

Office of Attorney General

BISMARCK, NORTH DAKOTA

Audit Report

For the Two-Year Period Ended
June 30, 2018

Joshua C. Gallion
State Auditor



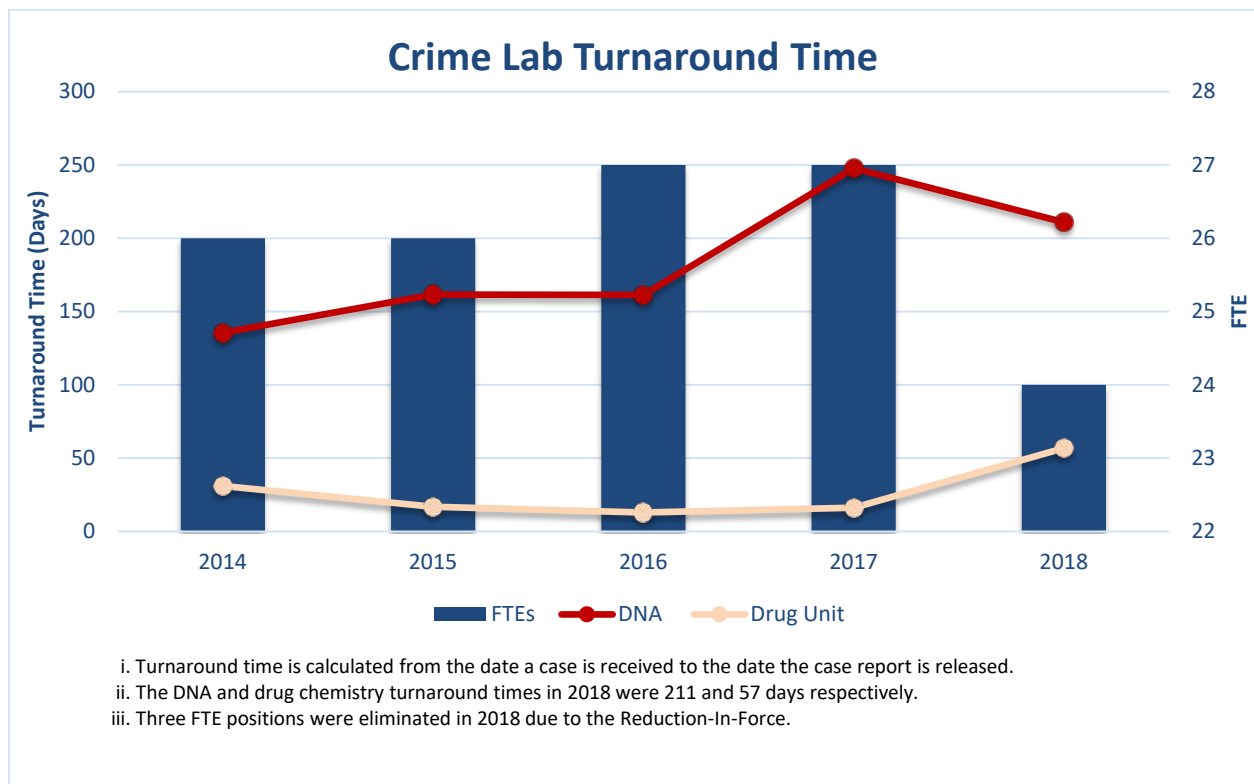
Office of the State Auditor
Division of State Audit



Opportunities to Reduce Turnaround Time

In recent years, the ND State Crime Lab has experienced significant workload increases while authorized FTEs have decreased. These factors have contributed to increased turnaround times to complete evidence testing at the ND State Crime Lab.

Changes to the current staffing arrangement and implementation of a fee schedule were considered potential opportunities to reduce turnaround time at the ND State Crime Lab. The chart below illustrates the turnaround time trends for DNA and Drug Chemistry testing.



Source: Forensic Advantage system

Did you know?



