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We have completed an audit of the Office of State Public Defender. This audit is part of the ongoing program of the Legislative Auditor as authorized by the Legislative Commission. The purpose of legislative audits is to improve state government by providing the Legislature, state officials, and Nevada citizens with independent and reliable information about the operations of state agencies, programs, activities, and functions. The results of our audit, including findings, conclusions, recommendations, and the Office of State Public Defender's response, are presented in this report.

We wish to express our appreciation to the management and staff of the Office of State Public Defender for their assistance during the audit.

Respectfully presented,

A handwritten signature in black ink, appearing to read "Paul V. Townsend".

Paul V. Townsend, CPA
Legislative Auditor

October 13, 2009
Carson City, Nevada

STATE OF NEVADA
DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF STATE PUBLIC DEFENDER

AUDIT REPORT

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EXECUTIVE SUMMARY

DEPARTMENT OF HEALTH AND HUMAN SERVICES OFFICE OF STATE PUBLIC DEFENDER

Background

The mission of the Office of State Public Defender (OSPD) is to provide quality criminal and juvenile legal defense services to rural indigent clients through a cost effective, independent, responsible, and efficient public defender system. OSPD provides equal protection under the law in accordance with the Nevada and United States Constitutions by representing indigent adults and juveniles accused of committing crimes in certain rural areas of Nevada or in one of Nevada's prisons.

OSPD is established within the Department of Health and Human Services. The State Public Defender is appointed by the Governor. Nevada counties with a population less than 100,000 have the option to use the services of OSPD or to obtain services from other sources. During calendar year 2008, OSPD provided services to Carson City, Storey, White Pine, Eureka, and Lincoln Counties. OSPD currently has offices in Carson City and Ely. In fiscal year 2008 OSPD had 16 authorized positions and incurred expenditures of \$2.3 million.

Purpose

The purpose of this audit was to determine if OSPD's financial, administrative, and reporting activities were carried out in accordance with applicable state laws, regulations, policies, and procedures. This audit included a review of OSPD's financial, administrative and reporting activities for the 12-month period from January 1, 2008, through December 31, 2008; and includes activities from July 1, 2007, for certain issues.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES OFFICE OF STATE PUBLIC DEFENDER

Results in Brief

The Office of State Public Defender substantially complied with state laws, regulations, policies, and procedures significant to its reporting, administrative, and financial practices. However, improvements are needed in some areas. OSPD should develop controls over the preparation and submission of annual reports to ensure all reports are issued in accordance with requirements, include accurate, complete and reliable data, and are error free. In addition, certain trial expenditures should be processed directly by OSPD and not participating counties. Furthermore, improved controls will help ensure OSPD's sensitive data and data systems are properly protected and OSPD complies with laws and regulations regarding personnel and property and equipment.

Principal Findings

- OSPD is required by statute to submit three reports at various intervals; however, OSPD did not prepare and submit some reports. Biennial reports disclosing the total proposed budget and projected cases for each participating county for the upcoming biennium were not prepared. In addition, the report submitted to the Legislative Commission was the same report submitted to the Governor and participating counties even though it was not prepared under the correct time frame and did not contain all information required by legislative regulation. (page 8)
- Underlying data used to compile required reports was not accurate, complete, or reliable. Our analysis of staff hours found all hours were not accounted for and hours were charged to the wrong entity. In addition, case logs, used to compile reports did not always

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DEPARTMENT OF HEALTH AND HUMAN SERVICES OFFICE OF STATE PUBLIC DEFENDER

agree to supporting files or to amounts stated on reports. Furthermore, errors were made during report preparation because the process is cumbersome and not adequately reviewed. Without accurate, complete, and reliable data, annual reports will not correctly reflect OSPD operations and calculations used to determine each county's proportional share of costs will be incorrect. (page 10)

- Expenditures, such as investigative costs, expert witness fees, and independent lab costs, were not recorded in OSPD's budget. We identified approximately \$86,000 of expenditures in fiscal year 2008 which were not reflected in OSPD's budget. These expenditures were paid directly from the treasuries of participating counties or from the Reserve for Statutory Contingency Account. By not processing trial expenditures through OSPD's budget, a complete accounting of costs needed to adequately defend indigent citizens is not available to government officials and the general public. (page 13)
- OSPD has not developed internal procedures to ensure state information technology standards are met. Network maintenance necessary to protect against outside threats has not been updated and steps have not been taken to protect sensitive information. Furthermore, adequate plans for the recovery of information and the ability to support critical business functions after a system failure or disaster have not been developed. (page 14)
- OSPD did not comply with performance evaluation and work performance standard requirements. All four classified employees did not receive evaluations or have work performance standards as required by statute. (page 15)
- Controls over certain financial activities can be strengthened. Specifically, the cash receipting

