

Steve Sisolak
Governor
Chairman

Warren Lowman
Administrator
Division of Internal Audits
Governor's Finance Office



STATE OF NEVADA EXECUTIVE BRANCH AUDIT COMMITTEE

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Members
Kate Marshall
Lieutenant Governor
Barbara K. Cegavske
Secretary of State
Zach Conine
State Treasurer
Catherine Byrne
State Controller
Aaron D. Ford
Attorney General
Trudy Dulong
Public Member

MEETING MINUTES

Date and Time: Wednesday, February 26, 2020, 1:00 PM

Location: Old Assembly Chambers of the Capitol Building
101 N. Carson Street,
Carson City, Nevada 89701

Video Conference Location: Grant Sawyer State Office Building
555 E. Washington Avenue, Ste. 5100
Las Vegas, Nevada 89101

1. Call Meeting To Order/ Roll Call/ Remarks

Governor Sisolak called the Executive Branch Audit Committee meeting to order at 1:00 PM. Roll call was conducted and a quorum was established.

Members Present:

Governor Steve Sisolak, Chairman
Lieutenant Governor Kate Marshall
Secretary of State Barbara K. Cegavske
State Treasurer Zach Conine
State Controller Catherine Byrne
Attorney General Aaron D. Ford
Member Trudy Dulong

2. Public Comment

Ms. Sandy Anderson, Executive Director for the Nevada State Board of Massage Therapy, thanked the Governor's Finance Office, Division of Internal Audits for the work they did to help the agency turn itself around and become more in compliance. She said the area where they had embezzlement was in payroll; it would be extremely helpful if all boards and commissions could convert to a central payroll system.

3. Approval of the November 7, 2019 Minutes **(For Action)**

Governor Sisolak asked for changes or corrections to the minutes; there were none.

Motion: Approve November 7, 2019 EBAC Meeting Minutes

By: Secretary Cegavske

Vote: Passed unanimously

4. Presentation of Audit Six-Month Follow-Up Status Reports Pursuant to NRS 353A.090 (Information Only)

A. Nevada's Independent Occupational and Professional Licensing Boards – Governance (DIA 19-03)

Mr. Warren Lowman, Administrator, introduced the six-month follow-up status report of DIA Audit Report No. 19-03, Nevada's Independent Occupational and Professional Licensing Boards and Governance, that was presented to the Committee in June 2019. Mr. Lowman stated the division made two recommendations that were partially implemented and that Department of Business and Industry Director Terry Reynolds was present in Carson City to provide comments on the progress of the recommendations.

Director Reynolds presented an overview of Agenda Item 4A. He said his staff worked with the DIA team as they reviewed all the state's boards and commissions, especially those boards and commissions that handle occupational licensing. The audit team reviewed the structure and operation of the boards and they discussed various options from the framework of the boards and how they are incorporated into the agencies versus a stand-alone board or an executive director and separate staff. They looked at approximately 23 states' occupational and professional licensing structures and decided that two states, Colorado and Utah, had occupational licensing structures very similar to Nevada's. The divisions in both states provide the following:

- **Central administration.** There is an overall budget for the division that incorporates administration, legal, as well as licensure functions for each of the occupational areas.
- **Complaint and compliance investigation.** Investigation and compliance functions are consolidated into a single unit with a Chief of Investigations and Compliance Investigation Teams. Standard investigation procedures are followed in preparation for hearings on licensing and discipline. Teams work in concert with the Attorney General's Office who provides legal support to the investigative teams.
- **Internal controls.** There are standard internal fiscal controls.
- **Legal representation.** Support is provided through the Attorney General's Office with a Deputy Attorney General assigned to their bureau, which would oversee several occupational licensing boards. The Deputy Attorney General works with policy boards and staff on licensing, regulatory issues, and to provide hearing support.

- **Policy boards.** The boards are made up of subject experts in various occupational fields as well as private citizens, so they are not only subject experts on the policy boards, but they are also private citizens that sit within those boards. Policy matters are left to the purview of the occupational boards that work closely with the Division and their respective bureau chiefs.
- **Transparency and consumer protection.** Each state has a website that provides for consumer information regarding regulations and regulatory changes, disciplinary actions and how to file a complaint. It is very easy to find board minutes, discipline, and regulatory actions, for each one of the occupational boards. The websites also promote occupational career information.

Director Reynolds said Nevada's Department of Business and Industry oversees and issues about 265,000 licenses. B&I believes that central administration and consistency of regulation for occupations and professional licensing in Nevada is really a step in the right direction and they support that effort.

Director Reynolds said the IT structures in Colorado and Utah are very similar in nature to the portal provided by Nevada's Secretary of State where you can go in and do initial license applications and renewals online. There is also information on how to get a license and the value of having that license.

Director Reynolds said he would be happy to answer any questions, but there were none.

Attorney General Ford said he had a comment regarding prior questions about training for Open Meeting Law. He wanted Committee members to know that since their last meeting, his office has posted online training videos and has offered assistance to any and all interested parties.

4. Presentation of Audit Six-Month Follow – Up Status Reports Pursuant to NRS 353A.090 (Information Only)

B. Division of Environmental Protection – Petroleum Fund (DIA 19-05)

Mr. Lowman presented an overview of Agenda Item 4B. Of the recommendations made, three have been partially implemented. There are two recommendations which have been determined as no action:

- 1) **Follow statute for third party liability.** DIA believes the statute is rather clear and will ask for an official opinion from the Attorney General's Office on the use of those funds. There is a draft letter out for review in the near term which will be sent to the Attorney General's Office once finalized.
- 2) **Revising enrollment and reimbursement policies.** While the division believes the procedures in place are sufficient, the audit showed there could be some tightening up in those procedures. Internal Audits intends to revisit this recommendation during the annual follow-up and hopes that during that time there can be some movement towards a better process that would ensure this sort of action does not happen again.

