Department of Corrections
Adult Diagnostic and Treatment Center

July 1, 2012 to June 30, 2014

Stephen M. Eells
State Auditor
The Honorable Chris Christie  
Governor of New Jersey

The Honorable Stephen M. Sweeney  
President of the Senate

The Honorable Vincent Prieto  
Speaker of the General Assembly

Mr. Albert Porroni  
Executive Director  
Office of Legislative Services

Enclosed is our report on the audit of the Department of Corrections, Adult Diagnostic and Treatment Center for the period of July 1, 2012 to June 30, 2014. If you would like a personal briefing, please call me at (609) 847-3470.

Stephen M. Eells  
State Auditor  
December 9, 2014
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Scope

We have completed an audit of the Department of Corrections, Adult Diagnostic and Treatment Center (ADTC) for the period July 1, 2012 to June 30, 2014. Our audit included financial activities accounted for in the state’s General Fund. We did not audit inmate medical expenditures since this is included in a separate departmental audit performed by our office. Also, we did not audit the financial transactions of the non-appropriated funds, except for the review of the balance of the Special Treatment Unit Resident Welfare Fund, since they are audited by the department’s internal auditors. The mission of the ADTC is to protect the public and provide custody and inpatient treatment services for adult male sex offenders who come under the purview of the Sex Offender Act. In addition, the ADTC provides security for the Special Treatment Unit (STU) jointly operated with the Department of Human Services that supervises treatment services. The STU houses sex offenders civilly committed under the Sexually Violent Predator Act, who, as defined by the act, pose a danger to others should they return to society after completion of their criminal sentence. Annual expenditures during our audit period averaged $36.5 million for the ADTC and $28.6 million for the STU. The STU total includes $11.2 million in treatment services provided by the Department of Human Services which are not part of our scope.

Objectives

The objectives of our audit were to determine whether financial transactions were related to the center’s programs, were reasonable, and were recorded properly in the accounting systems. We also tested for resolution of the significant issues noted in our prior report dated November 10, 2005.

This audit was conducted pursuant to the State Auditor’s responsibilities as set forth in Article VII, Section I, Paragraph 6 of the State Constitution and Title 52 of the New Jersey Statutes.

Methodology

Our audit was conducted in accordance with Government Auditing Standards, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In preparation for our testing, we studied legislation, the administrative code, circular letters promulgated by the Department of the Treasury, and policies of the Department of Corrections and the center. Provisions we considered significant were documented and compliance with those requirements was verified by interview, observation, and through our testing of financial transactions. We also read the budget messages, reviewed financial trends, and interviewed agency personnel to obtain an understanding of the programs and the internal controls.
A nonstatistical sampling approach was used. Our samples of financial transactions were designed to provide conclusions about the validity of transactions, as well as internal control and compliance attributes. Sample populations were sorted and transactions were judgmentally selected for testing.

To ascertain the status of findings included in our prior report, we identified corrective action, if any, taken by the agency and walked through the system to determine if the corrective action was effective.

**Conclusions**

We found that the financial transactions included in our testing were related to the center's programs and were recorded properly in the accounting systems. However, wages paid to residents at the Special Treatment Unit were not reasonable. In making these determinations, we noted opportunities for cost savings and certain compliance issues meritng management's attention. A prior report issue concerning monitoring of sick leave usage has been updated in this report.

We also made an observation that the Adult Diagnostic and Treatment Center has one of the most expensive per inmate cost in the New Jersey state prison system and that inmates are not removed from the center in accordance with the Sex Offender Act.
Resident Compensation - Special Treatment Unit

Annual cost savings of approximately $1.9 million could be achieved by eliminating the minimum wage requirement for civilly committed sex offenders.

The Adult Diagnostic and Treatment Center (ADTC) is responsible for the security of the Special Treatment Unit (STU) which housed 463 residents as of July 2014. In calendar year 1999, the New Jersey Sexually Violent Predator Act was enacted to civilly commit those sex offenders who, as defined by the act, pose a danger to others should they return to society after completion of their criminal sentence. The act stipulates that the civilly committed residents must be completely separated from the inmate population and these residents were remanded by court order to the STU jointly operated by the Department of Corrections (DOC) and the Department of Human Services (DHS). The DOC is responsible for security, custody, and care of these residents. The DHS provides and supervises sex offender treatment services. As of July 2014, there were 217 residents that had been confined to STU for between 10 and 15 years. The average time for all resident commitments was 8.5 years.

