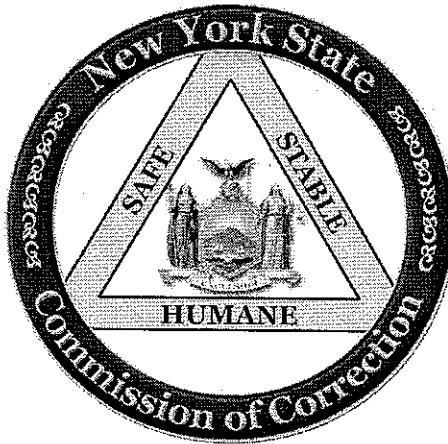


NEW YORK STATE COMMISSION OF CORRECTION

Albany, New York



**In the Matter of the Escape of Brian Collins,
an Inmate of the
Erie County Holding Center**

May 2010

Thomas A. Beilein
Chairman

Daniel L. Stewart
Commissioner

Phyllis Harrison-Ross, M.D.
Commissioner

PREFACE

Pursuant to Article 3, §45(2) and §45(3) of the New York State Correction Law, the New York State Commission of Correction conducted an investigation into the October 4, 2009 escape of inmate Brian Collins from the Erie County Holding Center in Buffalo, New York.

This report details the investigation conducted by Commission staff members Terrence Moran, Deborah Clark and Erin Purdy, under the direction of James E. Lawrence, Director of Operations. It describes the investigation, the Commission's findings and the actions necessitated and required as a result of those findings.

I. EXECUTIVE SUMMARY

On October 4, 2009 at approximately 12:16 p.m., Brian Collins, an inmate in the custody of the Erie County Sheriff's Office, escaped from the Erie County Holding Center facility in Buffalo, New York. The escape was a direct consequence of the failure of the Erie County Sheriff and his senior managers to implement and follow fundamental correctional and custody practices in accordance with New York State rules and regulations establishing *Minimum Standards* for the management of county jails and penitentiaries, as set forth as in Title 9 of the New York Codes, Rules and Regulations (9 NYCRR), and by a failure of Sheriff's Office managers to require staff's compliance with vital security regulations and fundamental physical security and supervision practices.

The escape occurred in the following manner:

- Collins, who was housed in the Gulf South Housing Area, cell #52, rendered the door locking mechanism in cell #52 inoperable hours prior to the escape by affixing a piece of metal to the door frame.
- After exiting his cell, he proceeded from the mezzanine level of Gulf South to the Gulf South ground floor, at which time he obtained a facility radio issued to jail deputies; the radio had been left unattended and unsecured in the Gulf South desk by a deputy assigned to the area.
- Collins then used the Gulf South desk telephone to call the Central Control Room and requested staff to open the door to the Gulf Outdoor Recreation area; a Central Control Room staff member opened the door without verifying the identity of the requestor.

- Collins then exited the Gulf South Housing area, the door to which was wedged open by Erie County Sheriff's Office deputies.
- Collins, while in possession of the facility radio, entered the outdoor recreation area and used a chair that had been carelessly left in the area by deputies to hoist himself up a basketball backboard. He then climbed through a gap between the recreation area roof beams and the wall to the south stairwell, gaining access to the Holding Center roof.
- Collins was not discovered missing until 1:45 p.m., 90 minutes after exiting his cell and after several supervisory tours of Collins' cell were completed by an Erie County Sheriff's Office deputy who failed to notice he was not present. His whereabouts were not discovered until 2:30 p.m. and he was not taken back into custody until approximately 4:00 p.m.

The escape of inmate Collins is the culmination of chronic administrative, managerial and supervisory failures of the Erie County Sheriff's Office that have been repeatedly brought to the attention of the Sheriff by the staff of the Commission during routine evaluations of the facility. During the course of this investigation, the Commission was dismayed to discover many of the same failures in security and supervision that were cited in the investigation of the escape of Ralph "Bucky" Phillips from the Erie County Correctional Facility in April 2006, more than three years prior to the escape of Brian Collins.¹ These included serious managerial and executive level operational and procedural breakdowns, intentional abandonment of security posts, dereliction of duty by supervisors and ineffective maintenance of security equipment.

¹ New York State Commission of Correction. August 2006. *In the Matter of the Escape of Ralph Phillips, an Inmate of the Erie County Correctional Facility*. Albany, NY.

Unlike Phillips, Collins displayed overt conduct that revealed to staff and management at the Erie County Holding Center that he was a high-risk inmate, who was a serious threat to escape from custody. Throughout his incarceration at the Erie County Holding Center from January through September 2009, it was increasingly and abundantly clear to the managers and staff of the Erie County Sheriff's Office that Collins was an inordinately high escape risk, a danger to the facility and its staff and to the public: Collins had been discovered by staff and by management to persistently attempt to make or acquire escape and weapons paraphernalia and had been observed and reported to have engaged in surveying or "casing" the security architecture of the facility. Still, both management and staff failed to prevent Collins' escape. To have provided such an obviously high-risk prisoner with both the means and opportunity to escape constitutes negligence and dereliction of duty on the part of Sheriff Timothy Howard and executives of the Erie County Sheriff's Office and its ultimate failure as a governmental public protection organization.

The report illustrates that several Erie County Sheriff's Office uniformed line personnel assigned to the Holding Center demonstrated a blatant disregard for their duties in maintaining facility safety and security which directly contributed to the escape of Collins. Those line staff assigned to directly supervise Collins were also derelict in the performance of their duties.

Furthermore, an Erie County Sheriff's Office supervisor failed to supervise and direct subordinate staff assigned to supervise Collins and failed to supervise subordinate staff assigned to adjacent housing areas. The supervisor was present during and complicit in personnel actions that violated numerous state regulations and contributed to Collins' escape. The supervisor failed to perform his duty to address and correct these lapses and failures by line staff.

As this report will show, Sheriff Howard, his executives, and his jail management in the Erie County Sheriff's Office are either incapable of or unwilling to sustain operation of the Erie County Holding Center in accordance with key New York State laws, rules and regulations establishing minimum standards and with basic safety and security practices.

Section II of this report, entitled "Methodology," describes the manner in which the investigation was conducted. Section III – "Background" – provides a descriptive overview of the Erie County Holding Center in downtown Buffalo, together with the social and criminal history of inmate Collins. Section IV of the report details Collins' course of incarceration and behaviors during the period January 31, 2009 through October 1, 2009. Section V of the report sets forth a factual account of the escape of Brian Collins from the Erie County Holding Center on October 4, 2009. Section VI represents the Commission's findings arising from this incident and Section VII sets forth the actions required of Sheriff Howard and the executives, managers and supervisors of his Erie County Sheriff's Office. Some additional recommendations are made.

II. METHODOLOGY

The New York State Commission of Correction (SCOC) learned of the October 4, 2009 escape of inmate Brian Collins approximately 11 hours after the event, approximately 9 ½ hours after the escape was detected by the Erie County Sheriff's Office and about seven hours after inmate Collins was returned to custody.² On October 5, 2009, Sheriff Timothy Howard was notified via faxed correspondence from Director of Operations James E. Lawrence that it was the Commission's intention to investigate the escape and directed to maintain for review by Commission staff various documents, operational records and surveillance records. From the onset of the investigation, the Erie County Sheriff's Office obstructed Commission progress, repeatedly refusing to accommodate the Commission's legally required inquiry. The account of events and findings of this report are based on examination of staff statements, written policies and procedures, housing area logbooks, transcripts of staff interviews with Commission investigators, inmate statements to Erie County Sheriff's Office investigators, operational documents, inmate records, photo and video evidence, and tours and inspection of various parts of the Holding Center, along with information obtained from previous on-site evaluations of the Holding Center.

Commission staff members Terrence Moran, Deborah Clark and Erin Purdy, at the direction of Director of Operations Lawrence, commenced an investigation on October 6, 2009 into the events leading to the escape and recapture of inmate Collins and traveled to the Erie County Holding Center in Buffalo for that purpose.

² Inmate escapes must be reported to the Commission immediately under 9 NYCRR §7022

On October 6, 2009 Commission staff informed the Erie County Holding Center administration that they would commence interviews with facility staff the next day. Such interviews are a normal course of action in investigations conducted by Commission staff pursuant to Correction Law §45 and §46.

On October 7, 2009, the Erie County Attorney's Office denied Commission staff's request to interview Erie County Sheriff's Office personnel, insisting that a representative from the County Attorney's office be present during interviews. Commission staff refused to agree to any such an arrangement for patently plain reasons: Representatives of the County Attorney's office are interested parties who would have a foreseeable chilling effect on Holding Center staff witnesses who potentially faced disciplinary action from their employer. Fear of retribution under these conditions is a legitimate concern. The interposition of interested parties interferes with fact-finding and impedes the progress of an investigation. Accordingly, the Commission moved to lawfully compel unimpeded access to the managers, supervisors, and uniformed staff of the Erie County Sheriff's Office who were involved in or were witness to events connected with the escape of inmate Collins.

Due to the litigation proceedings, the Commission was unable to interview Erie County Sheriff's Office staff until January 21, 2010. At those interviews, in addition to Commission staff, also present were Kristen Klein Wheaton, Esq., First Assistant County Attorney, and Robert Redin, Esq., representing Teamsters Local 264. The Commission is of the opinion that the presence of the County's legal advocates had a chilling effect on uniformed staff testimony and delayed, obstructed and interfered with the lawful state investigation. Consequently, through its defensive posture, the Sheriff's Office missed opportunities for timely identification of operational breakdowns and avenues for corrective action. While the tactical legal and political

benefit to the Sheriff and County is perhaps open to debate, there can be little doubt that the public interest in learning precisely what resulted in this severe breach of security – and in preventing such breaches in the future – was ill-served through this gamesmanship.