The ND State Crime Lab does not collect fees for its forensic services; however, NDCC 54-12-24 states it may establish and charge fees for services. (See page 5)

**LEGISLATIVE AUDIT AND FISCAL REVIEW
COMMITTEE MEMBERS**

**Senator Jerry Klein – Chairman
Representative Chet Pollert – Vice Chairman**

Representatives

**Bert Anderson
Patrick Hatlestad
Mary Johnson
Keith Kempenich
Gary Kreidt
Mike Nathe
Marvin E. Nelson
Wayne A. Trottier**

Senators

**Dwight Cook
Judy Lee
Richard Marcellais**

AUDITOR AND AGENCY PERSONNEL

State Auditor Personnel

**Allison Bader, MBA, Audit Manager
Michael Schmitcke, CPA, Audit Supervisor
Richard Fuher, CPA, MBA
Ian Ballantyne, CPA
Alandra Kist**

Primary State Agency Contacts

**Wayne Stenehjem, Attorney General
Kathy Roll, CPA, Director of Finance**

Contents

<i>Transmittal Letter</i>	<i>1</i>
<i>Audit Results</i>	<i>2</i>
<i>Crime Lab Turnaround Time</i>	<i>2</i>
<i>Conclusions</i>	<i>2</i>
<i>Background Information</i>	<i>2</i>
<i>Turnaround Time Trends</i>	<i>2</i>
<i>Additional Resources to Help Log Evidence</i>	<i>4</i>
<i>Charging Fees for Services Provided</i>	<i>5</i>
<i>Methodology</i>	<i>6</i>
<i>Internal Control</i>	<i>6</i>
<i>Scope</i>	<i>6</i>
<i>Statutory Audit Requirements</i>	<i>7</i>
<i>Conclusion</i>	<i>7</i>
<i>Internal Control</i>	<i>7</i>
<i>Scope</i>	<i>7</i>
<i>Methodology</i>	<i>8</i>
<i>Authority and Standards</i>	<i>8</i>
<i>Financial Statements</i>	<i>9</i>
<i>Statement of Revenues and Expenditures</i>	<i>9</i>
<i>Statement of Appropriations</i>	<i>10</i>
<i>LAFRC Responses</i>	<i>12</i>
<i>Responses to LAFRC Audit Questions</i>	<i>12</i>
<i>LAFRC Audit Communications</i>	<i>12</i>



STATE OF NORTH DAKOTA
OFFICE OF THE STATE AUDITOR
STATE CAPITOL
600 E. BOULEVARD AVENUE – DEPT 117
BISMARCK, NORTH DAKOTA 58505

Transmittal Letter

June 7, 2019

Members of the North Dakota Legislative Assembly

The Honorable Wayne Stenehjem, Attorney General, Office of Attorney General

We are pleased to submit this audit of the Office of Attorney General for the two-year period ended June 30, 2018. This audit resulted from the statutory responsibility of the State Auditor to audit or review each state agency once every two years. The same statute gives the State Auditor the responsibility to determine the contents of these audits.

The primary consideration in determining the contents of these audits is to produce informative audits to improve government. Statutory audit requirements are an important part of these audits and are addressed by our standard audit objective. Additionally, whenever possible additional audit objectives are included to increase responsiveness and effectiveness of state government.

Allison Bader was the audit manager. Inquiries or comments relating to this audit may be directed to the audit manager by calling (701) 328-2241. We wish to express our appreciation to Mr. Stenehjem and his staff for the courtesy, cooperation, and assistance they provided to us during this audit.

Respectfully submitted,

/S/

Joshua C. Gallion
State Auditor

Audit Results

Crime Lab Turnaround Time

The review of the ND State Crime Lab within the Office of Attorney General was designed and conducted to meet the following objective:

Are there opportunities for the ND State Crime Lab to reduce turnaround time to complete evidence testing?

Conclusion

We conclude there are opportunities that could be implemented by the ND State Crime Lab to reduce turnaround time. These opportunities include proper resources to log evidence and strategically charging fees for services provided by the ND State Crime Lab.

Background Information

The ND State Crime Lab is a division of the Office of Attorney General. It is the primary provider of forensic testing in North Dakota as it provides services to law enforcement agencies, coroners, medical examiners, and state's attorney's offices. The ND Legislature imposed a reduction-in-force (RIF) throughout state government for the 2017-2019 biennium. Through this RIF, the Office of Attorney General had a reduction of 13 authorized full time equivalent (FTE) positions. The Office of Attorney General implemented the reduction based on internal evaluation of resources and business needs. Three positions were reduced from the ND State Crime Lab including a forensic supervisor, an evidence technician, and a vacant evidence technician.