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DEPARTMENT OF HEALTH AND HUMAN SERVICES OFFICE OF STATE PUBLIC DEFENDER

function and the property and equipment function should be adequately segregated. In addition, OSPD lacks controls necessary to ensure appropriate records of asset disposals are created. Good control systems provide reasonable assurance that an agency's objectives are achieved by ensuring the efficiency and effectiveness of operations, reliability of financial information, and compliance with laws and regulations. (page 16)

Recommendations

This audit report contains eight recommendations to improve OSPD's financial, administrative, and reporting activities. Recommendations include policies and procedures over the submission, preparation, and accuracy of annual reports. Other recommendations were made to properly record trial expenditures in the budget, improve the security of the information technology function, and ensure administrative requirements over personnel are met. Finally, we made recommendations for improved controls over cash receipts and property and equipment. (page 25)

Agency Response

The Office, in response to the audit report, accepted the eight recommendations. (page 21)

Introduction

Background

The mission of the Office of State Public Defender (OSPD) is to provide quality criminal and juvenile legal defense services to rural indigent clients through a cost effective, independent, responsible, and efficient public defender system. OSPD provides equal protection under the law in accordance with the Nevada and United States Constitutions by representing indigent adults and juveniles accused of committing crimes in certain rural areas of Nevada or in one of Nevada's prisons. This representation is performed from arrest through trial, sentencing, and appeal. The OSPD may also be appointed by the court to represent parents or guardians in child abuse or neglect cases.

The OSPD is established within the Department of Health and Human Services. The State Public Defender is appointed by the Governor. Nevada counties with a population less than 100,000 have the option to use the services of the OSPD or to obtain services from other sources. During calendar year 2008, OSPD provided services to Carson City, Storey, White Pine, Eureka, and Lincoln Counties. OSPD currently has offices in Carson City and Ely. In fiscal year 2008 OSPD had 16 authorized positions.

OSPD administers one budget account, funded through a combination of fees collected from the participating counties and general fund appropriations. Fees charged to participating counties are determined using a legislatively mandated formula based on staff time records for the previous five fiscal years. The maximum amount of fees OSPD is authorized to charge participating counties is established in the authorization act of each legislative session.

Exhibit 1 shows funding by source and related expenditures of OSPD for fiscal year 2008.

**Office of State Public Defender
Funding by Source and Expenditures
Fiscal Year 2008**

Funding by Source	
General Fund Appropriation	\$1,221,617
County Fees	1,271,489
<i>Available Funding</i>	2,493,106
Reversion	(141,481)
Total Funding by Source	\$2,351,625
Expenditures	
Personnel Services	\$1,539,198
In State Travel	28,697
Operating	91,224
Post Conviction Relief	655,930
Information Services	25,133
Training	8,138
Purchasing Assessment	653
State Cost Recovery Plan	1,707
Reserve for Reversion	945
Total Expenditures	\$2,351,625

Source: State Accounting System.

Note: Post Conviction Relief claims are paid to private attorneys when a person files a petition to obtain relief from the conviction or sentence, or to challenge the computation of time that he has served.

Scope and Objective

This audit is part of the ongoing program of the Legislative Auditor as authorized by the Legislative Commission, and was made pursuant to the provisions of NRS 218.737 to 218.893. The Legislative Auditor conducts audits as part of the Legislature's oversight responsibility for public programs. The purpose of legislative audits is to improve state government by providing the Legislature, state officials, and Nevada citizens with independent and reliable information about the operations of state agencies, programs, activities, and functions.

This audit included a review of OSPD's financial, administrative, and reporting activities for the 12-month period from January 1, 2008, through December 31, 2008; and includes activities from July 1, 2007, for certain issues. The objective of the audit

was to determine if OSPD's financial, administrative, and reporting activities were carried out in accordance with applicable state laws, regulations, policies, and procedures.

Findings and Recommendations

Reporting, Administrative, and Financial Controls Need Improvement

The Office of State Public Defender (OSPD) substantially complied with state laws, regulations, policies, and procedures significant to its reporting, administrative, and financial practices. However, improvements are needed in some areas. OSPD should develop controls over the preparation and submission of annual reports to ensure all reports are issued in accordance with requirements, include accurate, complete and reliable data, and are error free. In addition, certain trial expenditures should be processed directly by OSPD and not participating counties. Furthermore, improved controls will help ensure OSPD's sensitive data and data systems are properly protected and OSPD complies with laws and regulations regarding personnel and property and equipment.

