



# NORTH DAKOTA OFFICE OF THE STATE AUDITOR

*State Auditor Joshua C. Gallion*

## Office of the Attorney General

*Audit Report for the Two-Year Period Ended June 30, 2020*

*Client Code 125*





## WHAT WE LOOKED AT AND WHY

North Dakota state law requires our team to identify any errors, internal control weaknesses, or potential violations of law in high-risk or significant functions of the agency. We also reviewed breath alcohol toxicology results to check if they were accurate and if the tests were performed by certified operators.

## WHAT WE FOUND



### Invalid DUI Tests

We found evidential breath alcohol tests were performed by certified operators using **expired** or **unapproved** gas canisters resulting in **invalid DUI tests**.

*Read more on page 5*

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# HAVE QUESTIONS? ASK US.

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# Introduction

## Office of the Attorney General

July 21, 2021

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**W**e are pleased to submit this audit of the Office of the Attorney General for the two-year period ended June 30, 2020. 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 primary audit objective. 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 the Office of the Attorney General's staff for the courtesy, cooperation, and assistance they provided to us during this audit.

Respectfully submitted,

/S/

**JOSHUA C. GALLION**  
**NORTH DAKOTA STATE AUDITOR**

## TERMS USED IN REPORT

**Appropriation:** An amount authorized by the North Dakota Legislative Assembly to be spent for a specific purpose.

**Approved Method:** Required procedures approved by the Office of the Attorney General, Crime Lab Division, for performing evidential breath alcohol tests using the Intoxilyzer 8000.

**Blanket Bond Coverage:** Insurance to state agencies for any default or wrongful act on the part of any public employee or public official.

**BrAD:** Breath Alcohol Database used within the ND State Crime Lab to maintain operator trainings and certification dates.

**Certified Field Inspector:** Law enforcement officer who has completed additional training and competency requirements set by the State Crime Lab to properly install the Intoxilyzer 8000 instruments in the field.

**Certified Operator:** Law enforcement officer who has met the State Crime Lab course objectives and is able to demonstrate competency on the Intoxilyzer 8000 breath alcohol instrument.

**COBRA:** Breath Alcohol test repository system used within the ND State Crime Lab. All tests and related information, such as calibrations, are downloaded from the field instruments into COBRA. Results are to be stored here for 6 years.

**Conforming Products List:** List put out by the National Highway Traffic Safety Administration (NHTSA) of products that have been tested and determined to be in conformance with NHTSA Model Specifications.

**ConnectND:** The accounting system for North Dakota.

**CRM:** Certified Reference Material.

**DUI:** Driving Under the Influence

**Emergency Commission:** Group of elected officials that have the authority to transfer or expend money appropriated by the North Dakota Legislative Assembly. Additional information can be found in N.D.C.C. Chapter 54-16.

**Gas Standard:** Provide known concentrations of ethanol vapor for the calibration or calibration checks of instruments that measure breath alcohol concentration.

**Internal Control:** Policies and procedures that ensure reliable financial reporting, safeguard assets, promote accountability and efficiency, and prevent fraud.

**Intoxilyzer 8000:** Evidential breath testing instrument used at locations throughout the state for testing breath alcohol concentration levels.

**NHTSA:** National Highway Traffic Safety Administration.



**NIST:** National Institute of Standards and Technology.

**North Dakota Century Code (N.D.C.C.):** Collection of all the statutes passed by the North Dakota Legislative Assembly.

**Performance Audit:** Engagements that provide objective analysis, findings, and conclusions to assist management and those charged with governance and oversight to improve program performance and operations, reduce costs, facilitate decision making, and contribute to public accountability.

**SAVIN:** Statewide automated victim information and notification system notifies registered individuals, via telephone, text or email, about certain types of defendant or offender related court proceedings or custodial facility changes, including pending releases or escapes from custody.

**Session Laws:** Published after each regular and special legislative session and contain the laws enacted during that session.

# Audit Results

## BREATH ALCOHOL TOXICOLOGY OBJECTIVE

Are breath alcohol toxicology results accurate, and performed by certified operators?

FINDING  
20-01

### Invalid DUI Tests

#### CONCLUSION

Breath alcohol toxicology results were performed by certified operators. However, we found tests were performed by operators using expired or unapproved gas standard canisters resulting in invalid tests.

#### BACKGROUND

The State Crime Laboratory (Crime Lab) is a division of the Attorney General's Office. They are authorized by state law to approve breath alcohol testing devices, develop approved methods of evidential breath analysis, and certify all qualified operators. State law also authorizes the Crime Lab to appoint, train, and supervise field inspectors of breath alcohol testing devices. The inspectors then report the findings to the Crime Lab for appropriate action. The Crime Lab owns and maintains the breath alcohol devices, performs annual inspections of the devices, and issues gas standard canisters for breath alcohol testing.

When a person is suspected to be driving while intoxicated and pulled over by law enforcement, a field sobriety test is administered. Our team did not review the field sobriety testing devices in this audit.

An evidential breath alcohol test is one of the tests that can be used on individuals suspected of DUI. Evidential breath alcohol tests must be conducted using a device that is on the approved conforming product list issued by the National Highway Traffic Safety Administration (NHTSA). The Intoxilyzer 8000 is the device selected and

approved by the Crime Lab to administer evidential breath alcohol tests in the state of North Dakota. These devices are installed at various locations across the state (see map on page 8 for Intoxilyzer 8000 locations).

Breath alcohol gas standard canisters serve as a check to see if the Intoxilyzer 8000 is calibrated and functioning correctly to analyze breath samples at the time of breath testing during a suspected DUI.