The STU residents are provided all necessities including medical care and are housed free of charge in two secured units. The per-resident cost to the state was $59,700 during fiscal year 2013.

STU residents are offered paid institutional work. According to the DHS Residents’ Guide to the STU, paid institutional work is part of treatment but it is also used as an incentive for good behavior and to encourage meaningful participation in sex offender specific treatment. According to the guide, the work program is a privilege rather than a right.

Residents are compensated at the state minimum wage rate ($7.25 per hour in 2013 and $8.25 per hour in 2014) for their institutional work. According to DHS management, the minimum wage requirements were determined based on a former Department of Law and Public Safety Deputy Attorney General’s advice issued at the time the STU was created in 1999. We were not provided with a written copy of the advice by the DOC, the DHS, nor the Department of Law and Public Safety. During calendar year 2013, 478 STU residents received nearly $2 million in wages. State and federal income taxes were not withheld. The residents earned up to $8,500; their average wage was $4,200; and 205 of 478 residents made over $5,000 during calendar year 2013. Over 80 percent of the money earned was sent by the residents to outside individuals or bank accounts. Money was also used on restaurant delivery orders. If the resident work hours remain at the same level for the entire calendar year 2014, the resident payroll will increase by an additional $270,000 due to the increase in the minimum wage rate that became effective on January 1, 2014.

STU residents are allowed limited paid institutional work hours equivalent to their assignment to one of the five therapy phases (one to five hours per day). Examples of STU paid job assignments include unit workers (155 residents responsible for sweeping and mopping all areas of the housing unit, wiping down the walls, tables, microwaves, windows, etc), kitchen clerks, dining and day room workers, and bathroom and laundry workers. Similar work
assignments are performed by ADTC inmates but unlike STU residents, inmates are compensated at the rates established by the DOC that range from $1.25 to $5.00 per day with the average being $2.33 per day. Calendar year 2013 ADTC payroll for the average of 574 inmates totaled $358,000, compared to $2 million paid to the average of 434 STU residents. If residents were compensated based on the pay rates established for inmates, the state could save approximately $1.9 million annually.

Imprisoned individuals do not fall under the Fair Labor Standards Act (FLSA) and are not entitled to minimum wages as repeatedly decided by the United States Courts of Appeals. Furthermore, in the Sanders v. Hayden case filed by a civilly committed sex offender after his institutional pay was reduced from minimum wage to $2.00 per hour, the Seventh Circuit Court held that civilly committed sex offenders are not covered by the FLSA, and that if they are put to work, it is to offset some of the cost of keeping them and not to enable them to earn a living.

There are 20 states (including New Jersey) that have passed legislation authorizing the civil commitment of sexually violent predators. Our review of the institutional work incentive programs for civilly committed sex offenders in other states disclosed, that of the 14 states that replied to our survey, only six states pay their civilly committed sex offenders minimum wages and for a maximum of five hours per week. In addition, four of these six states charge residents a daily care and maintenance fee.

Recommendation

We recommend that the Department of Human Services reevaluate the institutional work program for civilly committed sex offenders and cease compensating the STU residents at the minimum wage rate.

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Sick Leave

Stronger controls should be implemented to monitor sick leave.

Department of Corrections (DOC) Human Resource Bulletin 84-17 states, “Good attendance on the part of employees is imperative in achieving departmental goals and objectives. Attendance related problems such as excessive use or abuse of sick leave, unauthorized absence, etc., result in an inefficient allocation of capital and human resources.” Furthermore, the bulletin requires that employees who are absent an aggregate of 15 days in a calendar year submit doctor’s verification of illness for all future absences. The bulletin also requires employees who are absent on sick leave for five consecutive work days to submit a doctor’s verification of illness for the period of absence unless such leave was an approved family or medical leave.
The Adult Diagnostic and Treatment Center (ADTC) tolerates liberal use of sick time and does not enforce the bulletin requirements. Based on our analysis, we estimate of the $2.1 million in correction officers’ overtime costs incurred in calendar year 2013, $1.1 million was a result of sick or leave without pay call-outs.

ADTC had 370 correction officers as of the last pay period of calendar year 2013. Our analysis of calendar year 2013 sick leave usage disclosed the following.

- The average number of paid sick leave used by the 370 correction officers was 14.7 days. Fifteen days are allotted each year. In addition, 113 correction officers took an average of 22.5 days of leave without pay excluding workers’ compensation and disciplinary leave.