Controls Needed Over Reporting Process

OSPD has not established effective policies, procedures, and controls over its reporting process. Improvements are needed to ensure some reports are submitted and each report contains information required by statute and legislative regulation. Additionally, underlying data used in the reports was not always accurate, complete, or reliable. Further, errors were made during report preparation because the process is cumbersome. As a result, reports issued by OSPD were not reliable and did not accurately reflect its activities.

Some Reports Not Prepared

OSPD did not prepare and submit all reports required by statute and legislative regulation. Furthermore, the report submitted did not contain all required information. When reports are not submitted or are incomplete, county and state officials do not have proper information regarding OSPD operations, performance, and the cost of supporting indigent defense.

NRS 180.080 requires OSPD to compile and submit three reports to various entities regarding its operations. First, OSPD must submit a report compiled annually on a fiscal year basis to the Governor and participating counties. Second, a biennial

report for participating counties regarding the anticipated biennial budget must be submitted before December 1 of each even numbered year. Finally, OSPD must submit to the Legislative Commission a report annually which is compiled based on the calendar year. Exhibit 2 details each report, its required information, distribution, and related statutory citations.

Exhibit 2

**Office of State Public Defender
Statutory Reporting Requirements**

Statutory Citation	Distribution	Reporting Period	Required Information
NRS 180.080 (1)(a)	Governor and Participating Counties	Fiscal Year	<ul style="list-style-type: none"> • Number of cases pending in each county. • Number of cases in each county closed in the previous fiscal year. • Number of criminal defendants represented in each county with separate categories for: <ul style="list-style-type: none"> ○ Crime charged. ○ Juvenile or adult status. • Total number of hours spent on case work for each county. • Amount and categories of expenditures.
NRS 180.080 (1)(b)	Participating Counties	Biennial	<ul style="list-style-type: none"> • Total proposed OSPD budget for each county for the upcoming biennium including: <ul style="list-style-type: none"> ○ Projected number of cases. ○ Projected cost of services.
NRS 180.080 (1)(c) and Legislative Regulation	Legislative Commission	Calendar Year	<ul style="list-style-type: none"> • Cases by type of crime (felony, misdemeanor, etc.) and juvenile or adult status with the following details: <ul style="list-style-type: none"> ○ Number of cases assigned. ○ Number of persons charged. ○ Case results. ○ Number of cases pending at the beginning and end of the year. ○ Number of persons charged in pending cases at the beginning and end of the year. • Number of defendants appealing with separate categories for the court appealed to and the result of the appeal. • Number of petitions for habeas corpus of post-conviction relief with separate categories for the results of the petitions. • Number of proceedings to revoke parole or probation with separate categories for the result. • Number of criminal incidents handled without a formal charge. • Hours spent on each type of activity noted above.

Source: Nevada Revised Statutes and legislative regulations dated October 5, 1978.

Biennial reports required by NRS 180.080(1)(b) were not prepared or submitted for 2008. These reports should have disclosed the proposed budget of OSPD for each participating county, including the projected number of cases and the projected cost of services for the 2010 to 2011 biennium. Because county use of OSPD services is

voluntary, biennial reports provide counties with necessary information to determine if OSPD service is cost effective and fiscally appropriate.

Required calendar year reports for the Legislative Commission were not properly prepared or submitted. Instead, OSPD provided the Legislature with the same reports that were prepared for the Governor under NRS 180.080 (1)(a). However, these reports are compiled over a fiscal year basis, rather than by calendar year as required by legislative regulation. In addition, the report submitted failed to provide some of the information required by legislative regulation. For example, legislative regulation requires the results of each case, information on appeals, and statistics regarding parole or probation revocation proceedings be included in reports. These statistics were not provided on the report submitted under NRS 180.080(1)(a).

Statutes provide that the State Public Defender shall submit a report prescribed in regulation to the Legislature. Even though these requirements have remained unchanged since 1978, OSPD did not have controls to ensure the appropriate report was prepared and submitted. Effective control systems provide reasonable assurance that an agency's reports are reliable and applicable laws and regulations are complied with.

Underlying Data Not Reliable or Complete

OSPD does not have policies, procedures, and controls to ensure underlying data used in the compiling of reports is accurate, reliable, and complete. Our analysis of staff hours found all hours were not accounted for and hours were charged to the wrong entity. Further, case logs used to compile reports did not always agree to actual case files. Without accurate, complete, and reliable data, annual reports will not correctly reflect OSPD operations and calculations used to determine each county's proportional share of costs will be incorrect.

OSPD is required to monitor and record professional staff time for various purposes. Statutes require OSPD to report information regarding the number of hours worked by OSPD on each business activity by entity. In addition, fees charged to participating counties are determined using a legislatively mandated formula based on staff time records for the previous five fiscal years.

