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We have completed an audit of the Records Bureau within the Department of Public Safety's Records and Technology Division. 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 Division's response, are presented in this report.

We wish to express our appreciation to the management and staff of the Records and Technology Division and the Records Bureau 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

September 9, 2008
Carson City, Nevada

STATE OF NEVADA
DEPARTMENT OF PUBLIC SAFETY
RECORDS AND TECHNOLOGY DIVISION
RECORDS BUREAU

AUDIT REPORT

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EXECUTIVE SUMMARY

DEPARTMENT OF PUBLIC SAFETY RECORDS AND TECHNOLOGY DIVISION RECORDS BUREAU

Background

The Records Bureau is organized within the Department of Public Safety's Records and Technology Division. The mission of the Bureau is to provide accurate, timely, and appropriate public safety information to the Department, the law enforcement community, and the citizens of Nevada using state-of-the-art technology. This information is used in making informed public safety, criminal justice, and regulatory decisions regarding crime and criminal offenders.

Established by the Legislature in 1985, the Central Repository for Nevada Records of Criminal History is administered by the Bureau. The Bureau serves as the State's clearinghouse for criminal history records information, crime statistics, and information and activities that support a wide variety of public safety interests.

The Bureau manages the statewide Sex Offender Registry Program, established by the Legislature in 1997. The Program's mission is to provide law enforcement and the public with accurate information on registered sex offenders, to increase public awareness, and prompt safeguards to prevent encounters with sexual offenders. The Bureau also operates many other programs, including the Civil Applicant Background Check Program which began in 1988. The Program provides fingerprint-based criminal history background checks for state agencies, licensing entities, and employers.

The Bureau is headquartered in Carson City and also maintains an office in Henderson. The Bureau is funded from court assessments and other fees. Bureau expenditures were about \$12.7 million in fiscal year 2007.

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Purpose

The purpose of this audit was to determine whether the Bureau maintained the sex offender registry and community notification website accurately, completely, and in accordance with applicable laws. In addition, we determined whether the Bureau adequately addressed the backlog of criminal and juvenile fingerprint cards and court dispositions. We also determined whether the Bureau processed civil applicant background checks accurately and timely in accordance with applicable laws. We reviewed the sex offender registry as of November 1, 2007, and fingerprint cards, dispositions, and background checks for the 2 ½ -year period ended December 31, 2007.

Results in Brief

The Bureau needs to make improvements to the Sex Offender Registry Program. A significant portion of the offender information we tested in the sex offender registry and on the community notification website was inaccurate or incomplete. Furthermore, information was not always updated in the registry to reflect that offenders had moved out of the State. Finally, the Bureau has not designed the registry to allow law enforcement to search the record of registration of offenders by many of the data fields required by state law. The reliability and accessibility of the registry is important because the Program serves an essential function in providing the public and law enforcement with information about registered sex offenders.

Although the Bureau has successfully reduced the backlog of adult criminal fingerprint cards, backlogs of court dispositions and juvenile criminal fingerprint cards have increased in recent years. The increases were attributable to inaccurate internal reporting of backlog numbers to

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Bureau management and inadequate allocation of resources to reduce the backlogs. Criminal history records are incomplete when court dispositions and fingerprint cards are not recorded in the central repository for criminal records. Incomplete criminal records adversely affect Bureau programs and law enforcement.

For more than 4 years, the Bureau used incorrect criteria to evaluate criminal histories for certain civil applicant background checks. As a result, the Bureau issued some responses indicating applicants committed certain offenses when they had not. Furthermore, although the Bureau has improved the overall timeliness of completing civil applicant background checks, some responses were not disseminated within statutory timeframes. Inaccurate and untimely responses impact the subjects and recipients of background checks.

Principal Findings

- We found that 22% of the registered sex offender information we tested, required by statute to be included in the registry, was inaccurate or incomplete. Many of these errors were reflected on the community notification website. This occurred because the Bureau had not developed sufficient quality control review procedures to ensure the registry was maintained consistent with state law. Additionally, policies and procedures over the process need to be improved. A complete and accurate record assists the public and law enforcement in making informed decisions when dealing with offenders. (page 12)
- The Bureau did not always update information in the sex offender registry when offenders moved out-of-state. Forty-three residence and 187 employer addresses of offenders who moved out-of-state were inaccurate. Sixty-four of these inaccuracies were

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posted to the community notification website. Inaccuracies in the addresses provide misleading information to the public and law enforcement regarding the location of these offenders. (page 15)

- The sex offender registry does not have the capability to be searched by law enforcement using many of the search criteria required by state law. The inability to search by all of the required fields limits the usefulness of the registry information to law enforcement when performing investigations. Although this has been a requirement in statute since 1998, the Bureau has never developed this feature. (page 16)
- The backlog of unprocessed court dispositions was more than 306,000 as of December 31, 2007; a significant increase over amounts reported by the Bureau in recent years. The increase occurred because of inaccurate reporting of the backlog to management and resulting insufficient allocation of resources to address the need. Criminal history records are incomplete without dispositions, which indicate whether charges were dismissed or upheld and whether the suspect was found guilty. The Bureau has established a plan to reduce the backlog over the next 3 to 5 years. The Bureau is also working with the Administrative Office of the Courts to expand and enhance electronic submittal of court dispositions. (page 17)
- The Bureau has not developed a searchable database for the storage and utilization of juvenile fingerprint cards. As a result, the backlog has increased to more than 26,000 cards as of December 31, 2007, from about 20,000 as of June 30, 2005. Without a database, Nevada law enforcement agencies are unable to perform latent fingerprint searches on juvenile fingerprints when conducting crime scene investigations. (page 19)

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- From July 2003 to early October 2007, the Bureau utilized the wrong criteria to evaluate the criminal histories of certain subjects of civil applicant background checks. As a result, the Bureau issued “positive” and “undecided” responses when it should have issued “negative” responses in 13 of the 30 civil applicant background checks we tested. Consequently, some of the recipients of the responses were misled by Bureau responses, which may have negatively impacted employment or volunteer opportunities. (page 21)
- The Bureau did not issue state civil applicant background check responses within the 30-day statutory requirement for 44% of those performed under the authority of NRS 179A.210 during 2007. Untimely processing of background checks may cause delays in putting employees and volunteers to work. The Bureau conducted over 8,000 background checks under the authority of NRS 179A.210 during calendar year 2007. (page 23)

Recommendations

This report contains nine recommendations to improve the Bureau’s sex offender registry, civil applicant background check process, and backlogs of court dispositions and juvenile criminal fingerprint cards. These recommendations include enhancing supervisory controls and policies and procedures over the Sex Offender Registry Program. We also made recommendations to improve management’s monitoring of backlogs, issuance of civil applicant responses, and resolution of court disposition and juvenile fingerprint card backlogs. (page 39)

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Agency Response

The Department, in response to our audit report, accepted the nine recommendations. (page 29)

Introduction

Background

The Records Bureau is organized within the Department of Public Safety's Records and Technology Division. The mission of the Bureau is to provide accurate, timely, and appropriate public safety information to the Department, the law enforcement community, and the citizens of Nevada using state-of-the-art technology. This information is used in making informed public safety, criminal justice, and regulatory decisions regarding crime and criminal offenders.

Established by the Legislature in 1985, the Central Repository for Nevada Records of Criminal History is administered by the Bureau. The Bureau serves as the State's clearinghouse for criminal history records information, crime statistics, and information and activities that support a wide variety of public safety interests.

Records of Criminal History

A record of criminal history is initiated when the Bureau receives a criminal fingerprint card. Criminal fingerprint cards are submitted to the Bureau by law enforcement agencies during the booking process when a suspect is arrested. Records of criminal history are not complete until charges are matched to corresponding dispositions. A disposition marks the conclusion of a criminal proceeding and includes a record of whether arrest charges were dismissed or upheld and whether the suspect was found guilty. These records of criminal history are maintained in the central repository for criminal records. The main programs managed by the Bureau using criminal history records are described below.

