

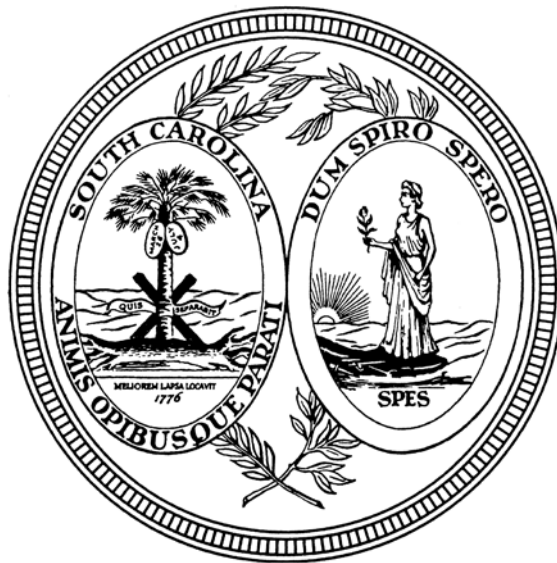


SOUTH CAROLINA GENERAL ASSEMBLY

Legislative Audit Council

October 2009

A LIMITED-SCOPE REVIEW OF THE DEPARTMENT OF CORRECTIONS



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Legislative Audit Council

A LIMITED-SCOPE REVIEW OF THE DEPARTMENT OF CORRECTIONS

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Synopsis

Members of the General Assembly requested the Legislative Audit Council to conduct a review of certain issues at the South Carolina Department of Corrections (SCDC). Our audit focused on agency expenditures, litigation costs, personnel practices, procurement practices, and agency internal controls. Our findings are summarized below.

- We reviewed agency expenditures and appropriations for FY 99-00 through FY 07-08. We found that SCDC's total expenditures decreased between FY 00-01 and FY 03-04 and then began increasing in FY 04-05. SCDC's total expenditures for FY 07-08 were 10% higher than they were for FY 99-00 and were about equal to FY 00-01 expenditures.
- SCDC has a number of performance measures in its accountability report and on its website. Some of these measures compare SCDC's performance to other states. We reviewed several of these measures and question the reliability and validity of two of them.
- We reviewed SCDC's personnel practices and did not find a widespread pattern of favoritism or deviation from SCDC policies. However, we did find specific instances where SCDC did not adhere to its policies, which resulted in the incorrect applicant being selected. We also found areas where SCDC could improve its hiring process.
- We reviewed SCDC's litigation costs covered by the Insurance Reserve Fund (IRF) to determine if there had been an increase in lawsuits filed by both employees and inmates. Based upon IRF data, we cannot conclude whether litigation costs have increased during the current administration. According to IRF officials, the data regarding lawsuits is "immature" due to a two-year lag in reporting and filing lawsuits and the time lag associated with the litigation itself. Accordingly, at this time, there is no visible statistical pattern to indicate an increase in litigation costs.
- SCDC also incurs litigation costs for claims not covered by the IRF. (Examples include breach of contract suits; suits seeking injunctive relief; and suits seeking return of property). Since 2001, SCDC attorney fees increased from approximately \$36,000 to \$408,000 in 2008. SCDC has also increased its prepaid legal defense coverage. Since 2001, SCDC has increased its coverage from \$15,000 to \$500,000 in 2008.
- We reviewed SCDC's practice of allowing inmates to miss meals as a result of violations of agency rules. An attorney general's opinion found no state law prohibiting SCDC's practice but did suggest written guidelines be established in order to avoid possible constitutional violations.

- We reviewed SCDC's policies and procedures regarding inmate escapes. Overall, the number of escapes from SCDC custody has decreased. We examined SCDC's reporting of escape data and did not find any significant problems. We found that SCDC has complied with its escapee return policy. We were unable to obtain reliable data to be able to make a state-to-state comparison on the number of escapes.
- We reviewed the state-owned residence provided without charge to SCDC's director. We found no need to provide a residence to the director and that only two other states provide their directors with residences. Also, SCDC spends state resources on utilities and maintenance of the residence. Further, the residence was used as office space for SCDC's programs and services division between 2000 and 2001. SCDC states that the residence provides a valuable recruiting tool and that selling the residence would provide no significant savings to the state.
- We reviewed SCDC's policies, procedures, and internal controls for safeguarding agency cattle and other livestock. We found that SCDC, in response to the theft of two steer in December 2006, established several internal controls over its livestock operation. Some of the controls are effective at accounting for cattle transactions and should help to deter theft. However, other controls are either not sufficient to detect theft or are not being fully implemented.
- We reviewed an incident where SCDC awarded procurement contracts to a tree cutting service that is owned by a former SCDC inmate. We did not find any language that would prohibit SCDC from contracting with a vendor who was a former inmate. We found that the amount of the procurement was below the \$1,500 threshold requiring competitive bids. We could not determine how the vendor was chosen because the individuals who approved the use of this tree cutting service are no longer employed by SCDC. According to SCDC officials, use of this vendor has been banned by the agency.

Review of Issues by the National Institute of Corrections

In order to address certain audit objectives, we consulted with the National Institute of Corrections (NIC). The NIC is an agency within the U.S. Department of Justice, Federal Bureau of Prisons which contracts with experts in corrections to provide technical assistance to state and local correctional agencies. The full NIC report is available on our website.

The NIC reviewed a hostage incident at Ridgeland Correctional Institution, an incident where an inmate was provided a homemade knife at Lee Correctional Institution, the agency's internal controls for handling keys, weapons, and ammunition, and a limited assessment of SCDC's escape prevention policies. The NIC found the following:

- Regarding a hostage incident that took place at Ridgeland Correctional Institution in November, SCDC's policies included all the organizational and response requirements needed to address emergencies that might arise. Also, SCDC's decision to rely on negotiations to resolve the situation was appropriate. Finally, the NIC reviewed SCDC's command structure. The NIC concluded that the actions taken by SCDC relating to command were not inconsistent or unexpected given the situation. However, the NIC recommended that SCDC incorporate a more flexible and functional command philosophy.
- Regarding an August 2005 incident at Lee Correctional Facility in which a supervisor provided an inmate with a homemade knife as part of a training exercise for two correctional officers, the NIC concluded that, while the supervisor's intent was to point up the importance of conducting appropriate searches, the supervisor's method for demonstrating the importance of proper searches was not acceptable. Chief among the problems was the decision to use a real weapon when another item could have been used. The NIC also stated that the use of an inmate as part of the test is generally not a good practice. The NIC recommended that SCDC develop a written policy concerning security system checks.

- The NIC conducted a review of the adequacy of agency internal controls for handling keys, weapons, and ammunition. The NIC found very limited opportunities for improvement in the area of key control. In the area of weapons and ammunition, the NIC found that, in general, SCDC's policies were thorough and comprehensive. The NIC also reviewed an incident where a revolver and six rounds of ammunition were discovered missing. The NIC concluded that the incident resulted from staff performance failure. According to the NIC, staff involved were disciplined.
- NIC officials performed a limited assessment of the SCDC's escape prevention policies and found all primary elements for escape prevention to be present in policy.

Additional Issues

During the course of our review, requestors of this audit asked us to expand our audit scope to include a review of additional issues. We conducted some preliminary work and determined that other state agencies have the expertise necessary to appropriately evaluate some of these issues.

- We were asked to compare the pay of SCDC correctional officers, wardens, and other operational staff to other states and to other agencies within South Carolina. The Budget and Control Board's (B&CB's) Office of Human Resources (OHR) has the capability and expertise to conduct salary studies and has done so in the past for various state agencies.
- We were also asked to review SCDC's use of confidential license plates to determine whether the agency has appropriately justified plate assignments. Ninety (10%) of SCDC's 950 vehicles have confidential plates. The B&CB's State Fleet Management Division has the statutory authority to approve these plates and is the most appropriate agency to examine SCDC's use of confidential plates. During the course of our review, SCDC stated that it intends to remove confidential tags from 13 of its vehicles.

Introduction

Audit Objectives

Members of the General Assembly requested the Legislative Audit Council to conduct a review of certain issues at the South Carolina Department of Corrections (SCDC).

Our objectives for this report were to:

- Analyze SCDC's revenues and expenditures and compare them to similar states.
- Determine if SCDC has an adequate process for handling hostage situations and if the agency has complied with that process.
- Review agency personnel procedures in the areas of hiring and promotions.
- Review the adequacy of agency internal controls for handling keys, weapons, and ammunition.
- Review agency policies and procedures regarding inmate escapes and determine the number of escapes since FY 99-00.
- Review litigation against SCDC by both inmates and employees since FY 99-00 to determine if there has been an increase in awards and costs.
- Review the need to provide a state-owned residence to the agency director.
- Determine the legality of the agency's practice of denying inmates access to food as punishment for rule violations. Determine if this policy is uniformly applied and if other states have similar policies.
- Review SCDC's procurement of tree cutting services from an inmate for compliance with state and agency procurement laws and policies.
- Review the adequacy of agency policies and procedures for safeguarding agency livestock.

Scope and Methodology

The period of this review was generally 2003 through 2008 with consideration of earlier and more recent periods when relevant. Information used in this report was obtained from a variety of sources including:

- Interviews with SCDC staff.
- SCDC financial records and personnel records.
- Reports from the state Insurance Reserve Fund and the state Comptroller General's Office.
- Inmate records.
- Livestock and farm records.
- SCDC policies and procedures.
- S.C. Procurement Code.

When addressing some of our objectives, we relied on computer-generated data maintained by SCDC and other state agencies. Where possible, we compared data maintained by SCDC with those at other agencies to ensure its validity. When viewed in relation to other evidence, we believe the data used in this report is reliable.

We conducted this performance audit in accordance with generally accepted government auditing standards, with one exception (see below). 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.

Scope Impairment

Generally accepted auditing standards require us to report significant constraints imposed upon the audit approach that limit our ability to address audit objectives. One of our audit objectives was to review SCDC personnel practices. As part of this review, we were asked to determine whether there is a perception by SCDC employees that a culture of harassment, intimidation, and favoritism pervades the employment practices at SCDC. In order to address this issue, we planned to conduct a survey of SCDC employees. We contracted with the University of South Carolina's Institute for Public Service and Policy Research to survey SCDC staff.

Part of the survey process included a pre-notification e-mail sent to SCDC staff informing them that they may receive a survey. Subsequent to this e-mail, SCDC staff was sent an e-mail by the SCDC director which raised a number of objections to the survey. After reviewing the SCDC e-mail, we became concerned that it could affect the validity of survey responses and requested it be reviewed by our survey consultant. The consultant stated that the e-mail would likely reduce the response rate and bias any resulting responses. Based on the consultant's recommendation, we did not proceed with the survey. As a result, we concluded that we cannot fully address the audit objective concerning SCDC's personnel procedures.

National Institute of Corrections

In order to address certain audit objectives, we consulted with the National Institute of Corrections (NIC). The NIC is an agency within the U.S. Department of Justice, Federal Bureau of Prisons which contracts with experts in corrections to provide technical assistance to state and local correctional agencies. The assistance includes onsite guidance, support, consultation, or training provided by an experienced technical resource provider or NIC staff member.

The NIC reviewed SCDC's internal controls over keys, weapons, and ammunition. In addition, the NIC reviewed agency policies and procedures covering escapes. The NIC also reviewed a hostage incident that took place at Ridgeland Correctional Institution in November 2006 and an incident involving SCDC staff at Lee Correctional Facility in August 2005 (see pp. 45, 47). The NIC also reviewed SCDC personnel policies. The full NIC report is available on our website.

Background

According to S.C. Code of Laws, §24-1-20, "It shall be the policy of this State in the operation and management of the Department of Corrections to manage and conduct the Department in such a manner as will be consistent with the operation of a modern prison system and with the views of making the system self-sustaining, and that those convicted of violating the laws and sentenced, shall have humane treatment and be given opportunity, encouragement and training in the matter of reformation."

The mission of the South Carolina Department of Corrections is three fold:

SAFETY — to protect the public, its employees, and inmates.

SERVICE — to provide rehabilitation and self-improvement opportunities for inmates.

STEWARDSHIP — to promote professional excellence, fiscal responsibility, and self-sufficiency.

SCDC operates 28 prisons dispersed geographically across South Carolina. Of the 25 facilities that house male inmates, 6 are designated as maximum-security, 9 are medium, and 10 are minimum-security facilities. Of the 3 institutions that house female inmates, there are 2 maximum and 1 minimum-security facility. On June 30, 2008, SCDC employed 5,701 personnel, 523 fewer than the number of authorized "full-time equivalent" positions allocated to SCDC. Security personnel accounted for 66% of the FTEs.

Audit Results

We reviewed the Department of Corrections' revenues and expenditures, as well as SCDC's operations in the areas of personnel, procurement, and escape prevention. SCDC's performance measures, litigation costs, and livestock were also examined. In addition, we reviewed the need for the director's state-owned residence and SCDC's policy of allowing inmates to miss meals as a result of rule violations.

SCDC's Funding

We were asked to review SCDC's expenditures and appropriations. We reviewed agency expenditures and appropriations for FY 99-00 through FY 07-08 and agency budget requests for FY 00-01 through FY 07-08.

We found that SCDC's total expenditures decreased between FY 00-01 and FY 03-04 and then began increasing in FY 04-05 (see Chart 2.2). This was the result of a significant drop in state appropriated funding from FY 00-01 through FY 04-05. SCDC is ranked last in the amount of increase for general fund adjusted appropriations received from FY 99-00 through FY 07-08 among the top ten state agencies. We also found that, although SCDC did not receive all the new funding it requested, it did receive additional appropriations every year except FY 01-02 and FY 02-03.

Total Expenditures

We obtained data on total expenditures from the Comptroller General's Office. Total expenditures include all agency expenditures from all sources, including state, federal, and other funds. Table 2.1 shows SCDC's total expenditures, by category, from FY 99-00 through FY 07-08.

Approximately two-thirds of SCDC's expenditures are for employees' salaries and benefits. SCDC's top five expenditure categories in FY 99-00 were personal services (50%), employer contributions (16%), supplies and materials (9%), contractual services (7%), and purchase for resale (5%), respectively.

The top five expenditure categories in FY 07-08 were slightly different. Personal services (49%), employer contributions (19%), supplies and materials (10%) and contractual services (5%) remained the top four expenditures for SCDC. However, case services (5%), which are comprised primarily of medical costs for inmates, surpassed purchase for resale (4%) to become the fifth highest expenditure for SCDC.

Chapter 2
Audit Results

Overall, SCDC's total expenditures decreased between FY 00-01 and FY 03-04 and then began increasing in FY 04-05. SCDC's total expenditures for FY 07-08 were 10% higher than they were for FY 99-00, and were about equal to FY 00-01 expenditures. During this period, SCDC's average daily inmate count increased from 21,028 to 23,958. Also, for the U.S. south region, inflation between 2000 and 2008 was 24.8%.

Table 2.1: Total Expenditures by Category

| CATEGORY | FY 99-00 | FY 00-01 | FY 01-02 | FY 02-03 | FY 03-04 | FY 04-05 | FY 05-06 | FY 06-07 | FY 07-08 |
|--|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
| Personal Services | \$192,218,089 | \$207,018,239 | \$185,525,150 | \$175,838,729 | \$166,974,040 | \$170,278,897 | \$185,083,340 | \$197,665,687 | \$207,681,799 |
| Employer Contributions | 59,683,515 | 65,603,374 | 63,688,871 | 62,160,261 | 61,246,353 | 62,269,908 | 65,615,352 | 74,399,290 | 77,838,119 |
| Supplies & Materials | 34,199,962 | 34,556,078 | 29,962,873 | 30,267,403 | 29,484,295 | 32,496,325 | 34,181,514 | 37,442,267 | 42,249,036 |
| Contractual Services | 27,982,807 | 17,371,778 | 14,765,754 | 16,155,712 | 15,655,191 | 17,907,365 | 18,323,956 | 18,266,057 | 21,311,606 |
| Purchase for Resale | 18,096,493 | 16,641,922 | 14,999,850 | 16,280,212 | 15,731,929 | 15,955,164 | 18,228,940 | 18,554,142 | 18,691,355 |
| Case Services (Medical) | 13,163,747 | 18,671,827 | 16,588,530 | 18,146,198 | 23,864,120 | 18,043,009 | 19,258,166 | 22,579,426 | 20,446,800 |
| Utilities & Transportation | 11,535,073 | 13,315,298 | 11,045,508 | 12,618,610 | 13,516,517 | 14,931,547 | 17,831,062 | 17,154,024 | 19,825,967 |
| Capital Expenditures | 8,977,359 | 30,408,437 | 15,008,596 | 6,616,132 | 7,633,558 | 9,023,947 | 7,364,762 | 6,911,897 | 6,637,059 |
| Equipment & Vehicles | 7,226,150 | 2,033,990 | 854,345 | 1,122,182 | 646,326 | 1,427,744 | 3,956,590 | 5,304,928 | 2,024,288 |
| Allocations (federal flow through funds) | 5,259,125 | 11,536,698 | 3,115,997 | 6,449,166 | 8,063,072 | 3,228,593 | 4,448,421 | 9,306,126 | 115,812 |
| Fixed Chgs. & Contributions | 2,888,300 | 3,083,298 | 2,545,379 | 2,489,153 | 2,356,736 | 2,555,572 | 2,650,084 | 2,854,699 | 2,687,979 |
| Miscellaneous | 287,550 | 262,276 | 136,861 | 153,218 | 351,240 | 516,962 | 554,685 | 510,507 | 517,082 |
| TOTAL | \$381,518,170 | \$420,503,215 | \$358,237,714 | \$348,296,976 | \$345,523,377 | \$348,635,033 | \$377,496,872 | \$410,949,050 | \$420,026,902 |

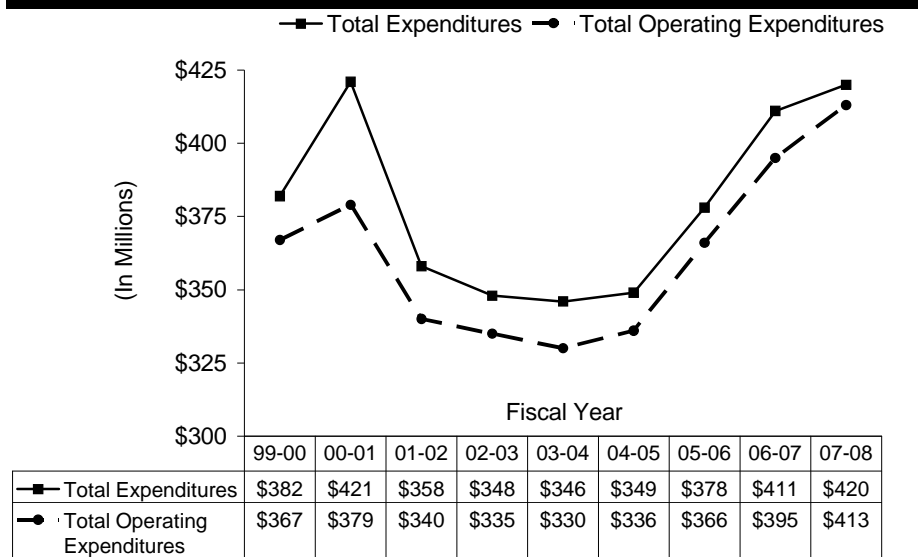
This table excludes trust fund sub-funds 3003,4411, and 4766.

Source: Comptroller General's Office.

We also reviewed SCDC's total operating expenditures. This figure provides a more accurate picture of what it costs to operate SCDC. Total operating expenditures are calculated by taking total expenditures and subtracting capital expenditures and allocated funds. Capital expenditures are construction costs that do not reoccur from year to year. Allocated funds are funds appropriated to SCDC, but which are then passed through to local governments or other state agencies. Chart 2.2 shows total expenditures and total operating expenditures for FY 99-00 to FY 07-08.

As with total expenditures, there was a downward trend in SCDC's total operating expenditures beginning in FY 01-02 (see Chart 2.2). The low point for total expenditures and total operating expenditures occurred in FY 03-04. However, SCDC's expenditures have increased over the last four fiscal years we reviewed, with total operating expenditures reaching their highest level during FY 07-08.