Staff record time by day in various increments based on the activity performed. Activities mainly include case management, travel, administration, and professional development. Cases are designated by type, such as felony, misdemeanor, and appeal, and by the entity in which the crime occurred. Because cases are linked to a specific participating county or the State, hours charged to each case are used to determine the funding allocation between the counties and the State.

OSPD has not implemented policies, procedures, and controls to ensure staff hours are accurate and complete. Our analysis of staff hours found several problems with OSPD's time accounting.

- OSPD staff failed to record time on office activities. Our analysis showed staff did not record enough time towards office activities in each of the three months we tested. For instance, based on an 8 hour workday, we found staff accounted for 1,652 of 1,824 work hours during February 2008, about 9% less than expected for the month.
- Staff time reports did not agree to timesheets. For instance, time reports showed eight hours worked on office activities; yet, the employee's timesheet indicated sick leave was used for that day. In all, we found five instances where employee time reports showed time recorded to office activities but timesheets showed leave being used. We also found instances where time reports noted leave but timesheets did not show leave taken.
- Time for administrative tasks, such as staff meetings and answering the phone, were attributed to two counties on logs used to track staff hours. The Public Defender indicated administrative time should be considered time spent related to state activities and not attributed to counties. Total administrative time charged to counties during 2008 that should have been charged to state activities amounted to over 2,100 hours, about 11% of total hours reported.
- Staff did not use a consistent method for time tracking. Five of the 12 staff members tracked their time using methods other than OSPD's computerized time tracking system. Methods included handwritten sheets, Microsoft Excel spreadsheets, and calendars.

The Legislature issued a letter of intent in 2005 requiring OSPD to use staff hours as the basis for determining participating counties share of costs each biennium. Because of inadequacies in OSPD's time tracking, the actual share of costs attributed to each county may be more or less than what they were actually charged. For instance, had administrative time been accounted for properly, the State would have been responsible for at least \$60,000 more in OSPD operational costs for fiscal year 2010 and 2011.

In addition to staff hours, caseload data is a major component of OSPD's reporting requirements. Caseload information is manually compiled from case files into logs which note client name, charges, disposition, and status. During our review of the case logs, we noted errors in the gathering and reporting of caseload data. First, the case status, either pending or closed, reported on case logs did not agree to supporting documentation in 3 of 20 cases we reviewed. Second, the number of parole revocation cases shown on the fiscal year report, for the county of Carson City, was overstated because some state cases were inadvertently included in the total. Finally, the total pending cases shown on OSPD's reports did not agree to the case logs. For 32 of 39 reported totals, the number shown on the log did not agree to the total reported. For instance, OSPD reported 114 pending felonies for Carson City on the 2008 fiscal reports but the log noted 289 pending cases.

Because the Legislature has determined OSPD reports are important to monitoring indigent defense, valid and accurate data are vital to ensuring reports are reliable. In addition, OSPD is mandated to collect accurate statistical information regarding its operations. Procedures detailing how data is to be classified, compiled, reported and reviewed are necessary to ensure information reported does not contain errors and inaccuracies.

Errors Found in the Compilation of Reports

The report submitted to the Governor, Legislative Commission, and participating counties contained errors made during the compilation process. These errors misstated staff hours and case log information shown on the report for more than one of the participating counties.

Compilation errors are the result of the manual process used by OSPD to compile underlying data. For instance, some figures in detailed reports were transferred incorrectly into the summary reports because OSPD uses several logs to track data related to cases and staff hours. In addition, missing or inaccurate formulas in supporting documentation caused some totals and subtotals to be incorrect. These errors occurred because one person performs all functions related to data collection and report preparation without adequate review. Detailed policies and procedures, including

a thorough review of final reports and supporting documentation can help reveal errors made in the compilation and preparation of data.

