



Office of the Inspector General
Commonwealth of Massachusetts

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**Sick Leave Abuse at the
Essex County Sheriff's Department
2009 to 2016**

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Executive Summary

The Office of the Inspector General (“OIG”) initiated a review of sick time use at the Essex County Sheriff’s Department (“ECSD” or the “Department”) in response to a complaint that former Essex County Sheriff Frank G. Cousins, Jr. and ECSD administrators had allowed certain healthy employees who were nearing retirement to use large amounts of their accrued sick leave.

The OIG reviewed ECSD’s practices with respect to employees’ use of sick leave during the period immediately prior to their retirement. The OIG found a pattern in which dozens of healthy employees stopped reporting for work at the ECSD but remained on ECSD’s payroll using significant amounts of leave, including sick leave, prior to retiring. Some employees even worked paid details and other jobs while out on sick leave from ECSD. Others became eligible for retirement only by using sick leave after they stopped reporting to work. This pattern was well-established over several years.

Specifically, the OIG found that:

- Sheriff Cousins knowingly authorized healthy employees to use sizable amounts of accrued sick leave in violation of the rules applicable to most ECSD employees.
- Between 2009 and 2014, ECSD unnecessarily paid more than \$631,000 in sick leave payments and \$412,300 in other leave payments to retiring employees.
- Dozens of ECSD employees achieved eligibility for their pensions only by receiving creditable service for improper sick leave use.
- ECSD administrators attributed the use of excessive sick leave to a “Retirement Incentive Program,” but there is no evidence that such a program ever existed.
- ECSD officials continued to allow healthy employees to use blocks of sick leave through 2016, even after the end of the purported retirement incentive program.
- ECSD officials allowed employees to accrue and receive compensation for unreasonable amounts of vacation time, imposing a burdensome liability on the state and wasting public funds.

Officials in ECSD’s current administration report that the Department no longer permits healthy employees to use significant blocks of sick leave immediately prior to retirement. The new administration, however, has not revised the Department’s written policies on sick and vacation leave.

The OIG makes the following recommendations:

- ECSD should update its employee handbook to enumerate the proper uses of sick leave and to define sick leave abuse.
- ECSD officials should ensure that employees only use sick leave for purposes that are permitted under state rules, ECSD’s collective bargaining agreements and its employee handbook.

- ECSD's current sheriff should ensure that the Department's leave policies, procedures, decisions and actions are documented.
- ECSD should adhere to its employee handbook's two-year cap on vacation leave carryover and accruals in order to limit the state's future liability. ECSD also should clarify the employee handbook by expressly stating that after two years, unused vacation shall be forfeited.

Background

I. County Sheriffs

Essex County was created in 1643 by the General Court as a regional unit of government for a geographic area in northeastern Massachusetts, now comprised of 34 cities and towns. The position of sheriff in Essex County dates back to the late seventeenth century. Sheriff was an appointed position until the mid-1800s when it became an elected position with a six-year term.

Through legislation passed in 1997 and 1998, the Legislature abolished six county governments, including Essex County, effective July 1, 1999. Section 53 of Chapter 127 of the Acts of 1999 added Chapter 34B to the Massachusetts General Laws and transferred certain duties, responsibilities and property of those counties to the state. Under Section 12 of Chapter 34B, sheriffs of the abolished counties became state employees; however, the position remains an elected one and sheriffs continue to exercise a high degree of independence and autonomy.

Specifically, sheriffs' offices function as "independent state agencies" within the executive branch. Employees of sheriffs' departments are on the state payroll and are enrolled in the state retirement system. The budgets of sheriffs' offices are set by the Governor and Legislature during the annual state budgetary process, and the departments are integrated into the state's budget and accounting systems. However, under the abolition legislation, sheriffs retain administrative and operational control over their jails; houses of correction; and the procurement of supplies, equipment and services. Sheriffs negotiate their own collective bargaining agreements with their employees, although each agreement must be submitted to the Governor, who has the authority to reject it.

II. Essex County Sheriff's Department

The Essex County Sheriff's Department ("ECSD" or the "Department") is a state agency whose mission is to help maintain public safety. Its primary responsibility is operating the Essex County Correctional Facility in Middleton where most of ECSD's approximately 600 employees work. The Essex County Correctional Facility houses more than 1,000 individuals who are either awaiting trial or serving a sentence following a criminal conviction. ECSD also runs pre-release centers, a detention center for juveniles awaiting arraignment, and transitional housing for women inmates at other locations in the region. In addition, the Department operates various educational, vocational and substance abuse prevention programs designed to help rehabilitate offenders. ECSD also has a Civil Process Division for service of legal documents. ECSD's annual budget was more than \$61 million in fiscal year 2016,¹ of which about \$57 million came from state appropriations. The remaining \$4 million came from trusts, federal funds for housing federal detainees and assessments collected by the Essex County Regional Emergency Communications Center.²

¹ Fiscal year 2016 began July 1, 2015 and ended June 30, 2016.

² The Essex County Regional Emergency Communications Center answers landline 911 emergency calls and dispatching services for several North Shore communities as well as wireless 911 calls in the region. This facility

III. Former Essex County Sheriff Frank G. Cousins, Jr.

In 1996, then-Governor William F. Weld appointed Frank G. Cousins, Jr. as Essex County Sheriff after the previous sheriff resigned. Cousins was elected to his first six-year term as sheriff in 1998 and was re-elected in 2004 and 2010. Cousins did not run for re-election in 2016 and his term expired in January 2017.

IV. Sick Leave Accrual, Use and Abuse

The OIG reviewed the accrual and use of sick leave by every ECSD employee who retired between January 1, 2009 and May 1, 2014. All full-time and regular part-time³ ECSD employees earn sick leave. At all times during the January 1, 2009 to May 1, 2014 time period, full-time ECSD employees earned 10 hours (1.25 work days) of sick leave credit for each month of service (*i.e.*, 15 sick days per year). Regular part-time employees earned sick leave on a prorated basis in the same proportion that their part-time schedule bears to a 40-hour work week. Collective bargaining agreements and ECSD's employee handbook allowed employees to carry over unused sick leave from one year to the next and did not limit how much sick leave an ECSD employee could accrue.

As noted above, ECSD became an independent state agency when the Commonwealth abolished six county governments in the late 1990s. Only executive branch agencies that report to the Governor are directly subject to the employment rules set by the state's Human Resources Division ("HRD"). During the period reviewed, the Department's employee handbook stated that, with respect to employment rules for unionized employees at ECSD, the terms specified in collective bargaining agreements had primacy over those contained in the employee handbook.

For many years, the vast majority of ECSD's employees have been represented by unions with negotiated collective bargaining agreements. The rules governing an employee's authorized use of sick leave at ECSD depended on whether the employee's position was covered by a collective bargaining agreement and, if so, which one.

A. The Correctional Officers' Union Contract

By far the largest bargaining unit at ECSD has long been its correctional officers' union, representing the uniformed staff below the rank of lieutenant. ECSD's contract with the correctional officers' union covering July 1, 2012 to June 30, 2015 stated, "Sick leave shall be paid as determined under the rules and regulations of the Human Resources Division of the Commonwealth of Massachusetts, acting under the authority of M.G.L. Chapter 7, Section 28." The collective bargaining agreement also defined "sick leave abuse" as when an employee "fails to report for a regular work shift and uses a sick leave day when said [employee] is physically able to work." One of the examples of sick leave abuse specified in the contract was "extensive

opened in 2013. It is a separate division of ESCD and is funded by assessments on member communities and state grants. It was not part of the OIG's review.

³ A "full-time" employee is an individual having a work schedule of 40 hours per week. A "regular part-time" employee is an individual having a work schedule of at least 20 hours per week but less than 40 hours per week.

sick leave usage without a serious medical illness, resulting in all, or nearly all sick days being used.”

Further, in accordance with Section 28 of Chapter 7, HRD periodically publishes updated employment rules and regulations for state employees. Entitled “Rules Governing Paid Leave and Other Benefits For Managers and Confidential Employees,” the publication is commonly referred to as the “Red Book.”

