

State of Nevada  
Governor's Finance Office  
Division of Internal Audits

**Audit Report**

**Nevada Department of Corrections**

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**Fiscal Processes**

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**Improved oversight of management and accounting practices will increase transparency and achieve more efficient and effective fiscal operations.**

DIA Report No. 21-03  
January 28, 2021



**EXECUTIVE SUMMARY**  
**Nevada Department of Corrections**  
**Fiscal Processes**

**Introduction**..... page 1

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**Objective: Improve Oversight of Fiscal Management and Accounting Practices**

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**Increase Oversight of the Offenders’ Store Fund**..... page 2

Increasing oversight of the Offenders’ Store Fund (OSF) by adopting regulations through the public administrative rulemaking process will: comply with legislative guidance over regulations; include members of the public in the process; and ensure rules for administering an average \$11.9 million in annual OSF expenditures conform with statutory authority and legislative intent. Existing internal OSF regulations reduce oversight did not include members of the public in the administrative rulemaking process. The Nevada Department of Corrections (NDOC) did not adopt OSF regulations through the public administrative rulemaking process defined in NRS 233B, the Administrative Procedures Act.

**Improve the Accuracy of Budgetary Estimates and Expenditure Projections** ..... page 6

Improving the accuracy of budgetary estimates and expenditure projections will help eliminate unnecessary or misstated budget revisions processed through work programs. Improving the accuracy of budgetary estimates and expenditure projections could benefit the state by \$13.6 million annually in reduced work programs and Contingency Account funding requests. Almost two-thirds of all NDOC work programs processed in fiscal years 2019 and 2020 included one or more issues. NDOC work programs were often processed for the same or similar purpose as previous or subsequent work programs (84%) or resulted from inaccurate projections or expenditure estimates (79%).

These and other unnecessary or misstated work programs increased the total number and represented a large proportion of all Executive Branch work programs processed during the period. The number of NDOC work programs was inverse to work program dollars and number of agencies.

**Ensure Contracting Practices Comply with State Requirements**..... page 13

Ensuring contracting practices comply with state requirements in NRS and NAC 333 will ensure contract review and approval by state public oversight bodies, increase transparency in NDOC operations, and protect the interests of the state. NDOC independently amended a \$13.5 million Master Services Agreement (MSA) and entered into three federal cooperative agreements. These actions by-passed state Board of Examiners (BOE) and legislative Interim Finance Committee (IFC) review and approval, limited transparency in NDOC operations, and increased liability to the state.

All amendments to BOE-approved contracts must be reviewed and approved by the BOE, regardless of the substance of the amendment. Additionally, some budget revisions require IFC review and approval; however, NDOC’s request for funding did not include MOU support and IFC

was unaware the request was based on a contract amendment. NDOC did not use the state's required contract forms for the amendment, that reduce liability to the state.

NDOC did not obtain BOE approval for three cooperative agreements it entered into with the federal government to reimburse NDOC for the cost of aiding in federal investigations. Cooperative agreements are defined in statute and are subject to BOE review and approval, a process that would have ensured transparency through disclosure to the public through available BOE meeting materials.

**Improve Oversight over Personnel and Payroll Practices** ..... page 17

Improving oversight over personnel and payroll practices will increase transparency in operations and benefit the state up to \$3.7 million annually. NDOC can improve oversight by: assigning pay location codes to conservation camps; obtaining IFC approval for moving employees or personnel costs between budget accounts; ensuring employees follow department overtime policies; and defining parameters for granting paid administrative leave.

A total of 9% of personnel costs or \$18.1 million annually were recorded to incorrect budget accounts and multiple NDOC facilities are assigned the same Pay Location code. As a result, direct personnel costs were misstated, recorded against budget accounts not associated with where employees actually worked, and some costs charged to the OSF could not be traced to activities or distinct locations. NDOC did not obtain IFC approval for moving employees or personnel costs between budget accounts; doing so would increase transparency and follow the law.

NDOC employee overtime increased by over \$3 million since the 2018 DIA audit report was issued on the same subject. Overall, overtime increased by 25% and sometimes higher in several budget accounts, including by over 400% of accrued compensatory time in one account. Many NDOC employees earned overtime in the same day or week as paid leave and NDOC did not ensure employees followed department overtime policies that prohibit this type of overtime. Requiring employees to adhere to overtime policies would reduce costs to the state.

NDOC personnel policies do not define parameters for granting paid administrative leave, including criteria necessary for placing employees on paid administrative leave, terms for payment of the leave, or whether other leave could be used in lieu of administrative leave. The majority of the 69,000 hours and \$1.9 million in paid administrative leave recorded in fiscal years 2018 through 2020 was associated with a small number of NDOC employees.

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## INTRODUCTION

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At the direction of the Executive Branch Audit Committee, the Division of Internal Audits conducted an audit of the Nevada Department of Corrections (NDOC). Our audit focused on NDOC's fiscal processes. The audit's scope and methodology, background, and acknowledgements are included in Appendix A.

Our audit objective was to develop recommendations to:

- ✓ Improve oversight of fiscal management and accounting practices.

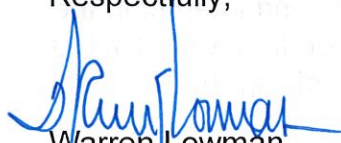
### Department of Corrections Response and Implementation Plan

We provided draft copies of this report to NDOC for review and comment. NDOC's comments have been considered in the preparation of this report and are included in Appendix B. In its response, NDOC accepted our recommendations. Appendix C includes a timetable to implement the recommendations.

NRS 353A.090 requires within six months after the final report is issued to the Executive Branch Audit Committee, the Administrator of the Division of Internal Audits shall evaluate the steps NDOC has taken to implement the recommendations and shall determine whether the steps are achieving the desired results. The administrator shall report the six-month follow-up results to the committee and NDOC.

The following report (DIA Report No. 21-03) contains our *findings, conclusions, and recommendations*.

Respectfully,



Warren Lowman  
Administrator

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## **Improve Oversight of Fiscal Management and Accounting Practices**

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The Nevada Department of Corrections can improve oversight of fiscal management and accounting practices by:

- Increasing oversight of the Offenders' Store Fund;
- Improving the accuracy of budgetary estimates and expenditure projections;
- Ensuring contracting practices comply with state requirements; and
- Improving oversight over personnel and payroll practices.

Improving oversight of fiscal management and accounting practices will increase transparency in the administrative rulemaking process and operations, and eliminate unnecessary or misstated budget revisions processed through the work program process. Improving oversight of NDOC fiscal management and accounting practices could benefit Nevada up to \$29.2 million annually.

### ***Increase Oversight of the Offenders' Store Fund***

The Nevada Department of Corrections (NDOC) should increase oversight of the Offenders' Store Fund (OSF) by adopting regulations through the public administrative rulemaking process, as required by statute. Adopting OSF regulations through the public administrative rulemaking process will comply with legislative guidance over regulations, include members of the public in the process, and ensure rules for administering an average \$11.9 million in annual OSF expenditures conform with statutory authority and legislative intent.

### **Existing Internal OSF Regulations Reduce Oversight**

Existing internal OSF regulations reduce oversight and excluded members of the public from the administrative rulemaking process. The money and interest in the OSF must be spent for the welfare and benefit of all offenders with limited exceptions, an important consideration in decision-making involving the interests of the Legislature and the public.<sup>1</sup>

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<sup>1</sup> NRS 209.221(3).

NDOC Did Not Adopt OSF Regulations through Public Administrative Rulemaking Process

NDOC did not adopt OSF regulations through the public administrative rulemaking process, as required by statute.<sup>2</sup> This resulted in \$11.9 million in OSF expenditures spent annually since fiscal year 2010 that were not administered through legislatively approved regulations.

NDOC reports the Board of Prison Commissioners (Board) approved NDOC internal Administrative Regulations (AR) 278 and 279 in June 2012 to address repayment to the General Fund to defray costs for offenders' store, coffee shop, and gymnasium operation and maintenance.<sup>3,4</sup> NDOC reports it began charging an electronic surcharge in July 2010 on televisions, hotspots, and fans sold by inmate commissaries to defray the costs of operating the equipment. However, NDOC does not have documented criteria for a reasonable surcharge amount.<sup>5</sup>

The OSF is administered through two separate budget accounts.<sup>6</sup> Administration and regulation for both budget accounts must comply with statutory requirements since both record department expenditures to the fund. Exhibit I shows OSF expenditures subject to the public administrative rulemaking requirement spent since fiscal year 2010:

**Exhibit I**

**OSF Expenditures Subject to Public Administrative Rulemaking Process Spent Since Fiscal Year 2010**

Fiscal Yr	BA 3708	BA 3763	Total by FY
FY10 <sup>a</sup>	\$ 4,040,090	\$ 105,415	\$ 4,145,505
FY11	9,733,637	116,542	9,850,179
FY12	9,831,607	115,220	9,946,827
FY13	10,609,068	115,942	10,725,010
FY14	10,700,150	115,315	10,815,465
FY15	10,776,755	115,422	10,892,177
FY16	12,045,671	117,532	12,163,203
FY17	12,774,870	123,554	12,898,424
FY18	13,989,293	119,675	14,108,968
FY19	13,332,592	117,838	13,450,430
FY20	13,556,658	142,920	13,699,578
<b>Totals</b>	<b>\$ 121,390,391</b>	<b>\$ 1,305,375</b>	<b>\$ 122,695,766</b>
<b>Average Per Year:</b>			<b>\$ 11,877,615</b>

Source: Derived from state accounting records.