Officers are verbally instructed to place a label on or near canisters that list the lot number and expiration date. This label (Form BrW-002, see below) identifies the lot number and expiration date. Gas standard canisters expire after approximately two years. State law requires the information on all gas standard canisters used for evidential testing to be listed on the Attorney General website.

OFFICE OF ATTORNEY GENERAL CRIME LABORATORY DIVISION Toxicology Section/Breath Alcohol Program		BrW-002
ETHANOL BREATH STANDARD		
Lot No. 17316080A2 Cyl. No. ____ Exp. Date 08-05-2018		
Simulates the Equivalent of 0.08% Vapor Alcohol (0.08 g/100 mL of Blood or 0.08 g/210 L of End Expiratory Breath) at 34.0 ± 0.2°C		
Acceptable Range: 0.075 – 0.085 g Ethanol /210L Vapor		
May 2012	Charles E. Eder, State Toxicologist	

Example of Gas Standard Canister Label  
Source: Attorney General Crime Lab Division

Operators are required to:

- Complete coursework and hands-on training using the Intoxilyzer 8000.
- Maintain current certification to perform breath alcohol tests and recertify every two years.
- Review the gas standard canister expiration dates prior to evidential testing.

Operators are also taught during their training that tests performed using an expired gas standard canister are invalid. Operators and field inspectors are law enforcement officers, and not employees of the Attorney General's Office.



State law requires operators to perform breath alcohol tests with the method and devices approved by the Crime Lab. Tests conducted using the approved method and devices are considered to be fairly administered and the results are scientifically accepted as accurate. The approved method outlines a step-by-step protocol on how to prepare the Intoxilyzer 8000 to begin a test, conduct the test, and interpret the test. The Crime Lab's approved method for conducting breath alcohol tests with the Intoxilyzer 8000 has been in effect since April 19, 2012.

Intoxilyzer 8000 breath alcohol test results are used as evidence in courts of law to determine if a person was driving under the influence of alcohol. If evidential breath alcohol tests for a DUI are performed using unapproved or expired gas standard canisters, the results are invalid and can be dismissed in a court of law.



If evidential **breath alcohol tests for a DUI** are performed using unapproved or expired gas standard canisters, the results are considered invalid and **can be dismissed** in a **court of law**.

During the course of our audit, breath alcohol tests were conducted 8,925 times. There are 63 Intoxilyzer 8000 locations across the state. Our team analyzed all 8,925 tests from our two-year audit period, which ended June 30, 2020.

Our team found errors with the unapproved gas standard canisters, as well as expired gas standard canisters (see chart on page 7). These errors included:

- Three gas standard canisters were unapproved, which means they were not certified, or on the Attorney General's website. These unapproved gas standard canisters resulted in seven errored tests.
- A total of 27 tests were conducted using expired gas standard canisters and are considered errored tests.

The legal limit of breath alcohol concentration is less than 0.08. A total of 26 of the 27 tests our team reviewed that were performed on the expired gas standard canisters had breath alcohol concentrations greater than 0.10. Sixteen of

these remaining 26 cases did result in a DUI.

While operators are trained to review the gas standard canister expiration date and that they must strictly adhere to the expiration date listed by the manufacturer, the Intoxilyzer 8000 software in North Dakota does not prevent the operator from using an expired gas standard canister. In addition, the device preparation steps in the approved method do not include a step to ensure the gas standard canister is not expired prior to testing. The Crime Lab also provides a label with the expiration date to be placed in a visible location near the instrument and indicated they notify law enforcement agencies when gas standard canisters are nearing the expiration dates. However, expired gas standard canisters are not communicated as replaced to the Crime Lab and also are not retrieved by the Crime Lab prior to expiration to prevent breath alcohol tests from being performed with expired gas standard canisters.

The Crime Lab has supervisory authority by state law, which includes directing field inspectors to perform necessary inspections to ensure gas standards canisters are replaced on or before the expiration dates and to have the field inspectors report the findings to the Crime Lab so appropriate actions can be taken when necessary.

The Crime Lab currently has two Intoxilyzer 9000 devices with newer technology capable of preventing operators from performing tests with expired gas standard canisters. According to the manufacturer, the Intoxilyzer 9000 has available software sets capable of being configured to monitor for the gas standard canister expiration date. If this parameter is not met, the subject test will not be performed. At this time, the Intoxilyzer 9000 is not approved by the Crime Lab for evidential breath alcohol testing use in North Dakota.

We have identified other states such as Georgia and Kansas, where law enforcement officers are utilizing the Intoxilyzer 9000 as approved devices for evidential breath alcohol testing. We estimate it would cost \$1.1M (approximately \$9,400 per instrument) to purchase 119 additional Intoxilyzer 9000s to replace the Crime Lab's inventory of 121 Intoxilyzer 8000s. Our estimate does not include other costs such as software or training.

The Crime Lab does not presently have processes in place that would prevent the use of expired gas standard



canisters. Law enforcement agencies and law enforcement officers certified to conduct breath alcohol tests share the responsibility in ensuring accurate and valid tests are conducted so offenders can be prosecuted appropriately. To that end, we are making the following recommendation due to the ramifications of offenders potentially being able to get out of a DUI on a technicality.

#### **RECOMMENDATION**

We recommend:

A) The Director of the State Crime Laboratory or the Director's designee, within their supervisory authority, direct field inspectors to ensure gas canisters are approved and replaced prior to the expiration dates and to have the field inspectors report the findings to the Director or the Director's designee in order for appropriate actions to be taken; or

B) The Attorney General establish other measures to prevent unapproved or expired gas canisters from being used to perform breath alcohol tests.

#### **STATE AUDITOR'S OFFICE RESPONSE**

As documented in our audit report, we identified breath alcohol tests performed on unapproved or expired canisters which included tests ran up to 153 days after the canister expiration date. Therefore, we disagree with the Attorney General's response that the corrective actions suggested by the State Auditor in part A have been in place for several years.