Chart 2.2: Total Expenditures and Total Operating Expenditures (In Millions)



Source: Comptroller General's Office.

State Appropriations

We reviewed the state agency appropriations activity report from the Budget and Control Board (B&CB) which shows SCDC's state appropriated funding for FY 99-00 through FY 07-08 to determine the change in SCDC's state appropriations over time. This includes original appropriations, which are the general fund amounts SCDC was appropriated in the appropriations act. We also reviewed adjusted appropriations. This includes any appropriation reductions to the original funding from the appropriations act, cost of living adjustments, supplemental appropriations, net transfers, and open-ended appropriations, which are approved deficit spending. Table 2.3 shows SCDC's agency appropriation activity for the nine fiscal years we reviewed.

Table 2.3 illustrates a significant drop in state-appropriated funding from FY 00-01 through FY 04-05. SCDC's original appropriations were reduced by almost \$28 million and adjusted appropriations were reduced by over \$51 million from FY 00-01 to FY 01-02. However, adjusted appropriations have increased in the three most recent fiscal years we reviewed.

SCDC received over \$315 million in original appropriations in FY 00-01 and over \$328 million in 2008. However, the 2008 appropriation amount includes approximately \$49 million in cost of living base pay increases. Thus, SCDC's appropriations are approximately \$49 million less in real dollars than they were in FY 00-01.

SCDC also experienced mid-year budget cuts from FY 00-01 through FY 03-04. However, the agency was allowed to run deficits in FY 01-02 through FY 03-04, which help offset some of the effects of these budget cuts.

Table 2.3: SCDC's Appropriations Activity

| FISCAL YEAR | ORIGINAL APPROPRIATIONS | APPROPRIATIONS BROUGHT FORWARD FROM PREVIOUS YEAR | SUPPLEMENTAL APPROPRIATIONS | OPEN ENDED APPROPRIATIONS | *BASE PAY INCREASE | APPROPRIATIONS REDUCTION | NET TRANSFERS | ADJUSTED APPROPRIATIONS |
|-------------|-------------------------|---|-----------------------------|---------------------------|--------------------|--------------------------|---------------|-------------------------|
| 99-00 | \$296,357,832 | \$18,892,978 | \$7,074,246 | \$0 | \$6,973,539 | \$0 | \$178,024 | \$329,476,619 |
| 00-01 | \$315,464,371 | \$10,939,209 | \$0 | \$0 | \$10,172,013 | (\$3,249,914) | \$668,034 | \$333,993,713 |
| 01-02 | \$287,848,559 | \$73,285 | \$0 | \$6,056,489 | \$7,936,517 | (\$18,987,036) | (\$130,715) | \$282,797,099 |
| 02-03 | \$277,202,679 | \$73,285 | \$0 | \$27,742,676 | \$0 | (\$23,790,748) | \$972,501 | \$282,200,394 |
| 03-04 | \$260,412,823 | \$0 | \$0 | \$23,700,000 | \$0 | (\$2,604,128) | \$0 | \$281,508,695 |
| 04-05 | \$272,783,466 | \$0 | \$0 | \$0 | \$6,286,047 | \$0 | \$0 | \$279,069,513 |
| 05-06 | \$289,516,930 | \$1,999,173 | \$1,902,000 | \$0 | **\$16,255,445 | \$0 | \$0 | \$309,673,548 |
| 06-07 | \$314,243,734 | \$8,081,177 | \$539,850 | \$0 | \$8,036,171 | \$0 | \$0 | \$330,900,932 |
| 07-08 | \$328,031,211 | \$621,325 | \$2,670,000 | \$3,958,387 | \$8,304,883 | \$0 | \$0 | \$343,585,807 |

* Base pay increase figures include allocations for the employer's share of health and dental insurance.

** Includes \$6,776,478 appropriated for correctional officer pay adjustments.

Source: Comptroller General's Office.

SCDC Appropriations Compared to Other State Agencies

According to B&CB reports, since FY 99-00, SCDC has ranked in the top ten of state agencies for general fund adjusted appropriations. We compared the percent change in adjusted appropriations for FY 99-00 through FY 07-08 for the top ten agencies from the FY 99-00 report. We excluded the S.C. Commission on Higher Education and all state colleges, universities, and technical schools. We also excluded the S.C. Department of Public Safety (DPS) because, until a few years ago, the S.C. Department of Motor Vehicles was part of DPS.

We calculated the percent change in funding for each of these fiscal years and the overall change in funding from FY 99-00 to FY 07-08 for the top ten agencies. After calculating the overall percent change, we found that SCDC ranked last among these agencies for percentage increase in general fund adjusted appropriations received during this time period. Table 2.4 better illustrates these rankings in percent change of adjusted appropriations.

Table 2.4: General Fund Adjusted Appropriations

| RANK | AGENCY | CHANGE IN ADJUSTED APPROPRIATIONS FY 99-00 THRU FY 07-08 |
|------|---|---|
| 1 | Dept. of Parks, Recreation, and Tourism | 110% |
| 2 | Dept. of Health and Human Services | 103% |
| 3 | Dept. of Health and Environmental Control | 51% |
| 4 | Dept. of Social Services | 40% |
| 5 | Dept. of Disabilities and Special Needs | 39% |
| 6 | State Dept. of Education | 39% |
| | ALL STATE AGENCIES | 37% |
| 7 | Dept. of Juvenile Justice | 27% |
| 8 | Dept. of Mental Health | 11% |
| 9 | Dept. of Revenue | 7% |
| 10 | Dept. of Corrections | 4% |

The ranking for Parks, Recreation, and Tourism is achieved, in part, because in FY 07-08 it received over \$45.1 million in supplemental one-time funding. Over \$12 million of this was "passed-thru" to other state agencies and local entities.

This table reflects only general fund activity and does not include capital reserve funds, increased enforced collections, or other non-recurring funds that are recorded and spent as "other" funds (either earmarked or restricted).

This table excludes all state colleges, universities, technical schools, the S.C. Commission on Higher Education, and the S.C. Department of Public Safety.

Source: Comptroller General's Office.

We also obtained from the B&CB's Office of State Budget the percentage change in adjusted appropriations from FY 99-00 to FY 07-08 for the top ten agencies using recurring funds only. SCDC ranked ninth out of the ten agencies in terms of percentage increase in adjusted appropriations (see Table 2.5).

Table 2.5: General Fund Adjusted Appropriations (Recurring Funds Only)

| RANK | AGENCY | CHANGE IN ADJUSTED APPROPRIATIONS (RECURRING FUNDS ONLY) FY 99-00 THRU FY 07-08 |
|------|---|---|
| 1 | Dept. of Health and Human Services | 133% |
| 2 | Dept. of Disabilities and Special Needs | 42% |
| 3 | State Dept. of Education | 37% |
| | ALL STATE AGENCIES | 36% |
| 4 | Dept. of Juvenile Justice | 31% |
| 5 | Dept. of Health and Environmental Control | 25% |
| 6 | Dept. of Social Services | 23% |
| 7 | Dept. of Parks, Recreation, and Tourism | 22% |
| 8 | Dept. of Mental Health | 18% |
| 9 | Dept. of Corrections | 11% |
| 10 | Dept. of Revenue | 9% |

Source: Office of State Budget, Budget and Control Board.

Budget Requests

We also reviewed a report on SCDC's budget requests to the General Assembly for FY 00-01 through FY 07-08. We found that although SCDC did not receive all the new funding it requested, it did receive additional appropriations every year except FY 01-02 and FY 02-03. SCDC's original appropriations were cut by \$33.6 million in FY 01-02 and \$6.4 million in FY 02-03. Table 2.6 shows SCDC's total budget requests and what it actually received for FY 00-01 through FY 07-08.

Table 2.6: Budget Requests for New Funding and Actual Legislative Appropriations*

| FISCAL YEAR | SCDC'S BUDGET REQUESTS | | | ACTUAL LEGISLATIVE APPROPRIATIONS | | |
|-------------|-------------------------|-----------------------------|--------------|-----------------------------------|--|--------------------|
| | STATE FUNDS (RECURRING) | STATE FUNDS (NON-RECURRING) | TOTAL FUNDS | APPROPRIATED STATE FUNDS | APPROPRIATED STATE FUNDS (NON-RECURRING) | TOTAL FUNDS |
| FY 00-01 | \$17,259,762 | \$5,200,000 | \$22,459,762 | \$12,133,000 | \$0 | ***\$12,133,000 |
| FY 01-02 | \$34,746,808 | \$9,432,906 | \$44,179,714 | (\$37,277,988) | \$3,635,141 | ****(\$33,642,847) |
| FY 02-03 | \$40,347,777 | \$22,964,995 | \$63,312,772 | (\$6,425,187) | \$0 | (\$6,425,187) |
| FY 03-04 | \$52,892,675 | \$23,611,323 | \$76,503,998 | **\$6,028,391 | \$3,672,750 | \$9,701,141 |
| FY 04-05 | \$13,231,699 | \$0 | \$13,231,699 | \$14,974,771 | \$7,018,856 | \$21,993,627 |
| FY 05-06 | \$14,883,495 | \$13,614,500 | \$28,497,995 | \$10,447,417 | \$3,199,953 | \$13,647,370 |
| FY 06-07 | \$5,750,500 | \$9,189,850 | \$14,940,350 | \$8,471,359 | \$4,552,600 | \$13,023,959 |
| FY 07-08 | \$6,404,086 | \$15,000,000 | \$21,404,086 | \$5,751,306 | \$2,670,000 | *****\$8,421,306 |

* Figures are based on operating budget requests as submitted to Budget and Control Board – Office of State Budget. The figures do not reflect any adjustments the agency may have made to its budget request during the legislative budget process.

** This total does not include the (\$23,790,748) in mid-year reduction taken by the agency during the legislative cycle.

*** \$1,000,000 in non-recurring funds were below actual funding level available and not received by the agency.

**** Includes \$3,500,000 in proviso 72.109 (extended care maintenance funds) not previously reflected.

***** Excludes \$500,000 in supplemental funds not actually available because of insufficient surplus revenue.

Source: Budget and Control Board.

Off-STARS Funds

SCDC has a number of accounts that are not tracked in the statewide accounting and reporting system (STARS). These accounts are referred to as off-STARS accounts. SCDC's off-STARS accounts totaled \$7,328,655 at the end of FY 07-08. According to an agency official, most of these accounts are fiduciary accounts set up for the inmates. Federal and state laws mandate that fiduciary accounts be set up for inmates. This official also stated that the remaining accounts that are not fiduciary inmate accounts are not used to cover general agency expenditures.

Other States

We were asked to compare SCDC expenditures to expenditures in other states. We found that making state-to-state comparisons is difficult. The National Association of State Budget Officers (NASBO) reports that there is no current data source that tracks spending on prisons alone. We contacted officials at the American Correctional Association (ACA), the National Institute of Justice (NIJ), and the Association of State Correctional Administrators (ASCA) to determine if they maintain state-to-state comparative data. According to these officials, the information that is currently available does not always provide an accurate comparison. Some states include only operating expenditures when reporting expenditures while other states may include both operating and capital expenditures. Also, expenditure data is self-reported and the ACA does not verify the validity and accuracy of the data that is provided. Furthermore, some states report expenditures for probation, parole, and pardon services and corrections services together because these services are provided by a single agency. However, in South Carolina these services are provided by different state agencies.

Medical and Food Costs and Inmate Growth

We were asked to review funding, staffing, inmate population growth, medical costs, and food costs and compare them to similar sized institutions. State-to-state comparisons are difficult to make. During this review, we found that there had been a significant increase in the cost of case services (comprised primarily of health services for inmates) between FY 99-00 and FY 07-08. The inflation rate for medical care between 2000 and 2008 was 35.6% for the U.S. south region. A study by the Pew Center on the States also cited medical care as one of the principal cost drivers in corrections budgets. The study noted that states are required to provide medical care equal to the “community standard.” The report also cited the medical needs of special populations such as HIV positive inmates, the threat of communicable diseases, and geriatric inmates as contributing to the increase in medical costs.

The Pew study also found that South Carolina’s actual inmate population growth for 2007 (an increase of 601 inmates) was in the second highest quintile among the states. South Carolina’s percent increase in inmate population growth (2.5%) ranked in the middle fifth of all states.

Performance Measures

SCDC has a number of performance measures in its accountability report and on its website. Some of the measures compare SCDC's performance to other states. We question the reliability and validity of two of these measures.

We reviewed the performance measures included in SCDC's FY 06-07 accountability report and found that several of the measures were not accurate. For instance, SCDC reported its staffing ratio as one correctional officer for every 9.1 inmates and compared that figure to the southeastern average of 5.4. SCDC stated that its ratio was "69% higher than the southern states' average" citing a 2006 report published by the Southern Legislative Conference (SLC) as the basis for this comparison. However the SLC report showed that SCDC's ratio was not 1:9.1, but 1:6.1. According to SCDC officials, the 9.1 figure was calculated by including only those employees in the positions of Corporal II and below. The SLC's definition includes all correctional officers, such as sergeants, lieutenants, captains, majors, etc. Thus, using the 6.1 figure, SCDC's ratio would be 13% higher than the southern states' average, not 69%. The 9.1 figure is still included in SCDC's FY 07-08 annual accountability report, though no comparisons to other states are made.

SCDC also included in its FY 06-07 annual accountability report a chart showing cost per inmate day for 16 southeastern states. South Carolina's cost of \$27.87 was the lowest of the 16 states. SCDC's figures are derived from the "System Wide Average Operating Cost per Inmate Day" figures included in the 2006 Southern Legislative Conference report. This figure excluded expenses for state central office, headquarters, capital outlay, and probation and parole expenditures. In calculating its figure, SCDC excluded approximately \$140 million, or one-third of its total expenditures in reaching the \$27.87 figure.

After consultation with other southern states, SCDC stated that they excluded their revenue funds and used only appropriated funding in making certain calculations because other states were doing so as well. SCDC believes that this is reasonable since their private Prison Industry program is the largest in the nation and generates significant gross, if not net revenues. SCDC believes that this skews their total spending numbers as those revenues, not appropriated funds, pay for many operational expenses, including security personnel and medical costs.

In our review of data from other states in the SLC report, we found discrepancies that call into question its reliability and validity. This makes using the report as a tool for comparison problematic. We found that the SLC

report contains data on both total cost per inmate and system-wide average operating costs. Total cost per inmate was calculated by taking a state's total expenditures and dividing by the number of inmates, whereas system-wide annual operating cost excludes expenses for state central office, headquarters, capital outlay, and probation and parole expenditures. Therefore, the latter figure should always be lower, but this is not the case. Kentucky, Mississippi, Alabama, and West Virginia had a higher institutional cost than total cost (see Table 2.7). We questioned the SLC about this and they were unable to provide an explanation of why this occurred.

We also questioned the reliability of the total operating costs per inmate figures in the SLC report. According to an SLC official, this figure is a state's total expenditures for corrections. In the 2006 SLC report, SCDC reported total expenditures of \$378,727,000. However, in 2007, SCDC reported \$330,283,000 in state appropriations instead of total expenditures of \$410,976,000. According to SCDC officials, SCDC changed its reporting because they believe other states were reporting only their state appropriations and not total expenditures. When states do not report expenditures in the same manner, it brings into question the reliability of the state-to-state comparison.

**Table 2.7: Total Expenditures vs. Annual Operating Cost
By State**

| STATE | FY 05-06 | | | FY 06-07 | | |
|-------|-------------------------------------|--|-----------------------|-------------------------------------|--|-----------------------|
| | TOTAL EXPENDITURES PER INMATE | SYSTEM-WIDE ANNUAL OPERATING COST PER INMATE | PERCENT DIFFERENCE | TOTAL EXPENDITURES PER INMATE | SYSTEM-WIDE ANNUAL OPERATING COST PER INMATE | PERCENT DIFFERENCE |
| AL | \$12,980 | \$13,414 | -3% | \$14,098 | \$8,539 | 39% |
| GA | \$17,364 | \$17,016 | 2% | \$19,302 | \$17,504 | 9% |
| KY | \$10,530 | \$16,874 | -60% | \$11,539 | \$13,425 | -16% |
| MS | \$11,274 | \$13,318 | -18% | \$12,399 | \$13,984 | -13% |
| NC | \$32,750 | \$23,199 | 29% | \$35,849 | \$24,984 | 30% |
| SC | \$16,242 | \$10,172 | 37% | \$13,870 | \$10,660 | 23% |
| TN | \$21,175 | \$20,927 | 1% | \$24,609 | \$22,205 | 10% |
| WV | \$18,989 | \$23,736 | -25% | \$23,731 | \$20,457 | 14% |

Source: The Southern Legislative Conference's FY 2006 and 2007 Reports on Adult Correctional Systems.

We also found that in the FY 06-07 accountability report, SCDC compared its performance to the national average in five categories of performance contained in the Corrections Yearbook. SCDC stated that these were “the latest figures available.” Comparisons were made in costs for food, health care, and inmate to officer ratio. However, the national statistics contained in the Corrections Yearbook are from 2002 while SCDC was using data from FY 06-07.

Performance measures can give outside entities and agency leadership a good indicator of how SCDC is performing and how it compares to other states. However, it is important that agency performance measures be reliable and valid. SCDC notes in its FY 06-07 annual accountability report that “unless definitions are consistent, it is difficult to compare data across state correctional systems in areas such as escapes, costs, and turnover.” In its FY 07-08 report, SCDC made no state-to-state comparisons. The ASCA is currently working to develop a Performance Based Measurement System (PBMS) with consistent and meaningful correctional performance measures for adult prison and community-based programs. It has also developed an automated system that enables the collection, management, and sharing of this type of data.

South Carolina was one of six pilot states that volunteered to enter performance indicator data into the system in accordance with developed measures and counting rules and SCDC’s director has served on the PBMS committee for over six years. This system has been operational since 2004 and over 100 indicators are used to measure performance in the four areas of:

- Public safety.
- Institutional safety.
- Mental health and substance abuse.
- Offender profile/contextual data.

However, an ASCA official stated that none of the data is currently publicly available. The ASCA hopes to expand the number and scope of these standards, measures, and key indicators that will be collected to include financial performance measures. The goal is to eventually implement these standards nationwide.

Although this program is in the early stages and financial measures have not been adopted, SCDC should continue to participate in this system. As this system develops and more states participate, valid and accurate comparisons between SCDC and other states will become possible. However, until this occurs, SCDC should be cautious when reporting comparative state data.

Recommendations

1. The Department of Corrections should report performance measure data that has been verified and determined to be reliable.
 2. The Department of Corrections should only make state-to-state comparisons of performance measure data when the comparisons have been proven valid and reliable.
-

Personnel Issues

We reviewed personnel practices at SCDC. SCDC has almost 6,000 employees and, according to an agency official, averages hiring over 100 people each month. We were asked to determine whether there is a perception by SCDC employees that a culture of harassment, intimidation, and favoritism pervades the employment practices of SCDC. In order to do this, we attempted to conduct a survey of employees, but were unable to complete the survey (see p. 2).

We also reviewed SCDC practices in the area of hiring and promotions to determine whether the decisions are overly influenced by favoritism or if there is a consistent pattern of deviation from human resources policies and procedures. Overall, we did not find a widespread pattern of favoritism or deviation from SCDC policies and procedures. However, we did find specific instances where SCDC did not adhere to its policies, which resulted in the incorrect applicant being selected. There are also areas where SCDC could improve its hiring process.

The NIC also reviewed SCDC's personnel policies as well as an incident involving SCDC staff at Lee Correctional Institution (see pp. 47, 49).

Applicant Selection Process

SCDC's applicant selection process requires that specific steps be followed when hiring for an open position. If a job position is available:

- The appropriate SCDC official requests the human resources (HR) department to approve and post a job announcement.
- HR collects all applications and determines which applicants meet both state and any additional agency requirements.
- A packet with all applicant profiles is sent to the SCDC requesting official, who may decide to interview all eligible candidates, or create a selection panel of one or more employees to screen and score the profiles.

