department with access to and/or copies of all relevant documents, including, but not limited to, incident reports and medical and mental health records.
- The Department will provide Erie County with a list of documents it would like to review prior to visiting the facilities and while on-site.²
- At the conclusion of the Department's review of the facilities, the Department will provide the County with an oral de-briefing of the consultants' findings.
- The parties agree to work in good faith to address the issues identified through the review of the facilities.
- In the event that the Department and the County should disagree regarding relevant constitutional standards, the Department and the County agree to engage in good faith discussions of each others' respective positions.

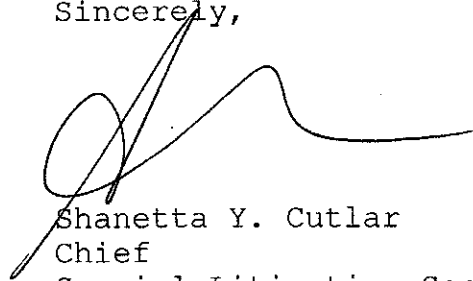
¹ The County takes the position that non-managerial staff could be represented by the County Attorney in the event they are named as individual defendants in lawsuits arising out of their employment and, therefore, such staff are represented parties for purposes of the Department's investigation. The Department's position is that the statements of non-managerial staff are not binding upon the County for purposes of the Department's investigation, therefore non-managerial staff are not represented parties and the presence of a representative of the County Attorney's Office during their interviews is not warranted. The County and the Department agree to continue their good faith discussions and to resolve this disagreement prior to the on-site tours.

² To implement the County's agreement (memorialized in text) to provide access to facilities, documents, and persons, we propose that the production of documents will occur by September 10, 2009. On-site facility visits will occur on October 5-9, 2009 and October 19-23, 2009.

We look forward to the opportunity to work cooperatively with Erie County in resolving our investigation and achieving the shared goal of remedying the identified constitutional violations present at the Holding Center and the Correctional Facility. Please indicate the County's agreement to the above-described process by signing below.

Should you have any questions, feel free to contact me at [REDACTED] Zazy I. López at (202) 505-8702 or Aaron Fleisher at [REDACTED].

Sincerely,



Shanetta Y. Cutlar
Chief
Special Litigation Section

Agreed to on behalf of Erie County:

Cheryl Green
County Attorney
Erie County Department of Law

cc: Kathleen M. Mehlretter,
Acting United States Attorney
Western District of New York



COUNTY OF ERIE

CHERYL A. GREEN
COUNTY ATTORNEY

CHRIS COLLINS

COUNTY EXECUTIVE

DEPARTMENT OF LAW

KRISTIN KLEIN WHEATON
FIRST ASSISTANT COUNTY ATTORNEY

MARTIN A. POLOWY
SECOND ASSISTANT COUNTY ATTORNEY

August 12, 2009

Shanetta Y. Cutlar, Chief
Special Litigation Section
U.S. Department of Justice
Civil Rights Division
Special Litigation Section - PHB
950 Pennsylvania Avenue, NW
Washington, DC 20530

Re: Investigation of the Erie County Holding Center and Erie County Correctional Facility
Our File No.: 31-20070052

Dear Ms. Cutlar:

We would like to thank you and the other attorneys from U.S. Department Of Justice Civil Rights Division ("USDOJ") for taking the time to meet with us on August 10, 2009. As you know, we came fully prepared to discuss substantive issues related to the report including, but not limited to, the content of the report, the threshold constitutional standards to be applied to the County and its Sheriff, and what the USDOJ proposed for inclusion in a consent decree with the County of Erie ("County" or "Erie County"). I must confess that we left the meeting disappointed that the USDOJ was not prepared to discuss any of these specific issues but, rather, took the position that, if the County provided USDOJ access to our facilities ("EHC/ECCF"), we could discuss these issues later.

As we advised at the close of the meeting, we were not authorized to bind Erie County to any commitments with the USDOJ until we had time to further evaluate your proposal with our clients and research several legal issues that arose in the context of our discussions. While Erie County remains committed to working cooperatively and in good faith with USDOJ toward a resolution of this matter, having reviewed your letter of August 11, 2009 and having reflected on our discussions and the meeting, we cannot sign the agreement you proposed. Instead, we offer the following proposal in the spirit of cooperation and as an alternative for moving forward.

1) Our office and USDOJ will, first and foremost, work on defining what the applicable constitutional standards are for the different areas identified in your letter of July 15, 2009 ("Findings Letter"). Specifically, we can discuss and come to an agreement as to what types of policies, protocols, and levels of services are required by the case law interpreting constitutional requirements in the Second Circuit, the governing jurisdiction for this matter.

This must be the starting point for negotiations because the legal authority cited in the Findings Letter recites standards applicable in cases against individual officials, rather than a supervisor such as the Sheriff or municipality such as the County. As you are aware, there is no vicarious or strict liability for alleged constitutional violations committed by individual employees. The case law requires a demonstration of an unconstitutional policy or custom. Moreover, one cannot simply cobble together a series of individual events in an attempt to meet the constitutional threshold.

In many instances the consent decrees USDOJ has entered into with other municipalities have contained standards and requirements, to be funded by local taxpayers, that far exceed the minimum constitutional requirements, as articulated by the courts, for conditions of confinement. For example, as mentioned at the meeting, one of USDOJ's consent decrees in another case required the jurisdiction to provide mammograms to every female inmate regardless of age or symptomology. This is not the constitutional standard for confinement. Inclusion of such a requirement in a consent decree is thus inappropriate given that it would force local taxpayers to fund costly medical services for inmates that exceed what is constitutionally required.

Similarly, USDOJ's Findings Letter regarding Erie County sets forth many recommendations that are not constitutionally mandated under existing case law. Indeed, the Findings Letter fails to cite any case law that establishes that any of the Findings Letter's recommendations are the minimally acceptable standards for conditions of confinement under the Constitution. Given that Erie County taxpayers will ultimately bear the financial burden of implementing any changes included in a consent decree, we are bound by our duty to the people of Erie County to commit the County to only those changes, if any, which are constitutionally required. Changes to conditions of confinement which are in excess of constitutional requirements must ultimately be approved by the people of Erie County given that spending more on improvements in prisons ultimately requires spending less on other public works such as roads and schools. For this reason, I am sure that you can understand why we cannot possibly proceed with a cooperative review of our detention facilities until we have clearly identified the constitutionally mandated conditions of confinement that will be the guide for recommended changes, if any, within the detention facilities.

Accordingly, the County and USDOJ should work together to define the standards to be applied in determining whether the conditions of the Erie County Holding Center and Erie County Correctional Facility meet constitutional standards as a starting point. Once very specific standards and guidelines are identified and agreed upon, the parties can move forward with further negotiations with the intent and commitment of resolving this matter.

2) Assuming we reach agreement on the applicable constitutional requirements, which we anticipate will be the result given the commitment to negotiate in good faith, USDOJ would agree to exchange and share all of the information it has gathered to date in its investigation of this matter with our office.

3) Once the above-referenced items are resolved, the County would then consider granting USDOJ access to our facilities. As you have already issued a Findings Letter summarizing USDOJ's findings in its investigation and communicated your intent to commence a lawsuit against Erie County and its Sheriff, any inspection and access to our facility should be defined as being granted for the express purpose of settlement negotiations, without prejudice, to resolve this matter. We would be agreeable to allowing an inspection on the terms and conditions set forth below and in accordance with Federal Rules of Civil Procedure. Thus, any information provided by the County could not be used against it in the event of litigation. Information would include, but would not be limited to, any facts, statements, documents and any and all information gathered during the inspection. In addition, any experts utilized by USDOJ during the inspection phase could not be called as experts against the County in the event of litigation.

This is a reasonable request given the representations by USDOJ that it is truly committed to providing technical assistance to resolve alleged deficiencies and to have frank dialog toward resolution of this matter. Such resolution can be obtained to the mutual benefit of both the USDOJ and the County where there is complete transparency in this process, which includes the following:

a) A representative from our office will accompany USDOJ on all interviews of all employees of the County, including but not limited to, employees of the Sheriff's Office, Public Works, Health Department, and Mental Health Department. This will not be limited to managerial employees. Lower level employees who speak with USDOJ expose themselves to potential litigation from inmates based upon any facts or statements gathered by the USDOJ for which the County must provide defense and indemnification. Accordingly, a representative of our office would need to be present during all employee interviews. With respect to inmates, if the inmates consent to allowing a representative from our office to be present, the interviews will proceed with a representative from our office present. If the inmate will not consent, the interview will be tape recorded with a copy of the entire, unredacted recording to be provided to our office.

b) As you are aware, our office did provide USDOJ with a substantial amount of documentation at the beginning of your investigation. USDOJ will provide an updated list of documents you are requesting at this juncture. We will review the updated requests and advise of our position. We have again reviewed the legal authority provided regarding the alleged exemption from Health Insurance Portability and Accountability Act ("HIPAA") and other statutes governing public health information in Mr. Gonzalez' letter of March 12, 2008. Because we take our HIPAA obligations to respect the privacy of our inmates very seriously, we ask that you provide us with legal authority from the United States Supreme Court or from courts within the Second Circuit that have held that the privilege does not apply in New York during the investigatory stage under CRIPA. We believe an exemption from the

Letter to Shanetta Y. Cutlar
August 12, 2009
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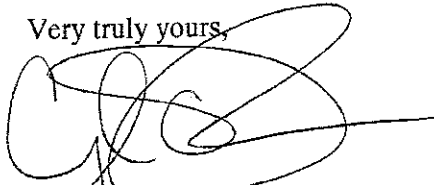
privilege may only apply, if at all, after USDOJ has filed suit. However, if you have binding legal authority to the contrary, please provide it to our office and we will take it under advisement.

c) At the conclusion of your agency's review of the facilities, your agency will provide the County with a copy of all reports, notes and opinions rendered by your experts in connection with the inspection. Again this exchange is for the express purpose of cooperatively resolving the issues.

We look forward to the opportunity of working cooperatively and in good faith with the USDOJ in resolving its investigation. While we do not agree with your assertion that there have been constitutional violations at the ECCF and ECHC based on the scope of constitutional conditions of confinement as established in existing case law, we are hopeful that a truly cooperative, interactive process, as outlined above, will result in finalization of this matter for both parties.

Please review and advise whether this proposal is acceptable to you. Otherwise, we intend to submit a formal written response, no later than September 10, 2009, addressing the issues raised in your Findings Letter.

Very truly yours,

A handwritten signature in black ink, appearing to be "Cheryl A. Green", written over a horizontal line.

CHERYL A. GREEN
Erie County Attorney

KK/dbm

Exhibit “B”



COUNTY OF ERIE

CHERYL A. GREEN
COUNTY ATTORNEY

CHRIS COLLINS
COUNTY EXECUTIVE

KRISTIN KLEIN WHEATON
FIRST ASSISTANT COUNTY ATTORNEY

MARTIN A. POLOWY
SECOND ASSISTANT COUNTY ATTORNEY

DEPARTMENT OF LAW

September 10, 2009

Via Overnight Delivery via UPS

Loretta King, Esq.
Acting Assistant Attorney General
United States Department of Justice
Civil Rights Division
950 Pennsylvania Avenue
Washington, DC 20530

**RE: US DOJ v. Erie County and Erie County Sheriff
Our File No.: 31-20070052**

Dear Ms. King:

This correspondence represents the substantive response by the County of Erie, New York ("County") to the Department of Justice ("DOJ" or "Department") Civil Rights Division's ("Division") investigation ("Investigation") and "Findings Letter"¹ ("Letter") under the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997 *et seq.*, at the Erie County Holding Center and Erie County Correctional Facility (individually referred to as "ECHC" or "ECCF", and collectively referred to as "Facilities"). The law is clear that prisoners cannot expect, and the County is not required to provide, "the amenities, conveniences and services of a good hotel."² However, Erie County is committed to providing, does provide, and will continue to provide, constitutionally adequate conditions of confinement to prisoners incarcerated in the Facilities. It is the position of the County that the Division has improperly utilized fictional

¹ The County wishes to note at the outset its concern with the fact that the Division even suggests that the allegations in the Letter constitute legal "Findings." Black's Law Dictionary defines "finding of fact" as "[a] determination by a judge, jury or administrative agency of a fact supported by the evidence in the record, usu[ally] presented at the trial or hearing." BLACK'S LAW DICTIONARY 646 (7th ed. 1999). Thus, given that the Letter is made up of one-sided allegations based on a limited investigation by the Division, to call such allegations "findings" improperly suggests to the public that the allegations are findings of fact that were made by a neutral arbiter based on a complete factual record, which is clearly not the case herein.

² Prisoners "cannot expect the amenities, conveniences, and services of a good hotel." *McBride v. Shackleford*, No. 2:07CV 143-O-B, 2008 WL 544941, 1 (N.D. Miss. Feb. 22, 2008) (dismissing, for failure to state a claim upon which relief could be granted, in inmates civil rights case alleging that he was compelled to wash and re-use his disposable cup and eating utensils and that his window was covered with sheet metal) (citing *Wilson v. Lynaugh*, 878 F.2d 846, 849 n. 5 (5th Cir. 1989), cert denied, 493 U.S. 969 (1989)).

events and incomplete information as “facts” to reach an improper, outcome determinative conclusion. Furthermore, the Letter falls far short of the statutory prerequisites under CRIPA to commence a suit against the County.

A. Procedural and Factual History

On November 13, 2007, the Division notified the County that it instituted an investigation at the Facilities “concerning allegations of use of excessive force by staff on inmates” and “allegations of inadequate medical treatment.” Significantly, the letter went on to read, “We have not reached any conclusions about the subject matter of the investigation[,]” and “[W]e will consider all relevant information, particularly the efforts [the Facilities] have undertaken to ensure compliance with federal law.”³

On January 30, 2008, the Division requested voluminous documents from the County. The Division specifically advised the County at that time, “We are committed to providing a fair, objective, and comprehensive review.” The County engaged in open dialogue with the Division shortly thereafter, advising that many of the Division’s document requests were protected from disclosure under New York Mental Hygiene Law, New York Civil Procedure Law, New York Civil Rights Law and state and federal HIPPA regulations. Approximately two months later, the County produced several hundred non-privileged documents to the Division including, but not limited to, New York State Commission of Correction reports; organizational charts; incident reports; grievances; Professional Standards Division reports; monthly census figures, daily population figures and staffing complements; training manuals; inmate handbook; policy and procedure manuals; nursing protocols; medical formularies; and forensic mental health information.

Unsatisfied with the County’s response, the Division sought additional documentation and dates to tour the Facilities. The County informed the Division that it was welcome to tour the Facilities at a mutually convenient date and time, and made the reasonable request that an Assistant County Attorney be present during the entirety of the tour and that a court reporter be present to transcribe requested interviews to obtain factually accurate information. The Division immediately denied this request by the County and refused to engage in any further dialogue on the topic.

The denial of this reasonable request by the County, coupled with the Division’s complete unwillingness to discuss several concerns of the County, including the constitutional criteria to be utilized during the Investigation, revealed that the Division was disingenuous in its representation that it would provide “a fair, objective and comprehensive review.”⁴

³ See Letter from Rena J. Comisac, Acting Assistant Attorney General, to County dated November 13, 2007. (Initial Letter)

⁴ See Letter from Gregory Gonzalez, Senior Trial Attorney, Special Litigation Section, to County dated January 30, 2008; see also Harris County’s Response to the United States Department of Justice Civil Rights Division June 4, 2009 Civil Rights of Institutionalized Persons Act “Findings” Letter regarding: The Harris County Jail System from Vince Ryan, Harris County Attorney to the Honorable Eric Holder, Attorney General of the United States, Harris County Judge Emmett, Commissioners Lee, Radack, Eversole and Garcia, Sheriff Garcia, District Attorney Lykos and Members of the Criminal Justice Coordinating Council (August 24, 2009) [hereinafter Harris County Response] (citing throughout its more than 200 pages, the lack of objective and fair review by the Division despite its representations to the contrary). “The Civil Rights Division encouraged full cooperation with their investigation, repeatedly pledging transparency in their investigation. Notwithstanding this pledge, the Division declined to allow

Additionally, the County conducted a thorough examination of the Division's prior investigations and consent decrees, wherein a clear pattern emerged. In sum, it appears that all jurisdictions subject to a Division investigation, whether cooperating or otherwise, are allegedly engaged in violating the constitutional rights of inmates⁵ where the jurisdiction is not following "best practices" for its jail management and inmate services, as opposed to the less rigorous standard imposed under CRIPA. CRIPA merely requires a showing that the minimum constitutional requirements of inmates are being met. In some instances, even the best practices standards apparently are not good enough to the Division as it appears the Division cannot resist issuing a negative "findings letter" against every jurisdiction it investigates, regardless of merit.⁶

On June 16, 2008, after several months of communications with the Division regarding the Investigation and the framework under which it would progress, the County ultimately determined that the Investigation was not warranted. At that time the County declined the additional overtures of providing the Division with unfettered access to documents and the Facilities as the Division had requested. Communications between the County and the Division were extremely limited thereafter. Significantly, once this decision was made by the County, the New York State Commission of Corrections (sometimes referred to herein as "NYSCOC" or "NYSCC") began to aggressively conduct "surprise inspections." This is in addition to its normally scheduled cycle audits at the Facilities, presumably in an effort to assist the Division in its Investigation.⁷

Harris County's non-uniformed consultants to silently observe witness interviews. . . . While Harris County believed that no negative inferences could logically be drawn from its consultant's silent observation of individual inmate interviews, Harris County indicated that it would not refuse the Division's requests for individual inmate interviews during the Division's inspections of the Harris County Jail system. Harris County was thus placed in a position where its consultants could not independently (and silently) observe the individual interviews conducted by the Division. Harris County could not immediately and accurately respond to any claims lodged by the inmates during these private interviews. Harris County could not later follow-up on the Division's private interviews with these same inmates for fear that the inmates would later lodge claims of retaliation. Thereafter, the Division relied upon unsubstantiated inmate complaints in their June 4, 2009 letter."

⁵ It is worth noting that CRIPA investigations generally encompass detention facilities and mental health facilities.

⁶ See, for example, Findings Letter against Harris County Texas dated June 4, 2009 and lengthy responsive letter by Harris County Texas County Attorney Vince Ryan dated August 24, 2009. This is further belied by the fact that the County pressed the Division to provide at least one example where the Division had not issued a negative findings letter against a jurisdiction where an investigation had been initiated, in its meeting with the Division on August 10, 2009, and the Division would not [and presumably could not] provide such an example because it does not appear to exist.

⁷ It is common knowledge that the NYSCOC has provided the Division with extensive support in the Division's Investigation of the County. In fact, the NYSCOC Board Meetings, which are available over the internet, routinely break into "executive session" for the sole purpose of discussing the "County of Erie." Given the fact that the COC Board Meetings are subject to New York's Open Meetings Law, the NYSCOC's attempts to shield its cooperation with the Division under the guise of "executive session" appear to be suspect.

In December 2008, the Division informed the County that it intended to conduct interviews of inmates at the Facilities. Given that none of the inmates at the Facilities had ever expressed to the County or to staff members at the Facilities that they desired to speak with the Division, the County again declined to provide the Division with the unrestricted access it requested.

Apparently recognizing that CRIPA provides limited investigative authority and does not grant the Division subpoena power, the Division then sought alternative means of gaining access to inmates. The Division ultimately settled on a ruse whereby the Division worked with the U.S. Marshals to perpetrate a fraud and deceit against the County, and on certain inmates themselves, by removing inmates from the Facilities under the false pretense that the inmates were required to appear in court.⁸ Unaware of the ruse, the Facilities delivered the requested inmates to the U.S. Marshals, and the inmates were thereafter interviewed by members of the Division regarding conditions at the Facilities.

The Division issued its Letter to the County on July 15, 2009 stating that while the Division had “[i]nitially [] informed [the County] that our investigation would focus on medical care, mental health care, and protection from harm, in the course of our investigation, we also became aware of environmental health and sanitation conditions that warranted investigation.” Within the Letter, the contents of which will be discussed in more detail hereafter, the Division relies upon a report issued by the National Commission on Correctional Health Care (“NCCHC”), Health Services Study: Erie County Corrections Facilities dated January 10, 2008, revised, February 11, 2008, in an effort to establish a negative inference against the County relative to the delivery of medical and mental health services at the Facilities. Significantly, the County specifically engaged NCCHC as a consultant to provide technical advice and recommendations for the delivery of health services at the Facilities long before the County was ever notified that the Division instituted an Investigation. Not surprisingly, the Letter issued by the Division improperly implies that the NCCHC came into the County to cite or regulate it in some way. This is wholly inaccurate and the Division appears to include such bias for purely self-serving purposes. Moreover, it is disappointing that the County’s good faith efforts to evaluate its own facilities were neither mentioned nor recognized in the Letter at all.

⁸ The County became aware of this ruse only after conducting its own interviews with the inmates that had been removed from the Facilities by the U.S. Marshals. The Division confirmed the County’s understanding, however, when it noted in the Letter that the Division was “able to communicate with a number of current and recently transferred ECHC inmates through an arrangement with the United States Marshals Service.” Letter at 2. The fraud and deceit perpetrated on the County and the inmates by the Division, in cooperation with U.S. Marshals, is extremely disturbing in light of the ethical obligations by which DOJ attorneys are bound. *See generally* 28 C.F.R. Part 77. Moreover, the American Bar Association’s Model Rules of Professional Conduct (“Model Rules”) state that a lawyer shall not knowingly “make a false statement of material fact or law to a third person.” Model Rule 4.1. Similarly, Model Rule 8.4 makes clear that it is professional misconduct for a lawyer to “engage in conduct involving dishonesty, fraud, deceit or misrepresentation.” In this case, the evidence known to the County suggests that attorneys in the Division intentionally caused the U.S. Marshals to make false and misleading statements to the County and its officials in order to obtain custody of certain inmates in the facilities. Furthermore, it appears that attorneys in the Division caused the U.S. Marshals to make false and misleading statements to the inmates themselves. As such, it may be appropriate for the Department to refer this matter to the DOJ Office of Professional Responsibility (“OPR”) for further investigation into possible ethical violations.

Since the issuance of the Letter, members of the Division, specifically Samuel Bagenstos, Deputy Assistant Attorney General, have repeatedly indicated that the Division is prepared to file a CRIPA suit based on the allegations in the Letter. In light of the fatal flaws in the Letter, as discussed below in more detail, any suit filed pursuant to the allegations made in the Letter would be improper under CRIPA.

On August 10, 2009, the undersigned, along with First Assistant County Attorney, Kristin Klein Wheaton, traveled to Washington, D.C. and met with Division representatives to discuss in detail the content of the Letter and the next steps going forward. Representatives of the Division were unwilling to discuss reasonable requests made by the County at the meeting, instead reiterating the Division's demand to gain access to the Facilities. The County made clear to the Division at this meeting that while it was committed to engage in good faith discussions with the Division, it would be unable to do so in the absence of establishing the threshold constitutional standards and applicable federal law, which the Division had committed to follow in the first instance.⁹ While the County is confident that it provides more than the minimally required constitutional level of care and services to inmates pursuant to CRIPA, the requested articulation of the applicable standard by the Department is essential to quantify the cost of remedial measures suggested by the Division given the fact that such remedial measures, if any, will ultimately be borne by the County taxpayers. In sum, the Division made clear at the meeting that its only interest was access to the Facilities and any concerns raised by the County could wait for another day.

On August 11, 2009, the Division requested that the County execute a letter authorizing the Division to tour the Facilities with its consultants, all but ignoring the issues the County had raised in person the previous day. On August 12, 2009 the County responded by offering a counter-proposal in the spirit of cooperation and as an alternative for moving forward. The Division denied the County's reasonable request on August 19, 2009 claiming that, "[it] sets forth a one-sided process that imposes unprecedented preconditions." Quite to the contrary, the experience of the County thus far with the Division has been one in which the Division has dictated to the County as opposed to negotiating in good faith toward a mutually agreeable solution that legitimately reflects the constitutional threshold issue in question.

B. Scale of the Erie County Jail System's Operations

Erie County is a metropolitan center located on the western border of New York State covering 1,058 square miles. Erie County is bounded by Lake Erie to the west, Niagara County and Canada to the north, Genesee County and Wyoming County to the east, and Cattaraugus and Chautauqua Counties to the south and has approximately 950,265 residents. Located within Erie County are three cities and 25 towns, including the City of Buffalo, the second largest city in New York State.

The Erie County Sheriff's Office ("ECSO") provides law enforcement services to Erie County and is the primary law enforcement agency in several towns and villages who do not have their own police agencies. Moreover, the County and City of Buffalo ("City") entered into a contractual agreement in 2003 whereby the County agreed to assume, for a fee, all City cell block inmates in an effort to avoid duplication of services in the County. At this time the City

⁹ See Initial Letter.

has a small cell block that is no longer in use and the delivery of all inmate services, including transportation to and from court, and medical and mental health services, to name a few, are delivered by the County.

In addition to performing law enforcement functions, the ECSO runs the two Facilities which in terms of number of beds, constitutes the fourth largest in New York State behind Rikers Island, Nassau County and Westchester County. There are currently 895 professional and dedicated employees assigned to the ECSO, including approximately 740 assigned to the jail management division. This represents 17.5% of Erie County's entire workforce of 5100 employees.

The Facilities consist of the ECHC located downtown in the City of Buffalo and the ECCF located in Alden, New York. Inmates awaiting arraignment, trial and sentence are housed at both facilities. The ECHC is a maximum security facility, while the ECCF is a medium security facility. The ECHC is situated, along with the connected building which houses the ECSO administration on 1.58 acres. The ECHC is 121,093 square feet with additions and expansions to the original building in 1968 and 1982. The ECCF is situated on 103 acres of land and is 254,700 square feet. The ECCF was constructed in 1982 and an addition was constructed in 1998. Moreover the Yankee Building, which previously served as a facility for the Erie County Home and Infirmary and Erie County Youth Detention center, was renovated in 2007 and 2008 and is now provides additional housing for inmates.

Over the past five years, the Facilities have admitted approximately 132,704 inmates, averaging about 26,540 inmate admissions per year. In addition to inmates admitted by local police jurisdictions, the Facilities house prisoners from the United States Marshal Service and United States Immigration Service pursuant to contract. Inmates are generally held for short periods of time before release or transfer to other correctional facilities. Typically, 18% of all inmates are released in under 24 hours and a total of 40% of inmates are released within 1 day. In 2008, 56% of inmates were released within 1 to 3 days, another 12.9% were released within 4 to 9 days, and another 11.9% of inmates were released within 10 to 15 days. Accordingly, 80.8% of inmates were released by the 15th day of incarceration. Although prisoners charged with felony cases, parole violations, awaiting transfer to the New York State Department of Corrections, etc. can remain incarcerated for much longer periods, the average length of stay for males during the past five years was approximately 16.8 days. For females, the average length of stay was approximately 6.9 days.

Generally, the intake process includes, but is not limited to, a search, property inventory, fingerprinting, photograph, distribution of inmate handbook, suicide and medical health history screening, phone call and change out. The Facilities provide a wide range of services to inmates at taxpayer expense. In most instances, inmates received better services at no cost to them, than Erie County taxpayers. Services for inmates are provided through a combination of both on sight and off-sight referrals, which include dental, podiatry, orthopedics, opthamologic and metabolism [diabetes] care, just to name a few.

The Facilities include basic inmate service components including, for example, a medical unit, commissary, recreation areas, law library, visitation areas, laundry and kitchen. In addition, the inmate units are equipped with televisions having conversion boxes that receive the major network television stations. Likewise, inmates also receive the Buffalo News on a daily basis free of charge.

The combined rated capacity for the Facilities is approximately 1589 beds. To provide an example of operational scale, the Facilities' kitchens prepare and serve more than 5000 meals per day. Given the diverse dietary needs of this population, the County employs a registered dietician to ensure that inmates who have diabetes, by way of example, receive meals for their specific medical issues. In 2008 alone, the Facilities prepared and served 1,850,289 meals to inmates. Indeed, at the ECHC alone, in 2008, the medical unit provided treatment to 25,742 inmates, administered 310,434 doses of medication, 8,662 inmates were seen on sick call, 235 lab tests were performed, 1,259 inmates were transferred to the Erie County Medical Center ("ECMC")¹⁰ for clinic referrals, 171 inmates were sent for Emergency Room assessments, and 46 inmates were admitted to the lock up unit at ECMC.

Since 2004, Erie County taxpayers have paid approximately three hundred sixty eight million tax dollars (\$368,000,000) to run the Facilities. The projected taxpayer dollars anticipated to be spent for the facilities in 2009 is approximately sixty nine million dollars (\$69,000,000) or almost five (5%) percent of the County's one billion dollar budget. The tax payer cost of running the Facilities has steadily increased, while aid from both federal and state governments has sharply decreased. For example in 2006, the County received approximately fifteen million dollars (\$15,000,000) in state and federal aid to supplement the local tax share to defer some costs in running the facilities. This amount was above and beyond the approximately fifty eight million dollars (\$58,000,000) in local tax payer share. In 2009, the County is only expected to receive three million dollars (\$3,000,000) in state and federal funding to supplement the local tax payer share of sixty nine million dollars (\$69,000,000). In the past five years, in addition to the amounts listed above, the County has spent more than three million dollars (\$3,000,000) for capital improvements. Other Erie County departments also incur costs in the support of the ECSO detention operations. These costs include, but are not limited to, human resources and risk management, retiree healthcare, management services, building services, utilities and building maintenance, and legal services.

The ECSO is committed to providing training to its personnel. All jail deputies and corrections officers are required to attend a 176 hour Basic Corrections Training course with four (4) COC exams administered during the Course. In addition, new jail deputies and corrections officers complete an eight (8) hour suicide prevention screening course, eight (8) hour adult CPR and First Aid course, a forty-seven (47) hour weapon course and an eight (8) hour Chemical Agent Course. These courses also require the employee to pass a written examination. New deputies and corrections officers are provided at least 200 hours of field training with frequent evaluations. The County is proud of its dedicated work force.

¹⁰ The County has a contractual arrangement with ECMC to provide clinical and other specialty services to the inmates as they are referred by health care providers.

Furthermore, the NYSCOC and New York State Division of Criminal Justice Services (“DCJS”) standards require annual training of one hour on use of force, one hour on chemical agents and eight (8) hours on handgun requalification. The ECSO also provides refresher courses on workplace harassment and discrimination, suicide prevention policy and procedure, general order review, contraband control, fire safety, extinguishers and evacuation and adult CPR. Newly hired sworn staff also complete an eighty (80) hour employee orientation program that covers a variety of topics.

The County has allocated significant resources to the ECSO for the jail management division in recent years. As outlined above, sixty nine million dollars (\$69,000,000) will be spent on the Facilities in 2009. Capital funding was bonded in 2009 to implement software facilitating electronic medical records for inmates at the Facilities scheduled to “go live” in the Fall of 2009. In 2004, one million dollars (\$1,000,000) was spent to renovate the constant observation area at the ECHC. An additional one million dollars (\$1,000,000) was spent in 2004 to upgrade the HVAC systems at the Facilities. Twenty-two thousand dollars (\$22,000) was spent in 2005 to replace the fire alarm system at the ECHC. In 2007, six hundred fifty-thousand dollars (\$650,000) was spent to install security windows as required by the NYSCOC in the Yankee Building. These amounts are just a few examples of the monies spent by Erie County taxpayers on behalf of inmates. Erie County has also expended a great deal of resources in maintaining the Facilities. During 2008 and 2009, 4061 work orders were processed and closed at the Facilities. It took 31,544 hours of labor to process these work orders at a cost of \$884,389, exclusive of materials.

The ECSO faces broad challenges in its management of the Facilities with a shrinking tax base, weak economy and rising costs. Notwithstanding these challenges, the County continues to commit resources and tax dollars to comply with New York State mandates and improve its Facilities. Significantly, the County has been proactive in addressing concerns which have been raised. The County is confident that inmates in the Facilities have been provided with care that exceeds what is required by the United States Constitution.

C. CRIPA Standards

I. The CRIPA Framework.

To provide a context for the discussion of the Letter’s inadequacies, it is significant to briefly summarize several key elements of the CRIPA statutory scheme. This section outlines the CRIPA framework by addressing: (1) the statutory requirements for the application of CRIPA, (2) the Attorney General’s certifications that are required before the Department can file suit under CRIPA, and (3) issues related to the County’s decisions regarding cooperation with the Division’s investigation as they relate to the application of CRIPA.

1. Statutory requirements for application of CRIPA.

CRIPA is a narrowly tailored statute granting the Attorney General authority to initiate and intervene in certain civil rights actions in order to redress “systematic deprivations of constitutional rights of institutionalized persons.”¹¹ Such enforcement authority is limited to

¹¹ See S. REP. NO. 96-416 at 1, *reprinted in* 1980 U.S.C.C.A.N. 787, 787; H.R. REP. 96-897 at 9, *reprinted in* 1980 U.S.C.C.A.N. 832, 833.

situations in which a detention facility has a "pattern or practice" of subjecting institutionalized persons to "egregious or flagrant conditions" which deprive such persons of rights, privileges, or immunities under the Constitution, thereby causing such persons to suffer "grievous harm."¹²

A "pattern or practice" sufficient to allow the Department to invoke its CRIPA authority must involve conduct undertaken pursuant to an official policy or custom of the State or political subdivision's final policymaker that was the moving force in causing the constitutional deprivations.¹³ A governmental unit may not be sued for federal constitutional violations for an injury inflicted solely by its employees or agents.¹⁴ "Instead, it is when execution of a governmental unit's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy inflicts the injury that the government as an entity is responsible."¹⁵ The Department must also establish that the governmental unit was "deliberately indifferent" to the known consequences of the policy or procedure at issue.¹⁶

The legislative history of the statute confirms that CRIPA was intended to be a narrowly targeted statute providing the Department with jurisdiction over only the most flagrant, egregious, and pervasive patterns or practices of conduct depriving inmates of their constitutional rights. The House Committee Report on CRIPA thus emphasized that CRIPA enforcement was to be targeted only at conduct that was a "part of a 'pattern or practice' of [the] denial [of constitutional rights] rather than an isolated or accidental incident."¹⁷ CRIPA enforcement should therefore be limited to "cases where unconstitutional or illegal practices are widespread, pervasive, and systematic, and adversely affect significant numbers of institutionalized individuals."¹⁸ "[M]inor or isolated acts or injuries are not intended to be the subject of litigation under [CRIPA]."¹⁹ Similarly, [t]he adoption . . . of the language 'egregious or flagrant' establishes a standard for the Department's involvement that reflects a Congressional sensitivity to the fact that a high degree of care must be taken when one level of sovereign government sues another in our Federal system. This is a higher standard than that required of plaintiffs other than the United States."²⁰

Examples of the types of correctional facilities that CRIPA was intended to target included: a facility in which "[g]roups of four men were regularly confined in 6-by-6-foot cells with no ventilation, no hot water, and sewage leaks;" a facility in which there were "40 stabbings, 44 serious beatings, and 19 violent deaths" in a three year period; and a facility in which "cattle prods were used to keep inmates standing or moving" and in which inmates were "confined naked for up to three days, without hygienic materials, heat, or adequate food" in a "6-by-6-foot cell with no light, toilet, sink, bed, or mattress."²¹

¹² See 42 U.S.C. 1997a(a).

¹³ See generally, Collins v. City of Harker Heights, 503 U.S. 115, 120 (1992).

¹⁴ See generally, Board of Comm'rs of Bryan County v. Brown, 520 U.S. 397, 403 (1997).

¹⁵ See, Monell v. Dep't of Soc. Services, 436 U.S. 658, 695 (1978).

¹⁶ See, Id.

¹⁷ H.R. REP. NO. 99-987, at 11 (1980)(Conf. Rep.).

¹⁸ S. REP. NO. 96-416, at 29 (1979).

¹⁹ Id.

²⁰ H.R. REP. NO. 99-897, at 11 (1980)(Conf. Rep.).

²¹ S. REP. NO. 96-416, at 12 (1979).

The legislative history further confirms that Congress intended to allow the Department to pursue only such “minimum corrective measures” as are necessary to remedy the alleged pattern or practice of unconstitutional conduct. CRIPA was never intended to permit the Department to impose mandates against local jurisdictions and taxpayers that amount to what the Division views as “best practices” rather than constitutionally imposed standards. Indeed, the legislative history of CRIPA specifically notes that CRIPA authority should be exercised by the Department “to represent the national interest in securing *constitutionally* adequate care for institutionalized citizens,” and that the Department does not “directly represent any institutionalized plaintiffs.”²² Furthermore, CRIPA was intended to “give States the primary responsibility for correcting unconstitutional conditions in their own institutions and to attempt to reach an agreement on the necessary remedies to correct the alleged conditions through informal and voluntary methods.”²³ Indeed, “[i]n the face of good-faith efforts by appropriate State and local officials to comply with constitutionally required minima . . . [it is] preferable to give such officials the opportunity to fashion their own specific solutions.”²⁴ The Division’s stated position that the County is not entitled to any explanation of the constitutional standards that the Division believes are applicable to the Facilities, unless the County first provides unfettered access to the Facilities, thus contradicts the express intention of Congress to encourage the Department to give state and local officials a meaningful opportunity to undertake voluntary remedial efforts to the extent that such efforts are necessary.

2. Attorney General certifications prior to filing suit under CRIPA.

Once the Department has properly invoked its authority under the CRIPA by establishing the existence of the many prerequisites noted above, the statute then requires the Department to satisfy several other procedural safeguards which are included in the CRIPA to prevent overreaching by the federal government into state affairs that are beyond the Department’s jurisdictional purview. The most significant of these safeguard provisions are the pre-suit certifications required under 42 U.S.C. §1997b, which the Attorney General must personally attest to before the Division can file suit under CRIPA. In short, CRIPA requires the Attorney General to personally certify that he has informed the Governor or chief executive officers and attorney general or chief legal officer of the appropriate State or political subdivision and the director of the institution in question of:

- the alleged conditions which deprive rights, privileges, or immunities secured or protected by the Constitution or laws of the United States and the alleged pattern or practice of resistance to the full enjoyment of such rights, privileges, or immunities;
- the supporting facts giving rise to the alleged conditions and the alleged pattern or practice, including the dates or time period during which the alleged conditions and pattern or practice of resistance occurred; and when feasible, the identity of all persons reasonably suspected of being involved in causing the alleged conditions and pattern or practice at the time of the certification, and the date on which the alleged conditions and pattern or practice were first brought to the attention of the Attorney General; and

²² H.R. REP. No. 990897, at 13 (1980)(Conf. Rep.)(emphasis added).

²³ *Id.*

²⁴ S. REP. NO. 96-416, at 32 (1979).

- the minimum measures which the Attorney General believes may remedy the alleged conditions and the alleged pattern or practice of resistance;²⁵

In addition, CRIPA requires the Attorney General to certify that he:

- [has] made a reasonable good faith effort to consult with the Governor or chief executive officer and attorney general or chief legal officer of the appropriate State or political subdivision and the director of the institution, or their designees, regarding financial, technical, or other assistance which may be available from the United States and which the Attorney General believes may assist in the correction of such conditions and pattern or practice of resistance;
- [has] encouraged the appropriate officials to correct the alleged conditions and pattern or practice of resistance through informal methods of conference, conciliation, and persuasion including, to the extent feasible, discussion of the possible costs and fiscal impacts of alternative minimum corrective measures, and that it is the Attorney General's opinion that reasonable efforts at voluntary correction have not succeeded; and
- [is] satisfied that the appropriate officials have had a reasonable time to take appropriate action to correct such conditions and pattern or practice, taking into consideration the time required to remodel or make necessary changes in physical facilities or relocate residents, reasonable legal or procedural requirements, the urgency of the need to correct such conditions, and other circumstances involved in correcting such conditions;²⁶

The Attorney General's certification as to each of these six requirements is non-delegable, which highlights the fact that Congress viewed the completion of these prerequisites to suit as essential limitations on the Department's enforcement authority in order to protect the principles of federalism that make up the core of our system of government.²⁷

In this case, the Division's Investigation and subsequent Letter to the County failed to satisfy all of these prerequisites to suit. As such, the County respectfully submits that it would be inappropriate for the Attorney General to certify that the Department has met these prerequisites and a suit against the County under CRIPA would be impermissible.

3. Cooperation under CRIPA.

Since the inception of the Investigation, the Division has taken the view that the County is not entitled to any specific guidance regarding the applicable constitutional standards that the Division intended to apply in conducting the Investigation. Instead, as discussed below, the Division has gone so far as to refuse repeated requests by the County to the Division, to provide any guidance as to what it considers to be the minimally acceptable constitutional standards related to the alleged conditions of confinement and patterns or practices at issue in the

²⁵ 42 U.S.C. § 1997b(a)(1).

²⁶ 42 U.S.C. § 1997b(a)(2).

²⁷ 42 U.S.C. § 1997b(b); *see generally* 42 U.S.C. § 1997a(c) (requiring that the Attorney General personally sign any CRIPA complaint).

Investigation. Previous consent decrees and investigations conducted by the Division offer little guidance on the subject as it is clear that the consent decrees and recommendations in previous investigations by the Division by and large impose a "best practices" standard that well exceeds the minimal constitutional requirements in the specified areas. Given this outright refusal by the Division to engage in good faith discussions with the County about the applicable constitutional standards, the County has been compelled to deny the demanded access by the Division to the Facilities.

Despite the Division's unsupported position, CRIPA does not require a state or local entity such as the County to cooperate with the Division's investigation in any way, much less to provide unrestricted access to all of its facilities, inmates, employees, and documents without first being provided with some guidance as to the constitutional standards by which the entity will be judged. Furthermore, the County's decision not to provide the Division with such access in no way eliminates CRIPA's requirement that the Division meet the Attorney General's pre-suit certification standards before filing suit against the County.

II. The Division has not satisfied the requirements for pre-suit certification.

The Division has failed to satisfy the requirements for the Attorney General's pre-suit certification because: (1) the Letter fails to adequately identify the allegedly unconstitutional conditions and alleged patterns or practices at issue; (2) the Letter fails to sufficiently detail the supporting facts giving rise to any allegedly unconstitutional conditions and any alleged pattern or practice; (3) the Letter fails to identify the minimal measures by which any alleged conditions and any alleged pattern or practice could be remedied; (4) the Division has not made a reasonable good faith effort to discuss financial, technical, or other assistance that might assist the County in correcting any allegedly unconstitutional conditions and any alleged pattern or practice; (5) the Division has not encouraged voluntary implementation of minimum corrective measures; and (6) the County has not had a reasonable time to take appropriate actions to correct any alleged conditions and alleged pattern or practice, if such actions are indeed necessary.²⁸

1. The Letter fails to adequately identify any allegedly unconstitutional conditions and any alleged patterns or practices.

Before a CRIPA suit can be filed in this case, the Attorney General must certify that the County has been informed of "the alleged conditions which deprive rights, privileges, or immunities secured or protected by the Constitution or laws of the United States and the alleged pattern or practice of resistance to the full enjoyment of such rights, privileges, or immunities."²⁹ Despite this explicit requirement, the Letter fails to even allege that specific conditions within the Facilities are unconstitutional, much less that there is a pattern or practice of resistance to changing such conditions.

The lengthy Letter includes precious little discussion of what conditions of confinement are required by the Constitution or federal laws. In fact, the Division's discussion of constitutional law in the Letter is primarily located in five pages at the beginning of the Letter which reference constitutional requirements only in the broadest of terms and primarily in the

²⁸ See 42 U.S.C. § 1997b(a).

²⁹ 42 U.S.C. § 1997b(a)(1)(A).

context of § 1983 suits against individual officers.³⁰ Noticeably absent from the Division's meager legal analysis is any case law establishing what constitutes an unconstitutional policy or custom sufficient to establish a "pattern or practice" for purposes of CRIPA.³¹ Moreover, none of the cases discuss in any level of detail the alleged standards the Division seeks to impose in this case. Thus, on its very face the Letter's discussion of law falls far short of providing the County with notice of the constitutional standards upon which the Facilities' policies and customs will be judged. Additionally, throughout the "Findings" section of the Letter, the Division cites virtually no case law in discussing the Division's allegations related to the Facilities. The Letter does not contain any legal authority justifying the recommendations made by the Division. Nor does the Letter set forth where any Court, in any jurisdiction, has required a jurisdiction to adopt the "Recommended Remedial Measures" outlined in the Letter. In fact, the Letter fails to identify any particular instances in which conditions at the Facilities, much less the patterns or practices of the Facilities, fail to satisfy constitutional standards.

To be sure, the Division repeatedly indicates in the Letter its view that the policies and/or practices at the Facilities are "inadequate" in some way. Tellingly, however, the Letter is devoid of any explanation of the ways in which such policies or practices rise to the level of being *unconstitutional* as supported by applicable case law and/or statute. Instead, the Division apparently focuses on aspirational best practices rather than articulating what is minimally required by the Constitution. This is so despite the explicit statutory mandate that the Department shall invoke CRIPA only to ensure that the operator of an institutional facility takes the "minimum corrective measures" necessary to remedy a "pattern or practice" of "flagrant and egregious" constitutional violations.

For example, the Letter alleges that the Facilities' "current suicide prevention practices do not comport with generally accepted standards of correctional mental health care."³² In so stating, however, the Division fails to cite any source for its purported "generally accepted standards."³³ Significantly, the Division does not allege that suicide prevention practices that do not meet the Division's nebulous "generally accepted standards" are unconstitutional.³⁴ Even more astounding, however, is the Division's failure to even *allege* that the Facilities' current suicide prevention practices fail to meet the minimally adequate standards required by the Constitution.³⁵ This vague analysis, bereft as it is of any references to the specific requirements of the Constitution, falls far short of informing the County of any alleged conditions and alleged patterns or practices of the Facilities that purportedly violate the Constitution.

Similarly, the Letter alleges that the Facilities "fail[] to provide inmates with adequate mental health care" and goes on to discuss purported "[g]enerally accepted correctional mental health care standards."³⁶ Once again, the Division fails to cite any source for these purported "generally accepted" standards, much less any source which would even tend to suggest that such standards are the minimally adequate standards required by the Constitution as opposed to "best practices."³⁷ The Division fails to even allege that the Facilities' mental health care

³⁰ See Letter at 4-8.

³¹ See *id.*

³² *Id.* at 9.

³³ See *id.*

³⁴ See *id.*

³⁵ See *id.*

³⁶ *Id.* at 13.

³⁷ See *id.*

services in any way fail to meet the minimally adequate standards required by the Constitution.³⁸ Thus, the Division again failed to put the County on notice of any alleged conditions and alleged patterns or practices of the Facilities that constitute “flagrant and egregious” violations of the Constitution.

While it is possible to repeat a similar analysis for each and every allegation in the “Findings” section of the Letter, the County does not wish to belabor the point. Suffice it to say that the Letter utterly fails to identify the appropriate minimally sufficient constitutional standards for each of the subject matters raised. Furthermore, the Letter does not specify in any detail the ways, if any, in which conditions and patterns or practices at the Facilities fail to meet those requirements, relying instead on vague suggestions that conditions, policies, or procedures are “not adequate” or fail to comply with “generally accepted standards.” Such vague allegations, devoid of references to specific constitutional standards, do not satisfy the notice requirements of CRIPA.

This problem is compounded by the many instances in which the Letter refers to alleged problems with the Facilities’ conditions, policies, or procedures that clearly do not rise to the level of being unconstitutional. For instance, the Letter states that “the organization of the [Facilities’] Manuals is confusing.”³⁹ Surely the Department would not contend that “confusing” organization of jail manuals is so flagrantly and egregiously unconstitutional as to fall properly within the scope of a CRIPA enforcement action. Nonetheless, due to the Division’s wholesale failure to frame its allegations in terms of minimum constitutional requirements, the County is left to speculate as to which portions of the Letter involve discussions of mere best practices and which, if any, address minimally adequate constitutional conditions and patterns or practices.

Given the Division’s abject failure to properly frame its allegations in terms of what is mandated by the Constitution, it is unclear to the County which, if any, of the allegations in the Letter are matters properly falling within the scope of the Department’s enforcement authority under CRIPA. In light of the Letter’s inadequacies, the County has requested, both in person and in writing, that the Division specify the applicable constitutional standards in this case as a first step in moving toward a cooperative resolution of any issues that are properly of concern in a CRIPA investigation. Inexplicably, however, the Division has flatly refused these requests. Instead, the Division has informed the County that it must either bend to the Division’s demands for unfettered access to the Facilities, without so much as an explanation of the legal basis for the Division’s purported enforcement authority, or risk defending itself against the full might of the Department in a CRIPA suit.

The Division has taken an astoundingly broad view of its authority under CRIPA, apparently deeming itself the proper authority to require the County to implement what the Division views as “best practices” in total disregard of the limits placed on federal government enforcement authority by both CRIPA and the Constitution. In addition, the Division has repeatedly refused to satisfy CRIPA’s pre-suit requirements by informing the County of any alleged unconstitutional conditions and alleged patterns or practices at the Facilities. As such, the County respectfully submits that the Attorney General cannot properly certify that the Department has identified the alleged conditions or alleged pattern or practice as required by 42 U.S.C. Section 1997b(a)(1)(A).

³⁸ See *id.*

³⁹ *Id.* at 15.

2. The Letter fails to sufficiently detail the supporting facts giving rise to any allegedly unconstitutional conditions and any alleged pattern or practice.

Before a CRIPA suit could be filed in this case, the Attorney General must certify that the County has been informed of “the supporting facts giving rise to the alleged conditions and the alleged pattern or practice, including the dates or time period during which the alleged conditions and pattern or practice of resistance occurred; and when feasible, the identity of all persons reasonably suspected of being involved in causing the alleged conditions and pattern or practice at the time of the certification; and the date on which the alleged conditions and pattern or practice were first brought to the attention of the Attorney General.”⁴⁰ The Letter fails to satisfy this requirement as well.

As a threshold matter, the Letter fails to satisfy this requirement because, as discussed above, the Letter fails to adequately identify with specificity any allegedly unconstitutional conditions and patterns or practices properly within the scope of the Department’s authority under CRIPA. Given this failure, no amount of factual detail could cure the Letter’s defects. Setting aside this fundamental failure, however, the facts as alleged in the Letter fail to meet the requirements for this element of the Attorney General’s certification.

With respect to each allegation, the Letter fails to specify with particularity the relevant dates or time period during which the purported condition and pattern or practice occurred.⁴¹ At most, the Letter identifies the date on which a particular instance of conduct allegedly occurred,⁴² though the Division failed to provide even that much detail in some instances.⁴³ This shortcoming is particularly significant given that many of the policies and procedures referenced in the Letter undergo frequent revisions. As such, by failing to adequately indentify the time periods during which the alleged policies or procedures were in place, the County cannot be certain which iteration of a given policy the Division considers problematic.

In addition, for the vast majority of the specific alleged incidences referenced in the Letter, the Division failed to note the identity of the guards and inmates allegedly involved in a given alleged incident and the specific date on which the alleged conduct occurred.⁴⁴ The Division has not provided the names of individuals involved in the incidents and has provided such little information that in most instances, the County is left to try to comb through years of documents to determine whether the alleged incident even occurred. Given the fact that the County admits over 24,000 inmates per year into its facilities, searching for these alleged incidents is like searching for a needle in a haystack. Finally, the Letter does not indicate the date on which the alleged conditions and pattern or practice were first brought to the attention of the Attorney General.⁴⁵

⁴⁰ 42 U.S.C. § 1997b(a)(1)(B).

⁴¹ See, e.g., Letter at 9-10 (addressing suicide prevention); *id.* at 13-14 (addressing mental health care); *id.* at 28-29 (addressing medical care).

⁴² See, e.g., *id.* at 18, 21, 25.

⁴³ See, e.g., *id.* at 10, 18, 20, 25 (addressing specifically alleged incidents but referencing, at most, the year or years in which the incidents allegedly occurred and, in some instances, providing no time period or date whatsoever).

⁴⁴ See, e.g., *id.* at 10, 11, 12, 14, 18, 21, 25, 31.

⁴⁵ See generally *id.*

Given the fact that the Letter does not meet the basic factual disclosure requirements of CRIPA, the County respectfully submits that the Attorney General cannot properly certify that the Department has met its obligations under this CRIPA prerequisite.

3. The Letter fails to identify the minimal measures by which any allegedly unconstitutional conditions and any alleged pattern or practice could be remedied.

Before a CRIPA suit could be filed in this case, the Attorney General must also certify that the County has been informed of “the minimum measures which the Attorney General believes may remedy the alleged conditions and the alleged pattern or practice of resistance.”⁴⁶ The Letter fails to satisfy this prerequisite to suit as well.

As discussed at length above, the Division has repeatedly refused to even discuss with the County what the Division believes are the applicable minimally adequate constitutional requirements in each of the areas referenced in the Letter or to specify the ways in which the Facilities’ conditions and patterns or practices allegedly fail to satisfy those standards with any level of specificity. Similarly, the Division has failed to provide any legal analysis or citations in support of its “Recommended Remedial Measures” indicating that such measures are the minimal measures sufficient to comply with the requirements of the Constitution.⁴⁷ Given these shortcomings of the Letter, the County cannot possibly know which of the Letter’s “Recommended Remedial Measures,” if any, should be viewed as *minimum measures* sufficient to comply with the Constitution.⁴⁸ This is particularly problematic given that some of the “Remedial Measures” are clearly not the minimum measures necessary to comply with the Constitution while others are so vague that they provide no meaningful guidance to the County at all.

Contrary to the Division’s articulated position in its Letter, there are no regulations or guidelines imposing the “Recommended Remedial Measures” made by the Division upon the County. Despite the Division’s repeated assertions, the standards imposed by the Department are not constitutionally mandated standards. One must review the case law applicable in the relevant jurisdiction for guidance as to the truly mandated constitutional standards. The Division has failed to set forth any relevant case law in the Second Circuit requiring any of the measures set forth as a “Recommended Remedial Measure” in its Letter. Rather, the Division has determined what it believes to be a best practices and has attempted to impose these best practices as a constitutional standard.

One example of a “Recommended Remedial Measure” that is clearly not a minimum measure necessary to comply with the Constitution is the Division’s recommendation that the Facilities “[e]nsure ECHC and ECCF properly identifies inmates with mental illness through adequate screening.”⁴⁹ Assuming *arguendo* that minimally adequate constitutional standards require the Facilities to have an “adequate” screening process for mental illness, whatever the term “adequate” might mean in that context, it is clearly not the case that a minimally adequate screening process must *in fact ensure* that all inmates with mental illness are properly

⁴⁶ 42 U.S.C. § 1997b(a)(1)(C).

⁴⁷ See generally Letter at 36-49.

⁴⁸ See generally *id.* at 36-49.

⁴⁹ *Id.* at 38.

identified.⁵⁰ No mental health screening process could possibly be perfectly accurate in identifying each and every case of mental illness among inmates, and the Constitution certainly does not require the Facilities to undertake such an impossible task. Thus, this “Recommended Remedial Measure” is clearly aspirational rather than a statement of the minimum remedial measures necessary to comply with the Constitution.

There are also numerous instances in which the Division’s “Recommended Remedial Measures” are so vague that they provide the County with virtually no meaningful guidance as to what the Division believes the County should do. For example, the Division recommended that the Facilities “[p]rovide adequate treatment for inmates with self-injurious behavior” without defining what treatment would be considered “adequate” for minimum constitutional purposes or how the Facilities’ existing treatment procedures are purportedly “inadequate.”⁵¹ Similarly, the Division recommended that the Facilities “[e]nsure that medications are provided to inmates in a timely manner and that they are properly monitored” without defining “timely manner” or what it means to “properly” monitor for purposes of meeting minimally necessary constitutional requirements or how those standards purportedly differ from the Facilities’ existing standards.⁵²

Even assuming *arguendo* that the Division considers such recommendations to be the minimum measures necessary to comply with the Constitution, the terms used in the recommendations are so vague that they fail to provide the County with any meaningful notice as required under CRIPA. Thus, given that the County is still not on notice of what “minimum measures” the Division considers necessary to satisfy the Constitution, the Letter has not satisfied this prerequisite to suit under CRIPA.

4. The Division has not made a reasonable good faith effort to discuss financial, technical, or other assistance which may assist in the correction of any allegedly unconstitutional conditions and any alleged pattern or practice.

Before a CRIPA suit could be filed in this case, the Attorney General must also certify that he has “made a reasonable good faith effort to consult with the Governor or chief executive officer and attorney general or chief legal officer of the appropriate State or political subdivision and the director of the institution, or their designees, regarding financial, technical, or other assistance which may be available from the United States and which the Attorney General believes may assist in the correction of such conditions and pattern or practice of resistance.”⁵³ The Division has failed to meet this prerequisite to suit.

Specifically, there has been no offer of funding by the Division to correct what it perceives to be the alleged constitutional deficiencies. What is clear from the consent decrees and investigations of the Division is that the Division imposes best practices to be paid for by the local taxpayers with no funding or assistance from the Division. The Division’s wholesale failure to articulate the constitutional standards applicable to any alleged conditions and any

⁵⁰ Indeed, of the nearly 100 “Recommended Remedial Measures” in the Letter, more than 60 purport to require the Facilities to “ensure” that something occurs. See *id.* at 36-49.

⁵¹ *Id.* at 36.

⁵² *Id.* at 39.

⁵³ 42 U.S.C. § 1997b(a)(2)(A).

alleged policies or practices at issue in this matter has likewise resulted in the Division's refusal to engage in any reasonable good faith effort to discuss possible assistance from the Attorney General in correcting any allegedly unconstitutional conditions and any alleged pattern or practice. Until such time as the Division adequately identifies which conditions and patterns or practices it considers unconstitutional, along with the associated financial cost of bringing the County into what the Division perceives as compliance, it is impossible for the County and the Division to engage in any good faith discussions about means by which the Department might assist the County in implementing minimally necessary remedial measures if such measures are indeed required. Thus, the Division has not satisfied this prerequisite to suit under CRIPA either.

5. The Division has not encouraged voluntary implementation of minimum corrective measures and has not even attempted to engage in discussions of such measures.

Before a CRIPA suit could be filed in this case, the Attorney General must also certify that he has "encouraged the appropriate officials to correct the alleged conditions and pattern or practice of resistance through informal methods of conference, conciliation and persuasion, including, to the extent feasible, discussion of the possible costs and fiscal impacts of alternative minimum corrective measures, and it is the Attorney General's opinion that reasonable efforts at voluntary correction have not succeeded."⁵⁴ The Division has failed to meet this prerequisite to suit as well.

As discussed above, the Division has not even attempted to identify with specificity which conditions and policies or procedures at the Facilities are allegedly unconstitutional, if any. Given the Division's abject failure to provide this information, it is clear that the Division cannot be said to have encouraged appropriate corrective action, if such corrective actions are indeed required pursuant to the Constitution. Moreover, the Division has failed to identify minimum corrective measures sufficient to satisfy the Constitution, instead providing a list of overbroad and vague "Recommended Remedial Measures" without providing any legal analysis to suggest that the recommended measures are the minimum corrective measures necessary to comply with the Constitution.

Thus, far from discussing "the possible costs and fiscal impacts of alternative minimum corrective measures," the Division has failed to even identify one set of possible minimum corrective measures or inquired of the County's financial ability to implement one or all of the "Recommended Remedial Measures." Indeed, when pressed to engage in discussions about the constitutional standards governing the matters addressed in the Letter, the Division has flatly refused to enter into such discussions with the County. Thus, the Division has not satisfied this prerequisite to suit under CRIPA either.

6. The County has not had a reasonable time to take appropriate action to correct any allegedly unconstitutional conditions and any alleged patterns or practices.

Before a CRIPA suit could be filed in this case, the Attorney General must also certify that he is "satisfied that the appropriate officials have had a reasonable time to take appropriate

⁵⁴ 42 U.S.C. § 1997b(a)(2)(B).

action to correct such conditions and pattern or practice.”⁵⁵ The Division has failed to meet this prerequisite to suit as well.

Given the Division’s failure to engage in any meaningful analysis of whether, or to what extent, any allegedly unconstitutional conditions and alleged patterns or practices even exist at the Facilities, and given the Division’s failure to adequately identify any minimum corrective measures related thereto, the County is not yet even aware of whether any remedial measures are in fact required by the Constitution. Assuming *arguendo* that the Division’s recommendations in the Letter constituted minimum corrective measures, however, the Division’s repeated threats to file suit 49 days after the date of the Letter obviously would not provide the County with a “reasonable time to take appropriate action to correct such conditions and pattern or practice.”

Many of the “Recommended Remedial Measures” are so vague as to provide virtually no guidance as to what changes would be required in many instances. For example, the Letter’s recommendation that the County “[d]evelop policies and procedures to ensure appropriate management of suicidal inmates” provides no reasonable guidance as to what specific remedial measures the Division is recommending or whether the County’s attempts to implement such recommendation would satisfy the Division’s understanding of “appropriate.”⁵⁶ Thus, before the County could reasonably be expected to implement any remedial measures, the Division would have to be willing to better define those recommendations.

In addition, to the extent if any, the “Recommended Remedial Measures” would require sweeping changes to a wide range of policies and procedures at the Facilities in areas such as suicide prevention, mental health care, use of force, medical care, and sanitation and environmental conditions,⁵⁷ the County would require a significant amount of time to consult with others in each of these areas in order to implement such changes.

Given the vagueness of the Division’s “Recommended Remedial Measures” and the breadth of those recommendations, 49 days from the date of the Letter would be a patently unreasonable amount of time to implement those recommendations even if they were sufficiently detailed, properly articulated recommendations of minimum corrective measures sufficient to comply with the Constitution. As things now stand, however, the County cannot reasonably be expected to implement any “remedial measures” until the proper contours of the constitutional matters at issue have been defined by the Division. Thus, the County has not had a reasonable time to implement any minimum corrective measures as required under CRIPA’s prerequisites to suit.

CONCLUSIONS REGARDING COMPLIANCE WITH CRIPA

CRIPA is a narrowly tailored enforcement statute with a number of fail-safes built in through the certification process to prevent the Department from overreaching in its enforcement efforts. In this case, the Division’s Letter to the County totally disregards those fail-safes by forsaking any discussion of what specific conditions and patterns or practices are required by the Constitution and any analysis of how the Facilities’ conditions and patterns or practices purportedly fail to satisfy those standards. Instead, the entire letter is couched in terms of vague

⁵⁵ 42 U.S.C. § 1997b(a)(2)(C).

⁵⁶ See generally Letter at 37.

⁵⁷ See generally *id.* at 36-49.

references to "generally accepted standards" and "adequate" conditions. Similarly, the Division's "Recommended Remedial Measures" do not even purport to apply existing constitutional standards to determine minimum corrective measures, instead addressing possible changes to the Facilities' policies and procedures in the broadest and vaguest possible terms.

At the very least, CRIPA inarguably requires the Department to put the County on adequate notice about the extent to which the conditions and patterns or practices of the Facilities allegedly violate the Constitution. Given this fact, it is truly astounding that the Division has repeatedly refused to even engage the County in a conversation regarding the appropriate constitutional standards at issue. Given the Division's sweeping failures to provide even the most basic information required under the pre-suit certification standards of CRIPA, the County respectfully submits that the Attorney General cannot properly certify that the Department has met the preconditions to filing suit against the County under CRIPA.

More broadly speaking, the County respectfully urges the Attorney General to take a close look at the Division's investigation and enforcement practices under CRIPA. If the Division's total failure to adhere to the requirements of CRIPA in this case is an indication of the Division's regular practices in CRIPA cases, then the County respectfully submits that changes to those practices are urgently required. Indeed, the recent submission to the Department by Harris County, Texas, advancing many of the same issues raised herein suggests that the inadequacies of the Letter to Erie County and the apparent overreaching by the Division in Harris County may not be isolated incidents.

CRIPA does not require state and local entities such as the County to ensure that the conditions and patterns or practices in their institutions adhere to the Division's amorphous notions of best practices for conditions of confinement. Rather, entities such as the County are simply required to provide minimally adequate conditions of confinement that are consistent with the mandates of the Constitution. It is an affront to the principles of federalism that are at the very heart of our system of government for the Department to allow the Division to invoke its CRIPA authority in a manner that seeks to force entities such as the County to make changes to conditions of confinement that exceed minimally adequate conditions as defined by the Constitution.

Each such change in policy or procedure that the County ultimately implemented would be funded by tax revenue from the citizens of the County of Erie to the detriment of funding for schools, roads, libraries, and other public works. The separation of power between state/local and federal government requires that such changes be left in the hands of the elected officials of the County of Erie who answer directly to the citizenry for how tax dollars are spent. Indeed, Congress explicitly recognized the risk of overreaching under CRIPA and sought to protect the principles of federalism by setting forth numerous procedural safeguards in the CRIPA statutes which the Division has completely ignored.

D. Rejection Of "Findings"

1. Mental Health Care

According to a national study, at midyear 2005, 64% of inmates in jails had a mental health problem.⁵⁸ About 76% of jail inmates who had mental health problems also met the criteria for substance dependence or abuse.⁵⁹ Since 2004, Erie County taxpayers have paid mental health professionals a total of seven million nine hundred thirty nine thousand nine hundred fourteen dollars (\$7,939,914) to treat inmates at the Facilities. This figure does not include mental health medications provided to inmates, including expensive psychotropic medications, at taxpayer expense. On a daily basis, licensed mental health professionals, including but not limited to, psychiatrists, nurse practitioners, clinical staff and forensic mental health staff engage in crisis intervention, lethality assessments, mental status examinations, medication treatment and supportive counseling for inmates. Even though not legally mandated, the forensic mental health professionals receive annual training in psychopharmacology and lethality assessment/suicidality, as well as training in cultural competency, therapeutic approaches, and community resources.

On page 13 of the Letter, the Division declared, without any factual or legal support, that the Facilities fail to provide inmates with adequate mental health care. In doing so, the Division cites a single example of an inmate, Jimmie Roberts.⁶⁰ Without any factual detail or citation to any applicable legal standard, the Division states that "ECHC and ECCF inmates require mental health assessments and treatment to avoid the unnecessary suffering of acute and chronic episodes of mental illness."⁶¹ Relying on a report completed by the NYSCOC, the Division summarily concluded that the treatment rendered by the ECHC physician to Jimmy Roberts was inadequate, "rising to the level of professional misconduct."⁶² By adopting the findings of the NYSCOC, the Division concluded that the ECHC physician engaged in misconduct with respect to Jimmie Roberts; however, neither agency has the expertise, knowledge or responsibility to make such a determination. In fact, the agency with authority to make that determination, the New York State Office of Professional Conduct has cleared the ECHC physician⁶³ with respect to the medical treatment he provided to inmate Jimmie Roberts.

A District Court in Pennsylvania has examined allegations made by the Division under CRIPA and rejected the assertion that such claims violated constitutional standards.⁶⁴ In that case the Western District of Pennsylvania noted, "[t]he Supreme Court has held that 'the Constitution only requires that the courts make certain that professional judgment in fact was exercised. It is not appropriate for the courts to specify which of several professional choices should have been made.'"⁶⁵ "Liability may be imposed only when the decision by the professional is such a substantial departure from accepted professional judgment, practice or

⁵⁸ See DORIS J. JAMES & LAUREN E. GLAZE, U.S. DEP'T, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT, MENTAL HEALTH PROBLEMS OF PRISON AND JAIL INMATES 1 (2006).

⁵⁹ Id.

⁶⁰ Letter at 13; Jimmy Roberts is a pseudonym

⁶¹ Id.

⁶² Id.

⁶³ The NYSCOC apparently made a complaint to the New York State Office of Professional conduct about the physician at issue in relation to the medical treatment provided to Jimmy Roberts.

⁶⁴ See, United States v. Commonwealth of Pennsylvania, 902 F. Supp. 565, 582 (W.D.P.A.1995).

⁶⁵ Id. at 582, citing Youngberg v. Romeo, 457 U.S. 307, 321 (1982).

standards as to demonstrate that the person responsible actually did not base the decision on such a judgment.”⁶⁶ “[P]rofessional judgment” has nothing to do with what course of action would make patients ‘safer, happier and more productive.’ Rather, it is a standard that determines whether a particular decision has substantially met professionally accepted minimum standards.”⁶⁷

The Court went on to note, “Even if every expert testifying at trial agrees that another type of treatment or residence setting might be better, the federal courts may only decide whether the treatment or residence setting that actually was selected was a ‘substantial departure’ from prevailing standards of practice.”⁶⁸ The Court further held that “Isolated instances of inadequate care, or even malpractice, do[] not demonstrate a constitutional violation.”⁶⁹ The Court concluded that the Division failed to establish a CRIPA violation.

Strikingly similar to the present case, the Division falls far short of demonstrating any unconstitutional custom or policy with respect to the provision of mental health services to inmates at the Facilities. To the contrary, the Facilities are providing care that far exceeds the minimal constitutional requirements and inmate “Jimmie Roberts” clearly received constitutionally adequate medical care while incarcerated at the ECHC.

2. Suicide Prevention Measures

“In the case of an inmate who presents a suicide risk, prison officials have an obligation to take reasonable measures to protect the inmate’s vulnerable mental state and to protect him or her from self-inflicted injury.”⁷⁰ The court went on to say that “[A] prison official does not act in a deliberately indifferent manner unless that official ‘knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.’”⁷¹ Where courts have analyzed this standard, it has noted that “the search for blame or fault, particularly with the benefit of hindsight, can too easily infect what must be dispassionate analysis. Simply laying blame or fault and pointing out what might have been done is insufficient. *The question is not whether the jailers did all they could have, but whether they did all the Constitution requires.*” [Emphasis added].⁷²

In a recent case from the Eastern District of New York, the court opined, “It is deceptively inviting to take the suicide, *ipso facto*, as conclusive proof of deliberate indifference. However, where suicidal tendencies are discovered and preventive measures taken, the question is only whether the measures taken were so inadequate as to be deliberately indifferent to the

⁶⁶ *Id.* at 582, citing *Youngberg* at 322-23.

⁶⁷ *Id.* at 583, citing, *Society for Good Will to Retarded Children Inc v. Cuomo*, 737 F.2d at 1239, 1248 (2d Cir. 1984)(Isolated incidents do not give rise to unconstitutional policies and certainly do not demonstrate deliberate indifference to the mental health needs of inmates).

⁶⁸ *Id.* at 584.

⁶⁹ *Id.* at 589.

⁷⁰ *Eze v. Higgins*, No. 95-CV-6S, 1996 WL 861935, at *8 (W.D.N.Y. Mar. 20, 1996)

⁷¹ *Id.* at *3 (quoting *Hathaway v. Coughlin*, 37 F.3d 63, 66 (2d Cir. 1994)).

⁷² *Rellergert v. Cape Girardeau County*, 924 F.2d 794, 797 (8th Cir. 1991).

risk.”⁷³ There is no doubt that at all times the County was exceeding the constitutional standards with respect to suicide prevention measures for inmates. Furthermore, the County is currently meeting the best practices standard recommended by the NCCHC, an authority that the Division routinely relies upon for technical advice in its CRIPA investigations.

On pages 9-10 of the Letter, the Division stated that “ECHC and ECCF’s current suicide prevention policies do not comport with generally accepted standards of correctional mental health care.” The Division further purported, “[a]lthough the policies we reviewed appear sound, it is clear by the number of recent suicides and attempted suicides that there are serious problems with how the policy is implemented and followed.”⁷⁴ Implicit in this axiomatic statement by the Division is that it has the ability to prevent both attempted and actual suicides of inmates, which is nothing short of wishful thinking.

Significantly, the Division did not cite any legal support for its articulated nine (9) part suicide prevention standard, leaving the County to speculate where such “standard” was expressed. Indeed, given the fact that the County has at all times followed the guidelines promulgated by the COC relative to suicide screenings, if the Division’s supposition were true, which it is not, then all detention facilities in New York utilizing the State mandated intake screening form are apparently in violation of CRIPA as well.

Even more surprising is the fact that while the Division had obtained a complete copy of the NCCHC study initiated by the County for purposes of providing technical assistance, the Division failed to mention that of the 12 component “best practices” standard promulgated by NCCHC, the County had ten components in place at the time the NCCHC study was completed and since that time the County has implemented the full twelve components into its suicide screening process at the Facilities.

