



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Inmate Sentence Calculation and Release Practices

Department of Corrections and Community Supervision



Report 2016-S-43

April 2017

Executive Summary

Purpose

To determine whether the Department of Corrections and Community Supervision (Department) follows court orders, and its own policies and procedures, regarding inmate sentences to ensure accurate and consistent calculation of sentence times in accordance with all laws and regulations. The audit covered the period January 1, 2013 through October 21, 2016.

Background

The Department is required to comply with the relevant laws and regulations regarding the sentencing and incarceration of inmates in New York State, including Penal Law Section 70.30, which gives the Department the responsibility for calculating the terms of each inmate's imprisonment. The staff within the Inmate Record Coordinator office at each facility are responsible for determining the inmates' release dates, as well as any credits that reduce their sentence time. The Department held approximately 50,700 individuals in its custody at 54 State facilities as of August 27, 2016. During the period January 1, 2013 through September 15, 2016, there were 83,475 inmate releases from Department facilities. This total includes 13,628 inmates who were released multiple times while serving a sentence for the same original crime.

Key Findings

- We found the Department has appropriate procedures in place to ensure that it accurately determines inmate release dates. Our tests of sentencing calculations for a sample of 60 inmates found proper procedures were followed in all the cases selected, and the sentences were accurately calculated. However, Department records showed that during our audit period five inmates were released between two weeks and 12 months early because Department procedures were not followed. The five errors represent an error rate of about one in every 17,000 inmates released during our audit period. Also, in all five cases, the Department detected the errors, and the inmates in question were returned to custody within 20 days.
- Another four inmates were released up to seven months early due to inaccurate documentation provided to the Department by external agencies, such as courts or local jails. Since the Department is compelled to honor the terms of the orders and the local credits for time served it receives, the four errors were beyond its immediate control. However, we found the Department also identified the errors, notified the appropriate external agencies, and took prompt action to return the inmates to custody as soon as corrected documentation was received. Further, each of the four inmates was returned to the Department within 19 days.

Key Recommendations

None

Other Related Audit/Report of Interest

[Department of Corrections and Community Supervision: Oversight of Sex Offenders Subject to Strict and Intensive Supervision and Treatment \(2014-S-50\)](#)

State of New York
Office of the State Comptroller

Division of State Government Accountability

April 7, 2017

Mr. Anthony J. Annucci
Acting Commissioner
Department of Corrections and Community Supervision
W.A. Harriman State Campus, Building 2
1220 Washington Avenue
Albany, NY 12226-2050

Dear Acting Commissioner Annucci:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively, and by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is our audit report entitled *Inmate Sentence Calculation and Release Practices*. The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

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This report is also available on our website at: www.osc.state.ny.us

Background

The Department of Corrections and Community Supervision (Department) is required to comply with the relevant laws regarding the sentencing and incarceration of inmates in New York State, including Penal Law Section 70.30, which gives the Department responsibility for calculating the terms of each inmate's imprisonment, including the date of release from custody. Additionally, the Department's correctional facilities must follow Department standards to ensure that they calculate inmates' sentences correctly and release inmates on the proper dates, according to the terms of their sentences. The staff within the Department's Inmate Record Coordinator (IRC) office at each facility is responsible for determining the inmates' conditional release dates, parole release dates, and maximum expiration dates, as well as any additional credit toward the length of their sentence. The Department's Office of Sentencing Review in its Central Office oversees inmate sentencing and handles the most complex sentence calculations.

Inmates are usually sentenced to serve either a determinate or indeterminate sentence. A determinate sentence is a single flat term, whereas an indeterminate sentence has a minimum and maximum term that the inmate may serve. When an inmate is initially received by the facility, the facility IRC is responsible for correctly calculating the inmate's sentence and release dates based on the Department's date computation manual. The IRC assigns the inmate a Department Identification Number and enters other relevant inmate data into a Department computer system, including the terms of the inmate's sentence. The IRC also prepares a file for hardcopy records for each inmate such as their sentencing commitment, jail time certificate, good time allowance certificate (if applicable), and other relevant documentation pertaining to their sentence calculation or their time in custody. In some cases where the date computation is unusually complex, the computer prevents the IRC from performing the calculation. Such cases are sent to the Office of Sentencing Review for manual computation.

An inmate's sentence is calculated several different times during his/her period of incarceration, including: upon arrival at the assigned facility; after any court appearances; when transferred among facilities; upon request by the inmate or his/her family; and at other specific intervals including within four months of expected release, as well as the day before and the day of release. These calculations are performed both manually by Department staff and automatically by the computer system. The manual and computer calculations are then used as a check on each other to ensure accuracy. Further, the IRC is required to verify the accuracy of the information used in the calculation by comparing it with the official documents in the inmate's file.