- If the applicant pool is too large, SCDC allows for an initial screening to narrow the number of applicants to be interviewed.
- During the interview, the selecting official/panel records scores assigned to each applicant for education, related work experience, and any other categories defined by the selecting official on the applicant evaluation form.
- All interviewees are awarded a set number of points based on their education level and related experience, as it exceeds SCDC's additional requirements. For example, an interviewee with 1 to 1.99 years of related experience is awarded 1 point while someone with 10 or more years would receive 6 points.
- The selecting official gives the entire packet to human resources, which reviews the packet for any errors and then offers the position to the highest scoring candidate.

SCDC retains a "master file" for each job announcement containing documentation verifying whether agency officials complied with hiring and promotional practices. SCDC provided a list of 2,148 job announcements for the January 3, 2006, to November 13, 2008, time period. We conducted a statistically random sample of 71 of the 2,148 job announcements. We examined these files to determine if applicants' education and experience points were awarded correctly, if the applicants had been screened properly, and if the applicant with the highest score had been selected for the position. We also reviewed a job announcement where there was an allegation that officials failed to follow SCDC's applicant selection process.

Documentation of Hiring Process

In our review of SCDC job announcements, we identified areas where SCDC could improve its hiring process.

Documentation of Selection Process

In reviewing applicants, SCDC allows for selecting officials to conduct initial screenings to narrow the number of applicants to be interviewed. SCDC policy states that, "The selecting official will ensure that all documentation relating to the screening and selection process, (i.e. referral roster, profiles, and evaluations on the screening and selection process) are forwarded to the Recruiting and Employment Services Branch." However, SCDC does not require that each member of the selection panel complete his own evaluation form.

Calculation of Related Experience

As stated above, SCDC awards applicants points during the interview process based on the amount of related experience the applicant has. The points for related experience are awarded based on how much the applicant *exceeds* SCDC's additional requirements. We found numerous instances where the selection panels did not properly calculate related experience points. Points were awarded based on all of an applicant's experience, rather than how he/she exceeded SCDC's additional requirements.

SCDC officials identified this as a problem and amended the applicant form in late 2006 or early 2007 to emphasize that points were to be awarded based on how an applicant exceeded the additional requirements. However, we found examples of cases in 2008 where selection panels continued to award points based on all of an applicant's experience.

Determination of Related Experience

SCDC's HR division screens all applicants to determine if they meet both state minimum and SCDC's additional requirements. In most cases, these requirements include a certain number of years of experience. Applicants meeting these requirements are then forwarded to a selection panel. The selection panel also evaluates an applicant's experience and awards points to the applicant based on the amount of related experience. Based on information discovered during the interview, an applicant can be awarded related experience points that may differ from the amount of experience shown on the application. SCDC policy does not require that the selection panel document how the related experience score was determined.

Courtesy Interviews

SCDC policy allows for "courtesy interviews" for applicants who are not qualified for a position. According to an SCDC official, these interviews are not done on a regular basis. These interviews serve as a management tool and provide flexibility to the agency. As noted in *Example 4* (see p. 20), we found a case in which SCDC staff attempted to select an unqualified applicant who had been granted a courtesy interview. Eliminating courtesy interviews could prevent this situation from arising in the future.

Improper Screening of Applicants

We found two examples of applicants who should have been screened out but were granted interviews, and three examples of applicants who should have been granted interviews but were screened out. In one case, an applicant who should have been screened out was selected for the position. The applicant was later disqualified for falsifying records and visiting an inmate at the prison. According to an SCDC official, if she had not been disqualified, the screening error eventually would have been detected.

Examples of Improper Selections

In the four cases discussed below, we found errors in the selection process that affected the outcome. In two cases, 3% of our sample, the applicant selected should not have been chosen for the position.

Example 1

A captain position was announced in 2008. Applicants were screened to determine if they met both state minimum requirements and SCDC additional requirements. As allowed by SCDC policy, applicants meeting these requirements were then subject to an additional screening. Applicants were evaluated on several categories, including overall correctional experience and uniformed security supervisory experience. Applicants were awarded points based on their number of years' experience. Those receiving 22 points or more from this additional screening were interviewed. The interviewee scoring the highest would be selected for the position.

We found that the applicant selected for this position was given 22 points during the additional screening, but should have received only 21 points. The applicant's score for security supervisory experience was revised from 1 to 2 points. However, the screening criteria only allowed applicants to receive scores of 1, 3, or 5 points depending on rank and time in position. Without the additional point, the applicant would not have scored high enough to receive an interview and would not have been selected for the position.

Example 2

A corporal position was announced in 2008. Applicants were screened to determine if they met both state minimum requirements and SCDC additional requirements. A total of ten applicants were interviewed for the position. The applicant chosen for this position was given an incorrect score for his related experience. Had the score been calculated correctly, a different applicant would have been selected for the position.

Example 3

An administrative coordinator position was announced in 2006. Applicants were screened to determine if they met both state minimum requirements and SCDC additional requirements. During the interview process, all applicants for the position were incorrectly given related experience scores based on their total work experience, not on how they exceeded SCDC additional requirements. If the related experience had been calculated correctly, a tie between two candidates would have resulted. SCDC policy requires when a tie occurs, objective criteria is to be used to break the tie.

According to SCDC officials, after HR officials received the packet with the interview results, they informed the director of human resources of the issues with the selection. However, because the offer was already made by an executive staff member, HR allowed the selection to proceed.

Example 4

During our review, we examined a job announced in 2006 where it was alleged that SCDC had not handled the selection in accordance with policy. We reviewed this selection and found that there were deviations from policy.

Applicants were screened to determine if they met both state minimum requirements and SCDC additional requirements. SCDC policy allows applicants not meeting the job requirements to be given a “courtesy interview.” However, the policy also specifically states that these applicants cannot be offered the position. An SCDC employee who applied for the position, but who was not qualified, was given a courtesy interview.

After conducting all interviews, three candidates tied for the top score. However, the selecting official offered the position to the applicant who was given a courtesy interview, who was not among the top three applicants. Selecting an applicant who does not meet position requirements is a violation of SCDC policy. Also, according to SCDC policy, only HR is allowed to offer positions to candidates. Once HR officials became aware of these discrepancies, they contacted the HR director and the job announcement was cancelled, leaving the vacancy unfilled.

In October 2006, the applicant who was granted the courtesy interview was assigned the additional duties of the previously-posted position and given a temporary pay increase. In May 2007, there was a restructuring of the division and this applicant was re-classified into a position which was not advertised.

Conclusion

While we did not find evidence of widespread deviations from SCDC policy, even occasional instances of improper selections can result in employees questioning the fairness and objectivity of the hiring process. SCDC allows employees to review their evaluation forms for jobs for which they are not the successful applicant. Improved documentation of the process can help employees to better understand how the hiring was done and that it was done in a fair and objective manner. Complete documentation can also help prevent errors in the selection process.

Recommendations

3. The Department of Corrections should revise its applicant selection policy to require selecting officials to document how they compute additional related experience points for each candidate interviewed.
4. The Department of Corrections should revise its applicant selection policy to require each member of the selection panel to complete his/her own evaluation form for each candidate interviewed.
5. The Department of Corrections should revise its applicant selection policy to require the agency retain documentation of interview questions and written exercises.
6. The Department of Corrections should eliminate courtesy interviews.

Litigation Costs

We were asked to review SCDC's litigation expenses and settlements to determine if there had been an increase in costs for lawsuits filed by both employees and inmates. Because individuals have up to two years to file a claim, and because costs will not be complete until the litigation has been resolved, it is difficult to determine if litigation costs for cases insured by the Insurance Reserve Fund (IRF), on behalf of SCDC, have increased. We also reviewed the cost of claims paid solely by SCDC.

Claims Covered by the Insurance Reserve Fund

The IRF is operated by the Budget and Control Board to provide property and liability insurance to governmental agencies. We obtained data, from both the IRF and SCDC, that covers the period January 1, 2000, through May 20, 2008. The IRF covers three major types of claims for SCDC. Tort claims are general lawsuits filed against SCDC by both inmates and employees. Professional liability claims only include medical malpractice lawsuits filed by inmates, which totaled approximately \$4.3 million between January 1, 2000, and January 31, 2008. Finally, the IRF also covers auto liability claims for SCDC; however, we did not obtain data on these types of claims because they were not significant to the audit request.

IRF Closed Cases

SCDC incurred approximately \$1.2 million in legal expenses and settlements for 22 closed employee tort claims between January 1, 2000, and December 31, 2007. Table 2.8 shows the total amount of closed employee tort claims' legal expenses and settlements per calendar year.

It is important to note that, under the South Carolina Tort Claims Act, claims can be filed within two years of the event. Therefore, the data provided regarding lawsuits is "immature" due to this lag in reporting and filing lawsuits and the pendency of the lawsuit.

We also obtained summary data of closed employee tort claims for all state agencies from January 1, 2000, through April 28, 2008. Table 2.9 is a list of the top five agencies' total settlements and expenses ranked in descending order.

We also obtained information on litigation costs associated with closed inmate tort claims. We found that the IRF paid \$4.4 million in expenses and settlement costs for 745 closed inmate tort claims.

**Table 2.8: SCDC Closed
Employee Tort Claims Data**

| CALENDAR YEAR | EXPENSES | SETTLEMENTS | TOTAL | # OF CASES |
|------------------|------------------|------------------|--------------------|---------------|
| 2000 | \$213,146 | \$427,000 | \$640,146 | 8 |
| 2001 | 37,295 | 1,000 | 38,295 | 1 |
| 2002 | 165,292 | 5,000 | 170,292 | 4 |
| 2003 | 60,328 | 4,000 | 64,328 | 2 |
| 2004 | 139,186 | 127,500 | 266,686 | 4 |
| 2005 | 0.00 | 3,500 | 3,500 | 2 |
| 2006 | 6,200 | 0 | 6,200 | 1 |
| 2007 | 0 | 0 | 0 | 0 |
| TOTAL | \$621,447 | \$568,000 | \$1,189,447 | 22 |

Source: Insurance Reserve Fund (as of January 30, 2008)

Table 2.9: Statewide Closed Employee Tort Claims Data — January 2000 – April 2008

| AGENCY | AMOUNT* |
|---|-------------|
| S.C. Department of Corrections | \$1,130,495 |
| S.C. Department of Mental Health | \$845,396 |
| University of South Carolina | \$836,717 |
| University of South Carolina School of Medicine | \$440,702 |
| S.C. Department of Public Safety | \$432,264 |

* Based on cause of claim code for employment disputes and libel and slander.

Source: Insurance Reserve Fund (as of April 28, 2008).

IRF Open Cases

We also obtained information for open tort cases, both inmate and employee, against the IRF. However, because these cases are still currently ongoing, we could not obtain any settlement or total amount of losses incurred by SCDC. Table 2.10 shows the total number of open tort employee and inmate claims for each fiscal year. In addition, SCDC currently has 77 open professional liability claims.

Table 2.10: Number of Open SCDC Claims

| CALENDAR YEAR | EMPLOYEE | INMATE | TOTAL |
|---------------|----------|------------|------------|
| 2000 | 0 | 10 | 10 |
| 2001 | 0 | 9 | 9 |
| 2002 | 1 | 11 | 12 |
| 2003 | 0 | 22 | 22 |
| 2004 | 1 | 38 | 39 |
| 2005 | 2 | 54 | 56 |
| 2006 | 2 | 67 | 69 |
| 2007 | 3 | 42 | 45 |
| 2008 | 0 | 1 | 1 |
| TOTAL | 9 | 254 | 263 |

Source: Insurance Reserve Fund (as of January 30, 2008)

SCDC Claims

There are certain claims filed against SCDC that are not covered by the IRF. Examples include breach of contract suits, suits seeking injunctive relief, and suits seeking return of property. We obtained information from SCDC regarding all litigation in which the agency incurs attorney fees and settlements. SCDC was unable to separate the information based upon inmate and employee claims. In addition, the financial information provided for attorney fees and settlement costs are aggregate totals for both open and closed cases.

In the event a claim is not covered by the state's general tort policy, SCDC uses agency funds to defend the claim and pay for any settlement costs. However, the agency can make use of prepaid legal defense coverage offered by the IRF. This coverage reimburses SCDC for up to 80% of legal fees and expenses up to the policy limits. It does not provide reimbursement for any settlement costs. Therefore, SCDC incurs partial attorney fees for prepaid cases as well as all settlement costs.

Attorney Fees

SCDC attorney fees from July 1, 2000, to June 30, 2008, totaled approximately \$1.5 million. SCDC was able to obtain approximately \$720,000 in reimbursements from the IRF using its prepaid coverage. In addition to fees for prepaid covered cases, SCDC incurred attorney fees in cases that were not covered by either the IRF or prepaid legal defense coverage. An example of "other" fees includes \$19,000 paid to a law firm for representation during negotiations involving the possible privatization of medical services to inmates. Table 2.11 is a breakdown of this information.

Table 2.11: Total Attorney Fees*

| FISCAL YEAR | PREPAID ATTORNEY FEES | | | OTHER ATTORNEY FEES PAID BY SCDC | TOTAL ALL ATTORNEY FEES |
|--------------|-----------------------|------------------|------------------|----------------------------------|-------------------------|
| | PAID BY IRF | PAID BY SCDC | TOTAL PREPAID | | |
| 00-01 | \$2,468 | \$0 | \$2,468 | \$33,541 | \$36,009 |
| 01-02 | 19,428 | 1,107 | 20,534 | 16,267 | 36,801 |
| 02-03 | 73,512 | 14,628 | 88,139 | 29,117 | 117,256 |
| 03-04 | 51,965 | 9,241 | 61,206 | 25,031 | 86,237 |
| 04-05 | 100,000 | 21,250 | 121,250 | 93,502 | 214,752 |
| 05-06 | 139,093 | 31,023 | 170,117 | 120,365 | 290,482 |
| 06-07 | 124,747 | 27,437 | 152,184 | 159,145 | 311,329 |
| 07-08 | 208,578 | 48,394 | 256,972 | 150,996 | 407,968 |
| TOTAL | \$719,791 | \$153,080 | \$872,870 | \$627,964 | \$1,500,834 |

*Since 1996, the range of fees for outside attorneys (based on experience or specialty) has increased from \$60 to \$80 per hour to \$70 to \$150 per hour.
Source: South Carolina Department of Corrections and the Insurance Reserve Fund (as of September 1, 2009).

Settlements

SCDC also provided financial information totaling all settlement costs for the same period. Settlement amounts are aggregate totals for both prepaid legal cases and non-prepaid cases. Of approximately \$400,000 SCDC paid in legal settlements, approximately \$173,000 was incurred from non-prepaid cases. An example of non-prepaid settlement costs includes \$52,600 paid to Planned Parenthood of South Carolina, Inc. as the result of the “Choose Life” license plate suit. Table 2.12 is a breakdown of this information.

Additionally, there are two cases with awards totaling \$882,000 that are under appeal. These cases are against SCDC employees acting in an *individual* capacity, not against the agency itself. Therefore, the agency is not legally responsible for paying any potential settlement costs in these cases. However, SCDC continues to defend these individuals during the appeals process.

Agency officials stated the agency is defending these specific employees because these lawsuits are holding state employees personally responsible for conducting duties within the scope of employment. Also, according to an SCDC official, SCDC takes no position as to whether or not it will pay the \$882,000 in settlement costs on behalf of its employees should the courts rule against them.

**Table 2.12: Total Settlements Paid
by SCDC**

| FISCAL YEAR | SETTLEMENTS |
|----------------|------------------|
| 00-01 | \$0 |
| 01-02 | 62,244 |
| 02-03 | 119,880 |
| 03-04 | 6,000 |
| 04-05 | 127,520 |
| 05-06 | 83,453 |
| 06-07 | 0 |
| 07-08 | 351 |
| TOTAL | \$399,448 |

Source: South Carolina Department of Corrections.

Premiums

In addition to litigation expenses and settlements, SCDC pays annual premiums for coverage from the IRF. SCDC pays the IRF to provide general tort coverage, professional liability coverage, and prepaid legal defense coverage. The general tort and professional liability premiums do not include any experience rating, but are based upon the total number of employees and the type of job the employee holds. For example, SCDC's premium for FY 06-07 is based on a total of approximately 5,300 employees and 6 job classifications, such as law enforcement, clerical, maintenance, etc.

Basic prepaid coverage in the amount of \$15,000 is provided by the IRF at no cost. Prepaid coverage can only be increased by purchasing additional prepaid legal coverage in increments and at rates set by the IRF: \$35,000, \$85,000, \$235,000, \$485,000, and \$985,000. The rate is 10% of the coverage. SCDC has increased the amount of prepaid coverage since 2001. Table 2.13 is a breakdown of SCDC's premium costs.

**Table 2.13: Policy Premium
Amounts by Fiscal Year**

| FISCAL YEAR | TORT | | | PROFESSIONAL LIABILITY | TOTAL |
|----------------|----------|-------------|-------------|---------------------------|-------------|
| | PREPAID | GENERAL | TOTAL | | |
| 03-04 | \$8,500 | \$510,656 | \$519,156 | \$53,140 | \$572,296 |
| 04-05 | \$8,500 | \$727,887 | \$736,387 | \$82,845 | \$819,232 |
| 05-06 | \$23,500 | \$818,555 | \$842,055 | \$94,672 | \$936,727 |
| 06-07 | \$23,500 | \$939,986 | \$963,486 | \$117,329 | \$1,080,815 |
| 07-08 | \$48,500 | \$1,013,965 | \$1,062,465 | \$118,675 | \$1,181,140 |

Prepaid legal coverage can only be increased by purchasing additional coverage in increments and at rates set by the IRF. For example, when coverage is at \$235,000, the next increment is \$485,000.

Source: Insurance Reserve Fund (as of April 28, 2008).

Conclusion

Based upon data provided by the IRF, we cannot conclude whether litigation expenses and settlements have increased during the current administration. According to IRF officials, the data provided regarding lawsuits is “immature” due to a two-year lag in reporting and filing lawsuits and the time lag associated with the pendency of the litigation. Accordingly, at this time, there is no visible statistical pattern to indicate an increase in litigation expenses or settlements.

The financial information provided by SCDC does reveal an increase in expenses for cases handled by the agency. Since 2001, SCDC attorney fees increased from approximately \$36,000 to \$408,000 in 2008. The increase in fees is attributed to an increase in lawsuits filed against SCDC which are not covered by the general tort policy coverage provided by the IRF. SCDC has also increased its prepaid legal defense coverage. Since 2001, SCDC has increased its coverage from \$15,000 to \$500,000 in 2008. According to the IRF, only four state agencies have purchased at least \$500,000 in prepaid legal coverage. The Governor’s Office purchased \$1,000,000, while SCDC, S.C. Education Lottery, and S.C. House of Representatives each purchased \$500,000.

SCDC Inmate Feeding Policies

We reviewed SCDC’s practice of allowing inmates to miss meals as a result of violations of agency rules. In addition to obtaining an opinion from the Attorney General (AG), we researched other states for their applications of this policy and reviewed SCDC’s policies and procedures describing disciplinary measures for rules violations. There is no state law prohibiting this practice, however, due to potential eighth amendment rights violations relating to cruel and unusual punishment, we recommend SCDC create a specific policy governing this action.

SCDC policy provides that food will not be withheld due to disciplinary action. However, inmates can have their movement restricted and be confined to their cells/units for violation of grooming and uniform standards, which can result in the loss of a meal. The classification of an inmate regulates where he eats meals. For example, some inmates eat in their cells while others have specific times during the day when they are moved to the cafeteria for meals. Therefore, if an inmate whose classification stipulates he eats in the cafeteria violates the grooming policy, he may be restricted from moving outside of the unit, missing the opportunity to go to the cafeteria for meals.

Attorney General's Opinion

We asked the Attorney General to provide an opinion as to whether SCDC's practice of restricting inmate movement and denying access to the cafeteria as punishment for rules violations is legal under South Carolina law. According to the opinion, there is no state law prohibiting SCDC's practice of denying prisoners in non-compliance with prison policies access to the cafeteria. The opinion also notes several cases from other states where an inmate refused to comply with a rule and was treated in a similar way. The opinion concluded, "... courts appear to recognize instances in which food may be withheld from inmates without violating their eighth amendment rights. These cases rest on the fact that denial of meals is based on failing to satisfy a reasonable condition required for the receipt of meals and is not an act of punishment."