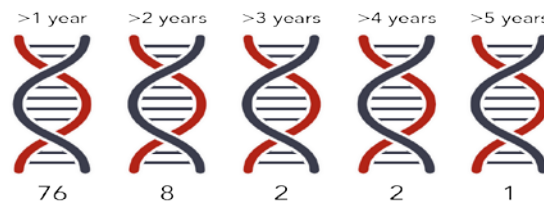
The ND State Crime Lab entered into two contracts with private forensic labs to help offset increased workloads. In fiscal years 2017 and 2018, the ND State Crime Lab released 161 and 116 outsourced DNA case reports, respectively, at an approximate cost of \$108,000.

Turnaround Time Trends

Turnaround time is calculated from the date a case is received to the date a case report is released by a crime lab. The ND State Crime Lab, along with many forensic laboratories throughout the United States, have experienced increased turnaround times.

Our audit verified turnaround time has increased by 55% (75 days) for DNA and 84% (26 days) for drug chemistry since 2014. Further, as of June 30, 2018, the ND State Crime Lab maintained 89 outstanding DNA cases greater than one year after lab submission.

Outstanding DNA Cases as of June 30, 2018



Source: Forensic Advantage system

Turnaround time has increased for three main reasons: increased demand for testing, reduction in employees, and time requirements for court subpoenas.

The ND State Crime Lab's ability to prevent increases in turnaround time has been impacted by the increased demand for testing. In 2018, the ND State Crime Lab received 754 DNA case record submissions compared to 383 in 2014 representing a 97% increase in DNA submissions. The number of authorized employees has fluctuated between 27 and 24 during the same time period. With the reduction in FTEs, it was noted that 5% (175 case records) of drug chemistry case records submitted in 2018 were not completed in 2018. Additionally, 6% (45 case records) of DNA case records submitted in 2018 were not completed in the same year when accounting for the outsourced DNA case records, thereby, increasing the amount of outstanding case records.

The following tables provide ND State Crime Lab workload data.

DNA					
	ND State Crime Lab FTE	Total Case Records Submitted	Total Case Reports Released	Turnaround Time	Percentage Change in Turnaround Time since 2014
2014	26	383	354	136	Base Year
2015	26	448	494	161	18%
2016	27	793	420	161	18%
2017	27	692	801	248	82%
2018	24	754	709	211	55%

Source: Forensic Advantage system

Drug Chemistry					
	ND State Crime Lab FTE	Total Case Records Submitted	Total Case Reports Released	Turnaround Time	Percentage Change in Turnaround Time since 2014
2014	26	3,643	3,869	31	Base Year
2015	26	4,244	4,151	17	-45%
2016	27	4,170	4,199	13	-58%
2017	27	4,218	3,920	16	-48%
2018	24	3,619	3,444	57	84%