Governor Sisolak said they need a clear policy moving forward so everybody understands what it is. Transparency is a must and in everyone's best interest.

Secretary Cegavske had a question about recommendation 3 in 4B. What was the timeline for the new resolution and implementation of the guidelines and site audits and when did they expect it be adopted by the Petroleum Fund Board?

Mr. Greg Lovato, Administrator of the Nevada Department of Environmental Protection, responded that they do have a proposed field audit policy that will be considered before the Board (to Review Claims) at its next quarterly meeting on March 12th and will be implementing it thereafter.

Attorney General Ford asked if Mr. Lovato could speak to the status of revising the definition of small business as they were discussing last go-round?

Mr. Lovato said they are scheduled to propose a new definition for small business that they may recommend in a bill draft request. They are going to bring that before the Board also at the March 12th meeting, and per their recommendation or approval, the agency will propose that for a revision in the NRS.

5. Presentation of Audit Reports Pursuant to NRS 353A.085 (Information Only)

A. Nevada Board of Pharmacy – Licensing Operations (DIA 20-05)

Governor Sisolak said he had some comments to make before the presentation of Agenda Item 5A.

The Governor said he has not been shy about sharing his serious concern over the issues regarding the Board of Pharmacy. He reminded Members that on May 3rd, 2019, DPS Director Togliatti informed his office of the DPS discovery that the Nevada State Board of Pharmacy had routinely failed, as far back as 2007, to submit fingerprints for criminal background checks as required by law. On that same day, the Governor issued a letter to then-Chair of the Board imposing an immediate moratorium on issuing of any new wholesale pharmacy licenses. He also directed the Division of Investigations (NDI) to look into the Board's fingerprint and background check practices. Based on NDI's findings and to supplement their initial conclusions, the Governor also requested that the Executive Branch Division of Internal Audits to conduct an emergency audit of the Pharmacy Board with a specific focus on wholesale pharmacy licensing requirements, fingerprint background checks and fee collections.

Governor Sisolak said the findings of the audit report of the Board of Pharmacy's licensing process are deeply concerning. The breadth of the problem and how long it has persisted are alarming. It is unconscionable that the Board and staff simply ignored their statutory obligation to conduct background checks to ensure the professionals in this space were properly vetted. It's beyond the pale that the Board collected money from Nevadans to perform a service that was never actually being done, and it is entirely unacceptable that they ignored the most basic bookkeeping and accounting practices by comingling fingerprint fees with other Board funds.

5. Presentation of Audit Reports Pursuant to NRS 353A.085 (Information Only) (continued)

A. Nevada Board of Pharmacy – Licensing Operations (DIA 20-05)

Equally troubling is the fact that concerns over these practices were raised well over a decade ago. There was more than ample time to address and resolve the issues raised in this report over a number of years.

Governor Sisolak stated the safety and well-being of Nevadans falls squarely on him, and it is his administration's duty to tackle this issue head-on. The findings of the recommendations of the audit report are the blueprint for how the Board will restore public faith in this process. But meaningful reform of this Board must also come with accountability and those who knew of this problem and sat idly by will be held accountable.

Last fall, the Governor made four new appointments to the Board, and he is confident that the Board has begun to take necessary action to restore public and industry trust that has been lost. The Governor has every expectation that they will continue to aggressively implement the recommendations laid out in this report. With that, he asked Mr. Saranjeet Bains, Executive Branch Auditor, to begin his presentation.

Mr. Bains stated the audit performed on the Board of Pharmacy concluded that the Board was in compliance with background check procedures.

However, additional improvements to the licensing process are needed to bring the Board in alignment with practices used by other Nevada boards. Since the moratorium on wholesale licenses was imposed in May, the Board has screened over 1,100 existing licenses and conducted 317 fingerprint background checks on 106 non-exempt licensees. Additionally, the Board has established a process to review and track applications along with fingerprint requests and results. Board agendas have been modified to segregate applicants with potentially disqualifying events for heightened Board review. The audit focused on two objectives, improving the wholesale background check process and improving the overall licensing process.

To improve the wholesale background check process, staff made three recommendations: Establish management oversight of the background check cycle, enforce fingerprint authority more stringently, and modify fingerprint protocols for wholesale license renewals.

Establishing management oversight of the background check cycle will allow management to maintain control of the entire process and identify bottlenecks by developing full-cycle tracking logs, establishing periodic review of the tracking logs, and developing criteria under which an application may be rejected when fingerprint cards have been rejected twice.

The recommendation to enforce fingerprint authority more stringently will help to thoroughly vet persons on each application for potential fingerprinting consistent with the Board's statutory authority by identifying persons with significant influence over the operation and acquiring an official list of officers from the home business registration agency to verify the accuracy of officers listed on an application.

**5. Presentation of Audit Reports Pursuant to NRS 353A.085 (Information Only)
(continued)**

B. Nevada Board of Pharmacy – Licensing Operations (DIA 20-05)

The Board should modify fingerprint protocols for wholesale license renewals by using the statutorily required annual updated list of stakeholders to identify new persons of influence rather than fingerprinting all renewal applicants. This will reduce the workload for Board staff, ensure more thorough vetting of applicant stakeholders and align more closely to other boards that only require fingerprints for initial licensure and not renewals.