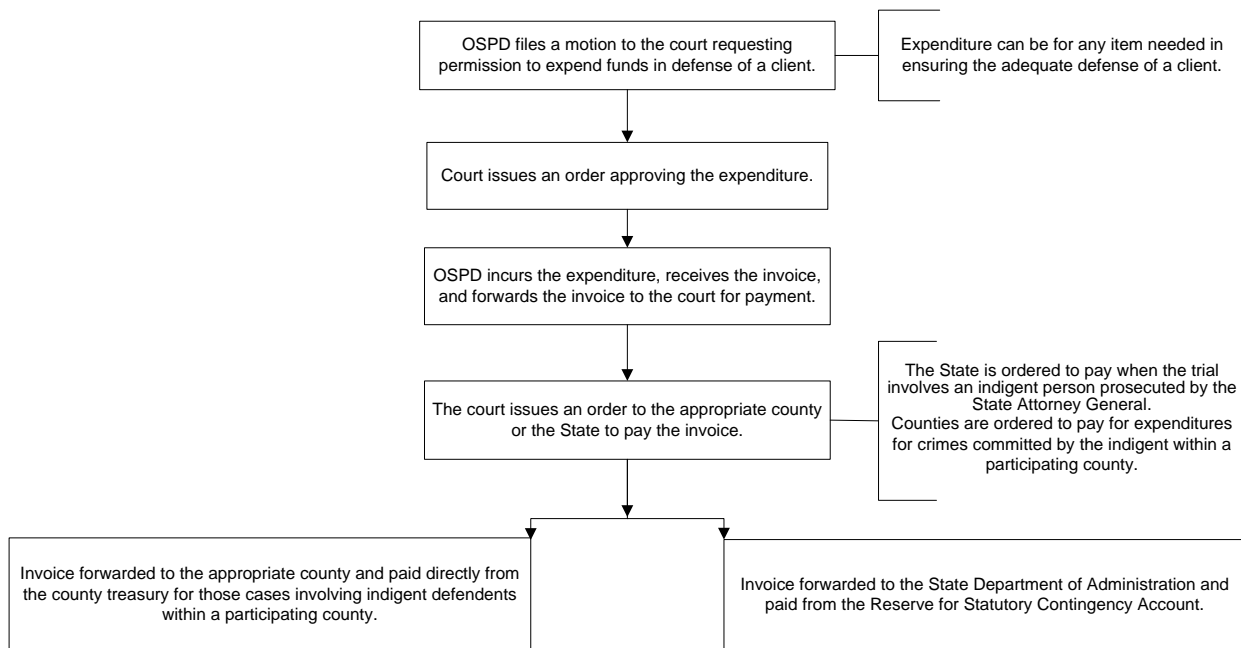
Trial Expenditures Not Processed Through OSPD’s Budget

Trial expenditures, such as investigative costs, expert witness fees, and independent lab costs, incurred as part of defending indigent clients, were not processed through OSPD’s budget. These expenditures were paid directly from the treasuries of participating counties or from the Reserve for Statutory Contingency Account. By not processing trial expenditures through OSPD’s budget, a complete accounting of costs needed to adequately defend indigent citizens is not available to government officials and the general public.

OSPD does not have procedures for tracking, monitoring, and recording trial expenditures. Under the current process, OSPD files a motion with the appropriate court requesting approval to incur the expenditure. After the service is provided, the invoice is forwarded to the appropriate court. Payment is ordered by the court from the treasury of a participating county or the Reserve for Statutory Contingency Account depending on case jurisdiction. Exhibit 3 illustrates this process.

Exhibit 3

**Office of State Public Defender
Trial Expenditure Payment Process**



Source: Agency personnel.

We identified approximately \$86,000 of trial expenditures incurred during fiscal year 2008 which were not recorded in OSPD's budget. Because these expenditures were not tracked or recorded, OSPD was unable to readily provide the total trial expenditures incurred during fiscal year 2008.

Including trial expenditures in OSPD's budget ensures all expenditures needed to adequately defend indigent citizens are recorded and reported. Transparency and accountability for the use of public resources are key to the governing process. Furthermore, this information can help government officials effectively oversee public functions and assure desired program objectives are achieved.

Information System Controls Not Adequate

Weaknesses exist in controls designed to provide security over OSPD's sensitive data and data systems. The State has issued minimum standards to protect state information technology systems. However, OSPD has not developed internal procedures to ensure these standards are attained. As a result, OSPD does not have assurance that sensitive information is protected.

OSPD has relied primarily upon contractors to set up and service their computers. Management believed the contractors were also ensuring state information technology security standards were adhered to. However, our review of OSPD's computers identified vulnerabilities regarding their information systems and sensitive data. Specifically, 7 of 12 computers tested did not contain antivirus software and 3 of 12 did not contain current Windows updates. Additionally, steps have not been taken to encrypt or otherwise protect sensitive information stored on all 8 laptops tested. Furthermore, OSPD does not have adequate plans for the recovery of information and the ability to support critical business functions after a system failure or disaster.

Adequate information technology security must include controls that reflect the importance of the data processed and the agency's investment in system components. Information stored and processed on information technology systems is vulnerable to degradation, corruption or deletion, hardware or software failures, and disasters. The weaknesses noted above decrease OSPD's ability to protect the confidentiality, integrity, and availability of sensitive information and information systems from these vulnerabilities.

Personnel Requirements Were Not Always Followed

Adequate controls are not in place to ensure personnel requirements are met. The employee files for all classified staff employed at OSPD did not contain performance evaluations or work performance standards. Requirements related to personnel are specified in state laws and regulations and include annual evaluations and review of work performance standards.