- On average, correction officers have utilized nearly 95 percent of allotted sick time through their career, including 66 officers with over 20 years of state service. Forty-four percent of officers had a zero cumulative sick leave balance at the end of 2013, including 26 officers with over 20 years of service.

A sample test of 26 correction officers who exceeded the 15-day limit disclosed that none submitted all the required doctor’s notes including 19 officers who had not submitted any notes.

The lax enforcement of the bulletin does not deter the casual use and abuse of sick leave. We determined that if each correction officer reduced paid sick leave by only one day, it would save ADTC $75,000 annually in overtime costs.

**Recommendation**

We recommend the ADTC monitor sick time usage more closely and enforce compliance with the DOC Human Resource Bulletin 84-17. Analysis of employee leave trends should be utilized to identify potential sick leave abuse.

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**Outside Employment**

**Correction officers failed to obtain permission for outside employment as required by departmental procedure.**

Department of Corrections Internal Management Procedure, PSM.EMP.HRB 98-05, prohibits correction officers from pursuing any secondary employment without the express permission of the Department’s Ethics Committee. The procedure states, “In the event that permission is granted for an employee to pursue a secondary position, or to continue such employment, the employee’s allegiance should be to the Department, not to the secondary employer. Moreover, when the question of overtime presents itself, the employee should fulfill his/her overtime obligation to the department before reporting for secondary employment.” Employees desiring
to obtain or continue secondary employment are required to submit a New Jersey Department of Corrections Questionnaire for Approval for Secondary Employment and a New Jersey Department of Corrections Secondary Employment Waiver. Requests for secondary employment and all documents must be resubmitted yearly.

We identified correction officers with outside employment through the Department of Labor and Workforce Development wage reporting system. There were 31 correction officers who earned more than $5,000 in outside employment wages during calendar year 2013, but only 13 had submitted the required documentation for that year. During calendar year 2013, these 31 correction officers took up to 320 hours (an average of 125 hours) of sick leave and up to 714 hours (an average of 36 hours) of leave without pay. Without knowledge of these outside jobs and activities, management may be less aware of warning signs, such as chronic absenteeism that may be attributable to outside employment or activities and the possibility of working the outside employment while on workers’ compensation. In fact, the department is currently investigating a correction officer that may have worked a security position with an outside employer while collecting workers’ compensation.

Recommendation

We recommend that the Adult Diagnostic and Treatment Center enforce the DOC outside employment procedure.

Special Treatment Unit Resident Welfare Fund

The state incurred $9,500 of costs due to the untimely creation of the Interagency Oversight Board.

According to N.J.A.C. 10A:35-10, the Resident Welfare Fund should be spent on amenities only for the use, benefit, and general welfare of the resident population as a whole. The amenities may include, but are not limited to appliance or kitchen items, recreation and sport equipment, television services, awards, library books, movies, magazines, stipends, and equipment to enhance the law library. Revenue sources for the Resident Welfare Fund include profits from the commissary, interest on resident welfare fund savings, gifts, and income from resident trust fund investments. Maintenance and recordkeeping for the Resident Welfare Fund is a responsibility of Adult Diagnostic and Treatment Center (ADTC) management. The ADTC Administrator and DHS Clinical Director, in consultation with the Interagency Oversight Board (IOB), are jointly responsible for the control and authorization of all fund expenditures.

The Special Treatment Unit (STU) Resident Welfare Fund was established in fiscal year 2006. There had been no disbursements out of the STU Resident Welfare Fund because the IOB had not been established until July 2013. The June 30, 2013 and 2014 balances of the STU Resident Welfare Fund were $115,000 and $97,000, respectively. From September 2011 through January
2014, at the request of residents, a number of microwaves, a toaster, and some barber shop supplies, all which met the Resident Welfare Fund expenditure criteria, were purchased with state funds. These disbursements totaled $9,500 and per the center were to be reimbursed to the state. However, the IOB did not approve the reimbursement to the state.

**Recommendation**

We recommend the ADTC and the DHS ensure continuous existence of the IOB. We also recommend the IOB reconsider reimbursing the state $9,500 for the costs of items that met the criteria for the Resident Welfare Fund expenditures.

**Observation**

The Adult Diagnostic and Treatment Center (ADTC) is designated by statute to provide custody and inpatient treatment services for repetitive, compulsive, and amenable adult male sex offenders willing to participate in treatment, and who come under the purview of the Sex Offender Act (N.J.S.A. 2C:47). The ADTC has the second highest per inmate cost of New Jersey state prisons following only the Edna Mahan Correctional Facility for Women. ADTC fiscal year 2013 per inmate costs were $59,900, compared to an average of $39,000 for the other state prisons, excluding the cost of the Special Treatment Unit and the women and youth correctional facilities. The high ADTC per inmate cost was attributed to high salary, medical, and treatment costs.