The Division failed to identify what if anything about the County’s policies or practices violate the constitution. The Division also alleges that the NCCHC “warned” the Facilities about housing potentially suicidal inmates in unsafe cells and stated that since 2003, at least 23 inmates either committed, or attempted to commit, suicide or took steps that demonstrated suicidal ideation.⁷⁵ The Division goes on to state “Between 2007-2008 there were three suicides and at least ten attempted suicides.”

As noted in section “B” of this letter which provides extensive statistical information related to the County’s jail operations, the County expends a significant amount of taxpayer dollars to fund mental health professionals who provide services to inmates. All inmates are given a suicide prevention screening at intake. As outlined in the suicide prevention policy for the Facilities, inmates who are deemed to be at risk for suicide (as determined by the many mental health professionals who examine and treat inmates at the Facilities), are placed on constant observation. Constant observation is the practice whereby a deputy constantly observes the inmate to ensure that he or she does not attempt to harm him or herself and regularly records the inmate activity. An inmate is maintained in constant observation until such time as a mental

⁷³ Kelsey v. City of New York, 2006 U.S. Dist. LEXIS 91977, at *14 (E.D.N.Y. December 18, 2006)(citing Hathaway v. Coughlin, 99 F.3d 550, 553 (2d Cir. 1996).

⁷⁴ Letter at 9-10.

⁷⁵ Letter at 10.

health professional clears the inmate by determining that the inmate no longer presents a risk for suicide. In addition, forensic mental health professionals determine whether the inmate is permitted to have certain items, especially if the item(s) could harm the inmate.

The Division did not cite any authority or statistics to support its suggestion that the suicide rate in the Facilities is higher than similar facilities. To the contrary, the suicide rate at the Facilities is much lower than the national average for local jails and lower than the rate in New York State Prisons. The Bureau of Justice Statistics (hereafter "BJS"), another agency of the United States Department of Justice, maintains national suicide rates for inmates in local jails. In its last report issued in 2005, the BJS reported that the suicide rate for inmates in local jails was 47 per 100,000 inmates.⁷⁶ The BJS noted that violent offenders had suicide rates over twice as high as those for non violent offenders (31 and 9 per 100,000 respectively).⁷⁷ The BJS noted that suicide rates in State Prisons were three times less than the rates in local jails and have been historically lower.⁷⁸ Significantly, the suicide rate in New York State Department of Corrections Facilities (even though it should be lower than local jails) was 28.3 per 100,000 for the year 2007.

Given the statistical data, the sound policies, and professional efforts exerted by staff at the Facilities, including classification and housing deputies, forensic mental health staff and medical staff to identify and prevent suicides, it is clear that the County is not deliberately indifferent to suicide prevention. Rather, the facts reveal that the number of suicides in the Facilities do not even approach the national average or average in the State facilities which historically have lower statistical deaths from suicides. While any suicide is an unfortunate occurrence, it is a nationally recognized phenomenon that occurs in prisons and jails, as well as in the community at large despite the best efforts of mental health professionals and family members. This statistical evidence further establishes that the Facilities meet the constitutional requirements for suicide prevention.

In short, the Division refused to acknowledge that the County was complying with the rigorous COC standards for suicide screening, and was in substantial compliance with the NCCHC best practices for suicide screenings, instead engaging in self-selective conclusory allegations. This transparent attempt by the Division to make a case where none exists should be not be condoned.

3. Protection From Harm / Use of Force

Under the Use of Force section of the Letter, the Division initially criticizes the policies and procedures manuals of the Facilities.⁷⁹ Without challenging the substance of the policies, the Division is critical of the fact that there are separate manuals for each facility and that the inmate handbook is available in Spanish at ECCF, but not at ECHC.⁸⁰ The Division is also critical of the fact that the County employs "two separate workforces" to supervise the inmates, apparently referring to the two public employee unions who work at the Facilities.⁸¹ Even if there was

⁷⁶ See Suicide and Homicide in State Prisons and Local Jails, Bureau of Justice Statistics report issued August 2005.

⁷⁷ *Id.*

⁷⁸ BJS Report at 2

⁷⁹ Letter at 15.

⁸⁰ Letter at 15.

⁸¹ Letter at 23.

credence for these criticisms, such deficiencies do not constitute constitutional violations. Indeed, the Division does not cite any case law or regulation that states otherwise.

a. Two Workforces

The dysfunctional governance of New York is well-known throughout the United States, as are the protections afforded to public employees. The history of the two work forces at the Facilities is well documented in a nine year legal battle that occurred between 2000 and 2009 and went all the way up to the New York State Court of Appeals, New York State's highest court, by permission.⁸² Two separate work units historically worked in each facility when one facility was managed by the Executive branch of County government and one facility was managed by the Sheriff.⁸³ Traditionally, the Civil Service Employees Association ("CSEA") supervised sentenced inmates at ECCF, while Teamsters supervised pretrial inmates at the ECHC.

In 2000 the Facilities were merged under the Sheriff and proceedings before the New York State Public Employment Relations Board resulted in rulings that the County and Sheriff could not merge prisoners and had to keep the work separate due to union work rules.⁸⁴ The issue was brought to a head when the Sheriff attempted to implement the classification system mandated by the NYCOC which required the Sheriff to segregate prisoners solely by risk and not by sentence status. After implementing a unified classification system in 2002 in accordance with the NYCOC mandate, both unions filed suits against the County and Sheriff alleging violations of the New York State Taylor Law.⁸⁵

The County and Sheriff lost at every administrative level and in the lower courts until the Court of Appeals reversed in 2009 concluding that the Sheriff had authority to assign prisoners in accordance with State regulations without regard to allocation of work between unions.⁸⁶ Given the history of these costly, lengthy and well publicized legal proceedings that culminated with the proper result, any suggestion by the Division that the County voluntarily set up its work force in this manner is specious. Notwithstanding these facts, the Division's observations regarding the two union work forces and its perceived inefficiency does not rise to a constitutional violation and no authority is cited for same.

For the same reason, the Division's comments about the Facilities' classification system fails.⁸⁷ Prior to the ruling, the Sheriff classified prisoners according to risk and housed them safely in accordance with NYCOC regulations. After the merger in 2000, the NYCOC mandated that it wanted the Sheriff to use all beds at both Facilities for efficient purposes, which required the co-mingling of post-sentenced and pre-trial detainees. During the legal proceeding cited above, both the New York State Public Employment Relations Board and lower courts prevented the Sheriff from implementing this unified classification plan. Although ultimately vindicated by the Court of Appeals, the Sheriff has only recently been given the freedom to implement the plan.

⁸² See County of Erie v. State of New York Public Employment Relations Board, 12 N.Y.3d 72 (2009).

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ See Civil Service Law §209-a.

⁸⁶ *Id.*

⁸⁷ Letter at 24.

The Division does not link any alleged incidents to its commentary on the two work forces or classification plan. Furthermore, there is no demonstration in the Letter of a custom or practice involving classification which has resulted in the deprivation of an inmate's constitutional rights. As with other topics, the Letter fails to contain even a single court case addressing this issue and supporting its position that the classification plan is "inadequate."⁸⁸

b. Deficient Use of Force Policies and Procedures.

Glaringly absent from this section of the Letter is any case law, rule or regulation that supports the Division's unfounded opinion that changes should be made to the Facilities' manual or that any alleged deficiency in the manual has caused deputies to violate inmate's constitutional rights by using excessive force. Moreover, the NYCOC, who regularly conducts cycle audits and surprise inspections at the Facilities, has not cited the Facilities for its use of force, policies, or procedures. The NYCOC requires completion of a Use of Force Form when force is applied to a prisoner. The policies and procedures at the Facilities comply with NYCOC standards and forms are completed under appropriate circumstances.

Reportable incidents (as defined by the NYSCOC) at the Facilities are regularly sent to the NYCOC, as required, for its review. There have been no issues raised by the NYCOC regarding the use of force at the Facilities and certainly no systemic allegations of abuse can be established.

c. Excessive Use of Force.

As the Division is surely aware, the Courts have articulated that conduct in an excessive force case must be particularly egregious to rise to a constitutional violation.⁸⁹ Moreover, the Courts distinguish between liability against individual officers for constitutional violations and liability against supervisors such as the Sheriff and municipalities such as the County.⁹⁰

i. Standard Against Individual Officers

The Eighth Amendment, which applies to states through the Due Process Clause of the Fourteenth Amendment,⁹¹ prohibits the infliction of "cruel and unusual punishment."⁹² The appropriate test under the Eighth Amendment involves both subjective and objective elements.⁹³ The subjective element is that the defendant must have had the necessary level of culpability, shown by actions characterized by "wantonness."⁹⁴ The objective element is that the injury actually inflicted must be sufficiently serious to warrant Eighth Amendment protection. Still,

⁸⁸ It appears the Division relied upon NYSCOC reports criticizing the classification plan and the NCCHC report which commented on the issue. The NYSCOC was well aware of the legal battle between the County and the unions regarding the merger as some of its employees were called as witnesses before PERB at a hearing in the legal proceeding. The NYSCOC was also aware that the labor issues between the two facilities were completely outside the control of the Sheriff or the County.

⁸⁹ Blyden v. Mancusi, 186 F.2d 252 (2d Cir. 1998).

⁹⁰ Id. at 262-265.

⁹¹ Robinson v. California, 370 U.S. 660, 666 (1962)

⁹² Id.

⁹³ Id., See Wilson v. Seiter, 501 U.S. 294, 298-99 (1991); Davidson v. Flynn, 32 F.3d 27, 29 (2d Cir.1994)

⁹⁴ Id., quoting Wilson, 501 U.S. at 298-99 (citing Whitley v. Albers, 475 U.S. 312, 319, 106 S.Ct. 1078, 89 L.Ed.2d 251 (1986)).

this standard requires that only the deliberate infliction of punishment, and not an ordinary lack of due care for prisoner interests or safety, lead to liability.⁹⁵

The “wantonness” inquiry turns on “whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.”⁹⁶ The objective component of the Eighth Amendment test is also context specific, turning upon “ ‘contemporary standards of decency.’ ”⁹⁷ “Because society does not expect or intend prison conditions to be comfortable, **only extreme deprivations are sufficient to sustain a ‘conditions-of-confinement’ claim.**”⁹⁸

ii. Standard Against the Sheriff and Erie County

A supervisor or municipality is not vicariously liable for acts committed by its employees and officers under 42 USC §1983.⁹⁹ Similarly CRIPA requires an unconstitutional custom or policy before the Department obtains jurisdiction. “The liability of a supervisor under Section 1983 is thus analytically distinct from that of a subordinate who directly caused the unlawful condition or event.”¹⁰⁰ To impose liability upon the County or Sheriff under CRIPA, the Department must establish a constitutional violation of an officer and that such constitutional violation was proximately caused by an unconstitutional custom or policy of the Sheriff and/or the County.¹⁰¹ The Letter falls far short of describing any unconstitutional custom or policy that violates CRIPA at the Facilities.

iii. Response to Alleged Incidents

In its letter, the Division, outlines alleged isolated and unrelated incidents in an attempt to cobble together a “finding” of alleged excessive force, alleged inadequate reporting of the use of force, alleged deputy encouraged violence, alleged inmate on inmate violence and alleged unprofessional and provocative attitudes towards inmates.¹⁰² The examples on pages 18 and 19 of the Letter lack any identifying information and certainly not the names of alleged inmates involved or dates of the alleged incidents as required by CRIPA. Perhaps more details could have been provided if the inmate interviews were transcribed by a stenographer as requested by the County with the transcripts being provided to the County.¹⁰³ Nonetheless, the County and Sheriff are really without means to verify any of the alleged incidents due to lack of factual

⁹⁵ Id.

⁹⁶ Id. at 263 quoting Hudson v. McMillian, 503 U.S. 1, 7 (1992).

⁹⁷ Id., citing Hudson, 503 U.S. at 8. (quoting Estelle, 429 U.S. at 103).

⁹⁸ Id., quoting Hudson, at page 9 (emphasis added).

⁹⁹ Id., citing Monell v. Department of Soc. Servs., 436 U.S. 658, 692-94 (1978)(other citations omitted).

¹⁰⁰ Id., (other citations omitted).

¹⁰¹ Blyden, supra.

¹⁰² Letter at 18-23

¹⁰³ The Division’s claim that it cannot provide the County this information because of fear of inmate retaliation is bogus. As demonstrated by the statistical data, 80% of inmates are released from custody within 15 days of admission. Accordingly, any of the inmates who allegedly witnessed this alleged conduct are probably no longer in the custody of the Facilities and have no reason to fear reprisal. By accepting off the record, unsworn hearsay statements as fact, the Division has adopted wholly unreliable recitations of events that may or may not have occurred. The County requested recorded statements so that the record would be clear as to what was said by the inmates, whether true or false.

detail.¹⁰⁴

The County can state affirmatively that at least two of the incidents never occurred and are pure fabrication by inmates. The Facilities' policies provide that no body cavity searches may be performed without the explicit authorization of the Superintendent pursuant to court order. Indeed, very specific conditions must be present before the Superintendent can obtain such court order under the policy. Moreover, if a body cavity search is ordered by the Court, the body cavity search is conducted at ECMC by a licensed Physician, Nurse Practitioner or Physician's Assistant as directed by the Facilities' policy. Deputies at the Facilities do not search anal or vaginal cavities. Accordingly, the second allegation on page 18 is unequivocally false.

Additionally, the County and Sheriff have searched their records to ascertain whether a pregnant inmate really had her teeth knocked out. There is absolutely no evidence that this event even occurred. Moreover, if such an outrageous event had occurred, we expect that the County or Sheriff would have been sued since inmates do not hesitate to bring lawsuits if they feel their rights have been violated. There has been no such claim made. In addition to lawsuits, inmates can file grievances if they are dissatisfied with conditions at the Facilities. There have been no grievances filed alleging that this event occurred. Accordingly, this too appears to be wholly fabricated.

The Division then claims that "ECHC fails to elicit adequate information about the use of force incidents, making management review ineffective."¹⁰⁵ In doing so, the Division claims that on a few occasions a use of force form was not used. There is no case law cited in which a Court has held that failure to use a use of force form is a constitutional violation under CRIPA. Indeed, even if this occurred, which is not conceded, it would not rise to a systemic constitutional violation.

In fact, the administration of the ECSO works diligently to ensure that the appropriate amount of force is used in the Facilities through monitoring, training and policy. Annual training is provided on the use of force as required by the NYSCOC. In addition, separate training is provided for OC Spray. New sworn staff spend a great deal of time at the Training Academy on use of force concepts, techniques, forms and procedures.

Not only are all reportable incidents that are forwarded to the NYCOC reviewed by top level administrators at the Facilities, other steps are taken to monitor the use of force at the Facilities. Management conducts regular and frequent reviews of statements from staff involved in use of force incidents, as well as statements made by supervisors. Management regularly meets with staff to discuss and question about incidents as needed. Management reviews any video or pictures, as well as use of force forms. Medical reports (if the inmate was seen by medical) are also reviewed and management will confer with medical staff if necessary to obtain additional information.

¹⁰⁴ Again, given the fact that the Facilities process in excess of 20,000 inmates per year, the lack of identifying information really burdens the County in trying to ascertain whether events even occurred.

¹⁰⁵ Letter at 19.

Any suspicious incidents or incidents in which management feels excessive force might have been utilized are referred to the Professional Standards Division for investigation. Management also regularly reviews staff performance evaluations to identify whether any staff appear to be more involved in incidents, have problems managing inmates, and/or have a large number of inmate complaints or grievances against them. Depending on the circumstances, management may add additional training, and /or investigate and discipline staff member up to and including termination as a result of the reviews. Accordingly, the Division's conclusion that inadequate monitoring occurs is erroneous.

The Division further claims that the Facilities lack adequate staff to protect inmates. The NYCOC regulates and mandates the amount of staff that must be present at posts in order for the Facilities to be in compliance with State regulations. The Facilities meet the minimum staffing requirements of the NYCOC.¹⁰⁶ Between January 1, 2007 and February 9, 2008, the Division cited over 70 reported incidents of inmate-on-inmate violence, including sexual assaults. The Division does not indicate how it came up with that number. For instance, it is not clear that if two inmates were involved in one incident, whether the Division counted the incident as one incident or two incidents. Similarly, the Division does not define what it considers "inmate-on-inmate violence." The Division also comments on the alleged social habits between prisoners, and how prisoners become angry over trivial matters which offers nothing to the analysis.

There is no comparative information of similar facilities set forth by the Division to support its conclusions that these alleged incidents have statistical significance in light of the population at the Facilities. Moreover, the NYCOC, which receives reports of all reportable incidents from the Facilities has not cited the Facilities as having any problems with excessive force, assaults or sexual assaults.

In a perfect world, the County would like to have as much staff as possible at the Facilities. However, given the fact that the County must balance its budget on the backs of taxpayers, priority must be given to meet State and Federal mandates (including staffing levels at the Facilities) while balancing other critical services that taxpayers expect and want from County government. Given the astronomical amount of funding that has been provided to the Facilities over the years, neither the County nor Sheriff (or the Erie County taxpayer for that matter) have been deliberately indifferent to the needs of inmates. The Facilities clearly meet the constitutional requirements with respect to use of force and supervision and treatment of inmates.

4. Medical Care

The County meets, and in some instances exceeds, the constitutionally minimum requirements for providing medical services to inmates. The Facilities have continued to make improvements in the delivery of medical care to its inmates both before the Investigation of the Division and after receipt of technical assistance from the NCHCC report in February 2008.

¹⁰⁶ Being in compliance with NYCOC standards, which are more rigorous than what the Constitution requires, means that the facility is not staffed below unidentified constitutional standards relied upon by the Division. By the same token, to the extent the Division alleges the Facilities are not in compliance with NYCOC standards, being out of compliance with the more rigorous standards does not automatically result in a constitutional violation under CRIPA.

The County has also made significant financial investments in the health care of inmates. In 2008 personnel costs for medical staff totaled one million six hundred forty six thousand four hundred seventy six dollars (\$1,646,476). In addition, in 2008 the County contracted the services of physicians and physicians assistants to provide medical care at the Facilities at the cost of ninety-nine thousand seven hundred eighty two dollars (\$99,782). The County also added new positions to the budget for fiscal year 2009 to increase the amount of staff delivering medical care at the Facilities.

Twenty three (23) new positions were added to the budget for 2009 at a total cost of almost one million dollars (\$1,000,000). Additional positions approved were a Psychiatric Nurse Clinician and other registered nurse positions. In a move to streamline operations under the Health Department, as well as to better utilize resources within that department for the delivery of medical services to inmates, the medical unit positions in the ECSO budget were transferred into the Department of Health in the summer of 2009. Additional staff have been hired and with the cooperation of the labor unions¹⁰⁷ nurses from the Health Department have worked overtime at the Facilities to increase coverage.

In recent years, the County contracted with a Nursing Supervisor/Administrator, as well as a Chief Medical Officer and to review and overhaul operations where necessary. This Nursing Administrator was recently certified by the NCCHC in correctional health standards after taking an examination. This certification is so rare, that there are very few individuals in New York State who possess it.

Officials have been meeting regularly to discuss continued improvements to medical services at the facilities. Some of the improvements that have been implemented, include, but are not limited to, improved documentation in nursing notes, new unified charts consistent at ECHC and ECCF to be instituted by end of 9/09, implementation of a program to better transfer charts and medication between facilities and implementation of electronic records to be completed by early 2010 (which will eliminate the need to transfer paper charts). In addition, forensic mental health now has an area close to medical which has resulted in more collaboration between the forensic mental health unit and the medical department.

In 2008, the County entered into a new contract with a pharmaceutical company to provide blister pack prescriptions customized for inmates. Nurses now pass blister packs assigned to inmates. This cuts down on any potential errors. Also, with the use of on line technology, prescriptions are filled in a much more expedient manner. A pharmacy license was also obtained for the ECHC. The use of blister packs will also save money as unused medications can be returned for a refund. The total cost of prescriptions for the Facilities in 2008 was one million sixty-eight thousand fifty one dollars (\$1,068,051). The projected cost for 2009 is eight hundred sixty-five thousand nine hundred fifty dollars (\$865,950) with the projected savings attributable to the credit for returned unused medications.

In 2009, two new head nurses were appointed. They perform day-to-day activities, chart review and supervise staff. The Nursing Administrator has been instrumental in persuading a local college to institute a curriculum for Correctional Health and encouraging a four-year

¹⁰⁷ Teamsters and New York State Nurses Association

program. In conjunction with this local college interns have been utilized to help out in the medical department.

Training of medical staff has been increased over the last couple years. In-services have been provided on many areas, including, but not limited to, TB policies and procedures and H1N1 policy and procedure. In addition, nursing protocols have been revised, completed and instituted in the Facilities. Training and orientation on new policies has been completed. A Clinical Laboratory Improvement Amendment (CLIA) license has been obtained for testing in both facilities. In addition, a mortality review committee was established to review appropriate cases in accordance with NCCHC recommendations.

Nonetheless, in yet another scathing indictment by the Division of the County's allegedly constitutionally inadequate policies, the Division claims, "Our investigation revealed that medical care provided at [the Facilities] falls far below constitutionally required standards of care."¹⁰⁸ The Division attributed this "finding" to allegedly inadequate administration of health care services at the Facilities, no quality improvement programs or monitoring procedures in place to internally assess the quality of health care, and medical policies and procedures that fail to provide staff operational guidance on quality of care.¹⁰⁹

In order to make a showing of inadequate medical care in violation of the Eighth Amendment's prohibition of cruel and unusual punishment, "a plaintiff must demonstrate that defendants acted with 'deliberate indifference to [his] serious medical needs' through the intentional 'den[ial] or delay[] [of] access to medical care or [that they] intentionally interfered with the treatment once prescribed.'"¹¹⁰ "To support a claim of deliberate indifference, a plaintiff must show: (1) the objective seriousness of his medical condition, i.e., that he was suffering from 'a condition of urgency, [or] on that may produce death, degeneration, or extreme pain,' and (2) that defendants had a subjectively culpable mind set in treating or failing to treat this condition, i.e., that defendants knew of and disregarded an excessive risk of harm to the inmate."¹¹¹ In order to have jurisdiction under CRIPA, the Division show more than individual incidents of denial of medical treatment. It must demonstrate a systemic deliberate indifference to serious medical needs of inmates resulting in constitutional violations. The Division has clearly not done so in the Letter.

By way of example, the Division claims that inmates "suffering from serious medical conditions require continual observation and consistent treatment and care in order to protect them from harm," which, according to the Division, is not provided at the Facilities.¹¹² In so "finding" the Division cites to "four inmates suffering multiple seizures who were told to sleep on the floor"; "providing inadequate dental care to an inmate suffering pain and a sensitivity to food and liquids;" and "while delivering prescribed medication to an inmate, it was discovered that the inmate had died due to unknown causes." Because the Division failed to identify any specific inmates at issue, through a pseudonym or otherwise, the County has been required to cull through extensive records to attempt to identify the alleged inmates at issue.

¹⁰⁸ See Letter from Loretta King to County dated July 15, 2009 at p. 28.

¹⁰⁹ See Letter from Loretta King to County dated July 15, 2009 at p. 29.

¹¹⁰ Patrick v. Amicucci, 2007 WL 840124, at * 5 (S.D.N.Y. 2007) (citing Estelle v. Gamble, 429 U.S. 97, 104 (1976); see also Goodson v. Evans, 438 F. Supp. 2d 199 (W.D.N.Y. 2006).

¹¹¹ Id.

¹¹² See Letter from Loretta King to County dated July 15, 2009 at 31.

Initially, none of the allegations at issue rise to the level of a constitutional violation of inmates civil rights under CRIPA. Rather, the County has employed sound medical practice and protocol in connection with inmates suffering from and diagnosed with seizure disorders. In sum, the County's protocol recommends that inmates suffering from seizure disorders be instructed to remove their mattress from the bed to the floor for purposes of sleeping so they are not in danger of injury from falling out of bed should they experience a seizure. There is no mandatory requirement that inmates do so and this protocol is entirely discretionary.

With respect to the allegation that an inmate expired in March 2007 due to "unknown causes," the Division has yet again exaggerated the truth.¹¹³ The inmate at issue, who will be described as inmate AA for purposes of identification, was incarcerated several times at the Facilities from early 2003 through March 2007. Upon inmate AA's return to the ECHC on September 8, 2006 he received a routine medical evaluation. Inmate AA had a past medical history including non-insulin dependent diabetes, congestive heart failure, hypertension and dyslipidemia. Inmate AA was continued on 3 separate medications for hypertension, one medication for dyslipidemia, two medications for coronary artery disease, one medication for diabetes and another medication for constipation. Inmate AA was seen in the medical department for various medical issues on 9/12/06, 9/14/06, 9/16/06 and 9/18/06, at which time he was transferred to ECMC for the implantation of a pacemaker (at taxpayer expense). Inmate AA returned to the ECHC on 10/1/06 following surgical implantation of the pacemaker with instructions for follow-up, new medications and diet. Inmate AA was subsequently seen in the medical department on 10/5/06 and 10/6/06. Inmate AA was also seen at the ECMC clinic on 11/2/06. On 11/8/06 inmate AA was again evaluated in the medical department and transferred back to ECMC for additional observation until 11/17/06. Inmate AA was again seen by medical personnel at the Facilities on 11/17/06, 11/18/06 and 11/21/06 when he was again returned to ECMC to be further evaluated. Inmate AA returned from ECMC on 11/28/06. Inmate AA had blood work done on 12/5/06, and was returned to ECMC on 12/7/06 through 12/19/06 for treatment related to congestive heart failure and pedal edema. It was noted at this time that inmate AA was feeling much better and medications were obtained as ordered by ECMC. Inmate AA was seen at the ECMC renal hypertension clinic for regular follow up on 1/18/07 and blood work was performed on 2/2/07. The results of the blood work were noted in the file on 2/12/07 and on 2/18/07 inmate AA made a special request for medication related to his dry skin. On 2/23/07 another blood sample was collected and the labs were returned and recorded in the chart on 2/28/07. Inmate AA was seen in the ECMC pacemaker clinic on 3/1/07, and was reported as doing well. A follow up visit was scheduled for 8/16/07. On 3/23/07 the inmate visited the podiatry clinic. On 3/24/07 inmate AA received a diabetic breakfast which was left at the cell bunk pursuant to inmate AA's request. During the regular rounds between 6 a.m. and 9:30 inmate AA was observed sleeping. When the nurse came to cell block to distribute medication inmate AA was summoned. Inmate AA did not respond to the request at which point the nurse attempted to awaken inmate AA, who was non-responsive. An emergency was called and the medical team performed CPR until an ambulance arrived. Inmate AA left the unit at 10:39 a.m. and was pronounced dead at ECMC at 10:52 a.m. The medical examiner ruled that the death was natural, due to hypertrophic and atherosclerotic cardiovascular disease. The amount of medical care and treatment rendered to inmate AA clearly contradicts the allegations

¹¹³ Upon information and belief the Division was provided with a copy of the COC report regarding this inmate in connection with its Investigation findings.

of the Division. Try as it may, and it does, the Division cannot in good faith accuse the County of deliberate indifference to the medical needs of inmate AA.

In its Letter, the Division also cites as an example of inmates suffering from serious medical conditions not receiving adequate medical treatment, a citation issued to ECCF regarding dental care of an inmate.¹¹⁴ The report states "In April 2007, ECCF was cited for providing inadequate dental care to an inmate suffering from pain and a sensitivity to food and liquids. The Citizens Policy and Complaint Review Council found that ECCF took too long to respond to the inmate's request to see a doctor regarding his pain, finding 21 days unreasonably long".

The inmate described above, referred to as Inmate BB herein, was brought into custody at ECHC on November 25, 2006. Inmate BB was transferred to the ECCF on 12/21/06 and remained there until 1/22/07, at which time inmate BB was transferred back to the ECHC. On 12/21/06 inmate BB was evaluated at the ECCF, where the only complaint noted by the inmate's self-report was hearing loss in the right ear, with a notation of chronic mastoiditis in the right ear. An evaluation at ECMC occurring on 12/16/06. There is an additional note to check with ECMC on prescription ear drops. There is no indication that inmate BB made any complaint at that time regarding dental discomfort of any kind.

On 1/19/07, inmate BB submitted an inmate grievance form indicating that a request was made for an emergency sick call with a facility dentist five times because a cavity filling came out. According to the dental sick call log book, it appears that inmate BB requested to be placed on the dental sick call list on 1/1/07. There is no record of any additional requests. The grievance was investigated on 1/23/07 and denied. Inmate BB had been scheduled to see the dentist on 1/25/07, but was transferred back to the ECHC on 1/22/07, where inmate BB was re-scheduled for a dental visit on 1/31/07. On 1/31/07, inmate BB returned to court and was unable to keep the re-scheduled appointment. Inmate BB was seen by the dentist on 2/9/07, who placed a temporary filling. Inmate BB was seen again by the dentist on 2/16/07, was examined in the medical department following the loss of the temporary filling on 3/23/07, and saw the dentist again on 3/28/07.

The NYSCOC letter of 5/24/07 to the County advising that there was an unacceptable delay in treating this inmate's dental complaints does not contain any basis for the finding given the facts at issue. There is no basis given for the arbitrary statement that a twenty-one day wait to see a dentist is too long. In fact a 2009 survey of physician appointment wait times surveyed fifteen metropolitan areas in five practice areas, including cardiology, dermatology, obstetrics-gynecology, orthopedic surgery and family practice. The average in all surveyed markets for all the practice areas was 20.5 days.¹¹⁵ At the time in question, inmates at the ECCF were seen in the dental clinic one day per week, and were scheduled according to the severity of the complaints.

As the Supreme Court has observed that, "society does not expect that prisoners will have unqualified access to health care."¹¹⁶ Accordingly, deliberate indifference to medical needs

¹¹⁴ The Division examined a letter from the NYSCOC to the County dated April 24, 2007 in reaching its conclusions. See p. 31 at footnote 54.

¹¹⁵ See Merrit Hawkins & Associates, 2009 Survey of Physician Appointment Wait Times at p. 14

¹¹⁶ Hudson v. McMillian, 503 U.S. 1, 9 (1992).

amounts to an Eighth Amendment violation only if those needs are “serious.”¹¹⁷ “For a plaintiff to satisfy the objective prong, ‘more than minor discomfort or injury is required . . . to demonstrate a serious medical need.’”¹¹⁸ While a lost filling can cause discomfort, it hardly rises to a “serious medical need” of the magnitude of a constitutional violation. In fact, the dental treatment report for 2/9/07 does not note the presence of any infection, or the need for any medication or prescribed treatment, other than the temporary filling that was placed that day.

The inclusion of this treatment as an example of inadequate medical care rendered to inmates at these facilities only highlights the fact that the Division has not cited constitutional violations.

5. Sanitation and Environmental Conditions

The threshold for a prisoner alleging unconstitutional conditions of confinement is the showing of “extreme deprivations.”¹¹⁹ “Because society does not expect or intend prison conditions to be comfortable, only extreme deprivations are sufficient to sustain a ‘conditions-of-confinement’ claim.”¹²⁰ Conditions of confinement must not involve wanton and unnecessary infliction of pain or be grossly disproportionate to the severity of the crime warranting imprisonment.¹²¹ “Because routine discomfort is ‘part of the penalty the criminal offenders pay for their offenses against society,’ ‘only those deprivations denying ‘the minimal civilized measure of life’s necessities’ are sufficiently grave to form the basis of [a constitutional] violation.’”¹²²

The Division boldly asserts that “EHC has severe environmental health and safety problems at numerous levels of operation.”¹²³ In support of this accusation the Division sets forth the tale of an inmate who claimed “he was housed, for at least one month, in an EHC cell with four inches of standing water due to toilet flooding.”¹²⁴ Despite the fact that there is absolutely no evidence in the possession of the County to support this specious claim, and the laws of science coupled with the physical plant structure would prohibit such an occurrence at the Facilities in any event, the Division is statutorily required under CRIPA to provide “factual” information regarding such allegations. This includes, but not limited to, the housing unit, cell number or inmate name, which would then allow the County to identify and investigate this “claim.”

The Division also referred to a COC EHC Cycle 2 Evaluation from August 2007 which reported Styrofoam food trays and other clutter observed in certain inmate’s cells.¹²⁵ The Division failed to articulate how an inmate’s failure to remove his/her Styrofoam food tray from his/her cell after finishing a meal rises to the level of a constitutional violation. Indeed, it does not.

¹¹⁷ *Id.* (citing *Estelle*, 429 U.S. at 104.).

¹¹⁸ *Patrick*, 2007 WL 840124 at * 6 (S.D.N.Y. 2007) (citing *Sully-Martinez v. Glover*, No. 00 Civ. 5997, 2001 WL 1491278, at *4 (S.D.N.Y. Nov. 26, 2001)).

¹¹⁹ *Sims v. Artuz*, 230 F.3d 14, 21 (2d Cir. 2000) (quoting *Hudson v. McMillian*, 503 U.S. 1, 8 (1992)).

¹²⁰ *Blyden v. Mancusi*, 186 F.3d 252, 263 (2d Cir. 1999).

¹²¹ *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981).

¹²² *Hudson v. McMillian*, 503 U.S. 1, 9 (1992) (internal citations omitted).

¹²³ See Letter at 34.

¹²⁴ *Id.* at 35.

¹²⁵ *Id.*

Additionally, the Division reports that “[COC] has cited ECSO and JMD for electrical hazards that neither correctional officers nor maintenance staff seemed to be concerned about...”¹²⁶ The Division does not identify when the alleged citation was issued or what specific “electrical hazards” were cited. A review of the materials generally referenced by the Division leads the County to conclude that the Division is referring to COC’s ECHC Cycle 2 Evaluation from April 2007. In the April 2007 Cycle 2 Evaluation, COC reported observing exposed wires in the Foxtrot East housing area where a wall clock, which no longer functioned, had been removed.¹²⁷ In the same evaluation, COC reported observing a light fixture in the ground level shower of the Gulf East housing area that was missing three screws.¹²⁸ In what appears to be yet another transparent attempt to assuage a visceral reaction to such allegations against the County, the Division fails to report that these “electrical hazards” were immediately remedied as noted in the COC’s ECHC Cycle 2 Evaluation from August 2007.¹²⁹ Rather than acknowledging that the “deficiencies” discussed above were promptly and properly resolved, the Division recommended that the County “Repair electrical shock hazards; develop and implement a system for maintenance and repair of electrical outlets, devices, and exposed electrical wires.”¹³⁰

Given the fact that over the last year and a half the County has processed over 4000 work orders at the Facilities reflecting approximately 31,500+ labor hours at a cost of \$884,389 to County taxpayers, it is obvious that the County takes its obligation to provide constitutionally adequate conditions of confinement seriously.

The Division also addresses laundry services at ECHC and ECCF, “finding” that such services at both facilities are inadequate¹³¹ and reporting that inmates were required to wash their own garments in their cell sinks or arrange for the pick-up and laundering of their personal items by family or friends.¹³² The fact that inmates may have to wash his/her garments in his/her cell sink is not a constitutional violation. As noted by NYSCC in its Cycle 3 evaluation from October 2008, inmates are provided bar soap to clean their clothes and are able to purchase cleaning detergent through the commissary. No constitutional violation exists where inmates are permitted to wash their clothes in sinks and are provided with laundry detergent or bar soap.¹³³

In short, the Division’s “finding” that ECHC has severe environmental health and safety problems at numerous levels of operation, is false. The Division’s self-serving omissions are a blatant attempt to find violations where none exist or have previously been remedied. Further, even assuming *arguendo*, that the Divisions allegations of environmental health and safety deficiencies are accurate, which they are not, the Division fails to articulate how said deficiencies rise the level of constitutional violations supported by applicable case law and/or statute. Instead, the Division apparently focuses on aspirational best practices rather than expressing what is minimally required by the Constitution. “[A] prisoner must demonstrate that he has been deprived of a ‘single, identifiable human need such as food, warmth, or exercise.’ If, however, the condition is not sufficiently prolonged or severe, it does not rise to the level of a

¹²⁶ Id.

¹²⁷ NYSCC ECHC Cycle 2 Evaluation April 2007, p. 6.

¹²⁸ Id.

¹²⁹ NYSCC ECHC Cycle 2 Evaluation August 2007, p. 3.

¹³⁰ See Letter at 48.

¹³¹ Id. at 36.

¹³² Id.

¹³³ Benjamin v. Fraser, 161 F.Supp.2d 151, 178-179 (S.D.N.Y. 2001), *affirmed in part and vacated in part*, 343 F.3d 35 (2d Cir. 2003)

[constitutional] violation. As recognized by the Supreme Court, 'the Constitution does not mandate comfortable prisons,' and conditions that are 'restrictive and even harsh . . . are part of the penalty that criminal offenders pay for their offenses against society.'"¹³⁴ In this instance, it is clear that the Division has proffered no evidence to support its baseless allegations of constitutional inadequacies.

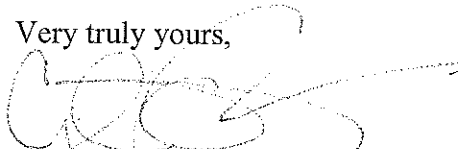
CONCLUSION

Neither the ECHC nor ECCF are violating the constitutional rights of inmates. The intent of CRIPA was to allow the federal government, through the Department to go into detention facilities, under very limited circumstances, to eradicate conditions that are so extreme they deprive inmates of the basic necessities of daily life. The intent of CRIPA was not to make the Division a prisoner advocacy group. CRIPA clearly does not grant the federal government, through the Department, unchecked authority to force locally run detention centers like the Facilities to implement best practices desired by the Division.

To the contrary, CRIPA was intended to provide the Department with a means of requiring operators of institutional facilities to reform only the most flagrantly unconstitutional policies or customs. Indeed, CRIPA itself states that the Department may institute a civil action under CRIPA only to cause the operator of an institutional facility to implement "the minimum corrective measures necessary" to protect the full enjoyment of the rights of institutionalized persons under the Constitution. The legislative history similarly confirms that Congress' intent in enacting CRIPA was to provide a narrowly tailored means by which the federal government could seek minimally sufficient constitutional remedies for flagrant and egregious patterns or practices of violations.

In closing, the County urges you to refuse to permit the Division to bring a CRIPA suit against the County on behalf of the Department unless and until the Division has fully satisfied the requirements of CRIPA. Prior to initiating suit, the Division should be compelled to give notice to the County as to the specific constitutional requirements that have allegedly been violated. I would welcome the opportunity to address any questions or concerns that you might have about the matters raised herein.

Very truly yours,



CHERYL A. GREEN, ESQ.
Erie County Attorney

cc: Hon. Chris Collins – Erie County Executive (via hand delivery)
Hon. Timothy Howard – Erie County Sheriff (via hand delivery)
Hon. Erie County Legislature (via hand delivery)
Hon. Eric H. Holder, Jr. - Attorney General of the United States (via overnight delivery)

CAG/dkw

¹³⁴ Cusumano v. Sobek, 604 F.Supp.2d 416, 487-88 (2d Cir. 2009)(internal citations omitted).

Exhibit “C”

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

FILED
ACTIONS & PROCEEDINGS

SEP 22 2009

**THE NEW YORK STATE
COMMISSION OF CORRECTION,**

**ERIE COUNTY
CLERK'S OFFICE**

Petitioner,

NOTICE OF PETITION

-against-

Index No. 2009-011216

TIMOTHY B. HOWARD, Individually and
in his capacity of Sheriff of
Erie County, New York,

Respondent.

PLEASE TAKE NOTICE, that upon the annexed Petition of Thomas A. Beilein, Chairman of the New York State Commission of Correction, verified on the 21st day of September, 2009, and upon the supporting papers attached hereto, an application will be made to this Court, to be held at the courthouse thereof, located at the New York State Supreme Court, Erie County, 50 Delaware Avenue, Part 32, Buffalo, New York, on the 22nd day of October, 2009, at 9:30 a.m. of that day, or as soon thereafter as counsel can be heard, for an Order pursuant to Article 4 of the CPLR and New York State Correction Law section 46(4) directing the Respondent as follows:

1. to comply with 9 NYCRR §7040.3 by assigning inmates to proper housing in accordance with the limitations and conditions of the Maximum Facility Capacity for the Erie County Holding Center; to wit, inmates may not be detained in the facility's holding areas for periods longer than that designated in the Commission's Maximum Facility Capacity;
2. to comply with 9 NYCRR §7005.6(a) by providing each inmate, upon admission to the facility and at facility expense, with an issue of personal health care items, including but not limited to soap, a toothbrush, toothpaste, a drinking cup, toilet paper and a bath towel;
3. to comply with 9 NYCRR §7005.9(a) by providing each inmate, upon admission and at facility expense, with an issue of clean bedding in good condition;
4. to comply with 9 NYCRR §7013.8(a) by conducting an initial screening and risk assessment of each inmate upon admission, and upon completion promptly placing such inmate in a housing unit designated for classification purposes;
5. to comply with 9 NYCRR §7002.9(a) by preparing and distributing to each prisoner, upon admission, a written copy of the facility rules and information;

6. to comply with 9 NYCRR §7006.3(a) and (b) by developing written rules of inmate conduct, which shall include all chargeable offenses, the range of punishments that may be imposed for each violation, and a detailed description and an explanation of the facility's disciplinary procedures;
7. to comply with 9 NYCRR §7006.3(c) by providing a copy of the written rules of inmate conduct to each inmate upon admission to the facility;
8. to comply with 9 NYCRR §7006.7(b) by providing an inmate administratively segregated pending a disciplinary hearing, within 24 hours of such confinement, a written statement setting forth the reasons for such confinement, to which the inmate shall be provided an opportunity to respond orally or in writing to the chief administrative officer;
9. to comply with 9 NYCRR §7006.7(c) by conducting a review of any such administrative segregation within 24 hours of confinement, by the chief administrative officer, to determine if continued confinement is warranted;
10. to comply with 9 NYCRR §7008.3(a) by providing each inmate of the Erie County Holding Center an opportunity for two hours of visitation each week, with each visit lasting at least 30 minutes;
11. to comply with 9 NYCRR §7008.3(b) by establishing and publishing a schedule of visits to ensure that each inmate has the opportunity for at least two visits per week;
12. to comply with 9 NYCRR §7008.5(a) by permitting any person who presents adequate proof of identity, with the inmate's consent, to visit such inmate, subject to the limitations of 9 NYCRR Part 7008;
13. to comply with 9 NYCRR §7028.2(b) by permitting all inmates to engage in outdoor exercise consistent with and subject to the limitations of 9 NYCRR Part 7028;
14. to comply with 9 NYCRR §7032.4(a) by providing any inmate incarcerated in the Erie County Holding Center access to the facility's grievance program;
15. to comply with 9 NYCRR §7032.4(d) by making formal grievance forms readily available so that an inmate may file a grievance;
16. to comply with 9 NYCRR §7032.4(i) by ensuring that, within five business days of the receipt of a grievance, the grievance coordinator issues a written determination, a copy of such provided to the inmate;
17. to comply with 9 NYCRR §7032.4(k) by ensuring that, within five business days after receipt of a grievance appeal, the chief administrative officer issues a determination on the appeal and provides a copy of such determination to the inmate; and

18. for such other and further relief as the Court may deem just and proper under the circumstances.

PLEASE TAKE FURTHER NOTICE, that pursuant to CPLR Sec. 403(b), answering papers, if any, are required to be served at least two days before the return date of this special proceeding. If, however, this Notice of Petition is served at least twelve days before the return date, answering papers, if any, are required to be served at least seven days before the return date.

Petitioner designates Erie County as place of trial. The basis of venue is the place of business of the Respondent.

Dated: Buffalo, New York
September 21, 2009

ANDREW M. CUOMO
ATTORNEY GENERAL OF
THE STATE OF NEW YORK

Attorney for Petitioner

BY:


MICHAEL A. SIRAGUSA

Assistant Attorney General, of Counsel
Main Place Tower, Suite 300A
350 Main Street
Buffalo, New York 14202
(716) 853-8485

PETITION

STATE OF NEW YORK
SUPREME COURT COUNTY OF ERIE

THE NEW YORK STATE
COMMISSION OF CORRECTION,

Petitioner,

PETITION

-against-

PAID
CHECK CASH Index No. _____

TIMOTHY B. HOWARD, Individually
and in his capacity of Sheriff of
Erie County, New York,

SEP 22 2009

Respondent.

ERIE COUNTY
CLERK'S OFFICE

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

The petition of Thomas A. Beilein respectfully alleges:

1. Your Petitioner currently serves, pursuant to Correction Law §41(1), as Chairman of the New York State Commission of Correction (hereinafter "Commission").
2. The grounds for Petitioner's information and the source of his belief as to all matters set forth herein are the papers and documents contained in the Commission's files, personal conversations with Commission staff, information he has obtained from the Erie County Sheriff's Department, and the Commission's investigation into the facts and circumstances involved herewith.
3. The Erie County Holding Center (hereinafter "Holding Center") constitutes a "local correctional facility," as well as a "correctional facility," as those terms are defined by New York State Correction Law §40. Respondent Timothy B. Howard (hereinafter "Howard"), as the Sheriff of Erie County, is charged with the custody of all local correctional facilities within Erie County pursuant to Correction Law §500-c.
4. The Commission, pursuant to Correction Law §45(6), is charged with the duty of promulgating rules and regulations establishing minimum standards for the operation of all correctional facilities in New York State.
5. The Commission's promulgated regulations set forth minimum standards for, among other practices, the issue of inmate personal hygiene products and bedding [9 NYCRR Part 7005], inmate rules of conduct and discipline [9 NYCRR Part 7006], inmate visitation [9 NYCRR

Part 7008], the assignment of inmate housing [9 NYCRR Parts 7013 and 7040], inmate exercise [9 NYCRR Part 7028], and facility grievance programs [9 NYCRR Part 7032].

6. Pursuant to Correction Law §46(4), in any case where a Commission regulation is being or about to be violated, the Commission "shall notify the person in charge or control of the facility of such violation, recommend remedial action, and direct such person to comply with the rule, regulation or law, as the case may be."
7. By Directive dated February 18, 2009 and pursuant to Correction Law §46(4), the Commission notified Howard of numerous regulation violations at the Holding Center regarding the issue of inmate personal hygiene products and bedding, inmate rules of conduct and discipline, inmate visitation, the assignment of inmate housing, inmate exercise, and facility grievance programs [Exhibit A]. Details of the Directive, including specific regulations and Howard's manner of non-compliance, are discussed with more specificity below. Such Directive thereafter recommended remedial action, directed Howard to comply with the listed regulations, and required Howard to submit to the Commission, by March 20, 2009, documentation substantiating compliance therewith.
8. By letter dated March 20, 2009, Howard's Undersheriff, Brian D. Doyle (hereinafter "Doyle"), submitted to the Commission Howard's response to the Commission's February 18, 2009 Directive [Exhibit B]. Although discussed in more detail below, Doyle's response purported to provide documentation demonstrating substantial compliance with the February 18, 2009 Directive.
9. Upon receipt of Doyle's March 20, 2009 response, Commission staff made two site visits to the Holding Center from March 24-27, 2009, and April 28-May 2, 2009. Thereafter, your Petitioner sent correspondence to Howard on May 22, 2009, which included an assessment of Doyle's March 20, 2009 response [Exhibit C]. While discussed with more specificity below, the Commission's May 22, 2009 assessment found that the Holding Center remained deficient in meeting the majority of the regulations cited in the February 18, 2009 Directive.
10. On June 8, 2009, Holding Center Superintendent Robert Koch (hereinafter "Koch") provided a response to the Commission's May 22, 2009 response assessment [Exhibit D]. Discussed in more detail below and similar to Doyle's March 20, 2009 response, Koch purported to demonstrate substantial compliance with the February 18, 2009 Directive.
11. In an effort to gauge compliance with the February 18, 2009 Directive, Commission field staff undertook a monitoring program at the Holding Center, generally consisting of weekly site visits between June 16, 2009 and July 8, 2009, followed by an additional site visits from August 1, 2009 to August 2, 2009, and September 16, 2009 to September 17, 2009. The sole purpose of such monitoring program was to evaluate compliance with the Commission regulations deemed violated in the February 18, 2009 Directive. Although discussed with greater detail below, the results of the monitoring program revealed that the Holding Center generally remained in substantial non-compliance with the majority of the regulations

complained of in the February 18, 2009 Directive.

FACILITY HOLDING AREAS

12. Pursuant to 9 NYCRR §7040.7, the Commission is charged with formulating a Maximum Facility Capacity (hereinafter "MFC") for each county correctional facility, which shall set forth the maximum number of inmates that may be housed in each individual and multiple occupancy housing unit. Such formulation shall be based, in part, upon the number of "properly equipped" individual and multiple occupancy housing units within the facility. 9 NYCRR §7040.7(b).
13. Upon information and belief, The Erie County Holding Center's holding areas (Court Hold #1-#7, Isolation #1-#5, M-Intake Pen, F-Holding Pen, M-Holding Pen) are designed for short term holding contemporaneous to inmate intake, booking and screening. Lacking beds, mattresses and the dayroom and shower capabilities required for standard inmate housing, such areas each routinely hold as many as thirty (30) inmates yet each contain only one (1) sink and toilet. As such, these cells and pens are not rated for standard inmate housing per the facility's November 8, 2006 Commission-issued MFC [Exhibit E].
14. Upon an inmate's admission, 9 NYCRR §7013.7(a) requires a local correctional facility to immediately perform an initial screening and risk assessment of such inmate. Following completion of the screening and assessment, but prior to determining the inmate's primary housing assignment, 9 NYCRR §7013.8(a) requires the facility to place such inmate in a housing unit within a housing area designated for classification purposes. For this reason, the Holding Center's MFC limits the time inmates may be held in the holding areas to twelve (12) hours, where inmates are individually detained, or four (4) hours where more than one inmate is detained in a cell or pen.
15. At the time of the February 18, 2009 Directive, the Commission found that inmates of the Holding Center "are routinely subjected to lengthy stays in the holding areas following the completion of their initial screening and risk assessment instead of being placed in a housing unit designated for classification purposes. As a result, such admitted inmates are denied beds, mattresses, clean bedding, showers, and required personal health care and hygiene items. Additionally, such inmates are denied the benefit of the additional floor space and toilet and sink access that would accompany a proper admission to a standard inmate housing unit." [Exhibit A, p. 8].
16. Accordingly, the February 18, 2009 Directive ordered and directed Howard "to assign inmates to proper housing in accordance with the limitations and conditions of the Maximum Facility Capacity for the Erie County Holding Center; to wit, inmates may not be detained in the facility's holding areas for periods longer than that designated in the Commission's Maximum Facility Capacity." [Exhibit A, p. 12].
17. By Doyle's March 20, 2009 response, it was offered that such violations would be remedied

by opening two facility housing units, Alpha Long and Alpha Short, for pre-arraignment housing [Exhibit B, p. 2]

18. Upon information and belief, such information and belief based upon Holding Center facility records gathered by Commission staff while undertaking facility monitoring [Exhibit F], inmate Guerhard J. Degraff was arrested and transported to the Holding Center, whereupon he was admitted at 1:06 a.m. on June 7, 2009. Inmate Degraff was not thereafter assigned to a housing unit, according to the unit logbook, until 9:31 p.m. on June 7, 2009. Considering the above, your Petitioner submits that inmate Degraff spent over twenty (20) hours in the Holding Center holding area before being assigned to a housing unit, a violation of both Commission regulations and the Commission Directive dated February 18, 2009.
19. Upon information and belief, such information and belief based upon Holding Center facility records gathered by Commission staff while undertaking facility monitoring [Exhibit G], inmate James S. Simmons was arrested and transported to the Holding Center, whereupon he was admitted at 3:23 a.m. on June 17, 2009. Inmate Simmons was not thereafter assigned to a housing unit, according to the unit logbook, until 9:16 p.m. on June 17, 2009. Considering the above, your Petitioner submits that inmate Simmons spent nearly eighteen (18) hours in the Holding Center holding area before being assigned to a housing unit, a violation of both Commission regulations and the Commission Directive dated February 18, 2009.
20. Upon information and belief, such information and belief based upon Holding Center facility records gathered by Commission staff while undertaking facility monitoring [Exhibit H], inmate Sarita L. Brown was arrested and transported to the Holding Center, whereupon she was admitted at 2:53 a.m. on June 18, 2009. Inmate Brown was not thereafter assigned to a housing unit, according to the unit logbook, until 6:47 p.m. on June 18, 2009. Considering the above, your Petitioner submits that inmate Brown spent nearly sixteen (16) hours in the Holding Center holding area before being assigned to a housing unit, a violation of both Commission regulations and the Commission Directive dated February 18, 2009.
21. Upon information and belief, such information and belief based upon Holding Center facility records gathered by Commission staff while undertaking facility monitoring [Exhibit I], inmate Dennis E. Childs was arrested and transported to the Holding Center, whereupon he was admitted at 6:03 a.m. on May 17, 2009. Inmate Childs was not thereafter assigned to a housing unit, according to the unit logbook, until 8:31 p.m. on May 17, 2009. Considering the above, your Petitioner submits that inmate Childs spent over fourteen (14) hours in the Holding Center holding area before being assigned to a housing unit, a violation of both Commission regulations and the Commission Directive dated February 18, 2009.
22. Upon information and belief, such information and belief based upon Holding Center facility records gathered by Commission staff while undertaking facility monitoring [Exhibit J], inmate Gary F. Yetzer was arrested and transported to the Holding Center, whereupon he was admitted at 2:56 a.m. on June 14, 2009. Inmate Yetzer was not thereafter assigned to a housing unit, according to the unit logbook, until 4:35 p.m. on June 14, 2009. Considering

the above, your Petitioner submits that inmate Yetzer spent nearly fourteen (14) hours in the Holding Center holding area before being assigned to a housing unit, a violation of both Commission regulations and the Commission Directive dated February 18, 2009.

23. In addition to the above violations related to the detention of newly admitted inmates, Commission staff discovered violations stemming from the use of the Holding Center's holding areas for the performance of constant supervision, commonly referred to as "suicide watch."
24. Upon information and belief, such information and belief based upon Holding Center facility records gathered by Commission staff while undertaking facility monitoring [Exhibit K], inmate Jeannie M. Morrison was placed in Isolation Cell #5, for the purpose of constant supervision, at 4:30 p.m. on July 6, 2009. Such records subsequently indicate that inmate Morrison remained in Isolation Cell #5 until 9:15 p.m. on July 7, 2009. Considering the above, your Petitioner submits that inmate Morrison spent nearly twenty nine (29) hours in the Holding Center holding area before being assigned to a housing unit, a violation of both Commission regulations and the Commission Directive dated February 18, 2009.
25. Similarly, and also upon information and belief, such information and belief based upon Holding Center facility records gathered by Commission staff while undertaking facility monitoring [Exhibit L], inmate Kimberly R. Carmichael was placed in Isolation Cell #5, for the purpose of constant supervision, at 6:30 p.m. on July 7, 2009. Such records subsequently indicate that inmate Morrison remained in Isolation Cell #5 until 9:00 a.m. on July 8, 2009. Considering the above, your Petitioner submits that inmate Morrison spent fourteen and one-half (14½) hours in the Holding Center holding area before being assigned to a housing unit, a violation of both Commission regulations and the Commission Directive dated February 18, 2009.
26. As demonstrated in the above allegations, and contrary to the Commission's Directive dated February 18, 2009, your Petitioner submits that Sheriff Howard, together with the administration and staff of the Erie County Holding Center, has continued to violate Commission regulations relative to the detention of inmates in non-standard facility holding areas, specifically sections 7013.8(a) and 7040.3 of Title 9 NYCRR.

PERSONAL HYGIENE ITEMS AND BEDDING

27. Pursuant to 9 NYCRR §7005.9(a), each county correctional facility must, upon an inmate's admission to a facility, provide such inmate with an issue of clean bedding in good condition.
28. Additionally, 9 NYCRR §7005.6(a) requires that each inmate, upon admission to a county correctional facility, be provided with an issue of personal health care items, including soap, a toothbrush, toothpaste, a drinking cup, toilet paper and a bath towel.
29. At the time of the February 18, 2009 Directive, the Commission found that inmates of the

Holding Center "are denied beds, mattresses, clean bedding, showers, and required personal health care and hygiene items." [Exhibit A, p. 9].

30. Accordingly, the February 18, 2009 Directive ordered and directed Howard "to provide each inmate, upon admission and at facility expense, with an issue of clean bedding in good condition." [Exhibit A, p. 12]. Further, the Directive ordered and directed Howard "to provide each inmate, upon admission to the facility and at facility expense, with an issue of personal health care items, including but not limited to soap, a toothbrush, toothpaste, a drinking cup, toilet paper and a bath towel." [Exhibit A, p. 12].
31. As set forth in Doyle's March 20, 2009 response, Howard presented that all inmates "remanded to the custody of the Sheriff" are given such personal health care items, as well as an issue of clean bedding [Exhibit B, p. 2-3]."
32. As noted in the Commission's May 22, 2009 assessment of Doyle's response, "[d]uring multiple visits to the Erie County Holding Center, Commission staff noted some improvement in providing un-arraigned [sic] prisoners with soap, a toothbrush and toothpaste, a drinking cup, and toilet paper. However such items are not consistently being provided to un-arraigned prisoners. Also, Commission staff noted that un-arraigned prisoners are not provided with a towel." [Exhibit C, p. 2]. The assessment further noted that "un-arraigned prisoners, while being provided a mattress in their cells, are not provided with bedding." [Exhibit C, p. 3].
33. In response to the Commission's May 22, 2009 assessment, Koch's June 8, 2009 letter indicated that "all inmates, including unarraigned," would be issued the required personal health care items and bedding [Exhibit D, p.2].
34. Upon information and belief, such information and belief based upon personal observations of Commission staff while evaluating the Holding Center for compliance with the Commission's February 18, 2009 Directive, inmates admitted to the Holding Center continue to be deprived of essential and required personal hygiene items and bedding.
35. More specifically, the attached affidavits of Commission staff depict specific observations of numerous instances in which admitted inmates of the Holding Center have not been issued a pillow, pillowcase, towel, drinking cup, toothbrush, toothpaste, toilet paper, soap and a full complement of bedding [Exhibits M,N,O,P,Q,R].
36. Upon further information and belief, and contrary to Koch's June 8, 2009 contention that "all inmates, including unarraigned," would be provided the required issue of bedding, unarraigned inmates admitted to the Holding Center are deliberately provided an inadequate bedroll that provides only one sheet [Exhibit O, R].
37. Upon information and belief, Holding Center inmates subject to constant observation are routinely deprived of personal hygiene items required by Commission regulation. As set

forth on page 7 of Holding Center Policy #JMD12.11.90, entitled *Constant Observation*, and submitted as part of Doyle's March 20, 2009 response to the Directive [Exhibit S], "[i]nmates in constant observation are allowed undergarments, linens, pillows and property. Property will be stored in bins (totes)."

38. Upon information and belief, such information and belief based upon post orders of the Bravo Constant Observation housing unit of the Holding Center obtained by Commission staff [Exhibit T], "[p]roperty for [inmates is] to be stored in plastic tote bins located in deputy runway. This includes toothbrush, toothpaste + towel. Nothing to be left in unit."
39. Upon information and belief, the "deputy runway," described in the above post order, is an area outside and separate by a locked door from the housing unit, thus inaccessible to the inmates therein. Without access to the bins in the deputy runway, your Petitioner submits that such inmates have neither been "provided" nor "issued" the necessary personal health care items as required by subdivision (a) of 9 NYCRR §7005.6.
40. Lastly, upon information and belief, Holding Center staff remain unwilling to provide and replenish, or unaware of their regulatory duty to provide and replenish, necessary personal hygiene and bedding items to the general inmate population.
41. Such information and belief is based partially on a June 23, 2009 inmate request slip, a copy of which was discovered by Commission staff at the Holding Center on June 26, 2009 [Exhibit U]. Therein, an inmate of the F-East housing unit, together with seven (7) other "co-signing" inmates, requested toothbrushes, toothpaste, and pillows. Evidently unaware of the obligation to issue and replenish such items at facility expense, Holding Center staff's written disposition of the request was to "Buy them on commissary! Pillows already offered on 6/20/09."
42. As demonstrated in the above allegations, and contrary to the Commission's Directive dated February 18, 2009, your Petitioner submits that Sheriff Howard, together with the administration and staff of the Erie County Holding Center, has continued to violate Commission regulations relative to the provision of personal hygiene items and bedding to inmates, specifically sections 7005.6(a) and 7005.9(a) of Title 9 NYCRR.

INMATE EXERCISE

43. 9 NYCRR §7028.2(b) provides that inmates of a county correctional facility are generally entitled to exercise periods in an outdoor exercise area which, at the discretion of the facility, must consist of at least one and one-half (1½) hours during each of five days per week, or at least one (1) hour seven days a week.
44. At the time of the February 18, 2009 Directive, the Commission found that inmates of the Holding Center "are routinely deprived of required outdoor exercise periods." [Exhibit A, p. 11].

45. Accordingly, the February 18, 2009 Directive ordered and directed Howard "to permit all inmates to engage in outdoor exercise consistent with and subject to the limitations of 9 NYCRR Part 7028." [Exhibit A, p. 14].
46. As set forth in Doyle's March 20, 2009 response, Howard presented that "[a]ll inmates are permitted to engage in outdoor exercise consistent with and subject to the limitations of 9 NYCRR Part 7028." [Exhibit B, p. 8]. In support of such position, Doyle's March 20, 2009 response included a copy of the Holding Center's *Inmate Handbook*, which set forth that "[a]ll inmates in the facility will receive recreation daily." [Exhibit V, p. 10].
47. As noted in the Commission's May 22, 2009 assessment of Doyle's response, "[d]uring the most recent visits to the Erie County Holding Center, Commission staff noted that not all female inmates housed in keeplock status are afforded the opportunity to participate in outdoor exercise. Due to insufficient hours allotted for keeplock exercise, the lack of individual exercise pens and the need to keep separate most inmates in punitive segregation housing, the facility is unable to provide all keeplock inmates the opportunity to participate in outdoor exercise." [Exhibit C, p. 15].
48. In response to the Commission's May 22, 2009 assessment, Koch's June 8, 2009 letter indicated that "[a]ll supervisors are aware that all inmates, including those on keep lock, male and female are permitted to engage in outdoor exercise subject to the limitations of 9 NYCRR, Part 7028." [Exhibit D, p. 7].
49. Upon information and belief, such information and belief based upon copies of facility logbooks obtained by Commission staff while evaluating the Holding Center for compliance with the Commission's February 18, 2009 Directive, inmates of the Holding Center continue to be deprived of sufficient outdoor exercise periods as required by 9 NYCRR Part 7028.
50. Specifically, your Petitioner's review of the Holding Center's *Keep Lock Recreation* logbook between the period of May 10, 2009 and June 14, 2009 [Exhibit W] reveals that inmates are consistently provided exercise periods for a period of less than one hour, to wit:
- May 10, 2009 10:10-11:00
 - May 10, 2009 13:00-13:45
 - May 10, 2009 13:50-14:30
 - May 16, 2009 13:50-14:30
 - May 20, 2009 14:00-14:30
 - May 21, 2009 14:00-14:30
 - May 23, 2009 08:25-08:50
 - May 23, 2009 08:55-09:50
 - May 24, 2009 14:00-14:30
 - May 25, 2009 14:00-14:30
 - May 26, 2009 14:00-14:45
 - May 27, 2009 14:00-14:30

- May 28, 2009 13:45-14:30
- June 1, 2009 13:45-14:30
- June 2, 2009 13:50-14:30
- June 7, 2009 14:00-14:30
- June 12, 2009 13:50-14:30

51. The overwhelming majority of the insufficient exercise periods listed above ended at 14:30 (2:30 p.m.), the cause of which, upon information and belief, is attributed to a scheduled facility lockdown. As published in the Holding Center's *Inmate Handbook*, all inmates are required to lock-in their housing units at specific times, including the duration from 2:30 p.m. to 3:00 p.m. for a shift change and headcount [Exhibit V, p. 23].
52. Upon information and belief, and apart from the above-referenced insufficient exercise periods, your Petitioner submits that Holding Center inmates are sporadically offered no exercise at all in a given day. Such information and belief is based, in part, upon a June 15, 2009 memorandum from Holding Center Sergeant J. Weyand-Garrett to Holding Center Chief M. Reardon [Exhibit X].
53. The memorandum, which purports to document an investigation into the incarceration of inmate Adrienne March, provides that March "expressed complaint regarding her right to one hour of recreation." Further, the memorandum sets forth that "Recreation was being held every three days per Dep. Higgins due to housing arrangements with Alpha, Delta & the minors." Finally, the memorandum details March's recreation schedule, which reflects that she was either provided or refused exercise on only nine (9) days during the twenty (20) day period between May 1 and May 20, 2009.
54. As demonstrated in the above allegations, and contrary to the Commission's Directive dated February 18, 2009, your Petitioner submits that Sheriff Howard, together with the administration and staff of the Erie County Holding Center, has continued to violate Commission regulations relative to inmate exercise, specifically section 7028.2(b) of Title 9 NYCRR.

FACILITY RULES/INMATE DISCIPLINE

55. County correctional facilities are required to implement a system of inmate discipline consistent with the Commission's regulations set forth in Part 7006 of Title 9 NYCRR.
56. 9 NYCRR §7002.9(a) requires a county correctional facility to prepare and distribute to all prisoners, upon admission, a written copy of facility rules and information. Besides the facility rules of conduct, penalties for violations and disciplinary procedures, such copy must provide essential information regarding available health services, exercise, correspondence, visitation, religion, grievances, etc.
57. It is the regulatory duty of the facility's chief administrative officer, pursuant to 9 NYCRR

§7006.3(a), to develop the written rules of inmate conduct. As provided by 9 NYCRR §7006.3(b), such written rules shall include all chargeable offenses, the range of punishments that may be imposed for each violation, and a detailed description and an explanation of the facility's disciplinary procedures.

58. Upon admission to the facility, 9 NYCRR §7006.3(c) requires that each inmate be provided with a copy of the rules of inmate conduct, with a copy also maintained in the facility law library.
59. 9 NYCRR §7006.7(a) provides that an inmate who threatens the safety, security, and good order of a correctional facility may be immediately confined in a cell or room pending a disciplinary hearing and may be retained in administrative segregation until the completion of the disciplinary process.
60. Within 24 hours of such confinement, 9 NYCRR §7006.7(b) requires that an inmate be provided with a written statement setting forth the reasons for such confinement. Upon receipt of the statement, the inmate shall be provided an opportunity to respond to the statement orally or in writing to the chief administrative officer of the facility.
61. Section 7006.7(c) of Title 9 requires the chief administrative officer of the facility to review any administrative order, within 24 hours of such confinement, to determine if continued confinement is warranted.
62. At the time of the February 18, 2009 Directive, the Commission found that "written rules of inmate conduct either do not exist or are not in sufficient supply for inmate allocation, as such distribution has not occurred since at least October of 2008. While deprived of the written rules of conduct, inmates are nevertheless charged with violations of such rules, and thereafter prosecuted via inmate disciplinary hearings." Additionally, the Directive expressed that "[i]nmates subject to [administrative] confinement are not provided a written statement setting forth the reasons therefore, nor provided an opportunity to respond to such statement orally or in writing to the chief administrative officer. Further, the facility's chief administrative officer routinely fails to review any such administrative confinement within 24 hours to determine if continued confinement is warranted." [Exhibit A, p. 9-10].
63. Accordingly, the February 18, 2009 Directive ordered and directed Howard "to prepare and distribute to each prisoner, upon admission, a written copy of the facility rules and information," "to develop written rules of inmate conduct, which shall include all chargeable offenses, the range of punishments that may be imposed for each violation, and a detailed description and an explanation of the facility's disciplinary procedures," and to "provide a copy of the written rules of inmate conduct to each inmate upon admission to the facility." Further, Howard was ordered and directed "to provide any inmate so administratively segregated pending a disciplinary hearing, within 24 hours of such confinement, a written statement setting forth the reasons for such confinement, to which the inmate shall be provided an opportunity to respond orally or in writing to the chief administrative officer."

[Exhibit A, p. 13]. Lastly, Howard was ordered and directed “to conduct a review of any such administrative segregation within 24 hours of confinement, by the chief administrative officer, to determine if continued confinement is warranted.” [Exhibit A, p. 12-13].

64. As set forth in Doyle’s March 20, 2009 response, Howard presented that, contrary to the allegations of the Directive, “[a]ll inmates, upon remand to the Holding Center, receive and sign for an Inmate Handbook. Your agency’s finding that inmates have not received these handbooks since October 2008 is untrue.” Additionally, Doyle’s response indicates that the Holding Center’s Policy #JMD04.02.06, entitled *Administrative Segregation Pre-Hearing Detention*, “requires the Sheriff’s Office to provide any inmate administratively segregated pending a disciplinary hearing, within 24 hours of such confinement, a written statement setting forth the reasons for such confinement, to which the inmate shall be provided an opportunity to respond orally or in writing to the chief administrative officer.” [Exhibit B, p. 4-5]. Doyle’s response further presents that the above facility policy provides that “the chief administrative officer or designee reviews any administrative segregation within 24 hours and determine if it is warranted.” [Exhibit B, p. 5].
65. Upon information and belief, such information and belief based upon the observations of Commission staff, Holding Center policies and procedures, and inmate disciplinary records obtained by Commission staff while evaluating the Holding Center for compliance with the Commission’s February 18, 2009 Directive, the administration of the Holding Center continues to operate the inmate disciplinary system in violation of Commission regulations, as set forth in Part 7006 of Title 9 NYCRR.
66. Upon information and belief, such information and belief based upon the attached affidavits of Commission staff Cynthia Diaz [Exhibit R] and Erin Purdy [Exhibit Q], inmates continue to be deprived of copies of the facility rules and information (*Inmate Handbook*) which, pursuant to 9 NYCRR §§7002.9(a) and 7006.3(c), must be provided every inmate upon admission.
67. Upon information and belief, based upon the attached affidavit of Cynthia Diaz [Exhibit R], Holding Center records provide no evidence or substantiation that inmates who are administratively segregated pending a disciplinary hearing receive an “Administrative Segregation Order-Keep Lock Pending Discipline Hearing,” nor any other written statement setting forth the reasons for such confinement. Also upon information and belief, based further upon the affidavit of Ms. Diaz, Holding Center records provide no evidence or substantiation that inmates are provided an opportunity to respond to any such order, nor does there exist a record of any such response by an inmate.
68. Your Petitioner submits that the absence of such records is a consequence of the Holding Center’s relevant policy. While Doyle’s March 20, 2009 response is correct in its allegation that the Holding Center’s Policy #JMD04.02.06 “requires the Sheriff’s Office to provide any inmate administratively segregated pending a disciplinary hearing, within 24 hours of such confinement, a written statement setting forth the reasons for such confinement, to which the

inmate shall be provided an opportunity to respond orally or in writing to the chief administrative officer" [Exhibit Y], it should be noted that such provision is contained solely in the "Policy" section.

69. A careful review of the "Procedure" section of the Holding Center's Policy #JMD04.02.06 reveals no mention of providing the required written statement to an administratively segregated inmate within 24 hours, or of such an inmate's opportunity to respond to the chief administrative officer. Consequently, your Petitioner submits that the policy provides no direction as to who must provide the required inmate notice, when such notice must be provided, and in what manner an inmate would be able to respond. Lacking such direction, your Petitioner submits that, upon information and belief and as evidenced by the Holding Center's records, said requirements are not accomplished.
70. As set forth above, section 7006.7(c) of Title 9 requires the chief administrative officer of the facility to review any administrative confinement within 24 hours of such confinement in order to determine if continued confinement is warranted.
71. Upon information and belief, based upon inmate disciplinary records obtained by Commission staff while evaluating the Holding Center for compliance with the Commission's February 18, 2009 Directive, such reviews have either not been conducted, or have been made beyond the 24 hour period allowed by Commission regulation.
72. Upon information and belief, such information and belief based upon a Holding Center "Administrative Segregation Order – Keep Lock Pending Discipline Hearing" record gathered by Commission staff while undertaking facility monitoring [Exhibit Z], inmate Terry Weilbon was initially administratively segregated by such order at 9:55 a.m. on June 20, 2009. As further indicated by the order, at no time was such confinement reviewed and continued by the chief administrative officer prior to its discovery by Commission staff on June 23, 2009 [Exhibit R], a period well in excess of the 24 hours allowed by regulation.
73. Upon information and belief, such information and belief based upon an Erie County Sheriff's Office Incident Report dated June 14, 2009 [Exhibit AA], a Deputy Carney witnessed inmates Quincy Balance, Rayshawn Miller, Antoine Lawrence and Lemuele Jackson "shoving pushing and harassing" inmate Norman Lindenau at 8:40 a.m. on June 14, 2009. Consequently, the offending inmates were immediately confined and thereafter "moved to Echo short and placed on Keep lock pending hearing status."
74. Upon information and belief, such information and belief based upon a Holding Center "Administrative Segregation Order – Keep Lock Pending Discipline Hearing" record gathered by Commission staff while undertaking facility monitoring [Exhibit BB], the administrative segregation of inmate Quincy Balance was not reviewed and continued by the chief administrative officer, Deputy Superintendent Barbara Leary, until 9:40 a.m. on June 15, 2009. As documented, such review was not conducted within the regulatory 24 hour period, commenced by administrative confinement at approximately 8:40 a.m. on June 14,

2009.