Regarding part B of the recommendation, while we provided suggestions to the Attorney General, management is responsible for all activities of the entity, including the design, implementation, and operating effectiveness of internal control. The State Crime Lab has not taken action to implement preventative procedures to ensure unapproved or expired gas canisters are not used to perform breath alcohol tests.

#### **OFFICE OF THE ATTORNEY GENERAL RESPONSE**

We adamantly disagree with this recommendation.

Our office vigorously attempted to explain to audit staff that the corrective actions suggested by the State Auditor in part A of the recommendation have been in place for several years. The State Auditor was unable to provide any suggestions relating to other acceptable measures that could be taken to satisfy part B of the recommendation.

The 2021 Legislative Assembly authorized funding for replacement of 61 Intoxilyzer 8000s with the 9000s. Funding to replace the remaining 58 Intoxilyzers will be requested in the 2023-25 biennium budget request if federal funding is available.

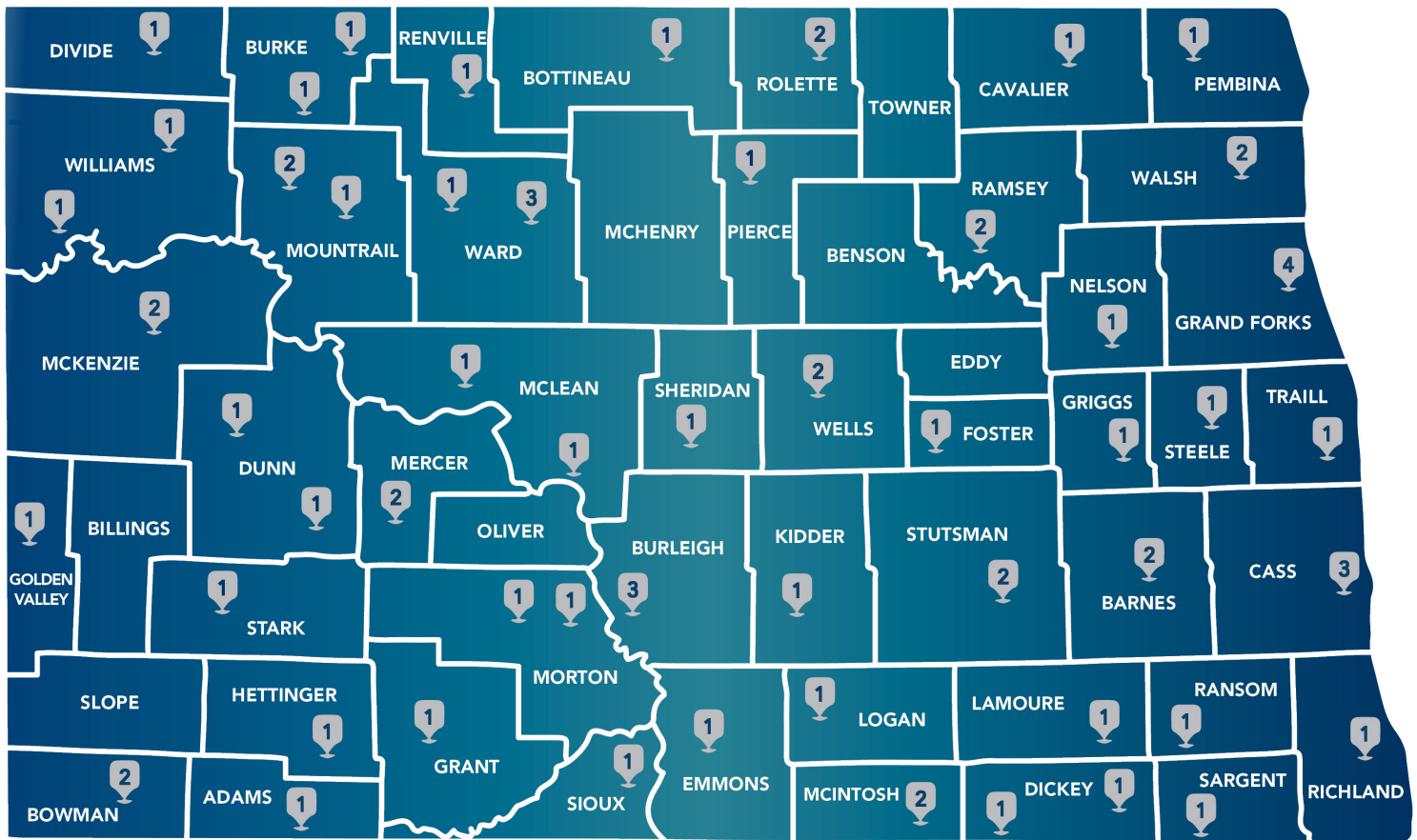
## Expired Canisters

Location of Expired Canister	Officers Running Tests on Expired Canister	Tests Run on Expired Canister	Days After Canister Expiration the Last Test Was Run
Carrington	2	2	49
Tioga	1	1	24
Fort Yates	2	4	12
Grafton	1	1	1
Fargo	1	2	16
West Fargo	8	12	153
Jamestown	1	1	17
New Town	3	4	18

## Unapproved Canisters

Location of Unapproved Canister	Officers Running Tests on Unapproved Canister	Tests Run on Unapproved Canister
Stanley	1	1
Valley City	2	3
Bowman	2	3

# NORTH DAKOTA INTOXILYZER 8000 LOCATIONS



For the two-year audit period ended June 30, 2020. City Source: Locations provided by Crime Lab.

