



**A REPORT TO THE  
WEST VIRGINIA  
LEGISLATURE**  
May 19, 2016

**Post Audits Subcommittee**

**Senate Members**

The Honorable William P. Cole, III  
The Honorable Mike Hall  
The Honorable Jeffrey V. Kessler

**House Members**

The Honorable Tim Armstead  
The Honorable Eric Nelson, Jr.  
The Honorable Timothy Miley

**LEGISLATIVE AUDITOR'S OFFICE**  
**STATE OF WEST VIRGINIA**  
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**DIVISION OF CORRECTIONS**

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**Director**

The Honorable William Cole, President  
West Virginia State Senate  
Post Audits Subcommittee, Co-Chair  
Room 229 M, Building 1  
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Charleston, WV 25306

The Honorable Timothy Armstead, Speaker  
West Virginia House of Delegates  
Post Audits Subcommittee, Co-Chair  
Room 228 M, Building 1  
State Capitol Complex  
Charleston, WV 25306

Dear Mr. President and Mr. Speaker:

In compliance with the provisions of the WV Code, Chapter 4, Article 2, as amended, we conducted a post audit of the Division of Corrections Central Office for the period of July 1, 2013 through June 30, 2014, excluding expenditures occurring in the 13th month, which was recorded into the West Virginia Our Advanced Solution with Integrated Systems (wvOASIS).

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (GAGAS). These standards require that we plan and perform the audit to obtain a sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusion based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The audit disclosed certain findings, which are detailed in this report. Findings deemed inconsequential to the financial operations of the agency were discussed with management. The Division of Corrections (DOC) management response to the audit findings is included at the end of the report.

Respectfully submitted,

A handwritten signature in blue ink that reads "Denny Rhodes".

Denny Rhodes

\_\_\_\_\_ *Joint Committee on Government and Finance* \_\_\_\_\_

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### ABBREVIATIONS:

DOC	DIVISION OF CORRECTIONS
DMAPS	DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY
WVFMO	WEST VIRGINIA FLEET MANAGEMENT OFFICE
IMIS	INMATE MANAGEMENT INFORMATION SYSTEM
FY	FISCAL YEAR (JULY 1 THROUGH JUNE 30) *EXCLUDING EXPENDITURES OCCURRING IN THE 13TH MONTH, WHICH WERE RECORDED IN THE WEST VIRGINIA OUR ADVANCED SOLUTION WITH INTEGRATED SYSTEMS (wvOASIS).
GAGAS	GENERALLY ACCEPTED GOVERNMENT AUDITING STANDARDS
WVFIMS	WEST VIRGINIA FINANCIAL INFORMATION SYSTEM
IRS	INTERNAL REVENUE SERVICE
WEX	WRIGHT EXPRESS
wvOASIS	WEST VIRGINIA OUR ADVANCED SOLUTION WITH INTEGRATED SYSTEMS

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## OBJECTIVES & CONCLUSIONS

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### OBJECTIVE ONE

Determine if DOC has clear standards/policies on when Medical Respite is warranted.

#### *Conclusion*

DOC Policy Directive 410.12 has set a clear standard/policy on when Medical Respite is warranted; however, the program has not been codified nor has DOC implemented a Legislative Rule to govern the program.

### OBJECTIVE TWO

Determine if the implementation of a Geriatric Release Program similar to programs in other states and the Federal Government's Compassionate Release Program could reduce the overall costs of incarcerating inmates in West Virginia.

#### Sub-Objective:

- a. Determine how many offenders currently incarcerated in DOC prisons would be eligible for release under a Geriatric Release Program with eligibility requirements similar to programs in other states and the Federal Government program.

#### *Conclusion*

The potential for cost savings from implementing a geriatric release program exist; however, WV may not be able to reproduce the cost savings seen in other states operating similar programs due to the high concentration of sexual and violent offenders in the WV prison system. As of June 30, 2015, only 12 inmates would have potentially been considered for release under such a program, as sexual and violent offenders are typically excluded from consideration.