Regarding the second objective to improve the overall licensing process, staff made two recommendations. First, require fingerprint background checks for other license types such as pharmacists and pharmacy technicians. Currently, only wholesalers are required to submit fingerprints amongst the Board's 17 different license types. Other states surveyed require fingerprint background checks for pharmacy and prescribing individuals. Similarly, other Nevada boards that regulate healthcare professionals have a widespread approach to fingerprinting prior to licensing.

Finally, the Board should account for fingerprint fees separately. The Board has been collecting fees since 2006. The amount of fees collected for fingerprint processing could not be determined through financial records; rather, the Board's case management system was used to make this determination.

Fingerprint fees should be accounted for separately to allow related summary and detail information to be quickly retrieved. The Board reports that all dormant fees have now been returned with interest.

Governor Sisolak asked how does the Board catch folks convicted of disqualifying crimes in between the licensing renewals? Is there any way for the Board to capture that information?

Mr. Jeff Landerfelt, Executive Branch Audit Manager, replied there is a provision in statute that requires an annual update from wholesale licensees of stakeholders to identify anyone new to their operation or influence on their operation and to also disclose any new disqualifying events. There is also a provision in that same statute, NRS 639.505, that requires any interim change within that annual update period to do likewise. The statute also includes a provision that prohibits the wholesaler from using anyone in their operation in any capacity that would be deemed a significant influence if they are required to submit a fingerprint or report their criminal history because of new disqualifying events.

The Governor asked was there any way to verify that or is it all just self-reporting? Mr. Landerfelt replied it is self-reported and that is why DIA recommended that the annual update process be used to more carefully screen potential candidates for fingerprinting.

Governor Sisolak said on Page 12 of the report, it lists 106 wholesalers submitted fingerprints and waivers. What happened to the 106?

5. Presentation of Audit Reports Pursuant to NRS 353A.085 (Information Only)
(continued)

A. Nevada Board of Pharmacy – Licensing Operations (DIA 20-05)

Mr. Dave Wuest, Board Executive Secretary, reported the Board has 1,100 licensees in this category. They were down to the 106 that required by law that had to do the fingerprint background checks. When they ran those fingerprints, there were 24 licensees that had what they call “disqualifying events,” which is a DPS term. It does not mean that they could not be part of the wholesaler; it just means they are disqualified from being part of the wholesaler without direct approval from the Board themselves. Those 24 people are in the process of going in front of the Board, choosing to disclose that event or not disclose that event.

The Board will take the appropriate action on that. They’ve done six already. They have nine that have been noticed for the March 18th meeting, and then the other nine will be noticed for the April meeting. The new applications that have come in since the moratorium will follow what is the current process, so if they have a disqualifying event, they go in front of the Board.

Governor Sisolak noted that the report recommends that the Board end the practice of collecting fingerprints at every renewal and instead just collect them during initial application, the initial phase. His understanding is other boards do the same thing, but do those boards do a full background check at each renewal?

Mr. Landerfelt said his understanding is that the boards at initial licensure conduct the same fingerprint background check as the Board of Pharmacy currently does at both initial licensure and renewal. So, that is a full background check.

The Governor asked if DPS could do a full background check at renewal without fingerprints? Mr. Wuest said there is the option to do a name check.

The Governor asked on the renewals, are they just relying totally on self-reporting of these events? Mr. Wuest said they do require that their licensees do some self-reporting. They intend to do the annual updated list of employees during their renewal period and then their off-renewal period. Mr. Wuest said there is a better document to use than the one they use now. The procedures moving forward will be to go to the Secretary of State and match that list up.

Governor Sisolak asked Mr. Wuest to explain the protocol for retaining background check records. Mr. Wuest said they adopted exactly what the repository said was the standard for doing this. If there is no disqualifying event, then the records do not need to be retained. The fingerprints come in the mail and they go right to the repository. The repository handles doing the background check. There are multiple people reviewing what the criminal background check reveals, per policy, and ultimately, it’s the Board’s decision on what happens with that. Staff do not have the ability to say this crime is something we are not worried about or this is not. It is totally up to the Board in an open meeting to make that decision on the licensee. Governor Sisolak said his concern was that was not happening before.

5. Presentation of Audit Reports Pursuant to NRS 353A.085 (Information Only)
(continued)

A. Nevada Board of Pharmacy – Licensing Operations (DIA 20-05)

Mr. Wuest said they have checked every renewal to make sure that they have done that right. And then moving forward, they have the policy in place to make sure that the public is safe with the current licensees.

The Governor said he was a little concerned that the existing statute only contemplates background checks on “persons of influence” at the wholesale level. Not everyone who handles the drugs, for example, pharmacists or pharmacist techs, are screened. Does the Board enforce any requirement that wholesalers submit updated annual lists of personnel changes?

Mr. Wuest said they do now but it is a manual process. The goal is to get a software application to make sure that they notify these wholesalers that updated personnel records need to be submitted. And then if they don’t do it, they would be required to appear before the Board to explain why they did not. This will roll out in October 2020. They need some potential regulatory change to make sure they are identifying who the people are that have significant influence. They have taken a very hard look at the Gaming Control Board to utilize their language for who is influencing casinos. So, if they can do something before that time, they will. But they need some help from their Board to provide some regulatory direction on exactly who is a person of significant influence.

Governor Sisolak said he was “confident and hopeful” at least that the Board will address this prior to six or seven months from now and that they can come up with a plan.