Since at least 2004, the Red Book, has provided that sick leave can be used only in 10 specific circumstances. It states:

Sick leave shall be granted, at the discretion of the Appointing Authority, to employees only under the following conditions:

- *When they are unable to perform their duties due to illness or injury.*
- *When through exposure to contagious disease the presence of the employee at his/her work location would jeopardize the health of others.*
- *When appointments with licensed medical or dental professionals cannot reasonably be scheduled outside of normal working hours for purposes of medical treatment or diagnosis of an existing medical or dental condition.*
- *When an employee, who is absent due to excessive use of alcohol or narcotics, becomes and continues to be an active participant in an approved counseling service program.*
- *An employee may use up to a maximum of 30 days of sick leave per calendar year (concurrent with any FMLA entitlement used) for the purpose of:*
 - *Caring for the spouse, child, foster child, step child, parent, step parent, brother, sister, grandparent, grandchild of either the employee or his/her spouse, person for whom the employee is legal guardian, or for a person living in the employee’s immediate household who is seriously ill.*
 - *Parental leave due to the birth or adoption of a child, to be concluded within 12 months of the date of the birth or adoption. Eligible employees utilizing sick leave under this section shall not be required to submit a medical certification, unless the appointing authority has reason to believe that the birth or adoption claim was not genuine. This leave benefit shall be in addition to the ten days of paid leave set forth in section 5.02 (A).*
 - *Where an eligible full or part-time employee and his/her eligible spouse are both employees of the Commonwealth, they may be each granted a total of not more than 30 days of accrued sick leave as set forth above for the care of a seriously ill parent or for parental leave due to birth or adoption.*
- *An employee may use up to a maximum of 10 days of accrued sick leave in a calendar year for the purpose of attending to necessary preparations and legal requirements related to the employee’s adoption of a child, except that in no event may an employee charge more than a total of thirty days in a calendar year for adoption related purposes.*

- *An employee may use up to a maximum of 10 days of sick leave per calendar year for the purpose of attending to necessary preparations and/or legal proceedings related to foster care of DSS children, such as foster care reviews, court hearings and MAPS training for pre-adoptive parents (this is in addition to the 10 days of paid leave [Rule 5.02] for the initial foster placement); HRD may approve a waiver of the 10-day limit for difficult placements. See also 8.06, Other Leaves of Absence with Pay.*

The granting of sick leave is solely in the discretion of the Appointing Authority but if granted the provisions of this rule must be followed. [Emphasis added.]

HRD updated the Red Book in 2011 and again in 2015, but the sick leave rule remained the same.

The 2012 collective bargaining agreement with the correctional officers' union also stated that "the parties recognize that absenteeism and overutilization of sick leave by employees are, where they occur, problems of mutual concern." The parties further agreed to form a "Labor/Management Committee" to develop methods of reducing overutilization of sick leave and absenteeism.

For a four-year period between July 1, 2008 and June 30, 2012, ECSD and the correctional officers' union did not have a contract. The parties had had an earlier contract that expired on June 30, 2008.⁴ This earlier contract, like the 2012 contract, had linked the allowed use of sick leave to HRD's Red Book rules. It also included language regarding sick leave abuse that was mirrored in the later 2012 contract. ECSD's legal counsel said that, during the four-year period when no contract was in place, the rules from the expired 2008 contract regarding sick leave use, accrual and abuse remained in force until the new contract became effective on July 1, 2012.

While ECSD took the position that the 2008 contract's rules remained in force during the period without a contract, a May 2011 memorandum of understanding between ECSD and the correctional officers' union suggested the opposite. It explicitly stated that the 2008 contract was "no longer in effect" after its expiration. It also stated that the new 2012 contract, which had been negotiated but not yet approved by the governor's office, was not retroactive. In the absence of a collective bargaining agreement, rules specified in ECSD's employee handbook would have applied to the correctional officers.

The employee handbook contained very limited guidelines on sick leave. It did not enumerate allowed uses of sick leave or define sick leave abuse. It stated that full-time employees earned 10 hours of sick leave per month. It also stated, "The employee calling in sick will notify the Shift Commander or designee whether they are sick or if there is a sickness in the family."⁵

⁴ The preceding contract covered the period July 1, 2003 to June 30, 2006. A memorandum of understanding between ECSD and the correctional officers' union extended the contract by two years to June 30, 2008.

⁵ ECSD's employee handbook, p. 7.

B. The Captains and Lieutenants' Union Contract

During the period January 1, 2009 to May 1, 2014, ECSD had two other smaller unionized bargaining units: one for captains and lieutenants and another unit composed of managers, such as deputy superintendents and assistant deputy superintendents, as well as non-uniformed administrative and clerical personnel.

Throughout that period, ECSD and the union representing captains and lieutenants operated under a contract that dated back to 2007 and remained in effect through a series of extensions. The 2007 contract defined sick leave as “absence from work without loss of pay because of injury or illness or serious illness within the immediate family of the employee.”⁶ It defined sick leave abuse as “any instance where a bargaining unit member fails to report for a regular work shift and uses a sick leave day when said member is physically able to work.”⁷

The contract with the captains and lieutenants' union did not reference HRD's Red Book. Instead it stated, “Sick leave shall be paid as determined under the rules and regulations of the Commonwealth acting under the Authority of M.G.L. c. 35, § 51.” The contract's reference to this statute appears to be vestigial. Section 51 of Chapter 35 of the Massachusetts General Laws authorized the County Personnel Board to establish employment rules. ECSD provided a copy of the County Personnel Board Rules & Regulations, dated October 1, 1987; however, neither ECSD nor the union relied on the County Personnel Board's policies and regulations during any part of the period reviewed.⁸ According to ECSD's legal counsel, those rules ceased applying to ECSD when Essex County was dissolved and ECSD became a state agency in 1999.

C. The Union Contract for Managerial, Administrative and Clerical Personnel

During the period reviewed, ECSD and members of the union representing managerial, administrative and clerical personnel operated under a contract signed in 2007 and that remained in effect through a series of three negotiated extensions.

Unlike agreements with ECSD's other bargaining units, the contract with the managerial, administrative and clerical personnel's union did not have a section regarding sick leave accrual, use or abuse. Because the collective bargaining agreement was silent on the topic, rules for sick leave in the employee handbook would have applied to ECSD members in this bargaining unit. However, as noted above, the employee handbook only addressed the accrual of sick leave and who to notify when using sick leave. It did not enumerate allowed uses of sick leave or define sick leave abuse. The employee handbook stated, “The employee calling in sick will notify the Shift Commander or designee whether they are sick or if there is a sickness in the family.” This

⁶ “Agreement Between the Essex County Sheriff's Department and the International Brotherhood of Correctional Officers Local R1-71, July 1, 2007 thru June 30, 2009,” p. 8.

⁷ *Id.*, p. 9.

⁸ The County Personnel Board's rules for sick leave in 1987 were not noticeably different than those established by contracts in force during the period January 1, 2009 to May 1, 2014. For example, sick leave with pay could be granted “to employees only when they are incapacitated from the performance of their duties by sickness, injury, quarantine, or exposure to contagious diseases;...[or] in case of serious illness in the immediate family of the employee.” “County Personnel Board Rules & Regulations,” p. C2.

implies that sick leave could only be used when the employee or a family member was ill, but it did not explicitly establish allowed and improper uses of sick leave.

Other than collective bargaining agreements and the employee handbook, ECSD did not have any other written policies or guidelines regarding sick leave between 2009 and 2014.

V. Sick Leave Buyback

A 1968 Massachusetts Legislative Research Council report found that for years state employees had routinely abused sick leave by exhausting some or all of their accumulated sick leave prior to retirement.⁹ This occurred in violation of state rules that permitted an employee to use sick leave only when the employee was incapacitated by injury or sickness, might endanger the health of others by spreading contagious disease, or needed to care for immediate family members suffering from serious illness. The report raised the option of establishing legislation that would permit non-union state employees to exhaust their accumulated sick leave prior to retirement, but recognized that such a policy might “legitimize the present abuses” by permitting presumably healthy employees to exhaust sick leave prior to retirement. In 1981, the Legislature established a sick leave buyback program providing non-union state employees with 20 percent of the value of their unused sick leave upon retirement.¹⁰ Collective bargaining agreements with unionized state workers soon incorporated matching language.

ECSD’s contracts with all of its collective bargaining units included a sick leave buyback provision, the terms of which were identical to the buyback available to non-union state employees by statute. Under the contracts, therefore, an ECSD employee who retired with accrued sick leave credit was entitled to a buyback at a rate of 20 percent of the value of any unused sick time. For non-union employees, the 20 percent sick leave buyback was required by statute.