### OBJECTIVE THREE

Is DOC able to gather management data related to inmate medical costs and transport costs to determine if the cost of incarcerating inmates in DOC prisons could be reduced?

#### *Conclusion*

DOC is able to gather management data related to inmate medical costs and transport costs to determine if the cost of incarcerating inmates in DOC prisons could be reduced; however, DOC can improve the data it is tracking to make more effective decisions when determining areas where the cost of incarcerating inmates in DOC prisons could be reduced<sup>1</sup>.

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<sup>1</sup> Communicated to the Legislative Post Audits Subcommittee via a separate report.

## OBJECTIVE FOUR

Determine if DOC received the appropriate amount from the “Children’s Protection Act” money to offset the cost of electronically monitoring certain sex offenders as prescribed by WV Code during FY 2014.

### *Conclusion*

DOC did receive the appropriate amount of funds to offset the cost of electronically monitoring certain sex offenders as prescribed by WV Code during FY 2014.

## OBJECTIVE FIVE

Determine if DOC properly reported the taxable fringe benefit for commuting in a State vehicle for Central Office employees using the applicable Internal Revenue Service (IRS) valuation method.

### *Conclusion*

DOC did not properly report taxable fringe benefits for commuting in a State vehicle for Central Office employees using the applicable IRS valuation method.

### *Related Findings and Recommendations*

#### **Finding 2: Improper Calculation of Taxable Income**

- 2-1. The Legislative Auditor recommends DOC review any amounts paid via the agency’s United Bank Travel Account or by direct invoicing for the former Deputy Commissioner and determine if any of the amounts paid should be included as wages as a result of the misapplication of IRS Publication 463. In addition, the Legislative Auditor recommends DOC report back to the Legislative Post Audits Subcommittee the results of the review by September 2016.
- 2-2. The Legislative Auditor recommends DOC issue the former Deputy Commissioner amended W-2s (Form W-2c) for 2013, 2014 and 2015 with the appropriate amounts reported, and consult the IRS to determine whether or not it should recalculate the taxable fringe benefit for the employees who commuted in a State vehicle using the proper IRS valuation method and whether or not it should file amended W-2s for those employees.
- 2-3. The Legislative Auditor recommends DOC require employees who commute in a State vehicle to fill out a Fleet Statement of Commuting Value, and calculate the taxable fringe benefit of commuting using the appropriate valuation method as determined by the IRS.

## OBJECTIVE SIX

Determine whether DOC Central Office upper management’s travel expenditures and reimbursements complied with applicable State laws, rules and regulations and is free from fraud, waste and abuse.

## *Conclusion*

DOC Central Office upper management's travel expenditures and reimbursements did not comply with its own DOC Travel Policy (Policy 139.01) and were not following the state travel policy.

## *Related Findings and Recommendations*

### **Finding 1: Inadequate Monitoring of 237 State Vehicles**

- 1-1. The Legislative Auditor recommends DOC follow the current Legislative Rule.
- 1-2. The Legislative Auditor recommends DOC enforce WV Legislative Rule §148-3. Specifically, it should enforce subsection 9.3, which requires vehicles be assigned to an employee that has been required by the spending office in writing to commute to and/or from work for bona fide non-compensatory reasons and utilization of the State of WV Mileage Log, documenting all assignment of vehicles to individuals who have been authorized to commute, restricting take-home vehicles to those individuals who truly need the vehicle to perform their job responsibilities, and utilizing the available data to implement effective fleet management. Furthermore, the Legislative Auditor recommends DOC report back to the Legislative Post Audits Subcommittee no later than the September 2016 interim meeting with an update on DOC's progress over implementing the Auditor's recommendations.