Governor Sisolak asked what was the process that is used to communicate with wholesalers, the informal process? Mr. Wuest said they do it by mail and there is some requirement that it is certified mail and some other non-certified mail.

The Governor asked if there was a formal process to record any changes that they might make? Mr. Wuest responded that yes, but it is a manual process. The hope is that the process will eventually be automated through their new software platform.

Governor Sisolak asked about two licensees who did not comply with the Board’s request for new fingerprints. What happened to those two wholesalers? Mr. Wuest said one license has been revoked by the Board, and the second one is being reviewed and will come before the Board at their next meeting.

Governor Sisolak moved on to the topic of fingerprint fees. He said everyone had been concerned with the comingling of the fees with other funds. Is it true that there are now two separate accounts and that these fees are all kept separate?

Mr. Wuest said absolutely yes. They identified all the fees that they needed to give back and to date they have been returned with interest. And moving forward, they are separate and there is a whole cascade of procedures to make sure they stay separate.

5. Presentation of Audit Reports Pursuant to NRS 353A.085 (Information Only)
(continued)

A. Nevada Board of Pharmacy – Licensing Operations (DIA 20-05)

Governor Sisolak asked if Mr. Wuest's staff had accepted the vast majority of the findings and agreed to make adjustments within six months?

Mr. Wuest said "100 percent" they accept and agree with the findings. Staff was part of the process when they did it and it was a good process. The one that is outstanding is the one that has to go through the regulatory process. It is slated for their March meeting that the Board will make that decision, and then it goes through regulatory process.

Governor Sisolak said he understood that six months was allowed by law, but they do not have to take six months, did they?

Mr. Wuest said they were not going to take six months. The beginning of the fix will start at the March meeting and then that will go to LCB. Then it gets codified and it has to come back to another public hearing as required by law, and then it goes to the Legislative Commission on Regulation to approve it.

Governor Sisolak said in October, he delivered remarks concerning the Board and called for the Board to hold those accountable who failed to meet their statutory duty to protect the health and safety of Nevadans. This recommendation was based on Audit Division findings. The Governor asked what actions the Board has taken in response to those comments?

Mr. Wuest replied that the Board obviously took the Governor's comments very seriously and he did, too. They identified everybody that had historically had a role in it, and those people were removed. They have had turnover in the Board since then and they lost a person that was involved in it. The Board has restructured how the Board operates in their meetings to clearly identify what is happening with these license types.

Governor Sisolak asked as Governor, did he have any authority to discipline the individuals that were lax in their oversight?

Mr. Wuest said he thought that the Governor did have that authority.

Mr. Lowman said the Governor does not have that authority. That authority rests with the Board of Pharmacy.

The Governor said he did not want to go into personnel matters, but just wanted to know who specifically has that authority?

Mr. Lowman said based on statute, authority rests with the Board of Pharmacy itself.

Secretary of State Cegavske said the information suggests that the applicant submit a list of officers from their domicile registration agency, which rests with the Secretary of State and the Commercial Recording Division. However, her staff does not verify the validity of the list on file

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A. Nevada Board of Pharmacy – Licensing Operations (DIA 20-05)

with her office. That authority was not given to the Secretary of State by the Legislature. And these lists may not include those that have ownership interest or can otherwise exert significant influence over the entities. And so, where it says that they're using the Secretary of State's Office to verify, that is not exactly valid.

Mr. Landerfelt replied there is currently no verification with any official formal channel with the list of officers that are provided on the application. DIA's recommendation is from a "best information available" perspective.

Secretary Cegavske said she wanted to make sure it is on the record that people are not thinking that her office verifies and solidifies that information. All they do is take it in and take in the money.

Attorney General Ford asked is there a requirement that people affirm on the penalty of perjury or otherwise on the documentation that they give that they are providing true and accurate information? Secretary Cegavske said yes.

Attorney General Ford said to the extent these folks are submitting in his estimation false information and they find out about it, there is recourse that they would have relative to them not putting forth verifiable or truthful information. Even though you do not have the authority or the staff or the ability to verify it, they are themselves under penalty of perjury.

Attorney General Ford said along the lines of the significant influence component, he needed to understand what their contention is relative to statutory changes or regulatory changes.

Mr. Wuest said "significant influence" is what they need to better define. They are looking toward the Gaming Control Board language to bring a definition to the Board at the next meeting.

Attorney General Ford asked can that be done via regulation, or did they have to have a statutory change to do that? Mr. Wuest said because it is stated in the statute that they can do it.

Attorney General Ford and Mr. Wuest had a discussion about the fingerprint process. Both agreed that going forward, electronic fingerprinting was the way to go.

Director Togliatti, Director, Department of Public Safety, said their Chief of the Division of Investigation could detail the process if the Board wanted.

Member Dulong said she was "astounded" to hear that people were still doing paper fingerprint cards. Everybody is on digital fingerprints and you can tell immediately if they get a good set or not. Also with digital, there's no money that has to be exchanged with the agency because the people pay for it at the local law enforcement agency. Mr. Wuest said he thought they were

**5. Presentation of Audit Reports Pursuant to NRS 353A.085 (Information Only)
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A. Nevada Board of Pharmacy – Licensing Operations (DIA 20-05)

following the current law, but that is something that they may need to address at a different forum.

Governor Sisolak said he wanted to thank everyone for providing some context to this audit. They have asked for a more thorough and comprehensive large review of occupational licensing boards in the interim time here, and it's important that they ensure the process, especially as it relates to background checks for specific boards as part of that larger overall review. One of the goals is to streamline processes while still protecting the health and safety of all citizens. So, that will be preeminent.