Note: <sup>a</sup> FY10 rows includes only costs from March 12, 2010 through June 30, 2010.

<sup>2</sup> Requirement enacted by the Legislature during the 26th Special Session of 2010, effective March 12, 2010.

<sup>3</sup> AR 278: annual reimbursement to OSF is prorated based on the square footage of each facility inmate store or coffee shop. AR 279: annual reimbursement to OSF for each facility gymnasium is prorated based on square footage and available hours for use. OSF budget accounts defray these costs.

<sup>4</sup> NDOC Administrative Regulations are approved solely by the Board of Prison Commissioners.

<sup>5</sup> Statute does not provide guidance on how to calculate a reasonable surcharge. Guidance could be provided in regulations approved by the Legislature.

<sup>6</sup> 3708 Offenders' Store Fund and 3763 Inmate Welfare Account are accounted for in Fund 240.

### Statute Requires Criteria for Certain OSF Expenditures Be Defined Through Public Administrative Rulemaking Process

Statute requires criteria for certain OSF expenditures be defined through the public administrative rulemaking process. NRS 209.221(7) allows the NDOC director to establish criteria through regulation for a reasonable deduction from OSF money to repay or defray costs relating to the operation and maintenance of the offenders' store, coffee shop, and correctional officers' salaries for visitation posts in each facility. Additionally, these regulations must also address any charges put into place on the purchase of electronic devices to defray the costs relating to the operation of the devices. If established, these regulations must be approved by the Board and adopted pursuant to NRS 233B, the Administrative Procedures Act (APA), the minimum procedural requirements for public administrative rulemaking.<sup>7</sup>

### The Nevada Constitution Confers Authority Over Regulatory Measures to the Legislature

The Nevada Constitution confers authority over regulatory measures to the Legislature to review, modify, or veto administrative regulations adopted under APA.<sup>8</sup> The APA requires the Legislature to ensure proposed administrative regulations are consistent with statutory authority and carry out legislative intent.<sup>9</sup> Prior to adoption, Legislative Counsel is heavily involved in reviewing proposed regulations "...to determine if the language is clear, concise, and suitable for incorporation in the Nevada Administrative Code."<sup>10</sup> Following adoption, the Legislative Commission must review and approve a regulation becoming effective. Once approved, the regulation is codified and has the force and effect of law.

### The APA Provides Members of the Public the Opportunity To Participate in the Administrative Rulemaking Process

The APA provides members of the public the opportunity to participate in the administrative rulemaking process. Agencies adopting regulation through the APA are required to issue a notice of intent to act upon a regulation and provide certain statements prior to adoption, including but not limited to:<sup>11</sup>

- The need for and purpose of the proposed regulation;
- The estimated economic effect of the regulation on business and the public including adverse and beneficial effects, and immediate and long-term effects; and
- Whether the regulation establishes a new fee or increases an existing fee.

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<sup>7</sup> NRS 209.221(7), (8).

<sup>8</sup> Nevada State Constitution, Article 3, Section 1.

<sup>9</sup> NRS 233B.067(5).

<sup>10</sup> Nevada Office of the Attorney General, *Administrative Rulemaking, A Procedural Guide* (Nevada: 2015).

<sup>11</sup> NRS 233B.0603.



Agencies must also solicit comments from the public, hold public workshops and hearings, and follow Open Meeting Law requirements.<sup>12</sup> These procedures would allow members of the public to participate in decision-making by providing the opportunity to publicly submit concerns, support, or objections for consideration by both NDOC and the Legislature.

## ***Conclusion***

Adopting OSF regulations through the public administrative rulemaking process will comply with legislative guidance over regulations, include members of the public in the process, and help ensure rules for administering an average of \$11.9 million in annual OSF expenditures conform with statutory authority and legislative intent. NDOC did not adopt OSF regulations through the public administrative rulemaking process, as required by statute. Adopting regulations outside the public administrative rulemaking process reduces oversight and excludes members of the public from the administrative rulemaking process. The Nevada Constitution confers authority over regulatory measures to the Legislature to review, modify, or veto administrative regulations adopted under APA. The APA requires the Legislature to ensure proposed administrative regulations are consistent with statutory authority and carry out legislative intent and allows interested members of the public the opportunity to participate in the rulemaking process.

## ***Recommendation***

1. Increase oversight of the Offenders' Store Fund.

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<sup>12</sup> NRS 233B.061.

## ***Improve the Accuracy of Budgetary Estimates and Expenditure Projections***

The Nevada Department of Corrections (NDOC) should improve the accuracy of budgetary estimates and expenditure projections to eliminate unnecessary or misstated budget revisions processed through the work program process. Improving the accuracy of budgetary estimates and expenditure projections could benefit the state by \$13.6 million annually in reduced work programs and Contingency Account funding requests.

### **NDOC's Inaccurate Budgetary Estimates and Expenditure Projections Resulted in Unnecessary or Misstated Work Programs**

NDOC's inaccurate budgetary estimates and expenditure projections resulted in unnecessary or misstated work programs. An annual average of \$13.6 million in unnecessary or misstated work programs were processed in fiscal years 2019 and 2020, or 31% of the dollar value of all NDOC work programs. A work program is the document state agencies must use to request changes to a legislatively approved budget. It identifies the proposed sources of funds to be received by an agency, shows a plan of how the money is to be spent, and must be self-supporting.<sup>13</sup>

#### Almost Two-Thirds of All NDOC Works Programs Reviewed Had One or More Exceptions

Review of state budgetary and accounting records for the 266 NDOC work programs processed in the period reviewed resulted in 171 work programs noted with one or more exceptions – almost two-thirds of all work programs processed. Additionally, 83 of the 171 work programs identified as exceptions were unnecessary work programs. See Exhibit II for unnecessary or misstated work programs processed in fiscal years 2019 and 2020:

#### **Exhibit II**

#### **Unnecessary or Misstated Work Programs Fiscal Years 2019 and 2020**

<b>Description</b>	<b>FY19</b>	<b>FY20</b>	<b>Totals</b>	<b>Annual Avg.</b>
# Unnecessary/Misstated	90	81	171	86
# Total WPs	139	127	266	133
<i>% of # Unnecessary WPs</i>	64.8%	63.8%	64.3%	64.3%
\$ Misstatements	\$ 13,392,103	\$ 13,928,975	\$ 27,163,843	\$ 13,660,539
\$ Total WPs	\$ 43,387,708	\$ 45,770,641	\$ 89,158,349	\$ 44,579,175
<i>% of \$ Unnecessary WPs</i>	30.9%	30.4%	30.6%	30.6%

Source: Derived from state budget and accounting records.

<sup>13</sup> Nevada State Administrative Manual, Section 2524.

NDOC Work Programs Often Processed for Same or Similar Purpose or Resulted from Inaccuracies

In the period reviewed, NDOC work programs were often processed for the same or similar purpose as previous or subsequent work programs or resulted from inaccurate projections or expenditure estimates. Of the 171 work programs with exceptions: 84% were processed for the same or similar purpose; 79% appeared to have been due to inaccurate projections or expenditure estimates; and 26% resulted in unspent category authority greater than the work program(s) processed. See Exhibit III for work program exception attributes and incidence:

**Exhibit III  
Work Program Exception Attributes and Incidence**

Attribute	FY19	FY20	Annual Avg.
Processed for the same or similar purpose as a previous or subsequent work program.	92.2%	75.3%	84.2%
Processed subsequent to an allocation from the state Contingency Account approved by the Interim Finance Committee (IFC)	0.0%	14.8%	7.0%
Partially or fully reversed previous work program actions	6.7%	1.2%	4.1%
Processed to correct previous work program, budgetary, transaction, or accounting errors	4.4%	4.9%	4.7%
Work program authority that remained unspent at the end of the fiscal year	25.6%	25.9%	25.7%
Budgetary transfer to address departmental shortfalls	14.4%	17.3%	15.8%
Inaccurate projections or expenditure estimates	73.3%	85.2%	79.0%
Inaccurate supporting documentation or noncompliance with state rules and procedures	3.3%	0.0%	1.8%
Inadequately budgeted or unbudgeted expenditures, but foreseeable or known	12.2%	3.7%	8.2%
Inadequate planning for maintenance, facilities, and projects	13.3%	3.7%	8.8%
Inadequate grants management	10.0%	1.2%	5.9%
Personnel costs exceeded budgeted amounts (avoidable)	6.7%	0.0% <sup>a</sup>	3.5%

Source: Calculations derived from review of state budget and accounting records.

Note: <sup>a</sup> For purposes of this analysis, the reasons provided for FY20 work programs seeking to increase authority for personnel costs cited inadequate vacancy savings, inadequate coverage, COVID-19 coverage, among other reasons. Findings reported in Recommendation 4 of this report indicate some personnel cost overages could have been reduced or avoided.

Examples of work programs noted as having one or more exceptions included the following:

*Technology Investment Request funded by appropriations:* NDOC received \$6.5 million in legislative appropriations during the 2017 legislative session for technology improvements to NDOC's telephone system and various electronic records systems. However, NDOC did not fully spend the appropriations within the timeframe allotted by the Legislature. NDOC reported actual cost estimates provided by vendors exceeded legislatively approved amounts and discovered the original system to be usable for the original purpose of the technology request. NDOC did not research costs adequately before submitting the technology request for review and approval by the Legislature. Approximately \$1.7 million in appropriations was unnecessary due to inadequate research and planning.