Performance Evaluations Not Performed

OSPD did not complete performance evaluations for any of its classified staff during calendar year 2008. We reviewed the personnel files of all four active classified staff. Three of the four classified employees, in probationary status during all or part of calendar year 2008, had not received any probationary performance evaluations. Further, the remaining staff member had not received an annual evaluation. NRS 284.340 requires annual evaluations for employees in the classified service who have attained permanent status and more frequent evaluations for probationary employees.

Evaluations serve several purposes: (1) evaluating an employee's effectiveness in performing assigned duties and responsibilities; (2) identifying factors which can improve job performance; (3) clarifying performance standards as they relate to the current job description; (4) assisting employees to develop additional knowledge, skills, and abilities for advancement; and (5) supporting or denying annual merit increases. In addition, the agency may not have any recourse if an employee performs below standard and an evaluation has not been done.

Development and Review of Work Performance Standards Needed

Work performance standards were not developed or reviewed for any of the classified employees as required. State laws and regulations require work performance standards for all classified employees. However, policies and procedures for the ongoing monitoring over the development and review of performance standards have not been established.

Work performance standards serve as a written statement of principal job assignments and the results expected from employees. The lack of current work performance standards increases the risk that an employee is unaware of job elements and expected results for satisfactory performance. In addition, standards serve as the

basis for evaluating an employee's performance. Consequently, without established standards for rating purposes, it would be difficult to fairly evaluate an employee's performance.

OSPD Can Improve Controls Over Certain Financial Activities

Controls over certain financial activities can be strengthened. Specifically, the cash receipting function and the property and equipment function should be adequately segregated. In addition, OSPD lacks controls necessary to ensure appropriate records of asset disposals are created. Good control systems provide reasonable assurance that an agency's objectives are achieved by ensuring the efficiency and effectiveness of operations, reliability of financial information, and compliance with laws and regulations.

Segregation of Duties Will Help Safeguard Assets

OSPD lacks adequate segregation of duties over cash receipts and property and equipment. The legal office manager performs all functions for billing and cash receipts including preparation of the invoices, receipt of the payments, deposits, and recording the payments. Furthermore, one person performs all functions related to the recording, monitoring, and physical identification of assets.

NRS 353A.020 requires agencies to appropriately segregate duties to safeguard the assets of the agency. No one individual should control all key aspects of a transaction or event. Improper separation of duties increases the risk of errors or fraud occurring without detection.

Controls Over Asset Disposals Needed

OSPD has not developed controls over asset dispositions. As a result, some asset disposals during calendar year 2008 were not properly documented. Specifically, three transcriber machines which were unaccounted for were not reported to State Purchasing on the proper form and did not include management review and approval. In addition, three computers were disposed of without obtaining a signature from the receiving agency.

State law requires supervisory approval on asset disposal reports. Many of OSPD's assets can be easily converted to personal use. Proper documentation of

management's approval of disposed assets is necessary to ensure assets are not misused or replaced unnecessarily.

Recommendations

1. Prepare and submit required reports in accordance with statute and legislative regulation.
2. Develop policies, procedures, and controls to ensure data needed for reports is accurate and complete.
3. Develop policies, procedures, and controls, including a thorough review process over the compilation and preparation of statutorily required reports.
4. Ensure all program expenses including travel expenditures are properly tracked, monitored, and recorded in OSPD's budget.
5. Work with available information technology staff and the Department of Information Technology to develop policies, procedures, and controls over information technology functions.
6. Develop policies and procedures over the ongoing monitoring and completion of performance evaluations and work performance standards for all classified staff.
7. Separate duties in the cash handling and property and equipment functions to the extent possible.
8. Develop controls to ensure disposed assets are properly documented.

Appendices

Appendix A Audit Methodology

To gain an understanding of the Office of State Public Defender, we interviewed staff and reviewed applicable laws, regulations, policies, and procedures significant to OSPD's operations. We also reviewed OSPD's financial information, prior audit report, budgets, legislative committee minutes, and other information describing the activities of OSPD. Furthermore, we documented and assessed OSPD's internal controls related to reporting requirements, expenditures, information systems, personnel and payroll, revenues and receivables, and property and equipment.

To determine the accuracy of agency reports and compliance with reporting requirements we identified related statutes and regulations. We obtained copies of OSPD reports and compared them to detailed requirements in statutes and legislative regulations. We determined OSPD staff were tracking and recording hours worked by analyzing time reports and comparing those to timesheets. We also traced time reports and case logs to other supporting documentation used to compile reports and determined if amounts reported agreed to supporting documentation.