The following interviews took place:

STAFF

Deputy Michael Ciminelli
Deputy Tammy Cordova
Deputy Thomas Croome
Deputy Kyle Filipski
Deputy Michael Goedtel
Lieutenant Jacqueline Kretzmon
Sergeant Anthony LoDestro
Deputy Vincent McAllister
Deputy Theresa McCann
Deputy Alvaro Miller-Gonzalez
Sergeant Eugene Schuta
Deputy Owen Timm
Sergeant Alan Whalen

ASSIGNMENT ON OCTOBER 4, 2009

Central Control
Gulf East Housing Area
Outdoor Recreation
Gulf South Housing Area
Central Control
Tour Commander
Area Sergeant
Central Control
Gulf North Housing Area
Gulf East/South (Midnight)
Area Sergeant
Outdoor Recreation
Area Sergeant

Rather than risk interference in criminal cases pending at the time, the Commission of Correction elected, as a matter of policy and consistent with prior practice and precedent, not to attempt to interview inmate Collins or two other inmates, Ivan Melendez and Earl Howard, who may or may not have played a role in Collins' escape from the Erie County Holding Center.

In addition to its difficulties obtaining fresh and uncensored accounts of witnesses, the Commission was also hindered in its attempts to review and obtain documents and video materials. In a letter to Sheriff Howard dated October 14, 2009, Commission Chairman Thomas A. Beilein requested, in addition to various incident-related documents and photos, copies of videos of specific areas of the Erie County Holding Center, in accordance with Correction Law

§44(4) and §46(1). This information was to be forwarded to the Commission on or before October 20, 2009.

On October 20, 2009, a letter was faxed to Chairman Beilein from the Erie County Sheriff's Office, advising him that the facility camera system vendor was scheduled to train staff on the use of the system, which would cause a delay (until early November) in the submittal of the videos. Further, the Erie County Sheriff's Office failed to submit the requested documents.

Chairman Beilein informed Sheriff Howard in an October 21, 2009 letter that his delay in the submittal of videos was unacceptable. Sheriff Howard was reminded that copies of videos were made and provided to the Erie County Sheriff's Office Criminal Division within days of Collins' escape and that the Commission had afforded his office ample time to produce the documents requested. The information was again requested, with a due date of October 26, 2009.

On October 26, 2009, Chairman Beilein received a faxed letter from the Erie County Sheriff's Office pleading a further delay in the submittal of the videos and documentation requested, claiming that copies of photos had yet to be provided for mailing by the Sheriff's Office Detective Bureau, part of the Criminal Division under the direct control of Sheriff Howard.

On November 3, 2009, the Commission received from the Erie County Sheriff's Office criminal case files and related videos. The Sheriff's Office failed to submit the photos previously requested and made no reference to them in accompanying correspondence.

In a letter dated January 20, 2010, Chairman Beilein requested a copy of any escape investigation report and related findings prepared under Sheriff's Offices auspices. Yet another request for photos was made. On February 3, 2010, the Commission received a DVD containing

photos taken as a result of the escape. The Erie County Sheriff's Office delayed the submission of photos taken on the day of Collins' escape for nearly four (4) months. The response from the Erie County Sheriff's Office included no investigation report prepared by the Sheriff's Office as requested or any reference to an investigation having been conducted by the Sheriff's Office.

To date, no investigation report has been submitted to the Commission by the Erie County Sheriff's Office, nor has there been any documented indication that the Erie County Sheriff's Office investigated the Collins escape.

III. BACKGROUND

The Erie County Holding Center: Housing

The Erie County Holding Center is located at 40 Delaware Avenue, Buffalo, New York. The Holding Center is a seven-story high-rise facility designated to house pre-trial and sentenced inmates. In 2004, Correction Law §500-a was amended, at Erie County's request, to allow Erie County to house unarraigned prisoners arrested by law enforcement agencies within Erie County. Shortly thereafter, Erie County and the City of Buffalo entered into an agreement in which the Erie County Holding Center would house unarraigned prisoners arrested by the Buffalo Police Department.

The facility's reception/intake area is located on the ground floor and consists of:

- Three large holding pens which are rated to hold a combined total of 56 inmates for periods of time ranging from four hours (when holding more than one inmate) to 12 hours (when holding only one inmate);
- Five isolation cells which are rated to hold a combined total of 24 inmates for periods of time ranging from four hours (when holding more than one inmate) to 12 hours (when holding only one inmate); and
- Seven court holding pens which are rated to hold a combined total of 102 inmates for periods of time ranging from four hours (when holding more than one inmate) to 12 hours (when holding only one inmate). These pens are designated to hold inmates en route to and upon return from court appearances.

The Holding Center is comprised of a mixture of housing area designs which include:

- Traditional linear cell blocks ranging in size from eight cells (segregation “short” blocks) to 32 cells (“long” blocks), with an adjacent walkway for staff patrol;
- Dormitory - style housing with bunks arranged throughout;
- “Podular remote”- style housing in which cells/rooms are arranged around the outer wall of a common area with an officer’s post located adjacent to the housing with direct observation into the day area; and
- “Podular direct”- style housing in which cells/rooms are arranged around the outer wall of a common area with an officer posted inside the housing area.

The Erie County Holding Center: Incident Locale

The Gulf South Housing area from which Brian Collins escaped is a stand-alone podular direct-style housing area located on the 7th floor within the Gulf Housing section. The Gulf Housing array consists of three distinct housing areas that arc around a secure vestibule often referred to as “Gulf Sallyport.” Upon entering the sallyport from the main hallway, the three housing areas are arranged left to right as follows;; Gulf North, Gulf East and Gulf South. The sallyport and respective housing area doors are controlled remotely by the facility’s Central Control Room. At the time of Collins’ escape, the Gulf South Housing area was used to house high-security risk inmates.

The Gulf South Housing area consists of four 71 square-foot cells arrayed along the southeast wall. Two cells are located on the ground floor and two cells are located on the mezzanine level of the area. An officer’s workstation is located on the ground floor, which includes a common area where telephones and a shower are made available for inmate use. There are three video cameras positioned within the Gulf South Housing area. One camera is

positioned on the wall/ceiling behind the officer's post. This camera provides a view of the main common area, including tables, inmate telephone, shower and steps leading to the mezzanine level. The camera also provides a limited view of some of the Gulf South cell fronts, but not all.

A camera is positioned within the Gulf Housing sallyport above the sallyport entrance and shows the areas directly outside the Gulf South and Gulf East housing areas. The view does not show the Gulf North Housing area entrance door or the Gulf outdoor recreation entrance door.

Located directly off the Gulf Housing sallyport is the Gulf outdoor recreation area used by Brian Collins as an avenue for escape. Access to this area from the sallyport is accomplished via a steel security door controlled by the facility's Central Control Room. This rooftop recreation area is used to provide inmates from Gulf Housing and other areas with outdoor exercise, as required by 9 NYCRR, Part 7028 (Exercise). Its perimeter is enclosed with cyclone fencing and a roof structure consisting of I-beams and attached cyclone fencing. The area includes two basketball hoops that hang from opposite sides of the roof structure. The outdoor area's concrete floor is in poor physical condition and was noted in a January 14, 2008 letter to the sheriff as "crumbling to the extent that it creates a trip/fall hazard." It also creates a readily available source of contraband and can provide areas in which inmates can secrete contraband. To date, the Erie County Sheriff's Office has failed to take action to remedy this hazard.

Collins' Criminal History

Brian Collins is a three-time convicted violent felon, a known escape risk and a threat to public safety. This was known to Sheriff Howard and his executive, management and uniformed

staff of the Erie County Sheriff's Office prior to his escape. Collins' arrest and criminal record illustrates his resourcefulness.³

Most recently, Collins was arrested by the Buffalo Police Department and admitted to the Erie County Holding Center on January 31, 2009 on the charges of Criminal Possession Weapon 2nd degree, Criminal Possession Weapon 3rd, Criminal Possession Stolen Property 4th (Firearms), Escape 2nd, Resisting Arrest, and Obstructing Governmental Administration. Additionally, a U.S. Marshal detainer was on file.

During his most recent confinement in the Erie County Holding Center, Collins was arrested on two occasions in connection with incidents that allegedly occurred inside the facility. Collins was arrested on August 26, 2009 when he was discovered in to be in possession of a metal object he was attempting to sharpen into, apparently, a tool, weapon or both, in his cell. Collins was arrested again on August 29, 2009 when he was found to be in possession of a waist chain securing hook. Charges related to both these incidents are pending. Additionally, Collins was found in possession of a handcuff key that he had swallowed.

³ In February 2003, Collins was sentenced to four years in state prison after being found guilty of Attempted Robbery 1st degree. In December 2005 Collins was released to the supervision of the New York State Division of Parole. In February 2006, while being detained at the Buffalo Police Department Headquarters, Collins escaped by jumping out of a third-story window. He was apprehended.