The employee’s final hourly rate of pay is used to calculate the buyback, not the employee’s pay rate at the time the sick leave was earned.¹¹ Employees who leave the Department but do not immediately retire are not eligible to receive a sick leave buyback.

VI. Other Types of Paid Leave

ECSD’s time and attendance software system (known as “KRONOS”) generated and maintained a daily attendance log for each ECSD employee. KRONOS also kept a running total of the number of hours of each type of leave credited to each employee. During the 2009 to 2014 period reviewed, each employee’s KRONOS log had an entry for every day, showing whether the employee worked or not. If the employee worked, KRONOS recorded when the employee

⁹ Massachusetts Legislative Research Council Report Relative to Credit for Unused Sick Leave, 1968 Senate Doc. No. 908, p. 27.

¹⁰ See M.G.L. c. 29, § 31A(d).

¹¹ For non-union employees, *see id.* ECSD’s collective bargaining agreements with all of its unionized employees stated that employees who retire shall be paid 20 percent of the value of their unused accrued sick leave at the time of their retirement. Under this language, ECSD calculated a retiring employee’s sick leave buyback using the employee’s final hourly rate of pay.

logged in and out for the shift. If the employee did not work, KRONOS recorded whether the employee used leave and, if so, the type of leave.

By law, when an ECSD employee leaves the Department's payroll, the Department must pay the individual 100 percent of accrued vacation, holiday and personal time at the individual's current hourly rate.¹²

During the period January 1, 2009 to May 1, 2014, ECSD employees also earned vacation leave,¹³ holiday leave and personal days. For employees in collective bargaining units, their respective contracts set the rules for accrual and use of each type of leave. For the small number of non-union employees, the employee handbook determined accrual and use of each type of leave.

A. The Correctional Officers' Union Contract

As noted above in the section on sick leave, ECSD did not have a contract with the correctional officers' union between July 1, 2008 and June 30, 2012. In the absence of a contract, rules stated in the employee handbook for vacation, holiday and personal leave applied to members of this bargaining unit. On July 1, 2012, a contract went into effect and its terms superseded those in the employee handbook.

With respect to vacation, the employee handbook stated that employees "may carry up to two years vacation time; after that you may be in jeopardy of losing it." The contract that went into effect in 2012 did not address vacation accrual or carryover. As a result, the terms of the handbook regarding vacation continued to apply to correctional officers.

ECSD's contract with the correctional officers' union that expired in 2008 as well as the one that went into effect in 2012 allowed employees hired prior to July 1, 2001 to continue to accrue holiday leave – credit for paid time off in the future as additional compensation for working on any of the 11 holidays listed in the contract. However, the contracts prohibited employees hired after July 1, 2001 from accruing holiday leave. Instead, they were paid for an extra shift. During the four-year period without a contract, the employee handbook set the terms of employment; however, the handbook did not address whether holidays could be accrued.

For personal time, the 2012 contract provided five personal days per year to employees hired prior to July 1, 2012. Earlier contracts provided three personal days to employees; however, the state eliminated the Bunker Hill Day and Evacuation Day holidays in 2010 for non-union state workers. Subsequently, many public agencies, including ECSD, negotiated agreements with their unionized employees that eliminated those two paid holidays but added two extra personal days. Any personal time unused at the end of the calendar year was forfeited.

¹² See M.G.L. c. 149, § 148.

¹³ Collective bargaining agreements and the employee handbook have matching language on the amount of vacation leave employees accrue. Vacation leave is accrued monthly. The amount of vacation leave an employee receives depends on the number of years of services. Employees with less than 4.5 years of service accrue vacation at a rate of two weeks per year. Employees with 4.5 to 9.5 years of service get three weeks per year. Employees with between 9.5 and 19.5 years of service get four weeks per year. Employees with 19.5 years of service or more receive five weeks of vacation leave credit.

B. The Union Contract for Captains and Lieutenants

As noted above in the section on sick leave, during the January 1, 2009 to May 1, 2014 period reviewed, ECSD and the union representing captains and lieutenants operated under the terms of a contract negotiated in 2007 and extended by memoranda of agreement. The terms of the contract set a firm limit on the carryover of vacation time. The contract stated, “Unused vacation leave earned during the previous two (2) vacation years can be carried over on January 1st for use during the following vacation year. Annual earned vacation leave credit not used by December 31st of the second year it was earned will be forfeited.”¹⁴

This clause of the contract was supposed to strictly limit the amount of vacation leave a covered employee could accrue, according to state officials. As noted above, an employee with 19.5 years of service or more received just over two days of vacation leave per month, a rate equal to five weeks of vacation per year. If the employee did not use any vacation time for two calendar years, she could carry 10 weeks of vacation leave into the following calendar year. She would continue to accrue just over two days per month during this year. If she did not use any vacation time during this calendar year, she would have 15 weeks of vacation leave as of December 31st. However, on January 1st, she would forfeit any amount exceeding two years’ worth of vacation, which in her case would be 10 weeks. An employee who earned two weeks of vacation per year could carry four weeks of vacation leave into a new calendar year and accrue additional vacation time during that year. On January 1st, he would forfeit any amount exceeding two years’ vacation earnings, which for him would be four weeks.

For personal time, the 2007 contract provided unit members with three personal days per year. A 2011 memorandum of understanding amended the contract in several ways, including the aforementioned elimination of the Bunker Hill and Evacuation Day holidays and the addition of two extra personal days for employees hired prior to July 1, 2011. Employees forfeited unused personal time at the end of the calendar year.

C. The Union Contract for Managerial, Administrative and Clerical Personnel

During the January 1, 2009 to May 1, 2014 period reviewed, ECSD and the union representing managerial, administrative and clerical personnel operated under the terms of a contract negotiated in 2007 and extended by memoranda of agreement. Like the contract with the captains and lieutenants’ union, their contract limited the ability of employees to carry over vacation leave. The contract stated, “Unused vacation leave earned during the previous two (2) vacation years can be carried over on January 1st for use during the following vacation year. Annual earned vacation leave credit not used by December 31st of the second year it was earned will be forfeited.”¹⁵

With respect to personal time, this unit’s contract also eliminated two paid holidays but added an additional two personal days for employees hired before July 1, 2011. Unused personal time was forfeited at the end of the calendar year.

¹⁴ “Agreement Between the Essex County Sheriff’s Department and the International Brotherhood of Correctional Officers Local R1-71, July 1, 2007 thru June 30, 2009,” p. 18.

¹⁵ *Id.*, p. 11.

VII. State Liability for Sick Leave

With the dissolution of county governments in the late 1990s and the transfer of sheriffs' offices to the Commonwealth, the state also took on the liability for these employees' accrued leave time and has had to include it as part of the state's overall financial profile.¹⁶ More than a decade ago, ECSD began filing Generally Accepted Accounting Principles ("GAAP") reports annually with the Office of the State Comptroller listing the value of its employees' accrued leave time.

ECSD's 2004 GAAP report stated that its employees had accrued 257,760 hours of sick time. The report calculated the liability for 20 percent of this sick leave – the buyback amount – as \$1,309,150.

ECSD's 2015 GAAP report valued the state's liability of ECSD employees' accrued sick leave – the 20 percent buyback amount – as \$1,964,250.

¹⁶ Funds to compensate an employee for any accrued leave owed at the time of separation come from the operating budget of that employee's department or agency.

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Investigative Findings

Summary

As described more fully in a series of findings below, the OIG's investigation found that Sheriff Cousins' actions administering sick leave: (1) resulted in healthy employees using sizable amounts of sick leave prior to retirement in violation of the rules applicable to most ECSD employees; (2) cost the Commonwealth more than one million dollars; (3) resulted in dozens of healthy employees using large blocks of sick leave to achieve pension eligibility; and (4) wasted additional Commonwealth funds by permitting employees to accrue vacation leave inappropriately while they were misusing sick leave. The OIG also found evidence that Sheriff Cousins manufactured a "Retirement Incentive Program" to justify ECSD's widespread abuse of sick leave

I. Sheriff Cousins knowingly authorized healthy employees to use sizable amounts of accrued sick leave in violation of the rules applicable to most ECSD employees.

Between 2009 and 2016, Sheriff Cousins and ECSD administrators arranged for and encouraged dozens of healthy employees to use some or all of their accrued sick leave immediately prior to filing for retirement. Sheriff Cousins and ECSD administrators knew the sick leave was not being used because of illness or injury. In fact, ECSD officials recorded sick leave entries into the employees' daily attendance logs for dates well into the future. Sheriff Cousins and his administrators also knew that some of these individuals had already begun new jobs or performed paid details while they were using sick leave.