*Sexual Assault Kit federal award funds:* NDOC processed several work programs to balance forward authority that was largely unused. NDOC spent only \$63,000 of the \$860,000 in Sexual Assault Kit federal award funds sub-awarded to NDOC by the Office of the Attorney General (OAG) before the subaward expired on September 30, 2020. NDOC advised that the unspent funds were due to its initial overestimation of the number of offenders that would need to have DNA tested, among other reasons. The OAG was able to obtain an extension from the federal oversight agency until September 30, 2021 and subgranted the funds to the University of Nevada, Las Vegas. However, NDOC retained budget authority for the funds until almost the end of the initial grant period before de-obligating the funds.

*Misstated Vendor Cost Proposal:* An obvious error in an original cost proposal for satellite television services was not detected by NDOC fiscal staff. As a result, NDOC had only enough operating costs to cover eight months of satellite television service instead of four years as the underlying Request for Proposal had intended. Vendor costs in the proposal were for one month only not annual costs, which was apparent upon review of the proposal. Consequently, NDOC submitted a work program to augment the deficient budget category by an additional \$101,000 to cover services for the remainder of fiscal year 2019.

These and other unnecessary or misstated work programs significantly increased the number of Executive Branch work programs processed overall during the period.

### **NDOC Work Programs Represented Large Proportion of All Executive Branch Work Programs Processed**

NDOC work programs represented a large proportion of all Executive Branch work programs processed in fiscal years 2019 and 2020. In fiscal year 2019, NDOC submitted 70 (13%) of the 542 Executive Branch work programs processed for

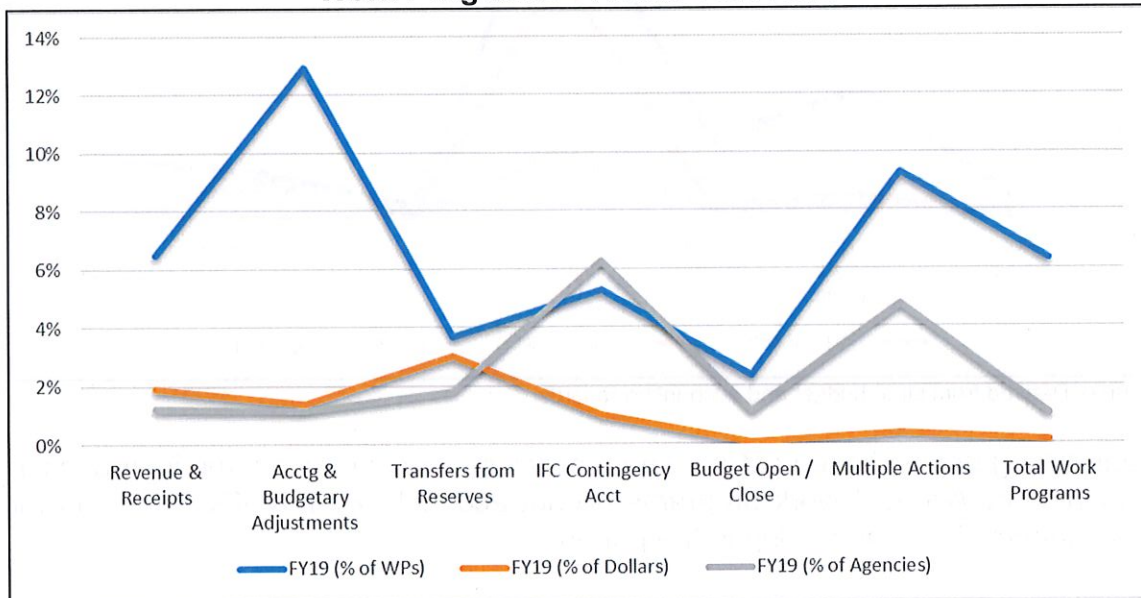
accounting and budgetary adjustments, and 70 (16%) of the 440 fiscal year 2020 work programs for the same purpose.

Number of NDOC Work Programs Inverse to Work Program Dollars and Number of Agencies

Our review showed inverse relationships on multiple types of work programs. The number of NDOC work programs processed in fiscal year 2019 for accounting and budgetary adjustments was inverse to work program dollars and number of agencies that submitted requests. NDOC was one of 88 Executive Branch agencies (1%) that submitted work programs of this type.<sup>14</sup> NDOC’s work programs of this type were 13% of the total. The same inverse relationship exists for work programs processed during the year for multiple actions and total work programs.

This charted trend shows NDOC processed a much higher number of work programs for smaller dollar values across several work program types than most Executive Branch agencies. See Exhibit IV for NDOC work programs as a percentage of all Executive Branch agency work programs processed in fiscal year 2019:

**Exhibit IV  
NDOC Work Programs as a Percentage of All Executive Branch Agency Work Programs – Fiscal Year 2019**



Source: Derived from state budget and accounting records.

<sup>14</sup> For analysis, work programs were categorized into the following categories in relation to work program purpose: revenues and receipts; accounting and/or budgetary adjustments, either within a solitary budget account or between budget accounts; transfers from reserves; IFC Contingency Account requests; budget opening or close actions; and multiple actions contained in one request, such as budgetary transfers and year-end close.

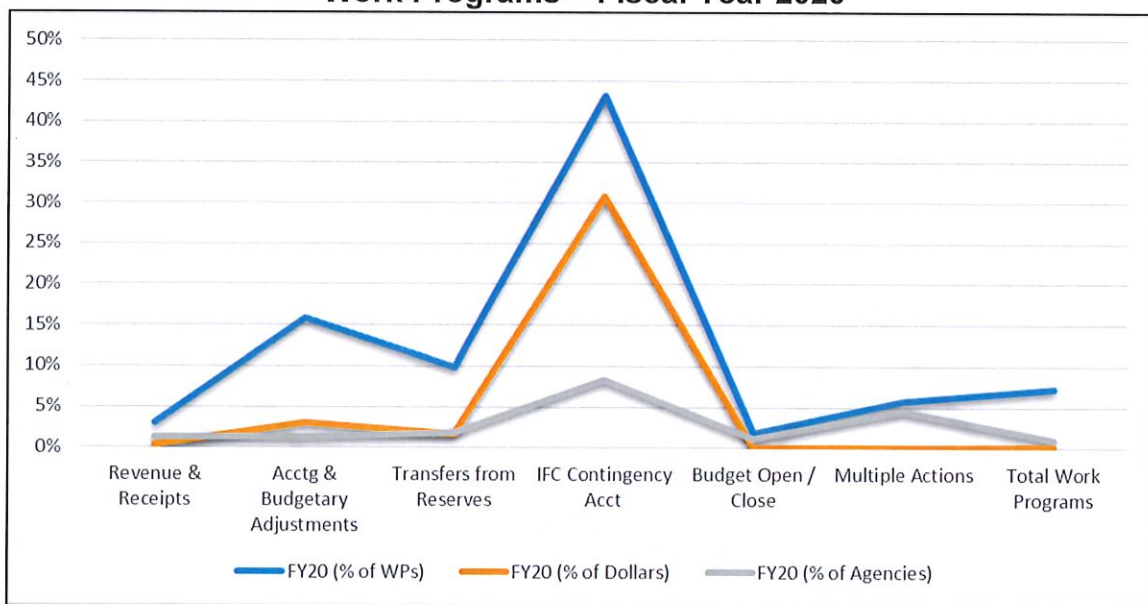
This inverse relationship continued in fiscal year 2020; however, there was an uptick in IFC Contingency Account work program requests from the prior year.

### Data for Fiscal Year 2020 Show Increase in IFC Contingency Work Programs

Data for fiscal year 2020 NDOC work programs show an increase from the prior year in IFC Contingency Account work programs, due in part to Nevada Supreme Court and Judicial District Court rulings requiring the Board of Prison Commissioners to remedy nutritional deficiencies in facility menus.<sup>15</sup> Additionally, there were significant increases in offender medical costs related to hepatitis C, HIV, and dialysis treatments as a result of revised NDOC medical directives approved by the Board and the IFC. See Exhibit IV for NDOC work programs as a percentage of all Executive Branch agency work programs processed in fiscal year 2020:

#### Exhibit V

#### NDOC Work Programs as a Percentage of All Executive Branch Agency Work Programs – Fiscal Year 2020



Source: Derived from state budget and accounting records.

Even taking unanticipated extraordinary costs into consideration, the increases in Contingency Account work programs do not account for all NDOC requests for Contingency Account funding in the period.

<sup>15</sup> As defined by Nevada Supreme Court Order No. 73498.



### Some NDOC Requests for Contingency Account Funding Were Unnecessary or Misstated

Some NDOC requests for Contingency Account funding in fiscal years 2019 and 2020 were unnecessary or misstated. Review of budget and accounting records for the period revealed NDOC received a total of \$8.5 million in Contingency Account funding. Of this, unnecessary or misstated Contingency Account work programs totaled an estimated \$2.3 million, including \$973,000 in personnel costs that could have been reduced or eliminated by reducing employee overtime and paid administrative leave, and \$1.3 million in categorical balances remaining unspent at year-end across both fiscal years.<sup>16</sup>

### **NDOC Could Improve the Accuracy of Budgetary Estimates and Expenditure Projections**

NDOC could improve the accuracy of budgetary estimates and expenditure projections, which would help eliminate unnecessary or misstated work programs. NDOC's unnecessary or misstated work programs tied-up limited state resources that could have been preserved in the originating fund accounts for other uses or allocated to other state agencies. The importance of proposing measures for efficient and innovative operations as stewards of limited resources was recognized in the state Budget Instructions for fiscal years 2020-2021.