5. Presentation of Audit Reports Pursuant to NRS 353A.085 (Information Only)

**B. Department of Public Safety, Division of Parole and Probation – Program Operations
(DIA 20-06)**

Governor Sisolak said he was pleased to see this audit on the Division of Parole and Probation (P&P). He has made criminal justice reform a priority of his administration, and the Division of Parole and Probation plays a central and critical role in that effort. As the report notes, offender supervision is far more cost-effective to the state than simply warehousing Nevadans in jails and prisons until their debt to society is paid. Additionally, efforts such as these will lead to reduction of recidivism and therefore a safer Nevada. A key portion of the Division's mission is to promote the successful reintegration of offenders back into society.

The goal of the Division is not to administer retribution when offenders fall short of the expectations placed on them, but to help them move past their stumbles and set them up to succeed. The Governor said he wanted to acknowledge both the leadership and the stellar team of professionals who work day in and out to serve that mission.

There are always opportunities to improve services and this report is an important step to identifying some of the ways they can do that. The Governor signed AB 236 into law, which is one of the biggest steps the state has ever taken towards meaningful criminal justice reform. Improving and increasing the services offered by P&P is the next step in that direction.

Governor Sisolak said he was confident that the stellar P&P staff under the direction of DPS Director Togliatti shares his vision for criminal justice reform. The first step is agreeing to take this seriously and that step is complete. The P&P staff also share their understanding that implementing 180-degree shift in the state's approach to criminal justice is a long-term process that requires intentional efforts and a lot of work.

Mr. Brian Wadsworth, Executive Branch Auditor, presented the report for Agenda Item 5B. He said the division is restricted on its ability to analyze data because its current database management system is old, inflexible and labor-intensive. These restrictions limit the division's ability to identify opportunities for improvement through data analysis. The Division's data

5. Presentation of Audit Reports Pursuant to NRS 353A.085 (Information Only)
(continued)

B. Department of Public Safety, Division of Parole and Probation – Program Operations
(DIA 20-06)

limitations preclude accurate statistics needed for informing management decisions related to performance and measuring the success of its programs and services.

To ensure compliance with AB236, approved during the last legislative session, the Division's ability to track offender data is imperative. The audit objective was to improve services for offenders under the supervision of Parole and Probation, and there were four recommendations:

1. Revise the Division's definition of recidivism. Recidivism is a primary measure of effectiveness for programs focused on reintegration of those under supervision. The Division's current definition of recidivism does not include offenders currently being supervised by the Division. A more meaningful definition could consider all components of the population the Division supervises, including data on revocations of parole or probation, absconders, and honorable versus dishonorable discharges from supervision. Each of these components has unique issues and characteristics that, if measured, could identify opportunities to reduce re-incarcerations.
2. The Division should adopt additional performance measures for programs and services. The Division has two basic performance measures for the supervision of its offenders, percentage of successfully completed paroles and percentage of successfully completed probations, neither of which measures factors within the division's control. Data collection and analysis of more meaningful performance measures such as effectiveness of officer interactions with offenders and collaboration with other agencies and community partners, could better inform the division on effectiveness of its efforts for successful offender reintegration into the community.
3. Adopt internal controls and processes to ensure data is accurate and data integrity is safeguarded. Data is only meaningful if the data entered and analyzed and reported is accurate. Safeguarding the integrity of offender data is essential to generating accurate reports for decision-making purposes.
4. Allocate resources to other successful programs and services that serve the needs of those under supervision, as well as look at other reallocation alternatives.

Mr. Wadsworth said they reviewed two current Parole and Probation programs, the Data Reporting Centers and Indigent Funding:

The Data Reporting Centers serve as an intermediary sanction for offenders that have problems complying and is a last resort before revocation of parole or probation. Under the current contract, the Data Reporting Centers have seen a graduation rate of about 3 percent and are underutilized, on average, by 30 participants per month. A two-year contract, in the amount of \$1.9M with a new vendor was approved at the most recent Board of Examiners' (BOE) meeting; however, it too, is constructed as a flat rate monthly payment without regard to the number of participants served. Under the new contract, there is an opportunity for the Division to improve upon the services offered at the Data Reporting Centers' participants. If,

5. Presentation of Audit Reports Pursuant to NRS 353A.085 (Information Only)
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B. Department of Public Safety, Division of Parole and Probation – Program Operations
(DIA 20-06)

however, underutilization and performance measures under the new contracts justify, resources could be shifted to a successful program.

The Indigent Funding Program has shown a positive return on investment for Nevada. The Indigent Funding program is used to provide up to \$1,000 for temporary housing for those offenders approved for release by the Nevada Board of Parole Commissioners but cannot be released due to a lack of financial resources to obtain housing. Without the Indigent Funding, offenders would remain in prison.

Governor Sisolak said the report indicated that they could not calculate a meaningful recidivism rate because of data restrictions or limitations. What were some of the data points not being captured that would be helpful to flush out actual recidivism rates?

Mr. Lowman responded that including those parolees and probationers who are under current supervision is one of the critical pieces of data that needs to be included. Other items that could be included would be data based off of the National Register Resource Center, the Justice Center, Counsel of State Governments. There are all sort of inputs that could go into this breaking it down to the effectiveness of officers, those that are particularly successful, those sorts of data points to help guide resourcing and programming decisions, particularly as they get into the AB236 environment. It's a very data-driven process and they are extremely limited with what they can do based on their data management system. So those are the types of data elements they would recommend be included in that recidivism redefinition.