Sheriff Cousins' explanation for this practice shifted during the course of the OIG's investigation. Ultimately, the evidence indicates that Sheriff Cousins' reasons for permitting employees to use significant amounts of sick leave varied over time and from employee to employee. In some cases, Sheriff Cousins agreed to allow so-called "problem" employees to use some or all of their sick leave in exchange for the employees agreeing not to pursue legal disputes or grievances. In other cases, he rewarded favored members of his staff by permitting them to use blocks of their accrued sick leave immediately prior to retiring. Overall, his administration of sick leave was arbitrary, unsystematic, inappropriate, and contrary to the rules applicable to most ECSD employees.

Between January 1, 2009 and May 1, 2014, 121 ECSD employees retired from the Department. Of the 121 employees, 82 used significant blocks of sick leave during the period immediately prior to retirement. In these 82 cases, the employee's use of blocks of sick leave occurred after the employee's final worked shift. Among the 82 cases were uniformed officers of every rank and civilian employees. Personnel from each collective bargaining unit as well as non-union employees used blocks of sick leave.

Of the 82 employees, nine used 100 percent of their sick leave credits. The other 73 employees used less than all of their sick leave prior to retirement. For these 73 employees, the Cousins administration extinguished the remaining sick leave from ECSD's computer system. Had it not done so, the state's payroll system would have generated a sick leave buyback payment to the employees for 20 percent of their unused sick leave credits.

As noted in the Background section, ECSD's collective bargaining agreements¹⁷ with its correctional officers incorporated the Commonwealth's rules governing sick leave, found in the Red Book. Section 4.07 of the Red Book, titled "Approved Use of Sick Leave," lists the 10 specific circumstances in which an employee may use sick leave. All 10 circumstances involve the health of the employee or the employee's family or matters connected to the birth, adoption or foster care of a child. Since at least 2004, the Red Book prohibited appointing authorities, such as Sheriff Cousins, from granting sick leave for any other purpose.¹⁸

Moreover, the contracts defined "sick leave abuse" as when an employee "fails to report for a regular work shift and uses a sick leave day when said [employee] is physically able to work." One of the examples of sick leave abuse specified in the contracts was "extensive sick leave usage without a serious medical illness, resulting in all, or nearly all sick days being used." There was no provision in the contracts giving either the employee or the Department discretion to use sick leave for another purpose. Further, the contracts stated that an employee who retires shall receive a sick leave buyback of 20 percent; the contracts did not provide alternatives to a buyback, such as using up accrued sick leave.

The Cousins administration's practice of allowing healthy correctional officers to use sick leave prior to retiring violated the terms of ECSD's contract rules.

For captains and lieutenants, their contract linked usage of sick leave to injury or illness or serious illness in the employee's immediate family. The contract did not explicitly provide the discretion for employees to use or ECSD administrators to authorize sick leave for a purpose other than injury or illness. By permitting captains to use sick leave when they were not ill or injured, the Cousins administration violated the terms of its contract with the captain's union. ECSD also violated the sick leave buyback section of the contract, which required the Department to pay retiring employees 20 percent of their unused sick leave.

As noted in the Background section of this report, ECSD's contract with the union for managerial, administrative and clerical personnel contained no rules regarding sick leave accrual, use or abuse. Because of the lack of rules, the Cousins administration did not violate this bargaining unit's contract when it allowed healthy employees to use blocks of sick leave; however, this practice showed disregard for the state's policies that limit the use of sick leave. In addition, while the contract did not have sick leave rules, it did have a sick leave buyback provision, mirroring the terms set in other ECSD contracts and in state law. In this respect, ECSD violated its contract with the union for managerial, administrative and clerical personnel by circumventing the sick leave buyback.

A small number of employees were not covered by a union contract. Other than the fragmentary language in the employee handbook, ECSD did not have rules for sick leave use for these employees.

¹⁷ As noted in the Background section, there was a four-year period following the June 20, 2008 expiration of a collective bargaining agreement when ECSD and the correctional officers' union did not have a contract; however, the Cousins administration regarded the terms of the expired contract pertaining to sick leave as remaining in force during the period without an agreement.

¹⁸ Rules Governing Paid Leave and Other Benefits for Managers and Confidential Employees, Section 4.07 (2011).

According to a strict interpretation of the contract language, many of the employees also violated the rules for sick leave use that applied to them. They certainly knew they were using sick leave when they were not sick. They also recognized that the system bypassed the sick leave buyback. For some, this provided a substantial financial benefit. While the employees were complicit as participants in abusing sick leave, Sheriff Cousins bears the primary and overwhelming responsibility for the improper use of sick leave. He and his administrators directed and implemented the unauthorized and wasteful use of sick leave. They chose which healthy employees could use sick leave and told them how much sick leave they would be allowed to use.

The OIG found that Sheriff Cousins and certain members of his staff encouraged and organized the widespread abuse of sick leave by healthy employees at ECSD. Over a period of several years, Sheriff Cousins approved compensation for dozens of employees who were using sick leave for unauthorized purposes, wasting significant public funds. In doing so, Sheriff Cousins and his top administrators condoned and collaborated in sick leave abuse. In many cases, the Cousins administration violated the terms of its contracts with unionized employees. In cases where no rules existed for sick leave use, the Cousins administration could have followed reasonable standards for sick leave use, such as those in HRD's Red Book. Its failure to do so wasted taxpayer's money.

In dozens of cases, the Cousins administration extinguished employees' remaining sick leave credits at the time the employee officially left the payroll. This practice violated ECSD's union contracts and, in the case of non-union employees, state law, all of which required ECSD to pay a 20 percent buyback for unused sick leave upon retirement. Erasing employees' sick leave without their written acknowledgement or waiver also exposed the Commonwealth to legal and financial liability.

II. Between 2009 and 2014, ECSD unnecessarily paid more than \$631,000 in sick leave payments and \$412,300 in other leave payments to retiring employees.

As noted in Finding I, 121 ECSD employees retired between January 1, 2009 and May 1, 2014. ECSD's KRONOS system reflects that 82 of the retirees used significant blocks of sick leave immediately prior to their retirement. In total, ECSD paid these retirees \$631,000 more in sick leave compensation than they would have received through sick leave buybacks. The employees also accrued more than \$412,300 in additional vacation leave, holidays and personal days after they had stopped working.

A. Sick Leave Abuse

Seventy-five of the 121 retirees used 20 percent or more of their accrued sick time, with virtually all of this leave taken after the date of the employee's final worked shift but before the individual officially left the payroll to retire.¹⁹ ECSD administrators admitted that they had approved these 75 individuals' use of sick leave in excess of 20 percent of their accrued time. With three

¹⁹ At Sheriff Cousins' request, one employee agreed to use three sick days per week but continue working part-time until he had trained his replacement. He used 29 percent of his sick leave in this manner.

exceptions (discussed below), these individuals did not receive a sick leave buyback when they retired, although most of them did not use all of their accrued sick time.

ECSD administrators allowed nine of the 82 retirees to use – and receive full payment for – 100 percent of their accrued sick leave before retiring, resulting in a total payout of over \$173,000 more than the employees should have received under the buyback rules. See Table I, below. One employee received nearly \$46,000 more than he would have received as a buyback payment for his 258 accrued sick days. ECSD paid two others more than \$34,000 each in excess of the amount they should have received under the buyback rules. As a group, these nine employees collected full pay for 880 unworked shifts at the end of their ECSD service. By comparison, the nine were entitled to compensation equivalent to about 176 shifts under buyback rules. In other words, ECSD unnecessarily paid healthy employees for 704 shifts they did not work.

ECSD administrators permitted another 16 retirees to use between 90 percent and 99 percent of their accrued sick leave prior to retirement. By arranging for the employees to use sick leave prior to retirement, ECSD administrators paid these 16 employees an extra \$153,000 for unworked shifts compared to what they should have been paid under the buyback rules. Two of these 16 received an excess of \$30,000 each, measured against what the buyback rules entitled them to collect. Two others each received approximately \$13,000 more than they would have received as a buyback payment.

The Cousins administration permitted another seven retirees to use between 80 percent and 89 percent of their accrued leave. This represented nearly \$56,000 more than these retirees should have received in buyback compensation. Ten other individuals were allowed to use between 50 percent and 79 percent of their accrued sick leave. By using sick leave at full pay prior to retirement, these 10 individuals received about \$78,000 more in total than they should have collected in sick leave buyback payments. An additional 35 employees used between 20 percent and 49 percent of their accrued sick leave. By doing so, they collected \$144,000 more in pay for sick leave than they should have received from the sick leave buyback.