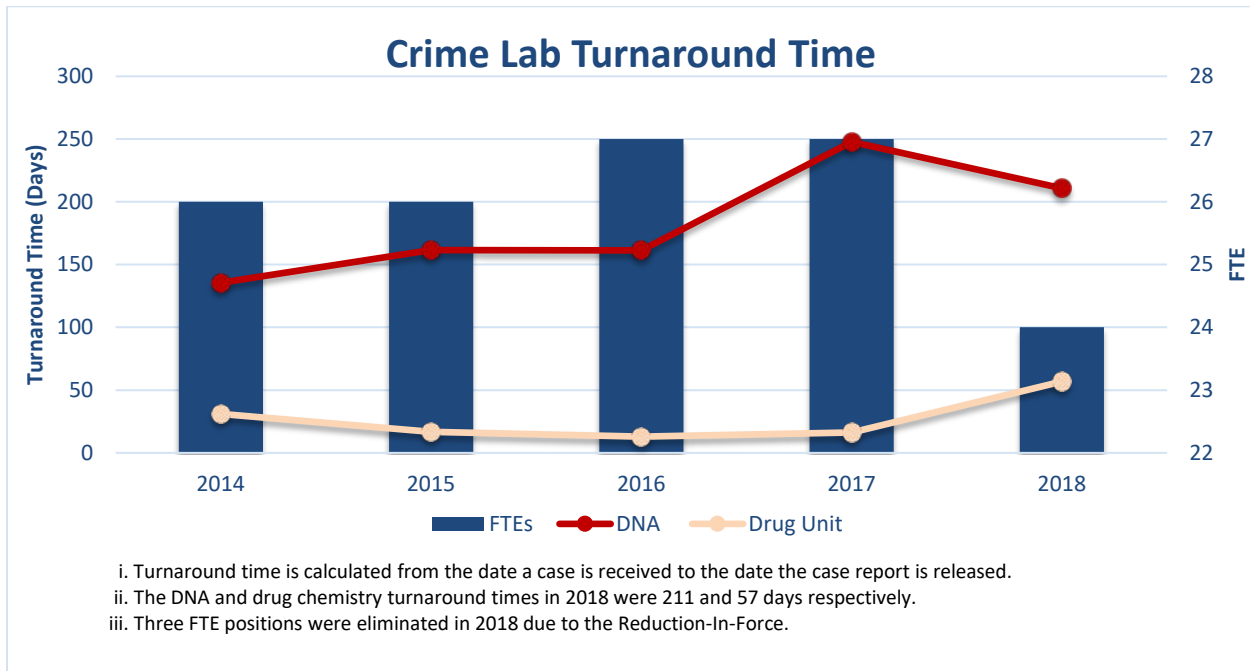
Source: Forensic Advantage system

Prior to the RIF, the ND State Crime Lab employed two evidence technicians. Following the RIF, one evidence technician remained to log in evidence. The quantity of evidence submitted has proven too great for one evidence technician and has required forensic analysts to be reallocated from their testing duties to assist in logging evidence. This resulted in additional testing delays and increased turnaround time for cases.

Finally, ND State Crime Lab employees are routinely subpoenaed from across the state which reduces available work time in the lab. In our audit period, ND State Crime Lab records indicate employees spent a total of 717 hours outside of the lab providing over 90 testimonies. These results indicate that every one hour of testimony provided by a ND State Crime Lab employee required 15 hours of their time out of the lab or roughly 90 days of missed lab testing which further prevented improvement in turnaround time.

As turnaround times increase, law enforcement and prosecutors wait longer for testing results, increasing the risk of additional offenses being committed and further delays in prosecution.

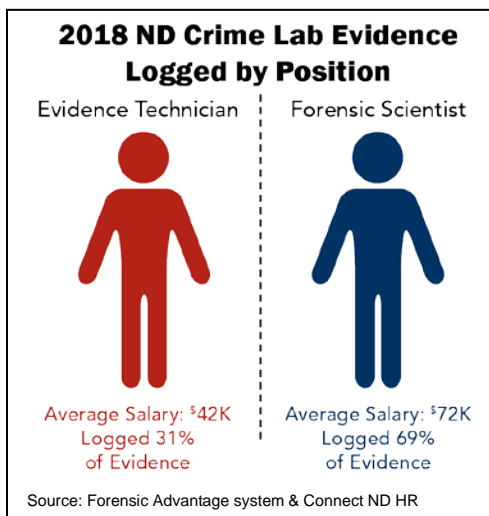
The chart below illustrates the turnaround time trends for DNA and Drug Chemistry testing.