75. Upon information and belief, such information and belief based upon a Holding Center "Administrative Segregation Order – Keep Lock Pending Discipline Hearing" record gathered by Commission staff while undertaking facility monitoring [Exhibit CC], the administrative segregation of inmate Rayshawn Miller was not reviewed and continued by the chief administrative officer, Deputy Superintendent Barbara Leary, until 9:40 a.m. on June 15, 2009. As documented, such review was not conducted within the regulatory 24 hour period, commenced by administrative confinement at approximately 8:40 a.m. on June 14, 2009.
76. Upon information and belief, such information and belief based upon a Holding Center "Administrative Segregation Order – Keep Lock Pending Discipline Hearing" record gathered by Commission staff while undertaking facility monitoring [Exhibit DD], the administrative segregation of inmate Antoine Lawrence was not reviewed and continued by the chief administrative officer, Deputy Superintendent Barbara Leary, until 9:04 a.m. on June 15, 2009. As documented, such review was not conducted within the regulatory 24 hour period, commenced by administrative confinement at approximately 8:40 a.m. on June 14, 2009.
77. Upon information and belief, such information and belief based upon a Holding Center "Administrative Segregation Order – Keep Lock Pending Discipline Hearing" record gathered by Commission staff while undertaking facility monitoring [Exhibit EE], the administrative segregation of inmate Lemuele Jackson was not reviewed and continued by the chief administrative officer, Deputy Superintendent Barbara Leary, until 9:03 a.m. on June 15, 2009. As documented, such review was not conducted within the regulatory 24 hour period, commenced by administrative confinement at approximately 8:40 a.m. on June 14, 2009.
78. Lastly, and upon information and belief, such information and belief based upon a Holding Center "Administrative Segregation Order – Keep Lock Pending Discipline Hearing" record gathered by Commission staff while undertaking facility monitoring [Exhibit FF], inmate Nate Myers was initially administratively segregated by such order at 7:37 p.m. on May 25, 2009. As further indicated by the order, such confinement was reviewed and discontinued by the chief administrative officer, Captain Jeffrey Hartman at 7:30 a.m. on May 26, 2009. Remarkably, the same order was reviewed and continued by Deputy Superintendent Barbara Leary at 10:15 a.m. on May 26, 2009 [Exhibit GG]. While neither review exceeded the 24 hour limit imposed by regulation, your Petitioner submits that the above exemplifies the disordered system of inmate discipline that continues to plague the Holding Center, resulting in the regulatory violations set forth above.
79. As demonstrated in the above allegations, and contrary to the Commission's Directive dated February 18, 2009, your Petitioner submits that Sheriff Howard, together with the administration and staff of the Erie County Holding Center, has continued to violate

Commission regulations relative to inmate discipline, specifically sections 7006.7(b) and 7006.7(c) of Title 9 NYCRR.

INMATE GRIEVANCE PROGRAM

80. County correctional facilities are required to establish, implement and maintain a formal inmate grievance system consistent with Part 7032 of Title 9 NYCRR.
81. As required by 9 NYCRR §7032.4(a), any inmate incarcerated in a local correctional facility shall be provided access to the facility's grievance program which, as mandated by 9 NYCRR §7032.4(c), includes advising every such inmate in writing as to the availability of grievance forms upon admission.
82. Consistent with the above regulations, 9 NYCRR §7032.4(d) requires facility staff to make grievance forms "readily available" to inmates so that an inmate may file a grievance.
83. Within five (5) business days of the receipt of an inmate grievance, 9 NYCRR §7032.4(i) requires a facility grievance coordinator to render and issue a written determination, a copy of which must be provided to the inmate grievant.
84. Should the grievant wish to appeal the grievance coordinator's determination, 9 NYCRR §7032.4(k) allows the chief administrative officer a maximum of five (5) business days in which to render and issue a written determination, a copy of which must be provided to the inmate grievant.
85. At the time of the February 18, 2009 Directive, the Commission found that "the facility's failure to provide grievance forms on the housing units ... has denied the inmates of the Erie County Holding Center sufficient access to the facility's grievance program by not making such program and forms readily available." [Exhibit A, p. 10].
86. As further set forth in the Directive, the Commission found, "in instances where access to the grievance program is provided, the facility's administration routinely fails to meet the regulatory time requirements. Specifically, the facility's grievance coordinator habitually fails to render a written determination within five business days of the receipt of a grievance. Further, the chief administrative officer customarily fails to issue a determination of any appeal to the grievance coordinator's decision within five business days." [Exhibit A, p. 10].
87. Accordingly, the February 18, 2009 Directive ordered and directed Howard "to make formal grievance forms readily available so that an inmate may file a grievance," "to ensure that, within five business days of the receipt of a grievance, the grievance coordinator issues a written determination, a copy of such provided to the inmate," and "to ensure that, within five business days after receipt of a grievance appeal, the chief administrative officer issues a determination on the appeal and provides a copy of such determination to the inmate." [Exhibit A, p. 14].

88. As set forth in Doyle's March 20, 2009 response, Howard presented that a "revised Inmate Grievance Program has been developed" which is reflected in a revised Holding Center Policy #JMD04.02.05, as well as provision of the *Inmate Handbook* to admitted inmates, "which outlines the inmate grievance process." [Exhibit B, p. 8].
89. Your Petitioner's review of the Holding Center *Inmate Handbook*, attached to Doyle's March 20, 2009 response, reveals instructions to inmates that "[g]rievance forms are available from your housing unit officer." [Exhibit V, p. 15].
90. Your Petitioner's review of Holding Center Policy #JMD04.02.05, attached to Doyle's March 20, 2009 response, reveals that a "supply of Inmate Grievance Forms and supplements shall be maintained in the housing area deputy's desk on each housing area." [Exhibit HH, p. 1].
91. Upon information and belief, such information and belief based upon the observations of Commission staff, inmate grievance records obtained by Commission staff while evaluating the Holding Center for compliance with the Commission's February 18, 2009 Directive, and inmate grievance records submitted for appeal to the Commission, the administration of the Holding Center continues to operate the inmate grievance system in violation of Commission regulations as set forth in Part 7032 of Title 9 NYCRR.
92. Upon information and belief and contrary to direction set forth in the above-referenced Holding Center policy and *Inmate Handbook*, your Petitioner submits that inmate grievance forms have not been made consistently available to all inmates. Such information and belief is based upon the observations and affidavits of two Commission staff, who found inmate grievance forms to be absent and unavailable from two Holding Center housing units on July 2, 2009 [Exhibits O, II].
93. Upon information and belief, such information and belief based upon inmate grievance records obtained from the Holding Center [Exhibit JJ], inmate Thamud Eldridge filed Grievance #09-G-018 on May 6, 2009, which was forwarded to the grievance coordinator on May 8, 2009. Nevertheless, the grievance coordinator did not render a written decision until May 18, 2009, well past the five (5) business day limit imposed by 9 NYCRR §7032.4(i).
94. Upon information and belief, such information and belief based upon inmate grievance records obtained from the Holding Center [Exhibit KK], inmate Thamud Eldridge filed Grievance #09-G-019 on May 6, 2009, which was forwarded to the grievance coordinator on May 8, 2009. Nevertheless, the grievance coordinator did not render a written decision until May 18, 2009, well past the five (5) business day limit imposed by 9 NYCRR §7032.4(i).
95. Upon information and belief, such information and belief based upon inmate grievance records obtained from the Holding Center [Exhibit LL], inmate Kevin Anderson filed Grievance #09-G-022 on April 14, 2009. Following the grievance coordinator's written

determination, dated April 15, 2009, Anderson expressed his desire to further appeal on April 15, 2009. Nevertheless, the chief administrative officer did not render a written determination until May 18, 2009, well past the five (5) business day limit imposed by 9 NYCRR §7032.4(k).

96. Upon information and belief, such information and belief based upon inmate grievance records obtained from the Holding Center [Exhibit MM], inmate Norman Caraway filed Grievance #09-G-037 on June 13, 2009. Following the grievance coordinator's written determination, dated June 22, 2009, Caraway expressed his desire to further appeal on June 29, 2009. Nevertheless, the chief administrative officer did not render a written determination until July 13, 2009, well past the five (5) business day limit imposed by 9 NYCRR §7032.4(k).

97. Upon information and belief, such information and belief based upon inmate grievance records obtained from the Holding Center [Exhibit NN], inmate Shannon Davis filed Grievance #09-G-031 on June 3, 2009. Following the grievance coordinator's written determination, dated June 9, 2009, Davis expressed her desire to further appeal on June 9, 2009. Nevertheless, the chief administrative officer did not render a written determination until June 24, 2009, well past the five (5) business day limit imposed by 9 NYCRR §7032.4(k).

98. Finally, upon information and belief, such information and belief based upon inmate grievance records obtained from the Holding Center [Exhibit OO], inmate Jerry Ridgeway filed Grievance #09-G-017 on April 2, 2009. After acknowledging receipt as the grievance coordinator on April 3, 2009, Deputy Superintendent Barbara Leary rendered both an undated determination as the grievance coordinator and an April 7, 2009 determination as the chief administrative officer. Your Petitioner submits that such action by Leary denied grievant Ridgeway any avenue to appeal to the facility's chief administrative officer, as is guaranteed by 9 NYCRR §7032.4(k).

99. As demonstrated in the above allegations, and contrary to the Commission's Directive dated February 18, 2009, your Petitioner submits that Sheriff Howard, together with the administration and staff of the Erie County Holding Center, has continued to violate Commission regulations relative to the inmate grievance program, specifically sections 7032.4(a), 7032.4(d), 7032.4(i) and 7032.4(k) of Title 9 NYCRR.

INMATE VISITATION

100. Pursuant to 9 NYCRR §7008.3, a local correctional facility must establish and publish a schedule of visits to ensure that each inmate receives at least two (2) visits totaling at least two (2) hours per week. Further, 9 NYCRR §7008.5 provides that any person who presents adequate proof as to his or her identity shall be permitted to visit an inmate.

101. At the time of the February 18, 2009 Directive, the Commission found that "as presently

established and operated, the visitation system employed by the Erie County Holding Center is insufficient to meet the requirements set forth in 9 NYCRR Part 7008.” [Exhibit A, p. 9].

102. Accordingly, the February 18, 2009 Directive ordered and directed Howard to “provide each inmate of the Erie County Holding Center an opportunity for two hours of visitation each week, with each visit lasting at least 30 minutes,” to “establish and publish a schedule of visits to ensure that each inmate has the opportunity for at least two visits per week,” to “permit any person who presents adequate proof of identity, with the inmate’s consent, to visit such inmate, subject to the limitations of 9 NYCRR Part 7008.,” and to “refrain from denying inmate visitation to prospective visitors on the sole basis of the inability to produce documented evidence of a current address.” [Exhibit A, p. 13].
103. As set forth in Doyle’s March 20, 2009 response, Howard developed and implemented Holding Center Policy #JMD10.06.00, entitled *Inmate Visitation*, “which complies with the Directive and instruction from Commission staff” with regard to providing each inmate of the Holding Center the opportunity for two (2) hours of visitation each week [Exhibit B, p. 6].
104. With regard to the Directive’s issues relative to the establishment and publication of a schedule of visits and requiring prospective visitors to show proof of address, Doyle’s response indicated that the above revised policy “complies with this directive.”
105. Upon information and belief, such information and belief based upon the observations of Commission staff, Holding Center policies and procedures, and visitation records obtained by Commission staff while evaluating the Holding Center for compliance with the Commission’s February 18, 2009 Directive, the administration of the Holding Center continues to operate the system of inmate visitation in violation of Commission regulations as set forth in Part 7008 of Title 9 NYCRR.
106. Upon information and belief, such information and belief based upon Holding Center Policy #JMD10.06.00, entitled *Inmate Visitation* [Exhibit PP], the weekly schedule for inmate visitation is from Saturday through Wednesday, from 7:00 a.m. to 2:30 p.m.
107. Also upon information and belief, such information and belief also based upon Holding Center Policy #JMD10.06.00, inmate visitation is not conducted on holidays. Based upon your Petitioner’s review of such policy, there includes no provision or procedure to compensate for such cancelled visitation later in the week.
108. While a definition for “holiday” is not provided in the policy, it is submitted, upon information and belief, that inmate visitation was not offered at the Holding Center on May 25, 2009 (Memorial Day) and July 4, 2009 (Independence Day). Also upon information and belief, additional visiting hours were not offered to inmates during the weeks of such holidays to compensate for the cancellations.

109. As set forth above, 9 NYCRR §7008.3 requires the Holding Center to establish a schedule of visitation that provides each inmate an opportunity for two (2) hours of visitation a week. The Commission's regulations do not provide an exception for weeks which contain a holiday, nor is any other exception therein allowed.
110. While the Commission is still evaluating whether the Holding Center's schedule of 37½ hours of weekly visitation is sufficient to provide each inmate two (2) hours of weekly visitation, your Petitioner submits that such a schedule is rendered insufficient each and every time visitation is cancelled for a holiday. Based upon the Holding Center's current five day per week schedule, cancelling just one day for a holiday decreases an inmate's opportunity for visitation by twenty (20%) percent.
111. With respect to visitor identification, your Petitioner notes that Holding Center Policy #JMD10.06.00, entitled *Inmate Visitation*, provides that any prospective visitor "must present proper picture identification before being allowed a visit," but provides no requirement that such identification contain a current address. Identification accepted per the policy includes a driver's license, a New York State Identification Card, a Social Services Card, a United States Military identification card, or a passport [Exhibit PP].
112. Despite such policy and Commission regulation requiring only that prospective visitors prove their identity [9 NYCRR §7008.5], visitors and Holding Center staff have been instructed, upon information and belief, that only identification containing a current address will be acceptable. Such information and belief is based upon Holding Center Visiting Procedures distributed to visitors [Exhibit QQ], a sign posted in the Holding Center visitation lobby [Exhibit RR], March 9 and March 13, 2009 memoranda from Deputy Superintendent Barbara Leary [Exhibit SS], and a March 3, 2009 memorandum from Superintendent Donald J. Livingston [Exhibit TT], all as provided in support of Doyle's March 20, 2009 response to the Directive.
113. In addition to contradicting Commission regulations set forth in 9 NYCRR §7008.5, your Petitioner submits that the Holding Center policy and subsequent administrative direction contradict each other. While the policy specifically lists a Social Services Card, military identification and passports as acceptable forms of identification, not one of these, upon information and belief, provides the holder's address thereon, rendering the same unacceptable per subsequent administrative direction.
114. As demonstrated in the above allegations, and contrary to the Commission's Directive dated February 18, 2009, your Petitioner submits that Sheriff Howard, together with the administration and staff of the Erie County Holding Center, has continued to violate Commission regulations relative to inmate visitation, specifically sections 7008.3(a), 7008.3(b), 7008.5(a) and 7008.5(b) of Title 9 NYCRR.

REQUESTED RELIEF

115. As thoroughly submitted above, Erie County Sheriff Timothy B. Howard, as custodian of the Erie County Holding Center, has continued to violate New York State Commission of Correction regulations with respect to the detention of inmates in non-standard facility holding areas, the provision of personal hygiene items and bedding to inmates, the provision of inmate exercise, and the establishment and maintenance of inmate discipline, grievance and visitation programs. Further, such regulatory violations have continued since and despite the February 18, 2009 issuance of a Directive to Sheriff Howard by the Commission of Correction, which notified Howard of the violations, recommended remedial action and directed compliance with such regulations.
116. Upon a sheriff's continued failure to comply with a regulation following Commission Directive, Correction Law §46(4) provides that the Commission "may apply to the supreme court for an order directed to such person requiring compliance with such rule, regulation or law."
117. Lastly, your Petitioner respectfully requests, considering the Commission's statutory interest in assuring that the Erie County Holding Center is a safe, stable and humane correctional facility, together with the Commission's preference over all other cases, except habeas corpus proceedings before this Court [Correction Law §48], that the Court schedule and issue a determination in this matter at its earliest convenience.

WHEREFORE, your Petitioner prays for an Order, pursuant to Correction Law §46(4), directing the Respondent, Erie County Sheriff Timothy B. Howard, as follows:

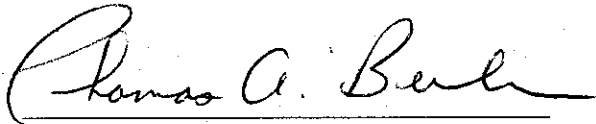
1. to comply with 9 NYCRR §7040.3 by assigning inmates to proper housing in accordance with the limitations and conditions of the Maximum Facility Capacity for the Erie County Holding Center; to wit, inmates may not be detained in the facility's holding areas for periods longer than that designated in the Commission's Maximum Facility Capacity;
2. to comply with 9 NYCRR §7005.6(a) by providing each inmate, upon admission to the facility and at facility expense, with an issue of personal health care items, including but not limited to soap, a toothbrush, toothpaste, a drinking cup, toilet paper and a bath towel;
3. to comply with 9 NYCRR §7005.9(a) by providing each inmate, upon admission and at facility expense, with an issue of clean bedding in good condition;
4. to comply with 9 NYCRR §7013.8(a) by conducting an initial screening and risk assessment of each inmate upon admission, and upon completion promptly placing such inmate in a housing unit designated for classification purposes;
5. to comply with 9 NYCRR §7002.9(a) by preparing and distributing to each prisoner, upon admission, a written copy of the facility rules and information;

6. to comply with 9 NYCRR §7006.3(a) and (b) by developing written rules of inmate conduct, which shall include all chargeable offenses, the range of punishments that may be imposed for each violation, and a detailed description and an explanation of the facility's disciplinary procedures;
7. to comply with 9 NYCRR §7006.3(c) by providing a copy of the written rules of inmate conduct to each inmate upon admission to the facility;
8. to comply with 9 NYCRR §7006.7(b) by providing an inmate administratively segregated pending a disciplinary hearing, within 24 hours of such confinement, a written statement setting forth the reasons for such confinement, to which the inmate shall be provided an opportunity to respond orally or in writing to the chief administrative officer;
9. to comply with 9 NYCRR §7006.7(c) by conducting a review of any such administrative segregation within 24 hours of confinement, by the chief administrative officer, to determine if continued confinement is warranted;
10. to comply with 9 NYCRR §7008.3(a) by providing each inmate of the Erie County Holding Center an opportunity for two hours of visitation each week, with each visit lasting at least 30 minutes;
11. to comply with 9 NYCRR §7008.3(b) by establishing and publishing a schedule of visits to ensure that each inmate has the opportunity for at least two visits per week;
12. to comply with 9 NYCRR §7008.5(a) by permitting any person who presents adequate proof of identity, with the inmate's consent, to visit such inmate, subject to the limitations of 9 NYCRR Part 7008;
13. to comply with 9 NYCRR §7028.2(b) by permitting all inmates to engage in outdoor exercise consistent with and subject to the limitations of 9 NYCRR Part 7028;
14. to comply with 9 NYCRR §7032.4(a) by providing any inmate incarcerated in the Erie County Holding Center access to the facility's grievance program;
15. to comply with 9 NYCRR §7032.4(d) by making formal grievance forms readily available so that an inmate may file a grievance;
16. to comply with 9 NYCRR §7032.4(i) by ensuring that, within five business days of the receipt of a grievance, the grievance coordinator issues a written determination, a copy of such provided to the inmate;
17. to comply with 9 NYCRR §7032.4(k) by ensuring that, within five business days after receipt of a grievance appeal, the chief administrative officer issues a determination on the appeal

and provides a copy of such determination to the inmate; and

18. for such other and further relief as the Court may deem just and proper under the circumstances.

Dated: September 21, 2009
Buffalo, New York

A handwritten signature in cursive script, reading "Thomas A. Beilein", written in black ink.

THOMAS A. BEILEIN
Commissioner of the New York State
Commission of Correction
Petitioner

VERIFICATION

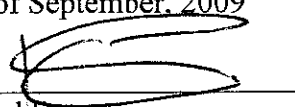
STATE OF NEW YORK
CITY OF BUFFALO
COUNTY OF ERIE

Thomas A. Beilein, being duly sworn, states that he is the Commissioner of the New York State Commission of Correction, the Petitioner in this action, and that he is acquainted with the facts underlying this proceeding; that he has read the Petition herein and understands the contents thereof; that the same is true to my knowledge, and to the matters alleged upon information and belief, I believe those matters to be true.

This verification is made under CPLR Sec. 3020(d) by deponent because the petitioner is the State of New York and/or a governmental subdivision of the State of New York, and your deponent is acquainted with the facts.


THOMAS A. BEILEIN

Sworn to before me this
21st day of September, 2009


Notary Public

KENNETH S. PETERS
Notary Public, State of New York
No. 01PE6122194
Qualified in Erie County
Commission Expires 2/3/13

EXHIBIT A

IN THE MATTER

OF THE

ERIE COUNTY

HOLDING CENTER

Directive Issued by the New York State
Commission of Correction Pursuant to
Correction Law §46(4)

TO: Sheriff Timothy Howard
Erie County Sheriff's Department
10 Delaware Avenue
Buffalo, New York 14202

Cheryl A. Green
Erie County Attorney
69 Delaware Avenue
Suite 300
Buffalo, New York 14202

GREETINGS:

The New York State Commission of Correction, having learned, upon information and belief, that inmates of the Erie County Holding Center are not provided suitable and necessary housing conditions, nor sufficient access to visitation, inmate grievance programs, personal hygiene items or an adequate system of inmate discipline, has determined that the Erie County Sheriff is violating, or is about to violate, the following minimum standard regulations relating to the management and affairs of a local correctional facility:

9 NYCRR §7002.9(a)

Each local correctional facility shall prepare and distribute to all prisoners, upon admission, a written copy of facility rules and information. Such rules and information shall include, but is not limited to, the following:

- (1) facility rules of conduct, penalties for violation, and disciplinary procedures;
- (2) available health services, including physician visits and sick calls;

- (3) telephone services and rules for use;
- (4) exercise periods and rules;
- (5) information and eligibility criteria for any available facility program including, but not limited to:
 - (i) temporary release programs;
 - (ii) educational programs;
 - (iii) counseling programs;
 - (iv) vocational programs; and
 - (v) work programs;
- (6) commissary operations;
- (7) lock-in and lock-out times, wake-up and lights-out times;
- (8) rules for the use of television, radio or musical instrument playing;
- (9) package rules and permissible items;
- (10) correspondence rules;
- (11) visitation rules and schedules;
- (12) eligibility criteria and procedures for requesting funeral and deathbed visits;
- (13) eligibility criteria and procedures, including application forms, for conditional release;
- (14) divine worship schedules;
- (15) grievance procedures;
- (16) the availability of legal reference materials and supplies, including a specific reference to the availability of rules and regulations of the State Commission of Correction; and
- (17) any additional information the chief administrative officer feels may assist prisoners.

9 NYCRR §7005.2(a)

Hot showers shall be made available to all prisoners daily. Consistent with facility health requirements, the chief administrative officer may require prisoners to shower periodically.

9 NYCRR §7005.6(a)

Upon admission to a facility, all prisoners shall be provided at facility expense with an issue of a personal health care items, including but not limited to:

- (1) soap;
- (2) toothbrush;
- (3) toothpaste;
- (4) drinking cup;
- (5) toilet paper; and
- (6) bath towel.

9 NYCRR §7005.6(b)

In addition to the items listed in subdivision (a) of [section 7005.6], all female prisoners shall be provided at facility expense with necessary feminine hygiene items, including but not limited to:

- (1) tampons; and
- (2) sanitary napkins.

9 NYCRR §7005.9(a)

Upon admission to a facility, all prisoners shall be provided at facility expense with an issue of clean bedding in good condition.

9 NYCRR §7006.3(a)

The chief administrative officer of each facility shall develop written rules of inmate conduct which contain a list of all rules and regulations governing inmate behavior.

9 NYCRR §7006.3(b)

The rules of inmate conduct shall include:

- (1) all chargeable offenses;
- (2) the range of punishments that may be imposed for each violation, consistent with the seriousness of the conduct prohibited; and
- (3) a detailed description and an explanation of the facility's disciplinary procedures.

9 NYCRR §7006.3(c)

Each inmate shall be provided with a copy of the rules of inmate conduct upon admission to the facility, and a copy shall also be maintained in the facility law library.

9 NYCRR §7006.7(a)

An inmate who threatens the safety, security, and good order of the facility may be immediately confined in a cell or room pending a disciplinary hearing and may be retained in administrative segregation until the completion of the disciplinary process.

9 NYCRR §7006.7(b)

Within 24 hours of such confinement, the inmate shall be provided with a written statement setting forth the reason(s) for such confinement. Upon receipt of the written statement, the inmate shall be provided with an opportunity to respond to such statement orally or in writing to the chief administrative officer.

9 NYCRR §7006.7(c)

The chief administrative officer shall review the administrative confinement within 24 hours of such confinement in order to determine if continued confinement is warranted.

9 NYCRR §7006.10(b)

All appeals [of a hearing officer's disposition and sanction] shall be reviewed and decided within five business days after receipt and each inmate shall be notified in writing of the results.

9 NYCRR §7008.3(a)

Except as provided in Part 7006 of [Title 9], each prisoner shall be entitled to at least two hours of visitation each week. Each visit shall be at least 30 minutes.

9 NYCRR §7008.3(b)

The chief administrative officer shall establish and publish a schedule of visits to ensure that each inmate has the opportunity for at least two visits per week.

9 NYCRR §7008.5(a)

Consistent with the requirements of [9 NYCRR Part 7008], any properly identified person shall, with the prisoner's consent, be permitted to visit that prisoner.

9 NYCRR §7008.5(b)

As used in [section 7008.5], the term *properly identified person* shall mean a person who presents adequate proof as to his identity.

9 NYCRR §7013.8(a)

After initial screening and risk assessment is completed and prior to determining each inmate's primary housing assignment, the inmate shall be placed in a housing unit within a housing area(s) designated for classification purposes. Such housing area(s) may be utilized on a temporary or permanent basis, given the needs and physical plant limitations of each facility.

9 NYCRR §7024.2(a)

Consistent with the requirements of section 7024.1(b) of this Part, all prisoners shall be permitted to congregate for the purpose of religious worship and other religious activities.

9 NYCRR §7024.8

Consistent with the requirements of section 7024.1(b) of this Part, prisoners shall be entitled to wear and possess religious medals or other religious articles.

9 NYCRR §7026.1

Consistent with the requirements of this Part, prisoners are entitled to receive any printed material or publication that is generally available to the public. Prisoners shall be permitted to receive such material:

- (a) from any source, including but not limited to family, friends or publishers;
- (b) as a gift, or pursuant to order or subscription.

9 NYCRR §7028.2(b)

All inmates who have completed the classification process pursuant to sections 7013.7 and 7013.8 of [Title 9], except as otherwise provided in subdivision (c) of this section or section 7028.6 of this Part, shall be entitled to exercise periods which, at the discretion of the chief administrative officer, shall consist of:

- (1) at least 1-1/2 hours during each of five days per week; or
- (2) at least one hour seven days a week.

9 NYCRR §7031.4(a)

Consistent with the requirements of [9 NYCRR Part 7031], each local correctional facility shall provide prisoners access to current legal reference materials.

9 NYCRR §7032.1

In order to provide an effective and impartial procedure for the timely resolution of inmate complaints, the chief administrative officer of each local correctional facility shall establish, implement and maintain a formal inmate grievance program. Every effort shall be made to resolve inmate complaints in an informal manner.

9 NYCRR §7032.4(a)

Any inmate incarcerated in a local correctional facility shall be provided access to the facility's grievance program.

9 NYCRR §7032.4(b)

Instructions for filing a grievance shall be included in the facility rules and information as required by section 7002.9(a)(15) of [Title 9].

9 NYCRR §7032.4(c)

Each inmate at any facility shall be advised in writing as to the availability of grievance forms upon admission.

9 NYCRR §7032.4(d)

Facility staff shall make forms readily available so that an inmate may file a grievance. An inmate must file a grievance within five days of the date of the act or occurrence giving rise to the grievance.

9 NYCRR §7032.4(i)

Within five business days of the receipt of a grievance, the grievance coordinator shall issue a written determination. Such determination shall specify the facts and reasons underlying the coordinator's determination. A copy of such determination shall be provided to the grievant.

9 NYCRR §7032.4(k)

Within five business days after receipt of a grievance appeal, the chief administrative officer shall issue a determination on the grievance appeal and provide a copy of such determination to the grievant.

9 NYCRR §7032.5(b)

Within three business days after receipt of the grievant's notice of appeal, the grievance coordinator shall mail the appeal, the accompanying investigation report and all other pertinent documents to the Commission's Citizens' Policy and Complaint Review Council.

9 NYCRR §7040.3

The total number of inmates confined within each correctional facility shall not exceed the maximum facility capacity of such facility.

The Erie County Sheriff, upon information and belief, is violating the above minimum standard regulations relating to the management and affairs of a local correctional facility in that inmates of the Erie County Holding Center are not provided suitable and necessary housing conditions, nor sufficient access to visitation, inmate grievance programs, personal hygiene items or an adequate system of inmate discipline more specifically set forth below:

FACILITY HOLDING AREAS

The Erie County Holding Center's holding areas (Court Hold #1-#7, Isolation #1-#5, M-Intake Pen, F-Holding Pen, M-Holding Pen) are designed for short term holding contemporaneous to inmate intake, booking and screening. Lacking beds, mattresses and the dayroom and shower capabilities required for standard inmate housing, such areas each routinely hold as many as thirty (30) inmates yet each contain only one (1) sink and toilet. As such, these cells and pens are not rated for standard inmate housing per the facility's November 8, 2006 Commission-issued Maximum Facility Capacity (MFC).

Upon an inmate's admission, 9 NYCRR §7013.7(a) requires a local correctional facility to perform an initial screening and risk assessment of such inmate. Following completion of the screening and assessment, but prior to determining the inmate's primary housing assignment, 9 NYCRR §7013.8(a) requires the facility to place such inmate in a housing unit within a housing area designated for classification purposes. For this reason, the Erie County Holding Center's MFC limits the time inmates may be held in the holding areas to twelve (12) hours, where inmates are individually detained, or four (4) hours where more than one inmate is detained in a cell or pen.

Nevertheless, inmates are routinely subjected to lengthy stays in the holding areas following the completion of their initial screening and risk assessment instead of being placed in a

housing unit designated for classification purposes. As a result, such admitted inmates are denied beds, mattresses, clean bedding, showers, and required personal health care and hygiene items. Additionally, such inmates are denied the benefit of the additional floor space and toilet and sink access that would accompany a proper admission to a standard inmate housing unit.

VISITATION

Pursuant to 9 NYCRR §7008.3, a local correctional facility must establish and publish a schedule of visits to ensure that each inmate receives at least two (2) visits totaling at least two (2) hours of visitation per week. Further, 9 NYCRR §7008.5 provides that any person who presents adequate proof as to his or her identity shall be permitted to visit an inmate.

As presently established and operated, the visitation system employed by the Erie County Holding Center is insufficient to meet the requirements set forth in 9 NYCRR Part 7008, and in fact acts to frustrate and obstruct prospective visitors from successfully engaging in inmate visitation. Specifically, visitation is conducted only five (5) days per week, whereupon visitors are required to wait in line, at two designated times per day, to procure visitation "tickets" for that particular day. A limited number of such tickets are distributed at each designated time, and those visitors who do not receive a ticket are denied visitation. Those who receive tickets must further wait to be screened by jail staff prior to visitation. During such screening, and in addition to providing adequate proof as to identity, potential visitors are required to provide proof of a current address, such as a recent telephone or utility bill, and are refused visitation without the same. While 9 NYCRR §7008.5(c)(2) requires a visitor to provide his or her address, such regulation only requires a visitor to present adequate proof as to identity.

During a previous audit by Commission staff, it was observed that actual visitation is conducted only between the hours of 8:15 a.m. and 11:15 a.m., and thereafter from 1:30 p.m. to 2:00 p.m., five days a week. Assuming that each of the 22 seats in the visitation room is occupied during each of these periods, such a schedule only allows for a maximum of 412.5 hours of visitation per week. With a maximum facility capacity of 611 and a present inmate population over 450, the Erie County Holding Center, per Commission regulations, must currently accommodate over 900 hours of potential inmate visitation, more than double what is currently offered.

INMATE DISCIPLINE

As required by 9 NYCRR §7006.3, each facility must develop and provide to each admitted inmate the written rules of inmate conduct, which shall include all chargeable offenses, the possible punishment for any such violation, and a detailed description and an explanation of the facility's disciplinary procedures. Commission staff have found that, at the Erie County Holding Center, such written rules of inmate conduct either do not exist or are not in sufficient

supply for inmate allocation, as such distribution has not occurred since at least October of 2008.

While deprived of the written rules of conduct, inmates are nevertheless charged with violations of such rules, and thereafter prosecuted via inmate disciplinary hearings. Although 9 NYCRR §7006.7(a) allows administrative segregation pending a disciplinary hearing for only those inmates who threaten the safety, security, and good order of the facility, every inmate charged with a rule violation is subjected to such segregation. Inmates subject to such confinement are not provided a written statement setting forth the reasons therefore, nor provided an opportunity to respond to such statement orally or in writing to the chief administrative officer. Further, the facility's chief administrative officer routinely fails to review any such administrative confinement within 24 hours to determine if continued confinement is warranted, as required by 9 NYCRR §7006.7(c). Lastly, inmate appeals of dispositions and sanctions resulting from disciplinary hearings are routinely not decided within five (5) business days, as required by 9 NYCRR §7006.10(b).

INMATE GRIEVANCE PROGRAM

9 NYCRR §7002.9(a) requires a facility to prepare and distribute to all inmates, upon admission, a written copy of the facility rules and information, which shall include instructions on facility grievance procedures. However, and as is the case with the written rules of inmate conduct, the written facility rules and information either do not exist or are not in sufficient supply for inmate allocation, as such distribution has not occurred since at least October of 2008. This fact, coupled with the facility's failure to provide grievance forms on the housing units, has denied the inmates of the Erie County Holding Center sufficient access to the facility's grievance program by not making such program and forms readily available. Such lack of access is apparent in that, despite the facility's relatively large inmate population, only eleven (11) grievances were ultimately appealed to the Commission's Citizens' Policy and Complaint Review Council (CPCRC) in all of 2008.

In instances where access to the grievance program is provided, the facility's administration routinely fails to meet the regulatory time requirements. Specifically, the facility's grievance coordinator habitually fails to render a written determination within five business days of the receipt of a grievance. Further, the chief administrative officer customarily fails to issue a determination of any appeal to the grievance coordinator's decision within five business days. Lastly, Commission staff have noted occasions wherein grievances, denied by the facility's chief administrative officer, were either not forwarded to the Commission upon the inmate's release or desire to appeal to the CPCRC, or were forwarded beyond the three business days allowed by regulation.

INMATES SUBJECT TO CONSTANT SUPERVISION

Pursuant to 9 NYCRR §7003.3(h)(3), an inmate may be placed on "constant supervision" when required by the inmate's condition, illness or injury. Though subject to such enhanced

supervision, an inmate does not otherwise forfeit the rights and services guaranteed by Commission regulations. Despite this fact, inmates subject to constant supervision in the Erie County Holding Center, by practice or policy, are customarily deprived the use and possession of sheets and bedding, soap, toothbrushes, toothpaste, drinking cups, toilet paper, bath towels, tampons/sanitary napkins and a change of undergarments. Further, such inmates are routinely deprived of required outdoor exercise periods, access to legal reference materials, congregate religious services, religious medals or other religious articles, printed materials and publications, and incoming correspondence.

FEMININE HYGIENE PRODUCTS

9 NYCRR §7005.6(c) requires a local correctional facility to provide, at facility expense, all female inmates with necessary feminine hygiene items, including tampons and sanitary napkins. During a previous audit by Commission staff, it was observed that the Erie County Holding Center does not maintain a sufficient supply of such feminine hygiene items, and female inmates are thus regularly deprived of the same.

WHEREAS, the State Commission of Correction is an independent body charged by its constitutional and statutory mandates with oversight and regulatory responsibility for all State and local correctional facilities within New York State; and

WHEREAS, pursuant to subdivision (4) of section 46 of the Correction Law, in any case where a minimum standard regulation or statute relating to the management and affairs of a local correctional facility is being or is about to be violated, the State Commission of Correction shall notify the person in control of the facility, recommend remedial action, and direct such person to comply with the statute, rule or regulation; and

WHEREAS, the Erie County Sheriff, upon information and belief, is violating the above minimum standard regulations relating to the management and affairs of a local correctional facility, it is hereby

RECOMMENDED, that the Erie County Sheriff undertake remedial action to improve the conditions of confinement for inmates incarcerated at the Erie County Holding Center, by assigning inmates to proper housing in accordance with the limitations and conditions of the Maximum Facility Capacity of the facility, as previously issued by the Commission; and it is further

RECOMMENDED, that the Erie County Sheriff establish and schedule a system of inmate visitation that does not serve to frustrate or obstruct visitors, wherein inmates have the opportunity to engage in two hours of contact visitation each week, and it is further

RECOMMENDED, that the Erie County Sheriff institute a system of inmate discipline

wherein each inmate is provided a copy of the written rules of conduct, administrative segregation pending a disciplinary hearing is employed only where necessary to preserve the safety, security, and good order of the facility, the reasons therefore provided to the inmate in writing, and such segregation is reviewed and only continued upon order of the chief administrative officer, and it is further

RECOMMENDED, that the Erie County Sheriff establish, implement and maintain a formal inmate grievance program wherein inmates are provided instructions for filing a grievance, forms are readily available, and timely determinations are rendered initially and upon any subsequent appeal, and it is further

RECOMMENDED, that the Erie County Sheriff ensure that inmates determined to warrant constant supervision are provided the rights and services guaranteed by Commission regulations, including sheets and bedding, hygiene products, clothing, outdoor exercise, legal reference materials, religious services and articles, printed materials and publications, and incoming correspondence, and it is further

RECOMMENDED, that the Erie County Sheriff make certain that feminine hygiene products are in sufficient supply to meet the needs of all female inmates of the Erie County Holding Center; and you are hereby

ORDERED AND DIRECTED to assign inmates to proper housing in accordance with the limitations and conditions of the Maximum Facility Capacity for the Erie County Holding Center; to wit, inmates may not be detained in the facility's holding areas for periods longer than that designated in the Commission's Maximum Facility Capacity; and you are further

ORDERED AND DIRECTED to make available daily, to each inmate not confined in special housing, a hot shower; and you are further

ORDERED AND DIRECTED to provide each inmate, upon admission to the facility and at facility expense, with an issue of personal health care items, including but not limited to soap, a toothbrush, toothpaste, a drinking cup, toilet paper and a bath towel; and you are further

ORDERED AND DIRECTED to provide each female inmate, at facility expense, with necessary feminine hygiene items, including but not limited to tampons and sanitary napkins; and you are further

ORDERED AND DIRECTED to provide each inmate, upon admission and at facility expense, with an issue of clean bedding in good condition; and you are further

ORDERED AND DIRECTED to conduct an initial screening and risk assessment of each inmate upon admission, and upon completion promptly place such inmate in a housing unit designated for classification purposes; and you are further

ORDERED AND DIRECTED to prepare and distribute to each prisoner, upon

admission, a written copy of the facility rules and information, which shall include instructions and procedures relative to inmate grievances; and you are further

ORDERED AND DIRECTED to develop written rules of inmate conduct, which shall include all chargeable offenses, the range of punishments that may be imposed for each violation, and a detailed description and an explanation of the facility's disciplinary procedures; and you are further

ORDERED AND DIRECTED to provide a copy of the written rules of inmate conduct to each inmate upon admission to the facility; and you are further

ORDERED AND DIRECTED to employ the administrative segregation of an inmate pending a disciplinary hearing only where necessary to preserve the safety, security, and good order of the facility; and you are further

ORDERED AND DIRECTED to provide any inmate so administratively segregated pending a disciplinary hearing, within 24 hours of such confinement, a written statement setting forth the reasons for such confinement, to which the inmate shall be provided an opportunity to respond orally or in writing to the chief administrative officer; and you are further

ORDERED AND DIRECTED to conduct a review of any such administrative segregation within 24 hours of confinement, by the chief administrative officer, to determine if continued confinement is warranted; and you are further

ORDERED AND DIRECTED to require all appeals of a disciplinary hearing officer's disposition and sanction be reviewed and decided within five business days after receipt, and each appealing inmate shall be notified in writing of such; and you are further

ORDERED AND DIRECTED to provide each inmate of the Erie County Holding Center an opportunity for two hours of visitation each week, with each visit lasting at least 30 minutes; and you are further

ORDERED AND DIRECTED to establish and publish a schedule of visits to ensure that each inmate has the opportunity for at least two visits per week; and you are further

ORDERED AND DIRECTED to permit any person who presents adequate proof of identity, with the inmate's consent, to visit such inmate, subject to the limitations of 9 NYCRR Part 7008; and you are further

ORDERED AND DIRECTED to refrain from denying inmate visitation to prospective visitors on the sole basis of the inability to produce documented evidence of a current address; and you are further

ORDERED AND DIRECTED to permit all inmates to congregate for the purpose of religious worship and other religious activities, subject to the limitations of 9 NYCRR Part 7024;

and you are further

ORDERED AND DIRECTED to permit all inmates to wear and possess religious medals or other religious articles, subject to the limitations of 9 NYCRR Part 7024; and you are further

ORDERED AND DIRECTED to permit all inmates to receive any printed material or publication subject to the limitations of 9 NYCRR Part 7026; and you are further

ORDERED AND DIRECTED to permit all inmates to engage in outdoor exercise consistent with and subject to the limitations of 9 NYCRR Part 7028; and you are further

ORDERED AND DIRECTED to permit all inmates access to current legal reference materials consistent with and subject to the limitations of 9 NYCRR Part 7031; and you are further

ORDERED AND DIRECTED to establish, implement and maintain a formal inmate grievance program; and you are further

ORDERED AND DIRECTED to provide any inmate incarcerated in the Erie County Holding Center access to the facility's grievance program; and you are further

ORDERED AND DIRECTED to include instructions for filing a grievance in the facility rules and information; and you are further

ORDERED AND DIRECTED to advise each inmate at the Erie County Holding Center, in writing upon admission, as to the availability of grievance forms; and you are further

ORDERED AND DIRECTED to make formal grievance forms readily available so that an inmate may file a grievance; and you are further

ORDERED AND DIRECTED to ensure that, within five business days of the receipt of a grievance, the grievance coordinator issues a written determination, a copy of such provided to the inmate; and you are further

ORDERED AND DIRECTED to ensure that, within five business days after receipt of a grievance appeal, the chief administrative officer issues a determination on the appeal and provides a copy of such determination to the inmate; and you are further

ORDERED AND DIRECTED to ensure that, within three business days after receipt of the inmate's notice of appeal to the CPCRC, the grievance coordinator mails the appeal, the accompanying investigation report and all other pertinent documents to the CPCRC; and you are further

ORDERED AND DIRECTED to ensure that the total number of inmates confined within the Erie County Holding Center does not exceed the maximum facility capacity of such facility; and you are further

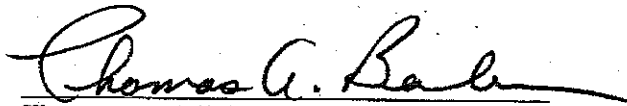
ORDERED AND DIRECTED to submit to the State Commission of Correction, by March 20, 2009, documentation substantiating compliance with this **DIRECTIVE**.

PLEASE TAKE NOTICE, that non-compliance with this **DIRECTIVE** may result in an application by the State Commission of Correction to the Supreme Court of the State of New York, pursuant to Correction Law section 46(4), for an order directing such compliance.

Dated: February 18, 2009
Albany, New York

STATE COMMISSION OF CORRECTION

By:


Thomas A. Beilein, Chairman


Daniel L. Stewart, Commissioner


Phyllis Harrison-Ross, M.D., Commissioner

EXHIBIT B

TIMOTHY B. HOWARD
SHERIFF

RICHARD T. DONOVAN
UNDERSHERIFF



ADMINISTRATIVE OFFICES
TEN DELAWARE AVENUE
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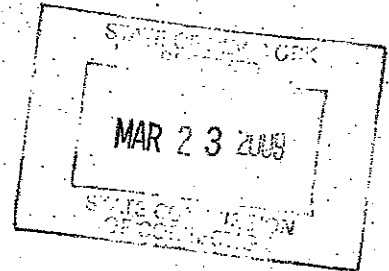
POLICE SERVICES
ONE SHERIFF'S DRIVE
ORCHARD PARK, NEW YORK 14127
(716) 662-5554
FAX (716) 662-8477
WEBSITE: <http://www.erie.gov/sheriff>

SHERIFF OF ERIE COUNTY

March 20, 2009

VIA FAX AND FEDERAL EXPRESS/PRIORITY OVERNIGHT

Chairman Thomas A. Beilein
NYS Commission of Correction
80 Wolf Road, 4th Floor
Albany, New York 12205



Re: Documentation of Compliance With Directive Issued February
18, 2009

Dear Chairman Beilein:

We are writing to submit our documentation demonstrating that the Erie County Sheriff's Office ("Sheriff's Office") is in substantial compliance with the Directive dated February 18, 2009. As is done with Cycle Audits, the Erie County Sheriff's Office has taken each "ORDERED AND DIRECTED" section contained in the Directive, retyped it below, and provided a response thereto, entitled "SHERIFF'S OFFICE RESPONSE." As set forth below, the Sheriff's Office is in substantial compliance with the Commission's Directive.

For the record, we take issue with many of the findings in your directive. Respectfully, some of the factual findings and assertions of violations are not correct. It is my understanding that in some instances your representatives conducted tours without representatives from the Sheriff's Office which may account for the factual inaccuracies. In other cases, findings were arbitrarily made. For instance, I am told that the file cabinet containing inmate grievance materials was locked during the visit (because the Captain was on vacation) so your staff assumed and concluded there was no inmate grievance process. In the future, I believe cooperation and communication between your representatives and employees of the Sheriff's Office can alleviate or eliminate factual inaccuracies. I look forward to working with you on a collaborative process in that regard in the future.

We will respond to your directives in a straightforward manner. Nothing in this response, or the exhibits hereto, should be construed by you or any third

Letter to Thomas A. Beirlein

March 20, 2009

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party as an admission that the Sheriff's Office was not in compliance prior to your visit and/or directive. In response to your directives, we submit the following:

ORDERED AND DIRECTED to assign inmates to proper housing in accordance with the limitations and conditions of the Maximum Facility Capacity for the Erie County Holding Center; to wit, inmates may not be detained in the facility's holding areas for periods longer than that designated in the Commission's Maximum Facility Capacity;

SHERIFF'S OFFICE RESPONSE

Alpha Long and Alpha Short have been opened for pre-arraignment housing. The following documents are attached hereto as Exhibit "A": 1) Memorandum from Captain Hartman to all watch commanders and supervisors dated March 13, 2009; 2) Memorandum from Chief Reardon to Captain Hartman dated March 13, 2009; 3) Jail Management Division Policy #01.00.90; and 4) Memorandum to Alpha (for posting) from Chief Reardon dated March 17, 2009.

ORDERED AND DIRECTED to make available daily, to each inmate not confined in special housing, a hot shower;

SHERIFF'S OFFICE RESPONSE

All inmates remanded to the custody of the Sheriff are given the opportunity for showers in accordance with 9 NYCRR, Chapter I and Chapter IV.

ORDERED AND DIRECTED to provide each inmate, upon admission to the facility and at facility expense, with an issue of personal health care items, including but not limited to, soap, a toothbrush, toothpaste, a drinking cup, toilet paper and a bath towel;

SHERIFF'S OFFICE RESPONSE

All inmates remanded to the custody of the Sheriff are given personal health care items, including but not limited to soap, toothbrush, toothpaste, drinking cup, toilet paper and a bath towel.

ORDERED AND DIRECTED to provide each female inmate, at facility expense, with necessary feminine hygiene items, including but not limited to tampons and sanitary napkins;

SHERIFF'S OFFICE RESPONSE

All female inmates are given necessary feminine hygiene items, including but not limited to, tampons and sanitary napkins. The items are on-hand and ordered routinely. On each shift, a supervisor is inspecting constant observation

Letter to Thomas A. Bellin

March 20, 2009

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areas of the jail and verifying that ample supplies are on hand. A copy of the supervisor checklist is attached hereto as Exhibit "B".

ORDERED AND DIRECTED to provide each inmate, upon admission and at facility expense, with an issue of clean bedding in good condition;

SHERIFF'S OFFICE RESPONSE

All inmates remanded to the custody of the Sheriff are issued clean bedding in good condition. Moreover, new mattresses were ordered some time ago; one hundred (100) new mattresses were delivered this past week and have been disseminated as appropriate. Within the past nine months, a total of two hundred (200) new mattresses have been delivered and disseminated.

ORDERED AND DIRECTED to conduct an initial screening and risk assessment of each inmate upon admission, and upon completion promptly place such inmate in a housing unit designated for classification purposes; and you are further

SHERIFF'S OFFICE RESPONSE

The Sheriff's Office has always conducted an initial screening and risk assessment in a timely fashion. We have designated areas on Alpha Long and Alpha Short to receive and house inmates after initial screening and prior to arraignment. If any of the unarraigned inmates require special housing, such housing will be made available keeping in mind that arraigned and unarraigned inmates cannot be co-mingled. See Exhibit "A".

ORDERED AND DIRECTED to prepare and distribute to each prisoner, upon admission, a written copy of the facility rules and information, which shall include instructions and procedures relative to inmate grievances,

SHERIFF'S OFFICE RESPONSE

All inmates, upon remand to the Holding Center, receive and sign for an Inmate Handbook. Your agency's finding that inmates have not received these handbooks since October 2008 is untrue. A copy of the current inmate handbook, with addendum, is attached hereto as Exhibit "C". Five thousand new handbooks were printed and are being distributed. The handbooks were ordered and printed prior to the changes in visitation hours, religious medals policy, and printed material policy. Because of the changes, an addendum is distributed with the handbook. See Exhibit "C".

ORDERED AND DIRECTED to develop written rules of inmate conduct, which shall include all chargeable offenses, the range of punishments that may be imposed for each violation, and a detailed description and an explanation of the facility's disciplinary procedures;

SHERIFF'S OFFICE RESPONSE

The written rules of inmate conduct have always been contained in the inmate handbooks. This information is contained on pages 14 through 23 of the handbook attached hereto as Exhibit "C". Also contained on these pages are all chargeable offenses, the range of punishments that may be imposed for each violation, and a detailed description and an explanation of the facility's disciplinary procedures.

It should be noted for the record that the Sheriff's Office has requested that the Commission provide technical assistance and training in inmate discipline procedures for Sheriff's Office employees. The Commission has not yet taken steps to provide the technical assistance.

ORDERED AND DIRECTED to provide a copy of the written rules of inmate conduct to each inmate upon admission to the facility;

SHERIFF'S OFFICE RESPONSE

As previously noted, all inmates upon admission to the facility are provided with inmate handbooks which contain the required information.

ORDERED AND DIRECTED to employ the administrative segregation of an inmate pending a disciplinary hearing only where necessary to preserve the safety, security, and good order of the facility,

SHERIFF'S OFFICE RESPONSE

The Administrative Segregation Pending Detention policy, Jail Management Division policy 04.02.06 is attached hereto as Exhibit "D". It complies with the Directive. Administrative segregation pending a disciplinary hearing is employed only where necessary to preserve the safety, security, and good order of the facility in accordance with New York State Commission of Correction Regulations.

ORDERED AND DIRECTED to provide any inmate so administratively segregated pending a disciplinary hearing, within 24 hours of such confinement, a written statement setting forth the reasons for such confinement, to which the inmate shall be provided an opportunity to respond orally or in writing to the chief administrative officer;

SHERIFF'S OFFICE RESPONSE

Please see Jail Management Division policy 04.02.06 attached hereto as Exhibit "D". The policy requires the Sheriff's Office to provide any inmate administratively segregated pending a disciplinary hearing, within 24 hours of

Letter to Thomas A. Bellin

March 20, 2009

Page 5

such confinement, a written statement setting forth the reasons for such confinement, to which the inmate shall be provided an opportunity to respond orally or in writing to the chief administrative officer. The form to be used for this purpose is attached hereto as Exhibit "E".

ORDERED AND DIRECTED to conduct a review of any such administrative segregation within 24 hours of confinement, by the chief administrative officer, to determine if continued confinement is warranted;

SHERIFF'S OFFICE RESPONSE

As per the Administrative Segregation Policy (Exhibit "D"), the chief administrative officer or designee reviews any administrative segregation within 24 hours and determine if it is warranted. The determination is noted on the form attached hereto as Exhibit "E".

ORDERED AND DIRECTED to require all appeals of a disciplinary hearing officer's disposition and sanction be reviewed and decided within five business days after receipt, and each appealing inmate shall be notified in writing of such;

SHERIFF'S OFFICE RESPONSE

All appeals of disciplinary hearing officer's decisions are reviewed and decided within five business days after receipt. A copy of Jail Management Division policy # 04.02.01(d) is attached hereto as Exhibit "F". Each appealing inmate is notified in writing of the decision on his appeal on a Disciplinary Appeal Form (see Exhibit "F"). We have shifted staff assignments to expedite the appeals process. We have designated the Captain to oversee all disciplinary proceedings and have designated a Chief to oversee all grievances.

It should again be noted for the record that the Sheriff's Office has requested that the Commission provide technical assistance and training in inmate discipline procedures for Sheriff's Office employees. The Commission has not yet taken steps to provide the technical assistance.

ORDERED AND DIRECTED to provide each inmate of the Erie County Holding Center an opportunity for two hours of visitation each week, with each visit lasting at least 30 minutes;

SHERIFF'S OFFICE RESPONSE

As the Commission is aware, this issue has been discussed frequently. The Sheriff's Office has advised the Commission that almost on a daily basis (less frequent on weekends) there is unused visit time, which, by logical extension, means we are providing ample opportunity for visits. The Commission's position has been there were not enough hours. After being advised of the Commission's opinion as to the necessary number of hours the Sheriff's Office should have available for visitation for the first time in the Directive of February 18, 2009, the Sheriff's Office developed and implemented Jail Management Division policy #10.06.00, attached hereto as Exhibit "G" which complies with the Directive and instruction from Commission staff. In addition, also attached as Exhibit "G" are the following documents: 1) Memorandum to Dayshift Watch Commander from First Deputy Superintendent Leary dated March 13, 2009 regarding visiting times; 2) Memorandum to Supervisors and Visiting Staff from Superintendent Donald Livingston dated March 3, 2009 regarding second form of identification; and 3) Memorandum to All Jail Management Division Staff from First Deputy Superintendent Leary dated March 9, 2009 regarding visitor identification.

To the extent any old signs reflecting previous visiting hours were found in the lobby of the Holding Center, they have been removed. Please note, the change in hours took effect after the last batch of handbooks was printed so the Inmate Handbook Addendum, (previously attached hereto in Exhibit "C") is being disseminated.

ORDERED AND DIRECTED to establish and publish a schedule of visits to ensure that each inmate has the opportunity for at least two visits per week;

SHERIFF'S OFFICE RESPONSE

The schedule has been established. (See Exhibit "G"). It is being published through the Inmate Handbook Addendum and new lobby signs have been ordered. The language of the signs is attached hereto as Exhibit "H".

ORDERED AND DIRECTED to permit any person who presents adequate proof of identity, with the inmate's consent, to visit such inmate, subject to the limitations of 9NYCRR Part 7008;

SHERIFF'S OFFICE RESPONSE

The new Inmate Visiting Policy complies with this directive. Please see Exhibits "G" and "H".

ORDERED AND DIRECTED to refrain from denying inmate visitation to prospective visitors on the sole basis of the inability to produce documented evidence of a current address; and you are further

SHERIFF'S OFFICE RESPONSE

The new Inmate Visiting Policy complies with this directive. Please see Exhibits "G" and "H".

ORDERED AND DIRECTED to permit all inmates to congregate for the purpose of religious worship and other religious activities, subject to the limitations of 9NYCRR Part 7024;

SHERIFF'S OFFICE RESPONSE¹

All inmates are permitted to congregate for the purpose of religious worship and other religious activities, subject to the limitations of 9 NYCRR Part 7024.

ORDERED AND DIRECTED to permit all inmates to wear and possess religious medals or other religious articles, subject to limitations of 9 NYCRR Part 7024;

SHERIFF'S OFFICE RESPONSE²

All inmates are permitted to wear and possess religious medals or other religious articles, subject to the limitations of 9 NYCRR Part 7024.

ORDERED AND DIRECTED to permit all inmates to receive any printed material or publication subject to the limitations of 9 NYCRR Part 7026;

SHERIFF'S OFFICE RESPONSE³

All inmates are permitted to receive any printed material or publication subject to the limitations of 9 NYCRR Part 7026.

ORDERED AND DIRECTED to permit all inmates to engage in outdoor exercise consistent with and subject to the limitations of 9 NYCRR Part 7028;

SHERIFF'S OFFICE RESPONSE⁴

¹ The Sheriff's Office is of the understanding this ORDERED AND DIRECTED and the following four (4) relate to inmates on Constant Observation, except for the revision to permitted origins of printed materials. Attached hereto as Exhibit "J" are the revised Constant Observation policy and the memorandums issued prior to the policy revision. See also Exhibit "B" which contains the One on One Daily Checklist which is being completed each shift.

² Ibid.

³ Ibid.

⁴ Ibid.

All inmates are permitted to engage in outdoor exercise consistent with and subject to the limitations of 9 NYCRR Part 7028.

ORDERED AND DIRECTED to permit all inmates access to current legal reference materials consistent with and subject to the limitations of 9 NYCRR Part 7031; and you are further

SHERIFF'S OFFICE RESPONSE⁵

All inmates are permitted access to current legal reference materials consistent with and subject to the limitations of 9 NYCRR Part 7031.

ORDERED AND DIRECTED to establish, implement and maintain a formal inmate grievance program;

SHERIFF'S OFFICE RESPONSE (Inmate Grievance Program)

A revised Inmate Grievance Program has been developed in consultation with Commission staff by First Deputy Superintendent Barbara Leary and Captain Jeffrey Hartman who have received grievance training provided by the Commission. Attached hereto as Exhibit "I" are: 1) a copy of Jail Management Division policy #04.02.05, 2) New York State Commission of Correction Grievance Form Part I and 3) New York State Commission of Correction Form Part II. The new policy and forms comply with this ORDERED AND DIRECTED and the following seven (7) ORDERED AND DIRECTED paragraphs. All newly admitted inmates are provided the Inmate Handbook which outlines the inmate grievance process. (See Exhibit "C").

In addition, we are examining the possibility of implementing an inmate telephone system to institute the equivalent of a 911 system where an inmate can anonymously request a grievance form (or medical visit). Our current telephone system provider is consulting with its technical staff. Further, there is a Request for Proposal for commissary services which includes a provision for further consideration for companies that can provide an anonymous electronic system for requesting grievances (kiosks). It is expected that a Request for Proposal will also include a request for an electronic grievance system and request for medical visits through the telephone or kiosk. In the meantime, the paper system is being used as outlined in the Inmate Grievance Program policy. (See Exhibit "I").

Finally, in response to our past requests, the Commission has scheduled the grievance training locally for April 9, 2009. We plan on having 20 students attend. This will improve the grievance process.

⁵ Ibid.

ORDERED AND DIRECTED to provide any inmate incarcerated in the Erie County Holding Center access to the facility's grievance program;

See previous response to Inmate Grievance Program and Exhibit "I".

ORDERED AND DIRECTED to include instructions for filing a grievance in the facility rules and information; and you are further

See previous response to Inmate Grievance Program and Exhibit "I".

ORDERED AND DIRECTED to advise each inmate at the Erie County Holding Center, in writing upon admission, as to the availability of grievance forms; and you are further

See previous response to Inmate Grievance Program and Exhibit "I".

ORDERED AND DIRECTED to make formal grievance forms readily available so that an inmate may file a grievance; and you are further

See previous response to Inmate Grievance Program and Exhibit "I".

ORDERED AND DIRECTED to ensure that, within five business days of the receipt of a grievance, the grievance coordinator issues a written determination, a copy of such provided to the inmate; and you are further

See previous response to Inmate Grievance Program and Exhibit "I".

ORDERED AND DIRECTED to ensure that, within five business days after receipt of a grievance appeal, the chief administrative officer issues a determination on the appeal and provides a copy of such determination to the inmate; and you are further

See previous response to Inmate Grievance Program and Exhibit "I".

ORDERED AND DIRECTED to ensure that, within three business days after receipt of the inmate's notice of appeal to the CPCRC, the grievance coordinator mails the appeal, the accompanying investigation report and all other pertinent documents to the CPCRC; and you are further

See previous response to Inmate Grievance Program and Exhibit "I".

ORDERED AND DIRECTED to ensure that the total number of inmates confined within the Erie County Holding Center does not exceed the maximum facility capacity of such facility; and you are further

We continue to be in compliance with this Directive and court order.

Letter to Thomas A. Bellein
March 20, 2009
Page 10

With respect to your recommendation found on page 12 regarding inmates on Constant Observation, we enclose the following documents attached hereto as Exhibit "J": 1) Jail Management Division Policy #13.11.90 regarding Constant Observation; 2) JMD Form 227 for suspected suicidal inmate referral; 3) Memorandum to JMD Deputies, Supervisors and Mental Health Staff dated February 13, 2009 from First Deputy Superintendent Leary regarding constant observation posts and 4) Administrative Hearing Record , Constant Observation Conditions & Restrictions Form. As outlined in these materials, we are in compliance with all directives and recommendations.

It is respectfully submitted that the Erie County Sheriff's Office is in substantial compliance with the Commission of Corrections Directive issued February 18, 2009. If we can provide anything further, please do not hesitate to contact me.

Thank you for your consideration.

Very truly yours,

TIMOTHY B. HOWARD, Sheriff

By:

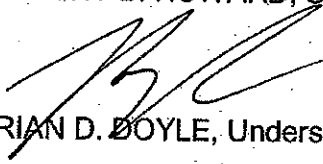

BRIAN D. DOYLE, Undersheriff

EXHIBIT C



STATE OF NEW YORK • EXECUTIVE DEPARTMENT
STATE COMMISSION OF CORRECTION
80 WOLF ROAD, 4TH FLOOR
ALBANY, NY 12205-2670
(518) 485-2346
FAX (518) 485-2467

CHAIRMAN
Thomas A. Beilein
COMMISSIONERS
Daniel L. Stewart
Phyllis Harrison-Ross, M.D.

May 22, 2009

Sheriff Timothy Howard
Erie County Sheriff's Office
10 Delaware Avenue
Buffalo, New York 14202

RE: Commission Directive – Erie County Holding Center

Dear Sheriff Howard:

The Commission has completed its review of your March 20, 2009 response to the Commission's Directive issued February 18, 2009. Since receiving your response, Commission staff have completed visits to the Holding Center to assess corrective taken to address the requirements of the Directive. Specifically, two extended site visits were made to the Holding Center on March 24-27, 2009 and April 28-May 2, 2009. This correspondence will outline the Commission's findings and status for each element listed in the Directive. However, I would first like to address some collateral issues raised in the cover letter to your response and to discuss problems with Commission staff gaining access to the Holding Center.

Your letter insinuates that in some instances Commission staff toured the facility without accompaniment by representatives of the facility administration, and as a result, obtained inaccurate information from other facility staff. Please be advised that as a courtesy, Commission staff routinely inform members of the facility administration of the areas they plan to tour and assess. Given the number of tasks to be accomplished during these visits, Commission staff cannot plan such tasks based upon availability of administrative staff, nor is the Commission's access authority [CL§46(1)] in any way contingent upon the availability of your staff. Regarding your concern that non-administrative facility staff provide inaccurate information to Commission staff, please be advised that information provided by such staff has proven to be accurate and quite beneficial in the Commission's efforts to improve the operations of the Holding Center. Commission staff are fully aware of their responsibility to verify information as part of any evaluation process, regardless of the source of information.

You also intimated that Commission staff was uncooperative by concluding that there was "no grievance process," merely because the grievance files needed for review were locked away and inaccessible. During a visit to the Holding Center, Commission staff requested to review recently submitted inmate grievances. First Deputy Superintendent Leary advised Commission staff that the grievances were locked in a file cabinet, with only Captain Hartman

able to gain access, and that Captain Hartman was on vacation. Commission staff explained that the deficiencies surrounding the grievance program would have to remain open until such time as the grievances could be reviewed and a determination made as to compliance with Part 7032. The fact that the Holding Center does not operate a viable, regulation-compliant grievance program is abundantly evident, has been evident since long before the issuance of the Directive, and is unrelated to the facility administration's inability to access its own records. Indeed, this particular incident speaks more to the failure of the Erie County Sheriff's Office to ensure access to important documents in the absence of the primary assigned staff member responsible for maintaining them. Access to vital information by facility officials or others in authority should always be maintained.

Finally, in December 2006, the Commission petitioned the State Supreme Court for an Order enforcing the Commission's lawful access to the Erie County Holding Center. As I am sure you are aware, the Order, signed by the Honorable William E. McCarthy, J.S.C., is still in effect. During the Commission's April 28 - May 2, 2009 visit, Commission staff was denied immediate entry into the Holding Center. Commission staff was informed that the tour commander was under instructions not to permit Commission staff access to the facility until a member of the facility's administration arrived. Access to the facility was delayed for 30 minutes. There was also an incident during which Commission staff requested to visit the Alpha Constant Observation Unit. A sergeant agreed to escort Commission staff. A second sergeant informed Commission staff they were not able to proceed to the area until Superintendent Koch arrived to escort them. Pending Superintendent Koch's arrival, Commission staff was escorted to and remained in the administrative conference room. Upon his arrival to the conference room, Superintendent Koch informed Commission staff that there was a "miscommunication" leading to the delay. He then escorted Commission staff to the unit. Please take notice that any further order, either written or unwritten, that delays access to the facility by Commission staff for any reason will invite contempt proceedings against you and your administration. Your compliance in this matter is required.

Please submit a plan of action to correct the deficiencies which remain open as explained in the attached Directive compliance summary. Such plan shall be forwarded to the Commission on or before **June 10, 2009**. If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,



Thomas A. Beilein
Chairman

cc: Cheryl Green, Erie County Attorney

NEW YORK STATE COMMISSION OF CORRECTION

Albany, New York



ASSESSMENT OF DIRECTIVE RESPONSE

FROM THE

**Erie County Sheriff's Office
Buffalo, New York**

May 2009

Thomas A. Beilein
Chairman

Daniel L. Stewart
Commissioner

Phyllis Harrison-Ross, M.D.
Commissioner

**ERIE COUNTY HOLDING CENTER
DIRECTIVE RESPONSE ASSESSMENT**

May 22, 2009

#1 - ORDERED AND DIRECTED (Maximum Facility Capacity)

Ordered and directed to assign inmates to proper housing in accordance with the limitations and conditions of the Maximum Facility Capacity for the Erie County Holding Center; to wit, inmates may not be detained in the facility's holding areas for periods longer than that designated in the Commission's Maximum Facility Capacity.

ECSO RESPONSE

Alpha Long and Alpha Short have been opened for pre-arraignment housing. The following documents are attached hereto as Exhibit "A": 1) Memorandum from Captain Hartman to all watch commanders and supervisors dated March 13, 2009; 2) memorandum from Chief Reardon to Captain Hartman dated March 13, 2009; 3) Jail Management Division Policy #01.00.90; and 4) Memorandum to Alpha (for posting) from Chief Reardon dated March 17, 2009.

SCOC RESPONSE ASSESSMENT AND STATUS

During multiple visits to the Holding Center, Commission staff observed an overall improvement in the timely transfer of un-arraigned prisoners from the holding tanks to either Alpha Long or Alpha Short housing units. Continued compliance with this requirement could prove difficult or impossible when the inmate population significantly increases during the summer months and Erie County continues with its refusal to board out inmates when necessary.

Commission staff noted that inmates from the Erie County Correctional Facility transferred to the Holding Center in preparation for court appearances, are detained in the holding tanks for periods exceeding four hours, a violation of the Commission's Maximum Facility Capacity document prepared in accordance with 9NYCRR, Part 7040, Maximum Facility Capacity. This deficiency remains **OPEN**.

#2 - ORDERED AND DIRECTED (Hot Showers)

Ordered and directed to make available daily to each inmate not confined in a special housing, a hot shower.

ECSO RESPONSE

All inmates remanded to the custody of the Sheriff are given the opportunity for showers in accordance with 9NYCRR, Chapter I and Chapter IV.

SCOC RESPONSE ASSESSMENT AND STATUS

Commission staff noted that the facility administration posted a written order which notifies staff that un-arraigned prisoners are not to receive showers. Further, facility policy 01.00.90 addressing the management of un-arraigned inmates states that the shower room will be off limits to un-arraigned inmates. The Erie County Sheriff's Office is applying 9NYCRR, Part 7500,

Minimum Standards and Regulations for Management of City Jails – Town and Village Lockups in the operation of housing areas in which un-arraigned inmates are detained, rather than Chapter I, 9NYCRR, Part 7000 Series, Minimum Standards and Regulations for Management of County Jails and Penitentiaries. Various facility policies and interoffice memoranda include specific requirements of Part 7500. This deficiency remains **OPEN**.

#3 - ORDERED AND DIRECTED (Personal Hygiene)

Ordered and directed to provide each inmate, upon admission to the facility and at facility expense, with an issue of personal health care items, including but not limited to soap, a toothbrush, toothpaste, a drinking cup, toilet paper and a bath towel.

ESCO RESPONSE

All inmates remanded to the custody of the Sheriff are given personal health care items, including but not limited to soap, toothbrush, toothpaste, drinking cup, toilet paper and a bath towel.

SCOC RESPONSE ASSESSMENT AND STATUS

During multiple visits to the Erie County Holding Center, Commission staff noted some improvement in providing un-arraigned prisoners with soap, a toothbrush and toothpaste, a drinking cup, and toilet paper. However, such items are not consistently being provided to un-arraigned prisoners. Also, Commission staff noted that un-arraigned prisoners are not provided with a towel.

The Erie County Sheriff's Office is applying 9NYCRR, Part 7500, Minimum Standards and Regulations for Management of City Jails – Town and Village Lockups in the operation of housing areas in which un-arraigned prisoners are detained, rather than Chapter I, 9NYCRR, Part 7000 Series, Minimum Standards and Regulations for Management of County Jails and Penitentiaries. This deficiency remains **OPEN**.

#4 - ORDERED AND DIRECTED (Feminine Hygiene)

Ordered and directed to provide each female inmate, at facility expense, with necessary feminine hygiene items, including but not limited to tampons and sanitary napkins.

ESCO RESPONSE

All inmates are given necessary feminine hygiene items, including but not limited to, tampons and sanitary napkins. The items are on-hand and ordered routinely. On each shift, a supervisor is inspecting constant observation areas of the jail and verifying that ample supplies are on hand. A copy of the supervisor checklist is attached hereto as "Exhibit B".