Civil Applicant Background Checks

The Civil Applicant Program began in 1988. The Program provides fingerprint-based criminal history background checks for state agencies, licensing entities, and employers on current or potential employees and volunteers. Applicants submit fingerprints and the Bureau attempts to match the fingerprints to existing prints in the criminal history fingerprint database to determine whether a criminal record exists.

The information the Bureau disseminates at the conclusion of a background check depends on the statutory authority indicated on the request. Under certain statutes, the Bureau provides state agencies and licensing entities with the subject's state and federal criminal history. Under other statutes, employers receive a letter from the Bureau that indicates whether the subject's criminal record contained an offense listed in specific statutes. In these cases, the Bureau does not distribute the criminal history. Rather, the Bureau issues one of the three following responses:

- "Positive" indicating the subject's criminal history contained certain offenses identified in statute.
- "Negative" indicating the subject's criminal history did not contain certain offenses identified in statute.
- "Undecided" indicating the Bureau was unable to accurately determine whether the subject's record contained certain offenses listed in statute. This response is used when a qualifying arrest in a criminal history does not include a court disposition indicating whether a person was convicted.

State Sex Offender Registry

In 1997, the Legislature established the statewide Sex Offender Registry Program and community notification process. The mission of the Program is to provide law enforcement and the public with accurate information on registered sex offenders, to increase public awareness, and prompt safeguards to prevent encounters with sexual offenders.

Nevada law requires a registry of sex offender information to be maintained for law enforcement purposes. In addition, the Bureau must post certain information on serious and high-risk sex offenders on a website for public access. Information on the community notification website includes an offender's name and known aliases, year of birth, photograph, tier level, physical description, complete residential address, block number of employment address, and certain conviction information. The public can access the website at the following web address: www.nvsexoffenders.gov. Information on the website is only provided on offenders who have been assessed as having the highest risks of recommitting offenses. These are offenders assigned tier levels 2 or 3.

A higher tier level equates to a greater assessed risk of re-offense. Offenders assigned tier level 1 are not subject to community notification.

The State adopted the provisions of the federal Adam Walsh Child Protection and Safety Act during the 2007 Legislative Session through passage of Assembly Bill 579. The resulting changes in state law, effective July 1, 2008¹, impact the operations of the Sex Offender Registry Program. A couple of examples of these changes include:

- New Tier Assessments - The basis for sex offender tier level assessments changed from a risk-based assessment to assignment based upon the sexual offense committed. The Bureau indicated it has completed the tier reassessments for all actively registered sex offenders. The reclassification of tier levels for offenders has resulted in a redistribution of the number of registered offenders between the three tiers. For example, the number of offenders classified as tier 3 will increase from about 200 to more than 2,500.
- Increased Frequency of Verification - The Bureau will be required to update the offenders' information in the registry more often due to increased frequency of verification requirements. The verifications include updating information such as address, employment, and vehicles. Offenders will be required to complete verifications in person with local law enforcement. Information will be sent to the Bureau to be updated in the registry. Tier 3 offenders will be required to complete a verification every 90 days, tier 2's every 180 days, and tier 1's annually. Prior to July 1, 2008, all offenders were required to submit an annual verification.

Other Bureau Programs

The Bureau also manages the following programs utilizing records of criminal history:

- Civil Name Check Program – name-based background checks used to obtain criminal background information on prospective employees.
- Brady Point-of-Sale Firearms Program – name-based background checks used to obtain criminal background information on individuals purchasing firearms.
- Temporary Protection Order Registry – a registry of domestic violence protection orders issued within the state made available to Nevada Criminal Justice Information System (NCJIS) users.

¹ On June 30, 2008, a federal judge issued an order to delay implementation of the new laws until constitutional challenges can be considered.

- Dangerous Offender Notification System – a database that captures information on potentially dangerous parolees for use when such an individual comes into contact with law enforcement.

Staffing and Budget

The Bureau is headquartered in Carson City and also maintains an office in Henderson. In fiscal year 2007, the Bureau was authorized 67 positions. The Legislature approved an additional 13 positions beginning in fiscal year 2008. As of May 2008, all but four authorized positions were filled.

The Bureau is funded primarily from court assessments and Civil Applicant Background Check, Brady Point-of-Sale, and Civil Name Check fees. Exhibit 1 details the Bureau's funding sources and expenditures for fiscal year 2007.

Exhibit 1

**Funding Sources and Expenditures
Fiscal Year 2007**

Funding Sources	
Beginning Cash	\$ 7,392,060
Civil Applicant Fees	6,683,848
Court Assessments	4,988,706
Point of Sale Fees	1,551,026
Civil Name Fees	1,152,640
Other	85,606
Available Funding	\$21,853,886
Less: Balance Forward	(9,127,332)
Total Funding	\$12,726,554
Expenditures	
Personnel Services	\$ 3,900,700
Information Services	3,876,794
FBI Fingerprint	3,249,354
Fingerprint ID Network	610,800
Operating	562,181
Other	526,725
Total Expenditures	\$12,726,554

Source: State Accounting System.

The Bureau also oversees the Revolving Account to Investigate the Background of Volunteers Who Work With Children. The account is funded by a general fund appropriation. The Legislature appropriated \$25,000 for each fiscal year from 2006 through 2009. Funds from the account are used to provide free background checks for volunteers working with children at non-profit organizations.

Scope and Objectives

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 an evaluation of the Records Bureau's Sex Offender Registry Program as of November 1, 2007. It also included a review of the civil applicant background check process, court dispositions, criminal fingerprint cards, and juvenile fingerprint cards for the 2 ½ -year period ended December 31, 2007. The objectives of our audit were to determine whether the Bureau:

- maintained the sex offender registry and community notification website accurately, completely, and in compliance with applicable laws;
- adequately addressed the backlog of criminal and juvenile fingerprint cards and court dispositions; and,
- processed civil applicant background checks accurately and timely in accordance with applicable laws.

Findings and Recommendations

Sex Offender Registry Program Needs Improvement

The Bureau needs to make improvements to the Sex Offender Registry Program. A significant portion of the offender information we tested in the sex offender registry and on the community notification website was inaccurate or incomplete. Furthermore, information was not always updated in the registry to reflect that offenders had moved out of the State. Finally, the Bureau has not designed the registry to allow law enforcement to search the record of registration of offenders by many of the data fields required by state law. The reliability and accessibility of the registry is important because the Program serves an essential function in providing the public and law enforcement with information about registered sex offenders.

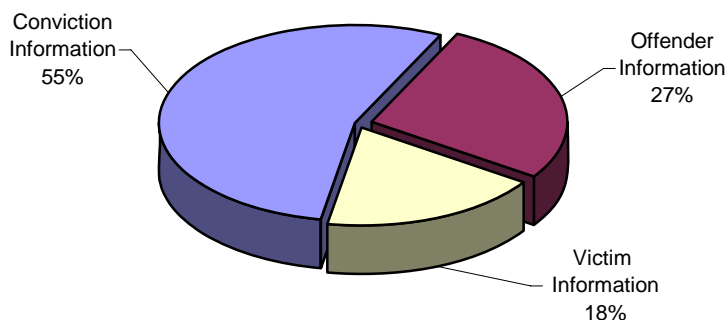
Registered Offender Information Not Always Reliable

The Bureau needs to improve the reliability of the information contained in the registry. A significant amount of the information in the registry we tested was either inaccurate or incomplete. These errors and omissions impact users of the information including law enforcement and the public through the community notification website. The reliability of the registry could be improved by increasing supervisory review of information recorded in the registry and improving related policies and procedures.