The Department utilizes multiple reports, as well as routine communication between the Office of Sentencing Review and the correctional facilities, to carry out the sentence calculation process. The Department also utilizes an Alert List, which is automatically generated when an inmate's expected release is moved to an earlier date. This list is reviewed daily to enable the appropriate staff to research the reason for the change to ensure it is proper.

An inmate may earn several types of reductions in his/her sentence by meeting certain programmatic goals and maintaining good behavior while in custody, generally referred to as "good

time.” For example, some inmates are eligible for Merit Time depending on the severity of their offense. Merit Time reduces an inmate’s minimum sentence and requires successful completion of programmatic goals for rehabilitation and good behavior during incarceration. Inmates not eligible for Merit Time may be eligible to earn a six-month Limited Credit Time Allowance, which is also dependent on several factors, including achievement of certain programmatic accomplishments, a good disciplinary record, and not filing frivolous lawsuits. Additionally, inmates are credited with the time spent in custody at a local jail prior to arrival at a Department correctional facility. Similarly, they may also be eligible for credit for parole jail time, which occurs when an inmate released on parole violates conditions of their parole and is returned to custody in a local jail. Good time and jail time are documented in official certificates.

The Department held approximately 50,700 individuals in its custody at 54 correctional facilities as of August 27, 2016. During the period January 1, 2013 through September 15, 2016, there were 83,475 inmate releases from Department facilities. This total includes 13,628 inmates who were released multiple times while serving a sentence for the same original crime. This can occur when inmates are returned to Department custody for violating the terms of their parole or probation.

Audit Findings

We found the Department has appropriate procedures in place to ensure that it accurately determines inmates' release dates. Our tests of sentencing calculations for a sample of inmates drawn from several facilities found proper procedures were followed in all of the cases selected, and the related sentences were accurately calculated. Still, Department records showed that some errors occurred. During our audit period, five inmates were released between about two weeks and 12 months early because Department procedures were not always followed. In total, these five instances represent an error rate of about one in every 17,000 of the 83,475 inmate releases that occurred during our almost four-year audit period. In all five cases, the Department took immediate action to return the inmates to custody as soon as staff detected the errors.

Additionally, another four inmates were released up to seven months early due to inaccurate documentation provided to the Department by external agencies, such as courts or local jails. The Department also identified these four errors, and took prompt action to return the inmates to custody as soon as corrected documents were received. Consequently, all four inmates were returned to the Department within 19 days.

Sentence Calculation and Release Practices

Our test of sentence calculations for 60 inmates, who were either in custody or recently released from five different facilities, showed Department staff accurately calculated the sentences of all 60 inmates. Nonetheless, despite the controls built into the Department's sentencing procedures, Department records detailed nine instances during our audit period where inmates (who were not in our sample) were released earlier than they should have been. Two of these inmates were youthful offenders, so specific information about their crimes is not publicly available. Further, Department records did not indicate that any of the other seven inmates were violent offenders. The Department detected each of the nine errors within short times of the releases, and all of the inmates in question were returned to Department custody within 20 days.

Table 1 summarizes five of these cases, where the inmates were released between two weeks and a year earlier than they should have been, due to errors made by Department staff.

Table 1

Inmates Released Early Due to Departmental Error			
Case	Number of Days Released Early	Days Prior to Return to Custody	Offense
1	15	Less than 1	Attempted Sale of a Controlled Substance
2	55	10	Unknown - Youthful Offender Status
3	104	1	Criminal Sale of a Controlled Substance
4	365	20	Unknown - Youthful Offender Status
5	369	1	Criminal Contempt

In each case, we determined that the errors occurred because the inmates' credits for good time (three cases) or parole jail time (two cases) had been reduced shortly before the inmates were scheduled for release. In several of the cases, the computer system had not yet been updated to reflect the change at the time the inmates in question were released. However, even though the computer system was not updated timely, procedures designed to verify release dates should have alerted Department staff of the reductions in good time credits and jail time credits, which impacted the release dates. For the aforementioned five cases, the changes affecting the release dates were not identified prior to the inmates' releases primarily because staff did not follow the Department's formal policies and procedures to verify release date determinations.

In the remaining four cases, the inmates were released early due to errors originating outside the Department. In these cases, the inmates were released between about two and seven months early, as shown in Table 2.