SCOC RESPONSE ASSESSMENT AND STATUS

During multiple visits to the Erie County Holding Center, Commission staff noted that feminine hygiene products are now being provided to female inmates. What is of serious concern, however, is the systematic breakdown in communication within the Erie County Sheriff's Office that led to the identification of this deficiency by Commission staff. At the time the deficiency

was noted, Commission staff informed the facility administration that tampons were not being provided to inmates and that a supply of tampons was not maintained at the Holding Center. The facility administration at first insisted that a supply was available within the building. The administration eventually acknowledged that no supply of tampons was maintained at the Holding Center, but that an ample supply was maintained at the Correctional Facility.

Further, the constant observation checklist developed by the Sheriff's Office does not list bras, religious articles, or rulebook as items to be issued. Also, the checklist merely lists "feminine hygiene items", and does not specify sanitary napkins or tampons.

It is imperative that necessary protocols be established and maintained to ensure that feminine hygiene products are provided to female inmates and that a sufficient supply of such products is maintained within the Holding Center proper. Since long-term compliance has yet to be established, this issue will remain **OPEN**.

#5 - ORDERED AND DIRECTED (Bedding)

Ordered and directed to provide each inmate, upon admission and at facility expense, with an issue of clean bedding in good condition.

ECSO RESPONSE

All inmates remanded to the custody of the Sheriff are issued clean bedding in good condition. Moreover, new mattresses were ordered some time ago; one hundred (100) new mattresses were delivered this past week and have been disseminated as appropriate. Within the past nine months, a total of two hundred (200) new mattresses have been delivered and disseminated.

SCOC RESPONSE ASSESSMENT AND STATUS

During multiple visits to the Erie County Holding Center, Commission staff noted that un-arraigned prisoners, while being provided a mattress in their cells, are not provided with bedding. Further, numerous mattresses throughout the facility are in extremely poor condition and need replacement.

The Erie County Sheriff's Office is applying 9NYCRR, Part 7500, Minimum Standards and Regulations for Management of City Jails – Town and Village Lockups in the operation of housing areas in which un-arraigned prisoners are detained, rather than Chapter I, 9NYCRR, Part 7000 Series, Minimum Standards and Regulations for Management of County Jails and Penitentiaries. This issue remains **OPEN**.

#6 - ORDERED AND DIRECTED (Initial Screening)

Ordered and directed to conduct an initial screening and risk assessment of each inmate upon admission, and upon completion promptly place such inmate in a housing unit designated for classification purposes.

ECSO RESPONSE

The Sheriff's Office has always conducted an initial screening and risk assessment in a timely fashion. We have designated areas on Alpha Long and Alpha Short to receive and house inmates after initial screening and prior to arraignment. If any of the un-arraigned inmates require special housing, such housing will be made available keeping in mind that arraigned and un-arraigned cannot be commingled. See Exhibit "A".

SCOC RESPONSE ASSESSMENT AND STATUS

Your assertion that the Sheriff's Office has always conducted an initial screening and risk assessment in a timely manner is incorrect. Until recently, the facility did not complete the risk assessment process for inmates placed on Constant Supervision.

Further, your assertion that arraigned and un-arraigned prisoners cannot be commingled is also incorrect. Correction Law 500-b and 9NYCRR, Part 7013, Classification prohibit the commingling of males and females, and minors and adults. Housing arraigned inmates and un-arraigned prisoners within a special housing unit is not prohibited.

During the most recent visit to the Erie County Holding Center, Commission staff noted that the facility now completes a risk assessment on all inmates admitted to the facility. However, upon completion of the risk assessment, inmates are assigned to the dormitories located in Gulf North, Foxtrot North, Foxtrot South, and Echo North housing areas. Several years ago, these areas were authorized via variance for housing inmate workers. These areas were subsequently converted to beds at standard and added to the facility's Maximum Facility Capacity with assurances from the Sheriff's Office that the areas would house only inmate workers. When only inmate workers were housed in these areas, the chief administrative officer was allowed pursuant to 9 NYCRR, Part 7003, to determine the type of supervision to be provided. Eventually, these areas were designated to serve as classification housing. These settings are inappropriate for classification housing in two important aspects.

First, these areas are not appropriate for housing inmates on whom the facility has yet to complete the processes required by 9 NYCRR, Section 7013.8. Such housing arrangements invite unacceptable safety risks to those inmates and staff. Individuals who have yet to complete the processes required by 9 NYCRR, Section 7013.8 shall be housed in an individual room or cell. Second, there is an existing Minimum Standard deficiency concerning the facility's inability to maintain *Active Supervision*, given the solid windows on the housing areas' doors. The housing of unclassified inmates in these areas requires the Holding Center to maintain *Active Supervision* at all times pursuant to 9 NYCRR, Part 7003. This deficiency, identified in 2007, has yet to be addressed by the Holding Center, although assurances that it would be addressed have been given to the Commission for quite some time. Accordingly, a recommendation will be submitted to the Commission for the removal of these housing areas from the Erie County Holding Center's Maximum Facility Capacity formulation in the near future. This issue remains OPEN.

#7 - ORDERED AND DIRECTED (INMATE RULE BOOK)

Ordered and directed to prepare and distribute to each prisoner upon admission, a written copy of the facility rules and information, which shall include instructions and procedures relative to inmate grievances.

ECSO RESPONSE

All inmates, upon remand to the Holding Center, receive and sign for an Inmate Handbook. Your agency's finding that inmates have not received these handbooks since October 2008 is untrue.

SCOC RESPONSE ASSESSMENT AND STATUS

Your response refutes the Commission's finding that inmate rulebooks were not distributed since October 2008. Be advised that the Commission's findings were based on Commission staffs' personal observations, review of documentation verifying the findings, and discussions with Erie County Sheriff's Office security staff. Additionally, inmates on Constant Supervision were not receiving the rulebook because they were not yet classified and rulebooks were being handed out during classification. In fact, the administration of the Erie County Holding Center acknowledged that the supply of inmate rulebooks had been depleted and more were on order.

During the most recent visit to the Erie County Holding Center, Commission staff noted that rulebooks were being provided to newly arraigned inmates and inmates on Constant Supervision. Un-arraigned inmates were not being issued a rulebook as required. Further, the facility may issue rulebooks at two different locations and times during the admissions process. At times, they are issued in the Intake area, while other times in the Classification Unit. This practice increases the chances of failing to provide a rulebook or issue duplicate rulebooks, thus depleting the supply at a faster rate. The documentation for rulebook issuance is not centralized.

The current facility practice regarding the issuance of inmate rule books requires the arraigned inmates to sign for the rulebook while being detained in the intake/holding area even though they do not receive the inmate rulebook until they leave the change over area.

However, inmates are not automatically provided with a rulebook when they are issued by the Classification Unit. Rather, classification staff ask inmates if they would like a rulebook. If an inmate declines a rule book, they are still required to sign their name acknowledging their receipt of a rulebook. The Erie County Sheriff's Office shall discontinue the practice of requiring inmates to sign a form acknowledging receipt of a rule book prior to receiving one. This issue remains **OPEN**.

#8 - ORDERED AND DIRECTED (Inmate Rule Book)

Ordered and directed to develop written rules of inmate conduct, which shall include all chargeable offenses, the range of punishments that may be imposed for each violation, and a detailed description and an explanation of the facility's disciplinary procedures.

ECSO RESPONSE

The written rules of inmate conduct have always been contained in the inmate handbooks. This information is contained on pages 14 through 23 of the handbook attached hereto as Exhibit "C". Also contained on these pages are all chargeable offenses, the range of punishments that may be imposed for each violation, and a detailed description and an explanation of the facility's disciplinary procedures.

It should be noted for the record that the Sheriff's Office has requested that the Commission provide technical assistance and training in inmate discipline procedures for Sheriff's Office employees. The Commission has not yet taken steps to provide the technical assistance.

SCOC RESPONSE ASSESSMENT AND STATUS

Concerning the issue regarding inmate notification of chargeable offenses, the range of punishments that may be imposed for each violation and a description and explanation of the facility's disciplinary procedures, the Holding Center was found in non compliance because the facility was not handing out rulebooks. During the last site visit Commission staff determined that rulebooks and addendum were being distributed to arraigned and constant supervision inmates, however un-arraigned inmates were not receiving the inmate rulebook or addendum. This issue will remain **OPEN**.

Concerning your assertion that the Commission has not taken steps to provide technical assistance in the area of inmate discipline please be advised that Commission staff informed then Undersheriff Doyle and Deputy Superintendent Leary that development of an inmate discipline program training course was underway at the Commission but that its completion time frame is unknown at this time. In lieu of the delivery of a formal training course, Commission staff offered to Mr. Doyle and Ms. Leary to arrange for multiple on-site information meetings during which time the various requirements of 9NYCRR, Part 7006, Discipline, would be discussed. Commission staff asked that the Sheriff's Office provide the Commission with potential dates for such meetings. As of this writing, no such dates have been proposed by the Sheriff's Office.

#9 – ORDERED AND DIRECTED (Inmate Rule Book)

Ordered and directed to provide a copy of the written rules of inmate conduct to each inmate upon admission to the facility.

ECSO RESPONSE

As previously noted, all inmates upon admission to the facility are provided with inmate handbooks which contain the required information.

SCOC RESPONSE ASSESSMENT AND STATUS

See SCOC response assessment in #7. This issue remains **OPEN**.

#10 – ORDERED AND DIRECTED (Administrative Segregation)

Ordered and directed to employ the administrative segregation of an inmate pending a disciplinary hearing only where necessary to preserve the safety, security, and good order of the facility.

ECSO RESPONSE

The Administrative Segregation Pending Detention policy, Jail Management Division policy 04.02.06 is attached hereto as Exhibit "D". It complies with the Directive. Administrative segregation pending a disciplinary hearing is employed only where necessary to preserve the safety, security, and good order of the facility in accordance with New York State Commission of Correction Regulations.

SCOC RESPONSE AND ASSESSMENT

During the most recent visit to the Erie County Holding Center, Commission staff noted that Captain Hartman was assigned to oversee the facility's inmate discipline program. After a review of numerous inmate files and other applicable documentation, Commission staff determined that administrative confinement of inmates pending a disciplinary hearing is being completed in accordance with the requirements of 9NYCRR, Part 7006, Inmate Discipline. The Erie County Sheriff's Office must establish sufficient staff coverage in the absence of Captain Hartman to ensure oversight of the inmate discipline program. In light of concerns as to whether long-term compliance can be sustained, this issue will remain **OPEN**.

#11 – ORDERED AND DIRECTED (Administrative Segregation)

Ordered and directed to provide any inmate so administratively segregated pending a disciplinary hearing, within 24 hours of such confinement, a written statement setting forth the reasons for such confinement, to which an inmate shall be provided an opportunity to respond orally or in writing to the chief administrative officer.

ECSO RESPONSE

Please see Jail Management Division policy 04.02.06 attached hereto as Exhibit "D". The policy requires the Sheriff's Office to provide any inmate administratively segregated pending a disciplinary hearing, within 24 hours of such confinement, a written statement setting forth the reasons for such confinement, to which the inmate shall be provided an opportunity to respond orally or in writing to the chief administrative officer. The form shall to be used for this purpose is attached hereto as Exhibit "E".

SCOC RESPONSE AND ASSESSMENT

During the most recent visit to the Erie County Holding Center, Commission staff noted that inmates are being provided with a written explanation as to the reasons for their confinement pending a disciplinary hearing, and are afforded the opportunity to respond orally or in writing to the chief administrative officer. Subject to continued compliance verification, this issue is **CLOSED**.

#12 – ORDERED AND DIRECTED (Administrative Segregation Review)

Ordered and directed to conduct a review of any such administrative segregation within 24 hours of confinement, by the chief administrative officer, to determine continued confinement is warranted.

ECSO RESPONSE

As per the Administrative Segregation Policy (Exhibit "D"), the chief administrative officer or designee reviews any administrative segregation within 24 hours and determine if it is warranted. The determination is noted on the form attached hereto as Exhibit "E".

SCOC RESPONSE AND ASSESSMENT

During the most recent visit to the Erie County Holding Center, Commission staff noted that reviews of administrative segregation confinement are being completed within 24 hours. Subject to continued compliance verification, this issue is **CLOSED**.

#13 – ORDERED AND DIRECTED (Disciplinary Hearing Appeals)

Ordered and directed to require all appeals of a disciplinary hearing officer's disposition and sanction be reviewed and decided within 5 business days after receipt, and each appealing inmate shall be notified in writing of such.

ECSO RESPONSE

All appeals of disciplinary hearing officer's decisions are reviewed and decided within five business days after receipt. A copy of Jail Management Division policy #04.02.01(d) is attached hereto as Exhibit "F". Each appealing inmate is notified in writing of the decision on his appeal on a Disciplinary Appeal Form (see Exhibit "F"). We have shifted staff assignments to expedite the appeals process. We have designated the Captain to oversee all disciplinary proceedings and have designated a Chief to oversee all grievances.

It should again be noted for the record that the Sheriff's Office has requested that the Commission provide technical assistance and training in inmate discipline procedures for Sheriff's Office employees. The Commission has not yet taken steps to provide the technical assistance.

SCOC RESPONSE ASSESSMENT AND STATUS

During the most recent visit to the Erie County Holding Center, Commission staff were unable to assess compliance on this issue, as there were no inmate appeals pending at that time. This issue will be assessed in the future. This issue remains **OPEN**.

#14 – ORDERED AND DIRECTED (Visitation)

Ordered and directed to provide each inmate of the Erie County Holding Center an opportunity for two hours of visitation each week, with each visit lasting at least 30 minutes.

ECSO RESPONSE

As the Commission is aware, this issue has been discussed frequently. The Sheriff's Office has advised the Commission that almost on a daily basis (less frequent on weekends) there is unused visit time, which, by logical extension, means we are providing ample opportunity for visits. The Commission's position has been there were not enough hours. After being advised of the Commission's opinion as to the necessary number of hours the Sheriff's Office should have available for visitation for the first time in the Directive of February 18, 2009, the Sheriff's Office developed and implemented Jail Management Division policy #10.06.00, attached hereto as Exhibit "G" which complies with the Directive and instruction from Commission staff. In addition, also attached is Exhibit "G" are the following documents: 1) Memorandum to Dayshift Watch Commander from First Deputy Superintendent Leary dated March 13, 2009 regarding visiting times; 2) Memorandum to Supervisors and Visiting Staff from Superintendent Donald Livingston dated March 3, 2009 regarding second form of identification; and 3) Memorandum to All Jail Management Division Staff from First Deputy Superintendent Leary dated March 9, 2009 regarding visitor identification.

SCOC RESPONSE ASSESSMENT AND STATUS

During multiple visits to the Erie County Holding Center, Commission staff observed the entire visitation process and reviewed numerous documents. The Commission notified the Erie County Sheriff's Office that the minimum number of required hours for contact visitation per week is 41. This number is based on the facility's inmate population and the number of available inmate visitation seats. The number of hours required also assumes an efficient visitation process and all visitors who are eligible for a visit receive a visit. Commission staff's observations found the facility visitation process was extremely flawed and inefficient. Additionally numerous visitors are denied a visit for reasons that violate the requirements of 9 NYCRR, Part 7008. Commission staff also observed numerous visits being terminated for reasons that also violate the requirements of Part 7008. Empty visitation seats, as referenced in your response, would not exist if the visitation process was streamlined to maximize efficiencies, all visitors were allowed to visit, and visits were not terminated in violation of 9 NYCRR, Part 7008. Even with an increase in efficiencies, the facility may again have to expand the visitation into the evening shift.

Start Times - Visits do not start at the times indicated on the posted schedule. For example, morning visitation is scheduled (posted) to commence at 7:00a.m. However, that does not occur, as the facility utilizes the visiting room for staff lineup and briefing at that time. The first visit often commences between 7:15am or 7:45am, or even later. Such late starts disrupt the remaining visitation sessions.

Waiting - Visitors are often required to wait for upwards of 45-60 minutes prior to being called into the visiting room. At times, visitors, after having successfully passed through the lobby entrance magnetometer, often wait upwards of 45-60 minutes, only to be told that the inmate they are visiting is either at court or incarcerated at the Erie County Correctional Facility in Alden.

Age Limitations — 9 NYCRR, Section 7008.5(d) states that a prospective visitor who is under 18 years of age may be restricted from visiting a prisoner if he is not accompanied by a parent or legal guardian, or the chief administrative officer may require a prospective visitor under 18 years of age not accompanied by a parent or legal guardian to provide written permission from a parent or legal guardian approving such visit. Commission staff observed several Sheriff's Office documents that conflicted with one another and the requirements of this part. The first document states that ".....the visitor who is under 18 years of age..." The second document states that ".....the visitor who is under 21 years of age..." The third document is actually a sign hanging in the entrance to the visiting lobby that states, in part, ".....the visitor who is under 16 years of age..." Commission staff noted justifiable confusion among Holding Center visitation staff regarding at the age a visitor needed a parent or guardian's permission to visit. The facility corrected the documentation to reflect "under the age of 18", however, the sign in the visiting area still stated "...under the age of 16..."

Clothing — 9 NYCRR, Section 7008.7(b) states that all prospective visitors may be searched solely to ensure that they possess no contraband. 9 NYCRR, Section 7008.8 states that consistent with the requirements of the Part, the visitation of a prisoner with a particular visitor may be denied, revoked or limited only when it is determined that such visitation would cause a threat to the safety, security or good order of the facility or the facility or the safety, security or health of the prisoners. When such denials, revocations, or limitations are implemented, a written explanation shall be provided to all affected by the decision.

The facility employs an arbitrary, subjective and inconsistent process in which visitors are routinely denied access to visits for wearing what is deemed by, in most cases, a lone visitation officer to be improper clothing. While present during the visitation process, Commission staff observed that of all the visitors denied a visit, with the exception of one, were turned away from visitation because of one officer's subjective opinion that the visitors' clothing was inappropriate. Commission staff witnessed visitors turned away for several of the following unjustified reasons: Orange with green pin striped polo shirt, sleeves too short, hooded sweatshirt, oversized pants, suit coat, dress above the knee, overalls, tank tops, long sleeves that cannot be rolled up to the elbow, or shirt too tight, to name several. Apart from causing confusion among staff, visitors and inmates, these denials of visitation violate Part 7008.

Commission staff observed several female visitors turned away because their blouses were considered "too tight." Conversely, overweight female visitors wearing tight shirts/blouses were allowed to visit without question. The denied visitors were advised by the deputy that they would not be allowed to visit wearing that particular shirt/blouse, and would be required to wear a t-shirt over the shirt/blouse in order to receive a visit. Several visitors left the Holding Center, purchased t-shirts at a nearby store, returned to the Holding Center wearing the T-shirts, and were allowed a visit. Some were overheard complaining that because the local store (a few blocks from the Holding Center) did not have their size T-shirt, they would have to

travel by car to a WalMart store several miles away. There is no valid justification for discouraging and otherwise impeding visitation in this manner.

Several other female visitors were given a "shirt warning" by the deputy assigned to the visiting room magnetometer. Numerous other visitors arrived at the Holding Center either wearing white T-shirts over their shirts/blouses or were in possession of white T-shirts in anticipation of a visit denial.

Several visitors were denied visits because of their footwear. Those not wearing sneakers or "soft shoes" (as described by visitation deputies) were informed that they could not visit wearing work boots or dress shoes (with or without high heels). Some individuals were offered shower sandals provided by the Holding Center and allowed to visit wearing the sandals. Others were not afforded the opportunity to wear the sandals and were denied a visit. This policy is not based on legitimate security concerns, as the footwear is scanned by the magnetometer and the visiting tables' under-table partitions are solid from top to bottom.

It should be noted that when one visitor requested to speak with a supervisor concerning the decision to deny a visit, the visitor was told that the visitation officer's decision was final. The final decision to deny a visitor a visit shall be made by the chief administrative officer since such documentation will have to be produced in accordance with the requirements of 9 NYCRR, Section 7008.8.

In accordance with the requirements of Part 7008, the facility has the authority to search a visitor solely to ensure that they possess no contraband. Clothing in itself does not represent a threat to the safety, security or good order of the facility until the clothing causes behaviors that constitute such a threat.

When a visitor is denied a contact visit the requirements of Part 7008.8 require that alternative arrangements for affording the prisoner the visit be made including but not limited to non-contact visits. Any determination to deny, revoke or limit a prisoner's visitation pursuant to this section shall be made by the chief administrative officer in writing and shall state the specific facts and reasons underlying such determination. A copy of the determination shall be given to any person affected by the determination. The Holding Center does not observe these requirements.

Commission staff observed visits being terminated in the visiting room for reasons including but not limited to:

1. Inmates speaking to other inmates (no warning given by deputies)
2. Inmates wearing what were viewed as gang signs on their shirt
3. A young child reaching over the visiting table
4. Inmate not wearing their issued wristband
5. Inmate wearing a blank wristband

While these terminations may indeed have been appropriate, neither affected inmates nor visitors were provided with a written explanation pursuant to 9 NYCRR, Section 7008.8.

Communication – The facility exhibited extremely poor communication when implementing recent changes to the visitation program. Visitors were not notified of the changes of visitation hours in advance. Further, visitation staff were not notified of the changes until that morning, just prior to commencement of the visitation program. Further, it appears the overall impact of recent changes (i.e., continued inmate movement during the lunch meal and change of shift lockdown) was not fully considered, as visitation hours conflict with mandatory facility operations (i.e., lockdown during meals and change of shift). Other examples of poor communication and inefficiencies include:

1. Visitation staff lost track of how many visitors were granted one hour visits. This resulted in delays in processing visitors, notifying housing staff, and escorting of inmate to visiting.
2. Two separate couples waited over two hours for a visit after being issued a visitation slip by the visiting desk deputy. When advised by the couples of their long wait, the deputy stated that he was on lunch break when they came into the visitation lobby and could not explain why they were not entered into the visitor waiting list.
3. Visitation staff lost track of the number of visitation slips issued. This created confusion over the length of visiting time (i.e., 30 or 60 minutes).
4. Visitation slips were incorrectly numbered, resulting in two visitors being issued the same visitation slip number.
5. Visitation staff lost track of the number of visitation slips issued, resulting in too many being issued, thus depleting the available locker space.
6. There was a breakdown between visiting staff, housing unit staff, and supervisors concerning the movement of inmates to and from visiting during a lockdown period. Based on communications between visiting staff, housing unit staff, and supervisors, it was evident that facility staff were not accustomed to escorting inmates to and from visiting (during lockdown or meal time) as was occurring the weekend day Commission staff were present to observe visiting.
7. There were obvious problems of visitation staff tracking the start times of individual visits, resulting in difficulty determining visiting end times.
8. A wheelchair-bound individual signed up for a visit. This was not communicated to staff assigned to the visiting room, as the handicap space in the room was already occupied. As a result, staff had to rearrange inmate and visitor seating.

9. During the May 2, 2009 site visit and observance of the visitation process, Commission staff found that the facility operated its visits through the lunch meal and change of shift count. Inmate movement for visiting occurred during shift lockdown. The practice of completing inmate counts while inmate movement continues to and from visiting, could be a potential violation of 9 NYCRR, Section 7003.5, Prisoner Population Counts.

Security - there were instances whereby generally accepted security precautions and practices were not observed. They included:

1. On multiple occasions, the deputy assigned to the visiting desk left the desk area, leaving his issued facility radio on the desk as well as visitors' driver's licenses unattended and accessible to the public. The computer used to track inmate housing assignments and other information was left on and accessible to the public.
2. Wheelchairs used by visitors were not scanned with a hand-held device or visually inspected upon entry into the lobby and visiting room.

#15 – ORDERED AND DIRECTED (Visitation Schedule)

Ordered and directed to establish and publish a schedule of visits to ensure that each inmate has the opportunity for at least two visits per week.

ECSO RESPONSE

The schedule has been established. (See Exhibit "G"). It is being published through the Inmate Handbook Addendum and new lobby signs have been ordered. The language of the signs is attached hereto as Exhibit "H".

SCOC RESPONSE ASSESSMENT AND STATUS

Commission staff will continue to monitor the issuance of inmate rulebooks as well as the signs in the Holding Center lobby. This issue remains **OPEN**.

#16 – ORDERED AND DIRECTED (Visitor Identification)

Ordered and directed to permit any person who presents adequate proof of identity, with the inmate's consent, to visit such inmate, subject to the limitations of 9NYCRR Part 7008.

ECSO RESPONSE

The new Inmate Visiting Policy complies with this directive. Please see Exhibits "G" and "H".

SCOC RESPONSE ASSESSMENT AND STATUS

During the most recent visits to the Erie County Holding Center, Commission staff noted that the Sheriff's Office has discontinued the practice of requiring visitors to present additional forms of identification (i.e., utility bill, etc.) beyond photo identification. However, Commission staff found that visitors were bringing the proof of address with them to the facility, because the recorded phone message regarding visitation at the Erie County Holding Center directs

visitors to bring proof of address with them to the visit. This issue remains **OPEN** until such time as the phone message is altered in conformance with compliant practice.

#17 – ORDERED AND DIRECTED (Visitor Identification)

Ordered and directed to refrain from denying inmate visitation to prospective visitors on the sole basis of the inability to produce documented evidence of a current address.

ECSO RESPONSE

The new Inmate Visiting Policy complies with this directive. Please see Exhibits "G" and "H".

SCOC RESPONSE ASSESSMENT AND STATUS

During the most recent visits to the Erie County Holding Center, Commission staff noted that the Sheriff's Office has discontinued the practice of requiring visitors to present additional forms of identification (i.e., utility bill, etc.) beyond photo identification. As mentioned previously, Commission staff found that visitors were bringing the proof of address with them to the facility, because the phone recording regarding visitation at the Erie County Holding Center directs visitors to bring proof of address with them to the visit. This issue remains **OPEN**.

#18 – ORDERED AND DIRECTED (Religion)

Ordered and directed to permit all inmates to congregate for the purpose of religious worship and other religious activities, subject to the limitations of 9 NYCRR, Part 7024.

ECSO RESPONSE

All inmates are permitted to congregate for the purpose of religious worship and other religious activities, subject to the limitations of 9 NYCRR Part 7024.

SCOC RESPONSE ASSESSMENT AND STATUS

Commission staff noted that the facility administration posted a general order which directs that inmates on Constant Observation are not allowed to attend religious activities. Further orders (deprivation orders) limiting or denying inmates access to religious worship and other religious activities lack supporting documentation and not all are approved in writing by the chief administrative officer pursuant to 9 NYCRR, 7024.11. This issue remains **OPEN**.

#19 – ORDERED AND DIRECTED (Religion)

Ordered and directed to permit all inmates to wear and possess religious medals or other religious articles, subject to the limitations of 9 NYCRR, Part 7024.

ECSO RESPONSE

All inmates are permitted to wear and possess religious medals or other religious articles, subject to the limitations of 9 NYCRR, Part 7024.

SCOC RESPONSE ASSESSMENT AND STATUS

Commission staff could not assess compliance with this issue, as no inmates under Constant Observation were wearing religious medals or articles. This issue remains **OPEN**.

#20 – ORDERED AND DIRECTED (Printed Material)

Ordered and directed to permit all inmates to receive any printed material or publication subject to the limitations of 9 NYCRR, Part 7026.

ECSO RESPONSE

All inmates are permitted to receive any printed material or publication subject to the limitations of 9 NYCRR, Part 7026.

SCOC RESPONSE ASSESSMENT AND STATUS

Commission staff verified that inmates on Constant Observation are now allowed to receive printed material and publications. This issue is **CLOSED**.

#21 – ORDERED AND DIRECTED (Exercise)

Ordered and directed to permit all inmates to engage in outdoor exercise consistent with and subject to the limitations of 9 NYCRR, Part 7028.

ECSO RESPONSE

All inmates are permitted to engage in outdoor exercise consistent with and subject to the limitations of 9 NYCRR, Part 7028.

SCOC RESPONSE ASSESSMENT AND STATUS

During the most recent visits to the Erie County Holding Center, Commission staff noted that not all female inmates housed in keeplock status are afforded the opportunity to participate in outdoor exercise. Due to insufficient hours allotted for keeplock exercise, the lack of individual exercise pens, and the need to keep separate most inmates in punitive segregation housing, the facility is unable to provide all keeplock inmates the opportunity to participate in outdoor exercise. Commission staff has suggested on numerous occasions that the Sheriff's Office consider erecting individual exercise pens in one or more of the rooftop exercise areas. This would enable the facility to provide sufficient time for keeplock exercise.

Further orders (deprivation orders) limiting or denying inmates the ability to engage in outdoor exercise lack supporting documentation and not all are approved in writing by the chief administrative officer pursuant to 9 NYCRR, 7028.6(b). This issue remains **OPEN**.

#22 – ORDERED AND DIRECTED (Legal Materials)

Ordered and directed to permit all inmates access to current legal reference materials consistent with and subject to the limitations of 9 NYCRR, Part 7031.

ECSO RESPONSE

All inmates are permitted access to current legal reference materials consistent with and subject to the limitations of 9 NYCRR, Part 7031.

SCOC RESPONSE ASSESSMENT AND STATUS

Inmates on Constant Supervision are not allowed by the facility to attend law library. Further orders (deprivation orders) limiting or denying inmates' access to legal reference materials lack supporting documentation and not all are approved in writing by the chief administrative officer. Such practices violate the requirements of 9 NYCRR, Part 7031. This issue remains OPEN.

#23 – ORDERED AND DIRECTED (Grievance Program)

Ordered and directed to establish, implement and maintain a formal inmate grievance program.

ECSO RESPONSE

A revised Inmate Grievance Program has been developed in consultation with Commission staff by First Deputy Superintendent Barbara Leary and Jeffrey Hartman who have received grievance training provided by the Commission. Attached hereto as Exhibit "I" are: 1) a copy of Jail Management Division policy #04.02.05, 2) New York State Commission of Correction Grievance Form part I and 3) New York State Commission of Correction Grievance Form Part II. The new policy and forms comply with this ORDERED AND DIRECTED and the following seven (7) ORDERED AND DIRECTED paragraphs. All newly admitted inmates are provided the Inmate Handbook which outlines the inmate grievance process. (See Exhibit "C").

In addition, we are examining the possibility of implementing an inmate telephone system to institute the equivalent of a 911 system where an inmate can anonymously request a grievance form (or medical visit). Our current telephone system provider is consulting with its technical staff. Further, there is a Request for Proposal for commissary services which includes a provision further consideration for companies that can provide an anonymous electronic system for requesting grievances (kiosks). It is expected that a Request for Proposal will also include a request for an electronic grievance system and request for medical visits through the telephone or kiosk. In the meantime, the paper system is being used as outlined in the Inmate Grievance Program policy (See Exhibit "I").

Finally, in response to our past requests, the Commission has scheduled the grievance training locally for April 9, 2009. We plan on having 20 students attend. This will improve the grievance process.

SCOC RESPONSE ASSESSMENT AND STATUS

During the most recent visits to the Erie County Holding Center, Commission staff noted that inmates continue to be told by the facility's administration that particular issues are not grievable, when in fact they are pursuant to 9 NYCRR, Part 7032. Inmates have forwarded correspondence to the Commission complaining about this very issue. The facility

administration acknowledged that they in fact informed inmates that those specific issues were not grievable.

Also, Commission staff found instances whereby housing unit staff failed to forward grievance forms (completed by inmates) to the facility's grievance coordinator for processing.

Further, the policy submitted in your response to the Directive is not the policy currently in use at the Holding Center. Please submit the current policy for review by Commission staff.

The Sheriff's Office should reconsider its proposal to purchase an electronic system which would allow inmates to anonymously request grievance forms and medical visits. It would appear that the taxpayers of Erie County would benefit more from the Sheriff's Office ensuring that facility staff are properly trained in and employ proper grievance procedures, and supervisors consistently enforce facility grievance program policies.

It is evident that the Erie County Sheriff's Office does not operate a formal grievance program in accordance with 9 NYCRR, Part 7032. Accordingly, this remains **OPEN**.

#24 – ORDERED AND DIRECTED (Grievance Program – Inmate Access)

Ordered and directed to provide any inmate incarcerated in the Erie County Holding Center access to the facility's grievance program.

ECISO RESPONSE

See previous response to Inmate Grievance Program and Exhibit "I".

SCOC RESPONSE ASSESSMENT AND STATUS

During the most recent visits to the Erie County Holding Center, Commission staff noted that the facility now makes grievance forms accessible to inmates by maintaining them on housing unit posts. Subject to continued compliance verification, this issue is **CLOSED**.

#25 – ORDERED AND DIRECTED (Grievance Program – Inmate Access)

Ordered and directed to include instructions for filing a grievance in the facility rules and information.

ECISO RESPONSE

See previous response to Inmate Grievance Program and Exhibit "I".

SCOC RESPONSE ASSESSMENT AND STATUS

During the most recent visits to the Erie County Holding Center, Commission staff noted that instructions for filing a grievance are included in the inmate rulebook. Subject to continued compliance verification, this issue is **CLOSED**.

#26 – ORDERED AND DIRECTED (Grievance Program – Inmate Notification)

Ordered and directed to advise each inmate at the Erie County Holding Center, in writing upon admission, as to the availability of grievance forms.

ECSO RESPONSE

See previous response to Inmate Grievance Program and Exhibit "I".

SCOC RESPONSE ASSESSMENT AND STATUS

See SCOC response outlined in #7. This issue remains **OPEN**.

#27 – ORDERED AND DIRECTED (Grievance Forms)

Ordered and directed to make formal grievance forms readily available so that an inmate may file a grievance.

ECSO RESPONSE

See previous response to Inmate Grievance Program and Exhibit "I".

SCOC RESPONSE ASSESSMENT AND STATUS

During the most recent visits to the Erie County Holding Center, Commission staff noted that the facility now makes grievance forms accessible to inmates by maintaining them on housing unit posts. Subject to continued compliance verification, this issue is **CLOSED**.

#28 – ORDERED AND DIRECTED (Grievance Forms)

Ordered and directed to ensure that, within five business days of the receipt of a grievance, the grievance coordinator issues a written determination, a copy of such provided to the inmate.

ECSO RESPONSE

See previous response to Inmate Grievance Program and Exhibit "I".

SCOC RESPONSE ASSESSMENT AND STATUS

Commission staff verified that the grievance coordinator was responding to grievant within five business days of receipt of the grievance. It is imperative that the Erie County Sheriff's Office assign additional staff to serve as grievance coordinator to ensure the grievance process is maintained when the primary grievance coordinator is not available. In light of concerns as to whether long-term compliance can be sustained, this issue will remain **OPEN**.

#29 – ORDERED AND DIRECTED (Grievance Appeals)

Ordered and directed to ensure that, within five business days of after receipt of a grievance appeal, the chief administrative officer issues a written determination on the appeal and provides a copy of such determination to the inmate.

ECSO RESPONSE

See previous response to Inmate Grievance Program and Exhibit "I".

SCOC RESPONSE ASSESSMENT AND STATUS

During a recent visit to the Erie County Holding Center, Commission staff noted that the grievance coordinator was on vacation and the facility administration failed to make adequate arrangements to process grievance appeals in his absence. Thus, timeframes as outlined in 9 NYCRR, Part 7032, were not observed. This issue remains **OPEN**.

#30 – ORDERED AND DIRECTED (Grievance Appeal to CPCRC)

Ordered and directed to ensure that, within three business days of after receipt of the inmate's notice appeal to the CPCRC, the grievance coordinator mails the appeal, the accompanying investigation report and all other pertinent documents to the CPCRC.

ECSC RESPONSE

See previous response to Inmate Grievance Program and Exhibit "I".

SCOC RESPONSE ASSESSMENT AND STATUS

No recent grievance appeals have been submitted to the Commission. Accordingly, compliance cannot be assessed at this time. This issue remains **OPEN**.

#31 – ORDERED AND DIRECTED (Maximum Facility Capacity)

Ordered and directed to ensure that the total number of inmates confined within the Erie County Holding Center does not exceed the maximum facility capacity of such facility.

ECSC RESPONSE

We continue to be in compliance with this Directive and Court Order.

SCOC RESPONSE ASSESSMENT AND STATUS

Commission staff verified that the facility is observing the requirements of 9 NYCRR, Part 7040, to the extent that the capacities of individual and multiple occupancy housing units are being observed. However, during the most recent visit to the Holding Center, **Commission staff noted that 41 cells and one multiple occupancy housing area (6 beds) were taken off line because they were determined to be inoperable.** Due to Erie County's failure to assign maintenance staff to the Holding Center, this will likely create problems with an anticipated increase in the inmate population in the coming months. This issue will remain **OPEN**. Commission staff will assess compliance in the future.

EXHIBIT D

TIMOTHY B. HOWARD
SHERIFF

RICHARD T. DONOVAN
UNDERSHERIFF



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SHERIFF OF ERIE COUNTY

June 8, 2009

Chairman Thomas A. Beilein
NYS Commission of Correction
80 Wolf Road, Suite 402
Albany, New York 12205

**RE: Commission Directive – Erie County Holding Center
Response to Commission Assessment of Directive Response**

Dear Chairman A. Beilein,

We are writing to submit our documentation and response to the Commission's Directive Response Assessment dated May, 22, 2009. This correspondence will follow along the previously numbered issues:

#1 - ORDERED AND DIRECTED (Maximum Facility Capacity)

Ordered and directed to assign inmates to proper housing in accordance with the limitations and conditions of the Maximum Facility Capacity for the Erie County Holding Center; to wit, inmates may not be detained in the facility's holding areas for periods longer than that designated in the Commission's Maximum Facility Capacity.

ECISO RESPONSE:

The Commission has held this order and directive open on an assumption of future non-compliance, not on conditions observed during their inspection.

#2 - ORDERED AND DIRECTED (Hot Showers)

Ordered and directed to make available daily, to each inmate not confined in special housing, a hot shower.

ECISO RESPONSE:

All inmates including pre-arraigned inmates are offered showers. Without prejudice to the ability to challenge the validity of the Commission's position, Policy 01.00.90 has been modified and staff has been instructed to meet Commission staff's assertion that inmates that would normally fall into a lock-up category will be treated under the standards for County Jails and Penitentiaries.

#3 - ORDERED AND DIRECTED (Personal Hygiene)

Ordered and directed to provide each inmate, upon admission to the facility and at facility expense, with an issue of personal health care items, including but not limited to soap, a toothbrush, toothpaste, a drinking cup, toilet paper and a bath towel.

ECSO RESPONSE:

Without prejudice to the ability to challenge the validity of the Commission's position, all inmates, including unarraigned are issued soap, toothbrush, toothpaste, drinking cup, towel and toilet paper to meet Commission staff's assertion that inmates that would normally fall into a lock-up category will be treated under the standards for County Jails and Penitentiaries.

#4 - ORDERED AND DIRECTED (Feminine Hygiene)

Ordered and directed to provide each female inmate, at facility expense, with necessary feminine hygiene items, including but not limited to tampons and sanitary napkins.

ECSO RESPONSE:

The Holding center has always provided sanitary napkins, and since February 2009, tampons. Protocols are in place to ensure that feminine hygiene products including tampons remain in stock and continue to be available to female inmates. We currently have seven cases of sanitary pads and seven cases of tampons at the Holding Center with an average daily population of 40 females housed at the Holding Center.

Constant observation check lists do not list items which require a deprivation order such as bras or religious articles. The order is individualized for each inmate as all inmates on Constant Observation are entitled to all the rights and privileges of other inmates unless specified on our constant observation administrative segregation order. The order is reviewed, signed by the Deputy Superintendent and filed in her office. Rule books are issued in booking and feminine hygiene items include both tampons and pads.

The Commission staff has kept this matter open based on an assumption of future non-compliance, not on conditions observed during their most recent inspection.

#5 - ORDERED AND DIRECTED (Bedding)

Ordered and directed to provide each inmate, upon admission and at facility expense, with an issue of clean bedding in good condition.

ECSO RESPONSE:

Without prejudice to the ability to challenge the validity of the Commission's position, every inmate upon admission is given an issue of bedding at facility expense including pre-arraigned inmates to meet Commission staff's assertion that inmates that would normally fall into a lock-up category will be treated under

the standards for County Jails and Penitentiaries. In addition, in the past several months, we have purchased and distributed 200 new mattresses. Moreover, 100 additional mattresses have been ordered.

#6 - ORDERED AND DIRECTED (Initial Screening)

Ordered and directed to conduct an initial screening and risk assessment of each inmate upon admission, and upon completion promptly place such inmate in a housing unit designated for classification purposes.

ECISO RESPONSE:

Each inmate is asked a series of questions when booked into the facility. While we considered this a screening / risk assessment for suicidal ideations and any medical conditions which may need immediate and further assessment, the Commission is clearly referring to inmate classification. We are now classifying all inmates on Constant Observation despite their mental health status. If needed, an additional classification review will be completed for those held in Constant Observation. At a recently held Supervisory Staff meeting all supervisors were advised that unclassified inmates are never to be housed in a dayroom setting. A directive from Captain Jeffrey Hartman has been issued to reinforce this order.

We have received quotes for the cost of removal of the glass from the dayroom doors and replacing them with a wire mesh security type screening. A work order has been submitted to the Erie County Department of Public Works.

#7 - ORDERED AND DIRECTED (INMATE RULE BOOK)

Ordered and directed to prepare and distribute to each prisoner, upon admission, a written copy of the facility rules and information, which shall include instructions and procedures relative to inmate grievances.

ECISO RESPONSE:

All inmates are receiving the inmate handbook in intake, at the booking desk, during the admission process. This includes both arraigned and unarraigned inmates. All inmates sign for their handbook. This practice has resulted in fewer inmates having the book in their possession once they are assigned permanent housing. It is apparent that most pre arraigned inmates are discarding their handbook when they leave for arraignment and once returned to the holding center they do not have a handbook despite our instructions to keep the book.

#8 - ORDERED AND DIRECTED (Inmate Rule Book)

Ordered and directed to develop written rules of inmate conduct, which shall include all chargeable offenses, the range of punishments that may be imposed for each violation, and a detailed description and an explanation of the facility's disciplinary procedures.

ECISO RESPONSE:

All inmates, including unarraigned, are receiving the inmate rulebook at booking.

Concerning the Commission's position that they offered multiple on site information/technical assistance meetings, we respectfully request information as to who from the Commission offered multiple on site information meetings to both Mr. Doyle and Ms. Leary and when that offer occurred (specific date). Please indicate how the trainings were to be arranged as neither Mr. Doyle nor Ms. Leary recall any formal offer being made by Commission staff. Erin Purdy did tell Ms. Leary over the telephone shortly after Chairman Beilein's visit to Erie in early January that she did not believe Erie would be afforded grievance training since "Erie has failed to send staff when the training has been offered in the past" and that there was no available formal training program for discipline. Since the February directive, Commission staff have been at the Holding Center on two extended visits and on both visits advised the administrative staff that they were under a gag order, and could not offer any technical assistance for jail operations.

#9 - ORDERED AND DIRECTED (Inmate Rule Book)

Ordered and directed to provide a copy of the written rules of inmate conduct to each inmate upon admission to the facility.

ECSO RESPONSE:

See response to #8

#10 - ORDERED AND DIRECTED (Administrative Segregation)

Ordered and directed to employ the administrative segregation of an inmate pending a disciplinary hearing only where necessary to preserve the safety, security, and good order of the facility.

ECSO RESPONSE:

As the Commission staff noted, a review of administrative confinements of inmates pending a disciplinary hearing is being completed in accordance with requirements of 9NYCRR, Part 7006. Further the assignment of conducting disciplinary hearings has been reassigned to two Lieutenants to provide sufficient coverage in one another's absence. Captain Hartman is assigned to oversee the appeal process. Again the Commission left this item open based on an assumption of future non-compliance.

#11 - ORDERED AND DIRECTED

Ordered and directed to provide any inmate so administratively segregated pending a disciplinary hearing, within 24 hours of such confinement, a written statement setting forth the reasons for such confinement, to which the inmate shall be provided an opportunity to respond orally or in writing to the chief administrative officer.

ECSO RESPONSE:

#11 Closed

#12 - ORDERED AND DIRECTED (Administrative Segregation Review)

Ordered and directed to conduct a review of any such administrative segregation within 24 hours of confinement, by the chief administrative officer, to determine if continued confinement is warranted.

ECSO RESPONSE:

#12 Closed

#13 - ORDERED AND DIRECTED (Disciplinary Hearing Appeals)

Ordered and directed to require all appeals of a disciplinary hearing officer's disposition and sanction be reviewed and decided within five business days after receipt, and each appealing inmate shall be notified in writing of such.

ECSO RESPONSE:

Commission staff advised that they will assess at a future date as no appeals were pending during their visit.

#14 - ORDERED AND DIRECTED (Visitation)

Ordered and directed to provide each inmate of the Erie County Holding Center an opportunity for two hours of visitation each week, with each visit lasting at least 30 minutes.

ECSO RESPONSE:

Staff schedules have been adjusted to allow inmates to be escorted to the visiting room prior to 7:00 a.m. to ensure that visits start at 7:00 a.m. promptly. Line up is no longer held in visits. It would seem as though the need for a mandated amount of hours for visiting time does not coincide with the actual demand. As Commission Staff noted on their last surprise inspection, the front lobby and visiting room were for the most part empty with only sporadic business between 9:00 a.m. and 12:00 noon. As Commission staff had cameras with them to document the visiting process, they were asked to take a picture of the empty lobby to document the lack of demand for visiting time. Because Commission staff did not take the photos, our staff has begun taking pictures to document the actual demand for visiting time; the allotted time is more than sufficient to meet inmate demand. Signage in the front lobby and visiting room has been replaced and is accurate. Orders have been issued that the Sergeant assigned to the visiting detail is the only person who can deny or terminate a visit to ensure consistency in following our policy and the issuance of a written explanation.

#15 - ORDERED AND DIRECTED (Visitation Schedule)

Ordered and directed to establish and publish a schedule of visits to ensure that each inmate has the opportunity for at least two visits per week.

ECSO RESPONSE:

Commission staff has indicated that they will continue to monitor the issuance of inmate handbooks and signage in the holding center lobby.

#16 - ORDERED AND DIRECTED (Visitor Identification)

Ordered and directed to permit any person who presents adequate proof of identity, with the inmate's consent, to visit such inmate, subject to the limitations of 9NYCRR Part 7008.

ECSO RESPONSE:

The phone message response has been changed, no longer reflecting that proof of address is necessary.

#17 - ORDERED AND DIRECTED (Visitor Identification)

Ordered and directed to refrain from denying inmate visitation to prospective visitors on the sole basis of the inability to produce documented evidence of a current address.

ECSO RESPONSE:

See #16

#18 - ORDERED AND DIRECTED (Religion)

Ordered and directed to permit all inmates to congregate for the purpose of religious worship and other religious activities, subject to the limitations of 9NYCRR Part 7024.

ECSO RESPONSE:

All inmates, including those on constant observation are offered attendance at religious services with the exception of those where it is indicated on their administrative segregation orders. The deprivation orders for constant observation are reviewed, signed and filed in the Deputy Superintendent's office as inmates are often placed on Constant Observation after the Deputy Superintendent has left for the day or on weekends. The Watch Commander then becomes the designee in the absence of the Deputy Superintendent. If an extended absence by the Deputy Superintendent occurs due to a vacation or illness, arrangements are in place to ensure this practice continues.

#19 - ORDERED AND DIRECTED (Religion)

Ordered and directed to permit all inmates to wear and possess religious medals or other religious articles, subject to limitations of 9 NYCRR Part 7024.

ECSO RESPONSE:

All inmates, including those on constant observation, are permitted to wear and possess religious articles, subject to the limitations of 9 NYCRR, Part 7024. No inmate has requested to wear religious medals or articles. Should a request be made, a review to ensure the safety and security of the inmate will be made.

#20 - ORDERED AND DIRECTED (Printed Material)

Ordered and directed to permit all inmates to receive any printed material or publication subject to the limitations of 9 NYCRR Part 7026.

ECSO RESPONSE:

Closed

#21 - ORDERED AND DIRECTED (Exercise)

Ordered and directed to permit all inmates to engage in outdoor exercise consistent with and subject to the limitations of 9 NYCRR Part 7028.

ECSO RESPONSE:

The issue of female keep lock recreation was discussed in detail at a recent supervisory staff meeting. All supervisors are aware that all inmates, including those on keep lock, male and female are permitted to engage in outdoor exercise subject to the limitations of 9 NYCRR, Part 7028. A log has been created for females on keep lock to record recreation times.

Further price quotes have been obtained for the construction of individual exercise pens on one of our rooftop exercise areas. Additionally we would like to explore replacing windows in the gymnasium to allow fresh air as other jails have been allowed to utilize the indoor gym if fresh air is available. We are working to identify funding for these projects.

#22 - ORDERED AND DIRECTED (Legal Materials)

Ordered and directed to permit all inmates access to current legal reference materials consistent with and subject to the limitations of 9 NYCRR Part 7031.

ECSO RESPONSE:

All inmates, including those on constant observation, are permitted access to current legal reference material consistent with and subject to the limitations of 9 NYCRR, Part 7031. At a recent supervisory staff meeting the issue was discussed in detail. Signed orders are filed in the Deputy Superintendent's office.

#23 - ORDERED AND DIRECTED (Grievance Program)

Ordered and directed to establish, implement and maintain a formal inmate grievance program.

ECSO RESPONSE:

A majority of our supervisory, and all of the administrative staff at the holding center recently attended a Commission sponsored grievance training session in Erie County. The Sheriff's Office is going to extreme lengths to purchase an electronic system as it seems the only way we can prove to the Commission that we operate a formal grievance program is to have a computer generated record to prove that grievances are issued and responded to in accordance with 9 NYCRR, Part 32. We maintain that our grievance program has improved significantly and will continually improve. During a site visit, we attempted to give

our grievance policy to Commission staff however our staff was told that the Commission staff could not accept it and we should mail it directly to the Commission.

#24 - ORDERED AND DIRECTED (Grievance Program – Inmate Access)

Ordered and directed to provide any inmate incarcerated in the Erie County Holding Center access to the facility's grievance program.

ECSO RESPONSE:

Closed

#25 - ORDERED AND DIRECTED (Grievance Program – Inmate Access)

Ordered and directed to include instructions for filing a grievance in the facility rules and information.

ECSO RESPONSE:

Closed

#26 - ORDERED AND DIRECTED (Grievance Program – Inmate Notification)

Ordered and directed to advise each inmate at the Erie County Holding Center, in writing upon admission, as to the availability of grievance forms.

ECSO RESPONSE:

This is explained in the inmate handbook which is distributed upon admission to the Holding Center

#27 - ORDERED AND DIRECTED (Grievance Forms)

Ordered and directed to make formal grievance forms readily available so that an inmate may file a grievance.

ECSO RESPONSE:

Closed

#28 - ORDERED AND DIRECTED (Grievance Forms)

Ordered and directed to ensure that, within five business days of the receipt of a grievance, the grievance coordinator issues a written determination, a copy of such provided to the inmate.

ECSO RESPONSE:

We have assigned additional grievance coordinators fill in and assist Chief Reardon in the grievance process. Captain Hartman is available as well as several Sergeants that attended the training on April 9, 2009.

#29 - ORDERED AND DIRECTED (Grievance Appeals)

Ordered and directed to ensure that, within five business days after receipt of a grievance appeal, the chief administrative officer issues a determination on the appeal and provides a copy of such determination to the inmate.

ECISO RESPONSE:

If an appeal is received, the appeal is reviewed immediately, usually the day received by the Chief Administrative Officer.

#30 - ORDERED AND DIRECTED (Grievance Appeal to CPCRC)

Ordered and directed to ensure that, within three business days after receipt of the inmate's notice of appeal to the CPCRC, the grievance coordinator mails the appeal, the accompanying investigation report and all other pertinent documents to the CPCRC.

ECISO RESPONSE:

We have sent grievance appeals to the CPCRC as we have received responses to the appeals. We are continuing to work to improve the grievance process and believe remarkable progress in this area should be noted and we are committed to this effort.

#31 - ORDERED AND DIRECTED (Maximum Facility Capacity)

Ordered and directed to ensure that the total number of inmates confined within the Erie County Holding Center does not exceed the maximum facility capacity of such facility.

ECISO RESPONSE:

As the Commission is aware, we have continually requested help in maintaining the building. We have reduced the number of out of order cell space to the low teens and have assigned a supervisor to inspect cells on a daily basis. Bids are in the process for the repair of 31 linear showers, and we are developing a painting schedule for cells.

If you are in need of further information please feel free to contact me.

Sincerely,



ROBERT KOCH
SUPERINTENDENT

RK/all

cc: Sheriff Timothy B. Howard
Erie County Attorney Cheryl Green

EXHIBIT E

**NEW YORK STATE
COMMISSION OF CORRECTION**



November 2006

MAXIMUM FACILITY CAPACITY

for

Erie County Holding Center

in

Buffalo, New York

NOTE: ONLY INDIVIDUAL HOUSING UNITS AND MULTIPLE OCCUPANCY HOUSING UNITS WHICH MEET THE FOLLOWING REQUIREMENTS PURSUANT TO 9 NYCRR PART 7040 ARE TO BE INCLUDED IN THIS CAPACITY FORMULATION.

INDIVIDUAL OCCUPANCY HOUSING UNITS:

1. Each such unit shall only house 1 inmate and contain at least 60 square feet of floor space.
2. Each such unit shall contain:
1 bed and mattress;
1 functioning toilet; and
1 functioning sink.
3. At least 1 functioning shower shall be available for each tier/section of such units.

EXCEPTIONS:

1. A unit may contain less than 60 square feet of floor space if such unit was originally constructed for single occupancy or rated for single occupancy by the Commission of Correction.
2. Each such unit used to house inmates apart from general population for the purpose of medical observation or treatment shall have a minimum of 80 square feet of floor space.
3. Required equipment (bed, mattress, toilet, sink) may be modified or excluded for units used for short term medical/mental health observation of inmates when the presence of such equipment may pose a threat to such inmates or to the safety or security of the facility.

MULTIPLE OCCUPANCY HOUSING UNITS:

1. Each such unit shall provide a minimum of 50 square feet of floor space per inmate in the sleeping area.
2. Each such unit shall house no more than 60 inmates.
3. Each such unit shall have a bed and mattress for each inmate.
4. Each such unit shall have at least:
1 functioning toilet for every 12 inmates;
1 functioning shower for every 15 inmates; and
1 functioning sink for every 12 inmates.
5. Each such unit shall provide a minimum of 25 square feet of dayroom space immediately adjacent and accessible to the sleeping area.

MAXIMUM FACILITY CAPACITY
ERIE COUNTY HOLDING CENTER

DATE: November 8, 2006

I. A. INDIVIDUAL OCCUPANCY HOUSING UNITS USED FOR GENERAL HOUSING

Name of Housing Area/Section	Number of Individual Housing Units	Total Size of Unit (Sq. Ft. of Floor Space)	# of Shower Available per Section	Proposed Inmate Capacity
Bravo Seg.	8	47.00	2	8
Bravo Long	28	47.00	2	28
Bravo Short	22	37.00	2	22
Charlie Seg.	8	47.00	2	8
Charlie Long	28	47.00	2	28
Charlie Short	22	37.00	2	22
Echo Long ¹	28	47.00	2	28
Echo South	36	71.00	4	36
Foxtrot North	28	71.00	2	28
Foxtrot East	20	71.00	2	20
Foxtrot South	36	71.00	4	36
Gulf East	20	71.00	2	20
Gulf North	28	71.00	2	28
Gulf South ²	4	71.00	2	4

Individual Housing Unit Total: 316

¹When necessary, Echo Long may be designated as an administrative / punitive segregation housing area. When designated as such, general housing inmates shall not be housed in this housing area.

²When necessary, Gulf South may be designated as an administrative / punitive segregation housing area. When designated as such, general housing inmates shall not be housed in this housing area.

MAXIMUM FACILITY CAPACITY
ERIE COUNTY HOLDING CENTER

DATE: November 8, 2006

I. B. MULTIPLE OCCUPANCY HOUSING UNITS USED FOR GENERAL HOUSING

[illegible]

Multiple Housing Unit Total: 60

³Use of this area for general population inmates other than trustees, requires two security posts to maintain active supervision in both the dorm and day area.

MAXIMUM FACILITY CAPACITY
ERIE COUNTY HOLDING CENTER

DATE: November 8, 2006

II. A. INDIVIDUAL OCCUPANCY HOUSING UNITS USED FOR SPECIAL HOUSING

Name of Housing Area/Section	Purpose/ Type of Special Housing	Number of Individual Housing Units	Total Size of Unit (Sq. Ft. of Floor Space)	# of Showers Available per Section	Proposed Inmate Capacity
Alpha Seg.	Admin. Seg.*	8	47.00	2	8
Alpha Long	Admin. Seg.*	28	47.00	2	28
Alpha Short	Admin. Seg.*	22	37.00	2	22
Bravo Iso.	Admin./Pun. Seg.	1	44.00	1	0
Charlie Iso.	Admin./Pun. Seg.	1	44.00	1	0
Delta Seg.	Admin. Seg.	8	37.00	2	8
Delta Long	Forensic	27	47.00	3	27
Delta Short	Forensic	22	37.00	2	22
Delta North	Forensic	13	85.00	1	13
Delta East	Forensic	10	85.00	1	10
Delta Female	Medical	5	97.00	1	5
Delta Male	Medical	4	72.00	1	4
Delta Observ. 59	Medical/Forensic	1	90.00	1	1
Delta Observ. 73	Medical/Forensic	1	77.00	1	1
Echo Short	Admin./Pun. Seg. ⁴	22	37.00	2	22
Echo North/East	Admin. Seg.*	48	71.00	4	48

Individual Special Housing Unit Total: 219

* Administrative segregation designation includes pre-arraigned detainee housing and / or classification housing.

⁴When necessary, Echo Short may be designated as a general housing area. When designated as such, inmates subject to administrative / punitive segregation shall not be housed in this housing area.

MAXIMUM FACILITY CAPACITY
ERIE COUNTY HOLDING CENTER

DATE: November 8, 2006

II. B. MULTIPLE OCCUPANCY HOUSING UNITS USED FOR SPECIAL HOUSING

[illegible]

Multiple Special Housing Unit Total: 16

MAXIMUM FACILITY CAPACITY
ERIE COUNTY HOLDING CENTER

DATE: November 8, 2006

II. C. NON-STANDARD HOUSING UNITS USED FOR SPECIAL HOUSING

Name of Housing Area/Section	Number of Toilets	Number of Sinks	Total Size of Unit (Sq. Ft. of Floor Space)	Holding Capacity	Description of use (limit as to use, time frame, etc.)
HOLDING AREAS					
Court Hold #1	1	1	281.00	18	These cells and pens may be used for short term individual and multiple occupancy <u>holding</u> of inmates providing supervision is maintained pursuant to Part 7003 of 9NYCRR. The facility shall limit individual occupancy holding to 12 hours. Multiple occupancy holding shall be limited to four (4) hours.
Court Hold #2	1	1	135.00	9	
Court Hold #3	1	1	194.00	12	
Court Hold #4	1	1	266.00	17	
Court Hold #5	1	1	217.00	14	
Court Hold #6	1	1	110.00	7	
Court Hold #7	1	1	383.00	25	
Isolation #1	1	1	77.00	5	
Isolation #2	1	1	77.00	5	
Isolation #3	1	1	77.00	5	
Isolation #4	1	1	77.00	5	
Isolation #5	1	1	62.00	4	
M-Intake Pen	1	1	304.50	20	
F-Holding Pen	1	1	103.00	6	
M-Holding Pen	1	1	437.00	30	

This housing may be used only for the type of housing and for the durations shown, as listed in the right hand column. Any other use is prohibited. This housing is non-standard and will not be added to the MFC.

MAXIMUM FACILITY CAPACITY
ERIE COUNTY HOLDING CENTER

DATE: November 8, 2006

Subtotal Individual Housing Units Used for General Housing:	<u>316</u>
Subtotal Individual Housing Units Used for Special Housing:	<u>219</u>
Subtotal Multiple Housing Units Used for General Housing:	<u>60</u>
Subtotal Multiple Housing Units Used for Special Housing:	<u>16</u>

MAXIMUM FACILITY CAPACITY = 611

Other identified detention areas not included on M.F.C Yes (X) No ()

The above-noted capacity is based upon the following:

1. The number of properly equipped individual occupancy housing units, including the number of properly equipped admissions, medical and mental health and any other special housing units;
2. The number of properly equipped multiple occupancy housing units, including the number of properly equipped admissions, medical and mental health and any other special housing units; and
3. The facility ability to provide required programs and services and to comply with other rules and regulations of 9 NYCRR Chapter IV which are related to facility capacity.

Adjustments have not been made based on the facility's ability to provide required programs and services and to comply with other rules and regulations of 9 NYCRR Chapter IV which are related to facility capacity.

X Adjustments have been made based on the facility's ability to provide required programs and services and to comply with other rules and regulations of 9 NYCRR Chapter IV which are related to facility capacity. (Explain below.)

COMMENTS:

Due to violations associated with housing inmates in Bravo and Charlie isolation cells absent administrative orders or medical / MH approval, these cells remain removed pending development and implementation of Commission approved policy.

The roof leak above the Delta Female three cell housing area dayspace appears to have been repaired.

To the best of my knowledge all information contained in this formulation is correct.

Submitted by:

Deane C. McGary (FST)
(Preparer's Signature and Title)

11/8/06
(Date)

Approved by:

Robert J. Mann FPII
(Signature and Title)

11/9/06
(Date)

EXHIBIT F

P-163
ORI # 1501

NY TA POLICE DEPARTMENT
ARREST DATA FORM

PROPERTY: YES
MONEY \$ 0

7/1/09
NO

DATE: 6/7/09 INCIDENT NUMBER 09-158-0052 RIC# AFN 09-06806-15

DEFENDANT'S NAME Degate (LAST) Guerdard (FIRST) J (M)

DATE OF BIRTH 11/5/79 AGE

ARRESTING OFFICER J. Kelle ASSISTING OFFICER

ASSIGNMENT III ARREST DATE 6/7/09 ARREST TIME 0031hrs

ADDRESS OF ARREST 1391 Main St.

INCIDENT DATE 6/7/09 INCIDENT LOCATION 1391 Main St

CHARGES PL 240.20(2)(3) PL 2405.30

NARRATIVE R Ofc. responded to a call of a drunk ind on a bus Ofc. arrived and was informed that he was now inside Utica Station. Ofc. began to question the ind. who became belligerent + began swearing at Ofc. And then he had to be forcibly subdued in handcuffs

DEFENDANT'S STREET NAME/ALIASES

DEFENDANT'S ADDRESS 18 Woltz St

CITY Buffalo STATE NY ZIP CODE 14212 US CITIZEN YES NO

SOCIAL SECURITY NUMBER 01663457 MARTIAL STATUS OCCUPATION

DEFENDANT'S SEX M HEIGHT 5'7" WEIGHT 165 BUILD Small EYE COLOR Brown

HAIR COLOR Black SKIN TONE Med RACE Black ETHNICITY Non-hispanic

SCARS, MARKS, TATTOOS

WARRANTS YES NO (IF YES ATTACH COPY) DEPUTY INITIALS Satisfactory ID YES NO

COMPLAINANT'S NAME SONY RELATIONSHIP

COMPLAINANT'S ADDRESS

CITY STATE ZIP CODE PHONE NUMBER

HAS A CHEMICAL AGENT BEEN USED UPON PRISONER? Yes No

IF YES, NAME OF THE OFFICER ADMINISTERING THE CHEMICAL AGENT

VEHICLE TO IMPOUNDED? Yes No PLATE # LOCATION

TO BE ASKED BY THE PROCESSING DEPUTY (TO BE ASKED IN PRESENCE OF ARRESTING OFFICERS)

1. Are you injured?
If yes, describe injury, any bandages, stitches, etc
If yes, when were you injured? (date and time)

2. Have you received medical attention since your arrest?
(If yes, Arresting Officers are responsible for completing P-1261)

PROCESSING DEPUTY BADGE #

SUBMITTED
TO RIC

1970-1971

age H/C = 8

1500-2300 Alpha Long
(cont) Lt. Diina

Sunday June 7, 2009
Sgt. Kuppel

H/C 7
Dep Perkins 1158

507

nn, #7 Clinton

1815 GST@1158

1830 GST@1158

1845 GST@1158

1900 GST@1158

1915 GST@1158

1930 GST@1158

1931 #3 Wicks #4 Werheim escorted to medical @1158

1937 #3 Wicks #4 Werheim escorted back from medical @1158

1945 GST@1158

2000 GST@1158

2001 ~~Sgt. Kuppel on duty - clear~~

2015 GST@1158

2030 GST@1158

2045 GST@1158

2100 GST@1158

2115 GST@1158

2130 GST@1158

2131 N/E Williams Dominic 87470 to A-L #1

N/E Kearney James 119171 to A-L #8 (Diabetic)

N/E Jenkins Tim 119169 to A-L #9

N/E Kidd Angelo 94682 to A-L #10

N/E Green Gary 62069 to A-L #11

N/E Degraff 99452 to A-L #12 First Name (Guerhard)

N/E Casado Juan 4687 to A-L #13

N/E Steele Meile 5417 to A-L #14 (For Ref)

H/C 15 @1158

2145 GST@1158

2200 GST@1158

2215 GST@1158

2230 GST@1158

2245 GST@1158

2255 End of tour, All appears secure, Equip. to relief.
Perkins (Perkins) 1158

re 7, 2009
Dep. Perkins 1158
id. 111, Fire Safety
appears secure

#15 Unarranged

EXHIBIT G

**B FALO POLICE DEPARTMENT
ARREST DATA FORM**

DISTRICT OF ARREST: A
PROPERTY: YES NO
MONEY \$ 10.00

DATE 6/17/09 INCIDENT NUMBER 091680083 RIC# 09-07323-8
AFN 07323-8

DEFENDANT'S NAME Simmons James S
(LAST) (FIRST) (M)

DATE OF BIRTH 11/1/1961 AGE 47

ARRESTING OFFICER Marcus L. Fears ASSISTING OFFICER Sam Lonergan/M. Moore

DIST. A ASSIGNMENT A520 ARREST DATE 6/17/09 ARREST TIME 0825

ADDRESS OF ARREST Reading / South Park

CHARGES PL 240.20-5 PL ~~240.20-5~~ 240.26-1

NARRATIVE On above date and time The defendant did consume beer in public on the corner of Reading and South Park. Owner of NOLO gas station did call police due to suspect loitering and harassing customers. Defendant was very

DEFENDANT'S STREET NAME/ALIASES Bergerant, and uncooperative and did swear out loud on street corner at officers.

DEFENDANT'S ADDRESS 105 Caldwell PL

CITY Lackawanna STATE N.Y. ZIP CODE 14218 US CITIZEN ☒ YES ☐ NO

SOCIAL SECURITY NUMBER 118-85 0191 MARITAL STATUS OCCUPATION

DEFENDANT'S SEX M HEIGHT WEIGHT BUILD Med EYE COLOR

HAIR COLOR Blk SKIN TONE Dark RACE Black ETHNICITY AFRICAN American.

SCARS, MARKS, TATTOOS

WARRANTS ☐ YES ☒ NO (IF YES, ATTACH COPY) DEPUTY INITIALS SATISFACTORY ID ☒ YES ☐ NO

COMPLAINANT'S NAME SONY RELATIONSHIP

COMPLAINANT'S ADDRESS 1847 South Park

CITY Buffalo STATE N.Y. ZIP CODE 14220 PHONE NUMBER 851-4415

HAS A CHEMICAL AGENT BEEN USED UPON PRISONER? ☐ YES ☒ NO

IF YES, NAME OF THE OFFICER ADMINISTERING THE CHEMICAL AGENT

VEHICLE TO BE IMPOUNDED? ☐ YES ☐ NO PLATE # LOCATION

TO BE ASKED BY THE PROCESSING DEPUTY (TO BE ASKED IN PRESENCE OF ARRESTING OFFICERS)

1. Are you injured? ☐ YES ☒ NO
If yes, describe injury, any bandages, stitches etc.

If yes, when were you injured? (date and time)

2. Have you received medical attention since your arrest? ☐ YES ☒ NO
(If yes, Arresting Officers are responsible for completing P-1261)

PROCESSING DEPUTY BADGE #

10:45 Am 7/1/09 Maryanne Graham
(ARRESTING OFFICER IS RESPONSIBLE FOR: P-31, P-77C, AND DCP3-L-1)
Pg 2 55404 logbook

ADMISSIONS INFORMATION:

Delivering Officer:

Marcus L. Fears

Rank & Badge Number:

Police officer 2105

Enforcement Agency:

Buffalo Police Dept.

09 JUN 17 AM 3:23

ERIE COUNTY
HOLDING CENTER

1500-2300 Alpha Long
(cont) Lt. Isch

Wednesday June 17, 2009

Sgt. Kuppel

Dep. Perkins 1158

1730 GST @ 1158

1744 #4 Morath Brian A/P G-I CT H/C 1 @ 1158

1745 GST Dep. Perkins 10-8 @ 1158

1800 GST @ 1158

1815 GST @ 1158

1830 GST @ 1158

1840 N/I Ross Christopher 119342 to A-L #1

N/E Petrino Justin 119343 to A-L #3 (For/Ref)

N/I Thayer James 80572 to A-L #5

N/E Bishop Shawn 83877 to A-L #6

H/C 5 @ 1158

1845 GST @ 1158

1900 GST @ 1158

1915 GST @ 1158

1930 GST @ 1158

1945 GST @ 1158

2000 GST @ 1158

2014 ~~St. Kuppel cannot appear see~~

2015 GST @ 1158

2030 GST @ 1158

2045 GST @ 1158

2100 GST @ 1158

2115 GST @ 1158

2116 N/I Stokes Courtney 49254 to A-L #4 For/Ref (unrec (M))

N/E Lester Jesse 89072 to A-L #7 (For/Ref)

N/I Tarver James 103518 to A-L #8 (NO ECHO, For/Ref)

N/I Simmons James 462 to A-L #9

N/E Palmowski Mark 49519 to A-L #10 (For/Ref)

N/I Hyde Jerry 11938 to A-L #11 (For/Ref)

H/C 11 @ 1158

2130 GST @ 1158

2145 GST @ 1158

2200 GST @ 1158

2205 N/E Gidney Dana 11023 to A-L #12 (For/Ref)

N/E Cruz Jose 119346 to A-L #13 (For/Ref, seizures)

N/E Rivera, Nelson 97023 to A-L #14 (NO ECCF) H/C 14

2215 GST @ 1158

2230 GST @ 1158

2245 GST @ 1158

2255 End of tour, All appears secure, Equip. to relief. Perkins 1158 (Perkins)

EXHIBIT H

BUFFALO POLICE DEPARTMENT
ARREST DATA FORM

DISTRICT OF ARREST: E
PROPERTY: YES NO
MONEY \$

DATE 6/18/09 INCIDENT NUMBER 091690016 RICI # AFN 0907364-18

DEFENDANT'S NAME Brown Sarita L
(LAST) (FIRST) (M)

DATE OF BIRTH 3/31/73 AGE 36

ARRESTING OFFICER C. Lehner ASSISTING OFFICER G. McClean

DIST. E ASSIGNMENT E441 ARREST DATE 6/18/09 ARREST TIME 0015

ADDRESS OF ARREST 3583 Main St

CHARGES VTL 600-1a, 1192-2, 1192-2a, 1192-3

NARRATIVE 911 call of Hit + Run Property Damage Only - Description of Vehicle put over air. Veh matching Description in area, followed VEH and pulled over at 3583 Main. Comp p-t out same plate. DVW 3660. After investigation, Def did appear intoxicated.