Offender Information Not Always Accurate or Complete

We found that 22% of the registered sex offender information we tested, required by statute to be included in the registry, was inaccurate or incomplete. This involved 233 of 1,040 selected components from 80 sex offenders' records. Bureau records indicated there were about 6,300 actively registered offenders as of November 1, 2007. Exhibit 2 details the three general types of errors identified that comprise the 22% error rate:

**Sex Offender Information Not Accurate or Complete
Nature and Frequency of Exceptions**



Source: Auditor testing of Bureau records and Sex Offender Registry.
Note: Percentages represent the errors within each category as a percentage of the 233 errors.

Errors related to conviction information included location of offense, court of conviction, specific sexual acts, or offenses committed and related statutes. Additionally, errors concerning offender information related to names and aliases, employer and residence addresses, and physical description. Finally, victim information includes descriptive data about the victim and method of obtaining access to the victim.

In addition to these errors, Bureau staff did not record the name and location of the institution the offenders were committed to for each offense. This information is required by statute to be in the registry and on the website. We noted the information was readily available in many of the case files that we tested.

Through the course of the audit, we communicated the errors that we identified with Bureau staff and management to allow them to take timely corrective actions. Appendix B provides more detail on the frequency and nature of the errors identified in the 80 offenders' records tested.

Errors and Omissions in the Registry Impact Users

The errors in the registry directly impact the information that is provided to the public on the community notification website. The information in the registry for tier 2 and tier 3 offenders is linked directly to the website; therefore, errors in the registry are reflected on the website. Incomplete or inaccurate information decreases the website's

effectiveness in accomplishing its purpose to increase the public's awareness and prompt safeguards to prevent encounters with sexual offenders.

These errors provide the public with misleading information that may impact how they deal with these offenders if encountered. For example, an offender's record on the website listed his convictions as "convicted sex offender" when the actual convictions were rape, lascivious acts with child, and assault to commit sexual abuse. Knowing the actual offenses is beneficial to the public. Additionally, errors in information such as names and aliases, residence and employment addresses, and others impact the public's ability to identify and locate offenders that may live or work near them. For example, an offender's record in the registry reflected an employer address of "NV 89102" when his complete employer address, in a different zip code, was available in the offender's case file but had not been entered into the registry.

We also identified one field of information in the registry that was not on the community notification website even though it is required by state law. This field shows the location of offense for each reportable sexual offense conviction. Even though the Bureau input this information in some cases into the registry, the field was not linked to the website. As a result, the information was not made available to the public as required by state law.

Information in the registry is also used by law enforcement. Errors in information such as the offender's residence or conviction information negatively impact its usefulness for law enforcement. The accuracy of registry information is also relied upon by other Bureau programs such as the Civil Applicant Background Check and Brady Point-of-Sale Firearms Programs.

Improved Controls Would Enhance Reliability of the Registry

Program management has not implemented sufficient controls to ensure that the sex offender caseworkers are complying with the governing statutes when entering sex offender information into the registry. The Bureau needs to enhance supervisory review procedures to ensure staff are entering offender information into the registry with accuracy and completeness and improve policies and procedures governing the Program.

The Program would benefit from the implementation of routine supervisory quality control reviews of staff work to assess the accuracy and completeness of the information entered into the registry. All of the errors we identified in our testing could have been corrected through adequate quality control procedures.

During the course of the audit, the Bureau added three staff to the Program. One of them was assigned to perform procedures to verify the accuracy of selected registry fields transmitted to the federal government. However, the scope of the information reviewed under this process does not include much of the information required in the registry by state law.

Although desk manuals containing policies and procedures for the sex offender registry exist, the manuals need to be improved. Specifically, policies need to include detailed guidance related to staff responsibilities. For example, policies did not address all of the statutorily required registration and community notification website information or dictate the appropriate source of the information. Additionally, policies did not require staff to review the community notification website after making changes to the registry to ensure the information was posted correctly. The Bureau implemented this procedure subsequent to our identification of the weakness. Finally, the policies and procedures manual needs to include the updated statutes relevant to their responsibilities.

Information Not Always Updated When Offenders Leave the State

The sex offender registry also contained inaccurate residence and employer addresses for some offenders who have moved out-of-state. These offenders are not actively registered in the State and are separate from the exceptions noted previously. Bureau policies require the new address of an offender who moves out-of-state to be input into the registry. However, this often did not occur. We found the following errors:

- Residence Address - 43 of about 800 tier 1, 2, and 3 offenders who moved out-of-state still had Nevada residence addresses in the registry. Twelve of the 43 were tier 2 or tier 3 offenders and subject to community notification.
- Employer Address - 187 of about 800 tier 1, 2, and 3 offenders who moved out-of-state still had Nevada employer addresses in the registry. Fifty-two of the 187 were tier 2 or tier 3 offenders and subject to community notification.

Inaccuracies in the addresses provide misleading information to the public and law enforcement regarding the location of these offenders. For example, a concerned citizen may be misled by the website indicating a tier 3 offender lives in Reno when the offender is actually living out-of-state. Additionally, someone in another state accessing the offender's registry record through the National Sex Offender Registry could be misled to think this offender was living in Nevada when they have moved to another state.

The errors with these offenders occurred because management has not developed sufficient quality control review procedures. Supervisory review procedures over inactive offenders subject to community notification would help identify and correct the errors in the offenders' addresses. The Bureau indicated it has focused its resources on the actively registered offenders.

Ability for Law Enforcement to Search Records Is Limited

The Nevada Sex Offender Registry does not have the capability to be searched by law enforcement using many of the search criteria required by state law. As a result, law enforcement's ability to search the registry is limited. Although this has been a requirement in state law since 1998, the Bureau has never developed this feature.

Law enforcement can query information in the registry through Nevada Criminal Justice Information System (NCJIS). Law enforcement is currently able to search the registry using an offender's name, state or federal criminal ID number, and other defining characteristics such as race, sex, date of birth, and social security number. However, many of the required search fields required by statute are not available. These include an offender's physical description, geographic location of offense, method of obtaining access to victim, and physical description of and injuries inflicted on the victim.

The unavailable search fields are ones that may be used by law enforcement when they are attempting to identify an offender. The inability to search by all of the required fields limits the usefulness of the registry information to law enforcement when performing investigations.

Recommendations

1. Enhance supervisory quality control procedures of sex offender records in the registry to ensure staff are accurately and completely recording information required by state law.
2. Improve written policies and procedures to address case worker responsibilities including detailing the information required by statute to be input into the sex offender registry.
3. Develop the capability to allow law enforcement to search the sex offender registry using the data fields required by state law.

Backlogs of Criminal Information Have Increased

Although the Bureau has successfully reduced the backlog of adult criminal fingerprint cards, backlogs of unprocessed court dispositions and juvenile criminal fingerprint cards have increased in recent years. The increases were attributable to inaccurate internal reporting of backlog numbers to Bureau management and inadequate allocation of resources to reduce the backlogs. Criminal history records are incomplete when court dispositions and fingerprint cards are not recorded in the central repository for criminal records. Incomplete criminal records adversely affect Bureau programs and law enforcement.

Court Disposition Backlog Has Increased Significantly

The number of dispositions not entered in the NCJIS increased to more than 306,000 as of December 31, 2007. The Bureau reported a backlog of about 120,000 in April 2006. Inaccurate records on the number of dispositions in backlog caused management to underestimate the resources necessary to correct the problem. A disposition is a record of the resolution of a criminal proceeding. A criminal record without a disposition has a broad effect on the Bureau and law enforcement community.

