



NORTH DAKOTA OFFICE OF THE STATE AUDITOR

State Auditor Joshua C. Gallion

Office of the Attorney General

For the Two-Year Period Ended June 30, 2022

Client Code 125





WHAT WE LOOKED AT AND WHY

North Dakota state law requires that our team perform an audit once every two years. This included a review of financial transactions and determining that expenditures are correct. Our audit reports any errors, internal control weaknesses, or potential violations of law identified in significant or high-risk functions of the agency.

WHAT WE FOUND



Invalid DUI Tests

We found that 25 breath alcohol tests used expired gas canisters. This test is used on individuals suspected of driving under the influence.

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HAVE QUESTIONS? ASK US.

**NORTH DAKOTA STATE
AUDITOR'S OFFICE**

600 E. Boulevard Ave. Dept. 117
Bismarck, North Dakota 58505

-  701-328-2241
-  NDSAO@nd.gov
-  ND.gov/Auditor
-  Facebook - [ndsao.link/ebs](https://www.facebook.com/ndsao.link/ebs)
-  LinkedIn - [ndsao.link/wsw](https://www.linkedin.com/company/ndsao.link/wsw)
-  YouTube - [ndsao.link/f2d](https://www.youtube.com/channel/ndsao.link/f2d)

Introduction

Office of the Attorney General

August 15, 2023

We are pleased to submit this audit of the Office of the Attorney General for the two-year period ended June 30, 2022. 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. Whenever possible, additional audit objectives are included to increase responsiveness and effectiveness of state government.

Lindsey Slappy, CPA, 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 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.

The Approved Method to Conduct Breath Tests: Required procedures approved by the Office of the Attorney General, Crime Lab Division, for performing evidential breath alcohol tests using the Intoxilyzer.

ConnectND (Peoplesoft): The accounting system for North Dakota.

Emergency Commission: A 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.

Evidential: Providing evidence of breath alcohol concentration levels.

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

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

Intoxilyzer 8000/9000: Evidential breath testing instrument used by law enforcement agencies at locations throughout the state for testing breath alcohol concentration levels.

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.

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

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

Except for the finding identified in this report, no errors, internal control weaknesses, or potential violations of law were identified.

FINDING
2022-01

Invalid DUI Tests

WHAT HAPPENED

Our team found 25 of the 726 breath alcohol tests conducted by local law enforcement and tested by the State Crime Lab from July 1, 2021, to June 30, 2022 used expired gas canisters. This is a repeat recommendation from the previous audit.

The breath alcohol test is one of the tests that can be used on individuals suspected of driving under the influence of alcohol (DUI). Tests that are not performed correctly have the potential to be dismissed in court.



We found that **25 breath alcohol tests** used expired gas canisters. This test is used on individuals suspected of **driving under the influence.**

BACKGROUND

The State Crime Lab is a division of the Attorney General that oversees breath alcohol testing. The State Crime Lab has created a procedure called “The Approved Method to Conduct Breath Tests”. This procedure explains how breath alcohol tests should be conducted to be sure they are accurate. Breath alcohol testing is one of the ways to test suspected intoxication in drivers.

The tests are administered by law enforcement independent of the Attorney General’s Office. All individuals facilitating the breath alcohol tests for a suspected DUI must be certified (through a program the State Crime Lab runs) to perform the testing. They are also required to recertify every two years to maintain their certification.

The time period our team reviewed was July 1, 2021, to June 30, 2022. There were 726 evidential breath alcohol tests administered by local law enforcement during this time. Of those 726 tests, 25 were performed using expired gas standard canisters. The State Crime Lab operator should review the record for errors in the gas canister expiration date (Approved Method to Conduct Breath Test with Intoxilyzer 8000). A test run after the expiration date is considered invalid (Intoxilyzer 8000 Initial Training Manual).

The tests using expired gas canisters were administered in the following counties:

- Mountrail County Police Department (14 tests).
- Wells County Sheriff’s Office (1 test).
- McKenzie County Sheriff’s Office and Police Department (5 tests).
- Carrington Police Department (5 tests).

These tests were administered between November 13, 2021, and April 17, 2022.

The State Crime Lab uses a label system to prevent the use of expired gas canisters. Labels with canister expiration dates are distributed to each location for certified administrators to note the expiration date.

Our audit team found that 25 breath alcohol tests were administered using expired gas canisters since the expiration date was not clearly listed on the label.