DEFENDANT'S STREET NAME/ALIASES

DEFENDANT'S ADDRESS 185 Springville

CITY Amherst STATE NY ZIP CODE 14226 US CITIZEN ☒ YES ☐ NO

SOCIAL SECURITY NUMBER MARITAL STATUS OCCUPATION

DEFENDANT'S SEX F HEIGHT 5'4 WEIGHT 140 BUILD Thin EYE COLOR BR

HAIR COLOR Blk SKIN TONE Dark RACE Black ETHNICITY

SCARS, MARKS, TATTOOS

WARRANTS ☐ YES ☐ NO (IF YES, ATTACH COPY) DEPUTY INITIALS SATISFACTORY ID ☐ YES ☐ NO

COMPLAINANT'S NAME SONY RELATIONSHIP

COMPLAINANT'S ADDRESS

CITY STATE ZIP CODE PHONE NUMBER

HAS A CHEMICAL AGENT BEEN USED UPON PRISONER? ☐ YES ☒ NO

IF YES, NAME OF THE OFFICER ADMINISTERING THE CHEMICAL AGENT

VEHICLE TO BE IMPOUNDED? ☒ YES ☐ NO PLATE # DVW 3660 LOCATION

TO BE ASKED BY THE PROCESSING DEPUTY (TO BE ASKED IN PRESENCE OF ARRESTING OFFICERS)

1. Are you injured? ☐ YES ☒ NO
If yes, describe injury, any bandages, stitches etc.
If yes, when were you injured? (date and time)

2. Have you received medical attention since your arrest? ☐ YES ☐ NO
(If yes, Arresting Officers are responsible for completing P-1261)

PROCESSING DEPUTY M. K... BADGE # 1291

(ARRESTING OFFICER IS RESPONSIBLE FOR: P-31, P-77C, AND DCPS-L-1)

SUBMITTED
TO RICI

10:57
7/1/09
Margann
Gruber

Pg 1 SSA Joy
log book

MISSIONS INFORMATION:

Delivering Officer:

ML

Rank & Badge Number:

PPD 168238

Law Enforcement Agency:

BPD

ERIE COUNTY
HOLDING CENTER
09 JUN 18 AM 2:53

1800-2300 Alpha Short Thursday June 18, 2009
Cont. Lt. Duna Sgt. Whalen Dep. 880rd
1847 - cont - 1/m Brown, Santa to ASht-37 1CN
(108945) - NO notes for either 1/m. New

1 THC=11. P&E

1900 GSt. BE

1901 Newspaper on unit and passed. BE

1903 ③ returned from rec. BE

1915 GSt. BE

1917 1/4 Mail collected. BE

1930 GSt. BE

1945 GSt. BE

2000 GSt. BE

2015 GSt. BE

2030 GSt. BE

2035 Law library slips passed. BE

2058 Rec'd ① NH.

1/m Prince, Kylie to ASht-39. 1CN (119350)
mWOR, BCC, no other notes. THC=12. BE

2045 GSt. BE

2100 GSt. BE

2112 Sgt. Whalen (wounded) on peds. H in good order

2107 ② called medical and spoke to Lupe. 1/m #51
Castleberry, Myra complaining of severe
stomach pains. Lupe said to have
her come up w/ female escort. BE

LE-2115 GSt. BE

2120 1/m #51 Castleberry Myra to medical. BE

2130 GSt. BE

2131 Nurse Colleen on unit medical.

2145 GSt. BE

2148 Rec'd ② NH's.

1/m Ponus, Debra (98467) ECC. NO notes to A40
1/m Lott, Audrey (80513) BCC. NO notes to A41.
THC=14. P&E

2200 GSt. BE

2215 GSt. BE

2230 GSt. THC=14 verified. Unit 4D. BE

2233 Rec'd ① M. Grawel, Brittany to ASht 42 (119358) THC=15 BE

2245 GSt. BE

2255 End of tour. All equipment to relief. P&E 1375

EXHIBIT I

ORI # 1504

ARREST DATA FORM

7/1/09

MONEY \$

DATE 5/17/09

INCIDENT NUMBER 09-137-0006

RICI #

AFN 09-55831-1

DEFENDANT'S NAME Dennis

(LAST)

Childs

(FIRST)

E

(M)

DATE OF BIRTH 12/23/61

AGE

48

ARRESTING OFFICER R. Elloff

ASSISTING OFFICER

S. Meegan

ASSIGNMENT BS43

ARREST DATE 5/17/09

ARREST TIME 0536

ADDRESS OF ARREST 1050 Main

CHARGES PL 200.03, PL 110-155.25, 155.30-4

NARRATIVE a/c. S. Meegan did observe def. peeking into vehicles at 12th Street. Parking lot. When stopped def did have 1 Glass crack pipe in residence in def. pants pocket recovered by a/c. S. Meegan submitted to ccs lab. at which def found in poss. of credit belonging to Sheila Donovan. Def had no explanation who she was or how he obtained it.

DEFENDANT'S STREET NAME/ALIASES

DEFENDANT'S ADDRESS 1310 Delaware Apt 215

CITY Bklyn

STATE NY

ZIP CODE

14209

US CITIZEN ☒ YES ☐ NO

SOCIAL SECURITY NUMBER 118-

MARITAL STATUS

OCCUPATION

unemp

DEFENDANT'S SEX M

HEIGHT 6'0

WEIGHT 176

BUILD thin

EYE COLOR

Br

HAIR COLOR Blk

SKIN TONE Dark

RACE

Blk

ETHNICITY

non-Hisp

SCARS, MARKS, TATTOOS

Rt forearm

WARRANTS ☐ YES ☐ NO (IF YES, ATTACH COPY)

DEPUTY INITIALS

SATISFACTORY ID ☐ YES ☐ NO

COMPLAINANT'S NAME SONY

RELATIONSHIP none

COMPLAINANT'S ADDRESS 695 Main St

CITY Bklyn

STATE NY

ZIP CODE 14202

PHONE NUMBER 851-4403

HAS A CHEMICAL AGENT BEEN USED UPON PRISONER? ☐ YES ☒ NO

IF YES, NAME OF THE OFFICER ADMINISTERING THE CHEMICAL AGENT

VEHICLE TO BE IMPOUNDED? ☐ YES ☐ NO

PLATE #

LOCATION

TO BE ASKED BY THE PROCESSING DEPUTY (TO BE ASKED IN PRESENCE OF ARRESTING OFFICERS)

Are you injured? ☐ YES ☒ NO

If yes, describe injury, any bandages, stitches etc.

If yes, when were you injured? (date and time)

Have you received medical attention since your arrest? ☐ YES ☒ NO

(If yes, Arresting Officers are responsible for completing P-1261)

PROCESSING DEPUTY

Ad. Gaud

Gaud

BADGE #

1142

(ARRESTING OFFICER IS RESPONSIBLE FOR: P-31, P-77C, AND DCPS-1.1)

SESSIONS INFORMATION:

Arresting Officer:

P.O. REED

Rank & Badge Number:

P.O. # 3371

Law Enforcement Agency:

BPD

09 MAY 17 AM 6:03

ERIE COUNTY
HOLDING CENTER

1800-2300
(cont)Alpha Long
Lt. DiinaSunday May 17, 2009
Sgt. Kuppel

H/C 13

Dep. Perkins 158

1600 GST@1158
 1602 chow on unit all served @1158
 1614 SGT Kuppel on unit and correct Seco
 1615 GST@1158
 1629 #13 Washington Phillip escorted to medical @1158
 1630 GST@1158
 1635 Trays + Trash off unit @1158
 1643 GST@1158
 1651 #13 Washington escorted back from medical @1158
 1700 GST H/C 13 Dep. Perkins 10-10 Lunch @1158
 1715 GST @1158
 1730 GST @1158
 1745 GST Dep. Perkins 10-8 @1158
 1800 GST@1158
 1815 GST@1158
 1830 GST@1158
 1832 I called medical about #12 Pilgram Kean's ~~about~~ medication
 Kathleen said she would look into it @1158
 1845 GST@1158
 1848 #2 Anderson Cory and #13 Washington Phillip escorted to medbook
 1900 GST@1158
 1903 #3 Harvey Allan escorted to ground floor for shower
 Per Sgt. Kuppel @1158
 1905 #2 Anderson and #13 Washington escorted back from medical @1158
 1906 #9 Sawczyn Timothy escorted to ground floor for shower
 Per Sgt. Kuppel @1158
 1910 #3 Harvey escorted back from ground floor @1158
 1915 GST@1158
 1917 #9 Sawczyn escorted back from ground floor @1158
 1918 #10 Steward Antwon escorted to ground floor for shower
 Per Sgt. Kuppel
 1927 #10 Steward escorted back from ground floor @1158
 1930 GST@1158
 1945 GST@1158
 2000 GST@1158
 2005 SGT Kuppel on unit and correct Seco
 2015 GST@1158
 2030 GST@1158
 2031 NLT Dennis Childs 62121 to A-214 (For Ref, Assaultive, Dep Escort) H/C 14

7/1/09

1800-2300
(cont)Alpha Long
Lt. Diina

2046 NLTs [Signature]
 2045 GST@1158
 2100 GST@1158
 2115 GST@1158
 2130 GST@1158
 2134 NLT Krasniqi
 NLT Murray M.C.
 NLT Rogers E.M.
 H/C 17 @1158
 2145 GST@1158
 2200 GST@1158
 2201 #13 Washington r.
 2206 #13 Washington e.
 2215 GST@1158
 2223 NLT Levan Chris
 NLT Candler Lisa
 H/C 19 @1158
 2230 GST@1158
 2245 GST@1158
 2255 End of tour, all app.
 2300-0700 Alpha Long
 LT CARNEY
 2300 Received ① Radio
 complete IAH app
 appears operation
 P.P. on unit @1158
 2315 GST @ 1059 - 1002
 2330 OK @
 2331 [Signature] call
 2345 GST@
 0000 GST@
 0015 GST@
 0030 GST@
 0045 GST@
 0100 GST@
 0115 GST@
 0130 GST@
 0145 GST@
 0200 GST@

EXHIBIT J

BI FALO POLICE DEPARTMENT
ARREST DATA FORM

PROPERTY: YES NO
MONEY \$

DATE 6/14/09 INCIDENT NUMBER 09-1650083 RICI # _____ AFN 09-07188-18
DEFENDANT'S NAME YPTZER GARY F
(LAST) (FIRST) (M)
DATE OF BIRTH 3/14/79 AGE 30
ARRESTING OFFICER Marcus Fears ASSISTING OFFICER Dustin Johnson
ASSIGNMENT A520 ARREST DATE 6/14/09 ARREST TIME 0215
ADDRESS OF ARREST 2097 Seneca St.
CHARGES PL 170.14-1, 240.26-1, 240.20-1(3)

NARRATIVE Defendant was asked to leave CJ'S Bar on Seneca St. He did leave but returned with a 40oz bottle of beer. He did break the bottle and threaten the complainant and complainant's mother. Defendant did say Fuck your mother fucker I'm invincible. Defendant was drunk and
DEFENDANT'S STREET NAME/ALIASES Violent

DEFENDANT'S ADDRESS 33 Weyand St. (716) 831-8513
CITY Buffalo STATE NY ZIP CODE 14210 US CITIZEN ☒ YES ☐ NO
SOCIAL SECURITY NUMBER 114-64-1772 MARITAL STATUS Single OCCUPATION Construction
DEFENDANT'S SEX M HEIGHT 6 WEIGHT 200 BUILD Med EYE COLOR Blue
HAIR COLOR Bald SKIN TONE Light RACE White ETHNICITY Caucasian
SCARS, MARKS, TATTOOS NONE

WARRANTS ☐ YES ☒ NO (IF YES, ATTACH COPY) DEPUTY INITIALS _____ SATISFACTORY ID ☒ YES ☐ NO
COMPLAINANT'S NAME Mark A. Kozlowski RELATIONSHIP _____
COMPLAINANT'S ADDRESS 543 Penora St. UPR.
CITY Depew STATE NY ZIP CODE 14043 PHONE NUMBER (716) 683-8083

HAS A CHEMICAL AGENT BEEN USED UPON PRISONER? ☐ YES ☒ NO
IF YES, NAME OF THE OFFICER ADMINISTERING THE CHEMICAL AGENT _____

VEHICLE TO BE IMPOUNDED? ☐ YES ☒ NO PLATE # _____ LOCATION SUBMITTED

TO BE ASKED BY THE PROCESSING DEPUTY (TO BE ASKED IN PRESENCE OF ARRESTING OFFICERS)

1. Are you injured? ☒ YES ☐ NO
If yes, describe injury, any bandages, stitches etc. _____
If yes, when were you injured? (date and time) _____
2. Have you received medical attention since your arrest? ☐ YES ☐ NO
(If yes, Arresting Officers are responsible for completing P-1261)

PROCESSING DEPUTY _____ BADGE # _____

(ARRESTING OFFICER IS RESPONSIBLE FOR: P-31, P-77C, AND DCPS-L-1)

10:55 am
7/1/09
Hayann
Gruber

Pg 1 SSAD04
Logbook

ADMISSIONS INFORMATION:

Delivering Officer:

Marcus L. Fears

Rank & Badge Number:

Police officer 2105

Law Enforcement Agency:

Buffalo Police Dept.

95-2 NY 71 NAC 6002

(cont) Along
0700-1500 Lt Diina Sgt LCOESTRA

SUNDAY JUNE 14, 2009
H/C DEP DZ WILSON #180

1320 QUINN JAMES IS ESCAPE RISK H/C @ #180

1330 GST @ #180

1345 GST @ #180

1400 GST @ #180

1415 GST, 1/m JONES, ROBERT COMPLAINS OF PEPPER
SPRAY IN FACE BEING REACTIVATED, MEDICAL (KATHY)
CALLED, THEY TOLD ME TO CALL SGT TO TAKE TO
LINEN ROOM THEN UP TO MEDICAL, CENTRAL CONTROL
NOTIFIED WAITING FOR SGT TO CALL BACK @ #180

1425 1/m #4 JONES ROBERT TO LINEN ROOM ESCORTED
BY DEP RUSI @ #180 B/K @ 1435 @ #180

1427 N/I REED, DWIGHT ICN # 84341 TO AL # 7,

DERDRICK, FRAY ICN # 119272 TO AL # 8,

MOLINA, NELSON ICN # 119283 TO AL # 9 * MINOR H/C 9 @

1430 GST @ #180

1445 GST H/C 9 @ #180

1455 END OF TOUR, EQUIPMENT TO RELIEF, ALL APPEARS SAFE
AND SECURE @ THIS TIME @ #180

1500-2300 Alpha Long

Sunday June 14, 2009

1 Lt. Diina

Sgt. Whalen

Dep. Perkins 1158

1500 GST, H/C 9 received Radio III, @ Keys, @ COK, F/S appears
operational, safety check all appears secure, previous logs
read P/P on unit @ 1158

1510 10-59 10-2 @ 1158

1515 GST @ 1158

1530 GST @ 1158

1545 GST @ 1158

1600 GST @ 1158

1601 Chow on unit all served @ 1158

1615 GST @ 1158

1625 Trash off unit @ 1158

1630 GST @ 1158

1635 N/I Yetzer Gary 44766 to A-L # 10 For/Ref @ 1158

N/I Hairston James 119295 to A-L # 11 For/Ref

N/I Hood Fred 27345 to A-L # 12

N/I Morales Guillermo to A-L # 13 ICN # 84351

H/C 13 N/I's served chow @ 1158

1645 GST @ 1158

1700 GST, Dep Perkins 10-10 Lunch @ 1158

EXHIBIT K

ORI # 1501

ARREST DATA FORM

PROPERTY: YES NO
MONEY \$

DATE 7/6/09 INCIDENT NUMBER 09-181-0723 RICI# 9180 AFD 09-08191-70
DEFENDANT'S NAME MORRISON JEANNIE M
(LAST) (FIRST) (M)
DATE OF BIRTH 11/20/74 AGE 34
ARRESTING OFFICER P. Kocael ASSISTING OFFICER G. Sengbush
DIST. C ASSIGNMENT C-431 ARREST DATE 7/6/09 ARREST TIME 0005
ADDRESS OF ARREST 139 PECK
CHARGES PL 16545-S PL 16505-1 PL 165.40

NARRATIVE ABOVE DEF DID HAVE IN HER POSSESSION & UNDER CONTROL
A 2007 NISSAN VERSA^{4D} BLACK NY Reg EFT 7821 REPORTED
STOLEN 6/29/09. Det was behind The wheel with keys &
CAR RUNNING when Otcs. Responded To 911 call

DEFENDANT'S STREET NAME/ALIASES

DEFENDANT'S ADDRESS 150 E. NORTHCITY Bt10 STATE NY ZIP CODE US CITIZEN ☐ YES ☐ NOSOCIAL SECURITY NUMBER 067-62-1635 MARITAL STATUS Single OCCUPATIONDEFENDANT'S SEX F HEIGHT 5'6 WEIGHT 100 BUILD Slm EYE COLOR BRHAIR COLOR BK SKIN TONE RACE ETHNICITYSCARS, MARKS, TATTOOS Left hipWARRANTS ☐ YES ☒ NO (IF YES, ATTACH COPY) DEPUTY INITIALS JN SATISFACTORY ID ☐ YES ☐ NOCOMPLAINANT'S NAME CAROL LOUBILO RELATIONSHIP NONECOMPLAINANT'S ADDRESS 1473 Cleveland DRCITY Check STATE NY ZIP CODE 14225 PHONE NUMBER 565-0316HAS A CHEMICAL AGENT BEEN USED UPON PRISONER? ☐ YES ☐ NO

IF YES, NAME OF THE OFFICER ADMINISTERING THE CHEMICAL AGENT

VEHICLE TO BE IMPOUNDED? ☐ YES ☐ NO PLATE # LOCATION

TO BE ASKED BY THE PROCESSING DEPUTY (TO BE ASKED IN PRESENCE OF ARRESTING OFFICERS)

1. Are you injured? ☐ YES ☒ NO

If yes, describe injury, any bandages, stitches etc.

If yes, when were you injured? (date and time)

2. Have you received medical attention since your arrest? ☐ YES ☒ NO

(If yes, Arresting Officers are responsible for completing P-1261)

PROCESSING DEPUTY

RANGE #

(ARRESTING OFFICER IS RESPONSIBLE FOR: P-31, P-77C, AND DCPS-L-1)

SUBMITTED
TO RICI
10

MISSIONS INFORMATION:

Delivering Officer:

P. Kocel

Rank & Badge Number:

PO 372

Law Enforcement Agency:

BPD

ERIE COUNTY
HOLDING CENTER
09 JUL -6 AM 9:56

pg 10/4

27104 JH #1299

355

6, 2009. H/c = 11
 steller Dep. C. Scans
 11 on bench, staring @
 bench, legs folded,

bench, staring, but

in cell, staring

in cell, talking to

bench, staring @

bench, staring @

with #1 Hensley @

with #1 Hensley, back

as continuous @

in bunk, staring @

in cell, staring

ing by the gate,

got bars, staring out @

on bench, staring out @

round cell @

near the gate,

ing near the gate

near the gate

reported back to the

from the holding cage

& returning to

to cons. obs bunk #2

1500-2300 ISO#5 Constant Observation
 H/c 1

LT. Diina EGT. Whalen Dep. Hernandez
 Radio # 740. Elm Morrison, Jennie. Elm returned
 from Court and placed in ISO#5 per CPEP. see Not. form

1630 Elm Morrison lying on bunk. JH.

1635 Choo on unit. Elm Morrison eating dinner. JH #1299

1645 Elm Morrison lying on bunk. JH. #1299

1700 Elm Morrison lying on bunk. JH. #1299

1715 Elm Morrison lying on bunk. JH. #1299

1730 Elm Morrison lying on bunk. JH. #1299

1745 Elm Morrison lying on bunk. JH. #1299

1 Dep. Hernandez 10-10. Dep. Molenda 10-8. JH #1299

1800 Elm Morrison appears asleep

1815 Elm Morrison appears asleep

1830 Elm Morrison appears asleep. Dep. Molenda 10-10. JH

1 Dep. Hernandez 10-8. JH. #1299

1840 Elm Morrison taken to Medical. JH.

1850 Elm Morrison returned from Medical using bathroom. JH

1900 Elm Morrison lying on bunk. JH. #1299

1915 Elm Morrison lying on bunk. JH. #1299

1930 Elm Morrison lying on bunk. JH. #1299

1945 Elm Morrison lying on bunk. JH. #1299

2000 Elm Morrison lying on bunk. JH. #1299

2015 Elm Morrison lying on bunk. JH. #1299

2030 Elm Morrison lying on bunk. JH. #1299

2045 Elm Morrison lying on bunk. JH. #1299

2100 Elm Morrison lying on bunk - appears asleep. JH. #1299

2115 Elm Morrison lying on bunk - appears asleep. JH. #1299

2120 Dep. Molenda relieved for bathroom break. Dep. Hernandez 10-10.

2125 Dep. Hernandez 10-8. Dep. Molenda 10-10. JH. #1299

2130 Elm Morrison lying on bunk - appears asleep. JH. #1299

2145 Elm Morrison lying on bunk - appears asleep. JH. #1299

2145 Sgt. Whalen on inter.

2200 Elm Morrison lying on bunk - appears asleep. JH. #1299

2215 Elm Morrison lying on bunk - appears asleep. JH. #1299

2230 Elm Morrison lying on bunk - appears asleep. JH. #1299

2245 Elm Morrison lying on bunk - appears asleep. JH. #1299

2255 End of tour. All appears safe & secure. JH #1299

2300- ISO #5 CONSTANT OBS. TUESDAY JULY 7, 2009 [H/C=1]
 0700 LT. TSCH SGT. WEYAND-GARRETT DEP. SENG BUSCH 1262
 2301 V.S.T. [H/C=1] VERIFIED, RECEIVED RADIO #740, LOGBOOK. PREVIOUS LOGS READ, FIRE, SAFETY, SECURITY CHECK COMPLETE. ALL APPEARS SAFE AND SECURE AT THIS TIME. INMATE-MORRISON, JEANNIE-I.C.N. #23855 ON CONSTANT OBS. PER C.P.E.P. - ALL REQUIRED PAPERWORK IS ON POST. J. Sengbusch 1262 - SENG BUSCH
 2301 I/M-MORRISON, APPEARS ASLEEP ON LEFT SIDE. JAO 1262
 2315 I/M-MORRISON, APPEARS ASLEEP ON LEFT SIDE. JAO 1262
 2320 10-59/10-2 JAO 1262
 2330 I/M-MORRISON, APPEARS ASLEEP ON RIGHT SIDE. JAO 1262
 2345 I/M-MORRISON, APPEARS ASLEEP ON RIGHT SIDE. JAO 1262
 2400 I/M-MORRISON, APPEARS ASLEEP ON RIGHT SIDE. JAO 1262
 0015 I/M-MORRISON, APPEARS ASLEEP ON RIGHT SIDE. JAO 1262
 0015 SGT. FULMER and SENG BUSCH
 0030 I/M-MORRISON, APPEARS ASLEEP ON STOMACH. JAO 1262
 0031 SGT. WEYAND-GARRETT DEP. SENG BUSCH 1262
 0045 I/M-MORRISON, APPEARS ASLEEP ON STOMACH. JAO 1262
 0100 I/M-MORRISON, APPEARS ASLEEP ON STOMACH. JAO 1262
 0115 I/M-MORRISON, APPEARS ASLEEP ON STOMACH. JAO 1262
 0130 I/M-MORRISON, APPEARS ASLEEP ON STOMACH. JAO 1262
 0145 I/M-MORRISON, APPEARS ASLEEP ON STOMACH. JAO 1262
 0200 I/M-MORRISON, APPEARS ASLEEP ON RIGHT SIDE. JAO 1262
 0203 DEP. SENG BUSCH 10-10 JAO 1262 DEP. MILLER 10-P
 0215 I/M-MORRISON lying on back appears asleep. @
 0230 I/M-MORRISON lying on back appears asleep. @
 0231 DEP. MILLER 10-10 DEP. SENG BUSCH 10-8 JAO 1262
 0245 I/M-MORRISON, APPEARS ASLEEP ON LEFT SIDE. JAO 1262
 0300 I/M-MORRISON, APPEARS ASLEEP ON LEFT SIDE. JAO 1262
 0315 I/M-MORRISON, APPEARS ASLEEP ON LEFT SIDE. JAO 1262
 0330 I/M-MORRISON, APPEARS ASLEEP ON STOMACH. JAO 1262
 0345 I/M-MORRISON, APPEARS ASLEEP ON STOMACH. JAO 1262
 0400 I/M-MORRISON, APPEARS ASLEEP ON STOMACH. JAO 1262
 0415 I/M-MORRISON, APPEARS ASLEEP ON LEFT SIDE. JAO 1262
 0430 I/M-MORRISON, APPEARS ASLEEP ON LEFT SIDE. JAO 1262
 0445 I/M-MORRISON, APPEARS ASLEEP ON LEFT SIDE. JAO 1262
 0500 I/M-MORRISON, APPEARS ASLEEP ON LEFT SIDE. JAO 1262
 0515 I/M-MORRISON, APPEARS ASLEEP ON RIGHT SIDE. JAO 1262
 0520 I/M-MORRISON, TOLD TO TAKE BLANKET OFF HER HEAD TWICE, HAS YET TO COMPLY. JAO 1262
 0530 I/M-MORRISON, APPEARS ASLEEP, YET TO REMOVE BLANKET JAO 1262

(2300- ISO #5 CONSTANT O
 0700 LT. TSCH
 0545 I/M-MORRISON, APPEARS
 0600 I/M-MORRISON, APPEARS
 0615 I/M-MORRISON, APPEARS
 0630 I/M-MORRISON, APPEARS
 0632 CHOW SERVED. JAO 12
 0645 I/M-MORRISON, APPEARS
 0655 END OF TOUR, EQUIP
 AT THIS TIME. JAO
 0700-1500 ISO #5 Constant
 Lt. Webster
 0700 V.S.T. [H/C=1] Verifie
 I/M-MORRISON, JAO
 per C.P.E.P. all pa
 0715 I/M #5, Morrison
 Right side, appear
 0730 I/M, Morrison, JE
 eating breakfast.
 0745 I/M Morrison, lay
 appears to be
 0747 by Mutish
 0800 I/M Morrison, lay
 to be sleeping @
 0810 10-59/10-2 @
 0815 I/M Morrison, lay
 sleeping @
 0830 I/M Morrison, lay
 sleeping @
 0845 I/M Morrison, lay
 be sleeping @
 0900 I/M Morrison, lay
 to be sleeping @
 0915 I/M Morrison, lay in
 be sleeping @
 0930 I/M Morrison, lay
 to be sleeping @
 0945 I/M Morrison, lay
 be sleeping @
 1000 I/M Morrison, lay
 be sleeping @

CONTINUED

Page 3 of 4

7/7/09 J. Kuppel 357

JULY 7, 2009 [H/C=1]

GARRETT DEP. SENGBUSCH 1262

7:40, LOGBOOK, PREVIOUS

COMPLETE: ALL APPEARS

14TE-MORRISON, JEANNIE-

PER C.P.E.P. - ALL REQUIRED

1262 - SENGBUSCH

ON LEFT SIDE. 1262

LEFT SIDE. 1262

RIGHT SIDE. 1262

RIGHT SIDE. 1262

RIGHT SIDE. 1262

ON RIGHT SIDE. 1262

STOMACH. 1262

STOMACH. 1262

STOMACH. 1262

STOMACH. 1262

STOMACH. 1262

STOMACH. 1262

STOMACH. 1262

RIGHT SIDE. 1262

WELL 10-8-0

appear asleep. 1262

appear asleep. 1262

10-8 1262

LEFT SIDE. 1262

LEFT SIDE. 1262

LEFT SIDE. 1262

STOMACH. 1262

STOMACH. 1262

STOMACH. 1262

LEFT SIDE. 1262

LEFT SIDE. 1262

LEFT SIDE. 1262

LEFT SIDE. 1262

LEFT SIDE. 1262

ON RIGHT SIDE. 1262

OFF HER HEAD TWICE, HAS

REMOVE BLANKET 1262

(2388-

0700)

ISO. #5 CONSTANT OBS.

LT. ISCH

SGT WEYAND-BARRETT

DEP. SENGBUSCH 1262

0545 I/M-MORRISON, APPEARS ASLEEP. HAS YET TO REMOVE BLANKET. 1262

0600 I/M-MORRISON, APPEARS ASLEEP; FINALLY COMPLIANT ABOUT BLANKET. 1262

0615 I/M-MORRISON, APPEARS ASLEEP ON STOMACH. 1262

0630 I/M-MORRISON, APPEARS ASLEEP ON STOMACH. 1262

0632 EDUW SERVED. 1262

0645 I/M-MORRISON, APPEARS ASLEEP ON RIGHT SIDE. 1262

0655 END OF TOUR, EQUIPMENT TO RELIEF: ALL APPEARS SAFE AND SECURE AT THIS TIME. 1262 - SENGBUSCH

0700-1500 ISO. #5 Constant obs. Tuesday July 7, 2009 [H/C=1]

LT. Webster

Sgt. Musteller

Dep. C. Scario

0700 VST, [H/C=1] verified, received radio # 740, previous logs read, I/M-Morrison, Jeannie | len # 23855 on constant obs per C.P.E.P, all paper work on unit @

0715 I/M #5, Morrison, Jeannie laying on floor bunk on her right side, appears to be sleeping @

0730 I/M, Morrison, Jeannie laying on floor bunk, sitting up eating breakfast @

0745 I/M Morrison, laying on floor bunk, laying on H side, appears to be sleeping @

0747 1262 on unit

0800 I/M Morrison, laying on floor bunk laying on side, appears to be sleeping @

0810 1059/10-2 @

0815 I/M Morrison, laying on floor bunk on side, appears to be sleeping @

0830 I/M Morrison, laying on floor bunk on side, appears to be sleeping @

0845 I/M Morrison, laying on floor bunk on side, appears to be sleeping @

0900 I/M Morrison, laying on floor bunk on stomach, appears to be sleeping @

0915 I/M Morrison, laying on floor bunk on stomach, appears to be sleeping @

0930 I/M Morrison, laying on floor bunk, on side and appears to be sleeping @

0945 I/M Morrison, laying on floor bunk on side, appears to be sleeping @

1000 I/M Morrison, laying on floor bunk on side, appears to be sleeping @

Cont...

Iso #5 Constant Obs. Thursday, July 1st 2009 [Hk-1]

0700-1500 Lt. Webster Sgt. Musteller Dep. C Scanio

1001 10-10 Dep. C Scanio @ Dep. Bettin on post for
relief. Inmate Morrison appears calm.

1015 In Morrison lying on bunk appears calm.

1030 In Morrison lying on bunk appears calm.

1045 In Morrison lying on bunk appears calm.

1100 In Morrison lying on bunk appears calm.

1101 In Morrison talking to forensics ^{being} interviewed.C. Hunt P.F. J. Noris who is UNHdang for
Crack cocaine & methadone. Denies suicide thoughts.

Willman to Airt & Contacts follow.

1115 In Morrison ^{went} to medical.1135 In Morrison got cleared from forensics and per
Sgt. Evans got placed in Gulf-East #32.

1140 End of tour, log book and radio to control.

7/1/09
Jel
Sgt. Koppel

Page 4 of 4

EXHIBIT L

FALO POLICE DEPARTMENT
ARREST DATA FORM

DISTRICT OF ARREST: B

PROPERTY: YES ☒ NO ☐

MONEY \$ 0

DATE 6-22-09 INCIDENT NUMBER 09-173-0765 RIC# 105 PPS AFN 09-0753745

DEFENDANT'S NAME CARMICHAEL (LAST) KIMBERLY (FIRST) R (M)

DATE OF BIRTH 2-11-73 AGE 36

ARRESTING OFFICER D. O'NEILL ASSISTING OFFICER _____

DIST. B ASSIGNMENT B 411 ARREST DATE 6-22-09 ARREST TIME 1730

ADDRESS OF ARREST ~~291 W. FERRY~~ 291 W. FERRY

CHARGES PL 140.05
155.25

NARRATIVE DEF. HAVING BEEN WARNED PREVIOUSLY, DID RETURN TO
STORE PROPERTY AND STEAL MERCHANDISE VALUED @ \$48.94

DEFENDANT'S STREET NAME/ALIASES _____

DEFENDANT'S ADDRESS 442 PLYMOUTH

CITY BFLD STATE NY ZIP CODE 14209 US CITIZEN ☒ YES ☐ NO

SOCIAL SECURITY NUMBER 085607151 MARITAL STATUS SINGLE OCCUPATION NONE

DEFENDANT'S SEX F HEIGHT 5'8" WEIGHT 100 BUILD THIN EYE COLOR BROWN

HAIR COLOR BLACK SKIN TONE _____ RACE BLACK ETHNICITY _____

SCARS, MARKS (TATTOOS) FACE/NECK/BLK. LEG

WARRANTS ☐ YES ☐ NO (IF YES, ATTACH COPY) DEPUTY INITIALS _____ SATISFACTORY ID ☐ YES ☒ NO

COMPLAINANT'S NAME LEONARD STEVENS ECKERD PHARMACY RELATIONSHIP NGWE

COMPLAINANT'S ADDRESS 291 W. FERRY

CITY BFLD STATE _____ ZIP CODE _____ PHONE NUMBER 883 7991

HAS A CHEMICAL AGENT BEEN USED UPON PRISONER? ☐ YES ☒ NO

IF YES, NAME OF THE OFFICER ADMINISTERING THE CHEMICAL AGENT _____

VEHICLE TO BE IMPOUNDED? ☐ YES ☐ NO PLATE # _____ LOCATION _____

TO BE ASKED BY THE PROCESSING DEPUTY (TO BE ASKED IN PRESENCE OF ARRESTING OFFICERS)

1. Are you injured? ☐ YES ☐ NO

If yes, describe injury, any bandages, stitches etc. _____

If yes, when were you injured? (date and time) _____

2. Have you received medical attention since your arrest? ☐ YES ☐ NO

(If yes, Arresting Officers are responsible for completing P-1261)

PROCESSING DEPUTY _____ BADGE # _____

SUBMITTED
TO RIC
7/1

ERIE COUNTY
HOLDING CENTER

09 JUN 22 PM 6:11

ADMISSIONS INFORMATION:

Receiving Officer:

D. O'NEAL

Rank & Badge Number:

P.O. #3081

Enforcement Agency:

BPD BOSTON

Cont.

TUESDAY

Iso #5 Constant Obs. Thursday, July 7, 2009 H/C

- 0700-1500 Lt. Webster Sgt. Musteller Dep. C Scanio
- 1001 10-10 Dep C Scanio @ Dep Bottom on boat for relief. Inmate Morrison appears asleep
- 1015 1m Morrison lying on boat appears asleep
- 1030 1m Morrison lying on boat appears asleep
- 1045 1m Morrison lying on boat appears asleep
- 1100 1m Morrison lying on boat appears asleep
- 1101 1m Morrison talking to forensics, interviewed, @
 @Arthur P.F. J. Morris who is withdrawn for crack/cocaine & methadone. Denies suicide thought.
 Will meet to A/H + Contacts to follow.
- 1115 1m Morrison ~~took~~ ^{went} to medical @
- 1135 1m Morrison got cleared from forensics and per Sgt. Evans got placed in Gulf-East #32 @
- 1140 End of tour, log book and radio to control @

TUESDAY JULY 7, 2009

- 15²³ DEPUTIES #969 LT ISCH / SET KUPPEL / SET WHITTEN
- 1830 POST OPENED RADIO #138 ON UNIT @969
 N/I-CARMICHAEL, KIMBERLY-INDIAN, ISO #5 PER SHAWTEL, SET KUPPEL, LT ISCH / H/C @969
- 1845 I/M CARMICHAEL TALKING TO DEPUTY, STATES SHE'S SICK, NOT FEELING WELL IN HEAD, NEEDS MEDS INCREASED, STATES SHE WILL TELL COUNSELOR @969
- 1845 CARMICHAEL MAKING BED, LYING DOWN @969
- 1900 CARMICHAEL LYING ON BOAT, APPEARS SLEEPING @969
- 1915 CARMICHAEL FOLDING BLANKETS ON BOAT, FIXING HAIR @969
- 1930 CARMICHAEL LYING ON BOAT, APPEARS SLEEPING @969
- 1945 CARMICHAEL LYING ON BOAT, APPEARS SLEEPING @969
- 2000 CARMICHAEL LYING ON BOAT, ROCKING, APPEARS SLEEPING @969
- 2015 CARMICHAEL LYING ON BOAT, APPEARS SLEEPING @969
- 2030 CARMICHAEL LYING ON BOAT, APPEARS SLEEPING @969
- 2045 CARMICHAEL LYING ON BOAT, ATTEMPTING TO COVER UP WITH BLANKET, APPEARS SLEEPING @969
- 2100 CARMICHAEL LYING ON BOAT, APPEARS SLEEPING @969
- 2115 CARMICHAEL LYING ON BOAT, APPEARS SLEEPING @969
- 2130 CARMICHAEL LYING ON BOAT, APPEARS SLEEPING @969
- 2145 CARMICHAEL LYING ON BOAT, APPEARS SLEEPING @969
- 2200 CARMICHAEL LYING ON BOAT, APPEARS SLEEPING @969
- 2215 CARMICHAEL LYING ON BOAT, ROCKING, APPEARS SLEEPING @969

7/18/09
Sgt. JENKINS
359
pg 2 of 3

507 KUPPEL
507 UNREIN

WCI

25 DEC 4

(210 969)

1200
965

H/c

2009

W. J. [Signature]

2077-10-10-11

Dep: 7.7021100000000000

Log

L'aspect

10 DER

Number of hauls	<i>A. balearicum</i> (%)	<i>A. balearicum</i> + <i>A. balearicum</i> + <i>A. balearicum</i> (%)
1	100	0
2	50	50
3	33	67
4	25	75
5	20	80
6	17	83
7	14	86
8	12	88
9	11	89
10	10	90

on 10/10/2014

عنه

100

100



1000

at. 8

at C



Drain

1016

~~Step 1. H.18~~

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 84

Fig. 1. α -D-glucopyranosyl 1,6- α -D-glucopyranoside.

1000

22. 23.

Oct. 10

1036

cat: 2

not.

2

15

0000 ISO #5 Constant obs. Wednesday July 8, 2009 Pg 3 of 3
 Lt. Isal Sgt. Franklin Dep. 7/1/02 Kier 12/08

0000 I/M Carmichael appears asleep on boat.
 0545 I/M Carmichael appears asleep on boat.
 0600 I/M Carmichael appears asleep on boat.
 0645 I/M Carmichael appears asleep on boat.
 0650 I/M Carmichael appears asleep on boat.
 0645 Chaw in front and around I/M Carmichael
 lying on bunk awake.

End of term. Equip to be left, all appears
 secure at this time. H/C I/M Dep. 7/1/02 Kier 12/08

0700-1500 ISO #5 Const obs Wednesday July 8, 2009
 Lt Webster Sgt Dep Caraballo

0700 VST, H/C I verified, received radio 738, Prev logs read,
 safety & security checks, all appears secure at this time @ 1230

0700 I/M Carmichael, Kimberly on bunk appears asleep @ 1230

0715 I/M Carmichael at door calling this Deputy a "Bitch" @ 1230

0730 I/M Carmichael on boat appears asleep @ 1230

0745 I/M Carmichael on boat appears asleep @ 1230

0800 I/M Carmichael on boat appears asleep @ 1230

0815 I/M Carmichael on boat appears asleep @ 1230

0830 I/M Carmichael on boat appears asleep @ 1230

0845 I/M Carmichael on boat appears asleep @ 1230

0900 I/M Carmichael on boat appears asleep @ 1230

EXHIBIT M

STATE OF NEW YORK
SUPREME COURT COUNTY OF ERIE

**THE NEW YORK STATE
COMMISSION OF CORRECTION,**

Petitioner,

-against-

AFFIDAVIT

TIMOTHY HOWARD, Individually and
in his capacity of Sheriff of
Erie County, New York,

Respondent.

STATE OF NEW YORK)
COUNTY OF ALBANY) ss:)

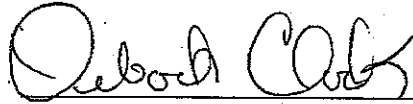
DEBORAH CLARK, being duly sworn, deposes and says:

1. I am currently employed as a Correctional Facility Specialist II with the New York State Commission of Correction, wherein my duties include visiting, inspecting and appraising the management and conditions of correctional facilities.
2. At the behest of Commission Chairman Thomas A. Beilein, and pursuant to subdivisions (3) and (7) of Correction Law section 45, I was commissioned to visit, inspect, appraise and monitor the Erie County Holding Center from June 30 to July 1, 2009.
3. While in the Alpha Long housing unit of the Erie County Correctional Facility on July 1, 2009, I personally observed that the following inmates had only been issued one sheet and had not been issued a pillow, pillowcase, or towel:
 - Nicholas Johnson (ICN No. 81609)
 - Gerald Sanders (ICN No. 119528)
 - Michael Urban (ICN No. 13917)
 - Curtis Daughy (ICN No. 31208)
 - Frederick Miller (ICN No. 105677)
 - Michael Sage (ICN No. 95329)
 - Noel Velazquez (ICN No. 119532)
 - Joseph Ingram (ICN No. 1117)
 - Eric Bogden (ICN No. 119535)
 - David Ertel (ICN No. 56524)
 - Reginald Peete (ICN No. 99920)

4. While in the Alpha Short housing unit of the Erie County Correctional Facility on July 1, 2009, I personally observed that the following inmates had only been issued one sheet and had not been issued a pillowcase:

- Pamela Robinson (ICN No. 35062)
- Delisha Dunn (ICN No. 119533)
- Evelina Anderson (ICN No. 17321)
- Nicole Jenkins (ICN No. 40230)

Dated: September 15, 2009
Albany, New York


DEBORAH CLARK

Sworn to before me this
15 day of September, 2009.


Notary Public
BRIAN M. CALLAHAN
Notary Public, State of New York
Qualified in Schenectady County
No. 6003133
Commission Expires Feb. 23, 20 10

EXHIBIT N

STATE OF NEW YORK
SUPREME COURT COUNTY OF ERIE

THE NEW YORK STATE
COMMISSION OF CORRECTION,

Petitioner,

-against-

AFFIDAVIT

TIMOTHY HOWARD, Individually and
in his capacity of Sheriff of
Erie County, New York,

Respondent.

STATE OF NEW YORK)
COUNTY OF ALBANY) ss:)

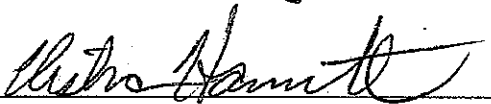
ELISHA HAMILTON, being duly sworn, deposes and says:

1. I am currently employed as a Correctional Facility Specialist I with the New York State Commission of Correction, wherein my duties include visiting, inspecting and appraising the management and conditions of correctional facilities.
2. At the behest of Commission Chairman Thomas A. Beilein, and pursuant to subdivisions (3) and (7) of Correction Law section 45, I was commissioned to visit, inspect, appraise and monitor the Erie County Holding Center from June 30 to July 1, 2009.
3. While in the Alpha Long housing unit of the Erie County Correctional Facility on July 1, 2009, I personally observed that the following inmates had only been issued one sheet and had not been issued a pillow, pillowcase, or towel:
 - Nicholas Johnson (ICN No. 81609)
 - Gerald Sanders (ICN No. 119528)
 - Michael Urban (ICN No. 13917)
 - Curtis Daughy (ICN No. 31208)
 - Frederick Miller (ICN No. 105677)
 - Michael Sage (ICN No. 95329)
 - Noel Velazquez (ICN No. 119532)
 - Joseph Ingram (ICN No. 1117)
 - Eric Bogden (ICN No. 119535)
 - David Ertel (ICN No. 56524)
 - Reginald Peete (ICN No. 99920)

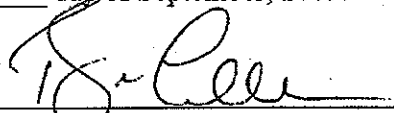
4. While in the Alpha Short housing unit of the Erie County Correctional Facility on July 1, 2009, I personally observed that the following inmates had only been issued one sheet and had not been issued a pillowcase:

- Pamela Robinson (ICN No. 35062)
- Delisha Dunn (ICN No. 119533)
- Evelina Anderson (ICN No. 17321)
- Nicole Jenkins (ICN No. 40230)

Dated: September 10, 2009
Albany, New York


ELISHA HAMILTON

Sworn to before me this
10th day of September, 2009.


Notary Public

BRIAN M. CALLAHAN
Notary Public, State of New York
Qualified in Schenectady County
No. 6003133
Commission Expires Feb. 23, 20 10

EXHIBIT O

STATE OF NEW YORK
SUPREME COURT COUNTY OF ERIE

**THE NEW YORK STATE
COMMISSION OF CORRECTION,**

Petitioner,

-against-

AFFIDAVIT

TIMOTHY HOWARD, Individually and
in his capacity of Sheriff of
Erie County, New York,

Respondent.

STATE OF NEW YORK)
COUNTY OF ALBANY) ss:)

LARRY ROE, being duly sworn, deposes and says:

1. I am currently employed as a Correctional Facility Specialist I with the New York State Commission of Correction, wherein my duties include visiting, inspecting and appraising the management and conditions of correctional facilities.
2. At the behest of Commission Chairman Thomas A. Beilein, and pursuant to subdivisions (3) and (7) of Correction Law section 45, I was commissioned to visit, inspect, appraise and monitor the Erie County Holding Center from July 1 to July 2, 2009, and also from July 5 to July 8, 2009.
3. While in the Bravo Short housing unit of the Erie County Correctional Facility on July 2, 2009, I personally observed that the following inmates had not been issued a pillow:
 - Andre Ingram (ICN No. 093292)
 - Lenard Harris (ICN No. 024319)
4. While in the Alpha Long housing unit of the Erie County Correctional Facility on July 6, 2009, I personally observed that the following inmates had not been issued a pillow, pillowcase, sheets, drinking cup, toothpaste or toothbrush:
 - Christopher Krayna (ICN No. 83512)
 - Joshua McLeod (ICN No. 115796)
 - Richard Boswell (ICN No. 63069)
5. On July 6, 2009, Erie County Deputy Ralph Colucci advised your deponent that unarraigned inmates were issued different bedrolls than committed inmates. Deputy Colucci explained

that unarraigned inmates were only issued a bedroll containing a blanket and one sheet, as they would only be in the facility for a couple of hours.

6. On July 2, 2009, while touring the Bravo Long housing unit of the Erie County Holding Center, I requested the housing officer to provide me with an inmate grievance form. After searching his unit work desk and area, the housing unit officer advised me that there were no inmate grievance forms available on the unit.
7. On July 2, 2009, while touring the Bravo Segregation housing unit of the Erie County Holding Center, I requested the housing unit officer to provide me with an inmate grievance form. After searching his unit work desk and area, the housing unit officer advised me that there were no inmate grievance forms available on the unit. Shortly thereafter, Andre Garner (ICN No. 027047), an inmate of the Bravo Segregation housing unit, requested but did not receive an inmate grievance form.

Dated: September 10, 2009
Albany, New York


LARRY ROE

Sworn to before me this
10th day of September, 2009.


Notary Public

BRIAN M. CALLAHAN
Notary Public, State of New York
Qualified in Schenectady County
No. 6003133
Commission Expires Feb. 23, 2010

EXHIBIT P

STATE OF NEW YORK
SUPREME COURT COUNTY OF ERIE

THE NEW YORK STATE
COMMISSION OF CORRECTION,

Petitioner,

-against-

AFFIDAVIT

TIMOTHY HOWARD, Individually and
in his capacity of Sheriff of
Erie County, New York,

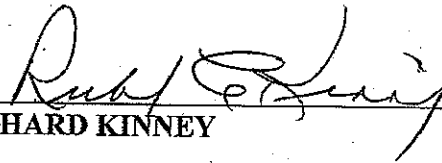
Respondent.

STATE OF NEW YORK)
COUNTY OF ALBANY) ss:)

RICHARD KINNEY, being duly sworn, deposes and says:

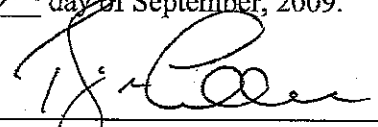
1. I am currently employed as a Correctional Facility Specialist III with the New York State Commission of Correction, wherein my duties include visiting, inspecting and appraising the management and conditions of correctional facilities.
2. At the behest of Commission Chairman Thomas A. Beilein, and pursuant to subdivisions (3) and (7) of Correction Law section 45, I was commissioned to visit, inspect, appraise and monitor the Erie County Holding Center from June 16 to June 18, 2009, and June 24 to 25, 2009.
3. While in the Alpha Short housing unit of the Erie County Correctional Facility on June 16, 2009, I personally observed that inmate Marcia Henderson (ICN No. 42651) was only issued one sheet and was not issued soap, a toothbrush, toothpaste, a drinking cup, toilet paper or a bath towel.

Dated: September 10, 2009
Albany, New York



RICHARD KINNEY

Sworn to before me this
10th day of September, 2009.



Notary Public

BRIAN M. CALLAHAN
Notary Public, State of New York
Qualified in Schenectady County
No. 6003133
Commission Expires Feb. 23, 2010

EXHIBIT Q

STATE OF NEW YORK
SUPREME COURT COUNTY OF ERIE

**THE NEW YORK STATE
COMMISSION OF CORRECTION,**

Petitioner,

-against-

AFFIDAVIT

TIMOTHY HOWARD, Individually and
in his capacity of Sheriff of
Erie County, New York,

Respondent.

STATE OF NEW YORK)
COUNTY OF ALBANY) ss:)

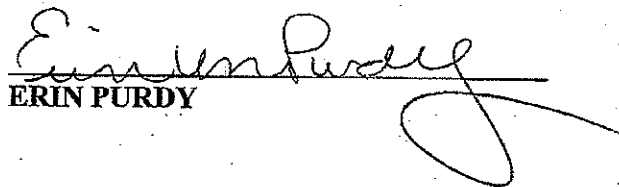
ERIN PURDY, being duly sworn, deposes and says:

1. I am currently employed as a Correctional Facility Specialist I with the New York State Commission of Correction, wherein my duties include visiting, inspecting and appraising the management and conditions of correctional facilities.
2. At the behest of Commission Chairman Thomas A. Beilein, and pursuant to subdivisions (3) and (7) of Correction Law section 45, I was commissioned to visit, inspect, appraise and monitor the Erie County Holding Center from June 16 to June 18, 2009, and from September 16 to September 17, 2009.
3. While in the Alpha Short housing unit of the Erie County Correctional Facility on June 16, 2009, I personally observed that inmate Marcia Henderson (ICN No. 42651) was only issued one sheet and was not issued soap, a toothbrush, toothpaste, a drinking cup, toilet paper or a bath towel.
4. On September 16, 2009, at approximately 3:00 p.m., Cynthia Diaz and I toured the Delta housing unit of the Erie County Holding Center. Each of the four (4) inmates detained therein was asked if they had been issued an inmate handbook upon admission. All four inmates answered that they had not. An examination of each inmate's tote/property bin and a visual inspection of their cells did not reveal the presence of a handbook.
5. On September 16, 2009, at approximately 3:10 p.m., Cynthia Diaz and I toured the Charlie housing unit of the Erie County Holding Center. Each of the four (4) inmates detained therein was asked if they had been issued an inmate handbook upon admission. All four inmates answered that they had not. An examination of each inmate's tote/property bin and a visual

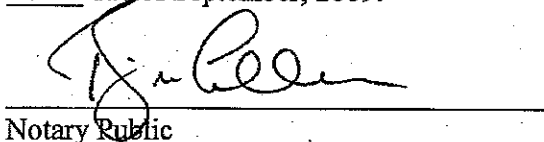
inspection of their cells did not reveal the presence of a handbook.

6. On September 16, 2009, at approximately 3:45 p.m., Cynthia Diaz and I toured the Bravo housing unit of the Erie County Holding Center. Each of the four (4) inmates detained therein was asked if they had been issued an inmate handbook upon admission. All but one (1) of the four inmates answered that they had not. An examination of the remaining three (3) inmate's tote/property bins and a visual inspection of their cells did not reveal the presence of a handbook.
7. On September 16, 2009, at approximately 4:00 p.m., Cynthia Diaz and I toured the Alpha Dorm housing unit of the Erie County Holding Center. Each of the two (2) inmates detained therein was asked if they had been issued an inmate handbook upon admission. Both inmates answered that they had not. An examination of each inmate's tote/property bin and a visual inspection of their cells did not reveal the presence of a handbook.
1. On September 16, 2009, at approximately 4:15 p.m., Cynthia Diaz and I toured the Alpha Long housing unit of the Erie County Holding Center. Four (4) inmates detained therein were asked if they had been issued an inmate handbook upon admission. All four inmates answered that they had not. An additional inmate on the unit appeared to be incoherent, and was therefore not questioned. A visual inspection of each inmate's cell did not reveal the presence of a handbook.

Dated: September 17, 2009
Albany, New York


ERIN PURDY

Sworn to before me this
17th day of September, 2009.


Notary Public

BRIAN M. CALLAHAN
Notary Public, State of New York
Qualified in Schenectady County
No. 6003133
Commission Expires Feb. 23, 2010

EXHIBIT R

STATE OF NEW YORK
SUPREME COURT COUNTY OF ERIE

THE NEW YORK STATE
COMMISSION OF CORRECTION,

Petitioner,

-against-

AFFIDAVIT

TIMOTHY HOWARD, Individually and
in his capacity of Sheriff of
Erie County, New York,

Respondent.

STATE OF NEW YORK)
COUNTY OF ALBANY) ss:)

CYNTHIA DIAZ, being duly sworn, deposes and says:

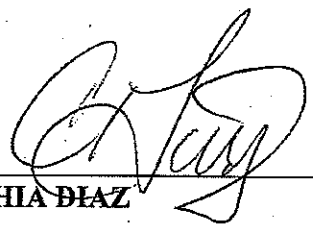
1. I am currently employed as a Correctional Facility Specialist I with the New York State Commission of Correction, wherein my duties include visiting, inspecting and appraising the management and conditions of correctional facilities.
2. At the behest of Commission Chairman Thomas A. Beilein, and pursuant to subdivisions (3) and (7) of Correction Law section 45, I was commissioned to visit, inspect, appraise and monitor the Erie County Holding Center from June 23 to June 26, 2009, July 5 to July 7, 2009, and September 16 to 17, 2009.
3. While in the Alpha Long and Alpha Short housing units of the Erie County Holding Center on June 26, 2009, I personally observed that inmates assigned to such units were not issued a towel, toothbrush, toothpaste or a full complement of sheets.
4. On July 6, 2006, while in the Bravo Constant Observation Dormitory of the Erie County Holding Center, your deponent personally observed that inmate Wesley Bennett was not issued a pillow.
5. On July 6, 2009, Erie County Deputy Ralph Colucci advised your deponent that unarraigned inmates were issued different bedrolls than committed inmates. Deputy Colucci explained that unarraigned inmates were only issued a bedroll containing a blanket and one sheet, as they would only be in the facility for a couple of hours.
6. From June 23 to June 25, 2009, I undertook a review of the Erie County Holding Center's

records regarding inmate discipline and administrative segregation pending discipline. Such records are maintained in both the Holding Center's inmate classification office and Deputy Superintendent Barbara Leary's office.

7. My review of such records revealed no evidence or substantiation that Holding Center inmates who are administratively segregated pending a disciplinary hearing receive an "Administrative Segregation Order-Keep Lock Pending Discipline Hearing," nor any other written statement setting forth the reasons for such confinement. The review further revealed no evidence or substantiation that inmates are provided an opportunity to respond to any such order, nor record of any such response by an inmate.
8. During such review of the Holding Center's inmate disciplinary records on June 23, 2009, I received from Deputy Superintendent Barbara Leary an "Administrative Segregation Order-Keeplock Pending Discipline Hearing" record for inmate Terry Weilbon, wherein the initial determination was recorded at 09:55 on June 20, 2009. Upon receipt of such record on June 23, 2009, there was no written indication of a review or determination by the chief administrative officer.
9. On September 16, 2009, at approximately 3:00 p.m., Erin Purdy and I toured the Delta housing unit of the Erie County Holding Center. Each of the four (4) inmates detained therein was asked if they had been issued an inmate handbook upon admission. All four inmates answered that they had not. An examination of each inmate's tote/property bin and a visual inspection of their cells did not reveal the presence of a handbook.
10. On September 16, 2009, at approximately 3:10 p.m., Erin Purdy and I toured the Charlie housing unit of the Erie County Holding Center. Each of the four (4) inmates detained therein was asked if they had been issued an inmate handbook upon admission. All four inmates answered that they had not. An examination of each inmate's tote/property bin and a visual inspection of their cells did not reveal the presence of a handbook.
11. On September 16, 2009, at approximately 3:45 p.m., Erin Purdy and I toured the Bravo housing unit of the Erie County Holding Center. Each of the four (4) inmates detained therein was asked if they had been issued an inmate handbook upon admission. All but one (1) of the four inmates answered that they had not. An examination of the remaining three (3) inmate's tote/property bins and a visual inspection of their cells did not reveal the presence of a handbook.
12. On September 16, 2009, at approximately 4:00 p.m., Erin Purdy and I toured the Alpha Dorm housing unit of the Erie County Holding Center. Each of the two (2) inmates detained therein was asked if they had been issued an inmate handbook upon admission. Both inmates answered that they had not. An examination of each inmate's tote/property bin and a visual inspection of their cells did not reveal the presence of a handbook.
13. On September 16, 2009, at approximately 4:15 p.m., Erin Purdy and I toured the Alpha Long

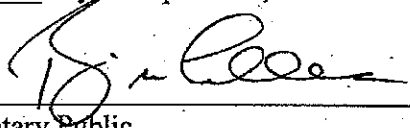
housing unit of the Erie County Holding Center. Four (4) inmates detained therein were asked if they had been issued an inmate handbook upon admission. All four inmates answered that they had not. An additional inmate on the unit appeared to be incoherent, and was therefore not questioned. A visual inspection of each inmate's cell did not reveal the presence of a handbook.

Dated: September 17, 2009
Albany, New York



CYNTHIA DIAZ

Sworn to before me this
17th day of September, 2009.



Notary Public

BRIAN M. CALLAHAN
Notary Public, State of New York
Qualified in Schenectady County
No. 6003133
Commission Expires Feb. 23, 2010

EXHIBIT S

Policy and Procedure



JAIL MANAGEMENT DIVISION:

Constant Observation

Policy

Approved

#JMD 13.11.90

Total Pages: 10+

Undersheriff

1st Deputy Superintendent

Effective Date: December 2003

Revision Date: 03/09; 06/04; 01/04;

NYSCOC Standards: 7003, 7013, 7022, 7033

NYSSAI Accreditation: 17, 21, 115, 125, 136, 156, 157

Other References: Formerly #JMD 06.11.90

THIS POLICY REQUIRES AN ANNUAL REVIEW BY THE SUPERINTENDENT'S OFFICE

POLICY:

In an effort to reduce the incidence of suicide among the inmate population in the Jail Management Division, facility personnel will make a conscious effort to identify suicidal inmates and commence procedures that will place all inmates that are suicidal and/or are suspected of being suicidal (exhibiting suicidal behavior) on a "constant observation" status and a "constant observation" housing area immediately when such an inmate is identified. This endeavor will require the complete cooperation of all facility personnel.

DEFINITION:

Constant Observation - Uninterrupted, personal visual observation of an inmate with the ability to immediately and directly intervene if a threat to an inmate's safety exists. All instances of Constant Observation require administrative segregation orders and are subject to the administrative segregation review process.

(I) INMATE PROFILES

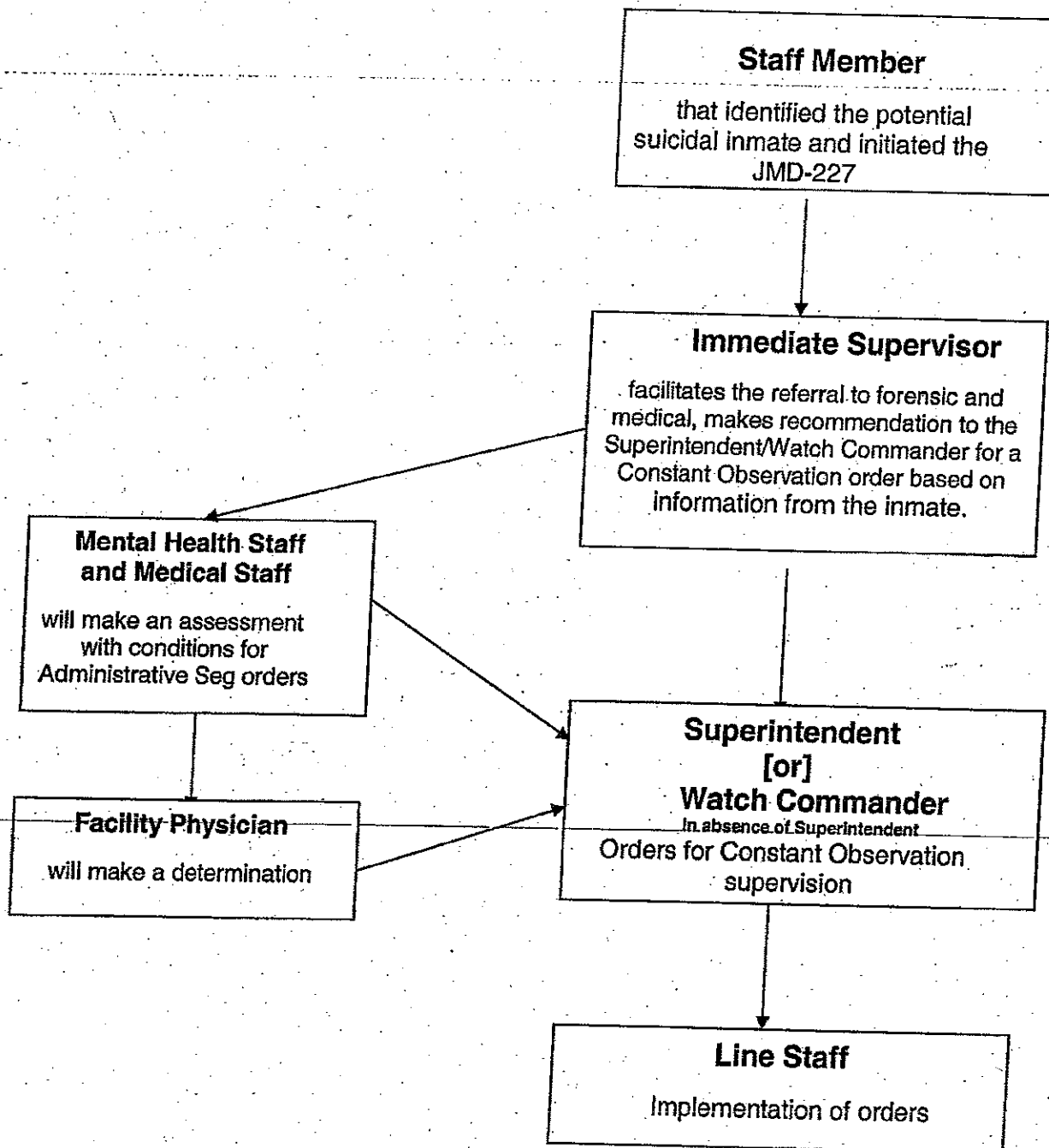
Profile I - An inmate may attempt suicide during the initial incarceration period when the realities of criminal behavior, disgrace and confinement must be faced.

Profile II - An inmate who has been incarcerated for a long period of time and may face an additional prolonged period of incarceration. Sense of connection with the outside world may almost be gone versus the future as being no different than the present, lonely and impersonal.

Profile III - Antisocial individual whose suicidal gestures are not really attempts to die. A manipulator who attempts to make his incarceration period more comfortable, not end it. Related to this group are the self-mutilators who injure themselves as a form of humiliation or self-punishment. These inmates may inadvertently complete a suicide or may be pushed to a successful suicide by negative stress.

Profile IV - Inmates going through drug or alcohol withdrawal, with mental health problems, or with serious physical injuries or illness may view suicide as a means of relieving their discomfort. In addition, inmates in this profile may also be susceptible to inadvertent physical injury due to their conditions, injuries or illness.

FLOW OF INFORMATION AND RESPONSIBILITIES:



(II) IDENTIFICATION OF RISK

Initial Suicide Prevention Screening

All inmates admitted to the Custody of the Erie County Sheriff's Office shall be subjected to the Commission of Correction Suicide Prevention Screening Guidelines (NYSCOC Form # 330 ADM) and Procedures during admissions processing. Any inmate identified as a suicide risk will be immediately reported to the Watch Commander and placed on Constant Observation status.

Suicide Crisis/Potential

During the course of incarceration an inmate may progress into a suicide crisis or have an increasing potential for a suicidal crisis. Signs of depression are the best indicator of a potential for suicide. During a suicide crisis, most individuals display either some or all of the following symptoms of depression. These symptoms are particularly serious when they represent a sudden change in personality, behavior or mood.

Observable Physical Indicators

Loss of appetite/refusal to eat; [automatically notify medical for a meal monitoring sheet].
Does not socialize
Crying;
Sleep disturbances or insomnia;
Sudden, unexpected uplift in mood;
Mood swings;
Sitting and rocking on a bunk/staring off into space;
Unusually slow reactions;
Difficulty doing routine tasks;
Tension and/or agitation;
Any unprovoked attack on a staff member or other inmate;
Another inmate advises you that an inmate is displaying any of the listed behaviors;

Verbal Indicators

In many cases an inmate will provide verbal indicators that can be identified during conversation.

The inmate states his intent to commit suicide;
An inmate jokes or sarcastically refers to suicide;
An inmate projects helplessness or **hopelessness** during conversation;
An inmate speaks of getting out of jail unrealistically;
Preoccupation with the past, unrealistically dealing with the present;
An inmate expressing fear and/or shame;
Increasing difficulty in communicating with others or refusal or reluctance to communicate;

Overt Indicators

Any act of self-injury or actual suicidal gesture;
Any sudden change in behavior after receiving bad news;
An inmate gives away his personal possessions.

Other Indicators

Previous suicide attempts;
Previous incidents of self-injury;
History of mental illness.
After any personal loss (i.e.: death in family, death of significant other, divorce, Dear John letter);
After hearing of serious personal illness or serious illness of a significant other;
After any physical assault - particularly sexual;
After any threat of physical assault - particularly sexual;
During holidays;
Prior to and after sentencing;
Protective custody order - due to isolation and stress.
Initial remand to incarceration

Mental Health

Inmates in a mental health crisis may:

Exhibit bizarre or unusual behaviors.
Be subject to hallucinations.
Exhibit paranoid behavior ("out to get me").
Rambling or incoherent speech.
Intentional self injury.
Unintentional or accidental injury during episodes of bizarre or unusual behaviors.
Demonstrate highly assaultive behaviors.
Withdrawal from reality.

Inmates in a mental health crisis may pose a substantial risk to themselves and to others. In addition these inmates may require protection from other members of the inmate population.

Illness or Injury

Inmates with serious illness or injuries may require Constant Observation because:

They may require emergency life saving medical intervention.
To monitor their behaviors for depression and indicators which could result in a suicide crisis.
To ensure that their incapacitation does not result in accidental injuries or victimization.

(III) STRATEGIES
FOR LINE STAFF FOR ACTIVELY SUICIDAL INMATES

- A. The intent on suicide or that a manipulative inmates' attempt will turn into a suicide is not known. Supervision must be increased until the Forensic Mental Health Services can evaluate the inmate.
- B. When a suicide risk is identified or you believe an inmate may have the potential risk factors for suicide or self injury or is in a mental health crisis, you must notify your immediate supervisor and initiate the JMD-227 Suspected Suicidal Inmate Referral Form.
- C. Trust your own judgment. If you believe an inmate may be suicidal, self-injuring, detoxing or in a mental health crisis, act on your beliefs.
- D. Stay with the inmate. Do not leave the inmate alone if you believe there is immediate danger.
- E. Request help via radio or telephone.
- F. Maintain contact and conversation. If an inmate is suicidal, be attentive, express your concerns, ask clarifying questions, and listen.
- G. Take all threats seriously.
- H. If at all possible, make a verbal contract with the person not to harm himself until seen by Forensic Mental Health Personnel.

(IV) RESPONSE

(A) The Responding Supervisory Staff is to:

When you are alerted by Booking, Housing Unit Managers or other general staff that an inmate poses a threat to him/her self and is an active suicide risk; an inmate has made a suicidal attempt or suicide gesture or has inflicted self-injury upon him self, or otherwise appears to be in a suicide crisis as described in section I(B) of this policy, the responding supervisor is to:

- 1. Respond to the area.
- 2. Assess immediate needs.
- 3. Ensure emergency medical attention is provided.
- 4. If available, request presence of Forensic Mental Health staff.
- 5. Advise the watch commander of the situation and request permission to institute constant observation of the inmate.
- 6. Implement Constant Observation procedures.
- 7. Write a Constant Observation order in both the logbook of origin for the inmate and the logbook for the constant observation post.
- 8. Ensure adequate staff is available for the Constant Observation
- 9. Order transfer of inmate to a Constant Observation Cell or area.
- 10. Supervise the transfer of the inmate to a Constant Observation Cell.
- 11. Arrange Staff coverage and relief for Constant Observation Post.
- 12. Complete required documentation, so that an Administrative order can be prepared. Include a narrative explaining why there is a need for Constant Observation.

13. Notify the Watch Commander to issue the Administrative Seg order for constant observation.
14. After the completion of the Administrative Segregation order, and the 1st Deputy Superintendent has signed the order, the responding supervisor will make all necessary copies (Forensic Mental Health, Chief of Operations, Classification and a copy in the Watch Commanders Office).

(B) The Identifying Staff Member Is to:

1. The staff member involved in the identification of the suspected suicidal inmate will complete PART-1 of the "Suspected Suicidal Inmate Notification Form" (JMD-227) and immediately forward this form to his/her supervisor.
2. The supervisor will inspect the "Suspected Suicidal Inmate Notification Form" (JMD-227) for completeness, gather any additional information from the inmate and forward the form to the forensic mental health staff.

(C) The Watch Commander Is to:

When it is determined that Constant Observation of the inmate is to be instituted, the Watch Commander is to make log entries in the Watch Commander's logbook and the Shift Summary that includes the following information:

1. The name and ICN Number of the inmate being placed on Constant Observation.
2. The time and date of the placement on Constant Observation.
3. The Cell or area where the inmate is confined on Constant Observation Status.
4. The name of the supervisor responding to, supervising and directing the placement of the inmate on Constant Observation Status.
5. The reasons for the placement of the inmate on Constant Observation Status.
6. The details of any conduct that preceded the placement of the inmate on Constant observation Status.
7. A notation that the proper Forensic referrals and administrative segregation orders have been completed and forwarded to proper authorities.
8. The Watch Commander will notify records so that a proper suicide alert can be entered into the Jail Management Computer System (JMS).
9. The Watch Commander will compile all paperwork to issue the Administrative Segregation Order paperwork and forward to the 1st Deputy Superintendent for signature.

(D) Duties of the Constant Observation Officer: Constant Observation Defined

1. After the transfer of the inmate to the designated Constant Observation housing unit, area, cell or room, the inmate is to remain in Constant observation housing pending an evaluation from Forensic Mental Health Services.

2. Maintain personal uninterrupted observation of the inmate.
3. Maintain visual verification that the inmate is safe and secure.
4. Log Book entry, describing your observations of the inmate's condition at 15 minute intervals. **Log entries for inmates MUST include behaviors observed in detail.** All paperwork (Suspected Suicidal Inmate Referral Form, Administrative Segregation Order and any other paperwork should be on the unit by the end of your shift.
5. Prior to placement in cell/room the inmate will be strip searched to ensure that nothing has been secreted in clothing or on the inmate's person that could be utilized for self-injury.
6. Prior to placement of the inmate in a cell/room the cell will be searched and any unauthorized item will be removed.
7. The inmate's personal property is to be removed and bagged from the previous cell and brought to Constant Observation and placed in the bin (tote) assigned to the inmate.
8. All items, which could be utilized to affect a hanging, will be removed.
9. Inmates in constant observation are allowed undergarments, linens, pillows and property. Property will be stored in bins (totes).
10. Constant Observation will be implemented for any incident involving an act of self-injury, a suicide attempt, a determination or opinion that an inmate is a suicide risk or during a severe mental health crisis. When initially admitted to Constant Observation, their property **must** be placed in their bin (tote).
11. **An Officer will be assigned for Constant Observation of the inmate at all times, a relief must be on post before the post is vacated for any reason.**
12. The observation will be uninterrupted and continuous around the clock until a forensic evaluation is conducted and an order to discontinue the Constant Observation is issued.