### **Finding 2: Improper Calculation of Taxable Income**

- 2-1. The Legislative Auditor recommends DOC review any amounts paid via the agency's United Bank Travel Account or by direct invoicing for the former Deputy Commissioner and determine if any of the amounts paid should be included as wages as a result of the misapplication of IRS Publication 463. In addition, the Legislative Auditor recommends DOC report back to the Legislative Post Audits Subcommittee the results of the review by September 2016.
- 2-2. The Legislative Auditor recommends DOC issue the former Deputy Commissioner amended W-2s (Form W-2c) for 2013, 2014 and 2015 with the appropriate amounts reported, and consult the IRS to determine whether or not it should recalculate the taxable fringe benefit for the employees who commuted in a State vehicle using the proper IRS valuation method and whether or not it should file amended W-2s for those employees.
- 2-3. The Legislative Auditor recommends DOC require employees who commute in a State vehicle to fill out a Fleet Statement of Commuting Value, and calculate the taxable fringe benefit of commuting using the appropriate valuation method as determined by the IRS.

### **Finding 3: Unauthorized Travel Reimbursement**

- 3-1. The Legislative Auditor recommends the Commissioner reimburse DOC \$138.25 for the unauthorized hotel stay. Furthermore, the Legislative Auditor recommends DOC

report back to the Legislative Post Audits Subcommittee no later than the September 2016 interim meeting with an update on DOC's progress over implementing the Auditor's recommendations.

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## FINDINGS & RECOMMENDATIONS

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### FINDING 1: INADEQUATE MONITORING OF 237 STATE VEHICLES

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*DOC failed to adequately monitor the usage of all 237 State vehicles which were assigned to the Division during fiscal year 2014.*

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DOC did not adequately monitor all 237 State vehicles assigned to the Division during fiscal year 2014 because DOC did not implement or enforce WV Legislative Rule §148-3 as required. Specifically, management did not implement or enforce:

- Use of a mileage log to adequately monitor vehicle use; and
- Formal assignment of vehicles by the DOC Commissioner or the designated fleet coordinator.

#### *Mileage Reporting*

DOC did not require employees to adequately complete vehicle mileage logs. DOC placed copies of the State of WV Mileage Log, issued by the Fleet Management Office, in each of its vehicles and verbally instructed its employees to complete the log for each trip; however, DOC did not require the employees to submit the forms to the Spending Unit Fleet Coordinator for review. Instead, in order to obtain mileage information, the Fleet Coordinator would pull the information from the Wright Express (WEX) Fuel Card information system.

Without reasonably complete and accurate information on the total miles driven and the frequency of vehicle use, fleet coordinators cannot accurately assess vehicle utilization as required by the law. This limits the WV Fleet Management Office and DOC's ability to optimize its fleet size and composition and safeguard State vehicles from improper use.

#### *Assignment of State Vehicles*

Of the 237 State vehicles maintained by DOC, five were verbally assigned to Central Office employees by the DOC Commissioner during FY 2014. These employees included:

- The Commissioner;
- The former Deputy Commissioner;
- The current Deputy Commissioner/former Assistant Commissioner;
- One of the Assistant Commissioners; and
- The Director of Construction and Engineering.

However, Legislative Rule §148-3 subsection 9.3 requires the vehicle be "assigned to an employee that has been required by the spending officer **in writing** to commute to and/or from work for bona fide noncompensatory reasons."

While this is a technical violation of the rule, failure to make these vehicle assignments in writing does not constitute a violation of law in and of itself.

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*DOC did not document the assignment of State vehicles to five Central Office employees.*

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However, the IRS could determine the DOC to have violated its own policy and the vehicle operator or the agency may be financially liable for any consequences of failing to follow the rule.

### *Recommendations*

- 1-1. The Legislative Auditor recommends DOC follow the current Legislative Rule.
- 1-2. The Legislative Auditor recommends DOC enforce WV Legislative Rule §148-3. Specifically, it should enforce subsection 9.3, which requires vehicles be assigned to an employee that has been required by the spending office in writing to commute to and/or from work for bona fide non-compensatory reasons and utilization of the State of WV Mileage Log, documenting all assignment of vehicles to individuals who have been authorized to commute, restricting take-home vehicles to those individuals who truly need the vehicle to perform their job responsibilities, and utilizing the available data to implement effective fleet management. Furthermore, the Legislative Auditor recommends DOC report back to the Legislative Post Audits Subcommittee no later than the September 2016 interim meeting with an update on DOC's progress over implementing the Auditor's recommendations.