Accurate Count of Backlog Not Maintained

The Bureau did not maintain an accurate record of the number of backlogged dispositions. Therefore, management could not accurately determine the resources necessary to reduce the backlog. For example, an internal management report dated

June 30, 2007, listed the backlog at around 87,000. A progress report to the grant administrator one month later listed the backlog at approximately 69,700. However, a complete physical count by Bureau staff revealed a total backlog of more than 306,000 as of December 31, 2007, including dispositions dating back several years. The Bureau's internal reports were not reasonable considering they received about 4,000 dispositions per month. Bureau management also agreed the internal reported figures were not reasonable. If accurate information had been provided to management, they could have better estimated the resources needed to reduce the backlog.

Efforts to Reduce Backlog Have Been Insufficient

The Bureau has made efforts to reduce the backlog of court dispositions in the last couple of years. However, these efforts have not been sufficient to eliminate the backlog. For example, the Bureau obtained federal grant funds and hired temporary staff to input backlogged dispositions into the central repository for criminal records. The Bureau also assigned staff to enter dispositions. In spite of these efforts, including processing about 68,000 cards in 2007, there were still more than 306,000 backlogged dispositions at year-end.

Upon recognizing the extent of the backlog, the Bureau assigned additional staff to enter dispositions and offered overtime to staff. They also intend to obtain additional grant funds to hire temporary workers. Bureau management estimates eliminating the backlog will take 3 to 5 years.

The Bureau is also working with the Administrative Office of the Courts (AOC) on the submission of dispositions from the courts to the Bureau electronically. Currently, the Las Vegas Justice Court and Carson City Municipal Court submit electronic dispositions to the Bureau. The Bureau continues to work with the AOC to improve and expand electronic submissions of court dispositions.

Incomplete Criminal Records Impact Users

The lack of disposition information in criminal histories affects the Bureau and law enforcement. A criminal history is not complete when arrest records are not matched to corresponding dispositions. The Bureau's programs and criminal justice system users rely on the information in the criminal history repository to be accurate and complete.

The quality and value of the Bureau's civil applicant and civil name background checks are only as good as the quality of the criminal histories. For example, civil applicant background check responses are slowed when the Bureau must pursue dispositions to arrest records. The Bureau is unable to make a decision as to the suitability of an applicant when the criminal history contains qualifying arrests without dispositions. As a result, an individual with a qualifying criminal record could be approved for employment in an inappropriate position. Furthermore, the Bureau's responses to background checks on potential purchasers of firearms are slowed when criminal histories do not contain dispositions. Incomplete criminal histories increase the risks of firearms being sold to individuals that are prohibited by law from having them.

Law enforcement agencies are also impacted when they run criminal histories that do not contain dispositions on subjects. They may not know whether prior arrests resulted in dropped or amended charges or if the subject was found guilty. In addition, other users such as district attorneys do not have complete prior conviction information on a subject.

Database Not Developed to Utilize Juvenile Fingerprint Cards

The backlog of juvenile fingerprint cards has increased over the past few years to more than 26,000. The backlog exists because the Bureau has not developed an electronic database to store and utilize the cards. Nevada law authorizes access to juvenile fingerprint cards to law enforcement officers conducting criminal investigations and Bureau staff assisting the officers. Without a database, Nevada law enforcement agencies are unable to perform latent fingerprint searches on juvenile fingerprints when conducting crime scene investigations.

The Bureau's internal management reports show a steady increase in the backlog of juvenile fingerprint cards over the last 2½ years. Exhibit 3 shows the increase in the backlog from June 30, 2005, to December 31, 2007:

Exhibit 3

**Juvenile Fingerprint Card Backlog
June 30, 2005 to December 31, 2007**

Date	Number of Cards
06/30/05	19,887
12/31/05	19,541
06/30/06	21,444
12/31/06	23,041
06/30/07	24,830
12/31/07	26,384

Source: Bureau records.

The Bureau indicated it intends to develop a database to hold the juvenile fingerprint cards and make them available to law enforcement. Until that time, the Bureau has contracted with a private vendor to digitally scan the juvenile fingerprint cards. The vendor will store the electronic images of the cards until the Bureau can develop a database.

Progress Made on Criminal Fingerprint Cards

The Bureau has significantly reduced the backlog of criminal fingerprint cards. The backlog was reduced from a high of 45,000 to less than 5,000 cards as of December 31, 2007. Exhibit 4 shows the decrease in backlog from June 30, 2005, to December 31, 2007:

Exhibit 4

**Criminal Fingerprint Card Backlog
June 30, 2005 to December 31, 2007**

Date	Number of Cards
06/30/05	41,489
12/31/05	45,200
06/30/06	41,625
12/31/06	42,227
06/30/07	27,580
12/31/07	4,943

Source: Bureau records.

The Bureau reduced the backlog of criminal fingerprint cards by utilizing the services of a contractor to scan the cards into an electronic database. The Bureau staff then analyzed the prints and added the records to the criminal history database.

The remaining backlog as of December 31, 2007 consisted of cards classified by the Bureau as “error cards.” Error cards primarily represent submission errors by local law enforcement agencies. According to Bureau staff, the error cards are mostly ones submitted with fingerprints in the wrong positions or with typographical errors. The Bureau indicated it plans to implement new information technology hardware and error checking software and provide training to reduce submission errors by law enforcement agencies.

Recommendations

4. Continue working with the Administrative Office of the Courts to expand and enhance the transmittal of dispositions electronically.
5. Enhance accuracy of internal reporting to management on the backlog of court dispositions.
6. Develop an electronic database for juvenile criminal fingerprint cards.

Civil Applicant Background Check Process Could Be Improved

For more than 4 years, the Bureau used incorrect criteria to evaluate criminal histories for certain civil applicant background checks. As a result, the Bureau issued some responses indicating applicants committed certain offenses when they had not. Furthermore, although the Bureau has improved the overall timeliness of completing civil applicant background checks, some responses were not disseminated within statutory timeframes. Inaccurate and untimely responses impact the subjects and recipients of background checks.

Checks Performed With Incorrect Evaluation Criteria

From July 2003 to early October 2007, the Bureau utilized the wrong criteria to evaluate the criminal histories of certain subjects of civil applicant background checks. The Bureau’s error impacted background checks performed on employees and volunteers under the authority of NRS 179A.210. Under this statute, the Bureau obtains the applicant’s criminal history and issues a response indicating whether the history contains any offenses listed in NRS 179A.190. However, since staff used a list of

crimes that were not consistent with those listed in statute, the Bureau issued incorrect responses in some cases. Due to the potential impact on applicants, we promptly notified the Bureau and they immediately began using the correct criteria on October 5, 2007.

The Bureau mistakenly used a list of crimes from a 2003 Senate Bill that did not become law. The bill contained crimes different from those listed in existing law. The incorrect criteria used was generally more restrictive as offenses such as misdemeanor DUI's were considered disqualifying offenses under the incorrect criteria but would not have been per state law. Conversely, in certain circumstances the criteria was less restrictive. Although we did not identify any errors in the "negative" responses we tested, it is possible that some "negative" responses were issued that should have been "positive."²

As a consequence of the use of the incorrect criteria, the Bureau issued some "positive" and "undecided"² responses when it should have issued "negative" responses. About 8,100 responses were subjected to the incorrect criteria in the 12 months preceding our identification of the Bureau's error. We tested 30 "positive" and "undecided" responses and found that 13 of them should have been "negative" responses. Most of the incorrect responses were the result of misdemeanor DUI offenses in criminal records that should not have been considered disqualifying offenses. As a result, some of the recipients were misled by the Bureau responses, which may have negatively impacted their employment or volunteer opportunities.

The following factors contributed to the Bureau's use of the incorrect criteria to evaluate applicants' criminal histories:

- Only one staff was responsible for evaluating the criminal histories and issuing response letters. Cross-training and rotation of responsibilities were not utilized by the Bureau.
- Written policies and procedures were insufficient to govern the civil applicant process.
- Supervisors did not adequately perform quality review procedures to ensure the proper criteria was used by staff.