 Office of the State Auditor

## CRITERIA

N.D.C.C. 39-20-07 states upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any individual while driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor, drugs, or a combination thereof, evidence of the amount of alcohol concentration or presence of other drugs, or a combination thereof, in the individual's blood, breath, or urine at the time of the act alleged as shown by a chemical analysis of the blood, breath, or urine is admissible.

N.D.C.C. 39-20-07 states the results of the chemical analysis must be received in evidence when it is shown that the sample was properly obtained and the test was fairly administered, and if the test is shown to have been performed according to methods and with devices approved by the director of the state crime laboratory or the director's

designee, and by an individual possessing a certificate of qualification to administer the test issued by the director of the state crime laboratory or the director's designee.

N.D.C.C. 39-20-07 states the director of the state crime laboratory or the director's designee is authorized to approve satisfactory devices and methods of chemical analysis and determine the qualifications of individuals to conduct such analysis, and shall issue a certificate to all qualified operators. The director of the state crime laboratory or the director's designee may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the director of the state crime laboratory or the director's designee for appropriate action.

N.D.C.C. 39-20-07 also states the director of the state crime laboratory or the director's designee shall prepare, certify, and electronically post a written record of the approval with the state crime laboratory division of the attorney general at the attorney general website, and shall include in the record:

- The operational checklist and forms prescribing the methods currently approved by the director of the state crime laboratory or the director's designee in using the devices during the administration of the tests.
- The certified records electronically posted under this section may be supplemented when the director of the state crime laboratory or the director's designee determines it to be necessary, and any certified supplemental records have the same force and effect as the records that are supplemented.
- The state crime laboratory shall make the certified records required by this section available for download in a printable format on the Attorney General website.

NHTSA requires Ethanol gas standard canisters must be traceable to NIST CRM. (NHTSA Notice 72 FR 34742, 77 FR 64588, 77 FR 35747, 82 FR 50940) The Certificate of Analysis for each approved gas standard canister identifies Lot Number, Expiration Date and Certificate ID.

The gas standards are available on the Attorney General website per N.D.C.C. 39-20-07 with the approved lot number certificate and expiration date available to the public.

The State Crime Lab's Approved Method to Conduct Breath Tests with the Intoxilyzer 8000 (BrS-001), effective April 19, 2012, states the operator is to review the record for errors in the gas standard canister lot number and expiration date.

The State Crime Lab's Intoxilyzer 8000 Initial Training Manual, issued September 2019, states the ethanol gas standard serves as a control to check if the Intoxilyzer 8000 is calibrated and functioning properly to analyze breath samples accurately at the time of breath testing. The manual states tests are considered invalid if run after the expiration date.

Standards for Internal Control in the Federal Government (Green Book) requires management design control activities to achieve objectives and respond to risks. (GAO-14-704G para 10).

### ETHANOL GAS STANDARD

Q. I noticed a few operators ran tests with an expired ethanol gas cylinder. What happens to these tests?

A. These tests are considered invalid if run after the expiration date. We know from Initial Intoxilyzer® 8000 classes that using an expired gas cylinder can still accurately perform tests long after the expiration date, but we must strictly adhere to the expiration date listed by the manufacturer. Any certified operator can install a new cylinder. If you need a gas cylinder call the Breath Alcohol Program to make arrangements for pickup. We cannot mail them.

Source: Attorney General Intoxilyzer 8000 Training Manual



# Audit Results

## PRIMARY OBJECTIVE

Are there any errors, internal control weaknesses, or potential violations of law for significant or high-risk functions of the agency?

## CONCLUSION

No errors, internal control weakness, or potential violations of law for significant and high-risk functions of the Attorney General were identified.

# Audit Procedures

## Breath Alcohol Toxicology Objective

### INTERNAL CONTROL

We obtained an understanding of internal control through inquiries, observations, and inspection of documents and electronic data records. As required by auditing standards, we planned our audit work to assess the design, implementation, and effectiveness of those internal controls that were significant to our audit objectives. Specifically, our work related to internal control included the following components and underlying principles based on guidance issued by the U.S. Government Accountability Office.

#### COMPONENT: CONTROL ENVIRONMENT

**Principle:** The oversight body should oversee the entity's internal control system.

**Principle:** Management should demonstrate a commitment to recruit, develop, and retain competent individuals.

#### COMPONENT: CONTROL ACTIVITIES

**Principle:** Management should design control activities to achieve objectives and respond to risks.

**Principle:** Management should design the entity's information system and related control activities to achieve objectives and respond to risks.

The specific internal control testing completed for this audit objective is identified below:

- Tested a random sample of evidential breath test devices used during our audit period to determine an annual inspection as required by N.D.C.C. 39-20-07 was completed according to the State Crime Lab specifications.

- Analyzed data to ensure non-certified operators were not able to access levels in the breath alcohol devices to complete breath alcohol testing and device system error messages properly generated.

- Analyzed data of gas standards used during our audit period to determine gas standards were certified and approved according to National Institute of Standards and Technology (NIST) Certified Reference Material (CRM) Ethanol Standards and the records are available on the Attorney General website for review.

- Certified operator records were analyzed to determine operators performing tests had completed training requirements recorded in BrAD.

- Tested a random sample of devices installed during the audit period. Installation forms were inspected to determine if installation of devices was properly completed and available for review on the Attorney General's website and if the Intoxilyzers were installed by currently certified field operators (per Intoxilyzer 8000 Initial Training Manual).

The deficiencies were identified in Finding 2020-01.

We found unapproved gas standard canisters and expired gas standard canisters used in evidential breath tests.

### SCOPE

The Attorney General has operations in the following locations. Each location was included in the audit scope:

- The central office in the State Capitol in Bismarck.
- State Crime Lab in Bismarck.