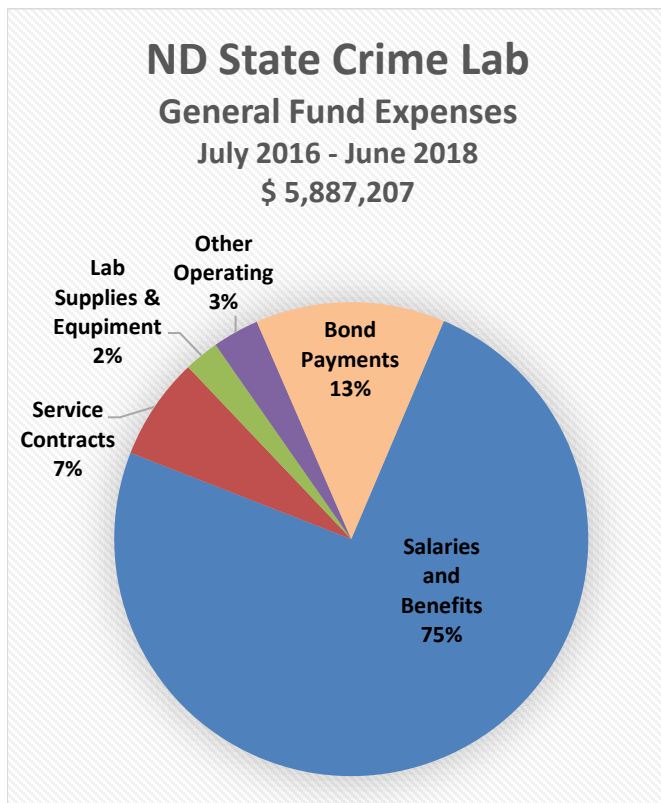
Source: Forensic Advantage system

Additional Resources to Help Log Evidence

The ND State Crime Lab has one full-time evidence technician responsible for receiving and logging all evidence into the ND State Crime Lab's evidence tracking system, Forensic Advantage. Due to the amount of evidence received, one evidence technician is unable to log the evidence timely. As a result, a forensic scientist is reallocated from lab testing to aid in the logging of evidence. Not only does this increase turnaround time, but it results in a higher paid employee logging evidence. More specifically, in 2018, the average salary of an evidence technician position was \$41,538, while the average salary of a forensic scientist position was \$72,409.



While the ND State Crime Lab could hire a temporary evidence technician pending a successful background check, the ND State Crime Lab has refrained from doing so due to position complexity as it relates to the legal and laboratory information system aspects of the role. Upon reviewing the job requirements of an evidence technician, it was noted a high school diploma plus two years of relevant work experience or four years of work experience related to information management systems, maintaining inventory, and entering data were the only requirements to meet the minimum qualification. As a result, we felt this inefficiency was significant enough to garner attention for additional resources pertaining to the logging of evidence whether through temporary positions or re-evaluation of authorized FTE placement.



Source: Connect ND Financials

Charging Fees for Services Provided

North Dakota Century Code (NDCC) 54-12-24 allows the North Dakota Office of Attorney General to charge fees for services rendered by the ND State Crime Lab. NDCC does not stipulate where the fees are to be deposited; therefore, the fees would be deposited into the state's General Fund. The ND State Crime Lab does not charge fees for any of its services provided. As a general funded division of the Office of Attorney General, the implementation of service fees would directly offset General Fund costs. See the adjacent chart for a breakout of ND State Crime Lab General Fund expenses from July 1, 2016 to June 30, 2018.

During our research of out-of-state crime labs, we identified a national survey¹ on the use of fees by crime laboratories. The survey was administered by the Kentucky State Police Forensic Laboratory which found that 48% of state crime labs that responded charge fees. The study

concluded that the nationwide average court fee was approximately \$150 and generates roughly \$1 million in annual revenue. As an example, the Nevada State Forensic Laboratory charges service fees through annual service fee contracts or pay-for-service options. On average, Nevada's pay-per-service options are charged at a rate of \$250/hour for forensic lab work. For subpoenas to provide expert testimony, the Nevada State Crime Lab charges testimony fees at \$100/hour per person with a maximum \$1,000/day in addition to any travel expenses. However, the Nevada state crime lab does not charge fees if the expert testimony is provided via video or phone.

As previously noted, the employees of the ND State Crime Lab are regularly subpoenaed for their expert testimonies resulting in not only lost time to perform lab tests, but at the taxpayers' expense. Modeling after other state crime labs such as Nevada, the ND State Crime Lab could charge fees for subpoenas that require the employee to travel outside the office. Alternatively, expert testimony could remain free of charge with the utilization of the Interactive Video Network (IVN) system as the ND State Crime Lab already has the IVN system installed on-site.