The State Crime Lab intends to move from the use of Intoxilyzer 8000 machines to Intoxilyzer 9000 machines. These new machines should prevent the use of expired gas canisters. Currently, the State Crime Lab owns 51 Intoxilyzer 9000s and intends to purchase more to replace the 119 Intoxilyzer 8000s in use.

RECOMMENDATION

We recommend the State Crime Laboratory ensure expired gas canisters are not used for breath alcohol tests.

OFFICE OF THE ATTORNEY GENERAL RESPONSE

We agree with the status of this recommendation.

These gas canisters are used by independent law enforcement that are non-OAG staff. The OAG supplies the canisters, provides training on their use, and provides reminders to law enforcement regarding expiration dates. It is the responsibility of the users to ensure expired canisters are not used. The majority of the tests identified in the study were conducted when the breath alcohol program was under previous management. The Crime Lab has seen a decline in the number of tests run on expired gas cylinders following a recent change in leadership of the breath alcohol program. The individual currently in charge of the program has been more effective contacting officers before gas cylinders expire to ensure the cylinders get exchanged at the laboratory. This has ultimately limited the number of tests run on expired gas cylinders. The program manager has also been monitoring gas cylinder installation paperwork for compliance as the paperwork is submitted to the lab by agencies.

The Crime Laboratory will be making the following changes to ensure future compliance by agencies regarding the gas cylinders:

- To prevent an agency/operator from running a test on an

expired gas cylinder, the breath alcohol program manager will remotely access the instrument and remove the operator file from the instrument. This action will prevent all users from operating that instrument if the laboratory has identified that the gas cylinder is expired on the instrument. The agency will be required to obtain a new gas cylinder from the laboratory before proceeding with any further breath alcohol tests on the instrument.

- The software of the Intoxilyzer 9000 will prevent running a test on an expired gas cylinder.

Audit Procedures

Primary Objective

INTERNAL CONTROL

We obtained an understanding of internal control through inquiries, observations, and inspection of documentation and electronic data records. We planned our audit work to assess the design, implementation, and operating effectiveness of those internal controls that were significant to our audit objectives.

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.
- Original appropriations and appropriation adjustment authorizations were reviewed in the audit of the State of North Dakota Annual Comprehensive Financial Report.
- Information Technology Director or designee approved Information Technology expenditures.
- Individual responsible for overseeing grant programs approved grant expenditures.
- Procurement officers had proper procurement training.
- Receipts are present to support purchase card expenditures.
- Purchase cardholders reconciled their receipts to monthly individual purchase card statements.
- Purchase card expenditures were approved by the appropriate individual.

- Intoxilyzer I-8000 gas standard analytical reports were filled out for the gas standard lot numbers.

There were no deficiencies identified.

SCOPE

The Office of the Attorney General has operations in the following locations. Each location was 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 south Bismarck
- North Dakota Lottery in south Bismarck.

The North Dakota Lottery receives a separate annual financial audit.

METHODOLOGY

To meet this objective, we:

- Interviewed appropriate agency personnel.
- Observed the Attorney General's Office's processes and procedures.
- Analyzed financial data in ConnectND to determine areas of risk.
- 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).
 - 2019 Session Laws Senate Bill 2003 Section 1
 - 2021 Session Laws House Bill 1003 Section 1
- Tested compliance with the documented intent of special appropriation laws, including one-time funding items.
 - Analyzed and tested expenditures to determine the \$400,000 one-time funding was used for Criminal

History Improvement Projects (2019 Session Laws Senate Bill 2003, Section 2).