Review of NDOC budget documentation indicates NDOC calculates budgetary estimates and expenditure projections based on historical trends from previous periods and some future-looking projections. More accurate budgetary estimates and expenditure projections could be achieved by incorporating more precise predictive measures into calculations. This may involve applying regression analysis, polling personnel involved in affected processes, and reviewing historical trends for anomalies that could impact the accuracy of projections.

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<sup>16</sup> Excessive employee overtime and paid administrative leave is discussed in detail in Recommendation 4.

## ***Conclusion***

Improving the accuracy of budgetary estimates and expenditure projections could eliminate unnecessary or misstated work programs and benefit the state by \$13.6 million annually in reduced work programs and Contingency Account funding requests. NDOC's inaccurate budgetary estimates and expenditure projections resulted in unnecessary or misstated work programs representing 31% of the dollar value and 64% of the number of all NDOC work programs. Additionally, these work programs represented 13% of all fiscal year 2019 and 16% of fiscal year 2020 Executive Branch work programs submitted for the same purpose. Finally, some NDOC requests for IFC Contingency Account funding in fiscal years 2019 and 2020 were unnecessary or misstated, resulting in \$2.1 million in work program misstatements and unnecessary work programs. Accurate budgetary estimates and expenditure projections could be achieved by incorporating more precise predictive measures into calculations.

## ***Recommendation***

2. Improve the accuracy of budgetary estimates and expenditure projections.



## ***Ensure Contracting Practices Comply with State Requirements***

The Nevada Department of Corrections (NDOC) should ensure contracting practices comply with state requirements in NRS and NAC 333. Complying with state contracting requirements will ensure contract review and approval by state public oversight bodies, increase transparency in NDOC operations, and protect the interests of the state.

State agency contracting and budgetary activities are subject to mandatory review and approval by state public oversight bodies, including the State Board of Examiners (BOE) and the Legislature's Interim Finance Committee (IFC). NDOC's improper handling of a Master Services Agreement (MSA) amendment and three federal cooperative agreements by-passed BOE and IFC review and approval, limited transparency in NDOC operations, and increased liability to the state.<sup>17</sup>

### **NDOC Processed an Improper Contract Amendment**

NDOC processed an improper contract amendment to a \$13.5 million MSA for outsourced, secure offender telephone services at all NDOC facilities. The original MSA was processed through the State Purchasing Division and became effective in January 2019 after BOE approval. NDOC subsequently entered into a Memorandum of Understanding (MOU) with the MSA telephone services provider in April 2020 to temporarily amend the MSA to increase incoming calls to offenders, following the suspension of in-person visitation at NDOC facilities to reduce the risk of COVID-19 transmission. An MOU is not an approved mechanism for state agencies to procure independent contractor services, whether for initial procurement or for contract amendment.

### **NDOC Independently Amended a Contract and Revised NDOC Budget without Approval**

NDOC independently amended a State Purchasing Division contract and revised the affected NDOC budget without BOE and IFC approval. Accordingly, NDOC reduced its budget by \$200,000 in contracted revenues and increased corresponding expenditures by the same amount. As part of the terms of the MOU, the telephone services provider agreed to provide up to two free calls per week to offenders and NDOC agreed to absorb \$0.09 per minute of the cost for the second call in return for a reduction in service provider commissions paid to NDOC.

NDOC included the net dollar effect of the MOU in a work program submitted to the Governor's Finance Office (GFO) and IFC to request \$200,000 in funding to cover the expenditure and revenue reduction, without disclosing the MOU itself to the GFO or providing documentation in work program support. These actions reduced transparency in NDOC operations because the GFO and IFC were not

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<sup>17</sup> MSAs are a type of statewide contract procured through the State Purchasing Division.

aware of the MOU and its impacts on NDOC's budget; the BOE was excluded from the process.

#### All Amendments to BOE-Approved Contracts Must Be Reviewed and Approved by the BOE

All amendments to BOE-approved contracts must be reviewed and approved by the BOE, regardless of the substance of the amendment. NDOC's \$200,000 MOU violated state contracting requirements. The MSA amendment was subject to BOE review to determine if the amendment was in the best interest of the state. Amendments include but are not limited to: additional money or time required to complete the scope of work of the contract; any change in the basis of payment for the contract; or any substantive change to the scope of work which would affect the anticipated results of the contract.<sup>18</sup> Contracts, amendments, and amended contracts individually or cumulatively valued at \$2,000 up to \$50,000 may be reviewed and approved by the Clerk of the BOE or designee, or by the BOE directly for those valued at \$50,000 and higher.<sup>19</sup>

#### Some Budget Revisions Require IFC Approval

Some budget revisions require IFC review and approval. IFC was unaware the request for \$200,000 funding included an MOU and did not include the MOU in work program support. Budget revisions are processed through the state's work program process in accordance with the criteria defined in NRS 353.220. A budget revision requires IFC review and approval if:<sup>20</sup>

- The categorical change is more than \$75,000 cumulative;
- The categorical change is more than \$30,000 cumulative and increases/decreases the category level by 10% or more cumulative;
- The work program includes a non-governmental grant or gift in excess of \$20,000 each in value; or
- The work program involves the allocation of block grant funds when the agency is using IFC for the public hearing requirement for block grant funds.

Agencies are responsible for tracking their revenues and expenditures throughout the fiscal year and must ensure they have sufficient budget authority and/or cash prior to obligating or expending any funds.<sup>21</sup>

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<sup>18</sup> Nevada State Administrative Manual, Section 0336.

<sup>19</sup> NRS 333.700.

<sup>20</sup> Summary description for IFC approval criteria obtained from the Nevada Executive Budget System (NEBS) Work Program Module Manual (rev. March 2020).

<sup>21</sup> Nevada State Administrative Manual, Section 2532.

## Using Required Contract Forms Reduces Liability to the State

Using required contract forms reduces liability to the state. NDOC did not use the state's required contract forms for the MSA amendment. Specific state-required contract terms must be included in contracts between a state agency and an independent contractor in conformance with requirements issued by the Office of the Attorney General (OAG). Additionally, contracts and contract amendments meeting required monetary thresholds must be reviewed and approved by the OAG as to form. These contract terms help ensure liability and costs to the state are reduced, including but not limited to: limits on the state's liability; indemnification from the contractor; professional liability insurance; warranties; provisions for reimbursement of costs; and choice of Nevada law and jurisdiction. These protections are not available to state agencies as legal remedies when approved contracts and contract amendments are not in place.

## **NDOC Did Not Obtain BOE Approval for Federal Cooperative Agreements**

NDOC did not obtain BOE approval for federal cooperative agreements it entered into with the U.S. Department of Justice (USDOJ) for the purpose of reimbursing NDOC for the cost of aiding in federal investigations. Review of NDOC records revealed NDOC entered into three separate USDOJ cooperative agreements in fiscal year 2019, each valued at a maximum of \$2,500 each. Like contracts, cooperative agreements must be submitted for review by the OAG prior to becoming effective. The OAG reviews the cooperative agreement for determination of proper form and compatibility with state laws.

## Cooperative Agreements Are Defined In Statute and Subject to BOE Review and Approval

Cooperative agreements are defined in statute and are subject to BOE review and approval. This review would have ensured transparency in the process by disclosure to the public through available BOE meeting materials. NRS 277.110 provides that any power, privilege, or authority exercised by a state agency, including but not limited to law enforcement, may be exercised jointly with any other public agency of the state, another state, or the federal government as permitted by law. These public agencies may enter into agreements with one another for joint or cooperative action.

Nevada State Administrative Manual, Section 0310 provides that cooperative agreements allowable under NRS 277 become effective only upon ratification by appropriate fiscal action of the governing body of each party to the contract as a condition precedent to its entry into force. For the State of Nevada, the governing body is the BOE and review and approval thresholds mirror those in place for standard contracts. Consequently, the cooperative agreements between NDOC and the USDOJ are each individually subject to BOE review and approval.

## ***Conclusion***

Ensuring contracting practices comply with state requirements in NRS and NAC 333 will ensure contract review and approval by state public oversight bodies, increase transparency in NDOC operations, and protect the interests of the state. NDOC processed an improper contract amendment to a \$13.5 million MSA for outsourced secure offender telephone services at all NDOC facilities by use of an informal MOU. NDOC additionally did not obtain BOE approval for federal cooperative agreements it entered into with the USDOJ for the purpose of reimbursing NDOC for the cost of aiding in federal investigations. Statute and Nevada State Administrative Manual require review of these agency activities by the state's public oversight bodies. NDOC's improper handling of an MSA amendment and three federal cooperative agreements by-passed BOE and IFC review and approval, limited transparency in NDOC operations, and increased liability to the state.

## ***Recommendation***

3. Ensure contracting practices comply with state requirements.

## ***Improve Oversight over Personnel and Payroll Practices***

The Nevada Department of Corrections (NDOC) should improve oversight over personnel and payroll practices by:

- Assigning Pay Location codes to conservation camps;
- Obtaining IFC approval for moving employees or personnel costs between budget accounts;
- Ensuring employees follow department overtime policies; and
- Defining parameters for granting paid administrative leave.

Improving oversight over personnel and payroll practices would increase transparency in operations and benefit the state up to \$3.7 million annually.