Governor Sisolak asked what are the national standards for Parole and Probation revocation rates? Do they have a national guideline or comparison to go by?

Mr. Lowman said they did not see a consistent guideline for probation. The parolee guideline is based off of what the Nevada Department of Corrections does, and they have a national standard that they follow.

Chief Anne Carpenter said she didn't have the national standards' information at hand, but she could get it.

Governor Sisolak said he appreciated that Chief Carpenter brought up the contract at a recent BOE meeting. BOE approved a contract to obtain non-state assistance through private company data reporting centers. What was the term and the length of that contract? Mr. Lowman said that the contract was for two years at about \$1.9M.

The Governor asked how will they know that it is working, if in fact it is working? Mr. Lowman said staff will review data for a year, see what they have and report back to the Committee and

5. Presentation of Audit Reports Pursuant to NRS 353A.085 (Information Only)
(continued)

**B. Department of Public Safety, Division of Parole and Probation – Program Operations
(DIA 20-06)**

let that guide judgments going forward. Governor Sisolak said that would be helpful, and if there are some specific benchmarks you want them to track, staff should let them know.

Attorney General Ford asked how could they be sure they would utilize the vendor to the fullest capacity? The audit showed that underutilization is taking place in the Data Reporting Centers right now. If underutilization is already taking place, how will they utilize this new contract and be at capacity?

Chief Carpenter said they just had a meeting with their new vendor, and they already discussed metrics and how staff will utilize it better and more efficiently. So, those talks are already underway.

Governor Sisolak said the report identified some limitations of the offender tracking system, OTIS. Has the division identified suitable alternatives for OTIS or are there none?

Chief Carpenter said there really isn't an alternative solution. Staff tries desperately to get the metrics that are needed, but it is very cumbersome.

Governor Sisolak asked if the Chief knew why there was such a disparity between probationers and parolees? Chief Carpenter replied she did not, but she would research that and get back to the Governor.

Governor Sisolak then asked the Chief about supervision for rural vs. urban areas. The Chief said there are some challenges to rural supervision that include smaller staff and longer distances to deliver services. Additionally, the rural areas do not usually have ancillary services like counseling or housing assistance.

Treasurer Conine had a question. They were using OTIS to capture and track this information. Does the Department of Corrections also use OTIS? Chief Carpenter said no, they use NOTIS, which is a different records management system. The systems cannot "talk" to each other.

Treasurer Conine asked if it would be possible, at least in the window between now and 2022, to use NOTIS in order to get the information that OTIS does not? There might be some concern over a three-year delay on starting to collect the data needed in order to get the legislative intent from a criminal justice reform standpoint. Are there opportunities to use in-house systems that maybe exist down the street? Chief Carpenter said they would love that, but they do not capture the same information.

Treasurer Conine asked if NOTIS could collect some of the information that needs to be captured in a way that works? Chief Carpenter said she did not know, but she could find out.

5. Presentation of Audit Reports Pursuant to NRS 353A.085 (Information Only)
(continued)

B. Department of Public Safety, Division of Parole and Probation – Program Operations
(DIA 20-06)

Treasurer Conine asked if there was any data from other states about the disparity between probation and parole, recidivism, and revocation rates? Is Nevada an anomaly? Chief Carpenter said she would find out.

Treasurer Conine asked before 2022 when the new records management system comes on board, could they start collecting some of that information by hand so that they can get better data? Is there any incremental step there? Chief Carpenter said it is not impossible, but with a huge workload and a small staff, they do not have the manpower to hand muck all of that information. AB 236 has provided certain metrics that they must comply with and they are working on that to try to figure out what they have, what they can collect and what they cannot collect until the new records management system comes on board.

Chief Carpenter added that gathering data about the effectiveness of officers is not quantitative; it is qualitative. It is difficult to figure out how to get that information and how to rate an officer as effective versus not effective. So, they are working on that, too.

Treasurer Conine wondered if the data from supervised and unsupervised populations combined together would give a total revocation and recidivism rate? In other words, if you're only looking at one-half of recidivism now and not looking at that supervised population, could they not simply combine the two to look at a rate that would be more comparable to other states?

Chief Carpenter said they are not capturing data for the time period that they are under supervision. They do capture if they are discharged or revoked so that is at least a piece they could examine.

Secretary Cegavske asked what should they be looking at and what is the methodology? Are they serving those who are at the highest risk of going back? Chief Carpenter said when they first had this program, it was utilized by the highest risk people so they would not go back to prison or go to prison for the first time. And then they realized that population might not be the best because sometimes people that are already your highest risk may or may not care as much. And so they had to figure out a median population of people who were straddling that line. Staff wanted to help them be better and give them the resources that they were not getting.

Governor Sisolak closed out Agenda Item 5B by saying he wanted to emphasize as it relates to the new Data Reporting Center that they are contracted with, how important it is to have accurate information and make sure that staff is utilizing to the fullest potential those services and better tracking any data points that are a concern. That is why they reduced it from a four-year contract down to two, to decide if it is worth keeping moving forward.

5. Presentation of Audit Reports Pursuant to NRS 353A.085 (Information Only)

C. Department of Administration, Purchasing Division – Foreign Vendors (DIA 20-07)

Mr. Craig Stevenson provided the report for Agenda Item 5C. He stated they conducted an audit of the role of foreign vendors in state contracting. The audit focused on increasing state contracts awarded to Nevada vendors. The state can do a better job helping Nevada vendors compete for state contracts. In fiscal year 2019, a one percent shift of contract awards from foreign vendors to Nevada vendors could have benefited the state by about \$6.6M.