- Analyzed and tested expenditures to determine the \$1,851,956 one-time funding was used for Capital Assets (2019 Session Laws Senate Bill 2003, Section 2).
- Analyzed and tested expenditures to determine the \$200,000 one-time funding was used for Undercover Vehicles (2019 Session Laws Senate Bill 2003, Section 2).
- Analyzed and tested expenditures to determine the \$316,000 one-time funding was used for the Finger Identification System Replacement Project (2019 Session Laws Senate Bill 2003, Section 2).
- Analyzed and tested expenditures to determine spending on the \$110,000 one-time funding was used for the crime lab security system project (2019 Session Laws Senate Bill 2003, Section 2).
- Analyzed expenditures and determined the \$250,000 Federal funding appropriated to the Attorney General was used for the purpose of defraying the expenses of the office and properly reported to the Office of Management and Budget (2019 Session Laws Senate Bill 2003, Section 7).
- Analyzed and tested expenditures to determine the \$815,000 appropriated to the Attorney General was used for the Statewide Automated Victim Information and Notification System (2019 Session Laws Senate Bill 2003, Section 9).
- Analyzed and tested expenditures to determine the \$1,400,000 appropriated to the Attorney General was used for the Human Trafficking Victims Grant Program (2019 Session Laws Senate Bill 2003, Section 10).
- Analyzed and tested expenditures to determine the \$250,000 appropriated to the Attorney General was used for the Forensic Nurse Examiners Grant Program (2019 Session Laws Senate Bill 2003, Section 11).
- Analyzed and tested expenditures to determine the \$400,000 appropriated to the Attorney General was used for purchasing equipment and software for a charitable gaming technology system (2019 Session Laws Senate Bill 2003, Section 12).
- Analyzed and tested expenditures to determine the unexpended funding was used for the Concealed Weapon Rewrite Project (2019 Session Laws Senate Bill 2003, Section 13).
- Analyzed and tested salaries to determine the Attorney General did not overspend the \$425,000 appropriated for providing salary equity increases to attorney positions (2019 Session Laws Senate Bill 2003, Section 14).
- Analyzed and tested expenditures to determine spending on the \$1,111,706 appropriated to the Attorney General was used for Capital Assets (2021 Session Laws House Bill 1003, Section 2).
- Analyzed and tested expenditures to determine spending on the \$300,000 appropriated to the Attorney General was used for the Automated Biometric Identification System (2021 Session Laws House Bill 1003, Section 2).
- Analyzed and tested expenditures to determine spending on the \$255,000 appropriated was used for the development and implementation of a sexual assault evidence collection kit tracking system and spending on the \$100,000 appropriated was used for drug analyzers (2021 Session Laws House Bill 1003, Section 4).
- Analyzed and tested expenditures to determine spending on the \$3,000,000 from the strategic investment and improvements fund was transferred to eligible state agencies for litigation expenses (2021 Session Laws House Bill 1003, Section 6).
- Analyzed and tested expenditures to determine the \$1,650,000 from the gaming tax allocation fund was transferred to eligible state agencies for litigation expenses (2021 Session Laws House Bill 1003, Section 7).
- Analyzed and tested expenditures to determine spending on the \$475,000 from the charitable gaming operating fund was used for defraying expenses related to the continued development and implementation of the charitable gaming technology system (2021 Session Laws House Bill 1003, Section 8).

- Analyzed and tested expenditures to determine spending on the \$1,101,879 from the general fund was used for the Human Trafficking Victims Grant Program (2021 Session Laws House Bill 1003, Section 9).
- Analyzed and tested expenditures to determine spending on the \$250,691 from the general fund was used for the Forensic Nurse Examiners Grant Program (2021 Session Laws House Bill 1003, Section 10).
- Analyzed and tested salaries to determine spending on the \$1,249,083 appropriated was used for providing salary equity increases for bureau of criminal investigation and Medicaid fraud control unit positions and spending on the \$125,906 appropriated for providing salary equity increases for fire marshal office positions (2021 Session Laws House Bill 1003, Section 11).
- Analyzed investments to determine investing on the \$2,577,624 in the attorney general refund fund and investing on the \$251,812 in the Reduced Cigarette Ignition Propensity and Firefighter Protection Act Enforcement Fund with the State Investment Board (2021 Session Laws House Bill 1003, Section 12).
- Analyzed and tested expenditures to determine if spending on the unexpended funding was used for a concealed weapon rewrite project (2021 Session Laws House Bill 1003, Section 20).
- Determined the Attorney General transferred \$10,000 quarterly to the gambling disorder prevention and treatment fund. Determined 5% of the total monies deposited in the charitable gaming operating fund went to cities and counties in proportion to the taxes collected from licensed organizations conducting games within the cities and counties (N.D.C.C. 53-06.1-11.2 subsections 2a & 2b).
- Analyzed and tested approved concealed carry licenses to determine the Attorney General properly issued licenses to carry a firearm or dangerous weapon (N.D.C.C. 62.1-04-03 subsection 1).
- Analyzed and tested civil asset forfeiture case reports to determine the Attorney General made the reports publicly available and included the required information (N.D.C.C. 19-03.1-36.8).
- Analyzed and tested salaries to determine the Attorney General properly utilized the \$537,297 appropriated for providing salary equity increases to employees in the State Crime Lab (2021 Special Session Laws, House Bill 1506, Section 3).
- Reviewed the process for obtaining funds from the litigation funding pool and determined the Attorney General received \$199,615 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).
- Tested for legislative approval of non-appropriated expenditures (N.D.C.C. 54-44.1-09).
- Tested compliance with the documented intent of appropriation adjustments relating to emergency commission requests (N.D.C.C. 54-10-01.1, N.D.C.C. 54-16-03).
- Tested compliance with the documented intent of appropriation adjustments related to project Carryover Committee (2019-2021 Carryover Committee, 2019 Session Laws Senate Bill 2003, Section 2).
- Tested revenue refunds for compliance with OMB Policy (OMB Policy 214).
- Selected a judgmental sample of purchasing card transactions and determined purchases were reasonable, and coding was adequate for management control and financial reporting purposes (OMB purchasing card manual).
- Selected a random sample of travel vouchers to ensure compliance with law (N.D.C.C. 44-08-03, N.D.C.C. 44-08-04, N.D.C.C. 54-06-09).