IV. COLLINS' COURSE OF INCARCERATION AND BEHAVIOR

Upon arriving at the Erie County Holding Center on January 31, 2009, facility intake officers completed an initial risk assessment of Collins. A Suicide Screening Instrument (ADM 330) was duly completed and Collins scored a zero. A notation of "*Escape Risk*" was recorded on the Classification Notification form. The remainder of the intake process was unremarkable and Collins, who refused to be interviewed, Collins was classified in absentia. A calculation of his initial classification resulted in a score of 17 (an exceedingly high institutional and public risk score) and he was further noted as being a "Fed" (indicating a Federal detainer was on record) and designated as linear (highly secure, close custody) housing. At the conclusion of the intake process, Collins was placed in cell #17 in the Charlie Long Housing Area.

Possession of Handcuff Key – July 15, 2009

On Wednesday, July 15, 2009, Collins was seen to drop a handcuff key while using the chin-up bar in the Hotel outdoor recreation area, and it was believed he had then swallowed the key. Collins was transported to Buffalo General Hospital, where hospital staff were able to see the handcuff key on an x-ray. Upon his return to the Holding Center, Collins was moved to Gulf South Housing Area cell #51, and placed on constant supervision and administrative segregation. The Administrative Hearing Record form (labeled as Initial Review) classified Collins as a security and escape risk and listed the following restrictions/conditions:⁴

1. Constant supervision.

⁴ The conditions listed were not numbered by the facility managers, but were identified by checking off a menu of conditions. For the purposes of continuity and organization, these conditions and those listed hereinafter are numbered.

2. May not comingle (sic) with other inmates and will receive time out of cell alone.
3. Deputy/Supervisor escort. To be transported alone at all times.
4. Restrained with handcuffs and leg shackles whenever transported within the facility and outside the facility.
5. Strip search immediately prior to leaving and immediately upon return to the facility.
6. May not come into contact with other inmates or members of the public.
7. Attend alternate recreation alone, restraints to remain in place during recreation.
8. Non contact visitation alone, restraints will remain in place during visitation.
9. May not attend congregate worship services with the general population. Individual services will be provided.
10. May not attend law library. May submit written requests for legal material.
11. Remain 1 on 1 constant supervision until the handcuff key is passed from the inmate's system.
12. May not use a toilet, must use commode until handcuff key is passed.
13. May not use the telephone, nor enlist anyone to make a telephone call for you. May file a written request and arrangements will be made to provide you with a telephone call. All calls will be supervised, monitored and recorded.
14. Incoming and outgoing mail will be searched and read as necessary.

Handcuff Key Recovery Attempts

On July 30, 2009, Deputy Jason Hussar, while supervising Collins in Gulf South cell #51 observed Collins sitting on the toilet.. Deputy Hussar informed Collins that he was supposed to go the bathroom in the "buckets" and that the water to his toilet was not even on. Collins informed Deputy Hussar that his water was in fact on. Deputy Hussar ordered Collins to get off the toilet. Collins ignored the order, appeared to have a bowel movement and flushed before Deputy Hussar could get the water turned off. The key was never recovered.

Failure by the facility to follow essential protocols when depriving Collins of access to a functioning toilet/sink created ample opportunities for Collins to pass the handcuff key through a bowel movement and flush the key down the toilet, hide it within his person or cell, or give it to another inmate. It is important to note that Collins, up until this point, was forced to use a commode instead of a toilet since July 15, 2009, a period of 16 days. Plainly, he should not have been permitted to use the toilet; plainly, the water to the toilet should have been turned off.

As a result of this incident, inmate Collins was charged with violating the following rules:

- 106-B: Conduct that threatens the safety, security or good order of the facility.
- 107-J: Failure to immediately obey any order from a staff member.

Security Notice - August 4, 2009

On August 4, 2009, Deputy Michael Sluce wrote a memorandum to Sergeant David Webster stating that, during Gulf recreation on August 1, 2009, inmate Collins displayed suspicious behavior, which included pacing, counting his footsteps and seemingly taking note of where certain gates ended, the height of the fence line and position of building to the recreation fence. Inmate Collins also stopped several times and pushed against the fence line. A copy of Deputy Sluce's memo was attached to an Administrative Review packet, but there was no specific acknowledgement or other reference to the memo within the packet. Consequently all references to this incident and its import were buried in administrative paperwork.⁵

⁵ This material was found by Commission investigators among a large volume of submitted documents subsequent to the staff interview process.

Escape Paraphernalia – August 11, 2009

On Tuesday August 11, 2009 after returning to Gulf South Housing from Gulf outdoor recreation, inmate Collins took a shower. While Collins was in the shower, Deputy Sluce searched his cell and found several items considered contraband. According to a Disciplinary Report prepared by Deputy Sluce, the following items were found:

1. A ripped length of linen on Collins' desk under papers and an envelope;
2. Three empty rolls of toilet paper;
3. Several broken plastic fork tines with small bends in them, and;
4. Two metal paperclips (one straightened and slightly bent at one end) hidden on the top inside of door jamb. The other paper clip was bent at various angles and found inside the rubber sole insert of Collins' sneaker.

The Erie County Sheriff's Office did not report this incident to the Commission of Correction, as required by Minimum Standard §7022 and the *Reportable Incident Guidelines for County Correctional Facilities*. The contraband found in Collins' cell was considered to have posed a threat to the safety and security of the facility. This is evidenced by the fact that the Erie County Sheriff's Office charged Collins with multiple rules infractions, including possessing a dangerous item that may be used to facilitate an escape. Failure to report this incident constitutes a violation of state regulations as set forth in 9 NYCRR, §7022.2(a)(4) and §7022.2(b).

On August 11, 2009, Collins was served with a Disciplinary Report, charging him with the following rule infractions:

- 104-A-2: contraband/dangerous any item may be used to facilitate an escape;
- 104-B-12: contraband/misc. any item considered contraband by staff;
- 106-B: disorderly conduct which threatens the security and good order of the facility;

- 107 : disruption to facility operations and conduct which interferes with staff duties and disrupts any operation function, and;
- 108-B: escape attempt planning or acting in manner to escape

Collins received 600 days keep-lock and loss of privileges. The disciplinary hearing report did not specify the privileges taken from Collins and only the “loss of privileges” box was checked off. Apart from constituting a violation of 9 NYCRR Part 7006 Discipline, this lapse caused confusion as to what amenities Collins was entitled and further complicated his management.

On August 18, 2009, a review of Collins’ administrative order was completed by First Deputy Superintendent Barbara Leary. Unlike the previous three reviews (7/24, 7/31, and 8/7), a new Administrative Hearing Record Form was completed. The following restrictions/conditions were entered on the form:

1. Constant supervision.
2. May not commingle with other inmates – out of cell time alone.
3. Deputy/Supervisor escort – transport alone at all times.
4. Restrained with handcuffs and leg shackled whenever transported within or outside the facility.
5. To be strip searched immediately prior to leaving and immediately upon return to the facility.
6. May not come into contact with other inmates or members of the public.
7. Will attend recreation alone.
8. Restraints will remain in place during recreation – at all times supervisor present during recreation periods.
9. Non-contact visitation alone.

10. Restraints will remain in place during visitation.
11. May not attend congregate worship services with general population – may request ministerial visits in writing to the chaplain of your faith and individual services will be provided.
12. May not attend the law library. May submit written requests for specific legal materials and every reasonable effort will be made to provide them.
13. May not use the telephone, nor enlist anyone to make a telephone call.
14. May file a written request and arrangements may be made to provide you with a telephone call. All calls will be supervised, monitored, and recorded.
15. Incoming and outgoing mail will be searched and read as necessary.

The following notations were handwritten on Collins' Administrative Hearing Record. One of the notations was signed by First Deputy Superintendent Leary, while the others were not signed, leaving confusion as to what deprivations were ordered or authorized

16. Supervisor present anytime inmate out of cell (signed by Leary).
17. All items in tote (stored in a bag outside of Collins' cell)
18. Nothing in cell but mattress, blanket – no sheets.
19. Smock only.
20. Cell searched every time he leaves, & 1 every shift ⁶

Escape Paraphernalia August 25, 2009

On Tuesday, August 25, 2009, inmate Collins was involved in another incident while housed in Gulf South Housing Area cell #52. Following is the narrative information provided by Sergeant James Franklin of the Erie County Sheriff's Office as part of a Reportable Incident faxed to the Commission of Correction on August 26, 2009:

⁶ Items #17 - #20 appear to be listed as part of another administrative review completed on August 26, 2009. There is no signature provided for these entries.

On August 25, 2009, at approximately 2320 hours, I was notified by Sgt. Thompson to report to Gulf South. I responded immediately. When I arrived, Deputy Sengbusch explained to me that she saw inmate Collins sharpening something on his bed and it sounded like metal. I gathered my response team and entered Collins' cell. Collins was handcuffed and led away to be pat frisked. The response team searched the cell finding several nail files that appeared to have been used to sharpen something metallic. I went to where Collins was being pat frisked and asked Collins what he was using the nail files to sharpen. At this point, Collins became agitated with the pat frisk and started to struggle. I, along with Deputy Weir, guided Collins to the ground with body holds and continued the pat frisk. After a few minutes, Collins stopped struggling and was allowed to stand up facing the wall. Collins did not appear to be injured nor did complain of any injury at any time. At this point the response team informed me that scratch marks on the edge of the bed, pry marks on the vent and on the light cover. I instructed Deputy Weir that Collins needed to be stripped searched and to use cell G51 for the strip search. During the search, I found a piece of sharpened metal hidden within Collins' pants. During the search, Collins made several threats against Deputy Sluce, Deputy Weir, and myself including, "Sluce is going to get it penitentiary style.", and "I will see you on the outside! I only got seven years and I shoot better than all you." After the shank was found inmate Collins refused to comply with any more of the strip search, clenching his butt cheeks together and refusing to squat and cough. Collins was placed in a smock and taken to Isolation #4, cuffed and shackled with a waist chain, as a '1 on 1'. Also found within Collins' cell were a pair of shower shoes with a slit cut into the sole of the right shoe. I instructed Deputy Geary and Deputy Wanderlich to bag all items within the cell and to have them x-rayed at the County Court building. A small pen wrapped with string to a plastic fork and was found hidden within the Collins' mattress. Write to follow, use of force form filed, CoC notified, initial admin hearing done, Road patrol services notified.