² "Positive," "Negative," and "Undecided" Bureau responses are defined at page 8.

The Bureau has since reassigned the responsibility of evaluating criminal histories to two staff and a supervisor. It also implemented new supervisory review procedures. Although the Bureau has developed some policies and procedures to document its new process, the written procedures do not address all of the pertinent controls it has developed. By developing written policies and procedures to govern this process, the Bureau can enhance the reliability of civil applicant background checks.

Timeliness Requirement Not Always Achieved

We found that the Bureau did not issue 44% of the state civil applicant background check responses, subject to a 30-day response requirement, timely. Untimely processing of civil applicant responses may cause the requesting organization to delay putting potential volunteers or employees to work. In addition, there is an increased likelihood that a person may be hired before background checks are received.

The background checks run under the authority of NRS 179A.210 are subject to the 30-day response requirement. In these cases, the Bureau must evaluate whether the subject’s criminal history contained certain offenses listed in statute. The Bureau cannot disseminate the record of criminal history to these applicants. Instead, they must issue a response indicating whether the criminal history contained any of the specified offenses.

The responses subject to NRS 179A.210 represent about 5% of the more than 160,000 civil applicant background check responses issued in 2007. Exhibit 5 shows the breakdown of the civil applicant responses subject to the 30-day requirement during calendar year 2007.

Exhibit 5

**Civil Applicant Response Times
Responses Required in 30 Days
2007**

Response Time	Response on State Criminal History		Response on Federal Criminal History	
	Amount	Percentage	Amount	Percentage
> 30 days	952	44%	4,640	75%
< 30 days	1,215	56%	1,514	25%
	2,167		6,154	

Source: Bureau Civil Applicant Data.

A Bureau response to a request for a federal criminal history generally requires additional time for the fingerprint card to be sent to the FBI and the FBI to send the criminal history. The FBI responds to electronic fingerprint cards within about 24 hours, while cards mailed in take up to 6 weeks. Mailed-in cards make up a significant portion of the requests. As a result, a higher percentage of these responses were not issued by the Bureau within the 30-day requirement.

Although some responses were not issued within statutory timeframes, the Bureau has improved its timeliness of distributing civil applicant background check responses. For responses based on state records of criminal history, response times have decreased from Bureau reported highs of more than 3 months during 2005 and 2006 to an average of less than 26 days during 2007. Responses for federal criminal histories issued by the Bureau averaged 45 days during 2007.

Recommendations

7. Develop written policies and procedures to ensure that the proper responses are disseminated through the civil applicant background check process.
8. Provide sufficient oversight of staff performing background checks to ensure criminal histories are evaluated consistent with statute.
9. Ensure sufficient resources are dedicated to process state civil applicant background checks within the 30-day statutory timeframe.

Appendices

Appendix A Audit Methodology

To gain an understanding of the Records Bureau, we interviewed management and staff and reviewed applicable state laws, regulations, and policies and procedures significant to the Bureau. We also reviewed prior audit reports, legislative and executive budgets, legislative committee minutes, and state accounting records. Finally, we attended NCJIS Advisory Committee meetings and reviewed Bureau reports, control activities, and records in significant Bureau program areas.

To determine whether the sex offender registry and community notification website are accurate, complete, and in compliance with applicable laws, we obtained an electronic copy of the data in the registry as of November 1, 2007. We tested the data's reliability by randomly selecting 20 offender case files and agreeing pertinent information to the data. We then randomly selected 80 sex offenders (25 tier 3, 35 tier 2, and 20 tier 1) and compared information in the offenders' case files to the sex offender registry and when applicable, the community notification website. Furthermore, we determined how many of the offenders classified as inactive/moved out-of-state had Nevada residence and employer addresses in the registry.

Next, we determined whether each selected offender's tier assessment was accurate, completed timely, and properly recorded in the registry. We also analyzed whether the offender's annual registration compliance status was properly reflected in the registry. Finally, we reviewed the Bureau's policies and procedures governing the Program and analyzed its plans and progress made towards implementing the Federal Adam Walsh Child Protection and Safety Act adopted through AB 579 (2007 Legislative Session).

To determine whether the Bureau reduced the backlog of criminal and juvenile fingerprint cards and court dispositions, we first determined the method for calculating the backlog. We then counted selected portions of the backlogged records to evaluate the accuracy of the Bureau reported backlogs as of December 31, 2007. We gained an

understanding of the events causing the backlogs and documented the size of each backlog at 6-month intervals between June 2005 and December 2007. We also reviewed internal reports to management on the backlogs during this time. In addition, we discussed the process for implementing electronic dispositions with a representative of the Administrative Office of the Courts. Furthermore, we documented the Bureau's plans and efforts to reduce the backlogs.

Finally, to determine whether the Bureau processed civil applicant background checks accurately and timely, we obtained an electronic record of all civil applicant responses processed between January 2006 and December 2007. We tested the data's reliability by randomly selecting 15 fingerprint cards from the Bureau files and verifying the information to the electronic record. Additionally, we traced pertinent information from five cards in the electronic record to the actual fingerprint cards.

We then calculated the average Bureau response time for civil applicant background checks and compared it to response times reported by the Bureau in 2005 and 2006. We also compared the timeliness of Bureau issued state and federal criminal histories. Next, we identified how many applicable civil applicant responses were issued within the 30-day statutory requirement in 2007. We also evaluated the appropriateness of 30 positive and 10 negative randomly selected civil applicant responses subject to NRS 179A.210. In addition, we analyzed the types of responses issued and criminal information disseminated by the Bureau.

Our audit work was conducted from June 2007 to May 2008 in accordance with generally accepted government auditing standards.

In accordance with NRS 218.821, we furnished a copy of our preliminary report to the Director of the Department of Public Safety and the Chief of the Records and Technology Division. On August 27, 2008, we met with agency officials to discuss the results of the audit and request a written response to the preliminary report. That response is contained in Appendix C, which begins on page 29.

Contributors to this report included:

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Appendix B
Sex Offender Registry Testing Results
Incomplete or Inaccurate Records

Number of Offenders with Inaccurate or Incomplete Records by Type

Offenders Data Tested		Tier 3 Offenders (25 tested)	Tier 2 Offenders (35 tested)	Tier 1 Offenders (20 tested)	Total Errors	Error Rate ³ (% of total)
Offender Information	Known names and aliases	11	17	4	32	40%
	Assigned tier	0	2	0	2	3%
	Physical description	2	2	0	4	5%
	Current photo	0	1	0	1	1%
	Year(s) of birth	1	2	2	5	6%
	Residence address	2	1	0	3	4%
	Employer address	6	6	4	16	20%
Conviction Information	Offense(s) committed and statute(s)	11	19	9	39	49%
	Court(s) of conviction	3	6	4	13	16%
	Location of offense	17	20	11	48	60%
	Specific sexual acts	9	12	6	27	34%
Victim Information	Method of obtaining access to victim	11	12	8	31	39%
	Victim information	2	5	5	12	15%
Totals		75	105	53	233	22%

Source: Auditor review of Bureau records and Sex Offender Registry.

³ Error rate percentage based on 80 offenders' records tested. Data elements tested totaled 1,040 (13 data elements x 80 offenders).

Appendix C
Response From the Records and Technology Division

Jim Gibbons
Governor



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September 8, 2008

Paul V. Townsend, CPA, Legislative Auditor
State of Nevada
Legislative Counsel Bureau, Audit Division
401 S. Carson Street
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Re: Statement to Audit Report

Dear Mr. Townsend:

Pursuant to NRS 218.821(1), here is the Department of Public Safety, Records and Technology Division, Records Bureau's response to the Legislative Counsel Bureau's preliminary audit report. The report contains nine (9) recommendations to improve the performance of the Records Bureau with respect to several key programs, most notably the State Sex Offender Registry and the Civil Applicant Background Check Program. For each recommendation, the Records Bureau either corrected the noted deficiency "on-the-spot" or has since taken action to address these recommendations. The Response to Audit Recommendations checklist is attached to this response for an "at-a-glance" view of the Records Bureau's reply.