However, while the opinion stated the practice of not feeding an inmate in certain situations is legal, it also notes, "...there appears to be a fine line between whether food is withheld for punishment or whether it is simply withheld due to a failure to satisfy conditions required to receive meals." In addition, after reviewing various SCDC policies, the AG found no *specific* written policy concerning the practice of denying inmates food if the inmates do not comply with SCDC's grooming policies. Therefore, the AG suggests written guidelines in order to avoid misuse of the policy and possible constitutional violations.

Other States and National Associations

We also found cases of similar inmate disciplinary policies and procedures in other states. In Illinois and Wisconsin, inmates sued prison officials for violation of their eighth amendment rights due to missed meals for non-compliance with policies. In both cases, the inmates refused to comply with a rule vital to safety and security of the institution. Due to this violation of policy, prison officials in Illinois refused to allow the inmate out of his cell, resulting in missing meals. In Wisconsin, the inmate was normally served meals in his cell; however, the inmate did not receive his meals due to his failure to comply with policy.

The inmates sued prison officials for constitutional rights' violations for missing meals because they were confined to their cells for non-compliance of policies. Judges found in favor of prison officials in both cases, supporting prison administrators in enforcing rules that support legitimate safety, security, and other penological concerns. Also, the inmates understood the consequences of refusing to follow these rules and essentially punished themselves. However, one judge stated, "...at some point, the denial of food

to an inmate may violate the Eight Amendment even if the denial is the result of the inmate's own choice not to follow the rules."

We contacted the American Correctional Association (ACA) to determine whether the practice of restriction of inmate movement to cafeterias is in violation of its standards. The ACA is a national organization that develops and administers accreditation standards for correctional institutions. Standard 4-4320 states, "Written policy precludes the use of food as a disciplinary measure." In its comments on this standard, the ACA states, "Food should not be withheld, nor the standard menu varied, as a disciplinary sanction for an individual inmate."

SCDC Disciplinary Policies and Procedures

We asked SCDC for all agency policies addressing loss of meal privileges or restriction of inmate access to cafeterias. Currently, if an inmate violates certain SCDC policies, specifically those promoting safety and security, SCDC can restrict inmate movement and confine him to his cell/unit. While the policies SCDC provided disclose to inmates the possibility of restricted movement and/or cell confinement for rules violations, none of them state specifically that inmates will miss the opportunity to eat meals.

We requested information from SCDC regarding the number of times inmates had not been served meals. According to agency officials, SCDC does not have any specific forms or requirements to document the occasions an inmate misses meal service due to restriction of movement, therefore we could not determine how often this practice is utilized.

Two agency documents further discuss the procedures to be followed in these situations. An e-mail dated November 6, 2006, to agency administration discusses the importance of ensuring inmates comply with grooming and uniform standards in order to maintain safety and security of institutions. The e-mail states, "...in fulfilling our duty to provide an opportunity to eat, exercise, visit, shower, etc...any inmate is allowed to decline the opportunity by failure to comply with our reasonable requirements." However, as stated in an agency memorandum, medical staff must be notified if an inmate misses a meal to ensure the administration of any needed medication.

Conclusion

SCDC's policy of restricting inmates' movement and confining them to their cells/units for rules violations is stated in its policy manual. According to SCDC policy, inmates receive a brief orientation through written material and video that includes all rules they must abide by in order to maintain safety and security. However, SCDC's policies do not include any language specifying that being placed on cell restriction can also result in the inmate not being fed. Also, the policy manual does not stipulate that if an inmate misses the movement to the cafeteria for meals, the inmate is not fed in a cell. Inmates must make this connection themselves by realizing their non-compliance with policies leads to cell confinement and, thus, loss of meals.

Recommendation

7. The Department of Corrections should revise agency policies to include written guidelines specifying that inmates may miss meals as a result of not complying with SCDC policies.

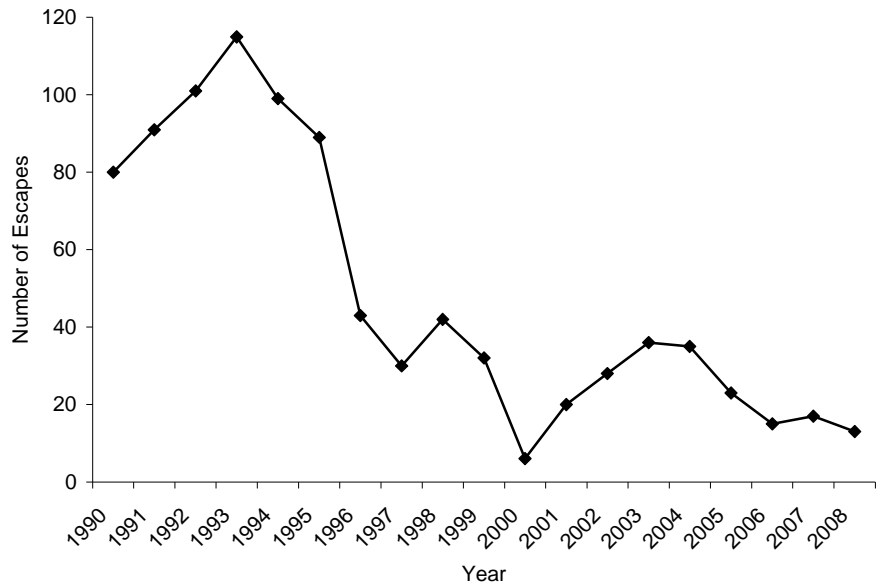
Escapes

We were asked to review SCDC's policies and procedures regarding inmate escapes. In conducting our review, we requested the assistance of the National Institute of Corrections (NIC). Overall, from 2004 to 2008, the number of escapes from SCDC custody has decreased. We reviewed SCDC's reporting of escape data and did not find any significant problems. We found that SCDC has complied with its escapee return policy. A limited review by the NIC found that all primary elements for escape prevention are present in SCDC policy. We were unable to obtain reliable data to be able to make a state-to-state comparison on the number of escapes.

Statistics on Escapes

An escape occurs when any SCDC inmate leaves SCDC's custody unlawfully. Chart 2.14 shows the number of escapes from SCDC between 1990 and 2008.

**Chart 2.14: Escapes Between
1990 – 2008**

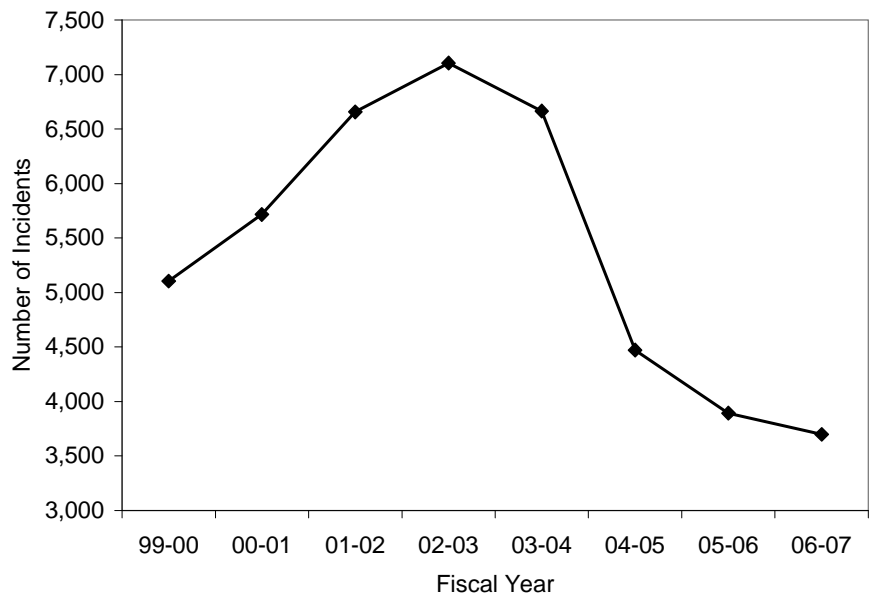


Source: South Carolina Department of Corrections website.

The number of escapes has decreased significantly since 1990 and has also decreased over the last five years. In addition, most escapes are from minimum security, as opposed to medium or maximum security prisons. Since 2000, 81% of all escapes have been from minimum security prisons.

We also reviewed data on the number of “out-of-place” incidents that occurred at SCDC. An “out-of-place” incident is defined as an incident in which an inmate has not escaped SCDC custody but is not in his assigned location. Chart 2.15 shows the number of these incidents has decreased since FY 02-03.

**Chart 2.15: Out-of-Place
Incidents, FY 99-00 – FY 06-07**



Source: South Carolina Department of Corrections.

Reporting of Escape Data

We were asked to determine if SCDC has been consistent in reporting escape information. We reviewed SCDC's escape data on its website and compared it to data contained in SCDC's accountability report. We found the number of escapes reported in 2002 and 2004 differed slightly between the website and the report. For 2004, SCDC reported 32 escapes in its accountability report while 35 escapes are shown on the website. According to SCDC officials, the difference is due, in part, to two inmates escaping twice but only being counted once in the accountability report.

SCDC's website states that its escape data is audited. According to a SCDC official, SCDC examines reports from four separate computer systems to identify escapes. As noted above, SCDC considers an escape to occur when an inmate leaves SCDC's custody unlawfully. Attempted escapes are not counted. For example, if an inmate manages to scale one fence at an institution, but is apprehended before he leaves SCDC property, that is not considered an escape for reporting purposes.

We attempted to verify SCDC escape data by comparing a list of escapes provided by SCDC to other sources of escape data maintained by SCDC. We reviewed escape information contained in SCDC's management information notes system, emergency action center logs, and the SCDC's Inspector General's list of investigations. We did not find any significant problems in the reporting of escape data.

Comparison to Other States

We attempted to compare escapes in South Carolina to those in other states. We found that it is difficult to make state-to-state comparisons. SCDC, in its accountability report, cautions against trying to compare escape data across states. We contacted the Bureau of Justice Statistics in the United States Department of Justice. The bureau stated it does not publish escape data due to the large variation in definitions between states for what constitutes an escape.

The Association of State Correctional Administrators (ASCA) has developed a Performance Based Measures System with a standard definition for escapes, which should result in more accurate state-to-state comparisons.

Escapee Return Policy

SCDC policy OP-21.04 states that escapees, "Upon capture...will not be returned/re-assigned to the facility from which s/he escaped." SCDC provided a list of escapees from 1998 to 2008. From this list, we identified two inmates who had escaped from an institution in November 2003 and were subsequently returned to the same institution from which they escaped. According to an SCDC official, these inmates were returned to same institution from which they escaped at the request of the warden to emphasize that the institution could house its own escapees. These inmates subsequently escaped again in December 2003.

We then reviewed all escapes since January 1, 2005, to determine if SCDC was complying with its policy of sending recaptured escapees to different institutions. We reviewed 53 escapes between January 1, 2005, and June 30, 2008, and found two escapes in 2007 where the escapees were returned to the same institution from which they escaped. According to an SCDC official, these inmates were in the general population of the institution at the time of the escape but were returned to the special management unit of the institution upon recapture. The official cited bed space limitations as another factor in returning the inmates to the same institution. SCDC officials indicated they may need to revise their escapee return policy to reflect bed space limitations.

NIC Review

Due to the complexity of development of policies and procedures surrounding escape prevention, NIC officials performed a limited assessment of the SCDC security policies. They confined this particular analysis to whether the primary elements necessary for effective escape prevention are included in each area of instruction. After reviewing SCDC security policies and procedures, they found all primary elements for escape prevention to be present in policy.

Director's Residence

We reviewed the state-owned residence provided without charge to the director of SCDC. We found no need to provide a residence to the director.

Each appropriations act for at least the last ten years has included a proviso stating that certain state employees “*may* be permitted to occupy residences ... without charge...” (Emphasis added.) Among the state employees permitted to occupy housing are the directors of the Department of Corrections and the Department of Mental Health (DMH). However, according to an official with DMH, the agency has not provided its director with a residence since it was sold in the 1990s.

We contacted four neighboring states (Florida, Georgia, North Carolina, and Virginia) and found that none provides the head of its corrections agency with a residence. We also contacted five other states that were identified by either SCDC staff or an official with the Association of State Correctional Administrators (ASCA) as states that provide the heads of their corrections agencies with a residence. These states were Arkansas, Louisiana, Mississippi, New Mexico, and Texas. Only Arkansas and New Mexico provide residences to their agency heads. According to an official with the Texas Department of Corrections, the residence for the Texas director was converted to an agency conference center in the 1990s and continues to be used for that purpose today.

In both our 1992 cost savings audit and in our 1999 review of state-owned land, we identified the SCDC’s director’s residence as a state-owned property that was potentially surplus. In response to our 1999 report, the director of SCDC at that time stated that he did not plan to utilize the house as a residence. Instead, in 2000, the house was used as office space for SCDC’s programs and services division. However, after a new director was hired, the house was converted back to a residence in 2001.

The house is over 4,200 square feet. SCDC estimates the replacement value of the house at \$316,000. Richland County tax records place the value of the house at \$277,700. It is located on prison grounds, but is separated from other prison buildings and borders a residential neighborhood. As required by proviso, SCDC, along with all other agencies that provide housing to employees, is required to report the fair market rental value of the house to the Agency Head Salary Commission and the Division of Budget and Analyses of the Budget and Control Board. For FY 06-07, SCDC reported the fair market rental value as \$700 per month. This was based on rental rates in the area with a percentage reduction based on the house's location on prison grounds.

SCDC pays utility and maintenance costs for the house. Between July 2007 and June 2008, SCDC paid approximately \$7,700 in utility costs (\$642 per month). Between 2002 and 2008, SCDC paid over \$42,000 in material costs for maintenance on the house. These costs are primarily material costs because, in most cases, inmates performed the labor.

According to agency officials, there are several features of the property that would affect the ability to sell the house and its value. These include four utility easements on the property. In addition, officials noted that the house is dissimilar from other houses in the surrounding neighborhood and, because of its proximity to the prison, would be subject to the noise coming from the prison.

SCDC states that the residence provides a valuable recruitment tool for future agency directors and sends a message about the safety of the state's prisons. Further, SCDC states that selling the residence would provide no significant savings to the state, particularly in the current real estate market.

We could find no evidence that providing SCDC's director with a residence is essential to the agency's operations. We found only two other states that provide their directors with a residence.

Recommendation

8. The Department of Corrections should sell the director's house as surplus property. If the house cannot be sold, it should be converted to office space for use by the agency.

Livestock

We were asked to review SCDC's internal controls for safeguarding agency cattle and other livestock. We found that SCDC, in response to the theft of two steer in December 2006, established several internal controls over its livestock operation. Some of the controls are effective at accounting for cattle transactions and should help to deter theft. However, other controls are either not sufficient to detect theft or are not being fully implemented.

Background

SCDC raises beef cattle at two of its correctional facilities. One of these facilities also runs a dairy farm. As of the end of November 2008, the agency reported 404 beef cattle and 548 dairy cows.

No beef is used internally at SCDC. In FY 07-08 the agency marketed 211,199 pounds of beef for a total market value of \$186,372. The dairy produces milk which is primarily used at SCDC and the S.C. Department of Juvenile Justice (DJJ), with the remainder being sold at market. In FY 07-08, the agency and DJJ were supplied with milk worth \$1,369,462, accounting for 92% of the total production. The remaining product, valued at \$115,793, was sold on the open market. Milk sales prices are set by Coburg Dairy.

SCDC also has a poultry egg production facility. The eggs are used primarily by SCDC and DJJ – a value of just over \$2 million. Excess production is sold on the open market and amounted to \$106,560 in outside sales revenue in FY 07-08.

Cattle Theft

Agency records show that on December 2, 2006, an inmate at the Wateree River Correctional Institution (WRCI) alleged that the number of cows that were on a trailer exiting the facility did not match with the number that were supposed to be on the trailer. Also, a front gate correctional officer noted, in an incident report, that the cattle trailer was empty upon arrival at the farm but she observed 13 calves on the trailer that exited the facility. Subsequent investigation revealed the buyer had an invoice showing he paid for 11 cows.

SCDC's investigations policy, GA-05.01 states:

Agency employees who, in the course of their duties, discover a criminal act will be required to immediately report this information to their appropriate Warden/Division Director or designee for transmission to an Investigator of the Division of Investigations.

Further, the policy indicates that investigative personnel will be assigned:

...to all reported criminal acts (suspected and/or alleged) which are believed to have been committed by SCDC inmates, employees, or others when the crime relates to the Agency....

This includes misconduct or:

...other offenses or actions when directed by the Agency Director, Inspector General, and the Office of General Counsel or the Division Director of Investigations.

An evaluation of the incident report filed by prison security was conducted by SCDC farm and WRCI prison personnel who concluded there was no wrongdoing. The report was not referred to SCDC's division of investigations of the Office of the Inspector General (IG). IG personnel have indicated the incident should have been reported to their office.

Several months later, in April 2007, a correctional officer at WRCI, based on a report by an inmate, questioned additional inmates about the incident and contacted the SCDC division of investigations. This resulted in the division opening its own investigation of the matter on May 11, 2007.

As part of the investigation, the State Law Enforcement Division (SLED) was notified and both SCDC and SLED interviewed two SCDC employees at the WRCI farm who admitted to putting two extra beef cows, owned by the farm, on the trailer. The employees were given the choice of resigning or facing disciplinary action. They both admitted to the offense and chose to resign. SLED initiated the arrest warrants for the subjects in June 2007 and charged them with livestock larceny, value of \$1,000 or less. One employee later made restitution and entered a pre-trial intervention program, which is an alternative to prosecution. The other subject passed away before restitution and disposition of the charges.

LAC Review of Internal Controls

The SCDC agriculture branch, the department responsible for farm policy, established a number of new internal control measures by updating its farm administrative policy effective August 1, 2007. These included:

- Employees are to forward all reports of work-related incidents/accidents involving staff and inmates to the institutional warden. Before this change, the incident report was only forwarded to the division director of support services.
- All calves are to be tagged at birth with an ear tag i.d. number. The dairy calves' ear tag identification numbers and related data are recorded in the inventory maintained at the dairy calf barn. The beef calves' ear tag numbers are recorded in the beef cattle inventory and used when animals are transferred to Wateree Farm – to be sold or for breeding purposes.
- All calves that are not kept for herd replacement are to be sold at auction and a bill of lading is to be used when shipping cows. The bill of lading is to be signed by the dairy supervisor, driver, branch chief or business manager, and the front gate officer.
- An ear tag inventory is to be conducted twice yearly for beef cattle – in February before breeding season and immediately following the calf sale, with the inventory to be verified against the master inventory maintained in the agriculture branch office. An inventory will be maintained at the dairy barn for dairy calves.
- Cow deaths are to be documented by providing the animal's identification made through visual or photographic evidence attached to a "condemnation report". Verification should include participation by a disinterested third party.

The agency installed a new front gate post order, effective September 19, 2007, designed to ensure compliance with the administrative policy. The policy states:

Farm employees exiting the Front Gate with cattle/calves to be sold at public auction will be required to have a bill of lading.... The Front Gate officer will count the number of cattle/calves in the trailer and verify that they match with the number on the bill of lading....

We reviewed SCDC's internal controls over livestock through the following methods:

- Observed a sample of calves for ear tags.
- Obtained bills of lading of cows shipped to auction to determine if the bills were used and had the proper information and signatures.
- Reviewed the front gate procedures pertaining to cow shipments.
- Selected a sample of cow sales and obtained documentation.
- Obtained auction records supporting the bills of lading.
- Reviewed the farm inventory methods.
- Selected a sample of cow condemnation reports.
- Selected a sample of cows from the dairy boards and traced them to the cows in the pastures.
- Selected a sample of cows in the pastures and traced them to the dairy inventory boards.
- Requested documentation of the cattle ear tag inventory.
- Reviewed farm statistical reports for cattle, dairy, and egg production.