### **Diminished Oversight over Personnel and Payroll Practices Increases Costs to the State**

Diminished oversight over personnel and payroll practices increases costs to the state by an average of \$3.7 million annually. As part of audit procedures over fiscal processes, DIA conducted a review of NDOC personnel and payroll practices to identify areas needing improvement. Review of payroll registers and accounting records for fiscal years 2019 and 2020 revealed the following issues:

- Personnel costs recorded and reported in NDOC budget accounts were misstated;
- Employee overtime costs increased significantly year-over-year; and
- NDOC's personnel policies do not define parameters for granting paid administrative leave and resulted in significant paid administrative leave costs for the period.

### **NDOC Paid an Annual Average of \$18.1 Million in Payroll Costs from Budget Accounts for Employees Working at Other Locations**

NDOC paid an annual average of \$18.1 million in payroll costs from budget accounts for employees working at other locations. Recording payroll costs in budget accounts for employees physically working at locations accounted for in other budget accounts reduces transparency in NDOC operations, contributes to financial accounting misstatements, and does not comply with state budget requirements.

9% of Personnel Costs Were Recorded to Incorrect NDOC Budget Accounts

A total of 9% of personnel costs were recorded to incorrect NDOC budget accounts in fiscal years 2019 and 2020. DIA tested payroll registers and accounting records for the period by comparing budget account location to Pay Location codes recorded in payroll registers.<sup>22</sup> By using this methodology, DIA was able to determine whether employees were being paid from the correct budget accounts and estimate the level misstated for each account. See Exhibit VI for estimated overstated and understated personnel costs by NDOC budget account for fiscal years 2019 and 2020.

**Exhibit VI**

**Estimated Overstated / (Understated) Personnel Costs by NDOC Budget Account – Fiscal Years 2019 and 2020**

<b>BA</b>	<b>Organization</b>	<b>Personnel Costs Recorded in BAs</b>	<b>Overstated / (Understated) Costs</b>
3710	Director's Office	31,944,376	6,188,250
3715	So. NV Correctional Ctr	206,524	(2,606,103)
3716	Warm Springs Correctional Ctr	20,881,844	1,348,028
3717	No. NV Correctional Ctr	46,632,575	(3,796,703)
3718	Nevada State Prison	-	(1,345,096)
3722	Stewart Conservation Camp	3,080,873	3,080,873
3723	Pioche Conservation Camp	2,947,133	2,947,133
3724	No. NV Transitional Housing	2,129,630	261,062
3725	Three Lakes Valley Conservation Camp	4,030,523	4,030,523
3738	Southern Desert Correctional Ctr	44,899,629	(4,174,958)
3739	Wells Conservation Camp	2,008,613	35,551
3741	Humboldt Conservation Camp	2,295,806	45,961
3747	Ely Conservation Camp	2,272,026	(285,786)
3748	Jean Conservation Camp	2,598,411	2,598,411
3751	Ely State Prison	52,312,473	3,382,962
3752	Carlin Conservation Camp	2,033,948	76,074
3754	Tonopah Conservation Camp	2,046,333	1,104,348
3759	Lovelock Correctional Ctr	42,817,023	216,384
3760	Casa Grande Transitional Housing	5,158,697	(5,486,628)
3761	F. McClure Women's Correctional Ctr	29,327,271	(853,461)
3762	High Desert State Prison	95,516,700	(6,766,825)
<b>Totals:</b>		<b>\$ 395,140,408</b>	<b>\$ 36,134,480<sup>a</sup></b>

Source: Derived from state payroll registers and accounting records.

Note: <sup>a</sup> Overstated costs are presented in conjunction with understatements, which net to zero. The total for provided in Exhibit VI for Overstated / (Understated) Costs represents the absolute value of total misstatements identified during testing.

<sup>22</sup> Per the Division of Human Resource Management, Central Payroll Certification Training manual, "The Pay Location Code...is the location where the employee's office is located, where they work."

Some employees are paid from incorrect budget accounts. In the period reviewed, \$17.6 million of \$191.1 million (9%) fiscal year 2019 and \$18.5 million of \$204 million (9%) in fiscal year 2020 direct personnel costs were misstated and recorded against budget accounts not associated with where employees actually worked.

#### Multiple NDOC Facilities Assigned Same Pay Location Code

Multiple NDOC facilities are assigned the same Pay Location code, which may partially contribute to misstated personnel costs. Four conservation camps do not have assigned individual Pay Location codes; however, the other six conservation camps do. Personnel costs associated with other facilities were recorded to these camps' budget accounts.<sup>23</sup> For example, the Stewart Conservation Camp had personnel costs recorded to its budget account associated with Pay Location codes for the Director's Office and the Northern Nevada Correctional Center. Consequently, there is no way to determine whether the payroll costs recorded to the four camps' budget accounts are accurate or if they should have been recorded to other budget accounts.

#### Director's Office Personnel Costs Charged to OSF Cannot Be Traced to Activities

Director's Office personnel costs charged to the Offenders' Store Fund (OSF) cannot be traced to activities. Our review showed the Director's Office charged almost 9% of its personnel costs to the Offenders' Store Fund in both fiscal years 2019 and 2020. However, it is unclear whether these charges related to overall administration of the fund or for administration of costs related to the operation and maintenance of specific activities: the offenders' store; coffee shop; gymnasium; and surcharges on electronic sales at various NDOC facilities. Costs charged to the OSF for these activities must be formally regulated.

Our review shows \$1.4 million (47%) of all fiscal year 2019 and \$1.5 million (42%) of all fiscal year 2020 personnel costs recorded against the OSF were recorded to the Location Code associated with the Director's Office. Some of these personnel costs may be attributable to the four conservation camps that do not have individual Pay Location codes; however, there is no way to determine the accuracy of personnel costs for the Director's Office Pay Location code by review of state official payroll accounting records.

The OSF was established by the Legislature with the directive that the money and interest in the OSF must be spent for the welfare and benefit of all offenders. NRS 209.221(7) allows the NDOC director to establish criteria through regulation for a reasonable deduction from OSF money to repay or defray costs relating to the operation and maintenance of the offenders' store, coffee shop, and correctional

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<sup>23</sup> Stewart Conservation Camp, Pioche Conservation Camp, Three Lakes Valley Conservation Camp, and Jean Conservation Camp.

officers' salaries for visitation posts in each facility. These regulations must be adopted in accordance with NRS 233B but were not.<sup>24</sup>

#### NDOC Did Not Obtain IFC Approval For Moving Employees or Personnel Costs

NDOC did not obtain IFC approval for moving employees or personnel costs between budget accounts. Moving employees and personnel costs between budget accounts requires Interim Finance Committee (IFC) approval because the action is considered a revision to the agency's budget. Budget revisions are processed through the state's work program process in accordance with the criteria defined in NRS 353.220 and must be reviewed and approved by the IFC depending on the dollar threshold of the work program.<sup>25</sup> Agencies are responsible for tracking their revenues and expenditures throughout the fiscal year and must ensure they have sufficient budget authority and/or cash prior to obligating or expending any funds.<sup>26</sup> Budget authority is granted by the Legislature or through its interim committees while not in session.

#### Assigning Pay Location Codes and Obtaining IFC Approval Would Increase Transparency and Follow the Law

Assigning Pay Location codes to conservation camps and obtaining IFC approval for moving employees or personnel costs between budget accounts would increase transparency and follow the law. Additionally, this would ensure that NDOC has been granted authority by the Legislature to move employees and personnel costs between budget accounts. Moreover, formal review and approval by the IFC would help ensure NDOC has sufficient budget authority prior to obligating or expending funds.

#### **NDOC Employee Overtime Has Increased Since 2018 DIA Audit**

NDOC employee overtime has increased since the 2018 DIA audit report was issued on the same subject.<sup>27</sup> Analysis of state payroll accounting records show employee overtime decreased 82,000 hours (-20%) and \$2.7 million (-19%) across the department from fiscal year 2018 to 2019 following the 2018 DIA audit. However, there was a significant increase of 58,000 hours (18%) and \$3 million (25%) across the department from fiscal year 2019 to fiscal year 2020, following the close of DIA audit follow-up inquiries.

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<sup>24</sup> See full details of the finding in Recommendation 1.

<sup>25</sup> See Recommendation 2 for IFC approval thresholds and criteria.

<sup>26</sup> Nevada State Administrative Manual, Section 2532.

<sup>27</sup> DIA Report No. 18-01, Correctional Officer Overtime Management, issued January 16, 2018.



### Overtime Includes Both Paid Overtime and Accrued Compensatory Time

For purposes of pay calculations, overtime includes both paid overtime and accrued compensatory time (comp time). NRS 284.250 provides that the method of compensating an employee for overtime is cash payment or by comp time in lieu of cash payment. Comp time allows an employee to accrue paid leave at the same rate as paid overtime, which is a rate of time and one-half of the employee's normal rate of pay. The accrued comp time is added to the employee's unused leave balances and taken as paid leave at a later date.

### Four Facilities and Prison Medical Care Increased Overtime Costs by Over \$250,000

Four facilities and the Prison Medical Care program each increased overtime costs by over \$250,000 from fiscal year 2019 to 2020. The four facilities included: Southern Desert Correctional Center; Ely State Prison; Lovelock Correctional Center; and High Desert State Prison. Likewise, the increases for the five associated NDOC budget accounts accounted for the majority of the overtime increases overall. See Exhibit VII for NDOC overtime hours and costs by budget account, year-over-year from 2019 to 2020.