The documentation provided suggests that the strip search of Collins was never completed subsequent to the confiscation of the weapon found in his pants. Such lack of a complete strip search created a safety and security hazard and threatened the safety of staff and inmates. Moreover, no thought or consideration was apparently given as to how Collins managed to acquire escape paraphernalia contraband while ordered to be on constant supervision.

At 3:25 a.m. on August 26, 2009, an *Administrative Hearing Record - Constant Observation Conditions and Restrictions* form was completed and ordered that Collins be placed

on Constant Supervision in Isolation Cell #4 due to his non-compliance with strip search and past history of escape attempts. The *Administrative Hearing Record - Constant Observation Conditions and Restrictions* form also listed the following conditions as being placed on Collins:

1. Deputy/Supervisor Escort
2. Handcuffs and Shackles
3. Non-contact visitation alone
4. Restraints will remain in place during visitation
5. Alternative recreation alone
6. May not attend library or law library. May request specific materials in writing.
7. All items stored outside constant observation area in tote while not in use

It should be noted that the above form differed from the *Administrative Hearing Record* form used on previous administrative orders for Collins and did not indicate whether previous restrictions (outlined in the August 18, 2009 form) were still in effect. Such lack of specificity potentially confuses staff and can result in security lapses. Also, a notation dated August 26, 2009 was written on Collins' August 18, 2009 Administrative Hearing Record form (with no signature), indicating the following conditions:

1. *All items in tote.*
2. *Nothing in cell but mattress, blanket – no sheets.*
3. *Smock only.*

On August 26, 2009, Brian Collins received a disciplinary report for the above referenced incident. He was charged with violating the following rules:

- *104.A-1: any shiv that may be classified as a weapon.*

- *105-A: destruction of county property.*
- *106-B: threatening the safety and security of the facility.*
- *114-C: possession of stolen property.*

The disciplinary hearing was held on August 26, 2009 in Collins' absence due to the Erie County Sheriff's Office determination that he was a security risk. The hearing report indicated that Collins pleaded not guilty to all charges and that he was found guilty of all charges based on the strength of the evidence.

According to the disciplinary hearing record, Collins received 365 days keep lock with loss of privileges for 365 days. The following boxes were checked off on the form indicating the evidence relied upon in the findings:

- Guilty due to officer's observations.
- inmate statement and review of physical evidence.
- Review of physical evidence.

As a result of this incident, Collins was charged criminally with a violation of Penal Law 205.25(2), Knowingly Making/Possessing Dangerous Contraband in Prison – 1st Degree.

Escape Paraphernalia - August 29, 2009

On Saturday, August 29, 2009, inmate Collins received a non-contact visit and remained in mechanical restraints during the visit. He was returned to the Gulf South Housing Area. While removing Collins' waist chain, a deputy discovered that the end hook of the chain was missing. Sergeant Webster ordered Collins to give him the hook and Collins refused. Sergeant Webster then ordered Collins to stand against the wall for a strip search. Collins attempted to

move away from the wall, at which time Sergeant Webster placed Collins in a restraint hold so the strip search could be performed. At that time, Collins spit the hook out of his mouth and it was recovered by Sergeant Webster. This calls into question the reliability of the mechanical restraints used by the Erie County Sheriff's Office and/or the inspections thereof. This incident was reported to the Commission of Correction⁷.

That same day, Collins received a disciplinary report while housed in Gulf South cell #52. He was charged with violating the following facility rules:

- *104A-1: Any item that by appearance or use may be classified as a weapon.*
- *105-C: destruction of county property.*
- *106-B: disorderly conduct which threatens the safety and good order of the facility.*
- *106-G: disorderly conduct insubordination.*
- *107-A: disrupts facility operations, tampering with security devices.*

Collins waived his right for a 24hour notice prior to a disciplinary hearing. The hearing was conducted on August 31, 2009 and again Collins was not permitted to attend his hearing for what the Erie County Sheriff's Office deemed "security reasons." Collins was found guilty of all charges based on officers' direct observations, review of incident report and review of evidence. Collins was given a sanction of 365 days keep-lock and loss of all privileges.

On September 1, 2009, First Deputy Superintendent Leary completed an *Administrative Hearing Record* form for Brian Collins. The form classified Collins as a security risk and escape risk. In addition to a notation of SMOCK ONLY (whereby he was required to wear a garment designed to prevent suicide attempt), the following restrictions were listed:

⁷ However, the Reportable Incident report incorrectly identified the facility as the Erie County Penitentiary. The inclusion of an incorrect facility on reportable incident forms has been an ongoing defect in Erie County's jail incident reporting.

1. Constant Supervision – 1:1 when out of cell with Supervisor and Deputy escort.
2. May not commingle with other inmates and will receive time out of cell alone.
3. Deputy/Supervisor escort – to be transported alone at all times.
4. Restrained with handcuffs and leg shackled whenever transported within/outside the facility.
5. To be strip searched immediately prior to leaving and immediately upon return to the facility. To be searched after leaving cell to recreation, visits, medical, etc.
6. May not come into contact with other inmates or members of the public.
7. Will attend alternative recreation alone.
8. Restraints to remain in place during recreation. At all times Supervisor present during recreation periods.
9. Non-contact visitation alone. Must be observed at all times. Restraints will remain on.
10. May not attend congregate worship services. Individual services will be provided.
11. May not attend the law library. Written requests for materials can be submitted.
12. All items stored outside of cell. Food trays removed immediately after eating, forks etc. inspected after use counted and logged.
13. Commissary items – keep lock only, stored in tote, used under supervision.
14. May not use the telephone, nor enlist anyone to make a telephone call for you.
15. May file a written request and arrangements may be made to provide you with a telephone call. All calls will be supervised, monitored and recorded.
16. Incoming and outgoing mail will be searched and read as necessary.
17. Cell searched every shift and logged – nothing in cell but mattress, blanket

As a result of this incident, Collins was charged criminally with a violation of Penal Law 205.25(2), Knowingly Making/Possessing Dangerous Contraband in Prison – 1st Degree.

The administrative order of September 1, 2009 was reviewed as required on September 8, September 18, September 24 and October 1, 2009 and renewed essentially unchanged.

Throughout the incarceration of Brian Collins at the Erie County Holding Center from January through September 2009, it remained abundantly clear to the executives, managers, and staff of the Erie County Sheriff's Office that Collins was an inordinately high escape risk, a danger to the facility and its staff and to the public. Collins had been discovered to persistently attempt to make and/or acquire escape and/or weapons paraphernalia and had been observed and reported to have engaged in surveying or "casing" the security architecture of the facility. To have provided such an obviously high-risk prisoner with both the means and opportunity to escape constitutes gross negligence and incompetence on the part of the executive leadership and management of the Erie County Sheriff's Office and demonstrates its ultimate failure as a governmental public protection organization.

V. ESCAPE OF BRIAN COLLINS - OCTOBER 4, 2009

At 6:00 a.m. on the morning of October 4, 2009, video surveillance of the Gulf sallyport camera showed the door to the Gulf South Housing area propped open with what appeared to be a door stop wedged underneath the door. The door to the Gulf East Housing area, secured to a wall-mounted grommet, was wide open. . Deputy Alvaro Miller-Gonzalez was assigned to the Gulf East and Gulf South Housing areas on the 11 p.m.-7 a.m. tour which commenced on October 3, 2009.

Deputy Miller-Gonzalez testified⁸ that it was his understanding that the entrance doors to Gulf East and Gulf North could be left open because inmates are locked in their cells. Further, the Erie County Sheriff's Office Policy #05.01.03 (*Security/Supervision: Runway Gates and Podular Housing Area Doors*) requires podular housing area doors (which includes Gulf Housing) to remain open on the 12 a.m.-8 a.m. shift. The policy of the Erie County Sheriff's Office constitutes a violation of 9 NYCRR §7003.1, Policy, since, in contrast to linear housing areas, there are no security gates between cell doors and housing area egress doors, to the effect that leaving such doors open fails "to ensure. . . proper facility safety and security. . ." as required by the regulation.

At approximately 6:57 a.m., Deputy Tammy Cordova arrived at the Gulf East Housing area for her 7:00 a.m.-3:00 p.m. shift. Seconds later, Deputy Miller-Gonzalez exited the Gulf East Housing area and departed through the Gulf sallyport, ending his shift. Deputy Miller-Gonzalez testified that he could not recall whether he completed an inmate population count in

⁸ Unless otherwise indicated, all references to *testimony* shall mean unsworn statements made to Commission investigators during personal interviews conducted as part of the Commission's investigation into the escape of Brian Collins.

conjunction with Deputy Cordova. Deputy Cordova testified that she conducted an inmate count by herself without Deputy Miller-Gonzalez. The failure of Deputies Miller-Gonzalez and Cordova to complete an inmate population in conjunction with each other is a violation of 9 NYCRR §7003.5.