Sex Offender Registry (SOR): Staff of the Legislative Auditor reviewed applicable laws, policies, and procedures as pertained to the State Sex Offender Registry and Community Notification Website as of November 1, 2007. The preliminary audit report found that a "significant portion" of offender information housed within the Registry was inaccurate or incomplete. Audit staff broadly categorized these errors into Conviction Information, Offender Information, and Victim Information. Audit staff found that in some cases, these errors were carried over into the Community Notification Website, as information from the SOR database directly feeds the website. To improve the accuracy of the SOR database and the website, the Legislative Auditor had three recommendations:

Recommendation # 1: Enhance supervisory quality control procedures of sex offender records in the registry to ensure all staff are accurately and completely recording information required by state law.

Records Bureau's Response to # 1: Accepted and Addressed

The Records Bureau recognized in FY 2006, during its budget preparation for the 2007 Legislative Session (FYs 2008 and 2009), that the lack of supervisory quality control procedures

was an issue. The Bureau was well aware that the one supervisor of the SOR Unit could not possibly initiate and maintain quality control procedures over the 10 case investigators of the Unit, as the volume of work is simply too great. Therefore, the Bureau requested a Program Officer II position in its 2008 – 2009 Budget to be a second supervisor of the Unit, and the 2007 Legislature approved the Bureau's request. The Bureau was in the process of recruiting for the position when staff of the Legislative Auditor began its work here. The new supervisor was hired in February 2008.

Having a second supervisor for the SOR Unit has reduced the ratio of supervisors to case investigators from the previous 1:10 to 1:5 and has allowed for the quality control procedures the auditors recommended. As of March 17, 2008, the supervisors have modified their procedures to audit 100% of all new case files. Audits include verifying that the offender's tier level is correct and that all information required by state law including, but not limited to, the judgment of conviction, offense and victim information, and a complete physical description of the offender is recorded in the SOR database. Registration records with missing information are turned back to the case investigators to acquire the necessary documentation and make the changes to the SOR database. Files created prior to March 2008 are audited during the annual verification process by the Case Investigators. Any missing information is updated immediately.

Procedures have been put into place for the supervisors to randomly audit an additional 10% of active case files annually to ensure that all required information is contained within the registration record. Any missing information is updated immediately. This allows the supervisors to monitor the accuracy of the registration records and gives them a mechanism to determine whether or not any training or performance problems exist with a particular case investigator or with the unit as a whole. Between the additional supervisor and the internal auditing procedures recently put into place, the Records Bureau feels it has sufficiently addressed and implemented Recommendation # 1.

Recommendation # 2: Improve written policies and procedures to address case worker responsibilities including detailing the information required by statute to be input into the sex offender registry.

Records Bureau's Response to # 2: Accepted and Addressed

Since the addition of the second supervisor position in February 2008, the SOR Unit has been in the process of updating its desk manual to address case investigator responsibilities. The updated desk manual will address all of the statutorily required registration and community notification website information and dictate the appropriate source of the information. The desk manual will include a requirement that the case investigators review the community notification website after making changes to the SOR database to ensure the information was posted correctly. In addition, Work Performance Standards have been established for the case investigators which include the need for packing¹ the registration records in accordance with the policies of the FBI's National Crime Information Center (NCIC) 2000.

¹ Packing the record refers to record completeness. It includes a review of whether additional information which is missing from the original entry that could be added has become available for inclusion with the record. For example, a registrant's vehicle information may not have been available at the time of his initial registration but may now be known. In this instance, the case investigator would "pack" the record with this additional information.

The updated desk manual, to be available by the end calendar year 2008, and the Work Performance Standards will adequately address the LCB Auditors' concerns regarding case investigator responsibilities and record completeness; therefore Recommendation # 2 has been addressed and implemented.

Recommendation # 3: Develop the capability to allow law enforcement to search the sex offender registry using the data fields required by state law.

Records Bureau's Response to # 3: Accepted (with Qualification)

NRS 179B.200(2) requires that the State Sex Offender Registry be searchable by law enforcement officers, in the course of their official duties, using search criteria including, but not limited to:

- (a) A name, alias, physical description or address of an offender.
- (b) A geographic location where an offense was committed.
- (c) The age, gender, race or general physical description of a victim.
- (d) The method of operation used by an offender, including, but not limited to:
 - (1) The specific sexual acts committed against a victim;
 - (2) The method of obtaining access to a victim, such as the use of enticements, threats, forced entry or violence against a victim;
 - (3) The type of injuries inflicted on a victim;
 - (4) The types of instruments, weapons or objects used;
 - (5) The type of property taken; and
 - (6) Any other distinctive characteristic of the behavior or personality of an offender.

However, the current SOR database does not have the capability to be searched by law enforcement. Staff of the Legislative Auditor uncovered this fact during the course of their audit.

The Records Bureau accepts the Legislative Auditor's recommendation to develop a registry searchable by law enforcement with qualification. The Legislative Auditor is correct in noting that the searchable database requirement has been in effect since the 1997 Legislature. Current management was not aware of this requirement until pointed out through this audit. It should be noted that during all these intervening years, *none* of the local law enforcement agencies have requested a searchable statewide sex offender registry – not even when the Local (Law Enforcement) Sex Offender Registry (LSOR) statewide application was being developed and deployed in consultation and cooperation with local law enforcement.

Furthermore, the recent Special Legislative Session of June 2008 had a significant impact upon the Records Bureau. In order to help with the State's General Fund shortfall, the Legislature authorized money to be withdrawn from agencies with budgetary reserves as a means to help balance the General Fund. The Records Bureau's contribution to this effort was \$4,000,000, which severely limits the Bureau's ability to make any application or system modifications for the remainder of FY 09 and for FYs 2010 and 2011. In consultation with the Division's Technology Bureau, adding the search capability as mandated by statute would be a

significant design change in the LSOR application. Given our current funding situation and the lack of demand for the search capability, the Records Bureau questions the value of making this change.

However, since we cannot disregard state law, the Records Bureau will look at developing the search capability when it re-designs the registry to comply with the requirements of the federal Adam Walsh Child Protection and Safety Act of 2006 (PL 248-109). The Records Bureau received a grant in late FY 2008 from the U.S. Department of Justice's Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) Office. The Bureau plans to include the search capability as a line item in its soon-to-be-released Request for Proposals for the software and hardware required to comply with the Adam Walsh Act. If the search capability does not cost an exorbitant amount of money to implement, the Bureau will proceed. If it is cost prohibitive, the Bureau will have to explore other options that may range from cutting services elsewhere to be able to afford this capability to submitting a Bill Draft Request to have this requirement removed from statute. Therefore, we accept Recommendation # 3 with this qualification.

Backlogs of Criminal Information

Court Dispositions

Staff of the Legislative Auditor correctly noted that the Records Bureau has a backlog of some 306,000 court dispositions² dating back several years. Criminal history records are incomplete without disposition information; therefore, the entry of these backlogged court dispositions is of the utmost importance to the Bureau. Unfortunately, this backlog took years to create and will take years to eliminate. It should also be noted that the lack of disposition information is not unique to Nevada. It is a problem nationwide, and the U.S. Department of Justice and Congress are looking at several options to remedy this situation, most notably the recent NICS Improvement Amendments Act of 2007 (PL 110-180).