Five retirees used some sick leave after their last worked shift but less than 20 percent of their accrued time. Three of the five received a buyback of 20 percent of their remaining sick leave balance. The other two apparently had the balance of their sick leave extinguished without receiving a buyback. Thirty-two of the 121 employees did not use any sick leave prior to retiring.²⁰

²⁰ Several employees retired after a period of being on worker's compensation. While they are among the 121 retirees, the OIG did not include their sick leave use in this review.

Percent Sick Leave Used	Number of Retirees	Total Hours of Sick Leave Taken	Cost of Total Sick Leave Taken	Hours Taken in Excess of 20% of Employee's Balance	Cost of Hours Taken in Excess of 20% of Employee's Balance
100%	9	6,792	\$217,125	5,690	\$174,919
90% – 99%	16	6,228	\$204,102	4,943	\$161,905
80% – 89%	6	2,272	\$70,012	1,725	\$53,113
50% – 79%	11	3,671	\$145,260	2,875	\$96,799
20% – 49%	35	13,102	\$399,479	4,868	\$144,641
1% – 19%	5	395	\$12,534		
0%	32				
Workers' Comp	7				
Total	121	32,460	\$1,048,512	20,099	\$631,377

Table I: Amount and Cost of Excess Sick Leave Used by ECSD Retirees

Overall, the 121 employees received more than one million dollars in sick leave pay after their final worked shift but before they officially left the payroll to retire. That figure is \$631,000 more than the compensation to which they would have been entitled under the sick leave buyback program.

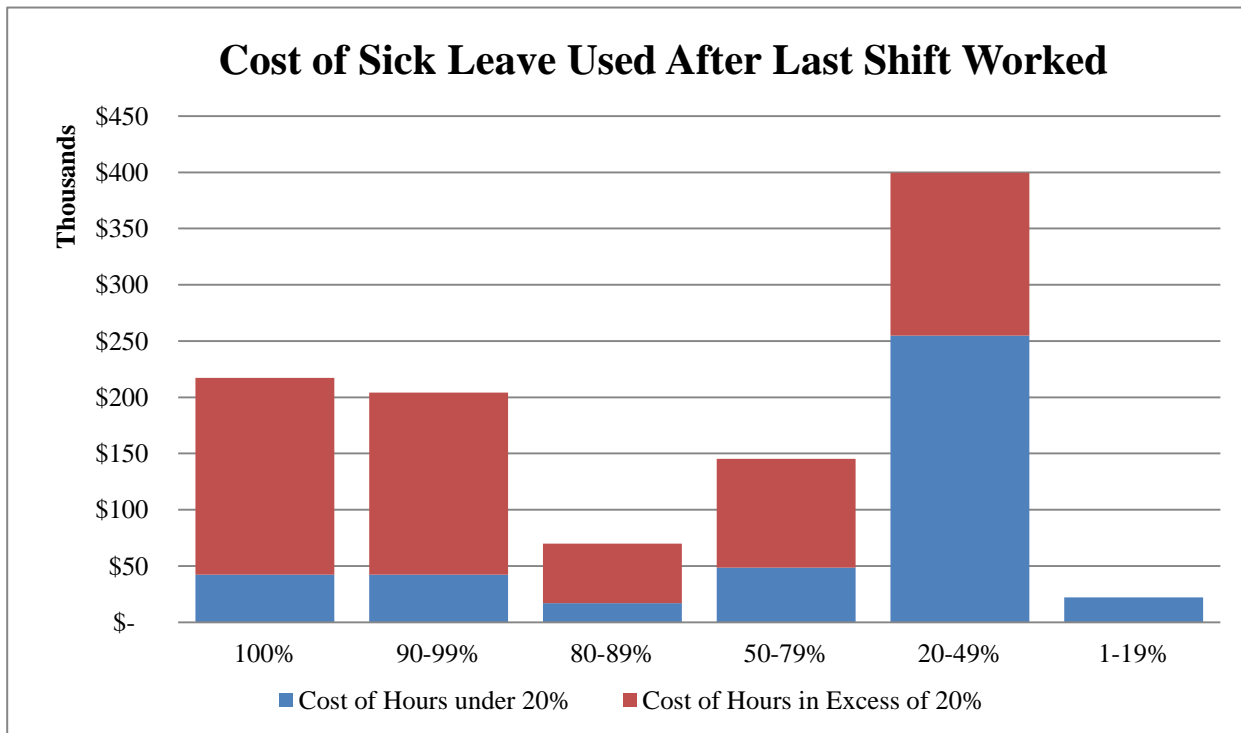


Table II: Cost Breakdown by Percentage of Sick Leave Used.

In addition, the OIG identified three cases in which an employee was allowed to both burn 20 percent or more of their accrued sick leave and collect the sick leave buyback. For example, a former director in the administration worked his final shift at ECSD on April 17, 2012. He then used 32 sick days, slightly more than 20 percent of his accrued sick leave. When he retired on June 1, 2012, ECSD paid him a sick leave buyback of \$10,024, representing 20 percent of his sick leave balance.

In another case, Sheriff Cousins asked a senior correctional officer who had wanted to retire to instead continue working part-time in order to train his replacement. The administration arranged for the correctional officer to use two to three sick days per week for six months. During those six months, this employee used about 29 percent of his accrued sick leave. When he retired in October 2010, he also received a sick leave buyback payment of \$9,500, compensation for 20 percent of his remaining sick leave.

A third case involved a correctional officer who did not work any shifts between October 2009 and his retirement in October 2010. During that year, the correctional officer used 10 weeks of sick leave, 91 holidays and 65 vacation days. Sheriff Cousins regarded the officer as a “problem employee.” Sheriff Cousins encouraged him to stop reporting for work and instead to use his accrued leave, which then allowed the officer to reach eligibility for a pension. Sheriff Cousins allowed the officer to use 22 percent of his accrued sick leave. When he retired in October 2010, the officer also received a sick leave buyback of \$7,312, representing 20 percent of his remaining unused sick leave.

B. Additional Vacation, Holiday and Personal Leave

Not only did Sheriff Cousins unnecessarily pay out more than \$631,000 in sick leave, but those 82 employees who remained on the payroll while out on sick leave continued to accrue other leave benefits that ECSD then paid out. The OIG calculated that these employees collectively earned more than 1,100 vacation days after they had stopped working, costing the state \$279,600. These employees also received about \$109,000 in paid holidays after they had stopped working. Also, 30 of these employees stopped working in one year but remained on the payroll into the following year, thereby getting three personal days, at a cost to the state of \$23,700. In total, Sheriff Cousins unnecessarily paid out more than \$1,000,000 for accrued leave.

It is important to note that this total does not include salaries paid to other employees who covered shift vacancies created by employees using sick leave prior to retirement. ECSD officials acknowledged that in some cases they needed to fill vacancies created when people stopped working but remained on the payroll using up accrued leave. Filling those vacancies – by paying existing staff overtime, promoting staff into higher paid positions or hiring additional staff – entailed extra costs beyond the additional pay the retiring employee received. ECSD officials said they did not undertake a financial analysis of the overall cost to ECSD of allowing staff to burn sick time. Because of ECSD’s inadequate and in some respects non-existent recordkeeping, it is impossible to calculate the cost of filling the shifts of the employees burning sick leave.

The OIG found that Sheriff Cousins and top ECSD officials engineered a system of sick leave abuse by certain employees immediately prior to their retirement. Between 2009 and 2014,²¹ this system paid these employees more than \$1,000,000 in sick leave compensation prior to their retirement date. This amount was at least \$631,000 more than ECSD would have paid to those employees for sick leave buybacks as required under state law and its own rules and contracts. The OIG found ECSD wasted and improperly spent at least \$631,000 of taxpayers' money.

As set forth above, moreover, the Cousins administration's administration of sick leave also resulted in \$401,000 in additional compensation for vacation leave, holidays and personal days to employees who had stopped working. ECSD also paid \$19,524 in sick leave buybacks to two individuals who had used more than 20 percent of their sick leave. In total, Sheriff Cousins' sick leave practices wasted more than \$1,062,000.

III. Dozens of ECSD employees achieved eligibility for their pensions only by receiving creditable service for unauthorized sick leave use.