**Exhibit VII**

**NDOC Overtime by Budget Account  
Year-Over-Year Changes, Fiscal Years 2019 to 2020<sup>a</sup>**

<b>BA<sup>b</sup></b>	<b>Organization</b>	<b>Regular Hrs</b>	<b>Accr Comp Hrs</b>	<b>Paid OT Hrs</b>	<b>Costs</b>
3706	Prison Medical Care	4,996	172	5,561	\$ 327,729
3708	Offenders' Store Fund	18,834	1	(518)	(12,912)
3710	Director's Office	1,988	(568)	501	22,783
3711	Correctional Programs	3,995	(118)	(303)	(14,821)
3715	So. NV Correctional Center	16	-	(26)	(1,308)
3716	Warm Springs Correctional Center	1,491	512	17	29,936
3717	No. NV Correctional Center	17,807	(16)	(12,013)	(455,004)
3719	Prison Industry	(1,018)	(23)	652	28,819
3722	Stewart Conservation Camp	2,350	(49)	(2,416)	(113,877)
3723	Pioche Conservation Camp	(3,096)	55	882	39,874
3724	No. NV Transitional Housing	306	32	61	4,827
3725	Three Lakes Valley Cons. Camp	5,100	54	1,204	47,277
3727	Prison Ranch	1,120	(12)	(16)	641
3738	So. Desert Correctional Center	4,644	978	19,989	895,328
3739	Wells Conservation Camp	(2,744)	49	(101)	(1,758)
3741	Humboldt Conservation Camp	1,660	(48)	(1,482)	(69,724)
3747	Ely Conservation Camp	(280)	115	(512)	(3,454)
3748	Jean Conservation Camp	1,112	43	331	16,742
3751	Ely State Prison	15,046	3,323	3,286	507,432
3752	Carlin Conservation Camp	(2,067)	(24)	400	27,955
3754	Tonopah Conservation Camp	1,716	(17)	(291)	(12,009)
3759	Lovelock Conservation Camp	(12,551)	159	5,111	280,128
3760	Casa Grande Transitional Housing	390	(32)	(283)	(8,852)
3761	F. McClure Women's Corr. Ctr.	3,016	798	1,840	130,496
3762	High Desert State Prison	35,327	2,648	28,144	1,347,349
3763	Inmate Welfare Account	3,565	(117)	71	1,066
<b>Totals:</b>		<b>102,723</b>	<b>7,915</b>	<b>50,089</b>	<b>\$ 3,014,663</b>

Source: Derived from state payroll accounting records.

Notes: <sup>a</sup> Figures rounded to the nearest whole number.

<sup>b</sup> Budget accounts with \$250,000 or more increase from the prior year are boxed in red.

**NDOC's Year-Over-Year Overtime Increased 25% Overall and Was Higher on a Budget Account Level**

NDOC's year-over-year overtime increased 25% overall and was higher when analyzed on a budget account level. Analyses included changes in regular hours, accrued comp hours/dollars, and paid overtime/dollars. Results indicate the following:

- 19 of the 26 NDOC budget accounts had an increase in overtime in one of the categories included in the analysis, and 14 of these had an increase in overtime of 25% or more in one or more categories;
- 5 budget accounts had increases in overtime of over 100%; of these, one exceeded 200%, one exceeded 300%, and one exceeded 400% in at least one category; and



- The greatest increase in hours and overtime costs occurred at the High Desert State Prison (HDSP), with an increase of 28,000 hours and \$1.3 million from the prior fiscal year.

See Exhibit VIII for NDOC percent increase hours and costs by budget account, year-over-year from 2019 to 2020.

**Exhibit VIII**

**NDOC Percent Increase in Hours and Costs by Budget Account  
Year-Over-Year Changes, Fiscal Years 2019 to 2020<sup>a</sup>**

BA	Organization	Reg Hrs	Accr. Comp		Paid OT		Total OT	
			Hrs	\$	Hrs	\$	Hrs	\$
3706	Prison Medical Care	1.0%	8.1%	9.4%	<b>51.1%</b>	<b>61.8%</b>	<b>44.1%</b>	<b>54.9%</b>
3708	Offenders' Store Fund	18.6%	-	-	-58.2%	-41.5%	-58.4%	-41.4%
3710	Director's Office	0.6%	-30.1%	-37.3%	8.9%	16.6%	-0.9%	6.5%
3711	Correctional Programs	2.3%	-32.8%	-25.1%	-72.6%	-74.0%	-54.0%	-59.3%
3715	So. NV Correctional Ctr	0.8%	-	-	-42.4%	-40.7%	-42.4%	-40.7%
3716	Warm Springs Corr Ctr	0.6%	<b>66.3%</b>	<b>76.0%</b>	0.23%	6.4%	6.5%	12.0%
3717	No. NV Correctional Ctr	3.3%	0.5%	4.5%	-30.3%	-31.1%	-27.9%	-29.1%
3719	Prison Industry	-3.1%	-100.0%	-100.0%	<b>86.6%</b>	<b>85.8%</b>	<b>81.1%</b>	<b>82.6%</b>
3722	Stewart Conservation Camp	8.1%	-20.2%	-17.9%	-45.2%	-45.9%	-44.1%	-45.1%
3723	Pioche Conservation Camp	-9.0%	22.0%	<b>29.8%</b>	<b>54.6%</b>	<b>66.9%</b>	<b>50.2%</b>	<b>63.3%</b>
3724	No. NV Transitional Housing	1.4%	<b>400.0%</b>	<b>216.1%</b>	9.9%	17.2%	14.9%	19.8%
3725	Three Lakes Vly Cons Cmp	11.3%	<b>63.5%</b>	<b>64.8%</b>	<b>46.0%</b>	<b>52.0%</b>	<b>46.6%</b>	<b>52.3%</b>
3727	PI Ranch	12.0%	-66.7%	-63.7%	-2.5%	4.3%	-4.2%	3.3%
3738	So. Desert Correctional Ctr	0.9%	<b>70.4%</b>	<b>78.1%</b>	<b>85.1%</b>	<b>110.9%</b>	<b>84.3%</b>	<b>109.4%</b>
3739	Wells Conservation Camp	12.2%	15.0%	<b>36.3%</b>	-2.7%	-3.4%	-1.3%	-1.1%
3741	Humboldt Conservation Cmp	7.6%	-30.0%	-28.6%	-34.0%	-36.1%	-33.9%	-36.0%
3747	Ely Conservation Camp	-1.2%	<b>319.4%</b>	<b>304.9%</b>	-17.7%	-6.13%	-13.5%	-3.0%
3748	Jean Conservation Camp	3.9%	<b>54.2%</b>	<b>44.4%</b>	<b>26.0%</b>	<b>34.8%</b>	<b>27.7%</b>	<b>35.3%</b>
3751	Ely State Prison	2.7%	<b>233.4%</b>	<b>245.2%</b>	4.9%	15.9%	9.6%	19.1%
3752	Carlin Conservation Camp	-10.4%	-50.0%	-49.1%	8.7%	14.4%	8.1%	14.0%
3754	Tonopah Conservation Camp	7.6%	-100.0%	-100.0%	-9.22%	-10.3%	-9.7%	-10.5%
3759	Lovelock Conservation Camp	-2.6%	9.7%	10.4%	17.2%	24.6%	16.8%	24.0%
3760	Casa Grande Transitional Hsg	0.7%	-24.6%	-26.4%	-14.7%	-12.3%	-15.3%	-13.0%
3761	F. McClure Women's Corr Ctr	0.9%	<b>54.4%</b>	<b>60.3%</b>	11.5%	19.4%	15.1%	22.0%
3762	High Desert State Prison	3.2%	<b>88.3%</b>	<b>95.5%</b>	<b>38.7%</b>	<b>49.8%</b>	<b>40.7%</b>	<b>51.2%</b>
3763	Inmate Welfare Account	8.3%	-54.3%	-40.5%	<b>76.6%</b>	<b>116.1%</b>	-15.1%	15.8%
<b>Total Increases:</b>		<b>1.9%</b>	<b>41.4%</b>	<b>42.3%</b>	<b>16.3%</b>	<b>24.2%</b>	<b>17.7%</b>	<b>25.0%</b>

Source: Derived from state payroll accounting records.

Note: <sup>a</sup> Budget accounts with an increase in overtime of 25% or more from the prior year in one or more categories appear in bold, red text.

NDOC Employees Earned Overtime in the Same Day or Week as Paid Leave

NDOC employees earned overtime in the same day or week as paid leave. For the period reviewed, three pay periods were selected for testing, one each from fiscal years 2018 through 2020.<sup>28</sup> DIA reviewed time data for every NDOC employee paid in each pay period tested, consisting of a total of 6,685 timesheets. Of these, 3,091 had overtime of some type and 942 were selected for detailed review.<sup>29</sup>

Results revealed 9% of timesheets reviewed had overtime earned in the same day or week as paid leave, or 14% of overtime hours reported. See Exhibit IX for NDOC overtime sample testing results for fiscal years 2018 through 2020:

**Exhibit IX**

**NDOC Overtime Sample Testing Results  
Fiscal Years 2018 through 2020**

	FY18/PP16	FY19/PP24	FY20/PP5	Totals
# of Timesheets in Sample	2,373	2,136	2,176	<b>6,685</b>
Timesheets with OT	1,329	837	925	<b>3,091</b>
Samples Reviewed in Detail	435	240	267	<b>942</b>
# of Exceptions	177	203	238	<b>618</b>
Exceptions as % of Sample	7.5%	9.5%	10.9%	<b>9.2%</b>
Total hours OT, all types	<b>17,009</b>	<b>10,837</b>	<b>13,277</b>	<b>41,123</b>
Hours Included in Exceptions	1,432	1814	2609	5,855
% of Total hours OT	8.4%	16.7%	19.7%	14.2%

Source: Derived from analysis of state payroll accounting records.