N.J.S.A. 2C:47-4.1 requires the commissioner to order the transfer out of ADTC any offender serving a life sentence without eligibility for parole, any offender not participating in or cooperating with the sex offender treatment provided in the ADTC, and any offender who is determined by the DOC to be no longer amenable to sex offender treatment.

As of August 2014, there were 17 inmates sentenced to ADTC under the act that had been refusing treatment. We reviewed personal folders of these inmates and verified their records with the ADTC classification unit and determined that these 17 inmates had been refusing treatment from 7 months to over 10 years of their incarceration time at the center. For the first time in 15 years and after our discussion with ADTC management, two inmates were transferred out of ADTC in September 2014 for refusing treatment.
November 24, 2014

John J. Termyna  
Assistant State Auditor  
Office of the State Auditor  
125 South Warren Street  
P.O. Box 067  
Trenton, New Jersey 08625-0067

Dear Mr. Termyna,

I have reviewed the audit report of the NJDOC, Adult Diagnostic and Treatment Center (ADTC) performed by your office for the period of July 1, 2012 to June 30, 2014. Thank you for the opportunity to respond and provide comments to your office prior to the release of the audit.

Our understanding of the objectives of the audit was to determine whether financial and personnel related transactions related to the facility’s programs, were reasonable, and were recorded properly in the appropriate systems. The following is in response to each area outlined in the audit.

**Resident Compensation – Special Treatment Unit**

ADTC has no objection to exploring the reduction of resident wages, as suggested in the audit. In addition, the DOC will meet with the Department of Human Services (DHS) to re-evaluate the work compensation program.

**Sick Leave**

Sick leave is being monitored closely by ADTC. Employees are issued six and fifteen day attendance notices once they have used those numbers of sick days in a calendar year. To date, ADTC has issued 286
six day notices and 116 fifteen day notices. Twenty seven attendance related disciplinary actions have been issued to date. ADTC will closely monitor and analyze sick leave usage.

Also, beginning in January 2015, the Office of Human Resources will conduct timekeeper training for custody and civilian timekeepers. Training will be conducted quarterly as deemed necessary. The training will include proper usage of attendance notification memos for those employees who have utilized six or fifteen sick days not covered by an approved FMLA entitlement in a calendar year as well as reinforcement of the requirement of staff to provide medical documentation for sick leave usage in excess of 15 days in a calendar year.

To ensure a more stringent control of DOC attendance policy, ADTC’s Office of Human Resources will continue to disseminate the bi-weekly ‘Employee Leave Balance Summary and Early Warning Report’ to timekeepers while following up with the timekeepers bi-monthly to ensure employees are being duly notified and subsequently disciplined, if not in compliance.

**Outside Employment**

The Office of Human Resources will post conspicuous reminders throughout the facility to remind employees that they are required to report secondary employment for approval before the secondary employment begins. Notifications will also be placed semi-annually in the DOC newsletter. Staff found not in compliance with policy will be referred for possible disciplinary action.

**Special Treatment Unit Resident Welfare Fund**

The DOC will work with DHS, Board members and the Office of Management and Budget (OMB) to determine what the procedures are regarding the processing of prior year reimbursements for these types of transactions.

In closing, I would like to thank your audit staff for their continued diligent work and professionalism exhibited during the audit.

Very truly yours,

[Signature]

Gary M. Lanigan, Commissioner
Office of the Commissioner

GL:am

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December 5, 2014

John J. Termyna, Assistant State Auditor  
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RE: Department of Corrections, Adult Diagnostic and Treatment Center Audit Report

Dear Mr. Termyna:

The Department of Human Services (DHS) agrees that the current practice of compensating residents of the Special Treatment Unit (STU) at the minimum wage rate calls for further examination and clarification. Therefore, it is both prudent and appropriate to seek contemporary advice from the Office of the Attorney General (OAG). DHS is in the process of seeking this opinion and, as a result, not prepared to commit to modifying the policy at this time. DHS, will however, work with the Department of Corrections (DOC) to explore other options until such time as the OAG renders an opinion.

Sincerely,

Jennifer Velez  
Commissioner

JV:03

c: Lynn Kovich  
Bonny Fraser  
William Cutti  
Mark Talbot