State retirement law provides county correctional and jail officers a retirement option not available to most other state employees. Most state employees cannot begin receiving a retirement allowance until they reach 55 years of age. Section 28N of Chapter 32 allows a county correctional employee with 20 years of creditable service, regardless of age, to retire and receive a pension equal to 50 percent of the salary he received during his last year of work. Most ECSD employees who retired between January 1, 2009 and May 1, 2014 exercised this option for retiring, often referred to as a "20/50 pension." A correctional officer with less than 20 years of creditable service is not eligible for a pension until age 55.

As noted above in Finding I, Sheriff Cousins sanctioned dozens of employees' use of sick leave for an unauthorized purpose. ECSD's contracts with its correctional officers' union limited the use of sick leave to 10 circumstances listed in the Red Book. ECSD's contract with its captains' union authorized sick leave only when the employee or a member of his immediate family was ill or injured. ECSD's contracts with these two unions defined sick leave abuse as any instance in which an employee uses sick time when he is physically able to work. One example of abuse listed in the contracts was the extensive use of sick leave without a serious medical illness.

The blocks of sick leave the 82 ECSD employees used between January 1, 2009 and May 1, 2014 were treated as creditable service by the Massachusetts State Retirement Board. If the abused sick time were subtracted from their creditable service, many of these employees' situations would be dramatically different. For at least 30 ECSD employees, their abuse of sick leave enabled them to reach 20 years of service. This enabled them to retire with a pension of 50 percent of their salary.

For example, one correction officer retired on December 31, 2011 at age 41, having just reached 20 years of service at ECSD. He had stopped working in March 2011, but stayed on the payroll using vacation time, holidays and 50 sick days. If his sick days had not been included in his

²¹ ECSD officials said that in March 2013 they stopped allowing employees to use in excess of 20 percent of their sick leave; however, they allowed employees who had already begun burning sick leave by March 2013 to continue to do so. Two of those employees remained on the payroll into 2014, using sick time and other accrued leave.

creditable service, he would have fallen short of eligibility for a 20/50 pension by about one month. Instead, he would have had to wait almost 14 years before becoming eligible for a pension at age 55, the minimum age at which a correctional officer with less than 20 years of service can receive a retirement allowance.

Similarly, an assistant superintendent retired in August 2011 at age 39 with about 20 years and 4 months of service. He did not work during his final eight months on ECSD's payroll. Instead he used eight months of accrued leave, including all six months of his accrued sick time. Without credit for his sick leave, he would have been two months short of 20 years of creditable service. Instead of receiving a 20/50 pension of about \$40,000 per year beginning at age 39, he would have had to wait more than 15 years when he became eligible for a pension at age 55.

Of the 30 individuals identified, 17 would not have been eligible for a pension for at least 10 years if their sick leave abuse had not been counted toward creditable service. As a practical matter, most of these employees likely would have worked the weeks or months necessary to reach 20 years of creditable service.

Sheriff Cousins' actions enabled 82 ECSD employees to get creditable service for their abuse of sick leave. If the improperly used sick time were subtracted from the 82 individuals' creditable service, at least 30 individuals who received 20/50 pensions would have been ineligible to receive a retirement allowance at the time they left ECSD's payroll. They would have had less than 20 years of creditable service and would have to wait until they turned 55 to begin receiving a pension. Sheriff Cousins administered sick leave at ECSD. While the employees should have known they were abusing sick leave, Sheriff Cousins bears the primary responsibility for the sick leave abuse and the public funds that have been wasted as a result.

IV. ECSD administrators attributed the use of excessive sick leave to a "Retirement Incentive Program," but there is no evidence that such a program ever existed.

Sheriff Cousins and other ECSD officials attributed employees' widespread use of blocks of sick leave immediately prior to retirement to a retirement incentive program. Sheriff Cousins said that in October 2009, during the fiscal crisis when ECSD's budget was cut by \$1.3 million, he created a program offering employees an incentive to retire. After the OIG began its review, ECSD reported that it had "ended" this "program."

However, the OIG found no evidence that the so-called retirement incentive program ever existed. During the 42 months that they managed the purported program, ECSD officials never created a single memo, email or report referring to it. Minutes of the sheriff's Command Staff meetings never mentioned it. ECSD officials never disseminated any information to the entire staff about the program they claimed to be operating. The only record created about the alleged three-and-a-half-year retirement incentive program was a one-page document created in late January 2013 ostensibly announcing that ECSD was terminating the program, purportedly to coincide with the end of the state's voluntary retirement incentive program. In fact, the state's program had closed seven months earlier. Further, ECSD officials never distributed the ostensible announcement to employees. Instead, it was created for a public relations purpose. In late January 2013, a local television station was preparing to broadcast a story about the Cousins administration allowing healthy ECSD employees to abuse sick leave. Sheriff Cousins

acknowledged that his aides created the document as the Department was preparing for the story's airing, which occurred in early February. ECSD officials told the OIG that they ended the purported program on March 31, 2013.

Moreover, ECSD's administration of sick leave use was neither uniform nor universal. Instead of offering an equal benefit to all similarly situated employees, ECSD officials determined who got to burn sick leave on a case-by-case basis. Meanwhile, many other employees were never offered the option of using their sick leave. ECSD officials acknowledged that they often gave the more generous terms to people who had filed grievances, threatened legal action or were considered problem employees. That is, Sheriff Cousins used sick leave as informal, undocumented settlements of personnel or legal disputes. Certain employees were allowed both to use more than 20 percent of their sick time and also to collect a sick leave buyback.

The OIG found that ECSD's process for administering sick leave for pending retirees lacked coherence and appeared to be erratic. ECSD officials' administration of sick leave exhibited no evidence that an organized departmental initiative was in operation. The OIG found that Sheriff Cousins' so-called retirement incentive program did not exist.

V. ECSD officials continued to allow healthy employees to use blocks of sick leave through 2016, even after the end of the purported retirement incentive program.

ECSD administrators allowed certain employees who retired after the end of the purported retirement incentive program in March 2013 to use blocks of their accrued sick leave following their final worked shift. The sick leave used was packaged with other types of leave, enabling each of the employees to stop working well in advance of the date of their retirement eligibility. ECSD administrators knew the sick leave was not being used because the employee had medical issues. In fact, ECSD officials recorded sick leave entries into the employees' KRONOS daily log for dates into the future. Below are examples of employees who were allowed to abuse sick leave time after March 2013.

ECSD Captain #1

An ECSD captain worked his final shift on July 16, 2015. Between that date and his retirement on November 15, 2015, this officer used 46 sick days, equal to about 20 percent of his accrued sick leave. He also used 28 vacation days, seven holidays and four personal days. During that time, his KRONOS log recorded that he worked 29 details, 17 of them on shifts when he was using sick leave. Command Staff meeting minutes for April 28, 2015 stated that Sheriff Cousins told the 11 officials in attendance that the captain was "retiring November, last working day July 19." According to one of the attendees, Sheriff Cousins told his command staff that the captain would begin working paid details the week of July 27. The captain's first paid detail took place on July 29.

ECSD Captain #2

ECSD officials allowed another captain to use more than 20 sick days – equal to 24 percent of his accrued sick leave – prior to his April 11, 2014 retirement. In December 2013, ECSD officials arranged for the officer to stop working and use more than four months of accrued leave. The arrangement allowed the employee to reach 20 years of service, making him eligible

for a pension. ECSD worked out these terms with the captain following a disciplinary hearing. ECSD officials said the plan called for the captain to use only 20 percent of his accrued sick leave; however, an error by the Massachusetts State Retirement Board calculating the date of his eligibility prompted officials to allow him to use five additional sick days.²²

Correction Officer #1

An ECSD correction officer worked his last shift on July 27, 2015 but did not retire until May 2, 2016. In the interim, he used 31 sick days, 30 vacation days, 141 holidays, and five personal days. When ECSD provided the employee's KRONOS work log to the OIG, it already had been filled out five months into the future.

Correction Officer #2

Similarly, another ECSD correction officer's KRONOS log had blocks of leave entered in advance of his retirement date. This correction officer worked his final shift in October 2015. His KRONOS log recorded him using 72 vacation days, 33 holidays, eight personal days and four sick days until his retirement date on March 25, 2016. ECSD provided the log two months before he retired.

ECSD records had additional examples of employees using sick leave immediately prior to retirement during this time period. The OIG found that even after the end of the purported retirement incentive program, ECSD officials allowed employees to use sick leave for unauthorized purposes.