NDOC Did Not Ensure Employees Followed Department Overtime Policies

NDOC did not ensure employees followed department overtime policies. Review of overtime codes recorded in the three timesheets tested revealed an average 48% of overtime recorded related to coverage for other employees' absences for annual or sick leave. This overtime was in addition to overtime earned by employees who also received paid leave on the same day or within the same week. NDOC internal overtime policies include but are not limited to the following requirements:<sup>30</sup>

- Relief Factor Management (RFM) positions are used for unscheduled annual leave relief to cover greater than normal sick leave, if available, and is used for pull and shutdown posts to cover greater than expected sick leave;

<sup>28</sup> Samples were selected from pay periods occurring subsequent to the issuance of DIA Report No. 18-01 in January 2018. Pay periods selected were: FY18/PP16; FY19/PP24; and FY20/PP05.

<sup>29</sup> Paid leave includes: annual; accrued comp time; administrative; sick; absent without leave; civil leave; workers' comp; and FMLA, in addition to multiple other paid leave categories.

<sup>30</sup> Nevada Department of Corrections, Administrative Regulation 326, Posting of Shifts/Overtime.

- No more annual leave will be scheduled than there are relief factor management positions available to support the requested leave without overtime;
- Leave requests submitted without sufficient notice will not be granted if there is no relief factor to accommodate the leave without overtime except in a case of a personal emergency;
- No employee who calls in sick or utilizes sick leave during any given pay period will be allowed to work voluntary overtime; and
- If an employee accrues overtime during the first week of the pay period and then uses sick leave, that employee will not be permitted any voluntary overtime in the next pay period.

Requiring NDOC Employees to Adhere to Overtime Policies Would Reduce Costs to the State

Requiring NDOC employees to adhere to overtime policies would reduce costs to the state by approximately \$3 million annually. In addition, NDOC requested and received \$973,000 in Contingency Account funds in fiscal year 2020 for personnel costs projected to exceed budgeted authority. Reducing overtime costs would reduce or eliminate the potential for needing to request funding from the state Contingency Account to cover projected shortfalls.

**NDOC’s Personnel Policies Do Not Define Parameters for Granting Paid Administrative Leave**

NDOC’s personnel policies do not define parameters for granting paid administrative leave, including criteria necessary for placing employees on paid administrative leave, terms for payment of the leave, or whether other leave could be used in lieu of administrative leave. Paid administrative leave costs for fiscal years 2018 through 2019 totaled \$1.9 million or \$639,600 annually. See Exhibit X for paid administrative leave granted to NDOC employees across fiscal years 2018 through 2020:

**Exhibit X**

**Paid Administrative Leave Granted to NDOC Employees  
Fiscal Years 2018 through 2020**

# of Hrs Paid	# Empl	Period Totals		Annual Averages	
		Hrs	Dollars	Hrs	Dollars
1,001+ hrs	16	24,563	\$ 714,438	\$ 1,638	\$ 47,639
501-1,000 hrs	27	20,689	549,442	766	20,350
401-500 hrs	7	3,353	89,811	479	12,830
301-400 hrs	10	3,684	99,452	368	9,945
201-300 hrs	11	2,883	88,832	262	8,076
101-200 hrs	33	4,438	113,617	134	3,443
81-100 hrs	6	547	18,011	91	3,002
41-80 hrs	53	3,442	91,931	65	1,735
0-40 hrs	450	5,481	153,245	12	340
<b>Totals</b>	<b>613</b>	<b>69,080</b>	<b>\$ 1,918,779</b>		

Source: Calculations derived from state payroll accounting records.

### Majority of Paid Administrative Leave Associated with A Small Number of NDOC Employees

The majority of paid administrative leave incurred in the period reviewed was associated with a small number of NDOC employees. Review of state payroll accounting records show 43 of 613 employees who were granted paid administrative leave in fiscal years 2018 through 2020 represented 66% of both the hours and dollars paid across the department. Our review found one NDOC employee was paid for almost 2.5 years administrative leave, including 440 hours more than intended.

### NDOC's Internal Administrative Regulations Language is Limited in Relation to Paid Administrative Leave

NDOC's internal administrative regulations language is limited in relation to paid administrative leave. Administrative Regulation (AR) 322.06(2) states:

Administrative Leave may be granted as designated in NAC 284.589.

- A. Employees who are mandated to attend an appointment scheduled through the Risk Management Division of the Department of Administration may be placed on administrative leave pending the results pursuant to the provisions of NAC. If the employee chooses their own health care provider, they shall use their accrued leave.
- B. Employees who are directed to obtain clarification, not through the Risk Management Division, shall use their accrued leave.

AR 322 makes no other references to administrative leave or criteria for determining when granting leave is appropriate.

### Defined Paid Administrative Leave Parameters Are Needed In NDOC's Personnel and Payroll Practices

Defined parameters for paid administrative leave are needed in NDOC's personnel and payroll practices. Undefined parameters resulted in 69,000 hours and \$1.9 million in paid administrative leave costs in fiscal years 2018 through 2020. Integrating defined parameters for granting paid administrative leave will help ensure: application of decision criteria is consistent across matters reviewed; time limits are clearly defined; other leave mechanisms are explored; and costs to the state are reduced or limited. Defined paid administrative leave parameters could benefit the state up to \$640,000 annually.

## **Conclusion**

Improving oversight over personnel and payroll practices would increase transparency in operations and benefit the state up to \$3.7 million annually by: assigning Pay Location codes to conservation camps; obtaining IFC approval for moving employees or personnel costs between budget accounts; ensuring employees follow department overtime policies; and integrating defined parameters for granting paid administrative leave. Diminished oversight over personnel and payroll practices resulted in: increased costs to the state; misstated personnel costs recorded and reported in NDOC budget accounts; increased employee overtime costs; and significant paid administrative leave costs.

## **Recommendation**

4. Improve oversight over personnel and payroll practices.

### **Exhibit XI**

#### **Summary of Audit Benefits**

<b>Recommendation</b>	<b>Benefit</b>
1. Increase legislative oversight of the Offenders' Store Fund.	\$ 11.9 million
2. Improve the accuracy of budgetary estimates and expenditure projections.	\$13.6 million
3. Ensure contracting practices comply with state requirements.	-
4. Improve oversight over personnel and payroll practices.	\$ 3.7 million
Total estimated benefit:	\$ 29.2 million

## Appendix A

### Scope and Methodology, Background, Acknowledgements

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#### Scope and Methodology

We began the audit in September 2020. In the course of our work, we interviewed members of management from the Nevada Department of Corrections (NDOC) to discuss processes inherent to NDOC's fiscal processes and accounting. We reviewed NDOC records and researched legislative history, state budget manual procedures, applicable Nevada Revised Statutes, Nevada Administrative Code, Nevada State Administrative Manual, governmental generally accepted accounting principles, and other state guidelines. We concluded fieldwork in December 2020.

We conducted our audit in conformance with the *International Standards for the Professional Practice of Internal Auditing*.

#### Background

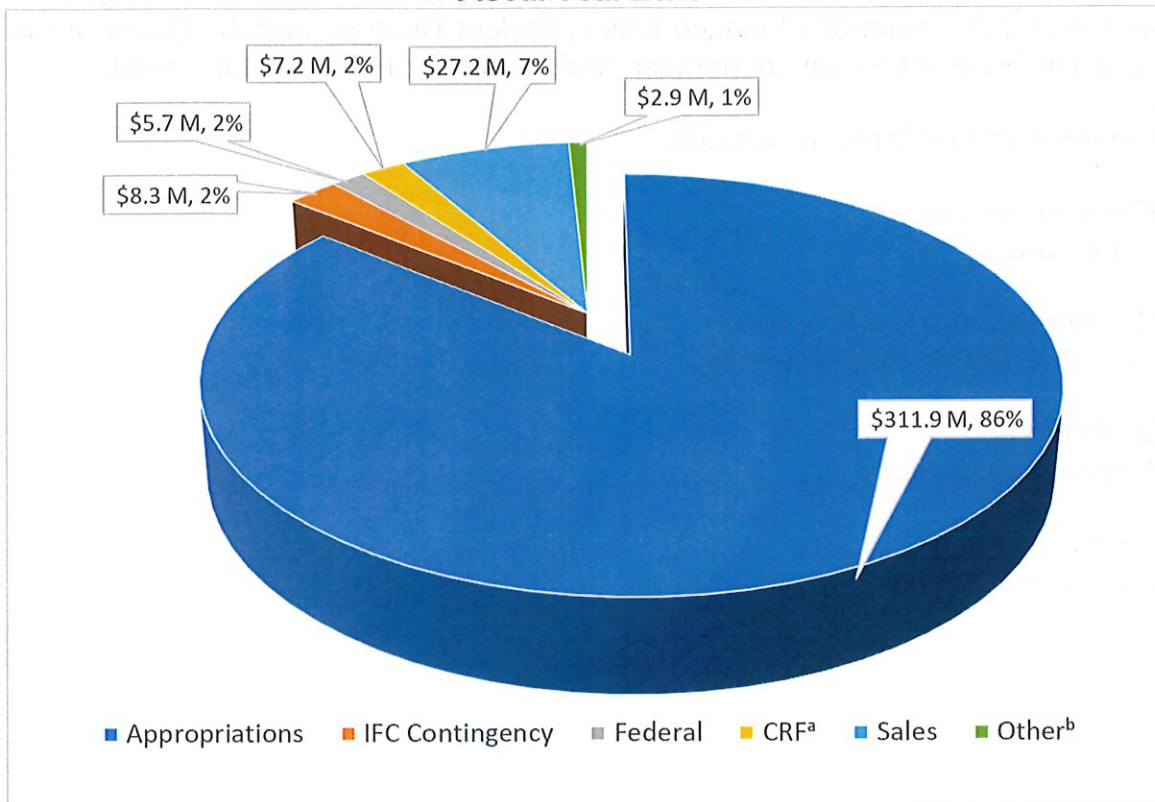
The mission of the Nevada Department of Corrections (NDOC) is to protect society by maintaining offenders in safe and humane conditions while preparing them for successful reentry back into society. NDOC operates in a team-based environment, including but not limited to the following goals: maintain a safe environment for employees and offenders; establish an agency strategic planning program; maintain industry standards and best practices; and implement professional development programs and curriculum specific to supervisory, mid-level managers, managers, leadership, and executive level leadership development.