We found the agency has a weak inventory control system for accounting for cows and detecting cow theft. The dairy farm monthly report beginning inventory, plus and minus herd events, such as births, deaths, and sales, does not equal the end of month head count. We found no evidence that the results of the monthly events are compared to a master inventory. Also, SCDC performed three of four ear tag inventories in 2008. However, the ear tag counts were not compared to a master inventory. This may result in theft going undetected or undetected for longer periods of time than if the inventories were performed and compared to the master inventory.

SCDC has implemented an effective front gate control procedure designed to deter theft of cattle. We could not test the procedure, as no employees left with cattle while we were onsite and no sales or transfers were planned. However, we interviewed one correctional officer who confirmed his responsibility is to verify the bill of lading cow count to the cows on the trailer.

SCDC has implemented the use of bills of ladings for the shipment of cows from the facility, used in conjunction with the front gate procedures, and records the appropriate information and signatures on the bills of lading, and is in compliance with agency policy.

SCDC also has maintained proper documentation of cattle sales. All sales of cattle we tested were properly documented with auction records matching bills of lading. Further, we found completed cow condemnation reports for all dead cows based on a sample we reviewed. We found the number of cows listed on the condemnation reports supported the number listed on the monthly inventory reports; however, SCDC has not complied with the requirements for visual/photographic evidence and verification by disinterested third party. This provides for the possibility of hiding theft with false reporting.

Agency personnel informed us they have begun to use a software package which will allow them to have a master inventory of the dairy and beef herds. They intend to use this software to account for all of their cows and cattle.

The software the agency is using is a part of the Dairy Herd Information Association (DHIA) package the farm subscribes to, which provides assistance to dairy managers regarding milk production, analysis of statistics, and record keeping. The DHIA is a national organization serving the dairy industry with dairy information services.

We obtained information regarding inventory control from the Texas Department of Criminal Justice farms office. In Texas, each prison farm unit completes a continual herd count, a monthly count, and an annual inventory. The continual count method requires counting during daily activities, such as when moving cattle from one pasture to another, penning cattle for working, etc. The monthly form is designed to use the traditional inventory formula: beginning balance, plus and minus herd events such as births, deaths and sales, equals ending inventory, which is compared to a head count. Discrepancies are reported to farm management and further procedures require the discrepancy be found.

Conclusion

SCDC farm operations personnel did not properly report the first notice of a possible cow theft incident, opting to conduct their own internal evaluation of the reported incident. A second report, sent to the SCDC's division of investigations, resulted in an investigation by the division and SLED. After the investigations, farm management crafted several internal controls designed to deter or detect future thefts. Some of the controls are effective. Other controls could be improved. The agency is in partial compliance with one control. Farm inventory methods lack proper accounting of cows for the purpose of detecting cow thefts. Farm management should revise its inventory methods so that it has a better likelihood of detecting cow theft and should follow all the policies it has developed.

Recommendations

9. The Department of Corrections should maintain a complete master inventory of its cattle and cow population, and update the master inventory with monthly herd events, such as deaths, births, purchases, and sales, to balance the monthly report.
10. The Department of Corrections should conduct all ear tag inventory counts not less than twice a year, as required by agency policy, to ensure the count balances to the master inventory and maintain a record of the results.
11. The Department of Corrections should follow its cow condemnation policy of documenting cow deaths to include documentation of visual/photographic and disinterested third party participation.
12. The Department of Corrections should ensure agency employees who, in the course of their duties, discover potential criminal acts or become aware of any violations of policies and procedures or improper acts, report such acts to the division of investigations through the appropriate channels.

Procurement of Tree Cutting Services

We were asked to review an incident where SCDC awarded procurement contracts to a tree cutting service that is owned by a former inmate of SCDC. During our audit, we reviewed the South Carolina Procurement Code and SCDC's policies and procedures on procurement. We did not find any language that would prohibit SCDC from contracting with a vendor who was a former inmate.

We reviewed all of the purchase orders for this tree cutting service from FY 00-01 through FY 06-07 and determined that SCDC used the service on three occasions. SCDC contracted with the vendor in 2001 and 2002 to remove trees from the director's residence. SCDC used the same vendor again in 2003 to remove a tree from Stevenson Correctional Institute.

The two purchase orders from 2001 and 2002 were prior to the current administration and, at the time, the company owner was not incarcerated, but was a former inmate. However, the owner was incarcerated at the time of the purchase order from 2003, which occurred under the current administration. This purchase order was handled by the maintenance staff and the approving authority did not extend beyond SCDC's maintenance division. We were unable to determine how the vendor was selected because the amount of the

procurement was below the threshold of requiring competitive bids. Also, the individuals who approved the use of this tree cutting service are no longer employed by SCDC. According to SCDC officials, use of this vendor has been banned by the agency. Table 2.16 illustrates these three procurements.

These amounts did not require competitive quotes because the estimates were under the \$1,500 threshold, which was changed to \$2,500 in 2006. Thus, SCDC did not violate the procurement code or its policies and procedures on procurement.

However, SCDC did not obtain price quotes from other suppliers before placing repeat orders with the tree cutting service. Both the procurement code and SCDC's policies and procedures state that when placing a repeat order with a previous supplier, a quote must be obtained when practical. SCDC did not do this the second or third time it used the tree cutting service. SCDC should try to obtain price quotes from other suppliers when making purchases under \$2,500.

We also looked at other states to determine if they prohibit former inmates from bidding on procurement contracts. Florida prohibits state agencies from contracting with vendors convicted of public entity crimes. However, there is no mention of state agencies contracting with inmates, or former inmates, that were convicted of other crimes. The Florida Department of Corrections has a policy that prohibits current inmates from establishing or engaging in a business or a profession while they are incarcerated.

**Table 2.16: Tree Cutting Service
Procurements by Inmate-Owned
Company, 2001 – 2003**

| DATE OF PURCHASE ORDER | AMOUNT | COMPETITIVE QUOTES OBTAINED |
|------------------------|---------|--------------------------------|
| October 23, 2001 | \$550 | Yes (2 quotes) |
| September 25, 2002 | \$650 | No |
| August 6, 2003 | \$1,250 | No |

Source: South Carolina Department of Corrections financial records.

According to Georgia's procurement manual, an agency must determine the responsiveness and responsibility of bidders and offerors before a contract can be awarded to a vendor. One of the examples provided in the procurement manual of non-responsible bidders/offerors includes criminal sanctions. Furthermore, a vendor/contractor can be debarred or suspended for numerous violations. Examples of violations include:

- Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offenses indicating a lack of business integrity or business honesty, which currently, seriously, and directly affects responsibility as a state vendor.
- Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals.
- Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a private contract or subcontract, or in the performance in the contract or subcontract.
- Any other cause so serious and compelling as to affect responsibility as a state vendor, including debarment by another government entity.

We did not locate any laws, regulations, or policies and procedures that would prohibit a current or former inmate from bidding on a corrections procurement contract in North Carolina. Also, an official at the North Carolina Department of Corrections stated that it could not prohibit a former inmate and/or his business from bidding on a contract as long as all procurement procedures were properly followed. This official was also unaware of any situation in which a procurement contract was awarded to a current inmate, but if a situation such as that were to arise, the legal department would be contacted for further guidance.

Recommendation

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13. The Department of Corrections should obtain a quote when placing a repeat order with a vendor.

Chapter 2
Audit Results

National Institute of Corrections Review

In order to address certain audit objectives, we consulted with the National Institute of Corrections (NIC). This agency, within the U.S. Department of Justice, Federal Bureau of Prisons, contracts with experts in corrections to provide technical assistance to state and local correctional agencies.

The NIC reviewed a hostage incident that took place at Ridgeland Correctional Institution in November 2006 and an incident involving SCDC staff at Lee Correctional Facility in August 2005. In addition, the NIC reviewed SCDC's internal controls over keys, weapons, and ammunition. The NIC also reviewed SCDC personnel policies. The findings in these areas are discussed below. The full NIC report is available on our website.

Hostage Situations

We were asked to review SCDC's handling of hostage situations. In particular, we were asked to review a hostage situation that took place at Ridgeland Correctional Institution in November 2006 to determine if the agency complied with policies and procedures regarding the handling of such situations. To conduct this review, we requested the assistance of the National Institute of Corrections.

The NIC evaluated SCDC's written policies concerning emergency operations and compared them to similar policies of other entities. The NIC found SCDC's policies included all the organizational and response requirements needed to address emergencies that might arise.

The NIC also examined the issue of whether a tactical assault should take place when it becomes evident that a hostage is being harmed. According to the NIC, when a tactical assault involving lethal force is attempted, there is a 78% chance that someone will be either seriously injured or killed, while 97% of negotiated resolution efforts end successfully without loss of life, usually in 12 to 13 hours. In the Ridgeland hostage situation, the NIC concluded that SCDC's decision to rely on negotiations to resolve the situation was appropriate.

The NIC also examined the assertion that the "command center" had directed that non-lethal (less lethal) force would be used to subdue the inmate. According to the NIC:

This direction was described in the SITCON (situation control team) *After Action Report* and appears to have been provided to the SITCON Commander during the incident. It is not clear who specifically provided this direction or the context in which it was provided. Entries in this report indicate continuing concern for the

safety of the hostage should a tactical assault be attempted whether non-lethal (less lethal) or lethal weapons were used. Since the SITCON Commander at the time is no longer with the agency and is reportedly out of the country and therefore unavailable and none of those present in the command center that we have been able to question recall this specific direction; its origin, etc., remain unclear and speculative.

We did note elsewhere in other reports that SLED non-lethal weapons specialists were requested and were present on scene. It is reasonable to conclude that all assault options were considered and that the small size and concrete block construction of the room where the hostage was held could have given rise to legitimate concerns about ricochet, shoot-through, etc. as well as the much abbreviated target acquisition time in such close quarters. Under such circumstances, establishing that a clear field of fire existed to rule out unintended injury to the hostage or to assault team members would be very difficult and precarious. These considerations could lead to effective non-lethal (less lethal) force options being preferred since their use would eliminate some of the concerns discussed previously and mitigate the seriousness of others when compared to the lethal weapon options. It is important to note that the Crisis Negotiations Unit of the FBI – Quantico, Virginia reports in their statistical report of 5,518 hostage incidents that 44% of those where tactical assault was required for resolution involved the use of non-lethal (less lethal) force options.

Finally, the NIC reviewed SCDC's command structure. Specifically the NIC looked at who was in command during the incident. SCDC policy states that, in an emergency, "The Warden will be the Ultimate Commander." A separate policy dealing with command structure discusses the establishment of a command post and specifies that various staff may be present, including the SCDC agency director as well as the chief of the State Law Enforcement Division. The policy further states that the commander will coordinate activities within the command post.

The NIC concluded that the actions taken by SCDC relating to command were not inconsistent or unexpected given the situation. The NIC found no inconsistency in the director's role in the incident as it relates to the Department's policy and procedures in this area nor was it inconsistent with what the NIC could realistically expect to occur in such an incident in any jurisdiction where the agency head was present on site, fully briefed and dealing with such life and death issues as existed in this incident. However, the NIC recommended that SCDC incorporate a more flexible and functional command philosophy similar to that found in the National Incident Management System used by the Federal Emergency Management Administration. SCDC responded that it agreed with this recommendation and would revise its policies.

Recommendation

14. In accordance with the recommendation of the National Institute of Corrections, the Department of Corrections should revise its policies to incorporate a more flexible and functional command philosophy.
-

Knife Incident

We were asked to review a specific incident of alleged harassment at Lee Correctional Institution. In conducting our review, we requested the assistance of the National Institute of Corrections (NIC). The NIC cited several concerns with the actions of SCDC staff during this incident.

In this incident, which occurred in August 2005, a supervisor provided an inmate with a homemade knife (or shank) for the purpose of conducting a training exercise on two correctional officers to use proper pat down and search procedures. However, it was alleged that one of the correctional officers involved considered the incident to be retaliation for complaints of sexual harassment.

The NIC noted that the supervisor's intent was to point out the importance of conducting appropriate searches. The NIC concluded that the supervisor's method for demonstrating the importance of proper searches was not acceptable. Chief among the problems was the decision to use a real weapon when another item could have been used. The NIC also stated that the use of an inmate as part of the test is generally not a good practice. The NIC noted that, while the threat of real danger to the staff was minimal, it could not be completely discounted. It was recommended that SCDC develop a written policy concerning security system checks. They recommended the policy address the planning of such tests, specify that inmates are not to be used, and require that such checks not result in the disciplining of staff. SCDC indicated it plans to adopt such a policy.

SCDC disciplinary records reveal no sexual harassment or hostile work environment complaints filed against the supervisor by either of the two officers involved prior to the August incident. However, one of the officers filed a complaint about two weeks after the incident, in which the officer expressed concern about potential retaliation by the supervisor against the officers for filing the initial incident report regarding the knife incident.

According to an SCDC official, no formal disciplinary action was taken against either the supervisor or the officers involved in this incident. However, the supervisor that provided the knife to the inmate was verbally counseled on the use of an actual knife in such a situation.

Recommendation

15. In accordance with the recommendation of the National Institute of Corrections, the Department of Corrections should adopt a policy addressing security system checks that provides guidelines to follow during such procedures. This policy should address the planning of such tests, specify that inmates are not to be used, and specify that such checks are to be used to test security systems and should not result in the disciplining of staff.

Internal Controls Over Keys, Weapons, and Ammunition

We were asked to review the adequacy of agency internal controls for handling keys, weapons, and ammunition. In conducting our review, we requested the assistance of the National Institute of Corrections (NIC). The NIC found that SCDC did not have an extraordinary number of lost key incidents and was making a strong effort to minimize these incidents. The NIC found that SCDC's policies governing controls over weapons and ammunition were thorough and comprehensive.

Keys

The NIC's key control instrument contains 54 issues for review. Overall, the NIC found very limited opportunities for improvement. The NIC recommended that SCDC revise some of its written policies. The NIC recommended that SCDC conduct quarterly inventories of the lock shop and permanently issued keys. The NIC also recommended SCDC limit the number of master keys. SCDC agreed with the NIC recommendations and plans to revise its policies.

Based on a review of SCDC documentation, the NIC concluded that SCDC was not having an extraordinary number of lost key incidents. The NIC also observed that SCDC was making a strong effort to minimize the number of lost key incidents. The NIC noted that keys are lost and inmates alter and attempt to fabricate them in all jurisdictions and that such incidents will continue despite the best efforts of staff.

During the course of our review, SCDC provided us with a lost key log showing 13 lost key incidents between 2000 and 2007. The estimated cost of these incidents totaled approximately \$32,000. SCDC also had 10 incidents of inmates altering or manufacturing keys between 2000 and January 2008 at an estimated cost of approximately \$3,000.

Weapons and Ammunition

The NIC evaluated SCDC's written policies using the NIC's own model security audit instrument, as well as guidelines published by the American Correctional Association. The NIC found that, in general, SCDC's policies were thorough and comprehensive. The NIC did make recommendations to revise agency policies in the areas of weapons credentials and issuance, designation of an assistant armorer, training, and limiting armory access to personnel approved by the warden. SCDC responded that it agreed with these recommendations and would revise its policies.

The NIC also reviewed an incident where a revolver and six rounds of ammunition were discovered missing. The NIC concluded, based on a review of the investigative file, that the incident resulted from staff performance failure. According to the NIC, staff involved were disciplined. The weapon and ammunition have not been found and the case remains open.

Recommendations

16. In accordance with the recommendation of the National Institute of Corrections, the Department of Corrections should revise its policies relating to internal controls over keys to require quarterly inventories of the lock shop and permanent keys. SCDC should also revise its policies to limit the number of master keys.
17. In accordance with the recommendation of the National Institute of Corrections, the Department of Corrections should revise its policies relating to internal controls over weapons to require documentation of weapons credentials, designation of an assistant armorer, and limiting armory access to personnel approved by the warden.

Employee Job Satisfaction Data

The NIC also gathered various statistical information during its review that provides some understanding of employee job satisfaction at SCDC. One SCDC policy covering measures of employee satisfaction is ADM-11.04, "Employee Corrective Action." The NIC reviewed monthly statistics for FY 06-07 and FY 07-08. The data indicates that while the number of employee infractions requiring corrective action increased 22%, lesser actions, such as written warnings and disciplinary probation, account for much of the increase. According to the NIC, the trends towards less stringent sanctions in the face of greater numbers of violations does not appear to indicate a more punitive attitude on the part of the administration.

The report also covers employee grievance statistics for the same time period. According to the NIC, there was a slight increase in both grievances filed and grievances processed from FY 06-07 to FY 07-08. In addition, the NIC gathered discrimination statistics for the same time frame. It found that both discrimination and sexual harassment charges filed significantly increased from 2007 to 2008. However, the NIC was unable to formulate any trends or problem areas of interest to provide more specific information regarding employee grievances and discrimination statistics.

Finally, after reviewing the exit interview process, the NIC found the data gathered in this area difficult to assess due to the very low return rates of the exit interview forms. According to the NIC report, the statistical information provided could not be reviewed for insight into trends or problem areas. The NIC recommends SCDC improve its data collection techniques in order to better utilize the exit interview process to provide a better understanding of employee retention.

Overall, the NIC found SCDC policies and procedures are adequate in providing guidance and control of staff. The NIC also found ample processes in place for employees to grieve or appeal actions they feel are unjust. The NIC states that these processes appear to be administered in a professional manner that provides many checks and balances. However, the NIC cited issues with SCDC data collection methods regarding staff-related processes. The lack of data in this area created difficulties in formulating specific trends or problem areas in assessing the information.

Recommendations

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18. In accordance with the recommendation of the National Institute of Corrections, the Department of Corrections should adopt a more consistent, ongoing method of data collection regarding staff-related processes.
 19. In accordance with the recommendation of the National Institute of Corrections, the Department of Corrections should create an overall, systematic review of existing statistics to determine if or where there may be agency-wide or individual personnel issues.

Additional Issues

During the course of our review, requestors of this audit asked us to expand our audit scope to include a review of additional issues. We conducted some preliminary work and determined that, in some cases, other state agencies have the expertise necessary to appropriately evaluate these issues.

Salary Study

We were asked to compare the pay of SCDC correctional officers, wardens, and other operational staff to other states and to other agencies within South Carolina. The Budget and Control Board's (B&CB's) Office of Human Resources (OHR) has the capability and expertise to conduct salary studies and has done so in the past at various state agencies. A January 2005 OHR study of law enforcement officers included a review of correctional officers' pay.

In FY 05-06, SCDC's base pay adjustment figure of \$16.2 million included \$6.7 million in correctional officer pay adjustments. According to data collected by OHR from eight southeastern states, the southeastern average for the entry-level correctional officer in FY 08-09 was \$29,141 and South Carolina's average was \$26,603, which is a difference of 9.5%. In the 2005 study which included data from ten southeastern states, the southeastern average for the entry-level correctional officer was \$24,655 and South Carolina's average salary for that position was \$23,016, which is a difference of 7.12%.

OHR also participates in the southeastern states' salary survey that consists of a large sampling of jobs and salaries paid in other states. This could assist SCDC in analyzing its staff salaries.

Confidential License Plates on State Vehicles

We were also asked to review SCDC's use of confidential license plates to determine whether the agency has appropriately justified plate assignments.

SCDC has 950 vehicles, of which 90 (10%) have confidential plates. We requested information from SCDC regarding the need for confidential plates for these vehicles. According to SCDC:

- Thirty-nine vehicles are assigned to law enforcement officers, including the SCDC's Inspector General and investigative personnel, and K-9 agents.
- Thirty-six vehicles are assigned to SCDC's division of operations, including 28 wardens. These vehicles are used in emergency response, escape apprehension, labor crew supervision, and sensitive inmate transport.
- Eight vehicles are assigned to SCDC's division of programs and services who have emergency response duties relating to the entire physical plant, utilities and sanitation, and food services.
- One vehicle is assigned to SCDC's director.

An SCDC official noted that all but three of these vehicles are equipped with emergency equipment including radios, sirens, and lights, as well as storage for other emergency equipment and firearms. The official stated that it would not be prudent to have state identification on these vehicles. The official further stated that non-law enforcement employees assist in conducting surveillance on homes of family members after escapes and contraband intervention and confidential plates are needed for this purpose. Also, the official stated that SCDC continually monitors these assignments and that they have all been approved by the B&CB's state fleet management division.