Next, to estimate the amount of trial expenditures paid outside the state accounting system we obtained and reviewed expenditures from each participating county and the Reserve for Statutory Contingency Account. We judgmentally selected five county expenditures and five expenditures from the Reserve for Statutory Contingency Account and reviewed supporting documentation to verify the expenditures were incurred by OSPD.

To evaluate information security controls, we selected 12 of the agency's computers. For each computer, we tested for current critical operating system updates and current antivirus software protection. For the laptops in our sample, we determined if agency critical data was properly protected through the use of encryption or other approved means. We also examined the physical security over the network server in the Carson City Office.

We tested compliance with applicable personnel laws, regulations, and policies, by obtaining the personnel files for all four classified employees and determined whether work performance standards were established, reviewed annually, and a copy provided to the employee. We also determined whether classified employee evaluations were completed timely. In addition, we verified unclassified employees were not receiving overtime compensation, premium pay, shift differential, or other compensation not specifically authorized. We verified payroll transactions were processed correctly by randomly selecting five pay periods.

To determine if financial and administrative activities were properly carried out, we obtained calculations for determining each participating county's share of OSPD expenditures and reviewed the calculations for accuracy. Next, we traced the calculated figures to amounts authorized by the Legislature. Furthermore, we reviewed the adjustments to these calculations, determined their accuracy, determined whether counties were notified of adjustments, and compared the total fees paid by each county to the amount authorized by the Legislature. We randomly selected five county payments and reviewed them to ensure they were received, agreed to amounts authorized by the Legislature, and were recorded and deposited timely.

We randomly selected 30 non-payroll expenditure transactions including 10 post conviction relief payments and 5 travel claims. Each payment was tested for proper recording, approval, and compliance with state laws, regulations, polices, and procedures. We tested 6 additional travel claims to determine the extent of errors noted in our original sample. We also randomly selected 6 transactions and verified they were recorded in the proper fiscal year. In addition, we reviewed 5 credit entries for propriety.

Next, we reviewed property and equipment for compliance with requirements by determining whether the OSPD performed annual physical inventories. Based on the inherent risk of loss or misuse, we judgmentally selected five items on the inventory list and verified their physical existence. Similarly, we selected five items physically located in the office and traced them to the inventory report. Two additional items were selected and traced to the inventory list because an item selected did not appear on the inventory list. Additionally, all asset disposals during calendar year 2008 were reviewed for compliance with state laws, regulations, policies, and procedures.

Our audit work was conducted from November 2008 to May 2009. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In accordance with NRS 218.821, we furnished a copy of our preliminary report to the State Public Defender. On September 24, 2009, we met with agency officials to discuss the results of the audit and requested a written response to the preliminary report. That response is contained in Appendix B which begins on page 21.

Contributors to this report included:

Eugene Allara, CPA
Deputy Legislative Auditor

Shannon Ryan, CPA
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Appendix B
Response From the Office of State Public Defender



NEVADA STATE PUBLIC DEFENDER

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October 1, 2009

Mr. Paul Townsend, CPA
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Dear Mr. Townsend:

The Nevada State Public Defender accepts all 8 recommendations in your report. The office has very dedicated and competent professionals, as I am sure your staff can attest, and this audit will help reinforce the need to stay vigilant in all of the areas revealed in your audit work.

Please extend my thanks to your staff for the professional manner with which they conducted themselves and the productive discussions held during the audit process.

Please do not hesitate to let me know if you have any questions or concerns regarding our response.

Sincerely,


Diane R. Crow
Nevada State Public Defender

Cc: Michael J Willden, Director, DHHS

NEVADA STATE PUBLIC DEFENDER
RESPONSE TO LCB AUDIT REPORT OF SEPTEMBER 2009

RECOMMENDATION #1: Prepare and submit required reports in accordance with statute and legislative regulations.

The NSPD will review all statutes and regulations that mandate reports; will establish methods to maintain accurate records; and will prepare and submit all required reports in a timely and accurate manner. Further, the NSPD will review these requirements and consider requesting Legislative changes in the 76th session. These changes would provide better statistical information for all stakeholders to evaluate the program.

RECOMMENDATION #2: Develop policies, procedures, and controls to ensure data needed for reports is accurate and complete.

The NSPD will formalize policies and procedures to ensure all timekeepers and staff accurately collect and maintain accurate records in a consistent manner. Further, the NSPD will develop policies and procedures to review all statistics on at least a quarterly basis to ensure the reports are accurate and complete. Used comp hours for unclassified, exempt employees (attorneys) will be recorded in a "personal" file and not as "sick" or "annual" leave. This will alleviate the discrepancy between office time logs and State timesheets. Each timekeeper will also have an "administrative" log for each county and State maintained separately to ensure administrative time is accurately reflected for each participating entity.