NOTE: For the purpose of providing Constant Observation of inmates, the term "observe", standing alone, without being accompanied by specific directive for staff actions to be taken, has No Meaning and shall not be used under any circumstances.

(E) Constant Observation Housing

Inmates identified as requiring Constant Observation will be transferred to special housing. Final discretion in selection of appropriate housing rests with the Watch Commander or approved by the Superintendent in conjunction with Forensic Mental Health after their evaluation.

(F) Staffing Authorization

Only Forensic Mental Health is authorized to clear someone from Constant Observation, unless inmate is placed on Constant Observation by the Superintendent or Medical for other reasons.

(G) Security and Safety Precautions

1. Transfer the inmate to the designated Constant Observation Housing Unit, area or room.
2. The inmate will be strip searched to ensure that nothing has been secreted in clothing or on the inmate's person that could be utilized for self-injury.

3. The inmate is authorized personal property - all personal property will be placed in property bin (tote).
4. All items that could be utilized to affect a hanging must be removed from the area.

(H) Use of Physical Restraints:

The use of soft restraints devices will only be authorized as a means of last resort for preventing an inmate from doing harm to himself and others and then only in accordance with the provisions of the Jail Management Division Policy and Procedure.

(I) Use of Restraint Chair:

See Policy #JMD 05.02.03

(V) DOCUMENTATION

(A) UNIT LOG BOOK ENTRIES

Pursuant to Minimum Standards, certain logbook entries are required for any utilization of Constant Observation procedures.

(1) Post Officer, Unit of Origin Logbook Entry

- a. Date, Time of initial observations or incident;
- b. Description of observations or incident;
- c. Name(s) of supervisors contacted and/or responding;
- d. Name(s) of all inmates and staff involved;
- e. Special orders issued including the name of person ordering;
- f. Name and signature of Officer completing entry.

(2) Post Officer, Constant Observation Unit Logbook Entry

- a. Date and time of arrival of inmate on the unit;
- b. Names and times of Officers conducting constant supervision procedures;
- c. Periodic staff observations of inmates' condition or specific behavior;
- d. Any unusual event or significant problem occurring during constant supervision including the date and time of the problem;
- e. Names of all staff and/or inmates involved;
- f. Staff response to the problem including a summary
- g. Description of the condition of any inmate involved;
- h. Name and signature of Officers completing entries.

(3) Responding Supervisory Staff

- (a) Unit Log Book:** In the Unit of Origin logbook (Where Incident/observed behavior occurred)

Enter the specific facts and reasons for ordering constant supervision procedures. Place your name and signature after the order.

- (b) In the Constant Observation Log Book:**

- i. Enter the specific facts and reasons for ordering constant supervision procedures.
- ii. Enter the specific enhanced supervision order and any special orders
- iii. The date and time when the supervision has been initiated, pending further evaluation by Forensic Mental Health Services;
- iv. Name and Signature of the Supervisor.

(c) Supervisors Log Book

- i. Enter the specific facts and reasons for ordering constant supervision procedures.
- ii. Enter the specific constant supervision order and any special orders
- iii. The date and time when the supervision has been initiated, pending further evaluation by Forensic Mental Health Services;
- iv. Name and Signature of the Supervisor.

(d) Administrative Segregation Order

- i. Responding Supervisor must complete an Administrative Segregation Order with the Watch Commander;
- ii. Write a description of the events which resulted in Constant Observation order
- iii. Form must be signed and stapled together;
- iv. Copies sent to the, Chief of Operations, Captain, Watch Commander and Classification. **The original is sent to the Superintendent.**

(e) Forensic Referral

Supervisor ordering constant supervision must complete a Forensic Referral form and include:

- i. Date, time of the incident
- ii. Name and location of the inmate
- iii. Description of the incident and inmate behavior
- iv. Special Orders issued
- v. Copies will be sent to Forensic Mental Health Services, Chief of Operations and Classification.

(f) Supplemental Reports

As required, based on events and responses by Jail Management Division Staff pursuant to Jail Management Division Policy and Procedures and Minimum Standards:

- i. Injury Reports
- ii. Disciplinary Reports
- iii. Supplementary Information Reports
- iv. Use of Restraints (if applicable)

(g) Reportable Incident Reports

Constant Observation procedures which involve incidents of a serious or problematic nature shall be reported to the N.Y.S.C.O.C., pursuant to the criteria and reporting requirements of 9 N.Y.C.R.R. Part 7022, and S.I.F.E.C.S. Reportable Incident Guidelines.

(VI) FOLLOW-UP PROCEDURES

(A) FORENSIC MENTAL HEALTH SERVICES:

1. After an inmate referral, the Erie County Forensic Mental Health Staff will be responsible for providing professional assistance, counseling and appropriate mental health treatment to any inmate at risk, as deemed appropriate.
2. The Forensic Mental Health Staff member conducting the assessment will complete PART-TWO of the "Suspected Suicidal Inmate Notification Form" (JMD-227).
3. The facility will follow all recommendations from Forensic Mental Health Services in regard to removal, continuation or level change for constant supervision of inmate referrals.
4. Forensic Mental Health staff will submit all recommendations in writing to;
 - a) Watch Commander
 - b) Classification
5. Upon receipt of Forensic Mental Health recommendations, the Watch Commander and/or on duty shift supervisory staff will:
 - a) Proceed to the concerned Housing Unit
 - b) Transpose, word for word, the Forensic recommendations and Special Orders into the Unit Book.
 - c) Take appropriate actions to effect new orders or status changes of the inmate.
 - d) All such log entries shall be noted "as per Forensic Mental Health" with the name of the person ordering. If no specific time frames are recommended "pending further evaluation".

WATCH COMMANDER NOTE: Nothing shall preclude increasing the level of supervision of a Forensic referral, if the situation warrants such increased supervision.

(B) STAFFING

During Constant Observation procedures, in the absence of sufficient numbers of on duty personnel, supervisors are pre-approved to call in those number of staff on overtime, prearrange overtime or temporarily modify post assignments pending arrival of personnel to ensure that;

- 1) Continuous and uninterrupted supervision of inmates must be maintained during periods of constant observation.
- 2) Continuous and uninterrupted supervision of inmates must be maintained during transportation.
- 3) Ensure continuous and uninterrupted supervision of inmates during staff relief situations (lunch, bathroom, etc.)

Erie County Sheriff's Office
Policy and Procedure
#JMD 13.11.90

JAIL MANAGEMENT DIVISION:
Constant Observation
PAGE 11 of 11

PROGRAMS FOR INMATES ON CONSTANT OBSERVATION

Inmates housed in Constant Observation Units are entitled to ALL programs, unless restricted by Forensic Mental Health, the Superintendent or Watch Commander. Restrictions must be documented on the Administrative Segregation Order and be reviewed by the Superintendent.

SUSPECTED SUICIDAL INMATE REFERRAL FORM (JMD-227)

===== [PART-ONE] =====

INMATE NAME: _____ ICN#: _____ H/U#: _____

THIS FORM INITIAIATE BY: _____ DATE/TIME: _____

NAME OF SUPERVISOR NOTIFIED: _____ DATE/TIME: _____

OBSERVATIONS BY REPORTING STAFF MEMBER: _____

(INCLUDE THE TELEPHONE NUMBER AND ADDRESS OF PERSON RELAYING INFORMATION BY PHONE)

ACTIONS TAKEN:

- ☐ Housing Area Deputy Notified _____
☐ Medical Department Notified _____
☐ Forensic Department Notified _____
☐ Special Orders / Recommendations _____

SIGNATURE OF SUPERVISOR

DATE

TIME

PART-ONE DISTRIBUTION: Constant Observation Unit Medical Department Forensic Department

===== [PART-TWO] =====

FORENSIC FOLLOW-UP

Upon notification, the above inmate was seen by _____
(Staff Member and Title)

on _____, and the following recommendations / evaluations were made:
(Date and Time)

- ☐ Restraint equipment was utilized (following Policy and Procedure #JMD 06.14.00)
☐ Constant Observation / Supervision ordered: _____
☐ Inmate is NOT suicidal, but Enhanced Supervision ordered: _____
☐ Inmate is cleared to return to general population: _____
☐ Forensic will continue to monitor inmate's condition: _____
☐ Other: _____

PART-TWO DISTRIBUTION: Housing Area Officer Medical Dept. Forensic Dept. Superintendent's Office

ERIE COUNTY SHERIFF'S OFFICE



MEMORANDUM

TO: JMD Deputies / Sergeants / Lieutenants / Mental Health Staff

FROM: Barbara B. Leary, 1st Deputy Superintendent

DATE: February 13, 2009

RE: Constant Observations Posts

According to NYS Commission of Corrections minimum standards, all inmates on constant observation are entitled to **all** of the rights and privileges that other inmates are allowed. An administrative segregation order must be completed if an inmate's rights are to be restricted. Until new revised orders are posted adhere to the following:

- **ALL** Inmates on Constant Observation (C Obs) are allowed sheets, pillows, blankets, underwear, personal hygiene items, commissary from Constant Observation commissary list and jail issued clothing unless specified in an administrative seg order.
- Should a newly admitted inmate appear at risk for suicide based on the booking intake, or other observation from security staff, the Sergeant and Watch Commander(through Chain of Command - Sergeant) must be notified immediately. If staff from Forensic Mental Health are not available to further assess this inmate, a determination will be made by the Watch Commander concerning where this inmate will be housed as well as what the inmate is allowed to possess until assessed by Forensic Mental Health.
- The Watch Commander, with assistance from the Sergeant, will issue a written administrative segregation order for that inmate. A copy of the order will be posted on the inmate's housing unit- (Constant Obs) The order must contain reasons why the inmate has been placed on constant observation as well as why his or her access to certain items and therefore rights should be removed. The original order will be placed in my mailbox for review and signature the following business day.

- A suicidal referral form **MUST** be completed on each newly admitted inmate to constant observation. This includes inmates who were held in other areas of the facility and have been moved to Constant Obs. This referral must be copied and one copy included in the inmate's file at the (C Obs desk), one copy sent to forensic mental health and the original attached to the administrative segregation order written by the Watch Commander.
- The logbook must indicate who placed the inmate on constant observation as well as the date, time and any restrictions must be noted including the reason for such restrictions
- Log entries for inmates **MUST include behaviors observed**. "Lying on bunk" is not acceptable. For example, the log entry should read "lying on bunk awake, appears calm" or "Lying on bunk, talking with inmate _____ (name of other inmate)". The Commission demands that all observable behaviors with detailed descriptions are noted on the log.
- Should you have any questions, do not hesitate to follow the chain of command and ask questions. It remains our goal that all inmates remain safe while held in our custody. As this change in post orders is dramatically different from previous orders, we remain committed to using more precautions than not until a full assessment can be made by qualified mental health staff.

ADMINISTRATIVE HEARING RECORD

Constant Observation Conditions & Restrictions

| | | | |
|------------------|--|------------------|--|
| Name of Inmate | | WC &
Officers | |
| ICN # | | | |
| Date | | | |
| Initial / Review | | | |

On this date, an Administrative Hearing was conducted regarding the constant observation status of the above named inmate. Based upon available information, the following decision has been made:

Justification for Constant Observation-

☐ No change in classification or security status.

Based upon your constant observation status, the following administrative restrictions shall apply to you:

Housing: You will be housed in: _____ under the following conditions of constant observation.

Movement: Deputy escort unless otherwise noted ☐ Dep / Sup ☐ Cuffs ☐ Cuffs / Shackles

Visitation: ☐ Contact visitation, ☐ Non-contact visitation
☐ Non-contact visitation ALONE ☐ Restraints will remain in place during visitation.

Recreation: ☐ Alternative recreation alone

Religious Services: ☐ You may not attend congregational worship services with the general population. Instead, you may request ministerial visits in writing to the chaplain of your faith and individual religious services will be provided.

Inmates are allowed all property unless specifically restricted. Justification for restrictions must be specific. All inmates are allowed bedding, underwear and personal hygiene items. All items must fit in inmate's tote, if property does not fit in tote the excess items will not be allowed.

Property Restrictions (FMH or WC to determine based on behavioral mental health needs & concerns)

- ☐ All items stored outside constant observation unit in tote while not in use
- ☐ Shoelaces ☐ Bra ☐ Hygiene items stored in tote when not in use
- ☐ Any item that can be tied around neck (chains, religious medal, plastic rosary, scapula)
- ☐ Sheets ☐ Writing Utensils ☐ plastic eating utensils (knife, fork)
- ☐ Razor ☐ Smoek ☐ Constant Obs Commissary

Signature of Watch Commander: _____

Signature of Sergeant: _____

Review Constant Observation Restrictions/Order: Forensic Mental Health signature and date

| | | |
|--|-----------|------|
| | | |
| | | |
| | | |
| | Signature | Date |
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| | | |
| | Signature | Date |
| | | |
| | | |
| | Signature | Date |

EXHIBIT T

501
copy pg 3 of logbook secured by [signature]

BRAVO Constant OBSERVATION

- * NO EXTRA BLANKETS (UNLESS OK'D BY MEDICAL)
- * ALL I/M'S ASSIGNED TO CONSTANT OBSERVATION'S MUST HAVE A SUICIDAL INMATE NOTIFICATION SI AT AND A ADMINISTRATIVE HEARING RECORD SHEET.
- * MAKE SURE ALL I/M'S ARE SUPPLIED WITH ① BLANKET, ② SHEETS, ① PILLOW, ① PILLOW CASE, ① DRINKING CUP AND FOOTWEAR.
- * I/M'S WEAR ORANGE V-NECKS + PANTS.
- * ALL CONTENTS OF EVERY FOOD TRAY MUST BE ACCOUNTED FOR PRIOR TO AND AFTER EVERY MEAL, AS PER LT. WEBSTER. NO FOOD OR UTENSILS TO REMAIN.
- * ~~I/M'S ARE TO REMAIN ON THEIR BOOKS AT ALL TIMES, EXCEPT WHEN EATING, USING THE TOILET OR SHOWERING.~~ NO PROPERTY FOR I/M'S TO BE STORED IN PLASTIC TOTE BINS LOCATED IN DEPUTY RUNWAY. THIS INCLUDES COMMISSARY, TOOTH BRUSH, TOOTH PASTE & TOWEL. NOTHING TO BE LEFT IN UNIT.
- * WHEN I/M'S AP/P TO NEW UNIT, MAKE SURE I/M'S TAKE ALL BELONGINGS, AND DEPUTY TO SEND SUICIDE SHEET. AND ADMIN. HEARING REC. SHEET TO DELTA CONSTANT. OBS.
- * ALL I/M'S ARE DEPUTY ESCORT.
- * ALL I/M'S MUST HAVE ID BANDS WITH PLASTIC TABS ONLY - NO METAL.
- * ALL I/M Phone Calls - allowed, not excessive.
- * ALL I/M Recreation - must log rec offered / accepted refused.
- * ALL I/M Library

[Signature]

EXHIBIT U

ERIE COUNTY SHERIFF'S OFFICE
JAIL MANAGEMENT DIVISION

TO: Sgt Webster

SUPT. _____ DEP. _____

LEUTENANT/SERGEANT: Webster CLERK: _____

SPECIAL SERVICE OFFICER: _____

CHAPLAIN: _____

NOTARY: _____ CLINIC: _____

PRE-TRIAL: _____ OTHER (SPECIFY): _____

DATE: 6/23/09 20 00 TIME: 11:00 AM HOUSING UNIT: E-East

DEPUTY SIGNATURE: _____ BADGE NO.: 522

INMATE'S NAME: Ryan Bucklewskell # 32

ICN#: 106787

REQUEST: Can we please have toothbrushes and toothpaste as soon as possible. It is difficult to keep up the personal hygiene without it. Pillows as well! Thank you! X Dale Hare
X J. H. Mc X J. H. Mc
X J. H. Mc X J. H. Mc
X J. H. Mc X J. H. Mc
X J. H. Mc X J. H. Mc

DISPOSITION: _____

BUY THEM OR CORRECTLY
PILLOWS READY OFFERED

ON 6/20/09 6/21/09

IF YOU WISH TO FILE A GRIEVANCE,
PLEASE REFER TO THE INMATE HANDBOOK
ON PROPER PROCEDURE TO FILE.

Exhibit “C” - to Green Declaration,

Continued-

New York State Commission of Correction v.
Timothy Howard, Index No. 2009-011216
(Supreme Court Erie County)

Exhibits V through TT to the Petition

EXHIBIT V

ERIE COUNTY SHERIFF'S OFFICE JAIL MANAGEMENT DIVISION

Inmate Handbook



**TIMOTHY B. HOWARD
SHERIFF**

**RICHARD DONOVAN
Undersheriff**

**BRIAN D. DOYLE
Undersheriff**

**Donald J. Livingston
Superintendent**

**Barbara B. Leary
1st Deputy Superintendent**

**Robert A. Koch
1st Deputy Superintendent**

**Erie County Holding Center
40 Delaware Avenue, Buffalo, New York 14202**

Rev. November 2008

NOTICE TO ALL INMATES

This handbook is provided for your benefit while you are in the Erie County Holding Center. It explains:

- your rights & privileges
- services & programs available to you
- rules & regulations
- conduct expected from you while you are here.

PLEASE READ THIS BOOK THOROUGHLY

Services, schedules, and programs outlined in this book are subject to change due to facility conditions. You will be advised of any such changes.

All inmates must be afforded the rights guaranteed them by the Constitution of the United States and those that are mandated by the New York State Commission of Correction's Minimum Standards.

Rights, which are granted to you, as an inmate, include but are not limited to, the following:

- The right to be informed of the rules, procedures, and schedules of the facility as they pertain to your needs.
- The right to freedom of religious affiliation and worship thereof.
- The right to health care, including nutritious meals, bedding, clothing, and linen, the opportunity to shower daily, a regular exercise period, and medical and dental treatment.
- The right to present your views to the public via the media.
- The right to visit and correspond with your family and friends.
- The right, upon admission to the facility, to make telephone contact with your attorney or family members.
- The right to recreation.
- The right to access the law library.

NOTE: ANY OF THE ABOVE RIGHTS MAY BE RESTRICTED IF THEY BECOME UNDULY DISRUPTIVE TO THE SAFETY, SECURITY, OR GOOD ORDER OF THE FACILITY.

INMATE PRIVILEGES:

A privilege is an opportunity which may be extended, abridged or revoked at any time. The Superintendent and the Deputy Superintendents have the responsibility of determining the extent and nature of inmate privileges. No employee, at any time, may grant an inmate special privileges. Officers may not prevent inmate access to privileges unless it is accomplished through proper disciplinary procedures.

Privileges that are granted to you as an inmate include, but are not limited to, the following:

- the privilege to order commissary
- the privilege to watch television
- the privilege of receiving a daily housing area newspaper free of cost. Should a newspaper be used for any other purpose other than what it is intended for, the privilege will be revoked for the entire unit. Channel changers are not allowed and are considered contraband.

INMATE REQUEST SLIP:

This is a three-part NCR (no carbon required) form, which you are to use if you have questions concerning programs, charges, accounts, etc., which cannot be answered by the Housing Area Officer. You are to fill out the request in the space marked, "Request." The space marked, "Disposition" is for the response to your request.

Be brief and to the point in your request. If you have any questions regarding the use of this form, ask your Housing Area Officer. Once completed, your Housing Area Officer will read the request and ensure that it is going to the proper person, initial same, and complete the date and time. You will receive the pink copy of this form for your records and the white and yellow copies will be forwarded for response. Once answered, you will receive the yellow copy back with the answer to your request.

INMATE HOUSING:

The Erie County Holding Center is made up of two different types of housing areas-Linear and Podular. You will be assigned to a housing unit based on your "Classification"

Podular housing areas are made up of individual housing units, which share a common day room area.
Linear housing areas are the traditional "jail cell" design.

CLASSIFICATION:

Within 5 days of admission, you will be assigned to a housing area. Classification is the process utilized to determine your housing assignment and is based upon:

- your institutional behavior, both past and present
- your medical and/or psychiatric evaluation
- your ability to understand and obey Holding Center Rules & Regulations
- your ability to get along with others - both staff & other inmates
- Availability of housing space.

PERSONAL HYGIENE:

It is important for your health and well being that you keep yourself clean. You are required to shower upon admittance to the Holding Center, and to maintain your personal cleanliness daily. Shower facilities are provided for all inmates. You are also required to keep the shower area clean and to take your soap out of the shower with you when done. You will be issued a personal hygiene package and a drinking cup upon admission to the Holding Center. All inmates regardless of indigent status are entitled to a toothbrush and toothpaste. After the initial issue, exchange requests for a toothbrush and/or toothpaste will be granted on a weekly basis providing used items are turned into the housing unit Officer.

Shaving: Holding Center- Each evening, a list will be taken of those inmates wishing to shave. Razors will be made available after breakfast the following morning. You must be awake and prepared to shave when your name is called. You will have two (2) minutes to shave and be supervised by a deputy while shaving. You may not tamper with the razor in any way, attempt to conceal the razor or pass the razor to another inmate. You must immediately surrender the razor when ordered to do so. Any violation will be considered a major security violation and may result in disciplinary charges, criminal charges and/or restrictions on your use of a razor.

CLOTHING:

You will be issued facility clothing and linen when you are admitted into the Holding Center (two pairs of pants, one T-shirt, and one v-neck shirt). You must wear this clothing at all times, except when you are in the shower or sleeping. You will be held responsible for damaged or missing clothing issued to you. A clothing change will be made in the housing area on a weekly basis. Facility socks and underwear are available upon request.

Your personal clothing will be held in storage and you will receive a receipt. If you wish to have your personal clothing picked up by your family, consult with the Officer assigned to your housing area for the correct procedure to be followed. Clothing for court appearances will be accepted into the facility only if exchanged for a set of clothing already in property storage.

Clothing can be dropped off and dirty laundry picked up at the following times:

Monday through Friday:

07:00 a.m. to 11:15 a.m.

12:30 p.m. to 2:15 p.m.

Saturday and Sunday:

7:00 a.m. to 11:15 a.m.

12:30 p.m. to 2:15 p.m.

3:00 p.m. to 5:15 p.m.

6:30 p.m. to 7:30 p.m.

ALLOWABLE PROPERTY:

6 pair of socks (white)

6 T-shirts (white, no logos, lettering, no pockets)

6 pair of underwear-briefs/boxers (must be white)

6 bras (no bones or underwires)

Books: religious/educational in paperback form only
directly from the publisher

The following property **WILL NOT BE ACCEPTED BY THE FACILITY:**

NO SNEAKERS will be accepted.

NO sweatsuits, jogging suits, pajamas, robes, belts, boots, sandals, or any other items except those listed above.

NO Magazines (except as prescribed below)

NO Newspapers (except as prescribed below)

NO Books (except as prescribed below)

***NOTE*:** Printed material (magazines, newspapers and books) will only be accepted via U.S. Mail directly from the publisher. These items may only be possessed by the inmate to whom they were sent.

ALLOWABLE COURT CLOTHING:

ONE outfit will be allowed for court (if on trial, two will be accepted). This outfit includes pants (no metal decorations), shirt (no logos or hoods), a dress, or a two or three-piece suit. If any inmate wants to change court clothing, arrangements must be made with your family/friends to pick up the court clothing already stored in your clothing bag. Jackets or coats will only be accepted during the months of October through March.

The clothing bags are inventoried once per month and a notice will be issued to any inmate with excess property. You will have 20 days from the date of the notice to make arrangements to have someone pick up the excess clothing. If you have no one to pick up the clothing, you will have 20 days to mail out the clothing.

If you have any problems with this property pick up, write to the Officer in the Linen Room via request slip. If you do not contact the Linen Room Officer and you exceed the 20-day limit, the clothing will be donated to the Salvation Army or other charitable organization.

STATE-READY INMATES:

Those inmates sentenced to serve state time will be subject to State Correctional Regulations concerning property. The State will only accept the following property with an inmate:

Books: only legal or religious

Religious Articles: beads, Kufi, Yarmulke, religious medals or chains (not to exceed \$50 in value, and no stones can exceed 2" in diameter), prayer robe and guthra, prayer rug, Talit, Talit Katan, Tefillin.

Jewelry: watches, wedding bands - no single piece of jewelry can exceed \$50 in value. No stones or protrusions.

Legal Work: legal paperwork and documents.

YOU WILL NOT BE PERMITTED TO TRANSFER CLOTHING, PROPERTY, OR MONEY TO ANOTHER INMATE.

Any money or property left at the Erie County Holding Center for more than thirty (30) days after your release/ transfer will be disposed of as follows:

- 1) Property: clothing, jewelry, etc. will be donated to one or more charitable organizations.
- 2) Money: turned over to the Erie County Comptroller's Office in your name.

Therefore, if you are sentenced to the New York State Department of Corrections, have your family or friends pick up your property or mail it to them at your expense prior to your transfer.

PERSONAL PROPERTY

You **will not** be permitted to keep any cash or valuable articles in your possession in your housing area. When you are admitted to the Holding Center your personal property will be inventoried and you will be given a receipt for it.

NOTE: Due to security concerns, you will not be allowed to wear a medallion, metal or wooden cross (crucifix) or metal chain in the facility. If you desire or need to wear this religious symbol, contact the chaplain of your faith (Catholic, Protestant, and Muslim) in the facility and one will be provided for you at facility expense. Your personal cross or medallion will be placed in your property and you will be given a receipt for it.

Wedding bands must be plain - no stones, no protrusions. No other jewelry (watches, rings, earrings, necklaces, bracelets) will be allowed to be worn or in your possession while you are in the facility.

PROPERTY

Once arrested, any property in your possession at the time of your arrest will be inventoried and receipted by the arresting Law Enforcement Agency and the Erie County Holding Center Reception Officer. If you are released from Court after your arraignment, you may pick up your property at the Erie County Holding Center at 40 Delaware. If you have been sentenced to the ECCF, your property will follow you to the ECCF.

Any money in your possession at the time of arrest will be receipted and placed into your commissary account.

At no time will any money from your account be released to anyone outside of the Holding Center unless authorized by the Superintendent.

The only property accepted at the Erie County Holding Center must fit inside a property envelope (approximately 9 x 12 inches). Any items which do not fit into that envelope will be returned to the arresting Law Enforcement Agency.

You must make arrangements with family or friends to pick up that property from the arresting Law Enforcement Agency. The Holding Center is **NOT** responsible for those items which did not fit into the property envelope.

MAIL:

Mail will be delivered once per day, five days per week. No mail will be received on Saturdays, Sundays, or holidays. You are entitled to correspond with any person when in the Holding Center. There is no restriction on the amount of mail you can receive or send.

INCOMING MAIL:

ALL incoming mail will be opened and inspected to ensure the absence of contraband. No mail will be read or censored (to censor means to withhold or delete any or all of the contents of a letter). If the Superintendent has reasonable suspicion that any incoming mail may contain contraband, which is either of a criminal nature or considered a threat to the safety and security of the facility or persons therein, it may be read. In all such cases, both the sender and the receiver of the correspondence will be notified of the Superintendent's decision and will be given an opportunity to appeal this decision, in writing.

Incoming correspondence from attorneys, legal assistance agencies, and courts will be considered legal mail. Such mail will be opened only in the presence of the recipient inmate to ensure the absence of contraband.

THE FOLLOWING ITEMS WILL NOT BE ACCEPTED INTO THE FACILITY:

Money (cash), personal checks, NON-U.S. Postal Money Orders, nude personal photographs, musical greeting cards, oversized greeting cards, plastic-type cards, telephone calling cards, personal identification cards, sonograms (plastic x-ray type), Polaroid's (whole or altered), more than ten (10) photographs, medicine, personal hygiene items such as deodorant, hair products, combs, brushes, toothpaste, tooth-brush, shampoo, soap, washcloths, towels, cosmetics, metal or wooden crosses, chains, necklaces, medallions, rings, watches, bracelets, stamps, writing paper, envelopes, pens, pencils, crayons, colored pencils, pantyhose, metal objects, plastic objects, glue substances, decals, stickers, artwork: beaded, painted, glued, strung, etc., belts, food items, candy, cologne or perfume, cassette tapes, electrical items such as radios, tape players, televisions, lottery tickets, hair, tobacco products.

IN OTHER WORDS, any item which can be purchased on the inmate commissary and which is sent through the U.S. Mail will be considered contraband and will be returned to sender at their expense. Save your family/friends time and money and abide by the rules. At no time are exceptions made.

Mail should be addressed to you as follows:

Your name and ICN #
(on your bracelet)
Erie County Holding Center
40 Delaware Avenue
Buffalo, NY 14202

It is your responsibility to notify anyone sending you mail to use the name you are currently using. We

are not responsible for mail sent to you under an AKA (alias). If you have a common name, such as Jones, Smith, Williams, etc., to avoid confusion, notify anyone who might write to you to use your date of birth or ICN number on the envelope. This will allow us to correctly identify the correct recipient of the mail. If we are unable to determine the correct person to whom the mail is intended, we will return it to sender until such time as your date of birth or ICN number is included on the envelope. Do not use your housing area/unit number as identification.

IF YOU LEAVE THIS FACILITY, WE ARE NOT RESPONSIBLE FOR FORWARDING YOUR MAIL. MAIL WILL BE RETURNED TO SENDER IF YOU ARE NO LONGER IN OUR CUSTODY. ALSO, DO NOT CALL AFTER YOU ARE RELEASED AND ASK US TO HOLD MAIL FOR YOU TO PICK UP.

Deposits into your inmate account may be made in person using cash or U.S. Postal Money Orders only.

Deposits made via the U.S. mail must be in the form of a United States Postal Service money order. No cash, checks, or any other form of deposit will be accepted.

OUTGOING MAIL:

All outgoing mail must have **your return address and ICN# in the upper left-hand corner**. If you do not include your name, ICN# and return address on the envelope and the mail is returned to sender, it will end up in the dead letter file in the U.S. Post Office. Additionally, do not attempt to send mail to anyone in the facility without using a meter-stamped envelope; we will not accept any such letters and the letters will also end up in the dead letter file in the Post Office.

A locked mailbox, for outgoing mail, will be brought to your housing area once a day on the 3-11 shift. You will be responsible for placing your mail in the mailbox. **AT NO TIME WILL YOU BE PERMITTED TO GIVE YOUR MAIL TO ANY OFFICER TO MAIL FOR YOU.**

All indigent inmates that submit a combo request will be provided with two stamped envelopes and writing paper (combos) once per week at facility expense. Additional writing materials and stamped envelopes can be purchased on the inmate commissary.

REQUEST FOR A MONEY ORDER:

Money order service is available to you at anytime for the following needs: bail purposes, legal fees, and court fees. The money order must be in the name and address of the legal entity (Attorney's Name, Township/City Name, etc.) and the envelope must be addressed to said entity.

ADDITIONAL POSTAGE

Any mail item requiring additional postage must be sent through the law library. You must submit a request to the law library and bring your additional postage mail item (oversized, certified, return receipt, etc.) with you to the law library. The law library Officer will compile the additional postage calculation and charge your account accordingly. Additional postage items will be sent through the U.S. Post Office following the **OUTGOING MAIL** procedures stated above via the Law Library Mailbox.

PACKAGES:

Any inmate wanting to receive a package from family/friends must receive the prior approval of the Superintendent. To do so, you must submit a request slip to the Superintendent stating the specific items being sent and from whom (include address of sender). Only those items that are acceptable in your housing unit will be permitted to be sent to you in a package. Also, those items listed as unacceptable in incoming mail are also unacceptable in packages.

Any inmate wishing to send their property out to family/friends will do so at their own expense. You will be provided with a box and will be required to pack your outgoing property in the presence of a facility staff member.

MONEY:

If your family or friends wish to provide money for you while you are in the Holding Center, they may deposit

it at the Cashier's Window located on the first floor near the Delaware Avenue entrance, during the hours specified below:

Monday through Friday:

7:00 a.m. to 11:15 a.m.
12:30 p.m. to 2:15 p.m.
3:00 p.m. to 5:15 p.m.
6:30 p.m. to 7:30 p.m.

Saturday and Sunday

7:00 a.m. to 11:15 a.m.
12:30 p.m. to 2:15 p.m.

NOTE: In accordance with policy established by the U.S. Marshals Service, any inmate being held in the Holding Center for the U.S. Marshals will not be allowed to have more than \$50 in their account at any time.

CASH BAILS WILL BE ACCEPTED FOR THE CITY, TOWNS, AND VILLAGE COURTS 24 HOURS PER DAY, 7 DAYS A WEEK.

NEWSPAPERS:

The Buffalo News will be provided, at facility expense, in all housing areas. However, as the provision of a newspaper at facility expense is a privilege, those inmates in disciplinary segregation are not provided with a facility-issued newspaper. Newspapers are for reading purposes only. Failure to follow this rule will result in removal of newspapers from the unit. If you wish to have a newspaper of your own, it will be up to you to contact the publisher to make arrangements for your own subscription to be delivered through the U.S. Mail.

TELEPHONES:

You will be allowed access to a telephone when admitted to the Holding Center to make contact with your attorney, family, or friend. "Collect Only" telephones are available for your use in housing areas at the following times:

9:00 a.m. to 12:00 noon
1:00 p.m. to 2:45 p.m.
4:00 p.m. to 5:00 p.m.
7:00 p.m. to 11:00 p.m.

ALL CALLS ARE SUBJECT TO MONITORING AND/OR RECORDING.

THIRD PARTY CALLS AND CREDIT CARD CALLS ARE NOT AUTHORIZED FOR THE TELEPHONES IN THE HOLDING CENTER. Therefore, any attempt to use either may result in a temporary lapse in service on the telephone used.

To make calls from this facility:

1. Pick up the phone; dial 1 for English, 2 for Spanish.
2. For all USA calls dial 0+ Area Code + your number.
3. After the call is connected, a message will be played telling the called party that the call is coming from an inmate at the Erie County Holding Center, warning them not to use any custom calling features or they will be disconnected.
4. To insure your call is complete, follow the instructions on "HOW TO AVOID BEING DISCONNECTED"
5. To accept calls from this facility, the party you are calling must have a touch-tone phone. If they have a rotary phone, please call 1-800-610-7079.

HOW TO AVOID DISCONNECTION

Failure to comply with the following could cause calls from inmates to be disconnected:

1. **DON'T** attempt to make a 3-way call.
 2. **DON'T** try to transfer the call.
 3. **DON'T** put the inmate on hold.
 4. **DON'T** use or answer call waiting.
 5. **DON'T** use cellular phones.
 6. **DON'T** use cordless phones.
 7. **DON'T** press numbers on the touch-tone pad during the call (on the inmate or called phone).
 8. **DON'T** stop the conversation for any length of time, even short pauses may result in disconnect.
- Once a number has been blocked, only the person the telephone is listed to may un-block the number by calling 1-888-288-9879.

A telephone is available in the event of a verifiable emergency (death in the immediate family; immediate family member in hospital). These calls are for the local area only and at the discretion of the shift supervisor. You are to complete a request slip and forward it to the attention of a shift supervisor with the name of the party to be called and the reason for the request.

AT NO TIME WILL WE ACCEPT TELEPHONE CALLS OR MESSAGES FOR ANY INMATE HOUSED IN THE ERIE COUNTY HOLDING CENTER.

Be courteous when talking with the telephone operators and be considerate of other inmates in your housing area waiting to use the telephone. There is a 15-minute time limit for each call.

AMERICANS WITH DISABILITIES POLICY:

Provisions are in place to ensure that reasonable accommodations are made within the framework of the Americans with Disabilities Act. In order to provide housing, access to programs, personal hygiene assistance, fair and equitable disciplinary proceedings, medical services and an outlet for grievances for inmates with physical disabilities, provisions will be made for any inmate with a verified disability, on an individual basis, in accordance with their specific needs.

For the hearing and or speech impaired, podular housing with audible and visual emergency alarms, TDD telephone system and televisions with close caption capabilities are available. Sign interpreters will be provided, upon inmate request, during disciplinary hearings, medical treatment, inmate grievance proceedings, booking, and classification or for those instances where an inmate's rights must be protected in accordance with the Americans with Disabilities Act. Additional reasonable accommodations will be made for any inmate with a verifiable disability in accordance with their specific needs. To access services under the ADA Policy, inmates must request through the ADA Coordinator, consideration for their specific needs. Any questions should also be forwarded to the ADA Coordinator.

TDD TELEPHONE SYSTEM

A TDD telephone system has been installed for those inmates who are hearing impaired and/or speech impaired. The hours for use of this keyboard telephone are from 9:00 am to 11:00 am and from 6:30 p.m. to 10:30 p.m. Schedules for use of this telephone may vary due to facility operations.

TELEVISION:

Televisions, with close caption capabilities, have been provided in all housing areas within the facility. When the housing area is clean, normal hours of operation will be from 9:00 am to 10:45p.m. Any tampering with the television sets, including the cable connection, may result in suspension of television privileges in that housing area.

CHANNEL CHANGERS ARE CONSIDERED CONTRABAND AND ARE NOT ALLOWED.

Possession of a channel changer will result in disciplinary charges filed as well as removal of newspaper delivery for that unit or side.

COMMISSARY:

A commissary service is available to all inmates housed in the Erie County Holding Center who have money in their accounts. Guidelines for ordering and receiving commissary:

- 1). Commissary ordering days will be Sundays, and Wednesdays. You will receive your orders on Mondays and Thursdays on the 3-11 shift. Microwaves are **not** available in all living units therefore do **not** order items which require a microwave if one is not available on your housing unit.
- 2). Your order will arrive pre-bagged with your receipt attached. After checking your order, you will be required to sign this receipt acknowledging that you have received your order and that it is correct. You will receive the copy of this form and the Officer will keep the signed original. Also on this receipt is the current balance of funds left in your account.
- 3). Inmates in "keep-lock" status will only be allowed to order personal hygiene items and writing materials. Inmates in "keep-lock" status must utilize the special **KEEP-LOCK COMMISSARY ORDER FORM**.
- 4). There is a \$30 limit per commissary order.
- 5). Your account will be checked to make sure that you have enough money to cover your order. If you do not have enough money to cover your order, your entire order may be cancelled.
- 6). Commissary items and/or prices may change. If so, you will be notified.
- 7). If there is a mistake in your order, you will have to wait until the next business day for it to be corrected.

- 8). If you have any questions concerning the money you have in your account, send a request slip to the records area with your questions. Do not ask your housing area Officer to call records for an account balance.
- 9). Combos (2 stamped envelopes and 2 sheets of paper) will be available for indigent inmates only. In order to receive a combo package, inmates must submit a combo request form. Your account will be checked, and if you are indigent, you will receive a combo on that Thursday. Request form must be submitted by Tuesday to ensure timely delivery of your combo package.

ERIE COUNTY HOLDING CENTER SERVICES

MEDICAL

A medical care provider is available seven nights per week, beginning at approximately 6:30 each evening. Inmates are scheduled and seen by this medical care provider through "Sick Call". Sick call is available to all inmates housed in the Erie County Holding Center.

Sick call on Saturday, Sunday and holidays is limited to emergencies and new admissions only. Regular sick call is held Monday through Friday. If you have a medical problem and feel you need to see the medical care provider on regular sick call, the Officer in your housing area will take a list before lunch. You must give the Officer your name, ICN#, your housing unit number, and the nature of your medical problem. Be specific as the medical staff screens the list to ensure that those inmates who must be seen by the medical care provider due to the severity of their medical problem(s) are seen. All inmates will be seen according to the severity of their condition. You will be scheduled to see a medical care provider as your condition dictates. In order to ensure that all inmates have an opportunity to see the medical care provider, your housing areas have a pre-scheduled day for sick call. See your housing Deputy for further information. Should an emergency arise after sick call requests have been taken, notify your housing officer immediately.

MEDICATIONS:

Morning medications are delivered to the housing areas beginning at 8:30 am. If you are to receive a medication, it will be your responsibility to ensure that you are up at that time or respond to the Officer/nurse when your name is called.

MEDICATIONS WILL NOT BE LEFT ON THE BARS, PODS OR WITH YOUR OFFICER.

When your name is called to receive medication(s), you must report to the Officer/Nurse passing the medications fully clothed and with a glass of water as you must take your medications in front of the person delivering them.

If you are at court, clinic, etc., when the medications are delivered, inform the Officer in your housing area. If you have any questions regarding your medications, the Medical Department is to be contacted, via request slip. If it is of an emergency nature, the housing area Officer will contact the Medical Department. The Nurse passing medications is not able to answer medical/medication questions while delivering medications. If you refuse medications that have been ordered for you, you will be expected to sign a refusal form.

If you are called to medical to be seen by a medical care provider, you must go to the infirmary when called; if you refuse treatment, you must sign a refusal for treatment form **IN THE MEDICAL OFFICE.**

DENTAL:

A dentist will be on duty in the Holding Center on Wednesday and Friday mornings. The Holding Center Dental Clinic was designed and set up for emergency dental care in order to alleviate any facial or dental discomfort an inmate may be experiencing. A nurse will first see inmates with dental problems during daily sick call hours. If there is an acute emergency, inform your housing area Officer and the medical department will be contacted.

NOTE: As the dentist is only in the facility on a limited basis, the wait for routine dental problems may be lengthy. Emergencies take precedence.

MARRIAGES:

Inmates wishing to marry must comply with Holding Center rules, as follows:

Inmates may submit a written request to the superintendent seeking permission to get married. The authority to grant permission rests solely with the Superintendent. Requests from inmates when the inmate or intended spouse is less than 18 years old, not a U.S. Citizen, sentenced, state ready, on parole or a parole violator, facing sex offense charges, domestic violence charges or is federal prisoner will not be considered.

An Inmate Marriage Request Form is available from your housing area deputy. You must fill it out completely, including the name, address & telephone number of an ordained minister or public official legally authorized to perform marriages in New York State that has agreed to consider presiding over your marriage.

You will be required to attend at least three (3) monthly premarital counseling sessions and any additional sessions that the minister or presiding official feels necessary. You, your intended spouse and the presiding official must conduct yourselves appropriately during these sessions. You will be held accountable for any violation of laws or rules and any such violations may result in the revocation of your permission to get married.

Upon successful completion of premarital counseling, you and your intended spouse are responsible for securing a marriage license. Once the marriage license is received, contact your presiding official who will contact the Superintendent to schedule the wedding. You, your intended spouse, the presiding official and official witnesses provided by the facility will be the only people in attendance. Upon completion of the ceremony, the only physical contact permitted is a brief kiss and embrace. Improper conduct of any kind will result in your ceremony being cancelled and the appropriate disciplinary or criminal charges being filed.

RELIGION:

The Erie County Holding Center provides religious services for the Catholic, Muslim, and Protestant Faiths. Chaplains of each of these listed faiths are on staff and available for consultation via request slip. If you are a member of a religion other than those listed above and this religion is of a recognized community standard, send a request slip to the Superintendent's Office and every effort will be made to ensure that your religious tenets are met.

If you wish to change your religious denomination, send a request slip to the Chaplain of the religion you want to join. The Chaplain will read your slips and if he/she approves the change, you will be allowed to attend services for that religion in the future.

SCHEDULE OF RELIGIOUS SERVICES:

Protestant: Sunday mornings beginning at 8:00 am.

Catholic: Saturday evenings beginning at 7:00 p.m.

Muslim: Friday afternoons beginning at 1:00 p.m.

To attend your service, you must sign up when the Officer compiles the list for that service (usually done the evening before the scheduled service). Late add-ons will not be allowed. When you attend a service, you must be quiet and respectful of the rights of others to worship. Unruly behavior may result in your ejection from the service.

LIBRARY:

A library has been established for the inmates while in the Holding Center. If you choose to use the library, the following rules must be obeyed:

- 1). You will attend on those days when your housing area is scheduled.
- 2). You must conduct yourself in an orderly manner and be respectful of others using the library. If you do not, your library privileges may be suspended.
- 3). You will be required to sign for any library books you take. Your name and ICN will be used as identification. All books will have a due date for their return and you will be required to either return or renew these books on your next visit to the library. You will not be allowed to borrow additional books until the books currently borrowed are returned or renewed. Take care of the books in your possession and let others enjoy them too.
- 4). You will be held responsible for any book that is damaged or lost while signed out in your name.
- 5). When you are released or transferred from the Holding Center, books must be returned to the library via the library cart in the linen room area.

RECREATION/EXERCISE:

All inmates in the facility will receive recreation daily. Activities include basketball, volleyball, weights, jogging, pool table, etc. Weather conditions or facility operations may change recreation schedules. You will be so notified.

NOTICE: WHEN AN INCIDENT IS TAKING PLACE IN RECREATION, THE OFFICERS ASSIGNED TO THE AREA WILL INSTRUCT ALL INMATES TO STOP ALL ACTIVITY AND LINE UP AGAINST THE WALL. WHEN SO ORDERED, ALL INMATES ARE REQUIRED TO PUT DOWN ALL RECREATION EQUIPMENT, BACK AWAY

FROM THE INCIDENT, AND LINE UP AGAINST THE WALL AS INDICATED BY THE OFFICER.

IF YOU ARE NOT INVOLVED **STAY OUT OF IT!!!** ANY INMATE WHO BECOMES INVOLVED IN ANY INCIDENT IN ANY WAY OR FAILS TO OBEY THE OFFICER'S ORDER, WILL BE SUBJECT TO DISCIPLINARY ACTION WHICH MAY INCLUDE THE RESTRICTION OF YOUR RECREATIONAL PRIVILEGES TO THE STATUS OF KEEP-LOCK RECREATION FOR A PERIOD OF UP TO 30 DAYS DEPENDING ON YOUR INVOLVEMENT.

MEALS:

You will receive three wholesome, nutritionally balanced meals per day. The meal schedule is as follows:

Breakfast begins at 5:00 a.m.

Lunch begins at 11:00 a.m.

Dinner begins at 4:30 p.m.

Each inmate must personally take his or her own trays. If you have another inmate take your meal for you, you may lose your meal.

SPECIAL DIETS:

The only special diets recognized are those for either medical or religious reasons. To obtain a **religious** diet, you must send a request slip to the Chaplain of your faith. If he/she approves such a diet, you will be given same. The diet will be as close as possible to the meal being served the general inmate population with your religious needs met. To obtain a **medical** diet, you must first be seen on sick call by the facility physician. If approved, you will receive the recommended diet. We do not serve vegetarian meals because you choose not to eat meat.

VISITING:

Due to the introduction of contraband through visits, all visiting rules and regulations will be strictly enforced. All visits will be contact visits unless otherwise specified. Each inmate will be allowed two hours of visiting time per week.

VISITING SCHEDULE:

Visiting will be conducted Saturday through Wednesday from 7:00 a.m. - 11:45 a.m. and 1:00 p.m. to 2:30 p.m. Visitor sign-up times are at 7:00 a.m. to 11:15 a.m. and 12:30 p.m. to 2:00 p.m. All visitors must be signed in by 11:15 a.m. and 2:00 p.m. for each visiting session. The building closes at 11:15 a.m. for the morning session and at 2:00 p.m. for the afternoon session. All visitors will be required to exit the facility at these times.

ANY VIOLATION (S) OF THE FOLLOWING RULES AND REGULATIONS WILL RESULT IN AN IMMEDIATE TERMINATION OF YOUR VISIT AND DISCIPLINARY ACTION.

VISITING RULES AND REGULATIONS:

- 1). Any order given to you by an Officer in the Visiting Room will be obeyed immediately and without question.
- 2). All inmates entering and exiting the visiting room will be required to walk along the wall to their designated visiting table.
- 3). You may briefly kiss your visitor at the start and end of your visit.
- 4). Hands will remain on top of the table and feet will remain on the floor.
- 5). Visitors will not be allowed to loiter on the premises of 10 Delaware and/or 40 Delaware. Additionally, any visitor found shouting or gesturing to any inmate in the facility will forfeit their visit.
- 6). Indecent exposure is strictly prohibited. If a visitor is found exposing any body parts, his/her visits may be suspended for a determined period of time.
- 7). No passing of any item between visitor and inmate or between inmate and visitor will be allowed. If any person is found passing contraband of any type, criminal charges will be filed if the contraband is of a criminal nature or if not of a criminal nature, visiting privileges may be suspended or restricted to non-contact visits.
- 8). As this is a smoke-free facility, no smoking will be allowed on the premises of the facility.
- 9). No cross visiting will be allowed between tables.
- 10). Neither inmates nor visitors will be allowed to bring any items into the visiting room, such as pens, pencils, combs, etc.
- 11). NO GUM CHEWING WILL BE ALLOWED.

- 12). Conversation between inmate and visitor(s) will be held in normal tones. Shouting and/or fighting will result in termination of your visit and may result in non-contact visiting status.
- 13). No food or beverages will be allowed into the visiting room.

CHILDREN'S VISITS:

- 1). Only one child will be allowed per adult.
- 2). Children are not to be left in the Public Lobby without a parent or guardian.
- 3). Children will not be allowed to run, scream, or shout in the visiting area.
- 4). **ANY PERSON UNDER THE AGE OF 18 MUST BE ACCOMPANIED BY A PARENT OR LEGAL GUARDIAN TO VISIT AN INMATE IN THE FACILITY.**
- 5). Only one child and one adult will be allowed to visit an inmate at any one time.

GENERAL VISITING RULES AND REGULATIONS:

- 1). Drug detection dogs will patrol the lobby and visiting areas periodically at unscheduled times.
- 2). Visitors may be required to submit to a strip-search as a condition of their visit. Based on a reasonable suspicion that a visitor is suspected of bringing contraband into the facility, a Superintendent's Order may be issued justifying a strip-search of a visitor. If the visitor does not submit to a strip search, his/her contact visiting privileges may be suspended for a determined period of time.
- 3). All visitors must present picture identification (current and valid NYS Drivers License; current and valid NYS Non-Driver's Identification; current and valid Driver's License issued by another state or province, etc.) and a second form of identification to verify the address. This second form of identification can be a current utility bill.

There will be no exceptions to this rule.

IT IS THE POLICY OF THIS DEPARTMENT TO **PROSECUTE** TO THE FULLEST EXTENT OF THE LAW, ANY INDIVIDUAL FOUND GUILTY OF INTRODUCING CONTRABAND INTO THE FACILITY.

Additionally, any visitor having been found guilty of introducing contraband into the facility will be denied all rights to visit in this facility. Any inmate or visitor who has had their visiting privileges either suspended or restricted may appeal this decision, in writing, to the Superintendent's Office.

ALL INMATES WILL BE REQUIRED TO SUBMIT TO A STRIP-SEARCH FOLLOWING THEIR VISIT. THERE WILL BE NO EXCEPTIONS TO THESE RULES.

LEGAL SERVICES

- 1). Pre-trial Services are available, via request slip to Pre-trial, to any inmate who sends needs assistance in legal matters.
- 2). Attorney Conference/Visits: your attorney may visit you at any time that does not disrupt the orderly running of the facility, such as lockdowns for shift changes or during the serving of meals.
- 3). Notary Public: you can have your paperwork notarized by sending a request slip to the Law Library. The Law Library Officer is a licensed Commissioner of Deeds and will notarize your paperwork as soon as possible.
- 4). Copies: copies of legal papers can be made by requesting it of the Officer in the Law Library. There will be a \$0.10 charge for each copy made. At the time the copies are made, a receipt will be delivered to the Records Area for a deduction from your account. If you do not have the necessary funds at the time, the copies will still be made. The Cashier will retain the receipt at the Cashier's desk and, at such time as you receive money in your account, the cost of the copies will be deducted.

LAW LIBRARY

A Law Library is maintained within the Holding Center for your use while incarcerated. Books and/or legal materials, (other than copies), will not be allowed to be removed from the law library. If you want to use the law library, you can do so by sending a request slip to the Law Library. You will be scheduled at the earliest possible available time. If you cannot use this library appropriately, you will be sent

back to your housing area.

The law library contains current legal materials and references as mandated, including a copy of the New York State Commission of Correction Minimum Standards. If you need pertinent legal material, which is not contained in this library, inform the Law Library Officer and every effort will be made to obtain the desired material from an outside source.

You will be permitted to discuss and/or offer advice regarding your legal matters with other inmates while in the law library. However, pursuant to section 7031.3 of the NYS Commission of Correction Minimum Standards, "no inmate shall receive payment, benefit, or consideration in any form for providing assistance to another inmate."

NOTE: Any violation of this section may result in restriction of your law library rights. Also, a law library trusty will be available to assist you in researching of needed legal materials or information.

All inmates have daily access to legal materials upon request. If you have any questions regarding the Legal Services provided in the Holding Center, ask the Officer in your housing area or send a request slip to the Law Library Officer.

IN-HOUSE PROGRAMS

If you have any questions about any programs offered in the Holding Center, ask the Officer in your housing area.

Educational Services:

Educational Services are provided by the Buffalo Board of Education and other service providers. The following educational programs are regularly available:

- G.E.D. Preparation
- Life Skills
- Computer Literacy
- Parenting classes

Educational Services are available Monday through Friday from 8:00 a.m. to 11:00 am; 1:00 p.m. to 3:00 p.m. and from 6:00 p.m. to 8:00 p.m. (night school). You will be screened for educational services when you are classified. If you wish to enroll in school after you have been classified, send a request slip to the Education Dept.

Inmates who are less than 21 years old, have not graduated from high school or received a GED and are likely to be in jail for ten days or more, will automatically be enrolled in school when you are classified. If you meet this criteria and want to take advantage of additional educational opportunities, notify the Education Dept.

FIRST TIME/LAST TIME:

This program provides counseling and crisis intervention for youth between the ages of 16 and 21 booked into the Holding Center for the first time who want to make it their last time. If you qualify, the counselors will contact you without any action on your part. If you do not meet the above criteria but want to take part in this program, send a request slip to First Time/Last time stating your reason(s) for the request. Each request will be screened on an individual basis and you will be notified of their answer.

FORENSIC COUNSELING PROGRAM:

This program is available to any inmate and provides counseling on a professional level to help you effectively cope with emotional and/or personal problems, which might affect mental health. If you wish to participate in this program, send a request slip to the forensic Mental Health Unit or send your request through the Medical Department. You will be notified of their answer.

TRUSTY PROGRAM:

If you want to become eligible to be a trusty in the Erie County Holding Center, submit your name, via request slip, to the Trusty Coordinator. Once your request slip is received, you will be required to undergo a four-part screening process, as follows:

- 1). Medical: Your medical condition and record will be reviewed by the Medical Department to ensure that you have no medical problem that would prove to be threatening to your medical well-being, or the well-being of others if placed in a trusty position. If you are approved medically, you will proceed to the second phase of the screening process.
- 2). Forensic: Your forensic mental health condition and record will be reviewed by forensic Mental Health staff to ensure that you have no mental or emotional problem which would prove threatening to yourself or others. If you are cleared by Forensic, you will move to the third phase of the screening process.
- 3). Classification: Your classification/disciplinary file will be reviewed to ensure that you are not violent or assaultive. If you have an extensive in-house disciplinary file, you will be denied access into the program.
- 4). Attitude and Demeanor: Access into the trusty program is a privilege, not a right. Therefore, your behavior, attitude, and demeanor while in the facility will be reviewed. If you cannot get along with others, or reports are received (other than disciplinary write-ups) from Supervisors or staff noting a negative or behavioral problem, access into the program will be denied.

If you pass all phases of the screening process, your name will be placed on an eligibility list. Just because you passed the screening processes, you are not automatically given a position as a trusty. You must wait until a position becomes available and your name is next on the list. When a position becomes available, you must also meet the job requirements before being appointed to the position. You will receive an answer, in writing, at the completion of the screening process as to whether you will be placed on an eligibility list.

NOTE: No inmate being held in this facility for the U.S. Marshals or U.S. Immigration Service will be eligible for the trusty program, per the requests of both agencies.

HOUSING AREA RULES & REGULATIONS:

Your housing unit will be inspected daily by the Officer assigned to your housing area:

1. You are required to keep your individual unit clean and to do your share in keeping the general housing area clean.
2. Before leaving your housing unit your bed must be made and all personal and paperwork, books and magazines neatly stacked.
3. You must make sure that the toilet and sink in your housing unit are thoroughly cleaned with hot water, soap, and scouring powder.
4. You are not to place any objects on the walls, windows, mirrors, vents, lights, or bars in the housing units or areas (example: pictures, pin-ups, light covers, etc.).
5. You are not allowed to accumulate newspapers or other flammable items, such as bags or boxes from commissary in your housing unit.
6. You may not place blankets, towels, newspapers, or other items on the bars or your housing unit for any reason.
7. You cannot hang clotheslines in the housing units/areas.
8. You are prohibited from drawing on, writing on, or otherwise defacing walls in the housing units/areas.
9. Channel changers are strictly prohibited.
10. Light covers are strictly prohibited.
11. All trash/garbage must be placed in the garbage cans provided in each housing area.
12. You must be fully clothed (pants, shirt, and shoes) when you leave your housing unit.
13. You are not to enter any housing unit other than your own.
14. Officer's desks and any items on the desk are "off limits" to you. You must not tamper with or take any property from an Officer's desk.
15. You are not allowed to store any items from any meals in your housing unit. The only food items allowed to be stored in your housing unit are those ordered from commissary.
16. You cannot sit on, tamper with, or obstruct in any way, radiators, windows, locks, electrical fixtures, televisions, etc., in any manner. You are to report any equipment not operating properly to the Officer assigned to your housing area.
17. You cannot tamper with the Officer's telephone.
18. You will not be allowed to sit on or obstruct the stairways in any manner.
19. You are not allowed to do chin-ups or gymnastics on the stairways or on the railings.
20. You are not allowed to hang anything on the stair railings.
21. Under no circumstances are you to take pillows or mattresses out of your housing unit.
22. You must wear clothing to and from the showers. A towel is not considered appropriate clothing.
23. You must wear shoes or appropriate footwear at all times.

24. You are not allowed, under any circumstances, to take food trays to your housing unit or to the furniture in the TV area. Meals are to be eaten at the tables provided for this purpose.
 25. You will not congregate at, knock on, or make obscene or disruptive gestures through the windows.
 26. You are not to leave your housing area with commissary items.
 27. Passing of items between inmates in different housing areas is not allowed. Do not ask any Officer to pass anything from you to another inmate.
 28. You will not argue or disagree over the selection of television programs. Selection of television programs will be in a fair and equitable manner. Failure to comply with this regulation will result in temporary suspension of television privileges in your housing area.
 29. Damage or destruction of the TV's will result in their removal and replacement will occur only when repaired or spare equipment is available.
 30. You are to obey and respect the Officer in your housing area at all times. If in the pods, violation of this rule will result in an automatic ejection from the pods.
- If you have any problems, complaints, or requests, first report them to the Officer assigned to your area. If he/she cannot resolve them, he/she will assist you in forwarding them to the proper person or department.

INMATE GRIEVANCE PROGRAM:

In compliance with the New York State Commission of Correction Minimum Standards, this facility has established an Inmate Grievance Program for the resolution of problems and complaints. This program consists of an informal procedure and a formal procedure, as follows:

INFORMAL GRIEVANCE PROCEDURE:

VERBAL REQUEST/COMPLAINT

- 1) Verbal requests or complaints may be made directly to the Officer assigned to your housing area. If the matter is within the realm of the Officer's authority, immediate action will be taken. If the matter cannot be resolved or must be forwarded to another person or office for resolution, the Officer will advise you on how to proceed.
- 2) Matters that cannot be immediately resolved will be placed in writing on a request slip and forwarded to the appropriate person or office for review and consideration. A decision regarding the request or complaint will be made without undue delay.

FORMAL RESOLUTION PROCEDURES:

You are encouraged to try to have your problems or complaints resolved through the informal process (above), however, you may file a formal written grievance at any time.

NOTE: Pursuant to New York State Commission of Correction Minimum Standards, dispositions and sanctions from disciplinary hearings, administrative segregation housing decisions, issues that are outside the authority of the Superintendent to control; or complaints pertaining to other inmates are not grievable and may be returned to the inmate. Such grievances may not be appealed to the Superintendent or to the Commission's Citizens' Policy & Complaint Review Council.

- 1). Grievance forms are available from your housing area officer.
- 2). A grievance must be filed within five (5) days of the act or occurrence giving rise to the grievance. Grievances that are untimely will not be accepted.
- 3). When completing the Grievance form include all specific facts, circumstances, dates, times, names of witnesses and any supporting documentation or evidence that you have. Once complete, submit the form to your housing area officer. If you need help completing the form, ask your housing area officer and assistance will be provided.
- 4). The housing area officer will review your grievance and try and assist you in resolving it immediately. If the officer is able to help you resolve your grievance, you will be asked to sign the appropriate space on the form and the form will be sent to the Grievance Coordinator.
- 5). If the housing area officer cannot help you, the form will be reviewed by a supervisor who will attempt to assist you in resolving your grievance. If the grievance is resolved, you will be asked to sign the appropriate space on the form and it will be forwarded to the Grievance Coordinator.
- 6). If your grievance is not resolved, it will be forwarded to the
- 7). Grievance Coordinator for processing and you will receive a formal decision within five (5) days.
- 8). If you are dissatisfied with the decision of the Grievance Coordinator, you may appeal to the Superintendent. You must appeal within two (2) business days of your receipt of the Grievance Coordinator's decision.

- 9). You will receive the Superintendent's decision within five (5) days of your appeal.
- 10). If you are dissatisfied with the Superintendent's decision, you may appeal to the New York State Commission of Correction. This must be done within three (3) business days of the Superintendent's decision.
- 11). You will be provided with a receipt for any grievance appealed to the commission of correction. You will be notified of their decision, via U.S. mail within 45 days of the date the commission receives your grievance.

NOTES:

1. Business days are considered Mondays through Fridays, excluding holidays.
2. Grievances related to disciplinary sanctions, administrative segregation decisions, issues outside the ability of the Superintendent to control, issues related to anyone other than yourself, or grievances that are vague or fail to provide specific information or fail to provide sufficient supporting evidence, will not be accepted and returned to you.
3. Law strictly prohibits reprisals against inmates for filing a grievance. All allegations of reprisal will be fully investigated.

INMATE REQUEST SLIPS: These slips are to be used for inmate requests, in writing, which cannot be answered by your housing area Officer. These requests are to be used for specific needs, actions, complaints, etc., and addressed to the appropriate areas or person in the facility. These slips are readily available in all housing areas. The Officer will read, sign, and date all request slips and will forward all completed request slips to the designated recipient for response.

INMATE DISCIPLINARY PROGRAM

The following behavior is prohibited. The type of disciplinary proceeding that may result from an alleged violation of each rule is listed. The acts of **conspiracy**, **attempt**, and **accessory** will be punishable to the same degree as the actual offense involved. These terms have the following meaning:

Attempt: any act that constitutes a step in a course of conduct that would result in an act of misbehavior.

Conspiracy: any agreement between two or more persons to engage in an act of misbehavior.

Accessory: providing assistance in any manner prior to, during, or after a person commits an act of misbehavior.

Attempt, conspiracy, and accessory may be cited whether or not the actual rule contains such terms.

DISCIPLINARY OFFENSES are categorized into three classes, determined by the severity of the offense, threat to safety, security, and good order of the inmates, staff, and/or facility.

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| CLASS A: | Most serious Class of Infraction. Involves severe threat to safety, security, good order of the facility as well as the safety and health of staff and inmates. |
| CLASS B | Intermediate Class of Infraction. Involves serious disruption of facility operations and routines and/or serious criminal activity. Serious threats to safety, security, good order or the health and safety of staff and inmates. |
| CLASS C | Least serious class of infraction. Involves disruptions to facility routines and operations and/or criminal activity. |

CHARGEABLE OFFENSES:

100 – ARSON: Intentionally starting a fire or recklessly or carelessly engaging in conduct that results in a fire.

A. ARSON

1. Which results in injury to any person. Class A
2. Which results in evacuation of one or more persons. Class A
3. Which results in hazardous gasses or substantial smoke. Class A
4. Involves the burning of any property or item belonging to the county. Class B
5. Involves the burning of any item. Class B

B. ATTEMPTED ARSON: Intentionally attempting to start a fire or
Intentionally engaging in conduct likely to result in a fire. Class B

101 – ASSAULT and related offenses: Intentionally or recklessly causing death or inflicting physical injury upon another person.

A. HOMICIDE

1. Intentionally or recklessly causing the death of another person. Class A
2. Attempting to cause the death of another person. Class A
3. Attempting to commit suicide. Class A
4. Assisting in a suicide or an attempt to commit suicide. Class A

B. ASSAULT

1. Intentionally or recklessly inflicting physical injury upon a staff member or a member of the public. Class A
2. Intentionally or recklessly inflicting serious physical injury upon an inmate. Class A
3. Any assault or fight involving the use of a weapon. Class A
4. Intentionally or recklessly inflicting physical injury upon an inmate Class B

C. AGGRAVATED ASSAULT

1. Causing another person to come into contact with any Body fluid, Chemical agent, noxious, hazardous, or dangerous substance. Class A
2. Causing a staff member to come into contact with any foreign substance, liquid, or material. Class B
3. Causing an inmate to come into contact with any foreign substance, Liquid, or material. Class C

D. ATTEMPTED ASSAULT

1. Intentionally attempting to or engaging in conduct likely to cause physical injury to any other person. Class B
2. Attempting to cause any person to come into contact with any body fluid, chemical agent, noxious, hazardous or dangerous substance. Class B
3. Attempting to cause any person to come into contact with any foreign substance, liquid, or material. Class C

E. FIGHTING: Any combat by agreement, which involves pushing, punching, kicking, biting etc. Class B

F. EXTORTION / STRONGARMING

1. Gaining or attempting to gain any item, favor, service by means or intimidation or threats of violence. Class B
2. Preventing or attempting to prevent another person from enjoying any item, favor or service by means of intimidation or threats of violence. Class B
3. Preventing or attempting to prevent any person from testifying or providing written Statements, as a witness in any criminal, civil or disciplinary proceeding, by means of intimidation or threats of violence. Class B

102 – BRIBERY: Offering or delivering any item, service or benefit, to any other person for the purpose of influencing an opinion, decision or action.

- A. Offering or delivering a bribe to a staff member for any purpose. Class A
- B. Offering or delivering a bribe to any government official for any purpose. Class A
- C. Offering or delivering a bribe to any service provider for any purpose. Class A

103 – CONSPIRACY: Two or more persons acting in concert to commit or in planning to commit

any violation of a statute, rule, regulation or order.

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| A. Conspiracy to commit a Felony or a Class A disciplinary violation. | Class A |
| B. Conspiracy to commit a Misdemeanor or a Class B disciplinary violation. | Class B |
| C. Conspiracy to commit a Violation or a Class C disciplinary violation. | Class C |

104 - CONTRABAND: *Introduction, manufacture, possession, sale, or exchange of:*

- ♦ Any item that an inmate is not allowed to possess by statute, rule regulation, or order.
- ♦ Any item that an inmate may be allowed to possess but is possessed in excessive quantities.
- ♦ Any item that an inmate may otherwise be allowed to possess that has been altered from or used for other than it's intended purpose.
- ♦ Any item that an inmate may otherwise be allowed to possess after an order has been issued for it's return or surrender.

A. DANGEROUS CONTRABAND: Contraband that by design, appearance or use endangers the safety and/or security of the facility or endangers the safety of any person.

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| 1. Any firearm, ammunition, explosive, knife, razor, shiv, club or any other item that by design, appearance, or use, may be classified as a weapon. | Class A |
| 2. Any item which may be used to facilitate an escape. | Class A |
| 3. Any quantity of illegal narcotics, controlled substances marijuana or other dangerous drugs | Class A |
| 4. Any item or insignia of an Officer's uniform or any item of an officer's equipment. | Class A |
| 5. Any quantity of unauthorized, prescription medication | Class B |

B. CONTRABAND: As defined above.

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| 1. Any quantity of tobacco. | Class B |
| 2. Matches, lighters, electric wires, batteries or any other item capable of generating heat, making a flame or making a spark. | Class B |
| 3. Any quantity of alcohol or homemade intoxicants. | Class B |
| 4. Ingredients to produce homemade intoxicants | Class C |
| 5. Unauthorized non-prescription medication. | Class B |
| 6. Unauthorized foodstuffs. | Class C |
| 7. Unauthorized or excess, clothing or footwear. | Class C |
| 8. Unauthorized or excess bedding, linen, towels. | Class C |
| 9. Unauthorized head-coverings. | Class C |
| 10. Unauthorized or excessive books, magazines, newspapers etc. | Class C |
| 11. Possession of any property belonging to another inmate. | Class C |
| 12. Miscellaneous: Any item considered contraband by a staff member. | Class C |

(Note: The facts and circumstances surrounding this determination must be fully described in the narrative.)

105 - DESTRUCTION OF COUNTY PROPERTY: Intentionally damaging, disabling, defacing or altering any property belonging to the County of Erie or to any government agency, service provider or vendor.

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| A. When the property exceeds \$500.00 in value. | Class A |
| B. When the property exceeds \$30.00 in value. | Class B |
| C. When the Property is valued at less than \$30.00. | Class C |

106 - DISORDERLY CONDUCT: Any conduct that causes unreasonable noise, harassment, inconvenience, annoyance or alarm. Any conduct which tends to serve no legitimate purpose.

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| A. When employed as a diversion for the commission of a Felony or a Class A Disciplinary violation. | Class A |
| B. Which results in injury or threatens the safety, security or good order of the facility | Class B |
| C. Being under the influence of alcohol, narcotics or unauthorized medication. | Class B |
| D. Smoking. | Class B |
| E. Tattooing, Branding, Piercing, self mutilation or self injury. | Class B |

- F. Threatening a staff member with physical harm. Class B
- G. Harassment, insubordination, insolence, use of abusive or obscene language/gestures Class B
- H. Any unauthorized conduct with a visitor. Class B
- I. Horseplay, foot chases, wrestling or other unauthorized physical activity. Class C
- J. Making unreasonable noise. Class C

107 - DISRUPTING FACILITY OPERATIONS: Conduct which disrupts any operation function, program or service of the facility. Any conduct which interferes with staff duties. Refusing to or failing to immediately follow an order from a staff member.

- A. Blocking, damaging, picking, or tampering with any security device. Class A
- B. Damaging, altering or tampering with any electrical outlet, fixture, or appliance. Class B
- C. Obstructing, damaging or tampering with any other facility system (plumbing, ventilation etc.) Class B
- D. Failure to stand for the count. Interfering in a count or security check. Class B
- E. Failure to immediately obey any order in an emergency situation. Class B
- F. Intentionally or recklessly causing a flood. Class B
- G. Throwing liquid, trash, food or any object or substance. Class B
- H. Being in any unauthorized area or failure to promptly report to any assigned area. Class C
- I. Failure to immediately lock-in when ordered. Class C
- J. Failure to immediately obey any order from a staff member. Class C
- K. Removal, alteration or tampering with an "Inmate Identification Bracelet." Class C
- L. Failure to remain right of the red line. Class C

108 - ESCAPE:

- A. **ESCAPE** Escape, abscond, or flee from confinement, custody, or a work detail. Class A
- B. **Attempted Escape:** Planning, conspiring, aiding another or acting in such a manner as to escape, abscond or flee from confinement, custody or a work detail. Class A
- C. **Wearing a disguise:** wearing, possessing or manufacturing any item or article, or altering your appearance in any way that interferes with identification. Class A

109 - FALSE STATEMENTS

- A. Falsely accusing any person of any misconduct. Class A
- B. Providing a written statement that is substantially false. Class B
- C. Making any verbal statement that is substantially false. Class C

110 - GAMBLING: Engaging in or wagering on any sporting event, game of chance, contest or event for which any amount or money, item, product or service is or is believed to be dependent upon the outcome.