## **FINDING 2: IMPROPER CALCULATION OF TAXABLE INCOME**

*DOC failed to report approximately \$4,400 in taxable income for the former Deputy Commissioner during calendar years 2011 – 2015.*

DOC did not report approximately \$4,400 in hotel reimbursements as taxable income (employee wages) for the former Deputy Commissioner during calendar years 2011 through 2015. These unreported wages were a result of DOC reimbursing the former Deputy Commissioner for travel-related expenses that did not qualify as a deductible travel expense per IRS Publication 463.

Additionally, DOC improperly calculated the taxable income for employees using State vehicles for commuting. This improper calculation was due to DOC following the 2005 version of Legislative Rule §148-3 rather than the 2013 amended version. The 2005 version of the rule set the “Commuting Value” at a flat rate of \$53.00 per month rather than the \$1.50 per trip that was required.

### *Misapplication of IRS Travel Rules*

Until his retirement at the end of May 2015, DOC reimbursed the former Deputy Commissioner for hotel accommodations in Charleston, WV (his official work location). Between fiscal year 2012 and May 2015, DOC reimbursed the former Deputy Commissioner on 39 separate occasions for 41 nights of hotel accommodations in the Charleston, WV area totaling approximately \$4,300<sup>2</sup>.

The IRS stipulates that in order for a travel expense to be deductible, the employee must be traveling away from home or on a temporary assignment or job. The IRS generally defines an employee’s tax home as “your regular place of business or post of duty, regardless of where you maintain your family home and includes the entire city or general area in which their place of business is located.”

With the application of IRS Publication 463, it was determined the former Deputy Commissioner’s tax home was Charleston, WV because it was his official headquarters. As a result, when the former Deputy Commissioner traveled to Charleston, WV from his home, it did not qualify as a deductible travel expense per the IRS definitions. Therefore, any amounts reimbursed by DOC for travel expenses should have been reported as wages paid to the former Deputy Commissioner.

**Table 1: Taxable Income not Reported by Calendar Year**

Calendar Year (IRS)	Amount Not Reported
2011 (July – December Only)	\$202
2012	\$403
2013	\$2,269
2014	\$1,305
2015	\$118
<b>Total</b>	<b>\$4,297</b>

<sup>2</sup> Amount only includes reimbursements paid directly to the former Deputy Commissioner. Does not include any amounts paid directly by DOC using the agency’s United Bank Travel Account or by direct invoicing.

### *Misapplication of IRS Commuting Rule*

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*DOC was following the 2005 version of the State law regarding use of State vehicles rather than the current version.*

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During FY 2014, DOC reported there were five Central Office employees authorized to take home and commute in State vehicles. These employees included:

**Table 2: Individuals Commuting in State Vehicles**

Title	Home Location	Headquarters	Average One-Way Commute
Commissioner	St. Marys, WV	Charleston, WV	100 miles
Former Deputy Commissioner	Bridgeport, WV	Charleston, WV	119 miles
Current Deputy Commissioner	Charleston, WV	Charleston, WV	9 miles
Assistant Commissioner	Moundsville, WV	Moundsville, WV	2 miles
Director of Construction and Engineering	Oak Hill, WV	Charleston, WV	52 miles

However, DOC was not following the current version of the State law regarding use of State vehicles. DOC was following the 2005 amended version of Legislative Rule §148-3, which governs the use of State Owned Vehicles, even though there were amendments in 2010, 2011 and 2013, respectively. The 2005 version of Legislative Rule §148-3 set the “Commuting Value” at a flat rate of \$53.00 per month rather than the \$1.50 per trip that was required by the current version of the law and IRS Publication 15-B.