The ability of the Office of Attorney General to establish and charge fees for forensic services, expert testimonies, and the associated travel costs provides a readily available option to directly reduce the impact on the General Fund. Further, the implementation of these fees may encourage the use of the IVN system instead of in-person testimony and assist in the elimination of excess

Triplett, Jeremy S., Kentucky State Police Forensic Laboratories (n.d.). National Survey on the Use of Court Fees for the Funding of Crime Laboratory Operations. Retrieved from <https://www.asclد.org/wp-content/uploads/2013/06/Triplett-Court-Fees-Poster.pdf>

idle time prevalent when subpoenaed. Ultimately, the time saved through these changes would provide for increased lab time, thereby, improving turnaround times at the ND State Crime Lab.

Recommendation:

We recommend the Office of Attorney General consider the following opportunities to reduce turnaround time at the ND State Crime Lab including:

- Provide additional resources to help log evidence such as temporary employees or re-evaluation of authorized FTE placement.
- Implementation of a fee schedule to strategically charge for services rendered.

Office of Attorney General Response:

Due to other temporary staff needs the office was unable to hire temporary evidence technician assistance in the 2017-19 biennium. For the 2019-21 biennium we will review the temporary staffing needs of the division and likely hire a temporary evidence technician. The Office requested and received from the 2019 legislature an additional forensic scientist to assist with the Crime Lab workload. The office will review the possibility of a fee schedule for services, however, the office's recipients are political subdivisions which also have tight budgets.

Methodology

To accomplish our objective, we performed the following procedures:

- Interviewed management responsible and/or knowledgeable about crime lab operations.
- Analyzed evidence tracking data of the Forensic Advantage System.
- Reviewed subpoena and court appearance logs provided by the ND State Crime Lab.
- Conducted research of other crime labs around the country to identify potential best practices.

Internal Control

The audit did not identify any significant internal controls related to this audit objective.

Scope

The scope of this audit included operations of the ND State Crime Lab within the Office of Attorney General for the two-year period ended June 30, 2018. Comparative data going back to fiscal year 2014 was used for informational purposes only.

Statutory Audit Requirements

The objective related to our statutory audit requirements is:

Are there any exceptions to report relating to statutorily required audit testing?

Statutorily required audit testing includes: performing the post audit of financial transactions, detecting and reporting any defaults, determining that expenditures have been made in accordance with law, appropriation acts, and emergency commission action, and evaluating blanket bond coverage. Defaults are defined as failures to do something required by duty or law. Bonding coverage provides insurance to state agencies for any default or wrongful act on the part of any public employee or public official.

Conclusion

No exceptions to our statutorily required audit testing were identified.

Internal Control

We gained an understanding of internal control and concluded as to the adequacy of their design. We also tested the operating effectiveness of those controls we considered necessary based on our assessment of audit risk.

Auditors are required to report deficiencies in internal control that are significant within the context of the objectives of the audit. A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect: misstatements in financial or performance information, violations of laws and regulations or impairments of effectiveness or efficiency of operations, on a timely basis. Considering both qualitative and quantitative factors, we did not identify any deficiencies in internal control that were significant within the context of our audit objectives and based upon the audit work performed.

Scope

The Office of Attorney General has operations in the following locations.

- Central office in the State Capitol building
- Crime Lab in east Bismarck
- Bureau of Criminal Investigations (BCI) in north Bismarck
- North Dakota Lottery in north Bismarck

Each location noted above was included in the audit scope, except the North Dakota Lottery. The North Dakota Lottery receives a separate annual financial audit. See the latest financial audit of the North Dakota Lottery at:

https://www.nd.gov/auditor/sites/www/files/documents/Reports/State/2017_nd_lottery.pdf

Methodology

To meet this objective, we:

- Performed detailed analytical procedures including computer-assisted auditing techniques. These procedures were used to identify high-risk transactions and potential problem areas for additional testing.
- Interviewed appropriate agency personnel.
- Queried the ConnectND (PeopleSoft) system for data analysis. Significant evidence was obtained from ConnectND.
- Observed the Office of Attorney General's processes and procedures.
- Inspected documentary evidence.
- Tested compliance with appropriation laws and regulations including related emergency commission action.
- Reviewed adequacy of blanket bond coverage by comparing coverage to state bonding guidelines.
- Performed a review of BCI's evidence handling policies and procedures.

In aggregate there were no significant limitations or uncertainties related to our overall assessment of the sufficiency and appropriateness of audit evidence.