Moments after Deputy Miller-Gonzalez's departure, Deputy Kyle Filipski arrived at the Gulf South Housing area for his 7:00 a.m.-3:00 p.m. shift. Within seconds of his arrival to Gulf South, he exited the area, leaving the security post unattended and proceeded to the Central Control Room. Deputy Filipski testified that there were no keys to Gulf South available upon his arrival to the area and he had to proceed to Central Control to obtain the keys. The Erie County Sheriff's Office management failed to inform Deputy Filipski that there would be no staff person passing keys, radio and other equipment to him upon his arrival to the Gulf South Housing area. Such failure on the part of the Erie County Sheriff's Office significantly contributed to the violation of Minimum Standard §7003.6(b) committed by Deputy Filipski (i.e., failure to secure possession of the necessary keys)

Deputy Miller-Gonzalez and Deputy Filipski did not complete an inmate count in conjunction with each other at the change of shift, as Deputy Miller-Gonzalez had already departed from Gulf Housing prior to Deputy Filipski's arrival. Deputy Filipski did not complete an inmate population count on his own. Erie County Sheriff's Office policy #05.01.00 (Inmate Population Counts) requires the off-going and on-coming officers to conduct inmate counts in conjunction with each other. The failure of Deputies Miller-Gonzalez and Filipski constitutes a violation of 9 NYCRR §7003.5.

Upon assuming the duties of the Gulf South Housing area, Deputy Filipski documented in the logbook that he completed a fire and safety check, including a security inspection of

windows, bars, etc. A review of the video of the Gulf South Housing Area revealed that Deputy Filipski remained at the Gulf South desk area and did not complete such a safety check. This constitutes a violation of 9 NYCRR §7003.6(c).

Deputy Filipski also made an entry in the Gulf South Housing Area logbook that there was no Detex Clock available. Such devices are used to mechanically record supervisory tours completed by staff as required by 9 NYCRR §7003.3(e). Deputy Filipski testified that the Erie County Sheriff's Office did not provide him with any type of device to mechanically record supervisory tours during his shift. Deputy Filipski also testified that this was not the first time he had been assigned to a housing area without a Detex Clock. The failure of the Erie County Sheriff's Office to provide time recording devices, as an adjunct to manual supervisory documentation, constitutes a violation of 9 NYCRR §7003.3(e) and is a continuation of the persistent failure of the Erie County Sheriff's Office to address this outstanding issue.⁹

Deputy Filipski also documented in the logbook that, upon assuming the Gulf South Housing post and 21 times thereafter, at exact 15 minute intervals, that a Visual Supervisory Tour (VST) was completed. Deputy Filipski testified that it was his understanding that such tours could be completed from the Gulf South Housing officer's station, as he could see the area's

⁹ This violation has been outstanding since it was first identified by Commission staff during a December 2007 Minimum Standard evaluation and outlined in a January 14, 2008 report to Sheriff Howard. In a February 13, 2008 response to the Commission's report, then Undersheriff Brian Doyle, writing on behalf of Sheriff Howard, stated that pursuant to county purchasing procedures, the department was evaluating equipment and proposals to update or replace the recording system.

In a May 20, 2008 letter to the Commission, Undersheriff Doyle stated that the Jail Management Division completed the testing of several watch tour systems, established their preference, and submitted the information to the County's Department of Information and Support Services to write a bid proposal in order to purchase the system from the vendor.

In a December 17, 2008 letter to the Commission, Undersheriff Doyle stated that the Jail Management Division had selected a watch tour system, however, an additional option was introduced and was being reviewed with the county. Doyle stated that a final decision should be made in early 2009. To date, no new facility-wide time recording system has been implemented.

cells and hear inmate activity. Deputy Filipski's assertion that each of the Gulf South cells is visible from the desk area is false, as one cannot visually verify the presence of an inmate or observe the interior of the cells without positioning oneself directly in front of cells. Title 9 NYCRR §7003.2(a)(1-2) defines a supervisory visit as:

a personal visual observation of each individual prisoner by facility staff responsible for the care and custody of such prisoners to monitor their presence and proper conduct and a personal visual inspection of each occupied individual prisoner housing area and the area immediately surrounding such housing area by facility staff responsible for the care and custody of prisoners to ensure the safety, security and good order of the facility.

Further, Erie County Sheriff's Office Policy #05.08.00 (*Supervisory Tours*) essentially mirrors the requirements of §7003.2(a)(1-2). Deputy Filipski failed to make any general supervisory visits during his entire shift. His failure constitutes violations of 9 NYCRR §7003.2(a)(1-2), §7003.2(b), and §7003.3(c).

New York State regulations (9 NYCRR) §7003.2(b) define *General Supervision* as "the availability to prisoners of facility staff responsible for the care and custody of such prisoners which shall include supervisory visits at 30-minute intervals." Section 7003.3(c) requires that *General Supervision* be maintained when all prisoners are secured in their individual housing areas. Although Deputy Filipski documented in the Gulf South Housing logbook on 21 occasions that he completed a "Visual Supervisory Tour," video surveillance of the Gulf South Housing area camera revealed that he failed to maintain *General Supervision* and did not complete supervisory tours during his assignment to Gulf South on October 4, 2009. Each instance in which a supervisory tour was not completed as part of *General Supervision* constituted violations of Minimum Standards §7003.2(b) and §7003.3(c). Video records also showed Deputy Filipski occasionally sitting at the Gulf South Housing area desk with his feet

propped up on the desk; Deputy Filipski testified that he watched television while on duty in Gulf South.

“Visual Supervisory Tours,” apparently a term of art unique to the Holding Center, are not contemplated by 9 NYCRR §7003 as a type of inmate supervision in county correctional facilities. Moreover, the Erie County Sheriff’s Office Policy #JMD 05.08.00 (*Supervisory Tours*) does not address “Visual Supervisory Tours.” However, testimony given by several Erie County Sheriff’s Office line and supervisory staff revealed that “Visual Supervisory Tours” is a type of supervision accepted by the Erie County Sheriff’s Office management and is to be used when a mechanical recording device (Detex Clock) is not available for staff use. Further, several staff, Deputies Cordova and McCann among them, testified that it was their “understanding” that “Visual Supervisory Tours” were identical to general supervisory tours (minus the use of a Detex Clock), which require staff to visit each individual cell to visually verify that an inmate is present.

Upon assuming duty on the Gulf South Housing area post at 7:00 a.m., Deputy Filipski failed to secure the entrance door to Gulf South. At approximately 8:15 a.m., an unknown inmate exited the Gulf North Housing area and departed through the Gulf sallyport. This occurred while the entrance doors to the Gulf South and Gulf East (to which Deputy Cordova was assigned) Housing areas remained open. Sergeant Eugene Schuta was present in this area at the time and took no remedial action. This practice of leaving these doors open constitutes a violation of 9 NYCRR §7003.1. Inmates traversing through the Gulf sallyport have access to other housing areas.

The Gulf South entrance door remained propped open until approximately 8:30 a.m., when Deputy Filipski removed the door stop wedged underneath the door and Sergeant Schuta

closed the door. Throughout the remainder of the morning, the door to the Gulf South Housing area was either propped open or closed but not secured. On multiple occasions, inmates exited Gulf North and Gulf East Housing areas while the door to the Gulf South Housing area was unsecured. Erie County Sheriff's Office Policy #05.01.03 (*Security/Supervision: Runway Gates and Podular Housing Area Doors*) requires podular housing area doors (which includes Gulf Housing) to remain open during meal time lockdowns (12:00 p.m. to 1:00 p.m.) on the 8 a.m.– 4 p.m. shift. This policy and practice constitutes a violation of 9 NYCRR §7003.1 and is one of many examples of the failure of the Erie County Sheriff's Office management to secure housing area doors.¹⁰

At approximately 8:30 a.m., Brian Collins was placed in hand and ankle restraints and escorted to the Gulf Outdoor Recreation area by Sergeant Schuta and Deputy Filipski. The Gulf Outdoor Recreation area is used for inmates who are on disciplinary lockdown. Deputy Filipski periodically abandoned the Gulf South Housing area to spend time in the Gulf Outdoor Recreation area. During inmate Collin's time in the Gulf outdoor recreation area (8:30 a.m.-9:30

¹⁰ During a December 2007 Minimum Standard Evaluation and outlined in a January 14, 2008 report to Sheriff Howard, Commission of Correction staff cited the Erie County Sheriff's Office for failure to secure housing area doors.

In a February 13, 2008 response to the Commission's Evaluation report, then Undersheriff Doyle stated that housing area staff and supervisors are held accountable for non-compliance through the use of training and progressive discipline. Doyle also stated that the soon-to-be hiring of 12 front line supervisors will assist in this matter.

During a March 2008 site visit, Commission staff noted that all housing area doors were secured. Given the critical importance of long-term compliance, the Commission chose to keep the violation in open status.

During a July 2008 site visit, Commission staff observed the doors of a housing area and a remote central control room left unsecured. Accordingly, the violation remained in open status.

During an October 2008 site visit, Commission staff noted an improvement in the security of housing area doors. However, it was noted that housing area doors were left open during shift change, a practice the Erie County Sheriff's Office claimed was in place to allow for more timely responses to housing areas in emergency situations (occurring during shift change. Regardless of rationale, these lapses continue.

a.m.), Deputy Filipski failed to complete general supervisory tours. This violates state regulations as set forth in 9 NYCRR §7003.2(b) and §7003.3(c).