The following employee positions are assigned vehicles with confidential plates:

- Director of the budget and resource management office.
- Director of the division of classification and inmate records.
- Division director and assistant director of the division of facilities management.
- Branch chief of food services.
- Director of the division of transportation.
- Director of the division of occupational safety and workers' compensation.
- Gasoline shop foreman.

In addition, 84 of the 90 employees who are provided vehicles with confidential plates commute in the vehicles, including 12 who commute at least 100 miles or more each day in the state vehicle. Four of these vehicles are assigned to law enforcement and eight list emergency response as the reason for the assignment. During the course of our review, SCDC stated that it intends to remove confidential tags from 13 of its vehicles.

Section 1-11-220 of the S.C. Code of Laws requires the Budget and Control Board to develop a state fleet management program. The goals of the program, as set forth in statute, include achieving maximum cost-effectiveness in the use of state-owned vehicles and eliminating unofficial and unauthorized use. Section 1-11-320 of the S.C. Code of Laws requires that the B&CB "...ensure that all state-owned motor vehicles are identified as such through the use of permanent state-government license plates and either state or agency seal decals. No vehicles shall be exempt from the requirements for identification except those exempted by the Board." This section exempts law enforcement officers in certain circumstances and with the approval of SLED. It also exempts vehicles carrying human service clients where privacy of the client is necessary.

State fleet management's 2003 management review states that, "It is an axiom within the governmental fleet management profession that one of the primary deterrents to unauthorized use is that vehicles be clearly marked as government property." This review also recommended that state agencies should carefully review requests for confidential plates and exemption from the seal identification requirement to ensure that such requests are justified, and are in compliance with the Motor Vehicle Management Act.

State fleet management approves exemptions from state vehicle identification requirements. SCDC's request for exemption for non-law enforcement vehicles is not a detailed listing by employee position or vehicle but rather a general explanation for why vehicles need confidential plates. A more detailed review of specific positions and vehicles may be needed to ensure that the exemption is justified. The B&CB's state fleet management division is the most appropriate agency to examine SCDC's use of confidential plates, and we are referring this issue to state fleet management for its review.

Agency Comments

Appendix



MARK SANFORD, Governor
JON OZMINT, Director

SCDC'S RESPONSE TO SUMMARY, SYNOPSIS AND LAC'S LIMITED-SCOPE REVIEW

For ease of reference and accuracy, the complete Summary, Synopsis and Limited-Scope Review, **with these responses embedded in the appropriate sections**, is available at: <http://www.doc.sc.gov/news/news.jsp>.

Overview of SCDC Response¹

Over the past five years, SCDC has been the most reviewed agency in state government. In addition to this LAC review, all or portions of the original false allegations leaked against this agency have been investigated or reviewed by SLED, the 3rd Circuit Solicitor's office, Clemson University, the Department of Health and Human Services, the Budget and Control Board, the Comptroller General's Office, and the U.S. Department of Justice's National Institute of Corrections.

We are gratified that eight reviews and this final report reached the same conclusion about the original allegations: many did not even warrant a consideration and the remainder were false.

Moreover, we are encouraged that two years of intense scrutiny of this large and complex agency found that this administration has improved public safety despite draconian budget cuts and rising inmate counts. And, we are pleased that multiple professional reviews and years of politically motivated scrutiny have revealed no fraud, no financial problems, and no mismanagement.

This remarkable outcome is especially gratifying since the allegations and review of this agency were largely directed and driven by a single senator who concealed his strong personal, political, and financial interests and bias against this agency: in other words, every possible stone has been turned.

Summary of SCDC responses to LAC/NIC Recommendations

There are 19 recommendations in this report. The agency is already in compliance with all or part of recommendations 1, 2, 5, 9, 10, 11, 12, 13, and 17. We intend to comply with recommendations 6, 14, 15, and 17. The litigious legal climate of our state and constitutional concerns will likely preclude compliance with all or part of recommendations 3, 4, 5, and 7. Recommendation 8, selling the director's house, simply echoes a politically motivated attempt to treat this house differently than other state provided housing - that is really a legislative issue. Recommendation 16 may be precluded by limited resources and staff. And, recommendations 18 and 19, regarding on-going culture surveys, would be worthless unless done by fair-minded professionals on a recurring basis, as we noted early in this process and as the National Institute of Corrections confirmed. This is also a legislative issue as both would require adequate and recurring funding.

Historical Review

Some review of the tortured and politicized process behind this audit is appropriate, since we are now over two years removed from those beginnings.

¹ We apologize for the length of this response. However, that length is necessitated by two primary factors: (1) a final LAC report that is 70 pages in length and somewhat repetitive (including both a summary and a synopsis, in addition to the final report); and, (2) our duty to address the political tainting of and interference in the LAC process by a single senator, who might well have broken the law by his actions.

In August 2007, thirty false allegations aimed at this agency and many of our employees, were ‘leaked’ from our state senate. Most of the false allegations for that “Initial Staff Report” were marshaled by Senator Phil Leventis; a vocal opponent of this administration with clear personal, political, and financial relationships and interests in former agency employees terminated for racial discrimination and other misconduct. The allegations were made anonymously and without any corroboration, but they were placed into the ‘report,’ replete with sensational language such as ‘withholding food,’ ‘staff sex with inmates,’ ‘falsification of records,’ ‘abuse of inmates,’ ‘favoritism,’ ‘misuse of state property,’ and ‘senior management and obscenity.’ There was even an allegation that law enforcement officers from SCDC and SLED knowingly allowed a hostage to be raped for political purposes.

This audit was born of that failed witch hunt. After SLED found insufficient evidence to even warrant opening an investigation, the LAC was called in.

The false allegations leaked in the “Initial Staff Report” were damaging to the reputations of many dedicated and hardworking employees of this agency: folks who come to work in prisons filled with violent, angry, and dangerous inmates. Those employees deserve an apology for the lies that were leaked, but they will never hear one. Such libelous conduct is all too common in our political discourse and those few who purvey it do so while hiding behind their self-granted and self-serving immunity. Others are sucked into the slanderous cacophony only later to claim ignorance. Few are ever big enough to simply say: “I was wrong. I apologize.”

We are not a perfect agency. Our policies are not perfect and at times we fail to follow our own rules. We admit that we make mistakes and we welcome fair-minded assistance in identifying areas where we can improve. Our employees try hard to make us safer, but sometimes they get over-zealous, as with the Lee “inmate search” test incident.

According to the U.S. Chamber of Commerce, we operate in the state with the 7th worst civil justice system in the nation and like most state prison systems, we have long been the most costly insured of the IRF and the most sued agency a state where a ‘litigation lottery,’ ‘jackpot justice’ civil justice system is costly to this state; this agency is not to blame for that litigious environment.

Most importantly, we do not “withhold food,” we do not “falsify records,” we do not “abuse inmates,” we do not knowingly tolerate wrongdoing, and, we would never intentionally “allow a hostage to be raped.” Your data and field work confirmed as much and, with few exceptions, we believe that your report fairly identifies specific, past instances where our performance has fallen short. In this respect, we commend you.

However, we were hopeful that your report would also prove that the LAC will not be used for political purposes and that no individual senator, regardless of seniority, will be allowed to cast the shadow of bias, control, and partiality over the audit process. Disclosing personal, political, and financial interests and involvement by a senior senator would have required firm resolve to follow Generally Accepted Government Auditing (GAGA) Standards and great courage to withstand the retaliation that would follow. In this respect, you failed.

Our larger concern is this: if the LAC does not request legislation that prevents individual lawmakers from intervening in, directing, or influencing the work and process of the LAC, public and agency trust in the LAC will continue to decline. And, when lawmakers attempt to gain access to protected information and disclose protected information (even on television), it should be the LAC, not the audited agency that reports such misconduct and seeks enforcement of the law.

LAC’s Summary of Limited-Scope Review / Audit Results of SCDC

Summary - SCDC’s Funding

SCDC RESPONSE

We commend you for adding inflation and inmate counts at our suggestion. However, we are confounded that you mention growth in medical costs, without noting that medical inflation for the U.S. South Region was 34.9%.

Summary - Performance Measures

SCDC RESPONSE

We requested that your statements in this section include more precision. Specifically, your use of the term “several” is inaccurate and imprecise. First, your language is inaccurate since “several” is commonly defined as “being of a number of more than two or three but not many.” Your choice is imprecise since our FY 06-07 accountability report included **53** charts and graphs illustrating separate performance measures and you cite problems with **two**. In our response to your draft report, we simply asked that these specific numbers be used and we are confused as to why any professional auditor would knowingly choose less precision vice more precision.

As for your contentions about our state to state comparisons, we would have welcomed any “apples to apples” comparison of South Carolina’s correctional funding, spending or staffing to other states.² We are disappointed that you refused to do so, not just because that would have reflected positively on this agency, but because we think that the LAC should be willing to expose facts, even when those facts reveal inadequate resources.

Summary - Personnel Issues

SCDC RESPONSE

In the first paragraph, we think that you should have noted that the NIC also reviewed SCDC’s personnel practices and also found no favoritism: *“There are ample processes in place for employees to grieve or appeal actions that feel are unjust. These processes appear to be administered in a professional manner that provides many checks and balances and independent review installed to best insure impartiality in decision making.”*

In the second paragraph of this section, we requested that you be more precise and include the following language: “In our random sample of 71 job announcements, we found two (3%) where SCDC did not comply with its policies: In one SCDC did not comply with its policies, and in the second a mathematical error was never detected. This second mistake resulted in the incorrect applicant being selected.” To the extent that your language implies that we selected the incorrect applicant more than once, this paragraph is false. Again, we believe that professional auditors should err on the side of more precision, not less.

In the final paragraph of this section, dealing with courtesy interviews, we do not understand why you failed to note that a significant number of our courtesy interviews stem from legislative requests. While we agree with your recommendation and intended to end the practice, we think that you should have included this fact.

Summary - SCDC’S Inmate Feeding Policies

SCDC RESPONSE

SCDC Policy, ADM-16.05 provides that ‘food will not be withheld due to disciplinary action...’ Instead, our **written** policies simply allow inmates to choose not to participate in any voluntary evolution, including but not limited to meals, by their words or by their conduct.

In fact, our policies specifically limit the withholding of food, or feeding of special diets, from/to inmates in ‘lock up’ settings to circumstances where that inmate asks not to be fed or abuses or interferes with the meal process. This directly mirrors the policy in other states and ACA model policies. (See ACA Standard 4-4264.) Multiple federal courts have upheld identical policies.

Finally, in the years that this policy has been in effect, the legislative branch has not passed any legislation requiring that SCDC feed inmates who throw bodily waste, or otherwise fail to comply with prison rules. In fact, no such legislation has ever been proposed.”

Summary - Director’s Residence

SCDC RESPONSE

Our response to this subject is found in our response to the final Limited Scope Review, below. However, just as there were legitimate reasons for authorizing and providing the residence, there are legitimate policy and practical reasons that support keeping this option available. Furthermore, we believe that your inclusion of monthly utility costs without some context is

² As of September 15, 2009, our inmate population is 24,089. We currently have 2,692 Correctional Officers, a 9 to 1 ratio. We currently have 3,879 total uniformed security staff, a 6.2 to 1 ratio. On this issue, the LAC is simply wrong.

intentionally deceptive: we informed you that the house itself was completed in 1974 using inmate labor, at a total cost of \$38,000. As such, the house is not energy efficient by any accepted measure. Also, you failed to note that the house sits surrounded on three sides by prison property and utility costs include five security lights that burn daily from dusk till dawn.

Summary - Livestock

SCDC RESPONSE

You reviewed all of our **eleven** policies and procedures that serve as ‘controls’ over the cattle operation. You found **two** controls that were not sufficient and **two** instances when two other controls were not fully implemented by staff. Again, we think that you should err on the side of more precision, not less. However, we appreciate your suggestions in this regard and we think that this paragraph should note that we have already made appropriate changes to our policy.

MARGINAL NOTES AND FINAL REPORT COMMENTS ABOUT SCOPE IMPAIRMENT

SCDC RESPONSE

Your double-standard on this topic is disappointing. First, we do not think that a single email and message to employees impaired your efforts under GAGA Standards, especially since that message concluded with the following admonition: “If you choose to answer the survey, do so honestly.” Second, and most importantly, we are disappointed at your decision to violate GAGA Standards, in order to protect a member of the legislative branch.

The so-called “survey:” From the beginning, the problems with the proposed ‘survey’ were obvious: the survey was developed unilaterally in the politically charged atmosphere after the “leak” of the initial false allegations; it may have been influenced by Senator Leventis; it was a one-time survey, biased, full of leading and ‘loaded’ questions; and, your intention was to implement with no input from agency management, no plan for follow-up, and without comparative data or any plan for collecting the same.

Our concerns were immediately echoed by editorial pages across the state and were later confirmed by the NIC:

Determining the culture of a correctional facility, much less a correctional agency, is a complex, time consuming effort that requires the commitment of the agency administration and the dedication of the key staff designated to manage the project. The National Institute of Corrections uses the Organizational Culture Inventory....

...the complexity involved in conducting a large scale, comprehensive survey to determine the baseline of existing employee satisfaction followed by identified prescriptive initiatives and subsequent evaluative instruments to determine progress is clearly outside the scope of this audit.

We believe that you should have noted the following conclusion from the NIC Report, about the dangers and problems of such “one-time” surveys, in this section, as well:

In conclusion, the complexity involved in coordinating a large scale, comprehensive survey to determine the baseline of existing employee satisfaction followed by identified prescriptive initiatives and subsequent evaluative instruments to determine progress is clearly outside the scope of this project.

We made this point precisely in our letters to the LAC dated June 2, 2008, June 12, 2008, and June 27, 2008. In fact, we referenced the same continuing evaluative process and instrument used in the federal prison system and referenced in this NIC report. Then and now, we would welcome such a process.

Finally, we request that all of SCDC’s correspondence on this issue, including copies of the proposed “survey,” and the Director’s mainframe message and e-mail, be attached to the final report and posted on your website. Those documents speak for themselves and include instructions to all employees to be truthful in responding.

By selectively ignoring the conclusions of the NIC subject matter experts, you give the appearance of blaming SCDC for your decision to abandon your flawed survey; in doing so, you diminish the credibility of your organization.

The LAC’s Violation of Generally Accepted Government Auditing Standards and assaults on the integrity and independence of the LAC process: Pursuant to GAGA Standards, you are required to report **all** impairments to

independence, actual or perceived. The standards in this regard are quite clear and specifically address “pressures,” and requests to “modify the scope” of any audit.

External Impairments:

Audit organizations must be free from external impairments to independence. Factors external to the audit organization may restrict the work or interfere with auditors' ability to form independent and objective opinions, findings, and conclusions. External impairments to independence occur when auditors are deterred from acting objectively and exercising professional skepticism by pressures, **actual or perceived**, from management and employees of the audited entity **or oversight organizations**. For example, under the following conditions, auditors may not have complete freedom to make an independent and objective judgment, thereby adversely affecting the audit:

- a. external interference or influence that could improperly limit or **modify the scope of an audit** or threaten to do so, including exerting pressure to inappropriately reduce the extent of work performed in order to reduce costs or fees;
- b. external interference with the selection or application of audit procedures or **in the selection of transactions to be examined**;

Generally Accepted Government Auditing Standards, July 2007 Revision, Chapter 3, General Standards, Section 3.10. (Emphasis added.)

The standards specifically require disclosure by governmental auditing entities, such as the LAC, that are subject to external influence or control by the legislative branch with limited discretion to decline audit requests:

When evaluating whether independence impairments exist either **in fact or appearance** with respect to the entities for which audit organizations perform audits or attestation engagements, auditors and audit organizations must take into account the three general classes of impairments to independence--personal, external, and organizational. If one or more of these impairments affects **or can be perceived to affect independence**, the audit organization (or auditor) should decline to perform the work--except in those situations in which an audit organization in a government entity, because of a legislative requirement or for other reasons, cannot decline to perform the work, **in which case the government audit organization must disclose the impairment(s) and modify the GAGAS compliance statement**. (See paragraphs 1.12 and 1.13.) *Generally Accepted Government Auditing Standards*, July 2007 Revision, Chapter 3, General Standards, Section 3.04. (Emphasis added.)

In fact, and by the admission of your auditor assigned to this case, your agency fell victim to organizational or external impairments to independence. In our response to your draft audit and our meetings with you, we made you aware of facts and documentation demonstrating that impairment. Below is a summary of the actual or perceived impairment to independence that you intentionally omitted.

In or around the fall of 2006, two SCDC nurses visited the office of Senator Phil Leventis to complain about racial discrimination and other wrongdoing by their supervisor and her assistant. Leventis replied that their supervisor worked on his campaigns. Instead of reporting these serious allegations to SCDC, SLED or any other appropriate authority, Leventis warned his campaign worker about these complaints and even identified the victims!³ In spite of Leventis' attempted cover-up, other SCDC employees eventually notified their chain of command of these problems.⁴ In April 2007, the Department's Inspector General's office opened an investigation into these allegations.⁵

The investigation took several months and revealed violations including: racial discrimination and creation of a hostile work environment; unprofessional conduct in the form of excessive profanity; allowing non-nursing staff to perform nursing functions; falsification of medical records; failure to account for controlled drugs; and, falsification of leave and attendance records.⁶ Investigators gathered records and interviewed dozens of current and former employees. Across racial lines,

³ See Investigative Report of Lloyd Greer and Ladell Grice, dated June 21, 2007, case # 30-0583, interview of former staff nurse, employee #030746, dated June 7, 2007.

⁴ See Investigative Report of Lloyd Greer and Ladell Grice, dated June 21, 2007, case # 30-0583

⁵ See letter to Senator Bryant dated March 12, 2009. By copy of this letter, Leventis' actions covering-up this initial report by tipping off the discriminators was specifically reported to senate leadership, including Senator Glenn McConnell and the Chairman of the Senate Ethics Committee, Senator Wes Hayes. Apparently, no action was taken.

⁶ The appropriate licensing authority, the Nursing Board, was also notified of the misconduct of these two nurses. Even knowing the nature of their misconduct, Senator Leventis testified on their behalf.

virtually all of these witnesses corroborated the complaints of discrimination.

Witnesses stated that this supervisor used the terms “n_____” and “roid.” They stated that she belittled and harassed African-American medical staff and recounted instances when she refused to treat black officers who were injured or ill.⁷

The overwhelming nature of the evidence left our agency with no choice but to fire the two employees.⁸

Even before the investigation was completed, Leventis began a campaign of harassment and intimidation, intended to pressure and punish this agency. After warning his friend about the initial complaints, in December of 2006, Leventis placed a threatening phone call to her immediate supervisor, at home. Although Leventis has no prosecutorial authority, that supervisor’s sworn affidavit confirms that he threatened her with prosecution.⁹

Angered by the investigation of his “friend,” when the agency refused to cave to his initial pressure, Leventis requested ‘hearings’ into SCDC.¹⁰ The two former employees compiled a list of anonymous complaints against the agency that were circulated to certain senators and staff and ultimately ‘leaked’ to the media.¹¹

As media reports and editorials noted, leaks, unreliable information, politics, and incompetence sank the “hearings” and the entire mess was dumped on the Legislative Audit Council.¹² Apparently, Leventis failed to disclose his threatening phone call or his personal and political interests to his fellow senators when he requested hearings or when he joined in the LAC audit request.

Having lost his opportunity to repeat lies and grandstand in ‘hearings,’ Leventis began a wasteful campaign of requests and harassment.¹³ Almost immediately, he began calling for removal of the SCDC Director and since April of 2007, he has sent 19 costly and time consuming requests for records to SCDC, often repeating requests for the same information: a 300% increase over the previous four years.¹⁴

He even testified before the State Human Grievance Panel on behalf of both of these employees, while they both had pending lawsuits seeking financial compensation from state taxpayers!¹⁵

Leventis also changed his finance subcommittee assignment, ensuring that he was a member of the subcommittee with responsibility for SCDC’s budget. On that subcommittee, he introduced a series of budget provisos aimed directly at me and senior staff of SCDC. His efforts in this regard were so transparent that his senate colleagues referred to his efforts as the “get Ozmint” provisos.¹⁶

⁷ Even knowing the nature of her “gross misconduct,” and admitting that he “didn’t know” whether or not she had used the N-word, Senator Leventis testified on her behalf. See testimony of Phil Leventis, State Employee Grievance and Appeals Board hearing, May15, 2008 and January 27-28, 2009, pages 306-307.