Authority and Standards

This biennial performance audit of the Office of the Attorney General has been conducted by the Office of the State Auditor pursuant to authority within North Dakota Century Code Chapter 54-10.

We conducted this performance audit in accordance with *Generally Accepted Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The criteria used to evaluate internal control is published in the publication *Standards for Internal Control in the Federal Government* issued by the Comptroller General of the United States (Green Book, GAO-14-704G). Agency management must establish and maintain effective internal control in accordance with policy of the Office of Management and Budget (OMB Policy 216).

Financial Statements

Statement of Revenues and Expenditures

	<u>June 30, 2018</u>	<u>June 30, 2017</u>
Revenues and Other Sources:		
Revenue from Federal Government	\$ 12,597,692	\$ 1,843,460
Gaming Tax	3,138,765	3,161,366
Fines and Forfeitures	2,145,331	4,036,812
Legal Services	2,010,286	2,419,170
Remote Alcohol Monitoring Fees	1,366,110	1,533,591
Licenses and Fees	1,007,341	1,205,889
Miscellaneous Revenue	907,351	450,960
Background Checks	760,442	908,478
Fire Marshal	79,759	62,409
Transfers In	16,450,270	1,264,963
Total Revenues and Other Sources	\$ 40,463,347	\$ 16,887,098
Expenditures and Other Uses:		
Salaries and Benefits	\$ 21,151,365	\$ 22,725,146
PW Enterprises, Inc. Settlement	15,872,000	
IT Contractual Services and Repairs	1,428,307	2,174,546
Grants	1,054,659	1,633,136
SCRAM Bracelets	987,278	1,185,384
Supplies	981,329	1,813,654
Operating Fees and Services	892,460	725,944
Rent of Building Space	889,717	696,896
IT Data Processing	668,779	575,133
Professional Services	613,701	596,845
Travel	554,125	482,731
Repairs	523,576	470,841
Building Construction	378,063	382,180
Lab Supplies	308,244	330,670
Equipment under \$5,000	261,585	617,998
Professional Development	218,412	192,218
Miscellaneous Expenditures	213,323	319,916
IT Communications	179,956	181,479
Equipment over \$5,000	19,747	1,060,954
Transfers Out	10,000,000	
Total Expenditures and Other Uses	\$ 57,196,626	\$ 36,165,671

Source: ConnectND Financials

Statement of Appropriations

For the Biennium Ended June 30, 2017

Expenditures by Line Item:	<u>Final Appropriation</u>	<u>Expenditures</u>	<u>Unexpended Appropriation</u>
Salaries and Wages	\$ 42,063,653	\$ 40,163,990	\$ 1,899,663
Operating Expenses	24,844,299	13,217,128	11,627,171
Capital Assets	2,671,187	2,043,479	627,708
Technology Project Carryover	1,520,000	1,384,659	135,341
Grants	2,262,659	1,888,175	374,484
Law Enforcement Grants	1,655,186	1,411,969	243,217
Litigation Fees	217,581	151,491	66,090
Intellectual Property Attorney	418,323	418,323	
Abortion Litigation Fees	257,349	257,349	
Medical Examinations	660,000	539,261	120,739
North Dakota Lottery	5,282,778	3,806,792	1,475,986
Arrest & Return of Fugitives	15,000	12,382	2,618
Gaming Commission	7,490	4,858	2,632
Contracted Higher Education			
Legal Services	398,356		398,356
Criminal Justice Info Sharing	5,109,557	3,748,929	1,360,628
Law Enforcement	<u>3,455,725</u>	<u>3,453,665</u>	<u>2,060</u>
Total	<u>\$ 90,839,143</u>	<u>\$ 72,502,450</u>	<u>\$ 18,336,693</u>
Expenditures by Source:			
General	\$ 51,761,368	\$ 50,005,263	\$ 1,756,105
Other	<u>39,077,775</u>	<u>22,497,187</u>	<u>16,580,588</u>
Total	<u>\$ 90,839,143</u>	<u>\$ 72,502,450</u>	<u>\$ 18,336,693</u>