With regard to incoming dispositions, the Legislative Auditor recommended the following:

Recommendation # 4: Continue working with the Administrative Office of the Courts to expand and enhance the transmittal of dispositions electronically.

Records Bureau's Response to # 4: Accepted and Addressed

Staff of the Records and Technology Division meets every other week with staff of the Administrative Office of the Courts (AOC) on various issues of mutual interest. The electronic disposition (e-dispo) project has been rekindled recently because the Records Bureau recognizes that it is drowning in paper dispositions, and the AOC has graciously agreed to make this project a priority again. Going forward, electronic reporting is the only viable solution to the approximately 800 – 1,000 court dispositions received by the Records Bureau each week. On that front, staff from both offices are working on a two-phase project to improve the matching

² As of 12/31/07

rate of the electronic dispositions back to their original charges. Phase I is nearly complete and involves the DPS sending booking information to the AOC to store until such time as a disposition is sent to the AOC by the Courts. Phase II will commence later this month and will involve coding changes by both the DPS and the AOC to allow for two different ways to match the dispositions with the original charges. These coding changes can then be tested with the two courts currently submitting dispositions electronically, Las Vegas Justice Court and Carson City Municipal Court, and can then be rolled out to other courts pending the outcome of the testing.

In addition, the Records Bureau is working with the AOC to standardize the format that the courts and law enforcement agencies are using to report dispositions to our office. The lack of standardization for disposition reporting has made disposition data entry very time- and labor-intensive for the Bureau's staff. Our offices are in the process of assessing the impact of standardization, with the next meeting on the issue scheduled for October 2008 and implementation following relatively soon thereafter.

Regarding the backlog of dispositions, the Legislative Auditor recommended:

Recommendation # 5: Enhance the accuracy of internal reporting to management on the backlog of court dispositions.

Records Bureau's Response to # 5: Accepted and Addressed

The Records Bureau acknowledges that prior records of the disposition backlog were grossly inaccurate. There are several explanations for why this was the case, but the bottom line is the Records Bureau recognizes it needs to improve its disposition backlog tracking. To that end, the Bureau has kept detailed records of disposition data entry starting with the audit's report of 306,000 and counting backward.

The supervisor of the Bureau's File Management Unit, the section responsible for disposition data entry, keeps a daily log of all dispositions entered into the state criminal history system, separated by "backlogged" dispositions and "new" dispositions received for the current year. The daily logs are then compiled into weekly reports from the File Management supervisor to the Administrative Services Officer (ASO) over the Fingerprint and File Management Units. The ASO tracks the weekly progress reports in a spreadsheet to assess the status of the backlog and to ensure that the data entry rate is at least 10 dispositions per hour and that the File Management Unit is not falling behind on current dispositions and thus contributing to the backlog. Through the combined efforts of staff working on overtime and the temporary workers, the disposition backlog sits at less than 240,000 as of August 31, 2008.

We expect the backlog to steadily decrease, as the Records Bureau has received a verbal notification from the DPS Office of Criminal Justice Assistance that its 2008 National Criminal History Improvement Program (NCHIP) grant award has been approved by the U.S. Department of Justice. The grant will pay for continued staff overtime and temporary services for disposition data entry. The Bureau hopes to go to the November 2008 meeting of the Nevada Legislature's Interim Finance Committee to accept the award.

The Records Bureau estimates it will take approximately 3 – 5 years to completely clear the disposition backlog. It is hoped during this time that the Bureau can keep up with dispositions coming in for current cases and fully develop the e-dispo project for electronic reporting so that dispositions eventually become a non-issue.

Juvenile Fingerprint Cards

The other backlog noted in the audit report concerns juvenile fingerprint cards. NRS 62H.010(3)(b) provides that fingerprint impressions of a child *must* be taken by law enforcement and submitted to the Records Bureau if the child is adjudicated delinquent for an illegal act that would have been a felony or a sexual offense if committed by an adult and *may* be submitted to the Bureau for any other act. The section further mandates the Records Bureau to keep the fingerprints under special security measures that limit inspection to law enforcement personnel and to employees of the Records Bureau that are assisting law enforcement in the course of their official duties.

The audit report notes the backlog of juvenile fingerprints was approximately 26,000 as of December 31, 2007. The Legislative Auditor recommends that the Bureau develop an electronic database to store and utilize juvenile fingerprints so that law enforcement agencies can have an additional tool at their disposal to perform latent fingerprint searches.

Recommendation # 6: Develop an electronic database for juvenile criminal fingerprint cards.

Records Bureau Response to # 6: Accepted (with Qualification)

Like the court disposition backlog, the juvenile fingerprint backlog took years to create and was the result of decisions made by prior management to focus only on adult fingerprints in the face of budgetary challenges confronting the Bureau during FYs 2002 – 2005. In conversations with staff of the Legislative Auditor, management indicated its desire to develop a juvenile fingerprint database to match latent fingerprints (i.e., fingerprints collected from crime scene investigations) against.

It should be noted that the Records Bureau is in compliance with the current statute, which only requires that the fingerprints be housed by the Bureau and accessible to law enforcement. In their current format, the Records Bureau is meeting this requirement. The Bureau has even taken this a step further in that it has entered into a contract with a private vendor, Commetix, Inc.³, to scan the juvenile fingerprints into an electronic format and store the fingerprints in a searchable electronic medium until such time as a functional juvenile fingerprint database can be developed.

While the Bureau agrees with the audit's recommendation, the issue has unfortunately become one of funding. A portion of the \$4,000,000 that was removed from the Bureau's budgetary reserves would have been used to develop and deploy a juvenile fingerprint database.

³ Commetix has recently been acquired by Integrated Biometric Technology, Inc.

However, given the Bureau's current finances, we are unsure when we will have the necessary funding to implement Recommendation # 6 and must accept it with this qualification.

Civil Applicant Background Checks

Several state agencies are mandated to run State and Federal Bureau of Investigation (FBI) criminal history background checks on potential employees as part of a licensing or regulatory function. Those background checks are mandated to come through the DPS Records Bureau for processing. Many agencies have the statutory authority to receive the full State and FBI Record of Arrest and Prosecution (RAP) sheets to make their own hiring decisions. However, some of those agencies do not. For those agencies, the DPS Records Bureau receives the State and FBI RAP sheets and screens them for criminal history according to NRS 179A.190(4)⁴, only sending the agency a "sanitized" version of the records as follows:

- Positive: the individual has an offense that falls within NRS 179A.190(4);
- Negative: the individual may not have a criminal history record OR the individual may have a criminal history record but the specific offense(s) may not fall within the 7-year timeframe of NRS 179A.190(4)(b);
- Undetermined: the DPS Records Bureau was unable to determine whether or not the individual in question has a criminal history record. An Undetermined response results when the Bureau is unable to get additional information, usually a disposition from an out-of-state court, which does not allow the Bureau's staff to say with certainty if a criminal history record exists.

The audit revealed that from July 2003 – October 2007, the Records Bureau used the wrong criteria to evaluate the criminal histories of individuals for which it does employment screenings.

The Records Bureau wishes to thank the staff of the Legislative Auditor for bringing this error to our attention. As mentioned in the audit, Bureau management acted immediately to rectify this situation and ensure staff are using the correct criteria as listed in statute.

The audit staff conducted further tests to assess the damage that using the incorrect criteria may have caused and determined that some of the Bureau's *Positive* and *Undecided* responses should have been *Negative*. Therefore, "some of the recipients were misled by the Bureau responses, which may have negatively impacted their employment or volunteer opportunities," (page 22).