Video surveillance showed Deputy Cordova left her assigned post (Gulf East Housing) at 8:20 a.m. and entered the staff restroom in the Gulf sallyport. She did so without arranging for proper staff relief; nor did she secure the Gulf East inmates in their cells. Deputy Cordova then proceeded to the Gulf South outdoor recreation area and spent time either there or in the Gulf Sallyport. Between 8:20 a.m. and 9:05 a.m., Deputy Cordova periodically walked over to the Gulf East entrance door and either peered in through the window or entered Gulf East for a few seconds prior to exiting again. She returned to Gulf East at approximately 9:05 a.m. Cordova did not document in the logbook the instances during which she left Gulf East Housing. Sergeant Schuta was present at this time and took no action. Such actions by Deputy Cordova constitute violations of state regulations set forth in §7003.2(c)(1-4) and §7041.1. Sergeant Schuta, as the area supervisor, was derelict in his duty to supervise his subordinate staff (Deputies Cordova and Filipski), failing to intervene after post abandonment by both Deputies and after their failure to perform mandated active supervision and general supervisory tours.

At approximately 9:10 a.m., Deputy Filipski completed a search of Brian Collins' cell while Collins was in the Gulf Outdoor Recreation area (Erie County Sheriff's Office staff testified that Collins' cell was searched frequently due to previous incidents in which he was found to possess contraband). Deputy Filipski documented in the Gulf South logbook that no contraband was found.

At approximately 9:15 a.m., Deputy Filipski exited Gulf South, briefly entered Gulf East and then proceeded to the restroom in the Gulf Sallyport. While Deputy Filipski was in the bathroom, an unknown inmate exited Gulf North and then exited the Gulf Sallyport. All the

while, the Gulf South door was propped open. This constitutes a violation of 9 NYCRR §7003.1, as inmates traversing through the Gulf Sallyport had unfettered access to other housing areas.

Video surveillance showed that at approximately 9:30 a.m., inmate Collins returned to the Gulf South Housing Area. At that time, Deputy Filipski kicked the rubber/plastic door stop wedged underneath the Gulf South entrance door into the Gulf South common area. Sergeant Schuta entered Gulf South Housing and closed the entrance door behind him. Deputy Filipski removed the handcuffs and shackles from inmate Collins while he was in the Gulf South common area on the ground floor. Seconds later, Deputy Cordova walked from the Gulf North entrance and into Gulf South. Deputy Cordova was not properly relieved at her Gulf East post nor did she secure inmates in their cells. Again, Deputy Cordova's actions violated state regulations as set forth in 9 NYCRR §7003.2(c)(1-4) and §7041.1.

After his restraints were removed, inmate Collins then began his 15 minutes of "out of cell time," during which inmates housed in Gulf South can take a shower, make phone calls and spend time in the common area. Inmate Collins initially spent time talking on the inmate telephone on the ground floor common area. There is no evidence to suggest that he submitted a written request to use the telephone, as required by the October 1, 2009 deprivation order applied to him. Deputy Filipski then left Gulf South and entered Gulf East, leaving Sergeant Schuta alone with inmate Collins on the ground floor. Deputy Filipski testified that there are supposed to be two staff present anytime a Gulf South inmate is out of his cell. He did not secure the Gulf South door upon exiting. Further, the Gulf East door was not secured. Moments later, Deputy Filipski exited Gulf East with a portable mop bucket and entered Gulf South. Once again,

supervisory Sergeant Schuta was derelict in his duty to intervene in the failure of his subordinate staff to maintain supervision and occupation of a mandatory assigned post.

Inmate Collins was then issued cleaning supplies (i.e., broom, mop) by Deputy Filipski to clean his cell. Collins grabbed a push broom and walked up to his cell unescorted while Deputy Filipski and Sergeant Schuta remained near the Gulf South desk area. Collins entered his cell with the cleaning supplies and remained in his cell for the next few minutes. During this time, he was not supervised by Deputy Filipski or Sergeant Schuta, both of whom remained in the Gulf South common area on the ground floor.

After a short time, Collins exited his cell, removed his jumpsuit, and placed it on the heating vent next to his cell. He returned to his cell and dressed himself in a facility-issued suicide prevention smock. He then proceeded to the ground floor, grabbed a mop, and then returned to his cell. He mopped portions of his cell and then returned to the ground floor with the mop. Sergeant Schuta then provided Collins with a spray bottle containing cleaning fluid. Collins returned to his cell with the bottle, again unescorted. Moments later, Collins again exited his cell and proceeded to the ground floor, where he was handed what appeared to be paper towels from Sergeant Schuta. Collins then returned the bottle of cleaning fluid to the portable mop bucket. He returned to his cell unescorted. Just prior to entering his cell, Collins looked behind his right shoulder. He spent a few seconds in the cell, exited and then grabbed a push broom he left outside his cell moments earlier.

At approximately 9:37 a.m., inmate Collins entered his cell for a few seconds and then upon exiting, affixed a four-inch metal strip to the cell door frame locking mechanism, rendering the mechanism inoperable. Collins later admitted that he acquired the metal strip from the latch of a waist restraint that had been previously used on him. Upon exiting his cell, Collins, holding

a push broom, picked up a dust pan on the floor outside his cell, proceeded to the ground floor, and returned the push broom and dust pan.

At approximately 9:38 a.m., Collins was allowed to walk up the Gulf South Housing mezzanine stairs without staff escort, return to his cell, and closed his cell door by himself. Neither Deputy Filipski nor Sergeant Schuta took action to verify that Collins' door was secured. Deputy Filipski testified that he thought he heard Collins' cell door click shut when returning from his "out of cell time." Sergeant Schuta testified that he did not verify that Collins' cell door was secured and acknowledged that he should have ordered Deputy Filipski to go with Collins. A review of the video from the Gulf South Housing Area cameras reveals no staff member verified that Collins' cell door was secured from the time he placed himself into his cell (at 9:38 a.m.) until the time he escaped. Collins' cell door remained unsecured for over two and one-half hours prior to his escape.

At approximately 9:40 a.m., inmate Earl Howard, housed in cell #49, was allowed out of his cell for his "out of cell time." He proceeded to the telephone and made a phone call. He ended his phone call at approximately 9:55 a.m. and then returned to his cell unescorted and closed the cell door behind him. Neither Deputy Filipski nor Sergeant Schuta verified that Howard's cell door was secured.

At approximately 9:55 a.m., Deputy Filipski proceeded to cell #51 (Ivan Melendez) to commence Melendez's "out of cell time." Video surveillance showed that Deputy Filipski opened the cell and Melendez exited and stepped to the left. Deputy Filipski then entered the cell and Melendez followed behind, partially closing the cell door. Melendez then exited, followed by Deputy Filipski. Deputy Filipski placed himself in a potentially dangerous situation during this interaction as Melendez could have easily closed the cell door, trapping the deputy in

the cell. Throughout this time, Collins was standing at his cell window looking out, and stayed there until Deputy Filipski and Menendez reached the ground floor. Once reaching the ground floor, Melendez proceeded to the telephone and picked up the receiver. A moment later he hung up the receiver and began conversing with Sergeant Schuta. The conversation lasted a few minutes. Melendez then proceeded up the stairs and entered his cell. He was neither escorted nor supervised during this time. Melendez exited his cell with papers in his hand. He then proceeded to inmate Collins' cell, and pressed a paper up against Collins' cell window.

Melendez then walked downstairs to cell #49 (Earl Howard) on the ground floor and pressed the paper up against Howard's cell window. Howard then passed papers through the bottom of his cell door to Melendez. Melendez looked at the papers and then passed them back to Howard through the bottom of the cell door. Melendez then left the front of cell #49 and made an obscene gesture towards the Gulf South camera as he walked by. Deputy Filipski and Sergeant Schuta remained on the ground floor near the desk area and took no action while Melendez engaged in these behaviors.

Melendez proceeded to the telephone and appeared to make a phone call. He then picked up a push broom and dust pan and proceeded to his cell. He placed the broom and dust pan down in a small common area adjacent to his cell. Sergeant Schuta was observing Melendez from a point about halfway up the mezzanine stairs. Melendez then picked up a mattress off of a table in the common area and placed it on the ground in front of his cell. Melendez exchanged this mattress for his assigned one. He then retrieved the push broom and dust pan from the common area and again entered his cell. At this time, Sergeant Schuta walked down the stairs to the ground floor. Moments later, Melendez returned the push broom and dust pan to the portable mop bucket on the ground floor. He spent the next few minutes sitting on a chair in the ground

floor common area. He then walked up and down the stairs twice, conversing with Sergeant Schuta, who remained on the ground floor. At approximately 10:12 a.m., Melendez walked to his cell unescorted and closed the cell door behind him. Neither Deputy Filipski nor Sergeant Schuta verified that Melendez's cell door was secured.

Throughout Melendez's "out of cell time," Collins' cell door remained unsecured. This posed an immediate threat to the safety and security of staff, inmates, and the public.

Sergeant Schuta acknowledged during his testimony that inmates housed in Gulf South are not supposed to approach other inmates' cells during "out of cell time." Further, Deputy Filipski testified that he was uncertain as to the policy of the Erie County Sheriff's Office concerning the supervision of inmates during "out of cell time." At approximately 10:13 a.m., Sergeant Schuta exited the Gulf South Housing area and the Gulf sallyport.