- A. Gambling. Class B
- B. Possession of Gambling Devices / Paraphernalia. Class C

111 - RIOTING / INSURRECTION

- A. Rioting: Engaging in violent disorder with other inmate(s). Class A
- B. Inciting a Riot: Encouraging others to engage in violent disorder. Class A
- C. Insurrection: Individual or group demonstration, revolt or rebellion. Class A

112 - SANITATION / HYGIENE AND RELATED OFFENSES:

- A. **Sanitation:**
 - 1. Failure to Keep your Housing Unit clean. Class B
 - 2. Failure to participate in keeping your housing area clean. Class B
 - 3. Intentionally "Trashing" your housing unit, housing area, or any area of the facility. Class B
 - 4. Causing any foreign material or substance to contact any foodstuffs or handling food in an unsanitary manner. Class B
 - 5. Using any material, item, or tool in an unsafe or unsanitary manner. Class B

- 6. Improperly disposing of sanitary napkins. Class C
- 7. Using any material, item or tool for other than it's intended purpose. Class C
- 8. Failure to dispose of trash properly. Class C
- 9. Improperly washing, drying, hanging or handling laundry. Class C
- 10. Attaching any picture, article, or other item to any wall, door, window, or ceiling. Class C

B. Hygiene:

- 1. Sharing Razors or handling razors in an unsanitary manner. Class B
- 2. Failure to shower regularly or failure to keep your body clean. Class C

113 – SEXUALLY RELATED OFFENSES

- A. **Rape / Sodomy** – Engaging in sexual relations by forcible compulsion. Class A
- B. **Attempted Rape / Sodomy** Class A
- C. **Sexual Intimidation** attempting to engage another in conduct of a sexual nature by means of intimidation or threats of violence. Class A
- D. **Sexual Conduct** Engaging in any sexual acts with another, whether consensual or not. Class B
- E. **Sexual Harassment** any unwanted unsolicited verbal or written communication that is sexual in nature or contains sexual innuendo. Any reference to a staff member that is sexual in nature. Class B
- F. **Lewd Conduct** - Engaging in any conduct of a sexual nature that tends to harass, annoy, or alarm any other person. Masturbation, manipulation or fondling of the breasts, buttocks or genitals, in a manner likely to be within the view of others. Class B
- G. **Indecent Exposure** exposing any portion of body parts, breasts, buttocks or genitals, in a manner likely to be viewed by others. Class B

114 – STEALING

- A. **Robbery**- Taking something that does not belong to you by means of force or threats of violence. Class A
- B. **Stealing**- Taking something that does not belong to you. Class B
- C. **Possession of Stolen Property**: Possessing anything that does not belong to you. Class B

115 – UNAUTHORIZED CONTACT WITH THE PUBLIC:

- A. **Misrepresentation of oneself as a staff member or other government official.** Class A
- B. **Misrepresentation of oneself as anyone other than him/herself.** Class B
- C. **Threats or harassment of any person via the telephone.** Class B
- D. **Threats or harassment of any person via the mail.** Class B
- E. **Making three-way telephone calls.** Class C
- F. **Yelling out of any window or recreation area at the public.** Class C
- G. **Any unauthorized contact with the public during transportation.** Class C
- H. **Sending, receiving or delivering any correspondence by any means other than the US Mail.** Class C

116 – WORK ASSIGNMENTS:

- A. **Work Strike or Stoppage** – inmates assigned to work are prohibited from organizing or participating any work strike or stoppage. Class A
- B. **Refusing to Work** – sentenced inmates may not refuse to work. Class B
- C. **Protesting Work Assignment** – protesting any work assignment or any portion of any work assignment or failing to complete a work assignment. Class C
- D. **Tardiness for Work Assignment** – failing to promptly report to a work assignment when so ordered. Class C

SANCTIONS:

- (1) Direct referral to Forensic Mental Health Program or services within the facility.
- (2) Counsel or Verbal reprimands.

- (3) Restitution for the loss or damage of property made from existing and/or future funds in the inmate's account.
- (4) Loss of privileges for specified period of time:
 - CLASS A : 0 - 365 days
 - CLASS B : 0 - 90 days
 - CLASS C : 0 - 30 days
- (5) Confinement to a cell, room or in special housing for a period of time:
 - CLASS A : 0 - 365 days
 - CLASS B : 0 - 90 days
 - CLASS C : 0 - 30 days
- (6) If sentenced, forfeiture of a specified amount of allowance for good behavior (Good Time).
- (7) Restriction to non-contact visitation for a specified time period.
- (8) Inmates may be subject to a mandatory \$5.00 surcharge upon any finding of guilt in any sanction class. The hearing officer may hold the commencement of a sanction in abeyance for a period up to 30 days in order to assess the behavioral adjustment of the inmate. At the conclusion of such period, the hearing officer shall determine whether the sanction shall commence in whole or in part or shall be suspended in whole or in part.

INMATE DISCIPLINARY PROCEDURE(S):

Any violation of the New York State Penal Law is subject to criminal prosecution. If a staff member has reasonable grounds to believe that you have committed, attempted to commit, or are about to commit an act which violates Holding Center Rules & Regulations, or Housing Unit/Area Rules and Regulations, you may be charged with, and written up, for an infraction of these rules. Disciplinary action will be taken at such time, manner, and degree which is deemed necessary in order to regulate an inmate's behavior/conduct within acceptable limits as set forth by the facility and the NYS Commission of Correction. Disciplinary action initiated against any inmate will be applied in a completely impersonal, impartial, and consistent manner.

If disciplinary charges are filed, inmates will receive a copy of all disciplinary charges along with the accompanying narrative within 72 hours of the date on which the violation/infraction was discovered. A Disciplinary Hearing will be held within fifteen (15) days of the initial infraction.

You will have a fair and impartial hearing before a hearing officer or disciplinary committee wherein you will be afforded the opportunity to present information/paperwork/witnesses (if not unduly disruptive to the facility or redundant), to aide in your defense. In accordance with the NYS Commission of Correction Minimum Standards, you will not be allowed to directly question witnesses against you but you will be allowed to ask questions through the hearing officer, which are deemed relevant to the issue/charges. In certain circumstances in which your presence while the questioning of a witness presents a threat to the safety, security, or good order of the facility, you will not be allowed to be present. However, the hearing officer/disciplinary committee will supply all evidence supplied by a witness outside of your presence to you. The hearing officer/disciplinary committee will render a decision based on all evidence, statements, etc., presented at the hearing.

If you refuse to attend your disciplinary hearing, in accordance with Watson v Coughlin, 517 N.Y.S. 2d 620 (A.D. 1987), the Hearing Officer, or disciplinary Committee will note, in writing, on the hearing form that the inmate refused to attend. The hearing and decision will then be based upon all evidence previously submitted with the charges and disciplinary sanctions may be imposed outside of your presence. Your refusal to attend your disciplinary hearing does not negate the charges or possible discipline rendered.

If you are illiterate, non-English speaking, or do not understand the charges against you, assistance will be provided upon request.

Pre-Hearing Detention :

If your behavior is believed to jeopardize the safety & security of the facility, yourself or others, you may be continuously confined to a cell or room, pending your disciplinary hearing.

Should your behavior warrant such confinement, you will initially be secured for 24 hours. Your behavior will then be evaluated by the Superintendent to determine if it is necessary to continue

pre-hearing detention. Any determination to continue pre-hearing detention will be made in writing. You will receive a copy of the determination and your disciplinary hearing will be scheduled for the next available disciplinary committee. Any time that you have spent in pre-hearing detention will be counted toward the any sentence of disciplinary segregation that may be imposed by the disciplinary committee.

KEEP-LOCK, NO PRIVILEGES (KLNK):

While confined to a cell or room for 23 hours per day, whether in general population or disciplinary/punitive segregation, you will only be allowed to possess legal and/or religious material(s), writing materials, and personal hygiene items. At no time will you be allowed to order privilege items from commissary, such as potato chips, candy, cookies, etc. Also, any of the above items in your possession prior to your confinement to keep-lock housing will be placed in your property until such time as you return to regular inmate population with privileges restored. There will be no television privileges while keep-locked.

DISCIPLINARY APPEAL:

You have the right to appeal the decision of the Disciplinary Committee by filing a Disciplinary Appeal Form, complete with supporting documentation, to the Superintendent.

If you wish to appeal, you must file an appeal form within two (2) business days of receiving the decision of the Disciplinary Committee. You must specify the grounds on which your appeal is based and provide evidence supporting your.

Upon review of your request to appeal, the Superintendent will determine whether to: Uphold your appeal and modify your sentence, deny your appeal or grant a new hearing before a different Disciplinary Hearing Officer.

NOTE: *Failure to file a timely appeal, failure to provide specific supporting information, or failure to provide new and compelling evidence may be grounds to deny your appeal.*

ADMINISTRATIVE SEGREGATION:

A form of separation from the general population, administered by the Superintendent for the purpose of providing close and/or controlled supervision, such as for an inmate's personal protection, for the safety and security of the facility or person(s) therein.

Administrative Segregation decisions will be made in writing and you will receive a copy of the decision. All such decisions will be reviewed regularly and you will receive copies of these reviews. You may file a written statement, outlining any facts and/or circumstances that you wish to be considered by the administration in rendering these decisions.

Pursuant to 9NYCRR 7032, Administrative Segregation housing decisions may not be the subject of an inmate grievance.

CONTRABAND:

Contraband is:

- Any item which presents a threat to the safety or security of the facility or any persons therein.
- Any item not issued to an inmate by the facility.
- Any item an inmate is not allowed to possess.
- Issued items when found altered, in excessive quantity, or kept after a request has been made by a staff member for the item's return.

Dangerous contraband is any contraband that is capable of endangering the safety, security, or good order of the facility or person's therein.

205.20 - PROMOTING PRISON CONTRABAND IN THE SECOND DEGREE (Class A Misdemeanor)

A person is guilty of promoting prison contraband in the second degree when:

1. He/she knowingly and unlawfully introduces any contraband into a detention facility; or,
2. Being a person confined in a detention facility, he/she knowingly makes, obtains, or possesses any

contraband.

205.25 - PROMOTING PRISON CONTRABAND IN THE FIRST DEGREE (Class D Felony)

1. He/she knowingly and unlawfully introduces any dangerous contraband into a detention facility; or
2. Being a person confined in a detention facility, knowingly and unlawfully makes, obtains, or possesses any dangerous contraband.

IN ALL CASES INVOLVING CONTRABAND, THE ERIE COUNTY SHERIFF'S OFFICE WILL CHARGE AND PROSECUTE ALL INVOLVED PARTIES TO THE FULLEST EXTENT OF THE LAW.

HEADCOUNTS/LOCK-IN PERIODS:

All inmates will be required to secure (lock-in) in their housing units at specific times, as follows:

| | |
|---------------------------|--|
| 6:30 a.m. to 7:00 a.m. | shift change and headcount |
| 12:00 (noon) to 1:00 p.m. | lockdown and headcount |
| 2:30 p.m. to 3:00 P.M. | shift change/headcount |
| 5:30 p.m. to 6:30 p.m. | lockdown and headcount |
| 10:30 p.m. to 5:30 a.m. | lockdown for the night/trusty clean-up |

The above times are approximate and may vary due to facility conditions and/or operations. You must immediately return to your housing unit whenever ordered to do so by a Officer. Failure to comply with this order will be considered a violation of the Rules and Regulations of the Erie County Holding Center.

CONDUCT:

You will conduct yourself in an orderly manner at all times with respect and courtesy for the rights of other inmates and staff.

CELL INSPECTIONS AND PERSONAL SEARCHES

Searches of housing areas and units will be conducted on unannounced and irregular schedules. Inmates **do not have to be present** in order for a lawful search to be conducted. Also, on a random, unannounced basis, drug detection dogs will be used during cell searches.

CO-DEFENDANT VISITS

These visits may be granted only in cases in which a visit is specifically necessary. Each of your attorneys (both yours and your co-defendants) must submit a written request that you be allowed to visit. These letters must include:

- The name of the co-defendant with whom the visit is being requested.
- The attorney's authorization for the visit.
- The reason(s) why the attorney feels that the visit is necessary for your defense.
- Whether or not the attorney wants to be present during the visit.
- The number of visits being requested.

After a written request has been received from each attorney, the results will be reviewed and arrangements will be made to accommodate the visit(s). These co-defendant visits are intended to assist in the preparation of your defense, not for socialization. You will be expected to conduct yourself in a responsible manner. Inappropriate conduct of any kind may result in the termination of your visit and the denial of future co-defendant visits.

FUNERAL/DEATH BED VISITS: Inmates may be permitted, at the discretion of the Superintendent, to visit the deathbed and/or conduct a funeral visit (see definition below) of a designated family member. In accordance with the New York State Commission of Correction family member will mean father, mother, legal guardian, or formal guardian (legal verification needed), child brother, sister, husband, wife, grandparent, and grandchild.

DEATHBED VISIT: defined as visitation when death is imminent. Verification by the physician of record is required. Visitation will be coordinated with the hospital and will be subject to hospital policy and/or policy of the physician of record. Deathbed visits **will not be allowed in private homes**. All such visits will be limited to recognized health care institutions and which are located in the geographical boundaries of Erie County.

FUNERAL VISIT: defined as a visit for the purpose of paying last respects to the deceased. **Funeral visits will not be allowed in private homes.** All such visits will be limited to recognized funeral homes or mortuaries. Such visits will be coordinated with the funeral director and conducted at times other than those available to the general public and/or family. No inmate will be allowed to attend the actual funeral.

ELIGIBILITY: Death bed and/or funeral visitation will be approved based on verification of information and risk assessment.

NOTE: All such visits will be conducted at times when family members/ friends are not present. All inmates will be cuffed and shackled during all such visits.

No inmate will be allowed to receive any item from any person without prior approval. The possession or use of any alcohol or drug or engaging in conduct inappropriate for the circumstances of the visit is prohibited.

INMATE DNA TESTING: As of January 1, 1996, Executive Law, Section 49-B, established the authority for Sheriffs and local correctional facility administrators to assist in the implementation of this law by drawing blood, and sending same to Albany to be kept on file, from those offenders serving local sentences of imprisonment and, in some cases, sentences of probation for designated crimes. If a designated offender refuses to provide a blood sample a court order will be obtained.

IT IS YOUR RESPONSIBILITY TO READ THIS HANDBOOK AND TO KNOW AND UNDERSTAND THE RULES AND REGULATIONS OF THIS FACILITY. FAILURE TO DO SO WILL NOT BE ACCEPTED AS AN EXCUSE FOR A VIOLATION OF HOLDING CENTER RULES AND REGULATIONS.

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| | |
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NOTICE TO ALL INMATES

THE INMATE HANDBOOK IS PROVIDED FOR YOUR BENEFIT WHILE YOU ARE REMANDED TO THE CUSTODY OF THE SHERIFF OF ERIE COUNTY. IT EXPLAINS:

- **YOUR RIGHTS AND PRIVILEGES**
- **THE SERVICES & PROGRAMS WHICH ARE AVAILABLE TO YOU**
- **THE RULES AND REGULATIONS OF THE ERIE COUNTY HOLDING CENTER**
- **THE CONDUCT WE EXPECT FROM YOU WHILE YOU ARE HERE**

PLEASE READ THIS BOOK THOROUGHLY

NOTE: WE ARE NOT RESPONSIBLE FOR ANY MONEY OR PROPERTY LEFT IN ANY JAIL MANAGEMENT DIVISION FACILITY AFTER 30 DAYS OF YOUR RELEASE OR TRANSFER.

After 30 days, all property will be donated to a charitable organization and all money will be turned over to the Erie County Comptroller's Office. A copy of this signed page is certification that you received an Inmate Handbook. It will be filed in your Classification Records.

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Inmate Signature

Date

Inmate Handbook Addendum

Effective 3-13-09

The following changes to the Inmate Handbook are to be followed. These changes supersede the rules in the Inmate Handbook.

Page Topic

4 Printed Materials, Magazines, Newspapers and Books: Inmates may receive printed materials or publications from any source. If any printed materials pose a threat to the safety, security or good order of the facility, the materials may be censored. If materials are believed to be a threat to the safety, security or good order of the facility, those materials will be forwarded to the Chief Administrative Officer for a determination. If the printed materials are found to be in need of censoring, the CAO will notify in writing both the inmate as well as the sender within 48 hours of receipt of a periodical and 7 days of a publication / book. If incoming printed material may involve a criminal offense, the appropriate authorities will be notified for criminal prosecution.

Due to the limited amount of space, inmates will be allowed no more than two books and two magazines in their cell at one time. This includes books from the jail library.

4 Personal Property: In accordance with NYS Commission of Corrections inmates may possess and wear religious medals or articles *as long as* the items do not constitute a threat to the safety, security, or good order of a local correctional facility, or the health of an individual.

11 Visiting Schedule: Saturdays – Wednesday 7:00am through 2:30 pm. All inmates will leave the visiting room by 2:30pm.

12 Children's Visits: #4 Any person under the age of 21 must be accompanied by a parent or guardian in order to visit the child's parent who is an inmate in the facility.

General Visiting Rules and Regulations #3. All visitors must present picture identification (current and valid NYS drivers license, current and valid NYS non drivers license id, current and valid drivers license issued by another state or province). A second form of identification verifying the address is no longer mandated.

Unless an inmate is designated as a Deputy or Deputy/Supervisor escort, an inmate's visiting time will begin 5 minutes after they are called for a visit. Showering, before a visit will count against your visiting time. When called, you **MUST** report to the visiting room as soon as possible to prevent shortened visits.

EXHIBIT W

KEEP LOOK

RECREATION

0700-1500 K/L Rec

Sunday May 10, 2009

Lt Webster

Dep Puleo

0715-0815 1st session - Guif. rec yard searched @1354. ① attend @1354

Delta N/475 Powell, Kelvin

0815-0915 2nd session - rec yard searched @1354

Per. H/L deputies, all alternative rec. 'm's on B-seg, B-long, B-short, C-seg, C-long, C-short, D-seg

D-long, D-short refused @1354

0820-0920 3rd session - rec area searched @1354 ① attend @1354

E #29 Atkinson, Seymour @1354

0915-1015 4th session - Echo short minus ② attend - rec yard searched @1354

E #31 Cotta, Ruel

E #40 Morgan, Lapuente

1010-1100 5th session - Echo long minus ③ attend - rec yard searched @1354

E #22 Jackson, Joshua

E #23 Sweat, Eric

E #28 Gorae, Maquail

1100-1300 10-10. Delta control lunch relief then lunch @1354

1300-1345 6th session - Echo long minus ③ attend - rec yard searched @1354

E #18 Smith, Deshaun

E #21 Somerville, Walter

E #24 Littlejohn, Jahaan

1350-1430 7th session - Echo long minus ② attend - rec yard searched @1354

E #17 Boone, Ryan

E #20 Skinner, Kevin

1430 End of tour ⑫ total J. Puleo 1354

136
K24/Week
K24

TM. p 3

0700-1500 DELTA CONTROL SATURDAY MAY 10 2008 LT KATZMAN SET

0715-0815 SESSION (1)

0-12 BRADLEY, ANTHONY

NOTE: PER H/DEP WORKING - D-Long D-SHORT - D-Seq - C-Seq - C-Long - C-SHORT
D-Seq - D-SHORT - C-SOUTH - ALL - SPECIAL OR LOST LOCKS HAVE RETURNED FOR

0800-0900 SESSION (1)

0-82 DAVIS, L.L. KHAM
324

0845-0945 SESSION (1)

0-76 POWELL, KELVIN
8TH

0945-1045 SESSION (3)

E-29 ATKINSON, SEYMOUR

32 JONES, CYRUS

36 LAWRENCE, ANTOINE

1100-1300 10-10 DELTA CONTROL - LUNCH RELIEF
5TH

1300-1400 SESSION (4)

E-41 MILLER, RAYSHAWN

44 MONTANEZ, ERIBERTO

48 BALANCE, QUINCY

49 ANDERSON, JOSHUA
6TH

1350-1430 SESSION (3) MINORS

E-31 COTTO, LUCAS

40 MURKIN, LAQUAN

John C. TOTAL

140
Kess Lock
RLL

0700-1800 DEL GAVIN 1078 WEDNESDAY MAY 20, 2003 LTW/STK

0715-0815 SESSION ① REL AREA SEARCHED

C-17 COLLINS BRIAN

NOTE: REL HINDERANCES, WORKING B-SEQ B-Long B-SHORT C-SEQ C-Long C-SHORT

DELTA LEVEL - L-SOUTH ALL REFUSED KEET

0822 SGT P. EVANSON unit Supervisor TOUR ①⑤

0830-0930 SESSION ③

E-41 MILLER Raymond

42 JACKSON LEMUEL

49 ANDERSON Joshua

0930-1030 SESSION ④

E-27 ATKINSON SEYMOUR

1110-1300 10-10 DELTA CONTROL - LUNCH RELIANT ①⑤

1300-1400 SESSION ⑤ MINORS

E-13 WASHINGTON THOMAS

14 LUCAS IVAN

18 SMITH DESTON

20 BYERS CURTIS

21 SOMMERVILLE WALTER

22 JACKSON JUSTUS

23 WILLIAMS LOUIS

24 ALLEN DION

28 GORZ MARQUEL

1400-1530 SESSION ⑥

E-40 MCKINLEY LAQUAN

John ①⑤ T. 11:30

1st Lock
Rc

500-1500 DEP Gavin 1078 THURSDAY May 21, 2009 LT WEBSTER, SGT EVANS,

500-0918 SESSION (1)

C-17 COLLINS, BRIAN
2ND

500-0930 SESSION (2)

E-41 MILLER, LAYSHAW

42 JACKSON, LEMUEL

43 MAPS, DAMIEN - SENT BACK - INMATE BEING TAUNTED BY OTHERS

44 MONTANER, ERIBERTO

46 LITTLE, JOHN, JOHANN

47 ANDERSON, JOSEPH

0049 SGT. P. EVANS ON UNIT SUPERVISOR TON (PS)

0750030 SESSION (1)

E-29 ATKINSON, SZYMOUR

1100-1300 10-10 DELTA CONTROL + LUNCH RELIEF
1ST

1500-1510 SESSION

E-40 MCGRAW

500-1400 SESSION (1)

E-18 SMITH, DEONIA

20 STANLEY, KEVIN

21 SOMMERVILLE, KATHER

22 WASHINGTON, PHILLIP

28 GOSSE, MARQUEL
2ND

1100-1430 SESSION (2)

2-76 POWELL, KOLVIN

32 DAVIS, ALIKHA

JOURNAL (16) TON

0700-0800

FL REC

SAT May 23, 2009

LT Kitzman

Det 080521

0720-0820

Session 1

Rec Area Searched

0-35

Burner, Andre ①

NOTE: For H/V Deputies working B-Lg, B-SH, C-Sg, C-Lg, E-SH, D-Sg, D-Lg,

D-SH - K/L Minors + Adults Refuse K/L REC 70

0825-0925

E-31 Cotto, Raul - K/L REC Alone - minor ①

0855-0955

Session #3 E-29 ATKINSON, Seymour E-33 Pydzowski, Anthony

Adult K/L REC ②

0950-1050

Session #4 ADULT 141 REC E-42 Jackson, Lemuel, E-44 Montanez,

Erberto E-46 Little John, Johann E-49 Anderson, Joshua ④

1100-1200

10-10 Lunch Reliefs + D/H Control

1300-1400

Session 5 - E-Lg Minors ③ E-18 Smith, Deshaun E-19 Byrd, Curtis 20

NOTE: For H/V Deputies working Delta North EAST & innermost Refused K/L REC 70

TOTAL ⑩ TOTAL

0700-1500 K/L Rec Sunday May 24, 2009
 Lt Webster Dep Rilea

0715-0815 1st Session - rec area searched @1354

NOTE: 1/m's on B-long, C-seg, C-long, C-short, Delta seg that attend K/L rec refused per their H/u deputies

0730-0830 2nd Session - Gulf South rec area searched - (1) attended

Gulf #49 Horne, Dale

0830-0930 3rd Session - Gulf rec area searched - (1) attended

Gulf #51 Williams, James & 1/m would be return to H/u @ 0855

0900-1000 4th Session - Gulf rec area searched - (1) attended

Dalk #76 Powell, Kelvin

1000-1100 5th Session - rec yard searched - (1) attended

B-seg #35 Garner, Andre

1100-1300 Dep Rilea 10-10. Delta Control and lunch @1354

1300-1400 6th Session - rec yard searched @1354

Echo short - adults - (4) attend

E #29 Atkinson, Seymour

E #33 Rydzewski, Anthony

E #41 Miller, Rayshawn

E #44 Montanez, Eriberto

1400-1430 7th Session - rec yard searched @1354

Echo Long minors - (2) attend

E #18 Smith, Dashawn

E #21 Samnerville, Walter

1430 End of tour. *John P. Rilea* 1354 (10) total

K/L REC

MONDAY

5-25-09

LT Webster

Dep Price

0815 1st SESSION - REC AREA SEARCHED, (1) ATTENDS (2)

0817 COLLINS, BRIAN

NOTE: Per Hq deputies, 1/2's on B-seg, B-short, B-long, C-seg, C-short, P-seg, D-long, D-short, D-N/EAST ALL REFUSED (1)

0830 2nd SESSION - REC AREA SEARCHED ON GULF, (1) ATTENDS (2)

0850 WOODS, DEMOND

0910 3rd SESSION - GULF REC AREA SEARCHED, (1) ATTENDS (2)

0951 WILLIAMS, JAMES

1000 Dep PRICE 10-10 Delta control relief + Luncheon (1)

1010 4th SESSION - REC AREA SEARCHED (1) ATTEND (echo long minors) (2)

1018 SMITH, DESTIN

1019 BYERS, CURTIS

1020 SKINNER, KEVIN

1021 SUMMERVILLE, WALTER

1026 WASHINGTON, PHILIP

1028 GORE, MARQUEL

1040 5th SESSION - REC AREA SEARCHED - (1) ATTEND (echo short-adults) (2)

1033 RYDZEWSKI, ANTHONY

1029 ATKINSON, SEYMOUR

1041 MILLER, RAYSHAWN

1042 JACKSON, LEMUELE

1430 END OF TOUR (13) TOTAL

K/L REC

TUESDAY 5/26/09

LT. WEBSTER

Dep. J. Miller

0815 1st SESSION - REC AREA SEARCHED

NOTE: 1/2's on B-long, B-short, B-seg, C-long, C-short, C-seg Delta seg & Delta N/E ALL REFUSED

0900 Dep. Price 10-8, Dep. Miller 10-10-

10-1300 Dep. C. Price 10-10 for Luncheon + Relief. end

1300 E-29 ATKINSON SEYMOUR

E-30 CRUICKER ROBERT

E-33 RYDZEWSKI ANTHONY

1400 E-22 JACKSON JOSHUA

E-21 SUMMERVILLE WALTER

1445 END OF TOUR TOTAL (5) end

0700-1500 K/L Rec Wednesday May 27, 2009
 Lt. Webster Rep. Puleo

0715-0815 Per 1/2 deputies on B-seg, B-long, B-short, C-seg, C-long, C-short, D-seg, D-short, All alternative rec 1/2's refused rec @ D1351

0725-0825 1st session - Rec yard searched
 Delta Long - ① attended

D #16 Bradley, Anthony

note: Gulf South Ym's taken to rec by Gulf South deputy

0830-0930 2nd session - Rec yard searched
 Echo Short - adults ③ attend

E #29 Atkinson, Seymour

E #33 Rydzewski, Anthony

E #35 Oldham, Darrel

0940-1040 3rd session - Rec yard searched on Gulf - ① attended

D #76 Powell, Kelvin

1100-1300 10:10 Delta Control then lunch

1300-1400 4th session - Rec yard searched
 Echo Short - adults ③ attend

E #41 Miller, Rayshawn

E #42 Jackson, Lemuele

E #48 Mayes, Nate

1400-1430 5th session - Rec yard searched
 Echo Long runners ② attend

E #19 Byers, Curtis

E #22 Jackson, Joshua

1430 End of tour ⑩ total *Joseph Puleo P1351*

0700-1500 K/L Rec Thursday May 28, 2009
 Lt Webster Sgt Reynolds Rep. Sayers

0725 Rec yard searched 1/2 hr on B-Long, B-Short, C-Short, C-Long
 + City, D-seg, D-long refused

0730 Gulf rec taken by Gulf south deputy

0745 Sgt Reynolds on unit escorting Scott Jr

0745 1st session (1) #49 Delta Short Scott Jr

0845 2nd session rec yard on gulf searched (1) Powell Calvin

0945 3rd session rec yard searched (1) Garner Andre

11:15⁰⁰ Delta Control relief then lunch

1300 Rec yard inspected Echo Short Low side 32, 32, 33, 30, 29

1345 5th session (3) attend 41, 42, 43

1430 End of tour ⑪ total

0700-1300 K/L Rec

Monday

June 1, 2009

Lt Webster

Dep McLeach

0715-0805 1st session - rec on Gulf searched - Gulf Suck"49. Horn, Dale, 1st elected to return at 08050805-0850 2nd session - rec area on Gulf searched -G-51 Woods, Desmond, 1st elected to return at 08500850-0950 3rd session - rec area on Gulf searched

D-76 Powell, Kelvin

0955-1055 4th session - rec area searched

C-17 Collins, Brian

1100-1300 Dep McLeach 10:10 Delta Center and lunch ☺

1300-1400 5th session Echo Short 4/5

E-41 Miller, Raychaun

E-42 Jackson, Lennete

E-43 Rivers, Carlos

note All Echo Long and Echo Short minus refusal ☺

1300-1430 6th session Echo Short 4/5

E-33 Rydzewski, Anthony

E-37 Jordan, Shavian

E-32 Parks, Marquis

E-34 Crutcher, Robert

1400 end of tour, equipment to central (1) total D. McLeach 1358

700-1500 K/L Rec

TUESDAY

2 June 09

Lt Webster

PFAIZER

7:00 1st session - Rec on Gulf - Rec yard searched

DNE "74 Powell, Kelvin

8:00 2nd session - K/L Rec - Yard Search - BRAUN-SEG

GARNER, AMON

9:00 3rd session - Rec yard searched - C-Long Collins, BRIAN10:00 4th session - Echo-Short L-Side - "32 Parks, MARQUIS

"34 MACK, MARQUIS - "37 JORDAN, SHAVIAN

10:00 Dep PFAIZER to lunch and Refuel

11:00 5th Echo-Short High-Side A-000, SHAVIAN13:00 6th Group - Echo-Long mirror - 9-15 Washington, THOMAS

16-20 SMITH, TOMMY - 18. SMITH, DASHAWN - 20. SKINNER, KEVIN

23. MORGAN, LARRY - 24. SPENCER, SHAWN - 26. WASHINGTON, PHILLIP

27. COLLEY, MARK

14 total

0700-1500

K/L Rec

Sunday June 7, 2009

Lt Webster

Dep Riley

0710

All alternative rec Ym's on B-Long, B-Short, C-Long, C-Short, C-Long, D-Long, D-Short
 refusal rec per H/L deputies @ 1354

0715-0815

1st Session - Gulf rec yard searched - ① attend

G 49

Horn, Dale - Ym had visit @ 0740

All other Ym's on Gulf South refused @ 1354

0745-0845

2nd Session - Gulf rec yard searched - ① attend

D 76

Powell, Kelvin

0845-0945

3rd Session - K/L rec yard searched - ① attend

B-35

Garner, Andre

0950-1050

4th Session - Rec yard searched - Echo Short Adults - ① attend

E 49

Anderson, Joshua - note @ 1000 Ym wanted to return to H/L @ 1354

1000-1100

5th Session - Rec yard searched - Echo Short Minors - ② attend

E 31

Carter, Ruel

E 40

Morgan, Laquan

1100-1300

Dep Riley 1010 to Delta Control and lunch @ 1354

1300-1400

6th Session - Rec yard searched - Echo Long minors - ② attend

E 18

Smith, Preston

E 19

Byers, Curtis

1400-1430

7th Session - Rec yard searched - Echo Long minors - ② attend

E 21

Somerville, Walter

E 28

Gore, Marquel

1430

End of tour ⑩ total *Dep Riley Riley 1354*

MONDAY 8 JUNE 09

Lt Webster

PFA 12/24

730 - ALTERNATIVE Rec on Gulf YARD Checkin

750 - FIRST GROUP - Powell, Kelvin

810 - 2nd group - Garner, Andre

830 - 3rd group - Echo Long minors - BYERS - GORE

920 - 4th group - SKINNER - Somerville

1050 - Lunch on Belvoir

1300 - 5th group - E-Long Smith

1420 - End of tour

TUESDAY 9 JUNE 09

Lt Webster

715 - Inspect Rec YARD

730 - 1st group Brownsey Garner, Andre

0823 SGT P. EVANSON with Super Sonoma @ 1354

840 - 2nd group - Echo Long 20 SKINNER, Kevin

900 - 3rd group - Echo Long 22 Cadby, Sklar

①

②

③

④

⑤

⑥

⑦

⑧

⑨

⑩

⑪

⑫

0700-1800 continued K/L Rec Friday, June 12, 2009 LT Kibler Dep Rileo

1300-1400 4th session - Rec yard searched - Echo short adults - (2) attend

E 32 Parks, Marguis

E 35 Oldham, Dorrel

1350-1430 5th session - Rec yard searched - Echo Long minors (2) attend

E 16 Beasley, Tony

E 21 Sommerville, Walter

1430 End of tour. (8) total *Justi Rileo 1354*

SATURDAY JUNE 13 2009

0700-1500 DEP KLEIN LT KIBLER

0700 ALL APPEARS SECURE - RECEIVED RADIO 4732 AND (6) KEYS

SECURITY AND SAFETY EQUIPMENT CHECKED. PRISONERS LISTS READ

0715-0815 1st SESSION - B-SEG

- GARNER, ANDRE

K/L REC OFFERED TO B-LONG, B-SHORT, C-SEG, C-LONG, C-SHORT, D-SEG, D-LONG, D-SHORT

ALL REFUSED - 7/11/09

0825-0925 2nd SESSION - GULF SOUTH REC

- POWELL, KELVIN

0935-1040 3rd SESSION - ECHO LONG MINORS

- BEASLEY, TONY

- SOMMERVILLE, WALTER

1146-1360 BREAKS

PULLED TO CENTRAL *T. M. R.*

0700-1500 K/L Rec Sunday, June 14, 2009 LT Dina Dep Rileo

0700 K/L rec yard searched (1354)

0715-0815 1st session - Gulf South rec yard searched - (1) attended

G 49 Hein, Dale note: Ym. had vis. 1 @ 0745

0750-0850 2nd session - Gulf rec yard searched - (1) attended

D 76 Powell, Kelvin

0855-0955 3rd session - K/L rec yard searched - (1) attended

B 35 Garner, Andre - Ym. wanted to return to unit @ 0930

note: All K/L rec Ym.s on B-long, B-short, C-seg, C-long, C-short, D-seg, D-long, D-short refused per Ym. deputies @ 0930

0935-1035 4th session - K/L rec yard searched - Echo short minors - (3) attend

E 40 Billups, Travis

E 41 Scott, Percy

E 43 Rodriguez, Ramon note: Ym.s. returned to unit @ 0950. They were bored @ 1354

0955-1055 5th session - K/L rec yard searched - Echo Long minors - (2) attend

E 24 Thiggeard, Jerome

E 26 Lucas, Ivan

1031 SGT. P. EMANSON unit + Supervisory Tan (PE)

1100-1300 Dep Rileo 10-10 Delta Control then lunch @ 1354

EXHIBIT X

ERIE COUNTY SHERIFF'S OFFICE



MEMORANDUM

To: Chief M. Reardon

From: Sgt. J. Weyand-Garrett

Date: June 15, 2009

Re: Inmate March, Adrienne

Inmate Adrienne March entered the Erie County Holding Center on 04/01/2009. I/M March was deemed a security risk and ordered as a Keep away from Inmate Asia Davis on 04/05/09 per Lt. Kretzman and Sgt. Kuppel. I/M March received an Administrative Seg Order/KLPH on 04/13/09 per Deputy Superintendent B. Leary.

I/M March alleges that she had not received her "whites" that her mother delivered to Wende on March 23. Per the Alpha log book, I/M March received "whites" delivered on 4/15/2009 by Dep. Beyers to her housing unit.

I/M March expressed complaint regarding her right to one hour of recreation.

On 04/09/09 Recreation was cancelled @ approximately 2113 hrs due to lighting problems per Dep. Higgins.

Per I/M March's Administrative Segregation Order dated 04/13/09, I/M March is restricted to alternative recreation ALONE.

On 04/16/09 Recreation was being held every three days per Dep. Higgins due to housing arrangements with Alpha, Delta & the minors.

The following information details I/M March's K/L recreation schedule:

| | |
|----------|------------------------|
| 04/30/09 | @1519 hrs |
| 05/02/09 | @1510 hrs |
| 05/06/09 | @1954 hrs, refused rec |
| 05/08/09 | @1941 hrs, refused rec |
| 05/10/09 | @1920 hrs |
| 05/12/09 | @1855 hrs, refused rec |
| 05/13/09 | @1920 hrs, refused rec |
| 05/17/09 | @2025 hrs, refused rec |
| 05/18/09 | @1900 hrs, refused rec |
| 05/19/09 | @1905 hrs |
| 05/21/09 | @2018 hrs |
| 05/22/09 | @1935 hrs |
| 05/23/09 | @1900 hrs |
| 05/24/09 | @1945 hrs |
| 05/25/09 | @1913 hrs |
| 05/26/09 | @1953 hrs |
| 05/27/09 | @1931 hrs, refused |
| 05/28/09 | @1912 hrs |
| 05/29/09 | @2010 hrs |
| 05/30/09 | @1840 hrs |
| 05/31/09 | @1935 hrs |
| 06/01/09 | @1900 hrs |
| 06/02/09 | @1920 hrs |
| 06/03/09 | @1910 hrs, refused |
| 06/04/09 | @2130 hrs, refused |
| 06/05/09 | @1936 hrs |
| 06/06/09 | @1955 hrs |

This investigation found that I/M March received recreation on a daily basis as of 5/13/09. Information was verified through Alpha Short log book and Keep Lock Rec Book, both kept on the deputies desk on Alpha Short.

Law Library Access:

I/M March expressed complaints about her right to access Law Library: As per the inmate handbook, if an inmate wishes to use the Law Library, they must send a request slip. Per the Alpha log book, I/M March was called for Law Library on 05/20/09 at 0817 hrs, and refused to attend. I have requested a pink sheet from Dep. Sylvia O'Neal on I/M March's law library activity. (Please see attached.)

Religious Services:

Due to I/M March's Administrative Segregation Order effective 04/13/09, she may not attend religious services with the general population. I/M March must request ministerial visits in writing to the chaplain of her faith and individual services will be provided.

ERIE COUNTY SHERIFF'S OFFICE

TO Sgt. Michael Gurnett

DATE 6/15/09

FROM Det. M. Ornel #1059

SUBJECT Inmate 88107
March, Adrienne

I/m entered ECHC 3/24/09 (Tues)

I/m March has consistently been on KLP And subsequently Administrative Segregation.

AD Seg Order of 4/13/09 has been followed because there has ~~to~~ not been any follow-up paper work. (see attachment #1)

Request Date: 4/9/09 Attend date: 4/10/09 see attach #2 + #3
Request Date: 4/13/09 I/m called 4/15/09 - I/m Refused see #4 + #5
Request Date: 5/18 + 5/20 I/m called 5/20/09 - I/m Refused see #6 #7 #8
Request Date 6/10/09 I/m called 6/12/09 - I/m Refused #9 + #10

I/m March is called as frequently as she drops ships, she is called, then it is her choice to Attend or Refuse.

Det. M. Ornel

ADMINISTRATIVE SEGREGATION ORDER

KEEP LOCK PENDING DISCIPLINE HEARING

| | | | |
|-----------------|----------------|-----------------|-------------------------|
| Name Of Inmate: | Adrienne March | Watch Commander | <i>Alfred [unclear]</i> |
| ICN # | 88107 | Signature: | <i>Sgt Kneel</i> |
| Date / Time: | 4-13-09 | | <i>Dep. Supr</i> |

On this date, an Administrative Segregation Order (Keep Lock) has been issued to you because of the attached disciplinary charges and because you have engaged in behavior which endangers the safety, security and good order of the facility, specifically throwing liquid @ Deputy Jackson on April 12, 2009

Based upon available information, the following decision has been made:

- ☐ Remove Administrative Segregation / Keep Lock
- ☒ You have been classified as a SECURITY RISK
- ☐ You have been classified as an ESCAPE RISK

In addition, the following administrative restrictions shall apply to you:

- Housing: You will be housed in: _____ under the following conditions.
- ☐ Constant Supervision.
 - ☒ You may not co-mingle with other inmates and will receive time out of your cell alone.
- Movement: ☒ Deputy Escort.
- ☒ Deputy / Supervisor Escort. *Sgt Kneel*
 - ☐ Restrained with handcuffs whenever transported within the facility.
 - ☐ Restrained with handcuffs and leg shackled whenever transported within the facility.
- Recreation: ☐ You will attend recreation with your housing area.
- ☐ You will attend alternative recreation.
 - ☒ You will attend alternative recreation ALONE.
 - ☐ Restraints to remain in place during recreation.
- Visitation: ☒ Contact visitation.
- ☐ Non-contact visitation.
 - ☐ Non-contact visitation ALONE.
 - ☐ Restraints will remain in place during visitation.
- Religious Services: ☐ You may attend congregate worship services with the general population.
- ☒ You may not attend congregate worship services with the general population. Instead, You may request ministerial visits in writing to the chaplain of your faith and individual Religious services will be provided.
- Library: ☐ You may attend the library / law library with the general population.
- ☒ You may not attend the library with the general population. You may submit written Requests for an appointment to attend the Law Library alone.
 - ☐ You may not attend the law library. You may submit written requests for specific legal Materials and every reasonable effort will be made to provide them to you in your Housing unit.

Inmate Response to Chief Administrative Officer / Designee (may be written or oral)

CAO/ Designee Order Review Action

Signature CAO / Designee

Date

Time

LAW LIBRARY REQUEST

NAME: Abraham M. Ward ICN: 88107 UNIT: Alpha-Soc CELL#: 37 DATE: 4/9/09

☒ REQUESTING ACCESS TO LAW LIBRARY LEGAL RESEARCH MATERIALS

☐ REQUESTING SPECIAL U.S. POSTAGE [OVERWEIGHT / OVERSIZED / LEGAL / CERTIFIED]

NMATE'S SIGNATURE: 

WHEN REQUESTING SPECIAL POSTAGE YOU MUST BRING YOUR SPECIAL MAIL ITEM WITH YOU TO THE LAW LIBRARY.

COMPLETED: 4/10/09

JMD202 REV. 04/2003

Attach
#3

Thursday April 9, 2009

Ty1 Hager
2 Zamiatowski
3 Karkas
4

Dep Sm Onkal
Stene
Radio #233
#9 Key 10 Key
Fire Equip

Public: Bravo Const OBS DNE FoxSO Echo South
Gulf North

* K-9 + AJ on unit / 1/2 m E 30 Shipped at Court - 1/2 m 1/2 DO
* Female inmates notified of being open Fri (1401 - Good Fri.)
0929 Dep Russo in library w/ Bravo Const obs. Jaramba, Lasano (1st)

1400 Dep Rivera in library w/ Delta 1:1 #59 Contingent Aduna @

Friday April 10, 2009

Holiday

Dep Sm Onkal

Ty1 Hager
2 Zamiatowski
3 Karkas
4

Radio #233
#9 Key 10 Key
Fire Equip

Public: Alpha OBS. Alpha Long Alpha Short Delta Fern
Echo Dorn

0950 Dep. K. Ashburn B71 escorted & remained with inmates
Braham & Mitchell to public library from Alpha Const
Observation @ B71

1030

Dep. O'Carroll and K-9 NINA on unit @

1/2 m Ash March & 1/2 m Ash Davis are KAF - 1/2 m Davis
called Last

Monday April 13, 2009

Ty1 Hager
2 Karkas
3 Zamiatowski - Am only
4

Dep Sm Onkal
Stene
Radio #233
#9 Key 10 Key
Fire Equip

Public: Delta Long Segmm Delta Short ENE / Charlie Short

LAW LIBRARY REQUEST

NAME: Abner Mac ICN: 88107 UNIT: 4/14 CELL#: 36 DATE: 4/13/09

- ☒ REQUESTING ACCESS TO LAW LIBRARY LEGAL RESEARCH MATERIALS
- ☐ REQUESTING SPECIAL U.S. POSTAGE [OVERWEIGHT / OVERSIZED / LEGAL / CERTIFIED]

INMATE'S SIGNATURE:

Abner Mac PD 4/13/09
KLN 1P 2nd/Sup Court

4/13/09

WHEN REQUESTING SPECIAL POSTAGE YOU MUST BRING YOUR SPECIAL MAIL ITEM WITH YOU TO THE LAW LIBRARY.

COMPLETED: 4/15 Payroll - on 7/26/09

5

Tuesday April 14, 2009

Tyler Hager
2 Karlo
3 Gannitsky
4

Dep Sm O'Neal
Steve
Radio #233
#9 Key 10104
Fire Equip 1

Public's Delta OBS Charlie Long/Sec Fox No Fox East
Echo Long

0845 Dep. Birdy + K9 CIRCOS on unit. Srch. conducted. Neg. findings. (B)

0905 DEP M. HANCOCK IN LIBRARY FROM ROOM CONST OBS ALL 1/m's

ATTEND PUBLIC LIBRARY (M)

- * Per Dep. McMan Echo Short is Locked down pending investigation as per Sgt Ledesma
- * Sgt. Webster on unit to escort 1/m C-14 Thomas
- * Jeremy (109290) to & from Public & Law Library
- * Sgt. Ledesma on unit to escort 1/m Beto Gossan
- * Condary (9733) to & from Public & Law Library

Wednesday April 15, 2009

Tyler Karlo
2 Hager
3 Gannitsky
4

Dep Sm O'Neal
Steve
Radio #233
#9 Key 10104
Fire Equip 1

Public's Charlie Const OBS Bravo Long Bravo Short Bravo Sec
PM Female LAW

- * 7 1/m A 36 March Adrienne (88107) called for Law Library - she refused per Dep Kajakovich - 1/m to AD Sec - Attend Alone (Super Dep Sec)
- * AD Sec Sheets for 1/m's A 10105 ASIA 8905 And 1/m A 36 March Adrienne 88107 on
- Page - 488
- * Per Dep BIAA Tom - Charlie Constant OBS - All

ERIE COUNTY SHERIFF'S OFFICE
JAIL MANAGEMENT DIVISION

TO:

SUPV:

LEUTENANT SERGEANT

CLERK:

CHAPLAIN:

SPECIAL SERVICE OFFICER:

NOTARY:

PRE TRIAL:

CLINIC:

DATE:

OTHER (SPECIFY):

DEPUTY SIGNATURE:

20 09

TIME: 10:30 AM

HOUSING UNIT:

INMATE'S NAME:

BADGE NO.:

ICN#:

CELL #:

REQUEST:

To go to the library for new materials
on Wed on a day not away from me to go

DATE:

TIME:

HOUSING UNIT:

INMATE'S NAME:

BADGE NO.:

ICN#:

CELL #:

REQUEST:

DATE:

TIME:

HOUSING UNIT:

BADGE NO.:

INMATE'S NAME:

BADGE NO.:

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REQUEST:

BADGE NO.:

INMATE'S NAME:

BADGE NO.:

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BADGE NO.:

ICN#:

CELL #:

REQUEST:

BADGE NO.:

INMATE'S NAME

LAW LIBRARY REQUEST

NAME: Alvarado, Michael ICN: 88107 UNIT: Alpha Street CELL#: 47 DATE: 5/20/02

☒ REQUESTING ACCESS TO LAW LIBRARY LEGAL RESEARCH MATERIALS

☐ REQUESTING SPECIAL U.S. POSTAGE [OVERWEIGHT / OVERSIZED / LEGAL / CERTIFIED]

INMATE'S SIGNATURE: Alvarado, Michael

KLNP AD Seg

WHEN REQUESTING SPECIAL POSTAGE YOU MUST BRING YOUR SPECIAL MAIL ITEM WITH YOU TO THE LAW LIBRARY.

COMPLETED: 5/20

Alvarado on DIP Alvarado
JMD202 REV. 04/2003

#8

Wednesday May 20, 2009

Ty1 Karkas

2

3

4

Zamistone A/PECIF 5/24 centrod

Public: Charlie OBS / Bravo Seg / Bravo Long / Bravo Short
PM - Female Law - Alpha Seg Alpha OBS Alpha Short
Delta Firm

* 11m 1042 Anderson, Charles (82860) Law / Public Lib
- Alone - Dep Escort (SMD) 735m 8¹⁵ OUT

* A47 March Adrienne (88107) offered Law
Library - per Dep N A/I - 1m Released SMD

* 9⁰⁰ - Per Dep - All of Bravo Long sh seg
is locked down

* 9³⁰ - No Dep escorts available / No Bravo public library
done due to am call back

* Mr. Kuchm unit - Brief Tom SMD 1059

Thursday May 21, 2009

Ty1 Karkas

2 Jamison

3 Hagan (B sh - Temp) - Law

4

Public: Bravo OBS Forso Echo SD DNE

* Public / Law Library offered to 1m Powell Kelvin 101395
(D-76) - Dep Escort - Alone - AD Seg Sheet pg 520

0935 DEP. P. EGZA ESPORTING 2 JAMES FROM B-CON OBS

1045 DEP. O'CONNOR AND K-9 NINA ON UNIT. @

* Received AD Seg - 1m B35 Garner, Andie
Dep Escort - Alone pg 480 - SMD

Friday May 22, 2009

Ty1 Jamison

2 Karkas

PM 3 Hagan (Temp - B sh) - Law

Dep Sm O'Neal
Steve

Radio #233

#9 Key 10 Keys

Fire Equip

Dep Sm O'Neal
Steve

Radio #233

#9 Key 10 Keys

Fire Equip

Dep Sm O'Neal
Steve

Radio #233

#9 Key 10 Keys

NAME: Abriene Masack ICN: 88107 UNIT: Alpha West CELL#: 44 DATE: 6/10/09

- ☒ REQUESTING ACCESS TO LAW LIBRARY LEGAL RESEARCH MATERIALS
- ☐ REQUESTING SPECIAL U.S. POSTAGE [OVERWEIGHT / OVERSIZED / LEGAL / CERTIFIED]

INMATE'S SIGNATURE: Abriene Masack Sup Dzu ko 75 6/12/09

WHEN REQUESTING SPECIAL POSTAGE YOU MUST BRING YOUR SPECIAL MAIL ITEM WITH YOU TO THE LAW LIBRARY.

COMPLETED: 6/12/09

#10

Friday June 12, 2009

Ty1 Hager (Temp Law Bsh)
2 Callahan
pm 3 Karkos
4

Dep Son Dn
Stone
Radio #233
#9 by 10 Ka
Fire Equip

Public: Alpha Seg / Alpha Const Obs / Alpha Const / Delta
Echo Dnm

A 44 March Adrienne 88107 offered Law Library
1/m Request per Dep Dn at 4:35 pm
I inquired of Capt. Hartman if he intends to
change the Admin Seg order for 1/m Butler
Rick - Capt. Hartman said "he would look into it"
* 1/m Butler has not submit a request slip to
attend the library
* P.G. slip to Sgt Reynolds - 1/m Anderson Charles
request to attend the library - 1/m must
submit a library request slip and 1009 -
see pg 70

* Dep Hager escorted 2 Female 1/m's from A Can of DL
Monday June 15, 2009

Ty1 Callahan

2 Karkos

3 Hager (Temp - LAW - BSH 48)

4

Dep Son Dn
Stone

Radio #233

#9 by 10 Ka

Fire Equip

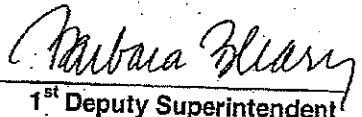
Public: Delta Long Seg mm / Delta short / ENE
Charlie short

* Reviewed 4 Administrative Segregation Orders
1/m Balance, Quincy 66188 E 33 Dep Sec - Alt A/B
page 476

1/m Lawrence, Antoine 79165 E 36 Dep Sec - Alt A/B
page 476

1/m Miller Layshaw 67288 Dep Sec - Alt A/B E 29
page 476

EXHIBIT Y

| | |
|--|---|
| <p>Policy and Procedure</p>  <p>JAIL MANAGEMENT DIVISION:
Administrative Segregation
Pre-Hearing Detention</p> | <p>Policy # #JMD 04.02.06
 Approved by: 
 Undersheriff
 
 1st Deputy Superintendent</p> <p>Effective Date: 06/1989
 Revision Date: 03/09, 12/08, 11/02, 08/97
 NYSCOC Standards: 7006
 NYSSAI Accreditation:
 Other References:</p> |
|--|---|

POLICY:

An inmate, who has been charged with disciplinary infractions, may be immediately confined to Administrative Segregation (pre-hearing detention), and held until the completion of the disciplinary process when the inmate's continued presence in general population would likely:

- 1) Represent an immediate danger to the inmate or other persons.
- 2) Constitute a serious threat to the safety, security or good order of the facility.

Any decision to immediately segregate an inmate in pre-hearing detention shall be made by the Watch Commander in writing, consistent with section two (2) of this part and for a period not to exceed 24 hours.

Within 24 hours of such confinement, the inmate shall be provided with a written statement (Administrative Segregation Order) setting forth the reason(s) for such confinement. Upon receipt of the written statement, the inmate shall be provided with an opportunity to respond to such a statement orally or in writing to the Chief Administrative Officer or designee.

Unless specifically restricted in writing, all rights and privileges afforded to general population inmates shall be enjoyed by inmates subject to pre-hearing detention.

Decisions to restrict privileges shall be based upon specific facts and circumstances shall be reasonable and applied only to the extent necessary to insure the safety, security or good order of the facility or the safety of any person.

DEFINITIONS:

PREHEARING DETENTION: A form of Administrative Segregation whereby an inmate, who has been charged with one or more disciplinary infractions is confined to an individual housing unit, segregating him / her from the general population, when a determination has been made that the inmate's continued presence in the general population would constitute a serious threat to the safety, security and good order of the facility or to any person.

PROCEDURE:

1. When an employee has reason to believe that an inmate who has been the subject of a disciplinary report presents an immediate danger to himself, others, facility property or constitutes a serious threat to the safety, security or good order of the facility, the employee shall report the facts and circumstances to the watch commander in writing.
2. If, upon review of all available information, the Watch Commander agrees that the inmate's continued presence in general population would likely pose a serious threat to the Safety, Security, good order of the facility or to any person, the Watch Commander shall order that the inmate be immediately placed in pre-hearing detention.
 - a. Based upon this review of all available information, the Watch Commander shall determine where the inmate is to be housed and what, if any, specific security restrictions shall apply to the inmate.
 - b. The Watch Commander shall issue a written Administrative Segregation Order placing the inmate in Administrative Segregation (pre-hearing detention). This written order shall cite the specific facts and circumstances leading to the determination, the housing unit to which the inmate is to be assigned and any specific security restrictions ordered.
 - c. The written Administrative Segregation Order issued by the Watch Commander shall contain the date and time written and shall be valid for twenty four (24) hours.
 - d. A copy of the written order along with copies of all supporting documentation (Disciplinary charges, Incident Report) shall be forwarded to the Superintendents' Office for review.
3. Within 24 hours of initial confinement, the chief administrative officer or designee shall review the facts and circumstances related to the initial confinement, any security restrictions placed on the inmate and the inmate's current condition to determine whether sufficient cause exists to continue such segregation. Based upon this review, the chief administrative officer or designee shall:
 - a. Order the inmate released from pre-hearing detention.
 - b. Continue segregation in pre-hearing detention but modify the housing area assignment.
 - c. Continue segregation in pre-hearing detention but modify any or all of the security restrictions originally imposed.
 - d. Continue segregation in pre-hearing detention under the same terms and conditions as originally imposed.

Erie County Sheriff's Office
Policy and Procedure
#JMD 04.02.06

EC SO P+P SUBJECT:

Pre-Hearing Detention

PAGE 3 of 3

4. In all cases in which an inmate is segregated in pre-hearing detention, every effort shall be made to complete any necessary investigation, hold the disciplinary hearing and complete the disciplinary process as expeditiously as possible.
 5. If the inmate is found guilty of disciplinary infractions at the Disciplinary Hearing, the hearing officer(s) shall credit the inmate with any time spent segregated in pre-hearing detention, toward any sanction imposed
-

EXHIBIT Z

ADMINISTRATIVE SEGREGATION ORDER

KEEP LOCK PENDING DISCIPLINE HEARING

Log Book
Pg. 1 C. DIAZ
Pg. 1 of
SUSANAS

| | | | |
|-----------------|--------------------|-----------------|----------------------|
| Name Of Inmate: | <u>Weilba Tony</u> | Watch Commander | <u>L.T. K. Allen</u> |
| ICN # | <u>14646</u> | Signature: | <u>[Signature]</u> |
| Date / Time: | <u>6/20/09</u> | <u>0955</u> | |

On this date, an Administrative Segregation Order (Keep Lock) has been issued to you because of the attached disciplinary charges and because you have engaged in behavior which endangers the safety, security and good order of the facility, specifically Refusal to move to cell - THREATS
T. STAFF

Based upon available information, the following decision has been made:

- ☐ Remove Administrative Segregation / Keep Lock
- ☒ You have been classified as a SECURITY RISK
- ☐ You have been classified as an ESCAPE RISK

In addition, the following administrative restrictions shall apply to you:

- Housing: You will be housed in: C-49 under the following conditions.
- ☐ Constant Supervision.
- ☒ You may not co-mingle with other inmates and will receive time out of your cell alone.
- Movement: ☐ Deputy Escort.
- ☒ Deputy / Supervisor Escort.
- ☒ Restrained with handcuffs whenever transported within the facility.
- ☐ Restrained with handcuffs and leg shackled whenever transported within the facility.
- Recreation: ☐ You will attend recreation with your housing area.
- ☐ You will attend alternative recreation.
- ☒ You will attend alternative recreation ALONE.
- ☒ Restraints to remain in place during recreation.
- Visitation: ☐ Contact visitation.
- ☐ Non-contact visitation.
- ☒ Non-contact visitation ALONE.
- ☒ Restraints will remain in place during visitation.
- Religious Services: ☐ You may attend congregate worship services with the general population.
- ☒ You may not attend congregate worship services with the general population. Instead, You may request ministerial visits in writing to the chaplain of your faith and individual Religious services will be provided.
- Library: ☐ You may attend the library / law library with the general population.
- ☐ You may not attend the library with the general population. You may submit written Requests for an appointment to attend the Law Library alone.
- ☒ You may not attend the law library. You may submit written requests for specific legal Materials and every reasonable effort will be made to provide them to you in your Housing unit.

Inmate Response to Chief Administrative Officer / Designee (may be written or oral)

CAO/ Designee Order Review Action

Signature CAO / Designee

Date

Time

EXHIBIT AA

SHERIFF'S OFFICE
 INCIDENT REPORT

Date 6/14/09

Inc 09-237

CL: 940498

PERSONS INVOLVED

1. Name: Lindenau Norman ICN: 25097 H/U: B-3 Age: 34 Race W

Address: 310 Breckenridge Buffalo NY 14213 Prim. Chg: 140.25 Burglary 2nd Bail 2000

2. Name: Miller Rayshawm ICN: 67788 H/U: B-5 Age: 26 Race B

Address: 355 Cambridge Buffalo NY 14212 Prim. Chg: 125.25 Murder Bail 105

3. Name: Balance Quincy ICN: 66188 H/U: B-9 Age: 25 Race B

Address: 106 Grimes Buffalo NY Prim. Chg: 120.05 Assault 2nd Bail 35

4. Name: Jackson Lemule ICN: 83560 H/U: B-11 Age: 22 Race B

Address: 111 Lang Buffalo NY 14215 Prim. Chg: 125.25 Murder Bail: non

INCIDENT

Category: 01-01 Inmate/Inmate assault (# 5 listed below)

Discovered by: Deputy Carney Date: 6/14/09 Time: 0840hrs

Responding Supervisor: Sgt. LoDestro Notified 0840hrs Arrived: 0841hrs

Assisting Officers

Witnesses:

Injuries to Staff: ☐

Injuries to Inmates: ☐

Injuries to Others: ☐

ACTION TAKEN

| | | |
|--|---|---|
| ☐ Use of Force Form filed | ☒ Medical Treatment INFIRMARY | ☒ Disciplinary charges file |
| ☐ NYS-COC - 011 Report form | ☐ Medical treatment HOSPITAL | ☒ Criminal charges filed |
| ☐ C-2 Injury Report filed | ☐ Decontamination OC SPRAY | ☒ Interview of VICTIM (S) |
| ☐ Exposure Incident Report file | ☐ Decontamination BLOOD/B.F. | ☒ Interview of SUSPECT (S) |
| ☐ Liability waivers filed | ☒ Pictures taken #: 1 | ☒ Interview of WITNESS (S) |
| ☐ QET Team used | ☐ Housing Area Evacuated | ☐ Evidence collected |
| ☐ Video taken | ☒ Admin. Segregation ordered | ☐ H.A. K/L pending Invest. |
| ☒ Housing referrals made | ☒ Keep Away orders issued | ☐ Other (see Narrative) |

Inv. Services follow up ☒

Detective:

date - time:

Superintendent's Review:

Conducted by:

Date:

42

ERIE COUNTY SHERIFF'S OFFICE

JAIL MANAGEMENT DIVISION

INCIDENT REPORT

Incident #: 09-237

Narrative

On 6/11/09 at approximately 0840hrs I was notified by Deputy Carney that Bravo Long low side was locked in due to a pushing and shoving incident involving several inmates. When I responded Deputy Carney informed me that after hearing sounds of a scuffle on the low side he investigated and observed inmates Jackson Lemule, Balance Quincy, Miller Rayshawn and Lawrence Antoine shoving pushing and harassing inmate Lindenau Norman. Deputy Carney stated that he ordered all inmates to lock in several times and they then complied.

Lindenau was escorted to the infirmary where Nurse Davidson evaluated him. Lindenau was complaining that he was pushed from behind and struck his head on the table. He had slight swelling and superficial scratches on the left side of his head. He complained of no other injuries and none were observed. Lindenau then also identified Jackson, Balance, Miller and Lawrence as the inmates involved and stated "they were trying to get me to fight for the past couple days".

Inmates Lawrence Antoine, Miller Rayshawn and Balance Quincy were moved to Echo short and placed on Keep lock pending hearing status. While being moved all 3 denied that they were involved. Jackson was also moved to Echo short until housing can be arranged on Gulf South. He also denied any involvement and claimed he was at the other end of the gallery. A canvas for reliable witnesses was conducted with negative results. Due to the nature of this incident Patrol Services were contacted. Keep away's were placed, disciplinary action was initiated and administrative segregation orders submitted.

5. Name: Lawrence Antoine

ICN: 79765

H/U: B-12

AGE: 24

RACE: B

Address: 327 Breckenridge Buffalo NY 14213

Prim. Chrg. 140.25 Burglary

Bail: 16,500

SIGNATURES

Supervisor:

Officer:

Officer:

Badge:

Officer:

Badge:

Officer:

Date: 6/14/09

Badge:

Badge:

MEDICAL REPORT

Exam Date: 6/14/09

Exam time: 840 AM

Result:

Inmate Brought to Medical Stated he got hit By Peer
on back of head & raised marks on marks noted
lt. Side of face Superficial scratches on forehead + on
cheek area Small raised area noted Ice pack given
to notify medical of further c/o

Dr. J. J. J. J.

Signature of Physician/Extern:

ERIE COUNTY SHERIFF'S OFFICE

TO Sgt. LodestroDATE 6/14/09FROM Dep CarneySUBJECT Bravo Long 10-40

On the above date at approx 0840 I heard sounds of a scuffle on Bravo Long low side. I observed I/m #11 Jackson, Lemeuve initiate an assault on #3 Lindenall, Norman. I/m Jackson began pushing and shoving I/m Lindenall. Three other I/m's joined in the assault #5 Miller, Rayshawn, #9 Balance, Quinol, and #12 Lawrence, Antoine also pushing and shoving I/m Lindenall. I/m Jackson was observed laughing during the incident. All I/m's were ordered to lock-in and complied. Sgt Lod notified.

J Carney 1181

EXHIBIT BB

Logbook
Pg 1
C. Diaz

ADMINISTRATIVE SEGREGATION ORDER
KEEP LOCK PENDING DISCIPLINE HEARING
Written Statement

| | | | |
|----------------|------------------------|---------------------|---------------------|
| Name Of Inmate | <u>Balwick, Quincy</u> | Order Date/Time | <u>6/14/09 0900</u> |
| ICN # | <u>66188</u> | Review by Date/Time | |
| | | | |

On this date, an Administrative Segregation Order (Keep Lock) has been issued to you because of the attached disciplinary charges and because you have engaged in behavior which endangers the safety, security and good order of the facility, specifically Fighting / Harassing / Threatening other Inms

Based upon available information, the following decision has been made:

- ☐ Remove Administrative Segregation / Keep Lock
- ☒ You have been classified as a SECURITY RISK
- ☐ You have been classified as an ESCAPE RISK

In addition, the following administrative restrictions shall apply to you:

Housing: You will be housed in: E-33 under the following conditions.
☐ Constant Supervision.
☐ You may not co-mingle with other inmates and will receive time out of your cell alone.

Movement: ☒ Deputy Escort.
☐ Deputy / Supervisor Escort.
☐ Restrained with handcuffs whenever transported within the facility.
☐ Restrained with handcuffs and leg shackled whenever transported within the facility.

Recreation: ☐ You will attend recreation with your housing area.
☐ You will attend alternative recreation.
☒ You will attend alternative recreation ALONE.
☐ Restraints to remain in place during recreation.

Visitation: ☒ Contact visitation. Times Close to Deputy
☐ Non-contact visitation.
☐ Non-contact visitation ALONE.
☐ Restraints will remain in place during visitation.

Religious Services: ☐ You may attend congregate worship services with the general population.
☒ You may not attend congregate worship services with the general population. Instead, You may request ministerial visits in writing to the chaplain of your faith and individual Religious services will be provided.

Library: ☐ You may attend the library / law library with the general population.
☒ You may not attend the library with the general population. You may submit written Requests for an appointment to attend the Law Library alone.
☐ You may not attend the law library. You may submit written requests for specific legal Materials and every reasonable effort will be made to provide them to you in your Housing unit.

Inmate Response to Chief Administrative Officer / Designee (may be written or oral)

originals
15 June

CAO/ Designee Order Review Action Review 6-15-09 - 9:45 am Keep
Order reviewed - continued Keeplock until
release

Signature CAO / Designee
LT TR J. J.

Date
6/14/09

Time
1200:125

EXHIBIT CC

Pg. 1
DIAZ

Erie County Sheriff's Office
ADMINISTRATIVE SEGREGATION ORDER
KEEP LOCK PENDING DISCIPLINE HEARING
Written Statement

| | | | |
|----------------|-----------------|---------------------|--------------|
| Name Of Inmate | Miller, Roshawn | Order Date/Time | 6/14/09 0900 |
| ICN # | 67788 | Review by Date/Time | |
| | | | |

On this date, an Administrative Segregation Order (Keep Lock) has been issued to you because of the attached disciplinary charges and because you have engaged in behavior which endangers the safety, security and good order of the facility, specifically Fighting - Harassing - Throwing other
things

Based upon available information, the following decision has been made:

- ☐ Remove Administrative Segregation /Keep Lock
☒ You have been classified as a SECURITY RISK
☐ You have been classified as an ESCAPE RISK

In addition, the following administrative restrictions shall apply to you:

Housing: You will be housed in: E-29 under the following conditions.

- ☐ Constant Supervision.
☒ You may not co-mingle with other inmates and will receive time out of your cell alone.

Movement: ☒ Deputy Escort.

- ☐ Deputy / Supervisor Escort.
☐ Restrained with handcuffs whenever transported within the facility.
☐ Restrained with handcuffs and leg shackled whenever transported within the facility.

Recreation: ☐ You will attend recreation with your housing area.

- ☐ You will attend alternative recreation.
☒ You will attend alternative recreation ALONE.
☐ Restraints to remain in place during recreation.

Visitation: ☒ Contact visitation. Placed Close To Deputy

- ☐ Non-contact visitation.
☐ Non-contact visitation ALONE.
☐ Restraints will remain in place during visitation.

Religious Services ☐ You may attend congregate worship services with the general population.

- ☒ You may not attend congregate worship services with the general population. Instead, You may request ministerial visits in writing to the chaplain of your faith and individual Religious services will be provided.

Library ☐ You may attend the library / law library with the general population.

- ☒ You may not attend the library with the general population. You may submit written Requests for an appointment to attend the Law Library alone.
☐ You may not attend the law library. You may submit written requests for specific legal Materials and every reasonable effort will be made to provide them to you in your Housing unit.

Inmate Response to Chief Administrative Officer / Designee (may be written or oral)

*originals
in class.*

CAO/Designee Order Review Action

Order reviewed, continued keep lock
6/15/09 940am

Signature CAO / Designee

W. J. D.

Date
6/14/09

Time
1200hrs

EXHIBIT DD

ADMINISTRATIVE SEGREGATION ORDER

KEEP LOCK PENDING DISCIPLINE HEARING

Written Statement

| | | | |
|----------------|-------------------------|---------------------|---------------------|
| Name Of Inmate | <u>Lourence Antoine</u> | Order Date/Time | <u>6/14/09 0900</u> |
| ICN # | <u>79765</u> | Review by Date/Time | |

On this date, an Administrative Segregation Order (Keep Lock) has been issued to you because of the attached disciplinary charges and because you have engaged in behavior which endangers the safety, security and good order of the facility, specifically Fighting - Harassing another inmate

Based upon available information, the following decision has been made:

- ☐ Remove Administrative Segregation / Keep Lock
- ☒ You have been classified as a SECURITY RISK
- ☐ You have been classified as an ESCAPE RISK

In addition, the following administrative restrictions shall apply to you:

Housing: You will be housed in: E-36 under the following conditions.

☐ Constant Supervision.

☐ You may not co-mingle with other inmates and will receive time out of your cell alone.

Movement: ☒ Deputy Escort.

☐ Deputy / Supervisor Escort.

☐ Restrained with handcuffs whenever transported within the facility.

☐ Restrained with handcuffs and leg shackled whenever transported within the facility.

Recreation: ☒ You will attend recreation with your housing area.

☐ You will attend alternative recreation.

☐ You will attend alternative recreation ALONE.

☐ Restraints to remain in place during recreation.

Visitation: ☒ Contact visitation. Placed Close to Deputy

☐ Non-contact visitation.

☐ Non-contact visitation ALONE.

☐ Restraints will remain in place during visitation.

Religious Services: ☐ You may attend congregate worship services with the general population.

☒ You may not attend congregate worship services with the general population. Instead, You may request ministerial visits in writing to the chaplain of your faith and individual Religious services will be provided.

Library: ☐ You may attend the library / law library with the general population.

☒ You may not attend the library with the general population. You may submit written Requests for an appointment to attend the Law Library alone.

☐ You may not attend the law library. You may submit written requests for specific legal Materials and every reasonable effort will be made to provide them to you in your Housing unit.

Inmate Response to Chief Administrative Officer / Designee (may be written or oral)

Original in Class

CAO/ Designee Order Review Action Review 6/15/09 904am
Keep lock order reviewed - continued keep lock
until hearing

Signature CAO / Designee

or TR 9.9

Date

6/14/09

Time

1200

EXHIBIT EE

ADMINISTRATIVE SEGREGATION ORDER

KEEP LOCK PENDING DISCIPLINE HEARING

Written Statement

| | | | |
|----------------|----------------|---------------------|--------------|
| Name Of Inmate | Jackson LEMUEL | Order Date/Time | 6/14/09 0900 |
| ICN # | 83560 | Review by Date/Time | |

On this date, an Administrative Segregation Order (Keep Lock) has been issued to you because of the attached disciplinary charges and because you have engaged in behavior which endangers the safety, security and good order of the facility, specifically Fighting Housing Threatening Another
It - Continued Threat Based on History AND Documented Threats To Staff

Based upon available information, the following decision has been made:

- ☐ Remove Administrative Segregation /Keep Lock
- ☒ You have been classified as a SECURITY RISK
- ☐ You have been classified as an ESCAPE RISK

In addition, the following administrative restrictions shall apply to you:

Housing: You will be housed in: G~ under the following conditions.

☐ Constant Supervision.

☒ You may not co-mingle with other inmates and will receive time out of your cell alone.

Movement: ☐ Deputy Escort.

☒ Deputy / Supervisor Escort.

☒ Restrained with handcuffs whenever transported within the facility.

☐ Restrained with handcuffs and leg shackled whenever transported within the facility.