- Selected a random sample of grant expenditures to ensure compliance with law (N.D.C.C. 53-06.1-11.2, N.D.C.C. 53-06.1-12, N.D.C.C. 54-12-26).
- 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. 54-12, N.D.C.C. 54-44.1-09, and N.D.C.C. 54-44.1-10).
- Selected a random sample of correcting entries and determined correcting entries were in accordance with fund restrictions and appropriation acts and properly coded and supported (N.D.C.C. 54-44.1-09, N.D.C.C. 54-44.1-10, N.D.C.C. 44-08- 05.1 1a, and N.D.C.C. 54-16-03).
- 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 random sample of missing notifications from the SAVIN resync system to ensure missing transactions had a notification sent after the resync (N.D.C.C. 12.1-34-06).
- Selected a sample including judgmentally selected and randomly selected items of Attorney General Refund Fund expenditures and determined that charges were in accordance with fund restrictions (N.D.C.C. 54-12-18).
- Analyzed if Intoxilyzer I-8000 gas canisters were used within the expiration date per the standard certification sheets available on the Attorney General website. Additionally, analyzed data to determine if the gas standard analytical reports were filled out for the gas standard lot number (N.D.C.C. 39-20-07, Intoxilyzer 8000 Initial Training Manual).

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).

Financials

Revenues and Expenditures

REVENUES AND OTHER SOURCES	JUNE 30, 2022	JUNE 30, 2021
Gaming Tax	\$ 23,927,594	\$ 19,615,644
Revenue from Federal Government	4,890,565	4,121,078
Legal Services	2,063,519	1,945,232
Fines and Forfeitures	1,205,958	5,298,403
Licenses and Fees	1,199,810	1,160,277
Remote Alcohol Monitoring Fees	1,147,670	1,222,275
Background Checks	624,885	635,412
Fire Marshall	117,200	79,116
Miscellaneous Revenue	271,549	251,420
Transfers In	3,848,140	972,321
Total Revenue and Other Sources	\$ 39,296,890	\$ 35,301,178

Source: ConnectND Financials

Continued on following page

Financials

Revenues and Expenditures

EXPENDITURES AND OTHER USES	JUNE 30, 2022	JUNE 30, 2021
Salaries and Benefits	\$ 24,441,836	\$ 23,281,498
Fees - Professional Services	3,682,498	889,206
Grants	3,498,462	2,938,038
Supplies	1,511,432	1,363,469
IT Contractual Services and Repairs	1,500,564	1,366,525
Rent -Building / Equipment	1,040,946	1,026,274
IT - Data Processing	852,748	824,085
SCRAM Bracelets	821,583	1,071,906
Repairs	695,816	1,930,331
Equipment over \$5,000	579,346	801,240
Operating Fees and Services	529,053	338,400
Travel	439,596	288,076
Lab Supplies	437,886	363,247
Building Construction	324,714	327,316
Equipment under \$5,000	294,073	548,160
Professional Development	195,475	226,228
IT - Communications	165,016	178,205
Motor Vehicles	-	144,492
Miscellaneous Expenditures	345,939	279,815
Transfers Out	40,000	-
Total Expenditures and Other Uses	\$ 41,396,982	\$ 38,186,510