Deputy Filipski documented in the Gulf South Housing area logbook that at 10:45 a.m., Brian Collins refused a non-contact visit. Sergeant Schuta testified that Collins' refusal of a visit was not a common occurrence. Deputy Filipski testified that he could not determine if Collins' refusal was unusual, as he was not routinely assigned to Gulf South Housing.

From approximately 10:40 a.m.-11:00 a.m., Deputies Filipski, Cordova and, on occasion, Theresa McCann, left their assigned housing areas without being properly relieved and gathered in the Gulf sallyport. Further, during these encounters, not all inmates were secured in their cells in the Gulf East Housing area (Deputy Cordova's assignment). These actions violate State regulations as set forth in 9 NYCRR §7003.2(c)(1-2) and §7041.1.

At approximately 11:00 a.m., Deputy McCann, who was assigned to the Gulf North Housing area, left her area for a lunch break. Deputy Cordova assumed the responsibility of completing supervisory tours of the Gulf North Housing area in McCann's absence. At this

time, lunch trays arrived at the Gulf Sallyport. The doors to the Gulf South and Gulf East housing areas were either propped open or hooked to the wall. Deputies Cordova and Filipski, nominally supervised by Sergeant Schuta delivered lunch to the various Gulf housing areas. During lunch delivery, not all inmates were secured in their cells in the Gulf East Housing area nor were they supervised. Further, the entrance doors to the Gulf South and Gulf East Housing areas were left open. These actions constitute violations of 9 NYCRR §7003.1, §7003.2(c)(1)(3)(4) and §7041.1.

At approximately 11:10 a.m., the lunch meal was served by Deputy Filipski on the Gulf South Housing Area. Deputy Filipski approached Collins' cell and stood in front of the cell for a moment. Deputy Filipski then walked away from Collins' cell and delivered Melendez his meal. Deputy Filipski documented in the Gulf South Housing logbook that inmate Collins refused his meal tray. Deputy Filipski testified that Collins told Sergeant Schuta earlier that he did not want his lunch tray that day. Deputy Filipski testified that when he approached Collins' cell with a lunch tray, Collins became irate. This suggests that Collins sought to attempt to keep Deputy Filipski away from his cell and from discovering that his cell door was not secured.

At approximately 11:55 a.m., Deputy McCann returned from lunch and relieved Deputies Filipski and Cordova, who then left the Gulf Housing area for their lunch. Prior to exiting the Gulf South Housing area, Deputy Filipski placed his facility-issued radio in the Gulf South Housing area desk drawer and failed to secure the drawer. The testimony of Erie County Sheriff's Office staff revealed that Erie County Sheriff's Office management neither made nor enforced a clear policy or practice concerning the handling of facility-issued radios. Some staff testified that they are required to maintain radios on their person at all times unless leaving the Holding Center, at which time they must turn their radio in to Central Control. Others testified

that prior to taking a lunch break, they leave their radio with the staff relieving them. A supervisor testified that the practice of staff leaving their radio secured "somewhere" (either in a desk drawer or closet) is also acceptable. Deputy Filipski testified that he thought it was an acceptable practice to place a facility-issued radio in a desk. In any case, the only thing clear is that the policy was unclear.

Deputy Filipski's actions constitute a violation of 9 NYCRR §7003.1. Failure to secure and account for radio equipment can allow inmates to gain access to the radios, and then by use of the radio, gain access to unauthorized areas of the facility. An inmate in possession of a facility radio could also interfere with (jam) the radio frequency, thus prohibiting other staff from transmitting and/or receiving information. The Radio Communications policy (JMD 05.12.02) provided to the Commission by the Erie County Sheriff's Office does not specify what actions staff are to take with their radios during work breaks.

The Erie County Sheriff's Office failure to provide for secure accountability for sensitive and vital facility communications equipment represents an egregious security breach.

At approximately 12:10 p.m., Deputy McCann exited the Gulf North Housing area, entered the Gulf South Housing area and commenced a supervisory tour. Video surveillance showed that Deputy McCann climbed the stairs to the mezzanine, proceeded to cell #51 (Ivan Melendez) and spoke to him for over one minute. She did not complete a supervisory tour encompassing cell #52, housing inmate Brian Collins. Deputy McCann then exited Gulf South without securing the entrance door and entered Gulf North. Deputy McCann testified that she looked into every cell during her tours while relieving Deputies Filipski and Cordova. McCann's failure to complete a supervisory tour of Collins' cell and environs violates State regulations as set forth in 9 NYCRR §7003.2(a)(1-2) and §7003.2 (b).

Video surveillance showed inmate Ivan Melendez, housed in cell #51, sliding a piece of paper underneath his cell door into the Gulf South common area at approximately 12:13 p.m.

At approximately 12:14 p.m., Collins opened his cell door which was rendered unsecured by his previous placement of the metal strip on the locking mechanism. He later admitted to Erie County Sheriff's Office investigators that he procured the piece of metal used to jam his cell door locking mechanism from the latch of a waist restraint. Collins reached out of the cell, grabbed his sneakers from the floor outside his cell, pulled them into his cell and placed them on his feet.

Collins then exited his cell and proceeded to cell #51, where he picked up the piece of paper (and according to his statement to Erie County Sheriff's investigators, a piece of string) previously slipped underneath the door by inmate Melendez. Melendez later admitted to Erie County Sheriff's Office investigators that he slipped a rolled-up piece of string from his sheet to Collins after Collins had asked for it to "strengthen his pen." Melendez insisted that he had no knowledge of Collins' escape plan. Collins would later admit the he planned to use the string to hold down the transmit button on the facility radio in an attempt to interfere with the radio system.

Collins then proceeded to the Gulf South ground floor and approached the area desk. He opened a desk drawer and retrieved the facility radio left unsecured by Deputy Filipski. Collins then attempted to gain access to the Gulf South Housing storage room, however, that door was secured.

Based on a statement given by Collins to Erie County Sheriff's Office investigators, he then telephoned the Central Control Room and requested that the entrance door to the Gulf

Outdoor Recreation be opened. Central Control Room staff opened the Gulf Outdoor Recreation area door without visually verifying the individual making the request.

Collins then approached the Gulf South entrance door, which was propped open with a rubber/plastic door wedge. He crouched down near the Gulf South Housing Area desk, peered out the Gulf South entrance and then exited into the Gulf Sallyport, while in possession of Deputy Filipski's facility-issued radio. He then proceeded to the Gulf Outdoor Recreation door, opened it and entered the outdoor recreation area. Approximately 15 seconds later, Deputy McCann exited the Gulf North Housing area, looked into the Gulf South Housing Area, and then returned to Gulf North. In a written statement given to the Erie County Sheriff's Office, Deputy McCann stated that she heard a noise in the Gulf Sallyport area at approximately 12:15 p.m., investigated it, and found nothing. Deputy McCann testified that she informed no one of the noise she heard.

Upon entering the Gulf Outdoor Recreation area, Collins grabbed a chair left near the entrance and proceeded to the south end of the recreation area. He placed the chair underneath the basketball backboard. Stepping up on the chair he then jumped up, grabbed hold of the rim to the basketball backboard, and hoisted himself up on top of the backboard. He climbed the basketball backboard's support bars and grabbed a roof structure cross-beam. He then proceeded to slip his body in between the steel cross beams of the roof structure (of the Recreation area) and the south stairwell wall. He then pushed himself up onto the south stairwell roof.

At approximately 12:26 p.m., Deputy McCann entered the Gulf South Housing area and commenced a supervisory tour. She looked very briefly into inmate Collins' cell. McCann testified that during her supervisory tours of Collins' cell she observed Collins under the blanket on his bunk. This is incorrect, as Collins had already escaped and McCann failed to determine

that he was not present. Indeed, McCann made three such tours during which Collins' escape was not detected. Deputy McCann then left the area without completing a supervisory tour of cell #51 (Ivan Melendez). Deputy McCann's failure to determine Collins was missing and her failure to complete a supervisory tour of cell #51 (Ivan Melendez) constitutes violations of 9 NYCRR §7003.2(a)(1-2) and §7003.2 (b).¹¹

At approximately 12:42 p.m., Deputy McCann entered the Gulf South Housing area and completed a supervisory tour. During the tour, she walked up to cell Collins' cell, looked in briefly, and then continued her tour. She then exited the Gulf South Housing Area. Deputy McCann's failure to determine Collins was missing constitutes a violation of 9 NYCRR §7003.2(a)(1-2).

At approximately 12:55 p.m., Deputy McCann entered the Gulf South Housing area and completed a supervisory tour. During the tour, she walked up to Collins' cell, looked in briefly, and failed to determine that Collins was not present in the cell. She then continued her tour. Deputy McCann's failure to notice Collins was missing constitutes violations of 9 NYCRR §7003.2(a)(1-2).¹²

At approximately 1:00 p.m., Deputy Filipski returned from lunch to the Gulf South Housing Area. He opened up the desk drawer and found his facility-issued radio was missing. Deputy Filipski testified that he thought other staff were "messaging around" with him by removing the radio. He then turned on the Gulf South Housing area television to see if there was a football game on.

¹¹ Deputy McCann also testified that she did not know the policy of the Erie County Sheriff's Office in instances where staff could not verify the presence of an inmate.

¹² It should also be noted that during an interview with a local (Buffalo) media outlet subsequent to his escape, inmate Collins stated that he was aware how long it took one deputy to make rounds when the other two deputies were on break and knew that he had a 15-minute window in which to escape from his cell.