⁴ **NRS 179A.190(4)** The offenses for which a notice of information may be disseminated pursuant to subsection 1 includes information contained in or concerning a record of criminal history, or the records of criminal history of the United States or another state, relating in any way to:

- (a) A sexual offense;
- (b) A conviction for a felony within the immediately preceding 7 years;
- (c) An act committed outside this State that would constitute a sexual offense if committed in this State or a conviction for an act committed outside this State that would constitute a felony if committed in this State; and
- (d) The aiding, abetting, attempting or conspiring to engage in any such act in this State or another state.

It should be noted that none of the responses went directly to the individuals whose criminal history records the Bureau ran – they went to the potential employers. Therefore it cannot be said with certainty that the *Positive* or *Undecided* responses were the only factor in keeping the individuals from employment. Additionally, an individual has the authority to challenge his/her criminal history record under NRS 179A.150. Anyone that felt he was unfairly denied a job based upon his criminal history had a remedy.

To ensure this situation does not occur again, the Legislative Auditor recommends the following:

Recommendation # 7: Develop written policies and procedures to ensure that the proper responses are disseminated through the civil applicant background check process.

Recommendation # 8: Provide sufficient oversight of staff performing background checks to ensure criminal histories are evaluated consistent with statute.

Records Bureau's Response to # 7 and # 8: Accepted and Addressed

The Fingerprint Support Unit, which is responsible for the Civil Applicant Background Check Program, has made several changes in light of the auditors' findings as follows.

- Two Administrative Assistant III (AA III) positions (Grade 27) are now used for the criminal history screening as opposed to one Administrative Assistant II position (Grade 25). Assigning the screening to two higher-level positions was done to reflect the serious nature of this function and to also provide for cross-training/coverage.
- The supervisor of the unit, a Program Officer II (Grade 33), reviews the records after the AA IIIs conduct their initial screenings. Prior to this change, there was no supervisory oversight of the screening process.
- The Program Officer II monitors the Legislative Website on a weekly basis to ensure the unit is always using the correct criteria as listed in statute and communicates any changes or updates to the AA IIIs.
- Written policies and procedures have been developed to reflect these changes and ensure the proper responses are disseminated.

Based upon the above procedural changes, the Bureau has fully addressed and implemented Recommendations # 7 and # 8.

Timeliness of Responses

The final recommendation of the Legislative Auditor concerns the timeliness of civil applicant background check responses. Background checks run under NRS 179A.210 are subject to a 30-day response requirement. However, audit staff found that 44% of the time the

Records Bureau did not return the State responses back to the requesting agency within the 30-day limit. That led to the following recommendation:

Recommendation # 9: Ensure sufficient resources are dedicated to process state civil applicant background checks within the 30-day statutory timeframe.

Records Bureau's Response to # 9: Accepted and Addressed

The Records Bureau has made significant strides in response time within the past year. The audit report correctly notes that response times have decreased from highs of more than 3 months in 2005 and 2006 to an average of less than 26 days in 2007. Still, the 44% figure is a concern, and the Bureau is continually looking for ways to improve its response times.

To that end, the following changes have been made or are in the process of being made to consistently meet the statutory requirement. It should be noted, however, that the FBI responses take considerably longer (6 - 8 weeks currently for a manually submitted fingerprint card). Although the statute doesn't distinguish between the State and FBI responses, it is important to note that the Records Bureau has no control over the FBI's response time.

- The Fingerprint Support Unit is now fully staffed at 15.0 FTEs, 5 of which were new positions approved by the 2007 Legislature with an effective date of July 1, 2007 (FY 08). The lack of staff significantly contributed to the slow response times during 2005 and 2006 and was not mentioned in the audit report.
- Having a dedicated supervisor for the unit (the Program Officer II position referenced above) and the two new AA III positions has led to an overall evaluation and streamlining of business processes that have resulted in the faster response times.
- An additional printer was purchased for the unit that has allowed responses for specific agencies, such as the Gaming Control Board, to be routed to specific printers, thereby minimizing the chances of staff mixing up responses and making the process more efficient.
- A cross-training program has been initiated within the Fingerprint Support Unit so that all work functions can be adequately covered when staff are absent due to vacations, illness, or training.
- Since the Division's move in October 2007, staff of the Fingerprint Support and Fingerprint Technician Units have worked diligently to eliminate the backlogs of outstanding criminal and civil applicant fingerprints that accumulated from the move and the 2007 holiday season. The Bureau's current State response time is less than 1 week for both electronically and manually submitted fingerprints and has been so for the past several months. (Again, the FBI response time for manual fingerprint cards is still 6 - 8 weeks, which perpetuates the perception that background checks take months.)

P. Townsend
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- More agencies are submitting fingerprints electronically, which is faster for both the State and FBI responses. During 2007, approximately 25% of the civil applicant fingerprints received by the Bureau were electronically submitted. Today that number is closer to 33% and growing.
- The Division is in the process of deploying Store & Forward hardware that will make fingerprint processing more efficient for both the criminal and civil applicant programs. The Store & Forward will function as a centralized collection point for all fingerprints received by the Bureau, and staff will have the ability to reject cards that do not meet certain quality control criteria before they are allowed to be stored in the queue for processing. The Store & Forward will allow for the metering of fingerprints coming into the Bureau (on a per minute, hour, or day basis) that will allow for more efficient handling. Additionally, the Store & Forward will be capable of providing data to supervisors and managers so that trends can be spotted and any training issues addressed. A deployment timeline is in the process of being developed.
- The Division is looking at an IT fix for converting manual fingerprint cards into an electronic format so that they can be sent electronically from our office to the Western Identification Network and to the FBI. This will improve response times, as the electronic cards can be processed faster than the manual cards at both the State and FBI levels. The Division is just starting to evaluate the technology fixes needed to enable this conversion to take place, so we do not have any firm timelines yet; however, it is the Division's desire to implement this change as quickly as possible.

All of the above demonstrates that the Records Bureau takes seriously its obligation to a 30-day State response deadline, and we feel we have implemented the changes necessary to fully address Recommendation # 9.

This concludes the Records Bureau's response to the audit report. If you have any questions about this response, please feel free to contact me at 684-6222 or Julie Butler, Records Bureau Manager at 684-6201. Otherwise, we look forward to the presentation of the audit report and our response at the Legislative Audit Subcommittee meeting on September 24, 2008.

Sincerely,



Captain Philip K. O'Neill,
Division Chief

Attachment
PKO/jb

cc: Jearld Hafen, DPS Director
Phil Brown, DPS Deputy Director
Kathalie Koche, Executive Officer to the Director
Jay Giovacchini, Internal Auditor

Records and Technology Division Response to Audit Recommendations

<u>Recommendation Number</u>		<u>Accepted</u>	<u>Rejected</u>
1	Enhance supervisory quality control procedures of sex offender records in the registry to ensure staff are accurately and completely recording information required by state law	<u> X </u>	<u> </u>
2	Improve written policies and procedures to address case worker responsibilities including detailing the information required by statute to be input into the sex offender registry	<u> X </u>	<u> </u>
3	Develop the capability to allow law enforcement to search the sex offender registry using the data fields required by state law	<u> X </u>	<u> </u>
4	Continue working with the Administrative Office of the Courts to expand and enhance the transmittal of dispositions electronically.....	<u> X </u>	<u> </u>
5	Enhance accuracy of internal reporting to management on the backlog of court dispositions.....	<u> X </u>	<u> </u>
6	Develop an electronic database for juvenile criminal fingerprint cards.....	<u> X </u>	<u> </u>
7	Develop written policies and procedures to ensure that the proper responses are disseminated through the civil applicant background check process.....	<u> X </u>	<u> </u>
8	Provide sufficient oversight of staff performing background checks to ensure criminal histories are evaluated consistent with statute	<u> X </u>	<u> </u>
9	Ensure sufficient resources are dedicated to process state civil applicant background checks within the 30-day statutory timeframe.....	<u> X </u>	<u> </u>
TOTALS		<u> 9 </u>	<u> 0 </u>