Source: ConnectND Financials

For the Biennium Ended June 30, 2019

Expenditures by Line Item:	<u>Final Appropriation</u>	<u>Expenditures</u>	<u>Unexpended Appropriation</u>
Salaries and Wages	\$ 41,379,043	\$ 19,374,477	\$ 22,004,566
Operating Expenses	17,107,281	5,549,606	11,557,675
Capital Assets	2,742,372	378,438	2,363,934
Technology Project Carryover	2,256,035	580,694	1,675,341
Grants	2,845,065	772,539	2,072,526
Law Enforcement Grants	242,191	124,710	117,481
Litigation Fees	16,122,000	15,885,718	236,282
Intellectual Property Attorney	426,924	209,030	217,894
Medical Examinations	660,000	250,500	409,500
North Dakota Lottery	5,336,797	1,839,090	3,497,707
Arrest & Return of Fugitives	10,000	7,847	2,153
Gaming Commission	7,490	3,509	3,981
SAVIN Cost-Share Program	315,000	7,926	307,074
Criminal Justice Info Sharing	3,386,645	1,122,527	2,264,118
Law Enforcement	<u>2,901,608</u>	<u>1,171,659</u>	<u>1,729,949</u>
Total	<u>\$ 95,738,451</u>	<u>\$ 47,278,270</u>	<u>\$ 48,460,181</u>
Expenditures by Source:			
General	\$ 46,305,905	\$ 20,863,057	\$ 25,442,848
Other	<u>49,432,546</u>	<u>26,415,213</u>	<u>23,017,333</u>
Total	<u>\$ 95,738,451</u>	<u>\$ 47,278,270</u>	<u>\$ 48,460,181</u>

Source: ConnectND Financials

LAFRC Responses

The Legislative Audit and Fiscal Review Committee (LAFRC) requests that certain items be addressed by auditors performing audits of state agencies. Those items and the Office of the State Auditor's responses are noted below.

Responses to LAFRC Audit Questions

1. What type of opinion was issued on the financial statements?

This question is not applicable for performance audits. The agency's transactions were tested and included in the state's basic financial statements on which an unmodified opinion was issued.

2. Was there compliance with statutes, laws, rules, and regulations under which the agency was created and is functioning?

Yes.

3. Was internal control adequate and functioning effectively?

Yes.

4. Were there any indications of lack of efficiency in financial operations and management of the agency?

Other than our work addressing "opportunities to reduce turnaround time" (page 7) there were no indications of lack of efficiency in financial operations and management of the Office of Attorney General.

5. Has action been taken on findings and recommendations included in prior audit reports?

There were no recommendations included in the prior audit report.

6. Was a management letter issued? If so, provide a summary below, including any recommendations and the management responses.

No, a management letter was not issued.

LAFRC Audit Communications

7. Identify any significant changes in accounting policies, any management conflicts of interest, any contingent liabilities, or any significant unusual transactions.

There were no significant changes in accounting policies, management conflicts of interest, contingent liabilities, or significant unusual transactions identified.

8. *Identify any significant accounting estimates, the process used by management to formulate the accounting estimates, and the basis for the auditor's conclusions regarding the reasonableness of those estimates.*

The Office of the Attorney General's financial statements do not include any significant accounting estimates.

9. *Identify any significant audit adjustments.*

Significant audit adjustments were not necessary.

10. *Identify any disagreements with management, whether or not resolved to the auditor's satisfaction relating to a financial accounting, reporting, or auditing matter that could be significant to the financial statements.*

None.

11. *Identify any serious difficulties encountered in performing the audit.*

None.

12. *Identify any major issues discussed with management prior to retention.*

This is not applicable for audits conducted by the Office of the State Auditor.

13. *Identify any management consultations with other accountants about auditing and accounting matters.*

None.

14. *Identify any high-risk information technology systems critical to operations based on the auditor's overall assessment of the importance of the system to the agency and its mission, or whether any exceptions identified in the six audit report questions to be addressed by the auditors are directly related to the operations of an information technology system.*

ConnectND Finance, Human Resource Management System (HRMS), and Forensic Advantage are high-risk information technology systems critical to the Office of the Attorney General.

You may obtain audit reports on the internet at:

www.nd.gov/auditor

or by contacting the Office of the State Auditor at:

Email: ndsao@nd.gov

Phone: (701) 328-2241

Office of the State Auditor

600 East Boulevard Avenue - Department 117

Bismarck, ND 58505-0060