Table 2

Inmates Released Early Due to External Errors			
Case	Number of Days Released Early	Days Prior to Return to Custody	Offense(s)
1	56	1	Attempted Robbery
2	97	16	Attempted Robbery, Criminal Possession of Stolen Property
3	161	7	Burglary, Criminal Sale of a Controlled Substance
4	216	19	Criminal Possession of Stolen Property

These instances involved incorrect local jail time certificates or commitment papers received by the Department from local jurisdictions. Although Department officials identified the errors and notified the relevant agencies of the need for corrected documents, such documents were not received prior to the inmates' scheduled release dates. According to Department officials, they must abide by the terms of the sentencing information detailed in an inmate's commitment papers and other official records as of the inmate's scheduled release date. As a result, the Department released the inmates on the dates per the paperwork it had on hand but prior to the determination of the revised release dates, as indicated by the corrected paperwork from the courts and localities. Nonetheless, once the Department received the corrected documents, each of the four inmates was returned to custody within 19 days, as shown in Table 2. Consequently, none of the inmates in question was out of custody for an extended period of time while court and local officials corrected sentencing documents.

Audit Scope and Methodology

The objective of our audit was to determine whether the Department follows court orders, and its own policies and procedures, regarding inmate sentences to ensure accurate and consistent calculation of sentence times in accordance with all laws and regulations. The audit covered the period January 1, 2013 through October 21, 2016.

To accomplish our audit objective and assess related internal controls, we reviewed Department policies and procedures, its date computation manual, and applicable State and federal laws. We also interviewed Department officials and employees to gain an understanding of sentencing practices, and reviewed documentation related to implementation of those practices. We also visited five correctional facilities (Sullivan, Albion, Gouverneur, Washington, and Queensboro), which we selected based on factors including their designated security level, level of inmate releases, prisoner gender, and geographic location.

At each of the five facilities, we compared actual sentencing calculation practices in place with established policies, and then used original records to recalculate the sentences and release dates of a dozen inmates. At each facility, our samples included five inmates in custody on the visit date and seven who had been released between July 1, 2016 and July 31, 2016. Finally, we also became familiar with the internal controls related to sentencing calculation, and assessed their adequacy related to the areas we audited. As part of this analysis, we became aware of nine inmates who had been released in error during our audit period. We interviewed Department officials and reviewed records related to the reasons for these releases and relevant dates.

We conducted our performance audit in accordance with generally accepted government auditing standards. 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating threats to organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

Reporting Requirements

A draft copy of this report was provided to Department officials for their review and comment. We considered their comments in preparing this final report and have attached their comments in their entirety to it. In their response, Department officials indicated that they will continue to work toward calculating all sentences correctly, as provided by State law.

Contributors to This Report

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Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Agency Comments



Corrections and Community Supervision

ANDREW M. CUOMO
Governor

ANTHONY J. ANNUCCI
Acting Commissioner

March 31, 2017

John Buyce
Audit Director Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

Re: Report 2016-S-43 "Inmate Sentence Calculation and Release Practices"

Dear Mr. Buyce:

This letter is in response to your draft audit report received on February 28, 2017, regarding the audit findings in Draft Audit Report 2016-S-43. The Department of Corrections and Community Supervision is pleased to receive the Office of the State Comptroller's findings regarding this Department's calculation of release dates for sentences of imprisonment. The State Comptroller determined this Department has appropriate procedures in place to ensure accurate sentence calculations. Every sentence calculation reviewed for this project was found to be correct. Out of the 83,475 inmates released during the review period, the failure by staff to comply with the procedures established by this Department resulted in five inmates being released early; that is approximately one error per 17,000 releases.

The State Comptroller also found this Department detected all such errors and the five inmates were returned to custody within 20 days. An additional four erroneous releases occurred during the review period, but they were attributable to inaccurate documents generated by courts and local jails. This Department detected those errors as well, and all four of the inmates were returned to custody within 19 days.

The Department of Corrections and Community Supervision thanks the Office of the State Comptroller for its substantial review of this subject. This Department will continue to work towards calculating all sentences correctly as provided for by the laws of New York.

If there are any questions, please contact Paul Guenette, Director, Bureau of Internal Controls at (518) 436-7886, Extension 5030.

Sincerely,

A handwritten signature in black ink, appearing to read "K P Bruen". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Kevin P. Bruen
Deputy Commissioner and Counsel

cc: Anthony J. Annucci, Acting Commissioner
Osbourne A. McKay, Deputy Commissioner, Correctional Industries,
Compliance Standards and Diversity
Daniel Martuscello III, Deputy Commissioner Administrative Services
Ann Marie McGrath, Associate Commissioner Population Management
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