Nevada vendors are currently at a disadvantage due to the purchasing preference laws in other states. To level the playing field for Nevada vendors, they made the following recommendations:

- 1) The Division should improve outreach efforts to Nevada vendors and establish a mechanism to track and measure the outreach program's effectiveness. Nevada vendor participation in the Division's solicitation process can be improved. In fiscal year 2019, Nevada vendors only responded to thirty-four percent of the Division's bid solicitations. During the same period, foreign vendors were awarded \$537M of the division's \$1.1B worth of contracts. The Division needs to improve outreach efforts and develop a mechanism to track and measure the effectiveness of its outreach program. Outreach programs such as the Governor's Office of Economic Development and Clark County's Small Business Opportunity Program can be used as models to improve and track the Division's outreach efforts.
- 2) The Division should seek a BDR to reinstate the inverse preference law. An inverse preference is when a state gives preference to its bidders against bidders from other states, equal to the other state's preference. The inverse preference law was enacted in 2003 to help Nevada vendors. The repeal of the inverse preference law in 2009 put Nevada vendors at a disadvantage within and outside the state because of similar preferences in other states. Reinstating the inverse preference law will level the playing field and result in more contracts awarded to Nevada vendors.
- 3) The Division should establish a statewide suspended and debarred vendor list to ensure the state is doing business with reputable vendors. Thirty-six states and the District of Columbia have suspended and debarred vendor lists. A statewide list accessible to all agencies will help protect the state's interests by reducing the potential risks and costs to the state of noncompliant vendors.

Governor Sisolak said he agreed wholeheartedly with the establishment of a suspended or disbarred vendor list. Otherwise, there's no consequence. The Governor noted questions about attaching the sanction to a company or the individuals who own the company to avoid simply forming a new LLC. It is something that is extremely important to establish moving forward.

The Governor said it is concerning that over half of the state's contracts are going to out-of-state companies when they have done everything they can to assure that Nevada-based businesses have the best opportunity to get those contracts. Maybe its outreach to various chambers and business groups but Nevada is losing a lot of business that way.

Attorney General Ford asked Mr. Doty for some history about inverse preference.

**5. Presentation of Audit Reports Pursuant to NRS 353A.085 (Information Only)
(continued)**

C. Department of Administration, Purchasing Division – Foreign Vendors (DIA 20-07)

Mr. Doty, Administrator for the State Purchasing Division, said the inverse preference was repealed in 2009, and it is not clear exactly why it was repealed. This happened when the Legislature was enacting a preference for a business owned by a disabled veteran, and there was some discussion in the legislative history regarding stacking of preferences and how they did not want preferences stacked. It was either that was the reason why the inverse preference was removed or perhaps a clever lobbyist just took advantage of the opportunity to kill the inverse preference. There is no way of knowing from the legislative history.

Attorney General Ford said he thought it was important for them to take a look at that and would have his office look at arguments being raised from other states.

Secretary Cegavske said there is an issue with vendors being qualified to do their jobs. They come in and tell the Legislature that they can do a certain act and that they can follow through, they can have these dates and they get all of this. And then they do not follow through. Then the only recourse is to stay with that group to utilize them. The big issue in the State of Nevada is trying to find vendors that are qualified and that can do the job. The state needs to have more “home grown” vendors.

Governor Sisolak said that was right, and it is particularly true in the IT field. Why is the state not producing the people that can fulfill these functions?

Treasurer Conine said he had two comments on the inverse preference. There may have been a reason to get rid of it when fewer states had it, but now that 34 states have it, it is a bit of an arms race. Nevada will be at a disadvantage until they put something like that back in. When it comes to vendors, they need to do a more effective job of letting Nevada vendors know there is work they are suited for. Staff needs to search out vendors and let them know.

Lieutenant Governor Marshall asked the auditors whether or not they had an opportunity to focus on whether small businesses can be vendors for the state. Last legislative session, a bill was passed to say that if you were going to be a company that did business with the state that you had to train your employees in sexual discrimination. The Lieutenant Governor has heard from many small businesses, especially businesses in rural areas, that they will no longer be able to compete because there is no tool for them to do these kinds of things that larger companies can do. Did the auditors look at the impact on small businesses and whether or not there were things that the state could do to facilitate small businesses being able to do business with the state? Other states with the same legislation have provided video trainings on their website so that a small company could download the video and train their employees that way, and then still have the opportunity to do business with the state.

Mr. Doty said anything they can do outreach-wise to help small businesses, such as help them with the registering as a vendor process, teaching them how to write a good proposal in response to an RFP, helping them with insurance requirements, is good. The vendor outreach person has done a tremendous job working with small businesses and they do interact with

**5. Presentation of Audit Reports Pursuant to NRS 353A.085 (Information Only)
(continued)**

C. Department of Administration, Purchasing Division – Foreign Vendors (DIA 20-07)

them. The vendor actually went to the home of a hay farmer to help that hay farmer log into the system and place a bid so that the state could buy hay for a prison industries ranch. A few

years ago, the state was actually buying hay from a California farm. So anytime Members hear about small businesses that want to be part of doing business with the State of Nevada, please contact Mr. Doty and let him know. They are always trying to get as many Nevada businesses signed up as possible.

Lieutenant Governor Marshall said she appreciated those efforts and would like for staff to consider adding training videos to the website to help those small businesses even more.