⁸ In the interest of full disclosure, that recommendation was made by two deputy directors: the Human Resources Director and our Medical Director, Russell Campbell. Campbell has since been convicted of insurance fraud. Campbell’s crime involved fraudulently procuring life insurance on his father before he came to work for SCDC. His fraud was not discovered until after he began working for SCDC. On the same day that SCDC learned of the AG’s investigation into Campbell’s insurance fraud, he was suspended without pay. Mr. Campbell did not participate in the investigation. In fact, he was interviewed. The investigation was conducted by the SCDC Investigations Division. That Division is comprised of Class I, certified Law Enforcement Officers, sworn and trained at the Criminal Justice Academy. That Division reports to SCDC’s Inspector General, who reports only to the Director. No warden or division director has any authority or administrative control over that office.

⁹ This threatening phone call was reported to the Senate Ethics Committee by letter dated April 12, 2007, containing a copy of the affidavit. Apparently, the Senate Ethics Committee took no action.

¹⁰ June 6, 2007, statement by Senator Mike Fair during meeting with Director Ozmint and others.

¹¹ See letter from Senator Knotts dated February 22, 2007 and the agency response dated March 30, 2007.

¹² See “Initial Staff Report” dated August 20, 2007 and initial LAC audit request dated “08/27/02.”

¹³ See correspondence and requests for information from Leventis to SCDC, from May 2, 2007 through April 15, 2009.

¹⁴ Between January 2003 and April 2007, Senator Leventis sent only seven requests for information.

¹⁵ Such intervention is highly unusual and attorneys at most agencies, including SCDC, have never witnessed such intervention by a state senator. The recorded testimony was given on October 1, 2008, and January 27, 2009. Despite Senator Leventis’ efforts on her behalf, the panel upheld the agency’s decision to terminate in the first case; after that, Leventis’ campaign worker dropped her case.

¹⁶ Such reference was made by Senators Peeler, Ryberg and others during meetings of the SFC and on the Senate floor during this year’s budget debate. Even after his provisos were rejected, Leventis continues his campaign of intimidation. He has demanded to walk the grounds around the SCDC director’s house with senate staffers as recently as June 9, 2009. His sudden interest in this residence is even more transparent since the home has housed SCDC directors since 1972 and since other state employees also live in state provided housing; Leventis has served in the senate since 1981 and has never sponsored any proviso or legislation regarding state provided housing until he began his campaign of intimidation in this matter.

A signatory to this audit and a statutory 'member' of your 'organization' has clear and admitted personal and political relationships with former employees terminated by the management of this agency. He has testified to the same and has repeatedly called for the removal of the Agency Director. He has threatened an agency employee. He has initiated ex-parte communications with the Director and staff of the LAC, he requested a copy of a draft report that was protected by law, he has broken the law by disclosing the content of the final report and disclosing the same before completion, and he may well be under investigation for the same. He has introduced provisos for the sole purpose of exacting revenge; and, he is using his position as a senator to attempt to force this agency to use taxpayer funds to pay plaintiffs with litigation pending against this agency.¹⁷

To your credit, you have admitted that Senator Leventis requested the expansion of the scope of this audit and that he requested a copy of the draft report. The 'Initial Staff Report,' your letter dated June 16, 2009, and Leventis' own testimony prove that Senator Leventis was involved in directing the subject matter of this audit.¹⁸ Even after you denied his requests to see the draft report, Senator Leventis brazenly broke the law by seeking knowledge of the content of this final report and then did so again, on television, by disclosing the content of this report before publication: a clear violation of S.C. Section 2-15-120.¹⁹ Disappointingly, you took no action. Your decision not to seek enforcement of your own protective statutes sets a clear precedent and will give license, and perhaps legal protection, to those who choose to disclose protected information during future audits.

In our response to your draft report, we noted that Senator Leventis was not honest and forthcoming with the LAC or his senate colleagues about his personal, political and financial interests against SCDC. However, GAGA Standards require that any such impairment to independence be reported, even if auditors were not actually influenced or impaired, if the impairment "can be **perceived**" to affect independence.

Accordingly, in our response to your draft, we urged you to heed the plain language and the spirit of GAGA Standards, take the 'high road' and err on the side of disclosure.²⁰ We requested that the following disclosure be added to your report:

We are also required to report impairments to independence, in fact or appearance. Unbeknownst to us, one of the signatories to this audit request had a personal friendship with an SCDC employee who was investigated and subsequently terminated by the agency. That employee provided some information for the "Initial Staff Report" that resulted in this audit request, and we now know that the senator testified on behalf of that employee, introduced provisos aimed solely at the agency director and has also called for the removal of the agency director. During the course of this audit, that senator also communicated directly with our staff and requested the inclusion of other subject matter in this audit. While we have not been influenced by that potential personal bias, indeed we did not even know about this information until most of our work was completed, this could create a perception of an impairment to independence, and we are compelled to report the same.

Ironically, your decision to overlook this impairment is even more hypocritical because you noted our alleged impairment, consisting of a single email message to employees that concluded as follows: "If you choose to answer the survey, do so honestly."

Such language is hardly sinister and pales in comparison to the personal interests of a signatory and participant to this audit who: failed to disclose his personal, political, and financial interests in personnel and litigation decisions made by the agency; threatened an employee of this agency; used his senate position to attempt to take revenge on this agency; initiated direct contact with employees of the LAC during this audit; attempted to expand the scope of this audit; and, disclosed the content of this audit before release in violation of SC Code Section 2-15-120.

By failing to disclose *and by failing to err on the side of disclosure*, you have violated GAGA Standards and cast doubt on your willingness to resist legislative pressure and influence.

¹⁷ See letter from Leventis to FOIA Coordinator at SCDC received August 18, 2009 and testimony previously referenced in footnote 12.

¹⁸ This letter from LAC Director Bardin was in partial response to Director Ozmint's letter to LAC Audit Manager Perry Simpson, dated May 4, 2009. (See specifically the first and third paragraphs of page 3.)

¹⁹ See letter to Attorney General from Director Ozmint, dated September 14, 2009 and WIS-TV interview of Senator Leventis of the same date.

²⁰ In addition to the standards previously referenced, Standards 2.09 and 2.10 also specifically require disclosure.

Summary – NIC Review

SCDC RESPONSE

We were gratified that you joined us in our call for NIC assistance in this matter. In this final report, you selectively summarized the findings of the NIC subject matter experts and ignore those findings when they reflected positively on this agency. Since these areas were admittedly beyond your expertise, we think that you should have simply referred to the NIC report or quoted it completely.

LAC's Synopsis of Limited-Scope Review of SCDC

SCDC RESPONSE to Bullet #3

The NIC also reviewed SCDC's personnel practices and found no pattern of favoritism or deviation from policies. In fact, after reviewing the random sample of 71 job announcements, you found two (3%) where SCDC did not comply with its policies: In one SCDC did not comply with its policies, and in the second a mathematical error was never detected. **Only** the second mistake resulted in the incorrect applicant being selected.

SCDC RESPONSE to Bullet #8

Our response to this subject is located in our response to this topic in the main body of the report. However, just as there were legitimate reasons for authorizing and providing the residence in 1974, there are legitimate policy and practical reasons that support keeping this option available.

SCDC RESPONSE to Bullet #9

In our response to your draft report we requested that you note that you reviewed all of our eleven policies and procedures that serve as 'controls' over the cattle operation. You found **two** controls that were not sufficient and **two** instances when two other controls were not fully implemented by staff. Again, we think that you should err on the side of more precise language, not less. However, we appreciate your suggestions in this regard and we think that this paragraph should note that we have already made appropriate changes to our policy.

SCDC RESPONSE to Bullet #10

As you know but fail to note, when the current director first learned of the use of a vendor owned by the family of a **then current** inmate, the use of that vendor was banned.

Synopsis - Review of Issues by the National Institute of Corrections

SCDC RESPONSE to Bullet #1

The NIC experts stated: *"We do not see any inconsistency in the director's role in the incident as it relates to the Department's policy and procedures in this area nor is it inconsistent with what we could realistically expect to occur in such an incident in any jurisdiction where the agency head was present on site, fully briefed and dealing with such life and death issues as existed in this incident."*

SCDC RESPONSE to Bullet #2

The NIC experts actually stated: *"Absent the actual shank, the use of the inmate to test staff performance is significantly less problematic, but still not generally a good practice. It appears to us that the Major had strong suspicion that the inmate would not be searched properly, if searched at all, and intended to send a strong message to staff involved by using an actual shank of what could happen when search procedures were not followed.(sic). While his point was certainly a good one, his methodology for emphasizing its importance was not acceptable."*

Synopsis - Additional Issues

SCDC RESPONSE to Initial Paragraph

Since a senator with a clearly expressed personal and political bias against this agency attempted to expand and direct this audit, attempted to obtain documents and information protected by law, and disclosed the protected content of this audit, we believe that your failure to note his role in the expansion of this audit calls into doubt your willingness to protect and preserve the integrity of the LAC process.

SCDC RESPONSE to Bullet #2

As you are aware, this administration has reduced the total number of assigned vehicles and the number of assigned commuting vehicles, even as inmate counts have risen.

Chapter 1 - Introduction

Introduction - Scope and Methodology

SCDC RESPONSE to Third Paragraph

For the reasons stated below, we requested that the third paragraph of this section (the paragraph directly above) be amended. We still believe that this section should read as follows:

“We conducted this audit in accordance with generally accepted government auditing standards, with two exceptions. We have noted our view of scope impairment. However, we failed to note the impairment to independence created by the interference of a single senator. His conduct, including but not limited to disclosing the content of this report, was in violation of state law and has been referred to the State Law Enforcement Division.”

Introduction - Scope Impairment

SCDC RESPONSE

See our previous comments on this subject.

Chapter 2 - Audit Results

Audit Results - SCDC's Funding

SCDC RESPONSE

We were shocked that your draft report made no mention of inflation or inmate population growth. Accounting for inmate growth and inflation certainly makes the accomplishments of this agency even more remarkable and the funding of this agency less adequate. You jeopardize your own credibility when you fail to account for such important cost drivers in your charts and calculations. By any objective measure, the state spends less per inmate than 48 other states; thousands less than our immediate neighbors to the north and south. Yet, your report fails to recommend that the legislature adequately fund this agency.

Audit Results – SCDC's Funding - Total Expenditures

SCDC RESPONSE after Third Paragraph

We strongly suggested that the LAC modify this section to account for increased inmate population and inflation by including the following chart.

SCDC's Average Daily Inmate Count

| <u>Fiscal Year</u> | <u>Average Daily Count</u> | <u>South Region Inflation</u> |
|--------------------|----------------------------|-------------------------------|
| 99-00 | 21,028 | 3.2% |
| 00-01 | 21,055 | 2.3% |
| 01-02 | 21,809 | 1.3% |
| 02-03 | 22,939 | 2.3% |
| 03-04 | 23,222 | 2.5% |
| 04-05 | 22,970 | 3.6% |
| 05-06 | 22,964 | 3.4% |
| 06-07 | 23,437 | 2.9% |
| 07-08 | 23,958 | 4.2% |
| 08-09 | 24,081 | |

We requested that this information be added to each chart and summary statement throughout this section. Doing so would have added precision, context and accuracy to this section of the report.

We requested that a sentence be added to the third paragraph on page 6: “However, inflation for the U.S. South Region was 25.7% for this period. The chart below shows inflation and the appropriations necessary to keep up with inflation.”

SCDC’s Appropriations and Inflation

| <u>Fiscal Year</u> | <u>Original Appropriation</u> | <u>Adjusted Appropriation</u> | <u>South Region Inflation Rate</u> | <u>Appropriation Needed to Maintain Inflationary Level</u> |
|--------------------|-------------------------------|-------------------------------|------------------------------------|--|
| 99-00 | 296,357,832 | 329,476,619 | 3.2% | 305,841,283 |
| 00-01 | 315,464,371 | 333,993,713 | 2.3% | 312,875,632 |
| 01-02 | 287,848,559 | 282,797,099 | 1.3% | 316,943,015 |
| 02-03 | 277,202,679 | 282,200,394 | 2.3% | 324,232,705 |
| 03-04 | 260,412,823 | 281,508,695 | 2.5% | 332,338,522 |
| 04-05 | 272,783,466 | 279,069,513 | 3.6% | 344,302,709 |
| 05-06 | 289,516,930 | 309,673,548 | 3.4% | 356,009,001 |
| 06-07 | 314,243,734 | 330,900,932 | 2.9% | 366,333,262 |
| 07-08 | 328,031,211 | 343,585,806 | 4.5% | 382,818,259 |

And, the last paragraph of this section on page 7 should be revised to account for inflation by including the following sentence: “When adjusted for 25.7% inflation since 1999-00, SCDC is managing 2,930 more inmates with \$54.8 million fewer appropriated dollars.”

Audit Results - SCDC’s Funding - Budget Requests

SCDC RESPONSE

We requested inclusion of another asterisk * and/or caveat to Table 2.6 for FY 04-05: “The actual appropriation in FY 04-05 included an incentive pay plan for correctional officers working at maximum and medium security prisons. The plan was proposed by the department but was not added to their budget request until after discussion with house and senate budget writers.

Audit Results – SCDC’s Funding - Table 2.6

SCDC RESPONSE TO TABLE 2.6

This table is inaccurate. We brought to your attention that the budget request data in two years was incorrect and provided you with copies of the documents submitted by SCDC. The response from your auditor was, “I have spoken with the folks over at the B&CB Budget division. They tell me they have gone through their records and their information checks with what is included in the table. They did note that the figures come from the ORIGINAL OPERATING BUDGET request submitted by SCDC in September of each year...”. The documents we submitted to the LAC were our September submissions which show that in FY04-05, SCDC requested \$27,509,865 in recurring State funds and \$16,339,055 in non-recurring State funds. In FY07-08, SCDC requested \$8,228,754 in recurring and \$29,750,000 in non-recurring State funds. We are compelled to correct this information and are confounded about why the LAC would ignore documentary evidence.

Audit Results – SCDC’s Funding - Other States

SCDC RESPONSE

We have key contacts with DOC’s in other states and do obtain relevant and accurate information for comparison, as needed.

Audit Results - SCDC's Funding - Medical and Food Costs and Inmate Growth

SCDC RESPONSE

We requested inclusion of the following chart regarding medical inflation be added.

Medical Inflation for the U.S. South Region

| <u>Fiscal Year</u> | <u>South Region Medical Inflation</u> |
|--------------------|---------------------------------------|
| 99-00 | 3.8% |
| 00-01 | 3.7% |
| 01-02 | 4.3% |
| 02-03 | 4.2% |
| 03-04 | 3.9% |
| 04-05 | 4.0% |
| 05-06 | 3.3% |
| 06-07 | 3.6% |
| 07-08 | 4.1% |

SCDC's increase in health care spending fell far below the 34.9% medical inflation rate for the same period."

Audit Results - Performance Measures

SCDC RESPONSE to Entire Section

SCDC's accountability reports and website include dozens of charts and graphs demonstrating performance indicators. We requested that the first sentence of the second paragraph of this section be made more precise as follows: "We reviewed the 53 charts and graphs demonstrating performance measures in SCDC's FY 06-07 accountability report and we question the reliability and validity of two. Out of the 53 charts, three compared SCDC with other states."

Finally, we specifically requested that the following conclusion from the NIC report be added at the end of this section, and we are at a loss as to why you would ignore this finding:

"It is very clear from the comparisons that SCDC operates the corrections system at an extremely low comparative cost to other departments in the region and does so with a staff compensated at a low rate of pay who are required to supervise more inmates on average than the majority of the other corrections systems in the region."

Audit Results - Performance Measures - Recommendations

SCDC RESPONSE to Both

As any objective comparison of correctional spending will confirm, we are in compliance with these recommendations. This agency operates with fewer resources per inmate and as percentage of state budget than at least 48 other states. We hoped the LAC would do the relatively simple work of making state to state comparisons. That you elected not to do so does not change those stubborn facts.

Audit Results - Personnel Issues

SCDC RESPONSE to Entire Section

You were not "unable" to complete a survey. Instead, you chose to abandon your flawed, one time "survey," which looked more like a political 'push poll.' The wisdom of that decision was confirmed by independent reviewers of that document and by the NIC review.

In this section, we also believe that context is important: SCDC has almost 6,000 employees working at 28 prisons and dozens of divisions across the state. Over the past 10 years, simply to maintain workforce levels, SCDC averaged hiring over 100 people each month.

We asked for inclusion of the following additional paragraph after the third paragraph of this section:

In 2003 and 2004, SCDC reviewed all of its personnel policies to address several issues, including allegations of double standards, such as simply moving senior bad performers from job to job and from location to location. As part of that effort, the agency reviewed all classes of employee offenses and the accompanying sanctions grid and made more offenses, including all integrity based offenses, punishable by up to termination, even for a first offense.

By memorandum dated July 1, 2004, all of SCDC's personnel policies were reissued, including these changes.

As this is the single largest 'personnel' policy change in the past ten years, we think that it should be referenced.

Finally, in order to be fair, we requested that you include mention of the NIC work and we specifically request that the following NIC conclusion be included at the end of this section:

"This review reveals that the SCDC has all the requisite procedural elements in place to effectively provide requisite guidance and control of staff. There are also ample processes in place for employees to grieve or appeal actions they feel are unjust. These processes appear to be administered in a professional manner that provides many checks and balances and independent review installed to best insure impartiality in decision-making."

Audit Results - Personnel Issues - Documentation of Hiring Process

Audit Results – Personnel Issues - Documentation of Selection Process

SCDC RESPONSE

Your audit did not reveal any instance wherein a written exercise was required as part of the selection process and the written exercise was not retained and included in the final records.

We already require that each member of the screening panel and selection panel initial each screening and/or score sheet.

Audit Results – Personnel Issues - Calculation of Related Experience

SCDC RESPONSE

To provide more specificity, we requested that the third sentence of the first paragraph of this section be changed as follows: "We found one instance when the documentation indicated that related experience points were improperly calculated." According to our HR staff, your assertions to the contrary are simply false.

Audit Results – Personnel Issues - Determination of Related Experience

SCDC RESPONSE

We believe that your auditor still fails to understand our process. In our process, candidates are scored on how their experience is **related** to the position, not simply on total experience. Here is an example that your auditor considered as an improper determination of related experience: Inmate Records announced an Admin Spec C position. The SCDC Additional Requirements were three years of clerical experience but did allow for the substitution of a Bachelor's degree for the

experience. Recruiting screened 101 applicants and forwarded to the selecting official 57 candidates that had either a Bachelor's degree or three or more years of clerical experience regardless of where this experience occurred. In other words, Recruiting screened broadly. The job description on the vacancy announcement clearly shows that this position works extensively with records, court documents, court officials, other law enforcement officials, etc. Your auditors had trouble understanding two things: (1) that more information other than what is on a candidate's profile can be discovered during the course of the actual interview and that information can be legitimately scored; and, (2) why the selection panel would give more points to a candidate with 10 years extensive clerical experience in a judicial, legal, law enforcement setting vs. a candidate that had 15 years extensive clerical experience in a hospital or business office setting. Although, the second candidate had 5 more years of clerical experience in office and business settings, that experience was not as relevant as the candidate who only had 10 years of clerical experience in judicial, legal and law enforcement settings.

Audit Results – Personnel Issues - Courtesy Interviews

SCDC RESPONSE

As you were informed but failed to note, courtesy interviews are often the result of specific requests by legislators. We intend to follow your recommendations and end all courtesy interviews.