The scope of this audit included the Intoxilyzer 8000 devices used to perform breath alcohol tests during the audit period. The Intoxilyzer 8000 devices are located at law enforcement and detention centers throughout the state. Test and operator data from these devices are stored and were obtained from COBRA and BrAD. The Attorney General website was also inspected for approved devices,

certified operator lists, approved and certified gas standard canisters, and maintenance records. Training materials and certification information for operators having performed breath alcohol tests during the audit period were also obtained from the Crime Lab.

No scope limitations were identified.

## **METHODOLOGY**

To meet this objective, we:

- Used non-statistical sampling and projected the results to the population where appropriate.
- Interviewed appropriate agency personnel and observed procedures to gain an understanding of the breath alcohol program, evidential breath alcohol devices, and operator training certification program.
- Tested a random sample of devices used during our audit period and determined that an annual inspection was performed as required by N.D.C.C. 39-20-07, in the method determined by the Crime Lab, with favorable results and were identified as approved devices on the Attorney General website.
- Analyzed if gas standards were used within the expiration date per the standard certification sheets available on the Attorney General website. Additionally, data was analyzed to determine if the evidential breath tests gas standard control tests fell within the acceptable range of 0.075 to 0.085 alcohol concentration on all evidential tests, according to the Intoxilyzer 8000 Initial Training Manual.
- Reviewed the gas standards measuring consistently in the upper and lower acceptable ranges to determine if changing the gas canister or annual inspection or calibration of the device affected the performance of the device.
- Performed analytics of breath alcohol test results to determine if the State Crime Lab's Approved Method requirements of clean mouthpieces were used with each evidential blow.
- Performed analytics of breath alcohol test results to determine if each evidential test fell within the acceptable range of 0.02 alcohol concentration (according to the Intoxilyzer 8000 Initial Training Manual) between two evidential blows and if not, reviewed if the device safeguards identified the discrepancy.
- Analyzed breath alcohol data to determine if non-certified operators were able to complete breath alcohol testing, which would not be in accordance with N.D.C.C. 39-20-07.
- Reviewed random samples of operators performing evidential breath tests to determine if the administering operator was certified at the time of testing as required by N.D.C.C. 39-20-07.
- Compared test results to dates of device installation to determine tests were not performed prior to significant installation procedures.
- Chain of Custody forms were inspected to determine if device location moves were documented by Chain of Custody with each applicable device move (per Crime Lab Standard Operating Procedures BrW-012).



# Primary Objective

## INTERNAL CONTROL

As required by auditing standards, we planned our audit work to assess the effectiveness of those internal controls that were significant to our audit objectives. Specifically, our work related to internal control included the following components and underlying principles based on guidance issued by the U.S. Government Accountability Office.

### COMPONENT: CONTROL ENVIRONMENT

**Principle:** Management should demonstrate a commitment to recruit, develop, and retain competent individuals.

### COMPONENT: CONTROL ACTIVITIES

**Principle:** Management should design control activities to acheive objectives and respond to risks.

**Principle:** Management should design the entity's information system and related control activities to acheive objectives and respond to risks.

### COMPONENT: INFORMATION AND COMMUNICATION

**Principle:** Management should use quality information to acheive the entity's objectives.

### COMPONENT: MONITORING ACTIVITIES

**Principle:** Management should establish and operate monitoring activities to monitor the internal control system and evaluate results.

The specific internal control testing completed for this audit objective is identified below:

- Segregated preparation and approval of expenditures were tested statewide in the audit of the State of North Dakota Annual Comprehensive Financial Report.

- Appropriate approvers in ConnectND GL and AP ledgers based on position and level of experience.
- Original appropriations and appropriation adjustment authorizations were reviewed in the audit of the State of North Dakota Annual Comprehensive Financial Report.
- Confirmed no changes were made to the ConnectND edit checks that limit budget overspending.
- Individual responsible for overseeing grant programs approved grant expenditures.
- IT Director or designee approved IT expenditures.
- Monthly reconciliation was performed between ConnectND deposits and the appropriate remittance listing.
- Purchasing card holders reconciled their receipts to monthly individual purchase card statements.
- Purchase card expenditures were approved by appropriate individual.
- Purchase card holders were required to obtain receipts.
- Procurement officers had proper procurement training.

There were no deficiencies identified.

## SCOPE

The Office of the Attorney General has operations in the following locations. Each location will be included in the audit scope, except for the North Dakota Lottery.

- The central office in the Capitol
- Crime Lab in east Bismarck
- Bureau of Criminal Investigations in north Bismarck
- North Dakota Lottery in north Bismarck.

The North Dakota Lottery receives a separte annual financial audit by the North Dakota State Auditor's Office.

## METHODOLOGY

To meet this objective, we:

- Use non-statistical sampling and projected the results to the population where appropriate.
- Interviewed appropriate agency personnel.
- Observed the Attorney General Office's processes and procedures.
- Inspected documentary evidence.
- Queried the ConnectND (PeopleSoft) system for data analysis. Performed detailed analytical procedures. These procedures were used to identify high risk transactions and potential problems for additional testing.
- Analyzed accounts charged to each appropriation class to determine that expenditures were not charged to an inappropriate class to circumvent appropriation spending authority. Analyzed and tested expenditures to determine the Attorney General did not expend more than appropriated. (N.D.C.C. 54-16-03).
- Reviewed 2017 Session Laws House Bill 1003 section 1.
- Reviewed 2019 Session Laws Senate Bill 2003 section 1.
- Tested compliance with the documented intent of appropriation adjustments, including specific Session Laws with related emergency measure sections, Carryover Committee, and Emergency Commission requests. (N.D.C.C 54-16-03, 2017 Session Laws House Bill 1003 Sections 14, 15, and 17, 2019 Session Laws Senate Bill 2003 Sections 7, 9, and 13).
- Analyzed expenditures to determine \$126,024 of \$150,000 requested was used for prosecution witness fees and that \$23,076 remained unspent at the end of the 2017-2019 biennium. (Emergency Commission requests 1919 and 1936; 2019 Session Laws Senate Bill 2024 section 1).
- Analyzed expenditures to determine the Attorney General used the increased federal funds to defray expenses related to capital assets through the end of the 2017-2019 biennium. (2019 Session Laws Senate Bill 2024 section 1).
- Analyzed expenditures to determine \$1,136,096 of the capital construction carryover was used for information technology projects and that \$1,119,939 remained unspent at the end of the 2017-2019 biennium. (2015-2017 Capital Construction Carryover Committee).
- Reviewed the process for obtaining funds from the litigation funding pool and determined the Attorney General received \$150,846.33 of increased spending authority via Office of Management and Budget transfers from the litigation funding pool for litigation expenses. (2019 Session Laws, Senate Bill 2015, section 9).
- Analyzed expenditures to determine \$30,900 of the \$43,179 general fund capital construction carryover was used to complete the DOS-based deposit system rewrite. (2017-2019 Capital Construction Carryover Committee).
- Analyzed expenditures to determine \$242,190.87 of unexpended funds appropriated from the strategic investment and improvements fund were used for crime-related needs of the Attorney General. (2017 Session Laws House Bill 1003 section 14).
- Analyzed expenditures to determine approximately \$6,386 of the \$10,000 increased spending authority in state contingency funds were used for the arrest and return of fugitives with \$3,614 remaining at the end of the 2017-2019 biennium. (Emergency Commission request 1915).
- Analyzed and tested expenditures to determine unexpended funds carried over were being used to enhance the statewide automated victim information and notification system. (2019 Session Laws Senate Bill 2003 section 9).
- Reviewed non-appropriated fund activity to ensure the Attorney General had legislative approval for non-

appropriated expenditures. (N.D.C.C 54-44.1-09).

- Tested compliance with the documented intent of special appropriation laws, including one-time funding items.
- Analyzed and tested expenditures to determine the \$150,000 appropriated from the Strategic Investment and Improvements Fund was used to provide grants for sexual assault examiner programs. (2017 Session Laws Senate Bill 2191 section 1).
- Analyzed and tested expenditures to determine the \$150,000 appropriated from the General Fund and \$130,065 not subject to the provisions of N.D.C.C. 54-44.1-11 were used to provide grants to organizations involved in providing prevention and treatment services related to human trafficking victims. (2017 Session Laws Senate Bill 2203 section 1 and 2017 Session Laws House Bill 1003 section 15).
- Analyzed and tested expenditures to determine \$77,730 of the \$100,000 appropriated from the General Fund was used for a DOS-based deposit system rewrite. (2017 Session Laws House Bill 1003 section 3).
- Analyzed expenditures to determine \$44,714 of the \$200,000 from the Tobacco Settlement Trust Fund was used for enforcing the master settlement agreement or disputes with the agreement during the 2017-19 biennium and that the remaining \$155,286 was transferred back to the Tobacco Settlement Trust Fund. (2017 Session Laws House Bill 1003 section 4).
- Analyzed and tested expenditures to determine the \$500,000 grant from the Board of University and School Lands was used to enhance the statewide automated victim information and notification system (SAVIN). (2017 Session Laws House Bill 1003 Sections 3 and 8 and 2019 Session Laws Senate Bill 2003 Section 9).
- Reviewed the cost-sharing program established by the Attorney General. Analyzed deposits for funding received as payments from political subdivisions. Analyzed and

tested expenditures to determine the funding was used to defray expenses related to the statewide automated victim information and notification system (SAVIN). ((2017 Session Laws House Bill 1003 Sections 3 and 9 and 2019 Session Laws Senate Bill 2003 Section 9).

- Analyzed expenditures to determine the unexpended funds appropriated from the Strategic Improvement and Investments Fund were used for crime-related needs of the Attorney General. (2017 Session Laws House Bill 1003 section 14).
- Reviewed expenditures and supporting documentation to determine the \$100,000 appropriated from the General Fund that was not subject to the provisions of N.D.C.C. 54-44.1-11 were used to defray the cost of litigation fees. (2017 Session Law House Bill 1003 section 17).
- Analyzed and tested expenditures to determine the Attorney General spent \$314,295 of the \$400,000 appropriated from the Attorney General Refund Fund on criminal history improvement projects during fiscal year 2020. (2019 Session Laws Senate Bill 2003 section 2).
- Analyzed expenditures to determine the Attorney General spent \$1,346,980 of the \$1,851,956 one-time Federal funding for capital assets during fiscal year 2020. (2019 Session Laws Senate Bill 2003 section 2).
- Compared the Attorney General's tracking spreadsheet to ConnectND data to determine the Attorney General spent \$111,656 of the \$200,000 appropriated from the General Fund on twelve undercover vehicles during fiscal year 2020. (2019 Session Laws Senate Bill 2003 section 2).
- Determined, as of June 30, 2020, the \$316,000 of one-time funding for the finger identification system replacement project remained unspent. (2019 Session Laws Senate Bill 2003 section 2).
- Analyzed and tested expenditures to determine the Attorney General is providing grants to organizations involved in providing prevention and treatment services

related to human trafficking victims. As of June 30, 2020, the Attorney General has spent \$540,417 of the \$1.4M General Fund appropriation. (2019 Session Laws Senate Bill 2003 section 10).