The NSPD will consider requesting a Legislative re-evaluation of the State-County split based on more accurate statistics replacing the 5-year average, which are inaccurate.

RECOMMENDATION #3: Develop policies, procedures, and controls, including a thorough review process over the compilation and preparation of statutorily required reports.

The NSPD will develop policies and procedures to ensure that statutory reports are maintained and adequately reviewed to provide accurate reports to the Governor, Legislative Commission, and the participating counties. Further, the office will research adapting the current software to enable the reports to be based on computer-generated reports in place of the manual process. Supervisory staff, to prevent inaccurate transfer of data and compilation of statistics, will review these reports.

RECOMMENDATION #4: Ensure all program expenses including trial expenditures are properly tracked, monitored, and recorded in OSPD's budget.

The NSPD will develop policies and procedures to track all extraordinary trial expenditures, including but not limited to expert witness fees for evaluations, investigation, testing, and testimony, clothing allowances for in custody defendants, excessive copying charges, production of trial exhibits, etc.

Previously, the NSPD has requested funding from the individual counties (District Attorney prosecutions) or the State Contingency Fund (AG prosecutions) through the courts. After the services were complete, the final statement would be submitted to the court with an order for payment from the appropriate entity and directly to the expert or service provider. Occasionally, when an attorney or investigator paid for the service directly, the request would be for reimbursement to that individual.

These funds would be accounted for in the county or Contingency fund records, but would not be associated with the NSPD budget.

The NSPD will track, monitor, and record all requested extraordinary funding requests from all funding sources and will request legislation in the 76th Session for an appropriate line item in future budget requests.

This process will provide more transparency in the NSPD budget. However, this will not completely negate the need to request some extraordinary funding in major cases, i.e. Capital cases, non-capital murder cases, some Category A felony cases.

RECOMMENDATION #5: Work with available information technology staff and the Department of Information Technology to develop policies, procedures, and controls over information technology functions.

The NSPD will be securing the office server in a locked room as soon as practical. Further, the NSPD will contact the Department of Information Technology to acquire the State standards for protecting the NSPD sensitive information and encryption of such data. The office will contact and work with all available information technology sources to secure and maintain all computers and the servers. The office will coordinate with the DHHS IT person when a trip is planned to Ely to maintain the computers.

RECOMMENDATION #6: Develop policies and procedures over the ongoing monitoring and completion of performance evaluations and work performance standards for all classified staff.

The NSPD will develop (review and maintain) work performance standards for all classified staff. Further, the NSPD will develop policies and procedures to monitor and complete the performance evaluations for all classified staff.

RECOMMENDATION #7: Separate duties in the cash handling and property and equipment functions to the extent possible.

The NSPD will be able to separate duties in the handling of cash and property and equipment functions when the new position of Administrative Assistant is filled. Since 2007, in an effort to reduce the NSPD budget, the position of Supervising Legal Secretary was reduced to a Legal Secretary II. Prior to this change the Supervising Legal Secretary and the Office Manager shared the functions of cash and property handling in the office. Once the AA is hired the office will be able to segregate the duties and ensure proper handling of these matters.

RECOMMENDATION #8: Develop controls to ensure disposed assets are properly documented.

The NSPD will develop controls to ensure all disposed assets are properly documented and that there is segregation and monitoring of these functions. Thus will also be enabled by the hiring of the admin assistant.

**Office of State Public Defender
Response to Audit Recommendations**

<u>Recommendation Number</u>		<u>Accepted</u>	<u>Rejected</u>
1	Prepare and submit required reports in accordance with statute and legislative regulation.....	<u> X </u>	<u> </u>
2	Develop policies, procedures, and controls to ensure data needed for reports is accurate and complete.....	<u> X </u>	<u> </u>
3	Develop policies, procedures, and controls, including a thorough review process over the compilation and preparation of statutorily required reports.	<u> X </u>	<u> </u>
4	Ensure all program expenses including trial expenditures are properly tracked, monitored, and recorded in OSPD’s budget.....	<u> X </u>	<u> </u>
5	Work with available information technology staff and the Department of Information Technology to develop policies, procedures, and controls over information technology functions.....	<u> X </u>	<u> </u>
6	Develop policies and procedures over the ongoing monitoring and completion of performance evaluations and work performance standards for all classified staff.....	<u> X </u>	<u> </u>
7	Separate duties in the cash handling and property and equipment functions to the extent possible.	<u> X </u>	<u> </u>
8	Develop controls to ensure disposed assets are properly documented.....	<u> X </u>	<u> </u>
	TOTALS	<u> 8 </u>	<u> 0 </u>