VI. ECSD officials allowed employees to accrue and receive compensation for unreasonable amounts of vacation time, imposing a burdensome liability on the state and wasting state funds.

ECSD's employee handbook established a ceiling on how much vacation time employees were entitled to carry over from year to year. The handbook stated, "You may carry up to two years vacation time; after that you may be in jeopardy of losing it." While the handbook stopped short of declaring that any excess vacation time was automatically forfeited, it reflected the statewide goal of limiting the Commonwealth's liability for unused leave. ECSD's two-year cap matched the limit HRD set years ago for executive branch non-union employees.²³

One of the reasons for capping vacation leave accruals is that, upon leaving government service, employees are paid for all unused vacation leave at their final hourly pay rate. Without a cap, employees can "bank" some or all of their vacation time throughout their career. Upon leaving government service, employees are paid for unused leave at their final pay rate, not the rate they were paid when they earned the leave. For the vast majority of employees, their final rate of pay

²² Sheriff Cousins' spokesman had informed the media in December 2013 that the employee had retired from ECSD without revealing that the individual would remain on the payroll for another four months. Cousins defended the statement, inaccurately stating that it is a common practice in state government to consider someone retired before that individual leaves the payroll.

²³ Rules Governing Paid Leave and Other Benefits for Managers and Confidential Employees, Section 2.08 (2011).

is also the highest of their career. Because of that, every time an employee receives a raise in salary, the Department's financial liability for that employee's outstanding vacation leave increases. Large lump-sum payments for unused vacation leave, especially if they occur unexpectedly, can disrupt agencies' budget plans. In an October 26, 2017 letter to legislators, for example, the OIG reported that 5,900 state employees had accrued vacation leave balances of 10 weeks or more. The Commonwealth's estimated liability for these individuals' accrued vacation leave was \$88 million. The *Comprehensive Annual Financial Report* for 2016, prepared by the Office of the Comptroller, estimated the state's overall financial liability for its employees' sick and vacation leave at \$558 million.

With the two-year ceiling on vacation carryover, the employee handbook's limit was an attempt to minimize the Department's liability. Upon leaving ECSD service, an employee who had not used vacation leave would be paid for the vacation days earned (but not used) so far in that calendar year and the prior two calendar years. An employee who left the Department on December 31 therefore should have a maximum of three years' worth of vacation time: those earned in that calendar year and during the prior two years.

Nevertheless, ECSD officials allowed employees to accumulate vastly more vacation leave than the limit expressed in the employee handbook. A number of these employees took paid vacation days prior to retirement or received a payout for vacation days upon retirement that exceeded the maximum they could have accrued if Sheriff Cousins had enforced the limit declared in his employee handbook.

For example, ECSD paid one employee, a correction officer assigned to the K-9 unit, nearly \$112,000 for his unused leave when he retired on January 11, 2016. Of that amount, more than \$60,000 represented pay for about 240 vacation days – the equivalent of one year of worked shifts. If Sheriff Cousins had enforced the employee handbook's cap on vacation leave, the employee should have had no more than about 40 days of vacation leave when he retired. ECSD therefore paid him approximately \$50,000 more than he would have received if Sheriff Cousins had enforced the two-year limit on vacation carryover.

Rather than receive a cash payment when they left the Department, some ECSD employees who were allowed to accrue excessive amounts of vacation leave used it prior to their retirement. Prior to one correctional officer's 2014 retirement, he used 113 vacation days, at least 61 more than he should have accrued under the employee handbook's cap. By not enforcing the employee handbook's two-year ceiling, ECSD paid the correction officer about \$14,000 more than it should have.

Similarly, an ECSD assistant superintendent used 98 vacation days prior to retiring on October 1, 2010, earning \$32,827. The union contract covering assistant superintendents stated that an employee forfeited vacation time that was unused at the end of the second year after it was earned. Sheriff Cousins failed to enforce the contract, allowing the employee to accrue and then use 29 more vacation days than permitted. Sheriff Cousins' failure to act wasted more than \$9,700 in excess compensation paid to the assistant superintendent.

As noted above in the prior finding, Correction Officer #2 used 72 vacation days prior to retiring in 2016. Based on his use of vacation leave during his last three years of service, he used approximately 31 more vacation days than he could have accumulated if the employee handbook's two-year limit had been enforced, representing excess compensation of \$10,630.

Employee	Vacation Days Employee Used or Was Paid For After Working Last Shift	Dollar Value of Vacation	Maximum Number of Vacation Days Allowed per Employee Handbook	Maximum Payout per Employee Handbook	Excess Amount Paid
Employee 1	240	\$60,173	40	\$10,029	\$50,144
Employee 2	113	\$25,909	63	\$14,445	\$11,464
Employee 3	98	\$32,827	69	\$23,113	\$9,714
Employee 4	72	\$21,260	41	\$12,106	\$9,154
Total	523	\$140,169	208	\$59,693	\$80,476

Table III: Four Examples of Excessive Vacation Accruals and Their Cost

These four examples alone totaled more than \$80,000 in excess compensation for vacation leave. Because sick leave abuse was the primary focus of this investigation, the OIG did not compile comprehensive data on vacation leave accrual; however, based on the records examined during the OIG's review of sick leave, ECSD paid excess compensation for vacation leave to many employees when they retired or separated from ECSD.

Employees were allowed to carry over excess vacation time throughout the period the OIG reviewed, creating an ongoing liability for ECSD. ECSD's failure to abide by the employee handbook's two-year limit on vacation accruals has allowed a significant number of employees to accumulate sizable amounts of leave. Under the carryover rules established in the employee handbook, the maximum amount of vacation credit an employee could have as of June 30, 2015 should be 500 hours: five weeks from each of the previous two years plus two-and-a-half weeks earned in the first half of 2015.

A review of ECSD employees' accrued vacation leave found that, as of June 30, 2015, 33 employees had accumulated more than 500 hours of vacation leave, the equivalent of 62.5 work shifts or 12.5 weeks. In total, these 33 employees had accumulated at least \$225,000 more in vacation time credits than if the employee handbook's cap had been enforced. For example, one superintendent had accrued 1,030 hours of vacation leave as of June 30, 2015, worth about \$62,000 at his current salary. That amount is more than double what he was entitled to accrue if the two-year ceiling had been enforced. An assistant superintendent also had accrued more than 1,000 hours of vacation leave, worth more than \$41,400 at his current salary.

ECSD officials' failure to follow their own rules on vacation accruals contributed to a growing financial liability for ECSD, and ultimately the state. According to ECSD figures, ECSD's overall liability for unused leave grew from \$5,665,437 in 2005 to \$7,237,019 in 2015, a difference of \$1,571,581. In percentage terms, ECSD's overall liability for unused leave increased 28 percent between 2005 and 2015. However, the vacation component of the liability accounted for most of that increase. ECSD's vacation liability grew from \$2,219,767 in 2005 to \$3,450,916 in 2015, a difference of \$1,231,149. Much of that increase occurred recently. ECSD's vacation liability went from \$2,649,476 in 2012 to \$3,450,916 in 2015 – a 30 percent increase in three years. ECSD's staff grew 11 percent from 2012 to 2015, accounting for a portion of that increase. Raises in salaries also contributed to the increase; however, the growth of ECSD's liability for unused vacation leave outpaced increases recorded in other types of leave and in ECSD's overall liability.

ECSD has also consistently carried a substantial liability for employees' unused holidays; however, the Cousins administration made modest progress on reducing the amount of liability in this category. As of June 30, 2015, ECSD's reported liability for employees' unused holiday leave was \$1,539,800. This amount is 15 percent lower than the Department's liability for holidays 10 years earlier, when the figure was \$1,812,013.

Early in Sheriff Cousins' administration, the Department negotiated collective bargaining agreements that did not allow employees hired after July 1, 2001 to accrue holiday time. Instead, employees hired after July 1, 2001 who worked on a holiday received extra pay of either eight or twelve hours, depending on the holiday. Employees hired before July 1, 2001 were still allowed to accrue holiday time. This change was made shortly after the state took over ECSD and other sheriffs' departments. It applied the state's personnel rules on holiday leave, which did not allow accrual and carryover of unused holidays, to new hires.