Source: ConnectND Financials

Appropriations

For the Year Ended June 30, 2022

	FINAL APPROPRIATION	EXPENDITURES	UNEXPENDED APPROPRIATIONS
Expenditures by Line Item			
Salaries and Wages	\$ 50,832,646	\$ 22,269,784	\$ 28,562,862
Operating Expenses	16,881,569	6,851,284	10,030,285
Capital Assets	2,389,221	660,165	1,729,056
Technology Project Carryover	353,436	248,170	105,266
Grants	4,030,941	1,606,605	2,424,336
Human Traffic Victims Grants	1,101,879	474,383	627,496
Forensic Nurse Examiner Grants	250,691	86,619	164,072
Justice Assistance Grants	1,615,880	734,759	881,121
Litigation Fees	127,500	63,832	63,668
Litigation Funding Pool	4,650,000	2,767,753	1,882,247
Medical Examinations	660,000	248,200	411,800
North Dakota Lottery	5,254,844	2,063,940	3,190,904
Arrest & Return Of Fugitives	8,500	4,765	3,735
Gaming Commission	7,489	1,956	5,533
Criminal Justice Info Sharing	5,213,329	1,537,478	3,675,851
Law Enforcement	3,048,927	1,468,878	1,580,049
Totals	\$ 96,426,852	\$ 41,088,571	\$ 55,338,281
Expenditures by Source			
General	\$ 42,790,249	\$ 21,360,881	\$ 21,429,368
Other	53,636,603	19,727,690	33,908,913
Totals	\$ 96,426,852	\$ 41,088,571	\$ 55,338,281

Source: ConnectND Financials

Appropriations

For the Biennium Ended June 30, 2021

	FINAL APPROPRIATION	EXPENDITURES	UNEXPENDED APPROPRIATIONS
Expenditures by Line Item			
Salaries and Wages	\$ 46,262,875	\$ 41,651,682	\$ 4,611,193
Operating Expenses	17,468,026	13,625,836	3,842,190
Capital Assets	4,023,756	3,063,013	960,744
Technology Project Carryover	43,179	30,900	12,279
Grants	6,034,954	2,331,054	3,703,900
Human Traffic Victims Grants	1,400,000	1,400,000	-
Forensic Nurse Examiner Grants	250,000	250,000	0
Justice Assistance Grants	2,082,871	-	2,082,871
Litigation Fees	375,070	273,797	101,273
Intellectual Property Attorney	442,085	441,803	282
Medical Examinations	660,000	660,000	-
North Dakota Lottery	5,191,454	4,267,851	923,603
Arrest & Return Of Fugitives	10,000	8,105	1,895
Gaming Commission	7,489	2,090	5,399
SAVIN Cost-Share Program	540,000	401,639	138,361
Criminal Justice Info Sharing	3,631,121	2,700,301	930,820
Law Enforcement	2,982,284	2,982,264	20
Totals	\$ 91,405,163	\$ 74,090,335	\$ 17,314,828
Expenditures by Source			
General	\$ 46,003,486	\$ 45,479,338	\$ 524,148
Other	45,401,677	28,610,998	16,790,680
Totals	\$ 91,405,163	\$ 74,090,335	\$ 17,314,828

Source: ConnectND Financials



Status of Prior Recommendations

Tests Performed using Unapproved or Expired Gas Standards (Finding 2020-01)

Partially Implemented

Recommendation: We recommend:

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

Status: Partially Implemented. The Attorney General's Office provided evidence to support some elements of the recommendation. Since the prior audit, the office only used approved gas canisters to perform breath alcohol tests, so this portion of the recommendation is implemented. However, the Attorney General's Office performed 25 breath alcohol tests using expired gas canisters. This portion of the recommendation was not implemented.





NORTH DAKOTA STATE AUDITOR
JOSHUA C. GALLION


NORTH DAKOTA STATE AUDITOR'S OFFICE


600 E. Boulevard Ave. Dept. 117 | Bismarck, North Dakota 58505


 [ND.gov/Auditor](https://nd.gov/Auditor)

 NDSAO@nd.gov

 701-328-2241

 Facebook - ndsao.link/ebs

 YouTube - ndsao.link/f2d

 LinkedIn - ndsao.link/wsw