NDOC is funded by the State General Fund, federal funds, and a variety of agency-generated sales. For fiscal year 2020, NDOC additionally received \$7.2 million in Coronavirus Relief Fund monies and \$8.3 million in General Fund Contingency Account funds. NDOC's revenues for fiscal years 2019 and 2020 were \$347.6 million and \$363.3 million, respectively. NDOC is responsible for the oversight of: six operating correctional facilities; 10 conservation camps; two transitional housing facilities; and 31 executive budget accounts with budget authority, fiscal activity, or cash balances in fiscal year 2020. Exhibit XII summarizes NDOC's budget by funding source for the most recently completed fiscal year, 2020.



Exhibit XII

NDOC's Budget by Funding Source  
Fiscal Year 2020



Source: Derived from state accounting records.

Notes: <sup>a</sup> CRF designates Coronavirus Relief Fund monies received by NDOC in fiscal year 2020.

<sup>b</sup> Other includes the following revenues: reimbursements; Treasurer's interest distribution; room, board, and transportation charges; offender wage assessments; energy rebates and utility credits; prior year refunds; and other miscellaneous revenues.

## **Acknowledgments**

We express appreciation to the Nevada Department of Corrections management and staff, the Governor's Finance Office, Budget Division, and the Office of the Attorney General for their cooperation and assistance throughout the audit.

Contributors to this report included:

Warren Lowman  
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Heather Domenici, MAcc, CPA  
Executive Branch Audit Manager

Maria Moreno  
Compliance Auditor

Teresa Schuff  
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## Appendix B

### Nevada Department of Corrections Response and Implementation Plan

Division of Internal Audit's report, DIA Report N. 21-03  
Nevada Department of Corrections, Fiscal  
Processes

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Steve Sisolak  
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Director



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STATE OF NEVADA  
Department of Corrections

January 6, 2021

Warren Lowman, Administrator  
Governor's Finance Office, Division of Internal Audits  
209 East Musser Street, Suite 302  
Carson City, Nevada 89701

Dear Mr. Lowman,

Pursuant to NRS 353A.085(1), the Nevada Department of Corrections is submitting the following written statement regarding the Division of Internal Audit's report, DIA Report N. 21-03, Nevada Department of Corrections, Fiscal Processes.

The Nevada Department of Corrections (NDOC) wanted to thank the staff of the Division of Internal Audit for the hard work, detailed analysis, and collaboration with the department throughout the audit.

Thank you for your time and consideration of this matter. If you have questions or wish to discuss further, please do not hesitate to contact Deputy Director Kristina Shea or myself.

Charles Daniels, Director  
Nevada Department of Corrections

cc: Heather Domenici, CPA, Executive Branch Audit Manager, Division of Internal Audits  
Kristina Shea, Deputy Director Support Services, Nevada Dept. Of Corrections  
Brian Williams, Deputy Director of Operations, Nevada Dept. Of Corrections  
Christina Leathers, Chief Human Resources Officer

**IA #21-03 Recommendation #1:**

***Increase oversight of the Offenders Store Fund.***

The department agrees with the recommendation of increasing oversight of the Offenders Store Fund by following the public administrative rulemaking process, specifically NRS 233B, the Administrative Procedures Act (APA). The APA provides members of the public the opportunity to participate in the administrative rulemaking process. Agencies adopting regulation through the APA are required to issue a notice of intent to act upon regulation and provide certain statements before adoption. Additionally, the NDOC must also solicit comments from the public, hold at least one public workshop and hearing, and follow Open Meeting Law requirements.

The NDOC will work with the Attorney General's office to determine the best path forward for any Offender Store Fund (OSF) money that was used to repay or defray costs related to operation and maintenance of the offender's store, coffee shops, and correctional officers salary for visitation. Additionally, any charges put into place on the purchase of electronic devices to defray the costs related to the operation of the devices that may have been inadvertently adopted without the public administrative rulemaking requirements in NRS 233B will be reviewed with the Attorney General's office to be sure NDOC is following the law according to the legislative intent.

The department anticipates that the initial implementation of this recommendation will be completed by the six-month check-in or August 2021. However, as the legislature will be in session for much of the next six months, the establishment of permanent regulations may take longer.

**IA #21-03 Recommendation #2:**

***Improve the accuracy of budgetary estimates and expenditure projections.***

The department agrees with this audit recommendation and has implemented immediate steps to reduce unnecessary work programs.

The action steps include the following:

1. Regular budget methodology meetings with Fiscal staff to determine the most appropriate budget methodology for each projected General Ledger Account and Category which will help create consistency and more accurate projections department-wide.
2. More frequent budget projection meetings with the facilities and institutions regarding budget vs. actual spending.
3. Deeper analysis and review by management and leadership regarding the projected budget shortfalls with root-cause analysis on a monthly basis.
4. A review of the projected shortfall and necessity of a work-program will occur before any unnecessary work-programs are generated by the department.

5. Review internal controls and possible updating Administrative Regulations and/or Operational Procedures to ensure that effective cost containment and monitoring measures are in place within each budget account.

The department anticipates that the implementation of this recommendation will be completed by the six-month check-in or August 2021.

**IA #21-03 Recommendation #3:**

*Ensure contracting practices comply with state requirements.*

The department agrees with this audit recommendation and is taking immediate action steps to ensure that the contracts align with the State Accounting Manual (SAM). The department is examining any outstanding MOU's for corrective action.

The department anticipates that the implementation of this recommendation will be completed by the six-month check-in or August 2021.

**IA #21-03 Recommendation #4:**

*Improve oversight over personnel and payroll practices.*

The department agrees with some aspects of this recommendation. However, overtime within the Department of Corrections is a usual and customary operational occurrence that can't be avoided due to vacancies and additionally, the complexity of the COVID-19 pandemic on NDOC operations. The NDOC takes proper measures to protect the health and safety of the staff and offenders in the institutions and facilities of the Department, which can have an impact on department-wide overtime.

Additionally, under Administrative Regulation 316.03 (Temporary Reassignment), the department may temporarily reassign an employee based on the determination and approval of the Appointing Authority to another duty location. The temporary reassignment does not change the employee's current budget account or position number. During the temporary reassignment, the employee shall be deemed to remain in their regular position as the temporary re-assignment does not constitute a transfer to that position. Furthermore, due to the temporary nature of the transfer, the NDOC does not believe that this temporary transfer requires the Interim Finance Committee (IFC) approval and does not meet the criteria defined in NRS 353.220.

The department can take the following steps to ensure that over-time is managed and controlled:

1. Establish and assign pay location codes to conservation camps.
2. Review and possible revisions to Administrative Regulation 326 – Shift bidding and overtime policies and ensure the department is following the procedures in this AR.

3. Determine specific requirements that will allow for the temporary reassignment of employees duty location, including emergency staffing situations and other emergency matters.
4. Expand recruitment and retention efforts.
5. Audits of employee time-sheets to ensure overtime is not recorded due to other employees' annual leave requests.
6. Review and possible revisions to Administrative Regulation 322 related to Administrative Leave management.
7. Increase over-time management with bi-weekly meetings between Fiscal, Operations, and facilities/institutions for greater oversight and transparency.
8. The part-time or critical hiring process for Correctional Officer vacancies.

The department anticipates that the implementation of this recommendation will take some time to complete. However, we anticipate some of the components can be completed by the six-month check-in with the remaining items completed within one year.

## Appendix C

### Timetable for Implementing Audit Recommendations

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In consultation with the Nevada Department of Corrections (NDOC), the Division of Internal Audits categorized the recommendations contained within this report into two separate implementation time frames (i.e., *Category 1* – less than six months; *Category 2* – more than six months). NDOC should begin taking steps to implement all recommendations as soon as possible. The target completion dates are incorporated from Appendix B.

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#### **Category 2: Recommendations with an anticipated implementation period exceeding six months.**

<u>Recommendation</u>	<u>Time Frame</u>
1. Increase oversight of the Offenders' Store Fund. (page 2)	Jan 2022
2. Improve the accuracy of budgetary estimates and expenditure projections. (page 6)	Aug 2021
3. Ensure contracting practices comply with state requirements. (page 13)	Aug 2021
4. Improve oversight over personnel and payroll practices. (page 17)	Jan 2022

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The Division of Internal Audits shall evaluate the action taken by NDOC concerning the report recommendations within six months from the issuance of this report. The Division of Internal Audits must report the results of its evaluation to the Executive Branch Audit Committee and NDOC.