- Analyzed and tested expenditures to determine the Attorney General is providing grants for sexual assault examiner programs. As of June 30, 2020, the Attorney General has spent \$85,616 of the \$250,000 General Fund appropriation. (2019 Session Laws Senate Bill 2003 section 11).
- Reviewed general ledger activity to determine the Attorney General properly deposited \$400,000 into the Attorney General operating fund. Analyzed and tested expenditures to determine that, as of June 30, 2020, \$102,368 has been spent for the purpose of purchasing equipment and software for a charitable gaming technology system. (2019 Session Laws Senate Bill 2003 sections 2 and 12).
- Tested the Attorney General's legal salary schedule to determine the Attorney General provided salary equity increases to 26 attorney positions using appropriated funds related to the April 2019 lawsuit settlement. ((2019 Session Laws Senate Bill 2003 section 14).
- Reviewed general ledger activity to determine the Attorney General invested \$1,130,443 of the lawsuit settlement proceeds received and deposited in the Attorney General Refund Fund with the State Investment Board. (2019 Session Laws Senate Bill 2003 section 15).
- Determined the \$50,000 appropriated from the General Fund was used for prosecution witness fees. 2019 Session Law Senate Bill 2024 section 1).
- Reviewed legislative management meeting minutes to determine the Judiciary Committee received reports from the Attorney General on the status and results of the human trafficking victims treatment and support services grant program and a report relating to civil asset forfeiture cases from the preceding fiscal year. Determined

the Attorney General complied with the reporting requirements outlined in session laws. (2019 Session Laws Senate Bill 2003 section 10 and 2019 Session Laws House Bill 1286 section 4).

- Analyzed significant revenue by account and fund and determined that revenue was being deposited in the proper fund. Tested monthly reconciliations and determined ConnectND deposits reconciled to the appropriate remittance listing. (N.D.C.C. sections 53-06.1-12, 54-06-07, 54-12-18, and 54-12-30; 2017 Session Laws House Bill 1003 section 13; and 2019 Session Laws Senate Bill 2003 section 8).
- Selected a random sample of purchasing card transactions and determined receipts were present to support individual purchase card statement charges, purchases were reasonable, and coding was adequate for management control and financial reporting purposes. (OMB purchasing card manual).
- Selected a random sample of expenditures and determined expenditures were for lawful and official purposes and properly coded and supported. (State Constitution article 10, section 12, N.D.C.C. 54-44.1-09, and N.D.C.C. 54-44.1-10).
- Selected a random sample of expenditures and determined goods and services were properly procured in accordance with competitive purchasing requirements. (N.D.C.C. 54.44.4, N.D.A.C. Title 4-12, and OMB State Procurement Manual guidelines).
- Selected a judgmental sample of general ledger correcting entries and determined correcting entries were in accordance with fund restrictions and appropriation acts and properly coded and supported (2017 Session Laws House Bill 1003 section 1 and 2019 Session Laws Senate Bill 2003 section 1).
- Selected a random sample of Attorney General Refund Fund expenditures and determined that charges were in accordance with fund restrictions. (N.D.C.C. 54-12-18).

- Analyzed Twenty-Four Seven Sobriety Program Fund expenditures and determined that charges were in accordance with fund restrictions. (N.D.C.C 54-12-29).
- Evaluated the adequacy of blanket bond coverage by comparing coverage to state bonding guidelines. (N.D.C.C. 26.1-21-08, N.D.C.C. 26.1-21-10(1)).

## **AUTHORITY AND STANDARDS**

This biennial 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. 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 standards used to evaluate internal control are 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).



# Responses to LAFRC Audit Questions

## **1. WHAT TYPE OF OPINION WAS ISSUED ON THE FINANCIAL STATEMENTS?**

Revenues, expenditures and appropriation information was not prepared by the Office of the Attorney General in accordance with generally accepted accounting principles so an opinion is not applicable. 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?**

Other than the findings of this report, the Office of the Attorney General was in compliance with significant statutes, laws, rules, and regulations under which it was created and is functioning.

## **3. WAS INTERNAL CONTROL ADEQUATE AND FUNCTIONING EFFECTIVELY?**

Other than the findings of this report, we did not identify any deficiencies in internal control that were significant within the context of our audit objectives.

## **4. WERE THERE ANY INDICATIONS OF LACK OF EFFICIENCY IN FINANCIAL OPERATIONS AND MANAGEMENT OF THE AGENCY?**

No.

## **5. HAS ACTION BEEN TAKEN ON FINDINGS AND RECOMMENDATIONS INCLUDED IN PRIOR AUDIT REPORTS?**

The Office of the Attorney General partially implemented the recommendation 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 revenues, expenditures and appropriation information does 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 and Human Capital Management (HCM) are high-risk information technology systems that were significant to the primary audit objective. The Breath Alcohol Database (BrAD) and Breath Alcohol test repository system (COBRA) at the ND State Crime Lab are high-risk information technology systems that were significant to the Breath Alcohol objective. None of the exceptions identified in the six audit report questions are directly related to these systems.



# Finances

## Revenues and Expenditures

REVENUES AND OTHER SOURCES	JUNE 30, 2020	JUNE 30, 2019
Gaming Tax	\$ 13,440,605	\$ 6,245,355
Revenue from Federal Government	4,389,414	2,779,541
Fines and Forfeitures	2,696,870	5,121,581
Legal Services	1,802,018	2,016,169
Remote Alcohol Monitoring Fees	1,200,254	1,357,402
Licenses and Fees	911,079	1,015,764
Background Checks	628,680	607,959
Fire Marshall	51,658	32,706
Miscellaneous Revenue	247,696	1,129,280
Transfers In	1,291,342	1,106,051
<b>Total Revenue and Other Sources</b>	<b>\$ 26,659,616</b>	<b>\$ 21,411,808</b>

Source: ConnectND

The above revenues do not include ND Lottery Activity as it was not included in the scope of the audit