6. Presentation of Special Follow – Up Status Report (For Action – Audit Plan)

A. Department of Health and Human Services, Division of Public and Behavioral Health – Rawson Neal Doctor Attendance (DIA 10-06)

Ms. Ashwini Prasad, Executive Branch Auditor, provided the report for Agenda Item 6A. She said this was their 12th report on doctor attendance at Rawson-Neal Hospital. The review shows the Division can account for doctor work hours, although a large number of hours for some doctors are performed offsite, away from the hospital. To account for doctor work hours, the hospital utilizes the gap analysis report, which reconciles doctor absences from the hospital with authorized and documented meetings, trainings, and other events.

Ms. Prasad said in August 2017, the Division implemented an additional report, which reconciles approved offsite hours with recorded electronic medical record entries. In October 2019, the Division created policies and procedures for how doctors are approved for offsite work hours and for what purposes.

During the most recent review period of fiscal year 2019 auditors found, overall, on average, hospital doctors are working 33 percent of their compensated hours away from the hospital. It was also noted select doctors were working from 17-66 percent of their compensated time offsite from the hospital. Auditors found use of offsite hours by doctors approved for offsite work was 2% higher for the Rapid Stabilization Unit and 4% higher for the Inpatient Hospital compared to our last review period.

In addition, auditors found use of offsite hours by doctors approved for offsite work increased by 25% during the fiscal year 2019 review period. The result is the average number of hours doctors approved for offsite work hours are onsite for patient care in the hospital for four hours and 16 minutes during a 10-hour day.

Auditors found in many weeks there were more hours accounted for on division reports than claimed on timesheets by contract doctors who worked offsite. Neither the affected doctors nor the division attempted to adjust compensation based on the variance between the reports and

**6. Presentation of Special Follow – Up Status Report (For Action – Audit Plan)
(continued)**

**A. Department of Health and Human Services, Division of Public and Behavioral Health –
Rawson Neal Doctor Attendance (DIA 10-06)**

timesheets. To note, four contract doctors were consistently compensated for 50 or more work hours in a week during the review period. Those doctors also recorded the most approved off-site hours.

Ms. Prasad concluded by saying the division should continue monitoring efforts to ensure doctors work a full day, timesheets are accurate and off-site hours are reviewed and approved.

Governor Sisolak noted his experience on the Board of Regents with faculty members using their university positions to earn additional personal income. The Governor asked what assurance there was that doctors were doing hospital work and not performing other side work during the time they were compensated for offsite hours?

Ms. JoAnn Malay, Deputy Administrator for the Division of Public and Behavioral Health, said what they do to ensure that the offsite hours are indeed related to the work for the hospital is they use service codes that have to be provided in the electronic health record that says exactly what they were doing during at that time. They also look at their key card activity in the hospital and outside when they are not there to track meetings and things like residential supervision, and the time amount they actually entered their documentation into the electronic health record.

There were no further questions, and Governor Sisolak said he would accept a motion.

Motion: Accept the Follow-Up Plan and Continue it on an Annual Basis as detailed in
Agenda Item 7A

By: Attorney General Ford

Vote: Passed unanimously

7. Revision of the Annual Audit Plan Pursuant to NRS 353A.038 (For Action)

Mr. Lowman said they didn't have any new audits to request approval for. They will continue as planned. They will do a follow-up of the DRCs in a year.

There were no further questions, and Governor Sisolak said he would accept a motion.

Motion: Adopt the Annual Audit Plan Pursuant to NRS 353A.038

By: Treasurer Conine

Vote: Passed unanimously

8. Committee Members' Comments

Secretary Cegavske shared that she attended a concert with a group of musicians that go into prisons all over the world, but for some reason, they are not allowed to perform in Nevada. She doesn't know why. Could that be looked into?

Attorney General Ford said he had to offer a compliment to the Governor. Not only did the Governor talk the talk when it came to criminal justice reform, he walked the walk as evidenced by his intention to capitalize on criminal justice reform. Most people just use it as a talking point, but the Governor is talking directly to the agency and letting them know what he expects to see. That is to be commended.

Governor Sisolak said he appreciated the kind words. He said he wanted to compliment the audit staff. These are constructive, educational audits that shed some light and help people to adopt best practices, so it is very, very effective.

Secretary Cegavske said the Audit Division did a lot of our audits. The crew has been nothing but absolutely fantastic working with everybody to give recommendations. They do a wonderful job, and they are extremely helpful.

9. Public Comment

Ms. Sarah Hunt, the Assistant Dean of Behavioral Health Sciences for the School of Medicine at UNLV, said the majority of their citizens reside in a mental health professional workforce development shortage area. Her comments were related to the occupational and licensing board policy that was discussed earlier. In the fall of 2016, there was an initiative to take the four independent mental health licensing boards – psychology, social work, marriage and family therapy, and professional counseling and the addictions counseling board – and there was a proposal to consolidate or transfer those boards to the Board of Health.

Ms. Hunt said those board members all came up with pros and cons for what that could look like; and there were a couple of strong lessons that came out of their comments. One was they didn't feel like they were engaged early in the conversation about that and there could have been better communication about what the specifics were for that proposal. Clear communication was one thing that was requested or highlighted. Ms. Hunt said this is an area of concern as she thinks about all the graduates of the NSHE institutions. Ms. Hunt wants those graduates to stay in Nevada and she wants the licensing process to be very clear and easy for them. The four boards are still working independently, but they've made a lot of progress in cleaning up the process to get licensed easily in Nevada, so she is glad to see that.

10. Adjournment (For Action)

Governor Sisolak thanked everyone and said he would accept a motion to adjourn.

Motion: Adjourn February 26, 2020 EBAC Meeting
By: Attorney General Ford
Vote: Passed unanimously