Recreation: ☐ You will attend recreation with your housing area.

☐ You will attend alternative recreation.

☒ You will attend alternative recreation ALONE.

☒ Restraints to remain in place during recreation.

Visitation: ☐ Contact visitation.

☐ Non-contact visitation.

☒ Non-contact visitation ALONE.

☒ Restraints will remain in place during visitation.

Religious Services: ☐ You may attend congregate worship services with the general population.

☒ You may not attend congregate worship services with the general population. Instead, You may request ministerial visits in writing to the chaplain of your faith and individual Religious services will be provided.

Library: ☐ You may attend the library / law library with the general population.

☐ You may not attend the library with the general population. You may submit written Requests for an appointment to attend the Law Library alone.

☒ You may not attend the law library. You may submit written requests for specific legal Materials and every reasonable effort will be made to provide them to you in your Housing unit.

Inmate Response to Chief Administrative Officer / Designee (may be written or oral)

Original w/ Doc in classification

CAO/Designee Order Review Action 6/15/09 - Keep lock remains in place pending hearing. 903 AM

Signature CAO / Designee

Date

Time

6/14/09

1205 AM

EXHIBIT FF

ADMINISTRATIVE SEGREGATION ORDER
KEEP LOCK PENDING DISCIPLINE HEARING

Rec'd from
 Deputy
 Malloy
 Class Officer

| | | | |
|-----------------|--------------|-----------------|-----------------|
| Name Of Inmate: | Myers, Nate | Watch Commander | Lt. Isch |
| ICN # | 23321 | Signature: | N. Isch 6/24/09 |
| Date / Time: | 5/25/09 1937 | | |

On this date, an Administrative Segregation Order (Keep Lock) has been issued to you because of the attached disciplinary charges and because you have engaged in behavior which endangers the safety, security and good order of the facility, specifically Inmate Fight

Based upon available information, the following decision has been made:

- ☐ Remove Administrative Segregation/Keep Lock K LPH
- ☐ You have been classified as a SECURITY RISK
- ☐ You have been classified as an ESCAPE RISK

In addition, the following administrative restrictions shall apply to you:

- Housing: You will be housed in: Echo #48 under the following conditions.
- ☐ Constant Supervision.
 - ☐ You may not co-mingle with other inmates and will receive time out of your cell alone.
- Movement: ☒ Deputy Escort.
- ☐ Deputy / Supervisor Escort.
 - ☐ Restrained with handcuffs whenever transported within the facility.
 - ☐ Restrained with handcuffs and leg shackled whenever transported within the facility.
- Recreation: ☐ You will attend recreation with your housing area.
- ☒ You will attend alternative recreation.
 - ☐ You will attend alternative recreation ALONE.
 - ☐ Restraints to remain in place during recreation.
- Visitation: ☒ Contact visitation.
- ☐ Non-contact visitation.
 - ☐ Non-contact visitation ALONE.
 - ☐ Restraints will remain in place during visitation.
- Religious Services: ☐ You may attend congregate worship services with the general population.
- ☒ You may not attend congregate worship services with the general population. Instead, You may request ministerial visits in writing to the chaplain of your faith and individual Religious services will be provided.
- Library: ☐ You may attend the library / law library with the general population.
- ☐ You may not attend the library with the general population. You may submit written Requests for an appointment to attend the Law Library alone.
 - ☒ You may not attend the law library. You may submit written requests for specific legal Materials and every reasonable effort will be made to provide them to you in your Housing unit.

Inmate Response to Chief Administrative Officer / Designee (may be written or oral)

CAO/ Designee Order Review Action

RELEASED FROM K LPH

Signature CAO / Designee

5/24/09 [Signature]
 Date Time
 0130

EXHIBIT GG

OK 6/24/09
Rec'd from
B Leary
Dep. Dir.

Erie County Sheriff's Office
ADMINISTRATIVE SEGREGATION ORDER
KEEP LOCK PENDING DISCIPLINE HEARING

| | | | |
|-----------------|--------------|-----------------|--------------------|
| Name Of Inmate: | Myers, Nate | Watch Commander | Lt. Isch |
| ICN # | 23321 | Signature: | <i>[Signature]</i> |
| Date / Time: | 5/25/09 1937 | | |

On this date, an Administrative Segregation Order (Keep Lock) has been issued to you because of the attached disciplinary charges and because you have engaged in behavior which endangers the safety, security and good order of the facility, specifically Inmate Fight

Based upon available information, the following decision has been made:

- ☐ Remove Administrative Segregation (Keep Lock) K LPH
- ☐ You have been classified as a SECURITY RISK
- ☐ You have been classified as an ESCAPE RISK

In addition, the following administrative restrictions shall apply to you:

Housing: You will be housed in: Echo #8 under the following conditions.

- ☐ Constant Supervision.
- ☐ You may not co-mingle with other inmates and will receive time out of your cell alone.

Movement: ☒ Deputy Escort.

- ☐ Deputy / Supervisor Escort.
- ☐ Restrained with handcuffs whenever transported within the facility.
- ☐ Restrained with handcuffs and leg shackled whenever transported within the facility.

Recreation: ☐ You will attend recreation with your housing area.

- ☒ You will attend alternative recreation.
- ☐ You will attend alternative recreation ALONE.
- ☐ Restraints to remain in place during recreation.

Visitation: ☒ Contact visitation.

- ☐ Non-contact visitation.
- ☐ Non-contact visitation ALONE.
- ☐ Restraints will remain in place during visitation.

Religious Services: ☐ You may attend congregational worship services with the general population.

- ☒ You may not attend congregational worship services with the general population. Instead, You may request ministerial visits in writing to the chaplain of your faith and individual Religious services will be provided.

Library: ☐ You may attend the library / law library with the general population.

- ☐ You may not attend the library with the general population. You may submit written Requests for an appointment to attend the Law Library alone.
- ☒ You may not attend the law library. You may submit written requests for specific legal Materials and every reasonable effort will be made to provide them to you in your Housing unit.

Inmate Response to Chief Administrative Officer / Designee (may be written or oral)

CAO/ Designee Order Review Action Approved

Signature CAO / Designee

Date

Time

Barbara Leary 5/26/09 10:5am

EXHIBIT HH

Policy and Procedure



JAIL MANAGEMENT DIVISION:

Inmate Grievance Program

Policy

Approved

#JMD 04.02.05

Total Pages: 2


Undersheriff


Deputy Superintendent

Effective Date: April 1990

Revision Date: 3/09; 8/03; 9/02; 8/99; 8/97; 8/90

NYSCOC Standards: 7032

NYSSAI Accreditation:

Other References:

POLICY:

In order to provide for the effective and timely resolution of inmate complaints and to comply with 9NYCRR7032 a formal process has been instituted for managing inmate grievances.

PROCEDURE:

- The attached Inmate Grievance Form and supplement shall be utilized.
- A supply of Inmate Grievance Forms and supplements shall be maintained in the housing area deputy's desk on each housing area.
- When an inmate has a complaint, the housing area deputy shall make every effort to informally resolve the issues.
- If the housing area deputy is unable to resolve the issues or the inmate specifically requests a Grievance form, a Grievance form shall be issued to the inmate and the issuance shall be recorded in the housing area log book.
 - In the upper right hand corner of the Grievance form the issuing deputy shall write the date issued, the issue being grieved and their name.
- The inmate shall submit the grievance form along with any additional documents to the housing area deputy when complete.
 - The submission of the grievance form shall be documented in the housing area log book.
 - The housing area deputy shall thoroughly document all efforts to informally resolve the grievance in the space provided on the form. If additional space is required, the Inmate Grievance Supplemental form shall be utilized.
 - The inmate shall be afforded the opportunity to accept or reject the housing area deputy's informal resolution and sign the form in the appropriate space.
 - If the housing area deputy is unable to successfully resolve the grievance informally, he / she shall contact the area Sergeant and advise him/her that they have an inmate grievance to submit.

- The Sergeant shall document receipt of the Inmate Grievance in the housing area log.
- The Sergeant shall review the Inmate Grievance and make every effort to resolve the grievance informally. All efforts to resolve the grievance shall be documented in the space provided. If additional space is necessary, the Inmate Grievance Supplemental Form shall be utilized. The name, title and outcome of all interviews shall be documented.
- If the Sergeant is successful in resolving the inmate's complaint and the inmate agrees to accept the resolution, the inmate shall be required to indicate acceptance of the informal resolution and sign his/her name in the space provided.
- The grievance form and copies of all additional documents and supplements as well as copies of all documents relied upon in investigating the complaint shall be attached to the Inmate Grievance form, which shall be forwarded to the Grievance Coordinator.
 - The Sergeant shall document the informal resolution of the grievance in the housing area log.
- If the Sergeant is unable to resolve the inmate's complaint, the Inmate Grievance form, complete with thorough documentation of all efforts at informal resolution, documentation of all interviews and copies of all documents reviewed shall be forwarded to the Grievance Coordinator for processing.
 - The submittal of the grievance form to the Grievance Coordinator shall be documented in the housing area log.
- The Grievance Coordinator shall cause any additional investigation required to be completed and shall render a decision in writing.
- The Grievance Coordinator's decision shall be delivered to the inmate and the delivery shall be documented in the housing area log.
- If the inmate accepts the decision of the grievance coordinator, the inmate shall indicate acceptance and sign in the space provided. The acceptance shall be documented in the housing area log. The original grievance form shall be returned to the grievance coordinator and a copy left with the grievant.
- If the inmate wishes to appeal the decision of the Grievance Coordinator, the inmate shall indicate same and sign in the space provided. The appeal shall be documented in the housing area log and the original grievance form shall be returned to the grievance coordinator for processing.
- The Chief Administrative Officer shall render a decision regarding the inmate's appeal and return the grievance form to the inmate.
- The appeal shall be delivered to the inmate, and the delivery shall be documented in the housing area log. If the inmate accepts the decision of the Chief Administrative Officer, the inmate shall indicate same and sign in the space provide and the original grievance form shall be returned to the grievance coordinator and a copy left with the grievant.
- If the inmate wished to appeal the decision of the CAO to the New York State Commission of Correction Citizens' Policy & Complaint Review Counsel, the inmate shall indicate and sign in the space provided. The original grievance form shall be returned to the grievance form to the grievance coordinator for processing.

Erie County Sheriff's Office
Policy and Procedure
#JMD 04.02.05

JAIL MANAGEMENT DIVISION:
Inmate Grievance Program
PAGE 3 of 3

- The inmate shall be issued a receipt indicating that the grievance has been sent to the NYSCOC CPCRC. The receipt shall be delivered to the inmate and the delivery shall be documented in the housing area log.
 - The inmate and Grievance Coordinator will be notified of the NYSCOC-CPCRC decision via the US mail.
-



Grievance Form - Part I

Facility: _____

Housing Location: _____

Name of Inmate: _____

Grievance #: _____

Brief Description of the Grievance (Completed by the grievant):

Number of Additional Sheets Attached ()

Action requested by the grievant (Completed by the grievant):

Number of Additional Sheets Attached ()

Grievant Signature: _____

Date/Time Submitted: _____

Receiving Staff Signature: _____

Date/Time Received: _____

Summary of facility staff attempts to resolve (Completed by Grievance Coordinator):
(Attach relevant documentation)

Number of Additional Sheets Attached ()

**Grievance Form - Part II**

Facility: _____

Grievance #: _____

Name of Inmate: _____

Date Part I was received: _____

Decision of the Grievance Coordinator:*(Including specific facts and reasons underlying the decision)*

Number of Additional Sheets Attached () _____

Signature of the Grievance Coordinator: _____

Date: _____

- () I have read the above decision of the Grievance Coordinator
() I agree to accept the decision
() I wish to appeal to the Chief Administrative Officer

Grievant Signature: _____

Date: _____

Decision of the Chief Administrative Officer:*(Including specific facts and reasons underlying the decision)*

Number of Additional Sheets Attached () _____

Signature of the Chief Administrative Officer: _____

Date: _____

PURSUANT TO SECTION 7032.5(A), ANY GRIEVANT MAY APPEAL ANY GRIEVANCE DENIED BY THE FACILITY ADMINISTRATOR, IN WHOLE OR IN PART, TO THE STATE COMMISSION OF CORRECTION.

- () I have read the above decision of the Chief Administrative Officer
() I agree to accept the decision
() I wish to appeal to the Citizen's Policy and Complaint Review Council

Grievant Signature: _____

Date: _____

Submission to the Citizen's Policy and Complaint Review Council

I HAVE ISSUED THE GRIEVANT A RECEIPT INDICATING THE DATE THE APPEAL HAS BEEN SUBMITTED TO THE CITIZEN'S POLICY AND COMPLAINT REVIEW COUNCIL. I HAVE ENCLOSED WITH THIS GRIEVANCE, THE INVESTIGATION REPORT AND ALL OTHER PERTINENT DOCUMENTS.

Signature of the Grievance Coordinator: _____

Date: _____

Form SCOC 7032-2 (6/05)

Original: Grievance File

Copy: Grievant

EXHIBIT II

STATE OF NEW YORK
SUPREME COURT COUNTY OF ERIE

**THE NEW YORK STATE
COMMISSION OF CORRECTION,**

Petitioner,

-against-

AFFIDAVIT

TIMOTHY HOWARD, Individually and
in his capacity of Sheriff of
Erie County, New York,

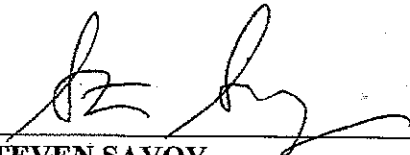
Respondent.

STATE OF NEW YORK)
COUNTY OF ALBANY) ss:)

STEVEN SAVOY, being duly sworn, deposes and says:

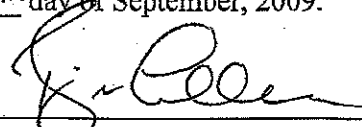
1. I am currently employed as a Correctional Facility Specialist III with the New York State Commission of Correction, wherein my duties include visiting, inspecting and appraising the management and conditions of correctional facilities.
2. At the behest of Commission Chairman Thomas A. Beilein, and pursuant to subdivisions (3) and (7) of Correction Law section 45, I was commissioned to visit, inspect, appraise and monitor the Erie County Holding Center from July 1 to July 2, 2009.
3. On July 2, 2009, while touring the Bravo Long housing unit of the Erie County Holding Center, I requested the housing officer to provide me with an inmate grievance form. After searching his unit work desk and area, the housing unit officer advised me that there were no inmate grievance forms available on the unit.
4. On July 2, 2009, while touring the Bravo Segregation housing unit of the Erie County Holding Center, I requested the housing unit officer to provide me with an inmate grievance form. After searching his unit work desk and area, the housing unit officer advised me that there were no inmate grievance forms available on the unit.

Dated: September 10, 2009
Albany, New York



STEVEN SAVOY

Sworn to before me this
10th day of September, 2009.



Notary Public

BRIAN M. CALLAHAN
Notary Public, State of New York
Qualified in Schenectady County
No. 6003133
Commission Expires Feb. 23, 20 10

EXHIBIT JJ

66/09.
ELDRIDGE, THAMM
RE: MIRRORS.

TM
Pg. 8

56
Inmate Grievance Form

01-16-686 1403 16A

Grievance #

09G-019

Facility: ERIE COUNTY HOLDING CENTER

Name of Inmate: THAMM ELDRIDGE

ICN # 22585

H/U # CH-SEG - 30

Brief Description of the Grievance (Completed by the grievant): Number of Additional Sheets Attached ()

NEW MIRRORS ARE NEEDED THROUGHOUT FACILITY.
PRESENT MIRROR ARE POORLY INSTALLED AND PROVIDED
NO VISIBILITY.

Action requested by the grievant (Completed by the grievant): Number of Additional Sheets Attached ()

INSTALL NEW MIRRORS THROUGHOUT FACILITY
SO THAT INMATES CAN SHAVE ADEQUATELY

Grievant Signature: THAMM ELDRIDGE

Date/Time Submitted: 5-6-09

Receiving Staff Signature: DEPT. R. DEE #1255

Date/Time Received: 05/06/09 @ 1329

Summary of facility staff attempts to resolve
(Attach relevant documentation)

Number of Additional Sheets Attached ()

MIRRORS IN CENS ARE IN POOR CONDITION, HOWEVER COMMON
AREA MIRROR NEAR SINK IS STILL IN GOOD CONDITION, AND
INMATE ELDRIDGE EVEN SAID SO. MIRROR REPLACEMENT IS
A MAINTENANCE ISSUE NOT ABLE TO BE COLLECTED BY THIS
DEPT.

AS PER ADMINISTRATION ABILITY TO RECTIFY
(P) D. WEBSTER #5-71

Officer/Supervisor Signature: DEPT. R. DEE #1255

I accept this resolution

☒ I do not accept this resolution and wish to file a formal grievance

Signature of INMATE:

THAMM ELDRIDGE

Date: 5/8/09 Time: 10:43

Forwarded to Grievance Coordinator

Officer/Supervisor Signature:

ST. R. DEE

Date: 5/8/09 Time: 10:45

Received by Grievant Coordinator

Signature of Grievance Coordinator:

MAY 26 2009

Date: Time:

(Grievance must be forwarded to Grievance Coordinator within 24 hrs of submission)



New York State Commission of Correction



Grievance Form - Part II

Facility: Erie County Holding Center

Grievance #: 09 G-020

Name of Inmate: Thamud Eldridge

Date Part I was received: 5/8/09

Decision of the Grievance Coordinator:
(Including specific facts and reasons underlying the decision)

Number of Additional Sheets Attached ()

Complaint unsubstantiated / Action Requested - Denied

*The mirrors in the facility are designed for
correctional settings and conform w/ all standards*

Signature of Grievance Coordinator [Signature]

Date: 5/18/09

- ☐ I have read the above decision of the Grievance Coordinator
☐ I agree to accept the decision
☐ I wish to appeal to the Chief Administrative Officer

Date: _____

Grievant Signature: _____

Date: _____

Decision of the Chief Administrative Officer

Number of Additional Sheets Attached ()

(including specific facts and reasons underlying the decision)

Signature of the Chief Administrative Officer: _____

Date: _____

PURSUANT TO SECTION 7032.5(A), ANY GRIEVANT MAY APPEAL ANY GRIEVANCE DENIED BY THE FACILITY ADMINISTRATOR, IN WHOLE OR IN PART, TO THE STATE COMMISSION OF CORRECTION.

- ☐ I have read the above decision of the Chief Administrative Officer
☐ I agree to accept the decision
☐ I wish to appeal to the Citizen's Policy and Complaint Review Council

Grievant Signature: _____

Date: _____

Submission to the Citizen's Policy and Complaint Review Council

I HAVE ISSUED THE GRIEVANT A RECEIPT INDICATING THE DATE THE APPEAL HAS BEEN SUBMITTED TO THE CITIZEN'S POLICY AND COMPLAINT REVIEW COUNCIL. I HAVE ENCLOSED WITH THIS GRIEVANCE, THE INVESTIGATION REPORT AND ALL OTHER PERTINENT DOCUMENTS.

Signature of the Grievance Coordinator

Erie County Sheriff's Office
Inmate Grievance Supplemental Form

Grievance #

09 G 019

Grievant: Eldridge Thamund ICN # 22585 H/U # c-30

First Deputy Superintendent Leary,

Inmate Eldridge, Thamud has filed Grievance # 09 G 019; he is not satisfied with the results and is requesting to move to the next step which is an appeal to the Chief Administrative Officer.

Complaint – Inmate does not like the quality of the facility mirrors.

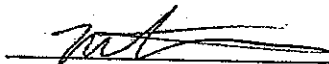
Action requested - Inmate requests to have mirrors replaced through out the facility.

Description of events – Inmate is flooding the Grievance system with frivolous complaints.

Decision: Complaint – Unsubstantiated / Action Requested – Denied

Submitted by:

NAME: Chief Michael Reardon

SIGNATURE: 

DATE: 5/19/09

Purpose of Supplement:

- ☐ Additional Information
☐ Interview
☐ Documentation of evidence
☒ Other: Appeal to CAO

New York State Commission of Correction
Citizens' Policy and Complaint Review Council
80 Wolf Road (4th Floor)
Albany, NY 12205

Re: Facility Grievance # 09 G 019

Dear Council Members,

Attached, please find a copy of facility Grievance # 09 G 019 along with copies of all investigative documentation for your review. Inmate Eldridge Thamud is no longer housed at this facility.

Chief M. Reardon
Grievance Coordinator

Cc: Grievance file (09G019)

EXHIBIT KK

05/06/09

ELDRIDGE, THAMUD
RE: RECREATION OPTIONS.

#52

Inmate Grievance Form

7-16-685 1403

Grievance #

096-018

Facility: ERIE COUNTY HOLDING CENTER

Name of Inmate: Thamud Eldridge ICN # 22585 H/U # Ch-Seg-30

Brief Description of the Grievance (Completed by the grievant): Number of Additional Sheets Attached ()

Recreation within the ^{GYMNASIUM} ~~gymnasium~~ should be re-opened for inmate use at least once per week and/or days of bad weather. Facility no longer use area for over-flow inmates. This area of the facility could be more productively used for inmates to exercise, play ball, shoot pool, etc.

Action requested by the grievant (Completed by the grievant): Number of Additional Sheets Attached ()

Recreation in huge gym be re-opened for days it rains or thunder. And winter when temperature below zero.

Grievant Signature: Thamud Eldridge

Date/Time Submitted: 5-6-09

Receiving Staff Signature: Daph R. Dize

Date/Time Received: 05/06/09 @ 1329

Summary of facility staff attempts to resolve

Number of Additional Sheets Attached ()

(Attach relevant documentation)

THE USE OR NON-USE OF THE GYM AREA IS BEYOND MY CONTROL, THE DECISION IS MADE BY JMD ADMINISTRATION. NOT IN MY AUTHORITY (D) D. WEBSTER #571

MAY 26 2009

Officer/ Supervisor Signature

Daph R. Dize #125

I accept this resolution

☒ I do not accept this resolution and wish to file a formal grievance

Signature of INMATE:

Thamud Eldridge

Date: 5/8/09 Time: 10:43

Forwarded to Grievance Coordinator

Officer/Supervisor Signature:

[Signature]

Date: 5/8/09 Time: 10:43

Received by Grievant Coordinator

Signature of Grievance Coordinator:

[Signature]

Date: 5/18/09 Time: 9:00

(Grievance must be forwarded to Grievance Coordinator within 24 hrs of submission)



New York State Commission of Correction



Grievance Form - Part II

Facility: Erie County Holding Center

Grievance #: 09-G-018

Name of Inmate Thamud E. Brige

Date Part I was received: 5/18/09

Decision of the Grievance Coordinator:

Number of Additional Sheets Attached ()

(Including specific facts and reasons underlying the decision)

Complaint - Unsubstantiated / Action Requested Denied

Recreation is governed by the COC. We use the indoor Rec Room only when the weather is inclement.

Signature of Grievance Coordinator [Signature]

Date: 5/18/09

() I have read the above decision of the Grievance Coordinator

() I agree to accept the decision

☒ I wish to appeal to the Chief Administrative Officer

Date: _____

Grievant Signature: Refused

Date: 5/18/09

Decision of the Chief Administrative Officer

Number of Additional Sheets Attached ()

(including specific facts and reasons underlying the decision) *NYS Minimum Standard 7028.2 All exercise periods shall be held in outdoor exercise area. Only the Chief Admin. Officer can change where rec is held. The change based on factors of safety, security & good order of facility based on weather impact - visibility, snow, ice, etc.*

Signature of the Chief Administrative Officer: [Signature]

Date: 5-19-09

PURSUANT TO SECTION 7032.5(A), ANY GRIEVANT MAY APPEAL ANY GRIEVANCE DENIED BY THE FACILITY ADMINISTRATOR, IN WHOLE OR IN PART, TO THE STATE COMMISSION OF CORRECTION.

() I have read the above decision of the Chief Administrative Officer

() I agree to accept the decision

() I wish to appeal to the Citizen's Policy and Complaint Review Council

Grievant Signature: _____

Date: _____

Submission to the Citizen's Policy and Complaint Review Council

HAVE ISSUED THE GRIEVANT A RECEIPT INDICATING THE DATE THE APPEAL HAS BEEN SUBMITTED TO THE CITIZEN'S POLICY AND COMPLAINT REVIEW COUNCIL. I HAVE ENCLOSED WITH THIS GRIEVANCE, THE INVESTIGATION REPORT AND ALL OTHER PERTINENT DOCUMENTS.

Signature of the Grievance Coordinator: _____

Date: _____

Erie County Sheriff's Office
Inmate Grievance Supplemental Form

Grievance #

09 G 018

Grievant: Eldridge Thamund ICN # 22585 H/U # c-30

First Deputy Superintendent Leary,

Inmate Eldridge, Thamud has filed Grievance # 09 G 018; he is not satisfied with the results and is requesting to move to the next step which is an appeal to the Chief Administrative Officer.

Complaint – Inmate would like to use the indoor gymnasium once a week and during bad weather.

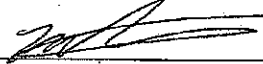
Action requested - Inmate requests to use the indoor gymnasium when it rains, thunders, and when it is below zero.

Description of events – Inmate is flooding the Grievance system with frivolous complaints. Inmate has been spoken to numerous times and told that the use of the indoor Gymnasium is regulated by the standards of the COC.

Decision: Complaint – Unsubstantiated / Action Requested – Denied

Submitted by:

NAME: Chief Michael Reardon

SIGNATURE: 

DATE: 5/19/09

Purpose of Supplement:

- ☐ Additional Information
- ☐ Interview
- ☐ Documentation of evidence
- ☒ Other: Appeal to CAO

New York State Commission of Correction
Citizens' Policy and Complaint Review Council
80 Wolf Road (4th Floor)
Albany, NY 12205

Re: Facility Grievance # 09 G 018

Dear Council Members,

Attached, please find a copy of facility Grievance # 09 G 018 along with copies of all investigative documentation for your review. Inmate Eldridge Thamud is no longer housed at this facility.

Chief M. Reardon
Grievance Coordinator

Cc: Grievance file (09 G 018)

EXHIBIT LL

109.
D. Russo
C. 26-6891403 060C

Inmate Grievance Form

Grievance #

09G-022

Facility: ERIE COUNTY HOLDING CENTER

Name of Inmate: Kevin Anderson

ICN # 107066

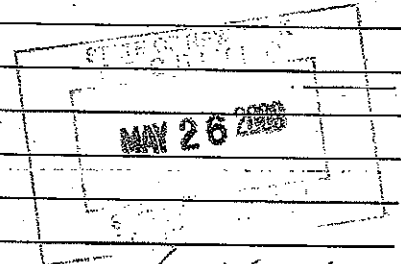
HU # 1-Seq 32

Brief Description of the Grievance (Completed by the grievant): Number of Additional Sheets Attached ()

Yr hand book say that we (people of privilege) are suppose to have a tv. I'm Kevin Anderson have all my privileges so why dont we have a tv yet - we really need one so please get us one!

Action requested by the grievant (Completed by the grievant): Number of Additional Sheets Attached ()

We want a tv A.C. A.D.



Grievant Signature: [Signature]

Date/Time Submitted: 4-14-09

Receiving Staff Signature: [Signature] #1316

Date/Time Received: 1310 4/14/09

Summary of facility staff attempts to resolve (Attach relevant documentation) Number of Additional Sheets Attached ()

called Dep. Higgins. Dep Higgins stated that NO TV'S were available. SPOKE w/ MAINT. & CONFIRMED NO T.V. AVAILABLE

Officer/ Supervisor Signature: [Signature] DRUSO #1316

I accept this resolution

X I do not accept this resolution and wish to file a formal grievance

Signature of INMATE:

[Signature]

Date: 4-14-09 Time: 1315

Forwarded to Grievance Coordinator

Officer/Supervisor Signature:

[Signature]

Date: 4/14/09 Time: 1346

Received by Grievant Coordinator

Signature of Grievance Coordinator:

Date: Time:

(Grievance must be forwarded to Grievance Coordinator within 24 hrs of submission)

Decision of the Grievance Coordinator:

Number of Additional Sheets Attached ()

(Including specific facts and reasons underlying the decision)

As told to you last week, tv's are on order. You agreed to wait for a tv. The process of acquiring the tv. after the ECSO has placed the order w/ the County is beyond the CAO control. Your grievance is therefore returned under 7032. H.

Signature of the Grievance Coordinator:

Poplauer

Date:

4/15/09

() I have read the above decision of the Grievance Coordinator

() I agree to accept the decision

() I wish to appeal to the Chief Administrative Officer

Grievant Signature:

Kim Anderson

Date:

4-15-09

Decision of the Chief Administrative Officer:

Number of Additional Sheets Attached ()

(Including specific facts and reasons underlying the decision)

Complaint substantiated / Action Requested-Modified

As Told previously TV. are ordered and will Be replaced.

Signature of the Chief Administrative Officer:

MAH

Date:

5/18/09

PURSUANT TO SECTION 7032.5(A), ANY GRIEVANT MAY APPEAL ANY GRIEVANCE DENIED BY THE FACILITY ADMINISTRATOR, IN WHOLE OR IN PART, TO THE STATE COMMISSION OF CORRECTION.

() I have read the above decision of the Chief Administrative Officer

() I agree to accept the decision

(X) I wish to appeal to the Citizen's Policy and Complaint Review Council

Grievant Signature:

Kim Anderson

Date:

5/17/09

Submission to the Citizen's Policy and Complaint Review Council

I HAVE ISSUED THE GRIEVANT A RECEIPT INDICATING THE DATE THE APPEAL HAS BEEN SUBMITTED TO THE CITIZEN'S POLICY AND COMPLAINT REVIEW COUNCIL. I HAVE ENCLOSED WITH THIS GRIEVANCE, THE INVESTIGATION REPORT AND ALL OTHER PERTINENT DOCUMENTS.

Signature of the Grievance Coordinator:

MAH

Date:

5/20/09

Erie County Sheriff's Office
Inmate Grievance Supplemental Form

Grievance #

09 G 022

Grievant: Anderson Kevin ICN # 107066 H/U # c-32

First Deputy Superintendent Leary,

Inmate Anderson, Kevin has filed Grievance # 09 G 022; he is not satisfied with the results and is requesting to move to the next step which is an appeal to the Chief Administrative Officer.

Complaint - No TV on C seg. Low side

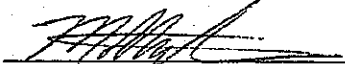
Action requested - Inmate wants a TV immediately

Description of events - Inmates housed on the low side of Charlie Seg destroyed a functioning TV. A replacement has been ordered and will be installed upon receipt of the purchase.

Decision: Complaint - Substantiated / Action Requested - Modified

Submitted by:

NAME: Chief Michael Reardon

SIGNATURE: 

DATE: 5/19/09

Purpose of Supplement:

- ☐ Additional Information
- ☐ Interview
- ☐ Documentation of evidence
- ☒ Other: Appeal to CAO

Inmate's Name/No: Anderson, Kevin C32

RE: Inmate Grievance # 09 G -022

This is to advise you that on this date, your grievance was forwarded to the Commission of Correction, Citizen's Policy Complaint Review Council. The grievance and all pertinent information was forwarded via First Class, U.S. Mail. Upon receipt, the Review Council will review your grievance and render a decision within 45 days. You will receive direct written communication from the Council regarding the disposition of your grievance.

Chief M. Reardon
Grievance Coordinator
Date: 5/20/09

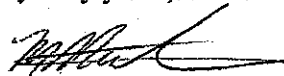
New York State Commission of Correction
Citizens' Policy and Complaint Review Council
80 Wolf Road (4th Floor)
Albany, NY 12205

Re: Facility Grievance # 09 G-022

Dear Council Members,

Attached, please find a copy of facility Grievance # 09 G-022 along with copies of all investigative documentation for your review.

Very truly yours,



Chief Michael Reardon
Grievance Coordinator

Cc: Grievance file (09 g 022)

EXHIBIT MM

MAIL

Tr 1/28/09
Page 9

09-16-483

09-G-037

Complaint/Grievance Form

Facility: ERIE COUNTY HOLDING CENTER

Housing Location: ECHO NE 66

Name of Inmate: NORMAN CARAWAY #112065

10C

Brief Description of the Grievance (Completed by the grievant): Number of Additional Sheets Attached (1)

1. SOME OF MY MAIL IS BEING REJECTED WITHOUT PROPER CAUSE.
2. I AM NOT RECEIVING NOTICES WHEN ITEMS ARE REJECTED. ON 5-26-09, I RECEIVED A LETTER THAT SHOULD HAVE HAD A FEW PAGES THAT WERE CLIPPED FROM A SWIMSUIT MAGAZINE. THEY WERE MISSING. I RECEIVED NO NOTICE. I WROTE THREE "SLIPS" TO CHIEF REARDON. 1ST RESPONSE- HE CLAIMED THE PAGES CONTAINED UNALLOWABLE CONTENT (SEXUAL NATURE). I CHALLENGED THIS, AND ASKED FOR CLARIFICATION,

Action requested by the grievant (Completed by the grievant): Number of Additional Sheets Attached ()

1. I WANT PROPER NOTICE ANY TIME MAIL IS TO BE REJECTED.
2. I WANT OPPORTUNITY TO CONTEST/APPEAL SUCH DECISION.
3. GIVEN THAT IT APPEARS THAT MAGAZINE CLIPPINGS ARE ALLOWED, I WANT TO RECEIVE ANY SUCH CLIPPINGS THAT ARE NOT OTHERWISE UNACCEPTABLE DUE TO CONTENT (ASSUMING CONTENT COMPARABLE TO AMERICAN CURVES IS ACCEPTABLE).
4. I WANT TO KNOW WHAT HAPPENED TO MY MISSING AM. CURVES MAGAZINES, AND RECEIVE FUTURE ISSUES UNIMPAIRED.

Grievant Signature: Norman S. Caraway Date/Time Submitted: 6-13-09

Receiving Staff Signature: Fall Allman #1224 Date/Time Received: 6/13/09 - 1845

Summary of facility staff attempts to resolve (Attach relevant documentation) Number of Additional Sheets Attached ()

I Dep Allman handed in (2) pb slips for Chief Reardon in which his responses to I/m Caraway were: material of a sexual nature is returned to sender and not accepted within the Holding Center.

I accept this resolution

Grievant Signature

Officer/ Supervisor Signature

X

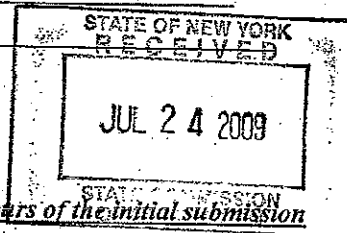
I do not accept this resolution and wish to file a formal grievance

Inmate Signature Norman S. Caraway

* Must be forwarded to Grievance Coordinator if not resolved within 24 hours of the initial submission

Forward to Grievance Coordinator Date 6/16/09 Time 9 AM

Officer/Supervisor Signature



Norman Caraway

E66 C-125

EN 09-6-037

Decision of the Grievance Coordinator:

Number of Additional Sheets Attached ()

(Including specific facts and reasons underlying the decision)

Complaint unsubstantiated / Action Requested Denied
Per a memo dated 6/9/09 for the first Sgt.
Material or photographs with an explicit sexual theme, which
displays frontal nudity or penetration of any sort is unacceptable
and will be returned to the sender. This includes
cut out clippings.

Signature of the Grievance Coordinator: MM

Date: 6/22/09

☒ I have read the above decision of the Grievance Coordinator

☐ I agree to accept the decision

☒ I wish to appeal to the Chief Administrative Officer

Grievant Signature: N. Caraway

Date: 6-29-09

Decision of the Chief Administrative Officer:

Number of Additional Sheets Attached ()

(Including specific facts and reasons underlying the decision)

- 1) It is not been proven that the holding center clipped/removed pictures
- 2) May 26, 2009 you rec'd magazine yet waited more than 5 days
to write a slip or file a grievance
- 3) We did not clip the pictures, you rec'd the magazine. therefore
we did not withhold mail.
- 4) You will be notified if mail is rejected but this was not.
Grievance decision of Grievance Coordinator upheld

Signature of the Chief Administrative Officer: Robb

Date: 7-13-09

PURSUANT TO SECTION 7032.5(A), ANY GRIEVANT MAY APPEAL ANY GRIEVANCE DENIED BY THE
FACILITY ADMINISTRATOR, IN WHOLE OR IN PART, TO THE STATE COMMISSION OF CORRECTION.

☒ I have read the above decision of the Chief Administrative Officer

☐ I agree to accept the decision

☐ I wish to appeal to the Citizen's Policy and Complaint Review Council

Grievant Signature: N. Caraway

Date: 7-15-09

Submission to the Citizen's Policy and Complaint Review Council

I HAVE ISSUED THE GRIEVANT A RECEIPT INDICATING THE DATE THE APPEAL HAS BEEN SUBMITTED
TO THE CITIZEN'S POLICY AND COMPLAINT REVIEW COUNCIL. I HAVE ENCLOSED WITH THIS
GRIEVANCE, THE INVESTIGATION REPORT AND ALL OTHER PERTINENT DOCUMENTS.

Signature of the Grievance Coordinator: MM

Date: 7-20-09

DESCRIPTION (CONT. FROM PAGE 1)

AS IT IS UNLIKELY THAT THE PERSON WHO SENT THE PAGES WOULD HAVE SENT ANYTHING WITH SEXUAL CONTENT. IN REPLY, I WAS TOLD THAT "CUT UP MAGAZINES ARE NOT ACCEPTABLE". THIS AVOIDS ALTOGETHER THE PREVIOUS CLAIM OF IMPROPER CONTENT. FURTHER, IN MY 16 MONTHS AT THIS FACILITY, I HAVE SEEN SEVERAL OTHER INMATES RECEIVE MAGAZINE CLIPPINGS - SOMETIMES NUMEROUS PAGES SENT IN A MANILA ENVELOPE. I HAVE PREVIOUSLY RECEIVED CLIPPED PAGES, 1 OR 2 AT A TIME.

THIS IS NOT THE ONLY PROBLEM I HAVE HAD. I SUBSCRIBE TO AMERICAN CURVES MAGAZINE (ALLOWABLE, PER SCTS, WEBSTER, LODESTRO, + BAYMAN). I AM MISSING 2 ISSUES. I RECEIVED ISSUE #49 (1-6-09) AND #52 (5-13-09). ISSUES #50 + #51 ARE MISSING. DUE TO LACK OF NOTICE, I CANNOT CONFIRM IF THEY WERE REJECTED, OR NEVER SENT (I HAVE WRITTEN TO AM. CURVES TO ASK - SO FAR, NO ANSWER). LAST YEAR (SUMMER 2008) MY BROTHER ORDERED FOR ME A SUBSCRIPTION TO PLAYBOY, NOT REALIZING THAT IT WAS NOT ALLOWED. AT LEAST 2 ISSUES WERE RECEIVED AT ECHC, AND WERE REJECTED, BUT I RECEIVED NO NOTICE! (SUBSCRIPTION TO PLAYBOY WAS CANCELLED.)

PURSUANT TO INMATE HANDBOOK, PG 5 (NOV 2008 REV), SECTION ON "INCOMING MAIL", IN ALL CASES WHERE INCOMING MAIL IS TO BE REJECTED AS CONTRABAND, BOTH SENDER + RECIPIENT ARE TO RECEIVE NOTICE, AND OPPORTUNITY TO APPEAL.

EXHIBIT NN

209

09-26-871

#70

MEDICAL TREATMENT

DEPUTY WILSONS #969

1403

Inmate Grievance Form

Grievance #

096-031

Facility: ERIE COUNTY HOLDING CENTER

Name of Inmate: DAVIS, SHANNON

ICN #

26344

H/U #

D92

Brief Description of the Grievance (Completed by the grievant): Number of Additional Sheets Attached (2)

ON OR ABOUT THE 17TH OF MAY I TOLD NURSE LESLIE THAT I HAVE HAD A HISTORY WITH BED SORES AND THAT THEY WERE ALL HEALED BUT THAT I NEEDED AN EGG CRATE TO GO OVER MY MATTRESS TO HELP PREVENT THE SORES FROM REOPENING. I WAS GIVEN AN EXTRA MATTRESS INSTEAD. ONE OF THE MATTRESSES HAS HOLES IN IT WITH TOWELS STUFFED INSIDE OF IT MAKING

Action requested by the grievant (Completed by the grievant): Number of Additional Sheets Attached (2)

(SEE ATTACH) →

- ① THAT I RECEIVE AN EGG CRATE OR A BETTER MATTRESS BECAUSE ONE OF THE MATTRESSES IS RAGGLY (STUFFED WITH TOWELS AND HARD AS ROCKS); ② THAT MENTAL HONORS THE POLICY OF EMERGENCY MEDICAL CARE. IT WAS CRUEL AND INHUMANE FOR THEM TO LET ME PAIN FOR 2 AND A HALF DAYS WITH NOT A NURSE

Grievant Signature: Shannon Davis

Date/Time Submitted: 6/3/09

(SEE ATTACH) →
3:31 PM

Receiving Staff Signature: _____

Date/Time Received: _____

Summary of facility staff attempts to resolve ()

(Attach relevant documentation)

DEPUTY WILSONS WAS NOT AWARE OF MATTRESS PROBLEM AND AREA SET.

WAS NOT INFORMED OF THAT PROBLEM - PG. SLIP GIVEN TO INMATE 6-3-09

TO REQUEST FROM MEDICAL MATTRESS NEEDED

6-1-09 INFORMED NURSE OF PROBLEM - WAS TOLD BY NURSE COLLEEN ISSUES BEING HANDLED, WILL BE SEEN 6-2-09.

6-2-09 - INFORMED NURSE LESLIE INMATE NEEDED TO BE SEEN, INMATE NOT SEEN, SET.

NOTIFIED OF PROBLEM, SET CATHART, NURSE LESLIE ON UNIT SPEAKING TO INMATE, TOLD HIM TO BE SEEN 6-3-09. GRIEVANCE FORM ISSUED, SEEN BY NURSE DAVIS 10:30HRS PT ON SICK CALL 6-3-09. DOES WANT TO SUBMIT GRIEVANCE FOR LENGTH OF TIME NOT BEING SEEN BY MEDICAL.

I accept this resolution

X I do not accept this resolution and wish to file a formal grievance

Signature of INMATE: Shannon Davis

Date: 6-3-09

4:44 P.M.

STATE OF NEW YORK
RECEIVED

Date: JUN 29 2009

Time: _____

STATE COMMISSION
OF CORRECTION

Date: 6/6/09

Time: 9 AM

Forwarded to Grievance Coordinator

Officer/Supervisor Signature: _____

Received by Grievant Coordinator

Signature of Grievance Coordinator: _____

(Grievance must be forwarded to Grievance Coordinator within 24 hrs of submission)

Decision of the Grievance Coordinator:
(Including specific facts and reasons underlying the decision)

Number of Additional Sheets Attached ()

096031

IT is my understanding That the medical department is seeing + changing your dressing Every other Day. This should solve your issue's with in The Grievance. IF you incur any other problems Do NOT Hesitate To contact this office

Signature of the Grievance Coordinator: [Signature]

Date: 6/9/09

() I have read the above decision of the Grievance Coordinator

() I agree to accept the decision

(☒) I wish to appeal to the Chief Administrative Officer

Grievant Signature: [Signature]

Date: 6.9.09

Decision of the Chief Administrative Officer:
(Including specific facts and reasons underlying the decision)

Number of Additional Sheets Attached ()

Issue Resolved To inmates

Satisfaction Inmate agreed verbally + then refused to sign off.

Signature of the Chief Administrative Officer: [Signature]

Date: 6/24/09

PURSUANT TO SECTION 7032.5(A), ANY GRIEVANT MAY APPEAL ANY GRIEVANCE DENIED BY THE FACILITY ADMINISTRATOR, IN WHOLE OR IN PART, TO THE STATE COMMISSION OF CORRECTION.

(☒) I have read the above decision of the Chief Administrative Officer

(☒) I agree to accept the decision

() I wish to appeal to the Citizen's Policy and Complaint Review Council

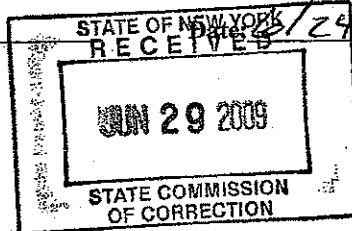
Grievant Signature: _____

Date: _____

Submission to the Citizen's Policy and Complaint Review Council

I HAVE ISSUED THE GRIEVANT A RECEIPT INDICATING THE DATE THE APPEAL HAS BEEN SUBMITTED TO THE CITIZEN'S POLICY AND COMPLAINT REVIEW COUNCIL. I HAVE ENCLOSED WITH THIS GRIEVANCE, THE INVESTIGATION REPORT AND ALL OTHER PERTINENT DOCUMENTS.

Signature of the Grievance Coordinator: [Signature]



New York State Commission of Correction
Citizens' Policy and Complaint Review Council
80 Wolf Road (4th Floor)
Albany, NY 12205

Re: Facility Grievance # 09 G 031

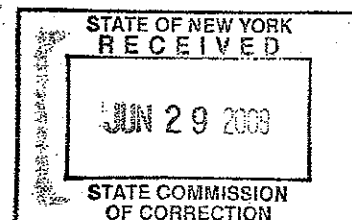
Dear Council Members,

Attached, please find a copy of facility Grievance # 09 G 031 along with copies of all investigative documentation for your review.

Very truly yours,

Chief Reardon
Grievance Coordinator

Cc: Grievance file (09G029)

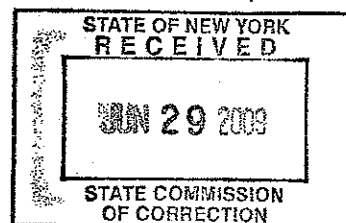


Inmate's Name/No: Davis Shannon

RE: Inmate Grievance # 09 G -031

This is to advise you that on this date June 24, 2009 your grievance was forwarded to the Commission of Correction, Citizen's Policy Complaint Review Council. The grievance and all pertinent information was forwarded via First Class, U.S. Mail. Upon receipt, the Review Council will review your grievance and render a decision within 45 days. You will receive direct written communication from the Council regarding the disposition of your grievance.

Chief M. Reardon
Grievance Coordinator
Date: 6/24/09



MEDICAL

ERIE COUNTY SHERIFF'S OFFICE
JAIL MANAGEMENT DIVISION

TO:

DEP. SUPT.: _____
LIEUTENANT SERGEANT: _____ CLERK: _____
CHAPLAIN: _____ SPECIAL SERVICE OFFICER: _____
NOTARY: _____ CLINIC: _____
PRE-TRIAL: _____ OTHER (SPECIFY): 1

DATE: 6-3 20 04 TIME: 3:33 AM/PM HOUSING UNIT: DEPT MM 97

DEPUTY SIGNATURE: [Signature] BADGE NO.: _____

INMATE'S NAME: James Davis CELL #: DEPT MM 98

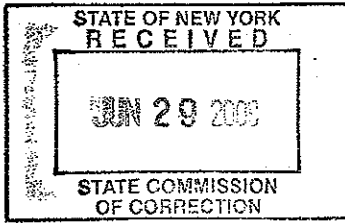
ICN#: 263221

REQUEST: I NEEDED AN EGG CRATE AND ANOTHER MATTRESS. WHEN I FIRST CAME HERE IN THE 14TH OF MAY I INFORMED NURSE LESLIE THAT I HAD A LITERGY WITH BED SORES BUT AT THE POCST TIME THEY WERE ALL HEALED AND THAT I NEEDED A EGG CRATE TO PREVENT THE SORES FROM REOPENING. I WAS GIVEN AN EXTRA MATTRESS INSTEAD WHICH I LAYED ON DRAIN N.EAST. SINCE THEN I WAS MOVED TO DEPT. MM 98 MEDICAL WHERE THE MATTRESS IS COVERED WITH TOWELS AND NOT CHANG. THIS IS THE REASON MY WOUND WAS OCCURED.

DISPOSITION: _____

IF YOU WISH TO FILE A GRIEVANCE,
PLEASE REFER TO THE INMATE HANDBOOK
ON PROPER PROCEDURE TO FILE.

ECHC-11R (Rev. 01/06)



DETA MM 92
SHANNON DAVIS # 26344

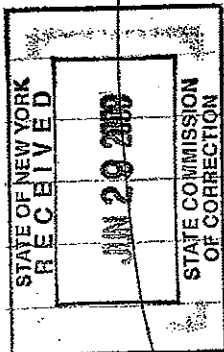
GRIEVANCE ATTACHMENT (PAGE 1)

6-2-09
RE. MEDICAL TREATMENT
DET. PA. WIGGUS # 789

BRIEF DESCRIPTION

IT HAD LIKE ROCKS. FROM THE HARDNESS OF THE MATTRESS A SORE ON MY BUTTOCKS HAS REOPENED. IF I HAD THE PROPER BENDING (ANOTHER MATTRESS OR AN EGG CRATE) THIS WOULD NOT HAVE OCCURRED. ON 6-1-09 IN THE MORNING DURING THE MEDICATION RUN I INFORMED NURSE COLLEN THAT I HAD A SORE ON MY BUTTOCKS THAT WAS BLEEDING, SHE TOLD ME THAT THEY WOULD CALL ME OVER TO MEDICAC TO HAVE IT CHECKED OUT. FOR THAT WHOLE DAY MY WOUND WAS NEVER LOOKED AT AND I WAS NEVER CALLED OVER TO MEDICAL. I WAS TOLD THE NEXT DAY (6-2-09) BY DEPUTY MS. PIAZZA THAT I WAS ON THE CALL OUT TO SEE THE DOCTOR FOR LATER THAT DAY. AT ABOUT 8:30 PM I INFORMED DEPUTY MS. WIGGUS THAT I WAS ON THE CALL OUT TO SEE THE DOCTOR, I WAS TOLD THAT THE DOCTOR HAD LEFT. I THEN DEMANDED THAT I RECEIVE A GRIEVANCE FORM. DEPUTY MS. WIGGUS THEN INFORMED SERGEANT CATHCART WHO IN RETURN CAME TO SPEAK TO ME WITH NURSE LESLEA. NURSE LESLEA REFUSED TO ASSESS MY BUTTOCKS, SIMPLY STATING DO YOU WANT A DUADERM PATCH TO PUT OVER IT. I TOLD THE NURSE THAT THIS WOUND NEEDED TO BE ASSESSED BEFORE A TREATMENT COULD BE IMPLEMENTED I TOLD ~~THE~~ NURSE LESLEA THAT MY WOUND WAS NOT SUPERFICIAL THEREFORE THE DUADERM PATCH WOULD NOT WORK. NURSE LESLEA REFUSED TO CHECK OUT MY WOUND OR TO HAVE IT

... AND ... ME ... TO SEND ME TO BED



DELTA MM92
SWINNON DAVIS #06344

GRIEVANCE ATTACHMENT

6-2-09
RE. MEDICAL TREATMENT
DEP. PA WELCH #969

(PAGE 2)

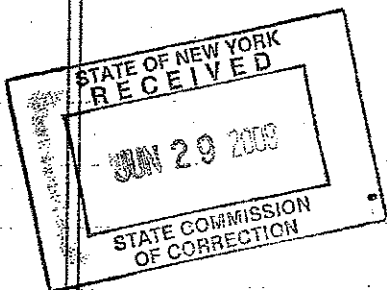
BRIEF
DESCRIPTION

FOR A SECOND NIGHT BLEEDING WITHOUT ANY TYPE OF BANDAGE. I TOLD NURSE LESLEA THAT IT WAS AN MEDICAL EMERGENCY AND THAT THE WOUND HAD BEEN BLEEDING FOR 2 DAYS. NURSE LESLEA STILL WAS SENSELESS, NOT WANTING TO GIVE ME ANYTHING, BUT AS I CONTINUED TO PRESS HER SITE RELUCTANTLY GAVE ME 2 LITTLE STRIPS OF TAPE AND 2 ABD PAD. BEFORE THEN, FOR 2 DAYS I HAD TO USE TOILET PAPER TO PREVENT THE WOUND FROM LEAKING BLOOD.

ACTION REQUESTED

CHECKING THE WOUND OUT. ③ I NEED TO KNOW WHY IT TOOK 2 IN A HALF DAYS FOR THIS MEDICAL STAFF TO ASSESS MY WOUND WHEN THEY WAS INFORMED THAT IT WAS AN EMERGENCY, ESPECIALLY SINCE I WAS BLEEDING? ④ I WAS ON THE CALL OUT TO SEE THE DOCTOR ON 6-2-09. I NEED TO KNOW HOW COULD I BE ON THE CALL OUT TO SEE THE DOCTOR WITH SUCH A MEDICAL EMERGENCY AND THE DOCTOR JUST LEAVE WITHOUT SEEING ME?

SWINNON DAVIS #06344



ERIE COUNTY HEALTH DEPARTMENT
PROGRESS NOTES

NAME: Davis, Shannon
DATE OF BIRTH 1/27/75 ID # _____

(Date and sign each entry)

Continued 6-3-09

will monitor until healed. Kuttler Davidson R.

4th Limit state for used patient - Silver coated dry
in the past.

will need order for egg crate.

PT to review + order as necessary.

[Signature]
Kuttler Davidson R.

6-5-09 Per PA Joel inmate to use Acticoat
on his buttocks open area - Cullen Delacruz

6-10-09 Egg crate mattress arrived given to inmate [unclear]

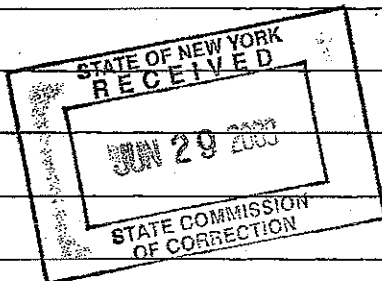


EXHIBIT OO

09-6-544
1403
076

Inmate Grievance Form

Grievance #
09G-017

Facility: ERIE COUNTY HOLDING CENTER

Name of Inmate: Jerry Ridgway Jr ICN # 78602 H/U # Aravol

Brief Description of the Grievance (Completed by the grievant): Number of Additional Sheets Attached ()

I put in four p.g slips regarding my jail time calculation sheet because it's
wrong in 100% sure of this. I got sentenced to 90 days on two counts ra
concurrent and 60 days ran concurrent, my release date was March 6, 09
and im still here I been in jail since January 9, 2009. Im being
"unlawfully imprisoned"

Action requested by the grievant (Completed by the grievant): Number of Additional Sheets Attached ()

That i be released As soon as possible

STATE OF NEW YORK
APR 20 2009

Grievant Signature: Jerry Ridgway Jr

Date /Time Submitted: April 2, 2009

Receiving Staff Signature: Det. K. Kilanski

Date/Time Received: 4-2-09 / 1430 HRS.

Summary of facility staff attempts to resolve (Attach relevant documentation)

Number of Additional Sheets Attached ()

DEPUTY OFFERED REQUEST SLIPS. INMATE REFUSED, STATING HE SUBMITTED FOUR
PREVIOUS SLIPS. SGT. WAS NOTIFIED

Reviewed jail time - out date is 4/10/09 -

Explained Jail time. Grievant disagrees with
Calculation
Hartman

Officer/ Supervisor Signature

☐ I accept this resolution

☒ I do not accept this resolution and wish to file a formal grievance

Signature of INMATE:

Jerry Ridgway Jr Date: 4-3-09 Time: 2:53 p.m.

Forwarded to Grievance Coordinator

Officer/Supervisor Signature:

Date: _____ Time: _____

Received by Grievant Coordinator

Signature of Grievance Coordinator:

Robleary Date: 4/3/09 Time: 3pm

(Grievance must be forwarded to Grievance Coordinator within 24 hrs of submission)

Decision of the Grievance Coordinator:

Number of Additional Sheets Attached ()

(Including specific facts and reasons underlying the decision)

Inmate jail time record reviewed w/ inmate on 4-7-09 with detailed explanation. He would be released on 4-9-09 as 4-10-09 is a holiday.

Jail time

Signature of the Grievance Coordinator: _____

Date: _____

() I have read the above decision of the Grievance Coordinator

() I agree to accept the decision

() I wish to appeal to the Chief Administrative Officer

Grievant Signature: _____

Date: _____

Decision of the Chief Administrative Officer:

Number of Additional Sheets Attached ()

(Including specific facts and reasons underlying the decision)

Jail time calculation is correct. Actual out date is earlier than originally given because of holiday.
Inmate refused to sign
Inmate to be released 4-9-09.

Signature of the Chief Administrative Officer: Bob Kearney

Date: 4-7-09

PURSUANT TO SECTION 7032.5(A), ANY GRIEVANT MAY APPEAL ANY GRIEVANCE DENIED BY THE FACILITY ADMINISTRATOR, IN WHOLE OR IN PART, TO THE STATE COMMISSION OF CORRECTION.

() I have read the above decision of the Chief Administrative Officer

() I agree to accept the decision

() I wish to appeal to the Citizen's Policy and Complaint Review Council

Grievant Signature: _____

Date: _____

Submission to the Citizen's Policy and Complaint Review Council

I HAVE ISSUED THE GRIEVANT A RECEIPT INDICATING THE DATE THE APPEAL HAS BEEN SUBMITTED TO THE CITIZEN'S POLICY AND COMPLAINT REVIEW COUNCIL. I HAVE ENCLOSED WITH THIS GRIEVANCE, THE INVESTIGATION REPORT AND ALL OTHER PERTINENT DOCUMENTS.

Signature of the Grievance Coordinator: _____

Date: _____

Inmate released 4-9-10

EXHIBIT PP

Policy and Procedure

JAIL MANAGEMENT DIVISION:

Inmate Visitation**Policy #**

Approved

#JMD 10.06.00

Total Pages: 10

Undersheriff

Deputy Superintendent

Effective Date: September 1989**Revision Date:** 03/09; 06/04; 10/02; 04/01; 02/99; 08/97; 03/92**NYSCOC Standards:** 7008**NYSSAI Accreditation:****Other References:****POLICY:**

In order to maintain compliance with the NYS Commission of Correction Minimum Standards and the New York State Constitution, all inmates housed in the Erie County Holding Center will receive contact visits, unless otherwise specifically stated.

PROCEDURE:

Each inmate housed in the Erie County Holding Center will receive, at a minimum, two hours visiting time per week. In order to accommodate all of our inmates and their visitors, the following breakdown will apply:

Each inmate will be entitled to two (2) hours of visits per week available Saturday through Wednesday. Half hour visits may be combined into one, one (1) hour visit. This option is limited to one-hour visit per day, **IN THE MORNING SESSION ONLY**, not to exceed the two (2) hour weekly maximum.

VISITING SCHEDULE:

Saturday through Wednesday from:
7:00 AM to 2:30 P.M.

VISITOR SIGN UP:

Beginning 7:00 AM ending at 1:00 P.M. for 1 hour visit and 2:00 P.M. for 1/2 hour visit.

THERE WILL BE NO VISITING ON HOLIDAYS.

VISITOR IDENTIFICATION AND REGISTRATION:

Any person wishing to visit an inmate must present proper picture identification before being allowed a visit. Proper identification is considered:

- a current and valid New York State Drivers License;
- a current and valid New York State Identification Card;
- a current and Social Services Card (with a picture),
- a current and valid Drivers License issued by any other state or province,
- a current and valid United States Military identification card;
- a current and valid passport.

Additionally, all visitors must register in the Visitor's Log, to include their name, current address, date of visit, the name of the inmate to be visited and their relationship to the inmate (spouse, friend, child, etc.).

The Deputy assigned to the Visiting Detail will be required to log the exact time the visit begins and the exact time the visit ended for each visit/visitor.

Parents or legal guardians who wish to bring children (anyone under 18 years of age) to visit a prisoner, must provide adequate identification for themselves AND THE CHILD. Identification for the child MUST INCLUDE:

- The child's birth certificate (either original or certified copy) Inmates are allowed to give permission to visit their own children provided their name appears on the birth certificate.
- Adoption papers
- Guardianship papers

Additional identification for children may include:

- Student identification card issued by a recognized school district
- Student bus pass
- New York State Learner's permit

NOTE: Any visitor under 18 years of age must be accompanied by an adult, (21 years of age or older).

SECURITY:

To maintain the safety, security, and good order of the facility, and all persons therein, the following security procedures have been established:

1. The Contact Visiting Room, Non-Contact Visiting Rooms, Attorney Conference Rooms, and ground floor Attorney Conference rooms will be searched prior to visiting hours to ensure the absence of contraband.
2. Visitors must place all items, coats, purses, keys, etc., into the lockers provided for this purpose in the Front Lobby. These lockers are secured via a lock and key system, which is provided at the time the visitor signs in for their visit.
3. All visitors must pass through a metal detector before admittance to any of the visiting areas and may be subjected to an oral search.
4. Visitors will be searched as a condition for contact visit, if there is reasonable, documented suspicion that they may be introducing contraband into the facility. Staff must be prepared to articulate why a certain person was searched and provide documentation.
5. All inmates will be strip-searched after each contact visit prior to returning to their housing area/unit to ensure the absence of contraband.
6. Security personnel will be present in the Contact Visiting Room during each visiting session to visually monitor the visits.

7. All rules and regulations, as posted in the Visiting Room and in the Inmate Handbook must be adhered to by both inmate and visitor(s). Violation of any of these rules and regulations may result in the termination of that visit. Any termination of a visit must be fully documented.
8. A brief kiss is allowed at the beginning and end of visit.
9. All visiting areas, as specified in #1 of this section, will be searched after each visiting period to ensure the absence of contraband.

ATTORNEY VISITS:

Attorney conference rooms have been provided for attorney/inmate visits. These rooms ensure inmate/attorney confidentiality because they cannot be audibly monitored. There are, however, visually supervised by the Deputy assigned to Visiting Control to protect the safety, security, and good order of the facility and all persons therein.

Attorneys can visit at any time that is not unduly disruptive to facility routine, i.e., lockdowns, shift change, etc. Attorneys are not allowed to bring in recording devices or cell phones unless they have prior approval from the Sheriff or his designee. Food and drink are prohibited.

ATTORNEY VISITING TIMES:

Daily:

7:00 a.m. – 11:00 p.m.

VISITING RESTRICTIONS:

If an inmate or visitor is considered a threat to the safety, security, or good order of the facility, their visits may be restricted. **These restrictions are ordered by the Superintendent's Office only.** Officers with concerns should notify the area Supervisor immediately and document concerns. The Supervisor will report the incident/concern to the 1st Deputy Superintendent who will make a determination on any restrictions and issue a decision. In this case, written notification will be provided to the affected person(s). These restrictions will include a specific period of time, i.e., ten days non-contact visits, 30 days non-contact visits, etc., and will be reviewed at that time to see whether the condition for the restriction still exists.

Any such restriction on visits can be appealed to the Superintendent, in writing, by either the visitor or the affected inmate.

SPECIAL VISITS:

Any inmate who is expecting a visit from family or friends from out of town can write to the Superintendent, via request slip, for special permission to extend his/her visiting time, or receive a visit on a day not normally scheduled for visits (Thursday, Friday). This decision is the responsibility of the Superintendent.

INITIAL VISITATION:

Each prisoner shall be entitled to receive a non-contact visit within 24 hours after his admission to the facility, provided that admission is within the regular visiting days.

VISITING NOTICES:

Any changes to visiting rules and regulations, dates, etc., will be posted in the Lobby (with copies made for individuals requesting same), issued to all inmate housing areas, and posted in the ECHC Library for a two week period prior to any changes made.

INMATE VISITS:

Inmate visits are not dependant on the amount of time an inmate has been in the facility. Inmates may have visits within the first 24 hours of their incarceration into the facility. If an inmate has been processed into the facility, they will visit in the Contact Visiting Room. If an inmate has not yet been processed into the facility, they will be changed over and escorted to the Non-Contact Visiting Room. These inmates will then be escorted back to the ground floor for processing. Visiting hours will remain consistent with those for regular visits but no less than 30 minutes per visit, unless violations or other circumstances justify ending the visit.

The 1st Deputy Superintendent responsible for visiting, or in their absence, the Chief of Operations, Captain or the Watch Commander, will authorize these visits.

VISITING ROOM SEARCHES:

All visiting rooms will be searched before and after the visiting sessions to ensure the absence of contraband. Additionally, the visiting rooms will be searched during the visiting sessions when no inmates and/or visitors are present. Visiting room searches include both inmate waiting and inmate strip search rooms.

All searches must be logged in the Visiting Log Book to include the time of the search (es), Deputies conducting the search (es), and the results of the search.

The Officers assigned to visiting will call a porter daily at the end of visits to clean the visiting room prior to afternoon shift line-up.

VISITING PERSONNEL ROTATION:

ALL OFFICERS HOLDING A BID IN THE VISITING DETAIL SHALL ROTATE ASSIGNMENTS.

| | | |
|--------------------|----|--------------------|
| VISITING CONTROL | TO | METAL DETECTOR |
| METAL DETECTOR | TO | FRONT DESK SIGN-IN |
| FRONT DESK SIGN-IN | TO | INSIDE SECURITY |
| INSIDE SECURITY | TO | SEARCH ROOM |
| SEARCH ROOM | TO | VISITING CONTROL |

*INSIDE DESK POSITION – NOT GENDER SPECIFIC

The Sergeant in charge of Visiting has the authority and responsibility to assign duties within the detail and to ensure the proper rotation of assignments.

If a member of the Visiting Detail is off from the outside posts, the senior Deputy assigned to the Inside Security/Search will fill the outside post. The relief Deputy will then fill his post. The Inside Security Deputy will be responsible to observe all the tables in the Visiting Room and enforce the Visiting Rules. They will also be responsible for the Visiting Record keeping (Logbook, statistics, marking "in and out times" etc.).

CHAIN OF COMMAND:

SERGEANT:

Responsible for Visiting Security, who works where, orderly running of visiting.

LIEUTENANT:

Schedules Deputies, O.K.'s time off, etc.

CHIEF OF OPERATIONS:

Oversees Visiting, coordinates the suspension of visiting privileges, reports to the 1st Deputy Superintendent responsible for Inmate Visitation.

EXHIBIT QQ

VISITING SCHEDULE:

7:00 a.m. to 11:45 a.m. (Morning Session)
1:00 p.m. to 2:30 p.m. (Afternoon Session)
Saturday through Wednesday

VISITING PROCEDURES

VISITOR SIGN UP:

7:00 a.m. to 11:15 for ½ hour visit, until 10:45 a.m. for one hour visit.
12:30 p.m. for the afternoon session and must be signed in by 2:00 p.m.

ALL VISITORS MUST REMAIN IN THE BUILDING UNTIL YOU ARE CALLED FOR YOUR VISIT.

- All visitors must clear the Metal Detector to enter the visiting room. Medical documentation is required for all medical devices.
- All visitors will be required to submit to a K-9 search. Anyone found to be in possession of narcotics will be arrested and prosecuted.
- Appropriate dress is required of all visitors.

NO ORANGE CLOTHING OF ANY KIND GENERAL GUIDELINES REGARDING PROPER DRESS:

- No 'Daisy Dukes' or short shorts
- No sleeveless shirts
- No halter tops
- No spandex clothing
- No see through clothing
- No hats, scarfs or hoods
- No pants, shorts or jeans that oversized or excessively baggy
- No suit coats

- Appropriate, respectful behavior is required of all visitors.
- All children must be under the direct supervision of their parent or legal guardian; they can not be left unattended.

If an inmate informs you directly that he or she is thinking of self harm or suicide during any telephone calls, visits, in any letters, or if you indirectly "overhear" an inmate talking of suicide, PLEASE notify jail staff immediately. Jail staff will have the inmate evaluated to determine what assistance is necessary for him/her to deal with the specific problems. **YOUR INFORMATION CAN SAVE SOMEONES LIFE.**

ACCEPTABLE FORMS OF IDENTIFICATION FOR VISITORS

Any identification must include your:

- Name
- Photograph
- Current Address
- Date of Birth
- Signature

ANY ATTEMPT TO USE FAKE OR ALTERED IDENTIFICATION WILL RESULT IN THE LOSS OF YOUR VISITING PRIVILEGES, YOUR ARREST OR BOTH.

Parents or legal guardians who wish to bring children (anyone under 18 years of age) to visit a prisoner, must provide adequate identification for themselves AND THE CHILD.

Identification for the child MUST INCLUDE:

- The child's birth certificate (either original or certified copy)
- Adoption papers
- Guardianship papers

Acceptable forms of identification are:

- Current and valid New York State Driver's License
- Current and valid New York State Non-Driver's License
- Current and valid Driver's license issued by any other state or province
- Current and valid United States Military Identification card
- Current and valid passport

Additional identification for children may include:

- Student identification card issued by a recognized school district
- Student bus pass
- New York State Learner's permit

EXHIBIT RR

ALL VISITORS MUST PRODUCE IDENTIFICATION

PROPER ID MUST INCLUDE YOUR:

- NAME
- PHOTOGRAPH
- CURRENT ADDRESS
- DATE OF BIRTH
- SIGNATURE

ACCEPTABLE FORMS OF IDENTIFICATION ARE:

- CURRENT VALID N.Y.S. DRIVER LICENSE
- CURRENT VALID N.Y.S. NON-DRIVER I.D. CARD
- CURRENT VALID DRIVER LICENSE, ANY STATE OR PROVIDENCE
- CURRENT VALID U.S. MILITARY I.D. CARD
- CURRENT VALID PASSPORT OR PASSPORT CARD

EXHIBIT SS

ERIE COUNTY SHERIFF'S OFFICE



MEMORANDUM

TO: ALL JMD Holding Center Staff

FROM: Barbara B. Leary, 1st Deputy Superintendent

DATE: March 9, 2009

RE: Visitor Identification

Effective immediately government issued picture identification with an address is sufficient proof of address for admission to visits. Visitors will no longer be denied a visit solely because they do not have a second form of proof of address.

Cc: Undersheriff Brian D. Doyle
Chief Michael F. Reardon
Chief John A. Anthony

ERIE COUNTY SHERIFF'S OFFICE



MEMORANDUM

TO: Dayshift Watch Commander

FROM: Barbara B. Leary, 1st Deputy Superintendent 

DATE: March 13, 2009

RE: Visiting times

By order of the Superintendent:

All assignments on the visiting detail are to be posted and rotated weekly.

Effective immediately, visits will be in operation from 7:00 to 14:30. Visiting will be closed for the hour between 12:00 and 13:00.

From 12:00 to 12:30 the Watch Commander, will assign lunch reliefs as necessary. Those assigned reliefs, will receive lunch breaks from 12:30 through 13:00 hours.

The Visiting Deputy assigned to the visiting control booth must stay on his/her post until attorneys have concluded their visit.

The Sign Up Deputy is to distribute passes in the morning and in the afternoon until all seats are filled and time constraints allow. Passes are not to be limited. Visiting time will be deducted in ½ hour increments. These ½ visiting sessions can be spread across four separate days.

The call down deputy will ensure that all inmates are called down in an efficient and timely manner.

At 12:30 passes will be distributed for the PM session. The call down Deputy will begin calling housing units at 12:45.

Inmates will not be denied the opportunity to visit because they are attending a program. Inmates will be informed of a visit and given the choice of attending.

All non - contact rooms are to be utilized for non - contact visits.

All seats are to be used in the visiting room on a first come first serve basis. Seats are not to be saved or reserved.

Social workers/Counselors will visit in the attorney visiting rooms. Deputies are to ensure that proper supervision is maintained.

Valid Government identification with a picture and an address is sufficient for admission. Visitors are not required to have a second form of ID or proof of address.

Administrative Segregation Orders are to be maintained for all non contact visits, there will no exception.

Cc: Undersheriff Brian D. Doyle
Chief Michael F. Reardon
Chief John A. Anthony

EXHIBIT TT

ERIE COUNTY SHERIFF'S OFFICE

Jail Management Division

Memo

To: Supervisors and Visiting staff
From: Superintendent Donald J. Livingston
CC: Undersheriff Brian Doyle
Date: March 3, 2009
Re: Second form of identification

The requirement that visitors produce a second form of identification to prove current address is immediately discontinued.

Visitor identification will be made in compliance with section 7008.5 of the Minimum Standards.

A properly identified person will be one who can produce a legitimate government issued photo identification card that contains their name and address. Secondary proof of address is not required.