Nevertheless, although most employees can no longer accrue holiday leave and carry it over to future years, ECSD still had sizable liabilities to some of its long-term employees at the end of the OIG's review period. As of June 30, 2015, ECSD had 46 employees who had more than 50 days of holiday leave credits. ECSD's holiday leave liability to these 46 employees totaled more than \$560,000.

The following chart lists the employees who, as of June 30, 2015, had more than 1,000 holiday leave hours, according to ECSD’s liability report:

Employee	Total Holiday Hours	Base Wage	Liability Amount
Employee A	1,464.00	\$31.34	\$ 45,881.76
Employee B	1,388.00	\$31.34	\$ 43,499.92
Employee C	1,280.00	\$31.34	\$ 40,115.20
Employee D	1,271.51	\$29.09	\$ 36,988.23
Employee E	1,232.00	\$31.34	\$ 38,610.88
Employee F	1,144.00	\$31.34	\$ 35,852.96
Employee G	1,112.00	\$30.42	\$ 33,827.04
Employee H	1,103.00	\$29.09	\$ 32,086.27
Employee I	1,045.00	\$31.34	\$ 32,750.30
Employee J	1,011.30	\$29.09	\$ 29,418.72
Employee K	1,005.30	\$29.09	\$ 29,244.18
Employee L	1,003.00	\$28.24	\$ 28,324.72
Total	12,595.11		\$ 380,718.41

Table IV: Employees With More Than 1,000 Holiday Hours and the Estimated Cost

As described above, the OIG found that the Cousins administration failed to follow their own employee handbook’s rules and in some cases contractual requirements regarding vacation leave accrual and carryovers. ECSD officials did not ensure that employees used their vacation leave to stay below the carryover limits nor did they forfeit employees’ vacation time in cases where it exceeded those limits. Also ECSD has a substantial liability for accrued holiday leave. While this category of leave will eventually disappear as employees hired before July 1, 2001 retire, it represents a significant liability. As a result, ECSD incurred a growing liability for unused vacation and holiday leave, a liability that ultimately rests with state taxpayers.

Conclusions and Recommendations

The OIG examined ECSD's practices with regard to sick time use by employees nearing retirement eligibility. The OIG determined that Sheriff Cousins and his top administrators encouraged and arranged for the extensive use of sick leave by healthy employees immediately prior to the employees' retirement. These practices violated state rules on the use of sick leave and the language of ECSD's collective bargaining agreements. ECSD subsequently tried to cover up the practices by claiming they were part of a retirement incentive program.

The financial consequences of their actions were significant. Between 2009 and 2013, ECSD paid more than \$1,000,000 in sick leave compensation to dozens of healthy employees approaching retirement. This figure was approximately \$631,000 more than taxpayers would have paid if ECSD officials had followed sick leave buyback rules for its employees. The state also bore the cost of paying to fill some of the shifts left vacant by employees using sick time.

ECSD officials reported that they created and administered a "Retirement Incentive Program" between October 2009 and March 2013 that accounted for the rampant use of sick leave by employees approaching retirement. The OIG found no evidence that the retirement incentive program existed. The initiative had no rules or terms, and it left no trace in ECSD's emails, meeting minutes and personnel records. The only document mentioning the program was created in January 2013 just as a local television station was preparing to broadcast a story about healthy ECSD employees using sick leave. Many of ECSD officials' other statements about their purported retirement incentive plan were inconsistent with Department records; in some cases, ECSD officials' statements were deceptive and misleading.

ECSD officials' wasteful practices regarding sick leave continued after March 2013 up through 2016. The Cousins administration allowed healthy employees to stop reporting for work while remaining on the payroll using blocks of sick leave until they officially retired.

For the 82 employees who used blocks of sick leave prior to retiring, the misused sick leave was treated as creditable service by the State Retirement Board. If the abused sick time were subtracted from their creditable service, many employees' retirement allowance would be affected. A correctional officer with less than 20 years of creditable service is not eligible for a pension until age 55. For at least 30 ECSD employees, Sheriff Cousins' actions enabled them to reach 20 years of service, the threshold at which they qualified for a pension of 50 percent of their salary.

The Cousins administration also allowed employees to accrue excessive amounts of vacation leave. This occurred because ECSD officials failed to enforce language in collective bargaining agreements and rules in the employee handbook setting limits on vacation carryover and accrual.

In short, Sheriff Cousins and his top officials disregarded established rules with regard to sick and vacation leave, administered sick leave in a manner that was wasteful, and sought to avoid accountability for their improper actions.

Sheriff Cousins chose not to run for re-election and left office in January 2017. The OIG recommends the following:

I. ECSD should update its sick and vacation policies, and should ensure that employees only use sick leave for purposes that are permitted under state rules, ECSD's collective bargaining agreements and its employee handbook.

As described earlier in this report, state personnel rules established by HRD allow employees to use sick leave only in 10 specific circumstances, all of which involve the health of the employee or the employee's family or for matters connected to the birth, adoption or foster care of a child. ECSD's contracts with its correction officers explicitly applied these rules, referred to as the Red Book, to the overwhelming majority of the Department's staff. The OIG found that Sheriff Cousins and his top administrators arranged for dozens of healthy employees to use significant amounts of sick leave for purposes that are prohibited by these rules. For many employees who were nearing eligibility for retirement, ECSD allowed them to stop working but to remain on the payroll using sick leave until they reached their retirement date. In other cases, ECSD officials treated sick leave as a bargaining chip to informally settle lawsuits or resolve personnel issues.

Officials in the current administration said that the Department does not permit employees to use excessive amounts of sick leave as occurred under Sheriff Cousins. Nevertheless, ECSD's current sheriff and his administrators need to align the Department's practices with the rules established in the Red Book and with ECSD's collective bargaining agreements. Although sheriffs have wide administrative and operational control over their departments, their actions are bound by state rules and contractual obligations.

Further, the current administration should review and update its sick and vacation leave policies. For instance, ECSD's current employee handbook does not identify the acceptable uses of sick leave. The current sheriff should consider updating the handbook to (1) enumerate the proper uses of sick leave; (2) define sick leave abuse; and (3) unambiguously limit vacation carryover to two years. Similarly, the collective bargaining agreement with the captains and lieutenants' union should enumerate the proper uses of sick leave; the outdated reference to the County Personnel Board also should be removed from that contract.

II. ECSD's current sheriff should ensure that the Department's policies, procedures, decisions and actions are documented.

As detailed above, Sheriff Cousins and his administrators facilitated the widespread use of sick leave for unauthorized purposes. Further, ECSD officials never documented key aspects of how they administered sick leave and the unconventional uses to which they applied it.

Public officials at every agency and Department have a duty to provide an honest and transparent account of how they have spent public funds. ECSD officials failed to do so. The lack of contemporaneous documentation also hindered efforts to fully evaluate ECSD's use of sick leave and its financial outcomes.

Sheriff Cousins cited the state's fiscal crisis, in which ECSD's budget was cut by \$1.3 million halfway through FY 2009, to justify allowing employees to burn sick leave. This explanation was implausible and inappropriate. First, it was illogical to justify wasteful spending by claiming

the Department was strapped for funds. Also, remaining within one's budget is a core obligation for managers. Budget difficulties are not acceptable rationales for sidestepping state laws, union contracts or the duty to spend public funds responsibly and transparently.

The current administration at ECSD should ensure that its policies, procedures, decision making and actions are contemporaneously documented. Doing so will enhance internal controls, enable external accountability, and foster transparency.

III. ECSD's current sheriff should adhere to the employee handbook's two-year cap on vacation leave carryover and accruals in order to limit the state's future liability.

ECSD has long carried and continues to bear a significant financial liability for its employees' unused vacation leave. The Cousins administration's failure to apply the two-year ceiling on vacation accruals and carryovers is the primary reason this problem has endured – and grown – over time. As described in Finding VI, the OIG found that dozens of employees have accumulated amounts of vacation leave that exceed the limit established by ECSD's employee handbook. The Cousins administration has allowed employees to bank excessive amounts of vacation leave. The state carries this as a liability on its books, a debt whose value increases whenever employees' base salaries go up.

The OIG recommends that the current ECSD administration bring the Department into compliance with the employee handbook's standards. This would involve requiring employees to draw down excess accruals within a reasonable time period or face the forfeiture of the leave. It would also oblige administrators and managers to ensure employees have reasonable opportunities to use their excess leave. To the extent possible, employees with a large amount of unused holidays should be encouraged to use this leave as well. Ultimately, ECSD's personnel policies and practices should be brought in line with HRD's Red Book standards.