Continued on the following page

# Finances

## Revenues and Expenditures

EXPENDITURES AND OTHER USES	JUNE 30, 2020	JUNE 30, 2019
Salaries and Benefits	\$ 22,372,575	\$ 21,795,814
Grants	2,109,123	1,463,468
IT Contractual Services and Repairs	1,761,067	1,631,716
Supplies	1,152,394	1,897,890
Equipment over \$5,000	1,132,974	1,499,046
SCRAM Bracelets	976,368	938,930
Rent of Building and Equipment	944,670	782,729
Information Technology Data Processing	847,445	725,353
Repairs	610,031	614,149
Motor Vehicles	603,717	-
Fees for Professional Services	552,911	806,228
Equipment under \$5,000	433,155	549,250
Operating Fees and Services	432,499	247,192
Travel	395,380	576,261
Lab Supplies	361,853	385,836
Building Construction	320,580	380,378
Land and Buildings	55,598	55,593
Professional Development	189,427	221,075
Information Technology Communications	175,023	177,176
Miscellaneous Expenditures	286,519	251,134
Transfers Out	-	314,209
<b>Total Expenditures and Other Uses</b>	<b>\$ 35,713,309</b>	<b>\$ 35,313,427</b>

Source: ConnectND

The above expenditures do not include ND Lottery Activity as it was not included in the scope of the audit

# 2019-2021 Appropriations

As of the Year Ended June 30, 2020

	FINAL APPROPRIATION	EXPENDITURES	UNEXPENDED APPROPRIATION
<b>Expenditures by Line Item</b>			
Salaries and Wages	\$ 46,126,641	\$ 20,500,733	\$ 25,625,908
Operating Expenses	17,113,026	6,105,298	11,007,728
Capital Assets	4,023,756	2,008,887	2,014,869
Technology Project Carryover	43,179	30,900	12,279
Grants	6,034,954	971,513	5,063,441
Human Traffic Victims Grants	1,400,000	520,417	879,583
Forensic Nurse Examiner Grants	250,000	85,616	164,384
Litigation Fees	175,454	60,581	114,873
Intellectual Property Attorney	442,085	215,029	227,056
Medical Examinations	660,000	255,400	404,600
North Dakota Lottery	5,191,454	2,000,921	3,190,533
Arrest & Return of Fugitives	10,000	5,882	4,118
Gaming Commission	7,489	1,928	5,561
SAVIN Cost-Share Program	540,000	368,039	171,961
Criminal Justice Info Sharing	3,631,121	1,149,749	2,481,372
Law Enforcement	2,982,284	1,271,638	1,710,646
<b>Totals</b>	<b>\$ 88,631,443</b>	<b>\$ 35,552,531</b>	<b>\$ 53,078,912</b>
<b>Expenditures by Source</b>			
General	\$ 46,003,486	\$ 21,099,331	\$ 24,904,155
Other	42,627,957	14,453,200	28,174,757
<b>Totals</b>	<b>\$ 88,631,443</b>	<b>\$ 35,552,531</b>	<b>\$ 53,078,912</b>

Source: ConnectND Financials

The above Attorney General appropriation includes ND Lottery. The above appropriation statement also reflects expenditures from the ND Lottery which were not included in the scope of the audit.

# 2017-2019 Appropriations

For the Biennium Ended June 30, 2019

	FINAL APPROPRIATION	EXPENDITURES	UNEXPENDED APPROPRIATION
<b>Expenditures by Line Item</b>			
Salaries and Wages	\$ 41,379,043	\$ 39,052,223	\$ 2,326,820
Operating Expenses	17,257,281	11,758,433	5,498,848
Capital Assets	3,598,282	2,330,092	1,268,190
Technology Project Carryover	2,256,035	1,136,096	1,119,939
Grants	2,845,065	1,972,866	872,199
Law Enforcement Grant	242,191	226,819	15,372
Litigation Fees	16,072,000	16,030,340	41,660
Intellectual Property Attorney	426,924	422,814	4,110
Medical Examinations	660,000	659,121	879
North Dakota Lottery	5,336,797	3,673,500	1,663,297
Arrest & Return of Fugitives	20,000	16,386	3,614
Gaming Commission	7,490	3,509	3,981
SAVIN Cost-Share Program	315,000	16,494	298,506
Criminal Justice Info Sharing	3,386,645	2,561,007	825,638
Law Enforcement	2,901,608	2,901,317	291
<b>Totals</b>	<b>\$ 96,704,361</b>	<b>\$ 82,761,017</b>	<b>\$ 13,943,344</b>
<b>Expenditures by Source</b>			
General	\$ 46,415,905	\$ 45,633,406	\$ 782,499
Other	50,288,456	37,127,611	13,160,845
<b>Totals</b>	<b>\$ 96,704,361</b>	<b>\$ 82,761,017</b>	<b>\$ 13,943,344</b>

Source: ConnectND Financials

\*The above Attorney General appropriation includes ND Lottery. The above appropriation statement also reflects expenditures from the ND Lottery which were not included in the scope of the audit.



# Status of Prior Recommendations

## Crime Lab Turnaround Time (Finding 18-01)

### Partially Implemented

**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.

**Status:** The Attorney General obtained an additional full time equivalent forensic scientist position, utilized temporary staff, and authorized overtime in an effort to reduce turnaround time at the Crime Lab. The Attorney General also chose not to implement a fee schedule at this time. According to statistics provided by the Crime Lab division, DNA turnaround time improved from 211 days, as noted in the prior audit report, to 108 days between January 2020 to June 2020. However, drug chemistry turnaround time increased from 57 days, as noted in the prior audit report, to 172 days between January 2020 to June 2020. The recommendation was not repeated.



NORTH DAKOTA STATE AUDITOR  
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