Audit Results – Personnel Issues - Improper Screening of Applicants

SCDC RESPONSE

We requested that the following be added:

“For example, one of the cases referenced above involved an OTR driver, who did not meet the SCDC additional requirements, but was mistakenly not screened out for that reason. However, a criminal history check revealed deception on the application and he was removed before starting work for that reason. SCDC maintains that the initial mistake would have been caught before final approval, during mandatory reviews by the Classification and Compensation Branch and/or a subsequent review by the Assistant Division Director for Human Resources.”

Audit Results - Personnel Issues - Examples of Improper Selections

SCDC RESPONSE to Initial Paragraph

Your first two examples below were found in your random sample of 71 job announcements. Examples three and four were specific cases brought to your attention by former employees. There is little statistical value to the latter class of case.

Audit Results - Personnel Issues - Examples of Improper Selections – EXAMPLE #2

SCDC RESPONSE

We requested the addition of the following clause to the fourth sentence of this paragraph: “..., due to a mathematical error.”

Audit Results - Personnel Issues - Conclusion

SCDC RESPONSE

The NIC also reviewed SCDC's personnel policies and culture related issues and reached the following conclusion:

“This review reveals that the SCDC has all the requisite procedural elements in place to effectively provide requisite guidance and control of staff. There are also ample processes in place for employees to grieve or appeal actions they feel are unjust. These processes appear to be administered in a professional manner that provides many checks and balances and independent review installed to best insure impartiality in decision-making.”

Audit Results - Personnel Issues - Recommendations

SCDC RESPONSE

As we asked that you note, state OHR regulations and model policies do not require any of the actions/changes that you suggest in this section. In a state with a one-of-a-kind legislative agency that controls executive functions, such as HR, this seems especially relevant.

Unfortunately we suspect that one, and perhaps more, of your recommendations in this area will run afoul of legal principals, case law, and the best advice of lawyers who specialize in representing business and government employers. In a state with the 7th worse anti-business litigation environment in the nation, human resources policy decisions affecting 28 prisons with 6000 employees – from Allendale County to York County - must be made cautiously. We must be mindful of our state's pro-plaintiffs environment when contemplating changes to those policies. However, we will seek an opinion from outside employment counsel with regard to recommendations 3 and 4.

We intend to follow Recommendation 5, with regard to written exercises, since we already retain these. However, based on decades of interviewing experience and the advice of counsel specializing in employment law, we do not believe that interviews should be strictly limited to written questions: the interview process from individual to individual and interviewers and candidates should be free to engage in relevant and appropriate 'give and take' during interviews. Therefore, we will continue to follow Budget and Control Board OHR guidance and allow individual interviewers discretion in determining whether or not to maintain all written questions and notes.

We intend to follow recommendation 6.

Audit Results - Litigation Costs

SCDC RESPONSE

We requested that the following language be added to this section:

"A 2008 U.S. Chamber of Commerce study determined that South Carolina had the 7th worst lawsuit climate in the nation. This study also found that SC had the 5th worst civil justice system for predictions of civil jury verdicts and the 4th worst system for civil jury fairness."

We also requested addition of the following:

"The IRF raised its hourly rates for outside counsel in 2002, 2005, and again in 2008. Since 1999, the standard hourly rate for attorneys in South Carolina has increased from \$60.00/hour to \$80.00/hour and from \$90.00/hour to \$150.00/hour for attorneys with over 10 years experience in subspecialties. **This is a 90% increase.** These rates are approved by the Attorney General and are used by SCDC and most state agencies. In fact, any deviation from these rates must be approved by the Attorney General."

Audit Results - Litigation Costs - Claims Covered by the Insurance Reserve Fund

SCDC RESPONSE

We suggested the following change to the last sentence of this paragraph: "SCDC has no control over the premiums paid and what cases the IRF chooses not to cover in any of its policies."

Audit Results – Litigation Costs - IRF Closed Cases & Table 2.9

SCDC RESPONSE

We requested that you change the last sentence of the second paragraph of this section as follows: “Therefore, according to the IRF, the data provided regarding lawsuits is only “immature” for part of 2007 and all of 2008 due to a two year lag in reporting and filing lawsuits.” Once again, we are confused as to why any auditor would choose less precision over more precision.

As for table 2.9 it has no other purpose than to incorrectly imply that it is unusual or unexpected for SCDC to generate the most legal expenses of any state agency. Of course, you could have inquired with other states to determine if DOC’s are commonly the most expensive litigants in their state. In fact, DOC’s are the most sued agencies in most states and in the federal government. Likewise, you should have at least asked the IRF how long SCDC has been its most costly and most sued insured. The IRF will not dispute that SCDC has consistently been its most costly and most sued insured agency. SCDC has more employees than the other agencies listed.

We suggested that you remove USC and the USC School of Medicine from this comparison and we are surprised that you did not. While comparing the working environment of prisons to those of Mental Health and Public Safety is comparing apples to oranges, comparing the working environment of Corrections to that of Higher Education is like comparing...well, working in a prison to working on a college campus. We believe that this comparison lacks any validity.

Audit Results - Litigation Costs - SCDC Claims

SCDC RESPONSE

As you well know, our inability to separate types of claims is due to our antiquated and inadequate information technology resources. The IRF has a similar problem.

Audit Results – Litigation Costs - Attorney Fees

SCDC RESPONSE

We were shocked that your draft report failed to account for any increase in attorneys’ fee rates over a nine year period. We requested inclusion of the following caveat below any table that includes attorneys’ fees:

“The IRF raised its hourly rates for outside counsel in 2002, 2005, and again in 2008. Since 1999, the standard hourly rate for attorneys in South Carolina has increased from \$60.00/hour to \$80.00/hour and from \$90.00/hour to \$150.00/hour for attorneys with over 10 years experience in subspecialties. **This is a 90% increase.** These rates are approved by the Attorney General and are used by SCDC and most state agencies. In fact, any deviation from these rates must be approved by the Attorney General.”

Audit Results – Litigation Costs - Settlements

SCDC RESPONSE

We suggested that the second sentence of the second paragraph of this section be changed to read as follows: “These civil verdicts were returned against two current SCDC employees and a former employee for civil conspiracy, a common law cause of action. In one case, there was never a finding that the employees acted outside of their official capacity.”

We requested that the first sentence of the third paragraph of this section be deleted or modified to read as follows:

“Agency officials stated that the agency is defending these employees because these employees were performing official duties and because these lawsuits are nothing more than attempts to circumvent the evidentiary standards and limits on damages contained in the S.C. Tort Claims Act. This is not unique to SCDC. The IRF confirms that the number of civil conspiracy claims brought against state and local employees and law enforcement officials has increased across covered

entities. Often, it is used as leverage with which to encourage the state to pay a settlement in claims filed against the agency. SCDC's general counsel provided us with a list of 20 such cases, filed in federal court alone. These civil conspiracy claims were filed against state and local board members, employees and law enforcement officers in their personal capacity within the past two years. Legislation has been introduced in the house to address this issue.”²¹

Audit Results - Litigation Costs - Premiums

SCDC RESPONSE

SCDC has no control over premium rates, policy language or exclusions. Premium increases are driven by a variety of factors, including inflation, which was 25.7% for this period. Prepaid Legal coverage can only be increased in increments set by the IRF. The rate is 10% of the **coverage**. Beginning in July 2002, SCDC increased prepaid legal coverage as follows:

SCDC PREPAID LEGAL COVERAGE

| <u>Effective Date</u> | <u>Coverage</u> | <u>Premium</u> |
|-----------------------|-----------------|----------------|
| FY 2001-02 | \$ 85,000 | \$ 8,500 |
| FY 2002-03 | \$ 85,000 | \$ 8,500 |
| FY 2003-04 | \$ 85,000 | \$ 8,500 |
| FY 2004-05 | \$ 85,000 | \$ 8,500 |
| FY 2005-06 | \$235,000 | \$23,500 |
| FY 2006-07 | \$235,000 | \$23,500 |
| FY 2007-08 | \$485,000 | \$48,500 |
| FY 2008-09 | \$485,000 | \$48,500 |

As SCDC has increased coverage and spent more on costs and fees, the amount paid in settlements for such cases has decreased from \$127,520 in 2005 to \$351 in 2008. (See Table 2.11)”

Audit Results – Litigation Costs - Conclusion

SCDC RESPONSE

We requested that the third sentence of the second paragraph be modified as follows: “The increase in fees is attributable to several factors, **including higher hourly rates** and the filing of more inmate cases that are not fully covered by the IRF’s general liability policy.”

Audit Results - SCDC Inmate Feeding Policies

SCDC RESPONSE

We requested that you include the following: “SCDC’s policies specifically limit the withholding of food, or feeding of special diets, from/to and inmates in ‘lock up’ settings to circumstances where that inmate asks not to be fed or abuses or interferes with the meal process. This directly mirrors the policy in other states and ACA model policies. (See ACA Standard 4-4264.)”

Audit Results - SCDC Inmate Feeding Policies – Attorney General’s Opinion

SCDC RESPONSE

We suggest that the third sentence of the first paragraph of this section be changed as follows: “The opinion notes four Federal court cases from other states where inmates refused to comply with rules and the immediate and foreseeable consequence was that the inmate forfeited the opportunity to eat.”

We suggest this change because these cases did not involve the use of food as a disciplinary tool. Instead, each of these courts specifically noted that when inmates interfere with the feeding process or choose not to eat, the disciplinary process is not necessarily invoked.

²¹ Representative Murrell Smith sponsored the legislation.

Audit Results - SCDC Inmate Feeding Policies - Other States and National Associations

SCDC RESPONSE

Since your inquiry to the ACA also misrepresented our policy - we do not withhold food as punishment or as a disciplinary measure, we only allow inmates to choose not to participate in any evolution – their reply was irrelevant. In fact, our policies mirror ACA policies.

Audit Results - SCDC Inmate Feeding Policies - SCDC Disciplinary Policies and Proced.

SCDC RESPONSE

We also requested that you include the following: “The legislature provided \$9,085,819 or \$1.08 per inmate per day for inmate food this year. By good stewardship, the agency was able to spend \$1.47. If SCDC adhered to the budget of the legislature, this issue would be largely moot, as the agency would deny all inmates almost one-third or one meal of their allotted 3,000 calories each and every day.”²²

We also asked for inclusion of the following: “Since this policy has been in effect, the legislative branch has not passed any legislation requiring that SCDC feed inmates who throw bodily waste, fail to wear their uniforms, expose themselves, or otherwise fail to comply with reasonable rules. In fact, no such legislation has even been proposed.”

Audit Results - SCDC Inmate Feeding Policies - Recommendation

SCDC RESPONSE

You still misrepresent our policies and correctional policies on this topic. In fact, as we have already explained: if we were to follow your recommendation and specifically reference meal evolutions to the exclusion of all other evolutions, we would greatly increase the likelihood that our policy would be found unconstitutional.

The reality is that our policies are an accurate and legally precise reflection of what federal courts have upheld, and your suggestion would undo that precision. Accordingly, we must reject this recommendation.

Audit Results - Director's Residence

SCDC RESPONSE

The director's residence is a creation of the legislature and it could be sold. It was built with inmate labor in 1974. In each of the intervening 35 years, the legislature has authorized the continued use of this house, and just this past session, lawmakers rejected attempts to treat this house differently than other state provided housing.

Let's be frank about this as well: This topic of inquiry simply mimics the partisan rants of Senator Leventis, who included a budget proviso on this topic last year and hopes to use this recommendation to force Director Ozmint's family to move out of the director's house. His hypocrisy and partisanship are clear: this is a suggestion that he has never made during decades of democratic administrations and one that he has never made about other state employees who live in state housing. It is another attempt to intimidate in his continuing campaign of retribution against the Agency Director.

While the opinions of the LAC represent one side of this issue, your approach to this topic has been unbalanced and one-sided: you fail to fairly note the policy and historical reason behind the house and you fail to count the dozens of other state employees, including those at educational entities, who live in state-owned and operated housing.²³ That bias is glaring and inexcusable.

The home was built in 1974, with inmate labor, after appropriate approvals, as a condition of employment for a former director. The larger purpose of the home was to make it easier to attract applicants to the director's job: a position filled by four people over five years prior to the current director and a position where the average tenure across the nation varies between 18 to 24 months.

²² Feeding inmates on the actual appropriations made for that purpose; now, that would be withholding food!

²³ Most of those other residents of state provided housing are not responsible for large and inherently dangerous 24/7 operations at more than thirty locations across the state.

Secondary purposes of providing homes to wardens/superintendents/directors were: to send a message to employees and citizens that these leaders felt safe living on prison property; to ensure that those leaders did have a personal stake in safe institutions; and, to make life a little easier for the families of directors... a job that is truly a 24/7 proposition.

As for the merits of your suggestion, selling the residence would produce no significant savings as the value of the home would be quite low. Also, any suggestion to do so during this time of depressed real estate would be comical, if not for the bad faith implications of doing so.

Your estimation of value ignores surrounding prison property, the numerous and large easements on the property and the nine prisons within one mile of the house. Even if the home was sold at over almost three times the value of the highest comparables in the surrounding neighborhood, doing so would not raise enough revenue to operate this agency for ten hours; the value of the home is much greater to the taxpayers in assisting future governors in attracting future directors.

Apparently, policy makers do not agree with your view of this issue: the LAC made the same recommendation in 1992 and again in 1999. Yet for over 15 years, four governors, ten general assemblies, and six corrections directors have rejected that recommendation. In fact, on a recent tour of the house, which is virtually surrounded by prison property, one state senator commented that selling the house would be “dumb” since the price would be low and the loss of a valuable asset to the state would be high.

Audit Results - Director's Residence - Recommendation

SCDC RESPONSE

We believe that the relatively negligible and short term financial gain to be derived from selling the house are far outweighed by the long term benefits of preserving it as an asset for the state and future administrations. Therefore, we do not intend to follow your recommendation in this regard.

Audit Results - Livestock

SCDC RESPONSE

We requested that the last sentence of this section be made more precise: “We reviewed eleven policies and procedures that serve as ‘controls’ over the cattle operation. In our opinion, two controls are not sufficient, and we found two instances when two other controls were not fully implemented by staff.”

Audit Results - Livestock - LAC Review of Internal Controls

SCDC RESPONSE

SCDC has complied with its policy for dairy cow/beef cattle verification with one exception: the second ear tag inventory at Wateree River CI in 2008. Dairy cows are accounted for on a monthly basis while beef cattle are accounted for on a semi-annual basis.

Since the policy changes following the theft incident, SCDC has been in compliance by having someone, who is a disinterested third party, observe visually the disposal of a carcass. The policy is being changed again, to denote that only photographic verification will be required.

Audit Results - Livestock - Recommendations

SCDC RESPONSE

As for recommendation 9, 10, and 11, we appreciate your assistance and we are already in compliance with these recommendations. With regard to recommendation 12, our policies already require the same.

Audit Results - Procurement of Tree Cutting Services

SCDC RESPONSE to Entire Section

No state law prohibits SCDC or any other state agency from contracting with a vendor who was a former inmate or that employs former inmates. Such a blanket prohibition would be somewhat inconsistent with statutory and policy requirements

to rehabilitate, reform and assist with re-entry into society.²⁴ In fact, SCDC policy does address the hiring of former inmates and access by former inmates to SCDC prisons and the LAC found no violations of those policies.

Audit Results - Procurement of Tree Cutting Services - Recommendation

SCDC RESPONSE

We are already in compliance with this recommendation.

Chapter 3 - National Institute of Corrections Review (NIC)

SCDC RESPONSE

The NIC also reviewed SCDC's personnel policies, culture and efficiency, as discussed previously.

NIC Review - Hostage Situations

SCDC RESPONSE

At no time during the negotiation/rescue process did SCDC and SLED forfeit the ability to use lethal force: we simply added the non-lethal option, so that both options would be available if needed. We want to be perfectly clear on this point: there is absolutely no documentation that states or suggests that lethal weapons were removed from Ridgeland Correctional Institution or from the SCDC and SLED personnel on the scene that night.

NIC Review - Hostage Situations - Recommendation

SCDC RESPONSE

The NIC recommended that OP-22.29 be revised to incorporate a command philosophy more in keeping with that found in the FEMA/NIMS incident management system.

We intend to follow this NIC recommendation, in part, because we believe that the FEMA/NIMS language is even more flexible than our current language.

NIC Review - Knife Incident

SCDC RESPONSE

The NIC concluded the following:

Absent the actual shank, the use of the use of the inmate to test staff performance is significantly less problematic, but still not generally a good practice. It appears to us that the Major had strong suspicion that the inmate would not be searched properly, if searched at all, and intended to send a strong message to staff involved by using an actual shank of what could happen when search procedures were not followed.(sic). While his point was certainly a good one, his methodology for emphasizing its importance was not acceptable. However, after the Major's suspicions were confirmed, one of the officers who failed to properly search the inmate claimed that the test was done in retaliation for her complaints of sexual harassment. However, a check of the Employee Relations Branch of the agency revealed that no such complaints had been made prior to this test of search practices.

NIC Review - Knife Incident - Recommendation

SCDC RESPONSE

We intend to implement the NIC recommendation.

²⁴ For example, even page 3 of your draft report cites S.C. Code, Section 24-1-20: "It shall be the policy of this State in the operation and management of the Department of Corrections to manage and conduct the Department in such a manner as will be consistent with the operation of a modern prison system and with the views of making the system self-sustaining, and that those convicted of violating the laws and sentenced, shall have humane treatment and be given opportunity, encouragement and training in the matter of reformation." (Emphasis added.)

NIC Review - Internal Controls Over Keys, Weapons, and Ammunition

Keys

SCDC RESPONSE

The NIC specifically stated: *“It is important to note that keys are lost and inmates alter and attempt to fabricate them in all jurisdictions and that such incidents will continue despite our best efforts.”*

NIC Review - Internal Controls Over Keys, Weapons, and Ammunition

Recommendations

SCDC RESPONSE

We are considering the fiscal and resource impacts of recommendation 16 relating to quarterly inventories. We have already taken steps to reduce the number of master keys.

We are already in compliance with recommendation 17.

NIC Review - Employee Job Satisfaction Data

SCDC RESPONSE

In fact, the NIC only mentioned SCDC’s staff related data collection methods twice, both on page 29 of the report. In the past, we have repeatedly made specific budget requests for IT infrastructure.

NIC Review - Employee Job Satisfaction Data - Recommendations

SCDC RESPONSE

We cannot comply with recommendations 18 and 19 until the legislature provides adequate funding for a host of higher priority needs in this agency and then provides adequate recurring funding for these two recommendations.

Chapter 4 - Additional Issues

Additional Issues - Confidential License Plates on State Vehicles

SCDC RESPONSE

Since the previous administration, SCDC has reduced the total number of assigned vehicles and the number of assigned commuting vehicles. Currently, out of 89 vehicles with assigned plates, 28 are assigned to Wardens, and 30 are assigned to certified Class I law enforcement officers in the Investigations Division, and 13 are assigned to certified Class II and III law enforcement officers. Out of the remaining 18, SCDC intends to remove confidential tags from 12. When SCDC removed commuting privileges from certain positions, the agency neglected to seek removal of the confidential plates for those vehicles. As a result of this audit, the agency has decided to do so. Out of the remaining 6 vehicles with confidential tags, two are spare K-9 and undercover vehicles to be retained for the Division of Investigations, one is assigned to the Division Director for Programs and Services, and two are assigned to Assistant Deputies in the Operations Division. The remaining vehicle, formerly utilized by the Division of Investigations, will be re-assigned for general pool usage with a non-confidential license plate.

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EXECUTIVE DIRECTOR

October 5, 2009

Thomas J. Bardin, Jr.
Director
South Carolina Legislative Audit Council
1331 Elmwood Ave, Suite 315
Columbia, S.C. 29201

Dear Mr. Bardin:

Thank you for the opportunity to comment on your audit, *A Limited-Scope Review of the Department of Corrections*. Concerning the issue of confidential tags, state agency heads must certify and justify any requests for the issuing of confidential tags for a state vehicle. State Fleet Management will review with the Department of Corrections (and the State Law Enforcement Division, where appropriate), the use of unmarked/confidential plates on department vehicles.

Sincerely,

A handwritten signature in cursive script that reads "Frank W. Fusco".

Frank W. Fusco

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