Deputy Filipski then exited Gulf South and entered the Gulf North Housing area. He asked Deputy McCann if she had seen his radio and she said she had not. He then returned to Gulf South for a moment, left the area and then entered the Gulf East Housing area and asked Deputy Cordova if she had seen his radio. She said she had not. He then looked in the Gulf sallyport restroom and then entered Gulf South with Deputy McCann.

According to Deputy Filipski's written statement to the Erie County Sheriff's Office, he called Central Control at 1:05 p.m. and notified them that his radio was missing. He further mentioned in his statement that Central Control informed him that they would notify Sergeant Schuta. As a matter of generally accepted institutional security practice, it would be expected that loss of the radio would automatically result in notice to the Central Control Room and the Tour Commander, followed by a facility-wide lockdown until the radio was recovered. This did not happen.

At approximately 1:12 p.m., an unknown inmate entered into the Gulf Sallyport from the main hallway and proceeded to the Gulf East Housing area, where he was let in by Deputy Filipski. Deputies Filipski and Cordova immediately left Gulf East and entered Gulf South. Deputy Cordova failed to secure all inmates in Gulf East into their cells. Deputy McCann then entered Gulf South and all three began searching the Gulf South common area for Filipski's radio. Deputy Cordova's failure to secure all inmates in their cells prior to exiting Gulf East constitutes a violation of 9 NYCRR §7003.2(c)(1)(3) and §7041.1.

From approximately 1:13 p.m. to 1:22 p.m., Deputies Cordova and McCann entered and exited the Gulf South Housing Area multiple times. During this time, Deputy Cordova failed to secure inmates in their cells in Gulf East and also failed to secure the entrance door to Gulf East.

These actions constitute violations of state regulations as set forth in 9 NYCRR 7003.2(c)(1)(3), §7003.1 and §7041.1.

At approximately 1:22 p.m., Sergeant Schuta arrived at the Gulf South Housing Area. For the next several minutes, Sergeant Schuta and Deputy Filipski searched the Gulf South ground floor common area, including the storage closet. Moments later, Deputies McCann and Cordova again assisted in searching for Deputy Filipski's radio. Again, Deputy Cordova failed to secure inmates in their cells in Gulf East. All the while, the entrance door to Gulf South remained propped open. Deputy Cordova's actions constitute a violation of 9 NYCRR §7003.2(c)(1)(3) and §7041.1. Deputy Filipski's failure to secure the entrance door to Gulf South constitutes a violation of 9 NYCRR §7003.1.

As of 1:30 p.m., Deputy Filipski had not completed a supervisory tour of the Gulf South Housing Area. The last supervisory tour of Gulf South was completed at 12:55 p.m. by Deputy McCann. Deputy Filipski's failure to complete a timely supervisory tour constitutes violations of 9 NYCRR §7003.2(a)(1-2) and §7003.2(b).

Sergeant Schuta and Deputies Filipski, Cordova, and McCann continued to search the Gulf South Housing Area and Gulf Sallyport for Filipski's radio.

At approximately 1:33 p.m., Deputy Filipski exited Gulf South and then the Gulf Sallyport. In a written statement given to the Erie County Sheriff's Office, Deputy Filipski indicated that Sergeant Schuta directed him to check the ground floor (where Filipski ate lunch) and his locker. He testified that he checked all of those areas but did not locate his radio.

At approximately 1:34 p.m., Deputy Cordova walked up to inmate Collins' cell and peered in for several seconds. Cordova failed to notice that Collins was not present.

Deputy Filipski returned to Gulf South at approximately 1:40 p.m. after searching for his radio on the Holding Center's first floor. Sergeant Schuta and Deputies Filipski, Cordova, and McCann continued searching for Filipski's radio.

At approximately 1:45 p.m., Sergeant Schuta and Deputy Filipski proceeded to the Gulf South mezzanine to initiate a shakedown of Gulf South inmates. Upon arriving at inmate Collins' cell, Sergeant Schuta grabbed the cell door handle and pulled it, opening the door without use of a key. Prior to entering Collins' cell, Sergeant Schuta focused his attention on the cell's door jamb. Sergeant Schuta testified that he yelled out Collins' name twice prior to proceeding towards his bunk. Sergeant Schuta then pulled down Collins' blanket and noticed Collins was missing and only his rolled-up smock left on the middle of the bunk. A "10-90" (missing inmate) was transmitted over the radio system.

Sergeant Schuta walked over and looked into cell #51 (Ivan Melendez). He then proceeded to the Gulf South Housing ground floor, exited Gulf South, and walked over to the Gulf Outdoor Recreation yard entrance. At this time, Deputy Cordova exited Gulf South and entered Gulf East. Deputy McCann exited Gulf South, opened the entrance door to Gulf East and secured it to the wall grommet. Deputies Filipski and Cordova began searching Gulf South Housing area for Collins.

At approximately 1:46 p.m., Deputy Cordova exited Gulf South and entered Gulf East. Seconds later, Deputy McCann opened the Gulf East entrance door (which had been closed but not secured) and secured it to a wall-mounted grommet. Inmates were unsecured in the Gulf East Housing area at that time, even though the entire facility had been alerted to a missing inmate.

At approximately 1:48 p.m., additional Erie County Sheriff's Office staff responded to Gulf South and commenced searches of Gulf South, Gulf East and Gulf North housing areas. Some staff then entered the Gulf outdoor recreation area.

Multiple Erie County Sheriff's Office deputies began searching the Gulf Outdoor Recreation area. At approximately 2:30 p.m., Sergeant Alan Whalen spotted Brian Collins on the Gulf South stairwell roof.

While on the roof of the Holding Center, Collins was waiving and yelling to bystanders on Delaware Avenue. Television media showed Collins in possession of a radio while on the roof. Sergeant Anthony LoDestro testified that he heard Collins speaking on the radio, although he could not comprehend what Collins was saying. Erie County Sheriff's Office detectives and a Crisis Negotiator began talking to Collins in an attempt to get him down off of the roof. At approximately 4:15 p.m., Collins agreed to come down. Once down from the roof, Collins was evaluated by Erie County Sheriff's Office medical staff and relocated to a new housing area.

At approximately 11:15 p.m., Sergeant Schuta faxed a Reportable Incident (RI) form to the Commission, nearly 11 hours after Collins escaped. The delay in reporting the escape constitutes a violation of 9 NYCRR §7022, Reportable Incidents. Inmate escapes must be reported to the Commission immediately. Collins was charged by the Erie County Sheriff's Office with multiple counts of escape.

On October 4, 2009, Sergeant Anthony LoDestro prepared a Disciplinary Report on Collins' escape. According to the report, Collins was charged with the following facility violations:

- 104-A-2(4): Dangerous contraband – any item which may be used facilitate an escape.
- 107-A: Blocking, damaging, picking or tampering with a security device
- 108-A: Escape from confinement custody
- 108-B: Attempted escape – planning to escape from confinement custody

On October 6, 2009, Collins' disciplinary hearing was held in his absence, as the Erie County Sheriff's Office determined that he posed an extreme security threat. Collins was found guilty of all charges lodged against him. He was given 730 days keep-lock with no privileges.

Subsequent to this incident, Collins was arrested and charged with the following offenses:

- Escape in the 1st Degree – Penal Law §205.15
- Escape in the 2nd Degree – Penal Law §205.10
- Obstructing Governmental Justice in the 2nd Degree – Penal Law §195.05
- Grand Larceny in the 4th Degree – Penal Law §155.30

Post-Incident Events and Conditions

Many of the Erie County Sheriff's Office uniformed staff testified that they were directed to submit a written report subsequent to the apprehension of Brian Collins. Lieutenant Jacqueline Kretzmon, assigned as tour commander for the 7 a.m.-3 p.m. shift on October 4, 2009, was not directed to submit a written report. Lieutenant Kretzmon, the tour commander, was not directed to undergo incident debriefing, nor was Sergeant LoDestro, Sergeant Schuta, or Sergeant Whalen directed to participate in any debriefing of the escape incident by the Erie County Sheriff's Office management.

Subsequent to Collins' escape, Deputy Kyle Filipski was terminated from his position with the Erie County Sheriff's Office. Sergeant Eugene Schuta testified that he was subject to discipline on the charge of *Improper Supervision*.

Housing Area Logbook

The last documented entry in the Gulf South Housing Area logbook for October 4, 2009 was 1:18 p.m. and made by Sergeant Eugene Schuta. There was a separate note (in different hand writing) to the side of the entry stating that the logbook was taken by the administration on the afternoon of October 4, 2009 and returned for the 3:00 p.m.-11:00 p.m. shift on October 5, 2009. Gulf South Housing Area activities were not documented in the logbook for over 24 hours. This constitutes a violation of Minimum Standard §7003.3(j).

Conversely, the Gulf East Housing Area logbook was removed at 4:27 p.m. on October 4, 2009. While the logbook was off of the area, the Deputy (L. Stevens) assigned to Gulf East continued to take notes and later transcribed them into the logbook when it was returned at 7:24 p.m. on October 4, 2009.

Post Orders/Policies and Procedures

The Erie County Sheriff's Office maintains written post orders and policies and procedures in the desks on respective housing areas. Staff testified that such post orders and policies and procedures are left unsecured in the area desks. This practice could easily allow for inmates to view and/or remove the documents from area desks, affording them access to potentially security-sensitive information.

Escape Debriefing

Debriefing with staff subsequent to any serious incident in a correctional facility is a critically important step to assess events and actions leading to the incident, facility response to