As a result, DOC improperly assessed the taxable fringe benefit using a monthly flat rate of \$53 for commuting in a State vehicle for four of the aforementioned five individuals; DOC did not assess any taxable fringe benefit to the current Deputy Commissioner/former Assistant Commissioner during calendar years 2013 or 2014. For employees who commuted more than 17 days a month<sup>3</sup>, the taxable fringe benefit used in the 2005 version of State law (\$53) would have been less than the taxable fringe benefit employees should have incurred resulting in a lower reported taxable income on the employee’s W-2.

Rather than requiring the employees to submit a monthly Fleet Statement of Commuting Value to the fleet coordinator as required, DOC relied solely on the individual to self-report when they were or were not commuting in a State vehicle to the Payroll Administrator. The Payroll Administrator would then simply apply the aforementioned flat rate (\$53 per month) to the employee’s pay.

DOC should have required each employee who had been assigned a State vehicle for one day or more and used the vehicle for commuting purposes to complete a monthly Fleet Statement of Commuting Value. The fleet coordinator should have reviewed and certified the form as to completeness and accuracy, then

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<sup>3</sup> The 2005 amended version of Legislative Rule §148-3 assumed there was an average number of 49 non-business days (includes holidays and sick/annual leave) in any given year. Since there are an average of 12 official State holidays in a given year, the 2005 version of the Law assumed the average employee would use roughly 37 days of annual and/or sick leave during the year.

calculated the amount of the taxable fringe benefit based on the applicable IRS valuation rule. The fleet coordinator should have then informed the Payroll Administrator of the amount to be included as the taxable fringe benefit.

### *Recommendations*

- 2-1. The Legislative Auditor recommends DOC review any amounts paid via the agency's United Bank Travel Account or by direct invoicing for the former Deputy Commissioner and determine if any of the amounts paid should be included as wages as a result of the misapplication of IRS Publication 463. In addition, the Legislative Auditor recommends DOC report back to the Legislative Post Audits Subcommittee the results of the review by September 2016.
- 2-2. The Legislative Auditor recommends DOC issue the former Deputy Commissioner amended W-2s (Form W-2c) for 2013, 2014 and 2015 with the appropriate amounts reported, and consult the IRS to determine whether or not it should recalculate the taxable fringe benefit for the employees who commuted in a State vehicle using the proper IRS valuation method and whether or not it should file amended W-2s for those employees.
- 2-3. The Legislative Auditor recommends DOC require employees who commute in a State vehicle to fill out a Fleet Statement of Commuting Value, and calculate the taxable fringe benefit of commuting using the appropriate valuation method as determined by the IRS.

**FINDING 3: UNAUTHORIZED TRAVEL REIMBURSEMENT ISSUED TO DOC COMMISSIONER**

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*The DOC Commissioner received an unauthorized travel reimbursement of \$138.25 for an overnight stay in Charleston, WV.*

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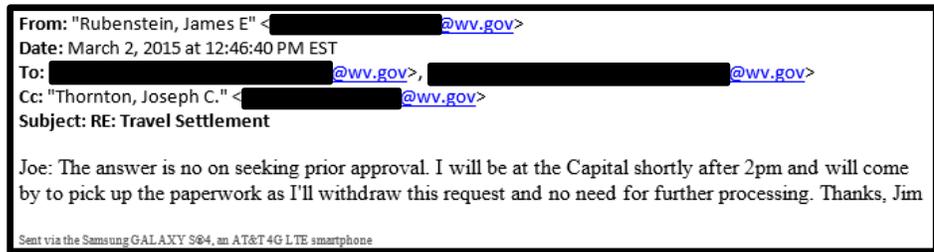
On February 9, 2015, the DOC Commissioner stayed overnight at a hotel in Charleston, WV. On February 24, 2015, and in accordance with Department of Military Affairs and Public Safety (DMAPS) protocol<sup>4</sup>, the Commissioner submitted a Travel Expense Account Settlement form to the DMAPS Cabinet Secretary to approve reimbursement of \$138.25 for hotel accommodations and parking for the stay.

When the requests validity was questioned by the Cabinet Secretary’s Executive Assistant, the Commissioner stated in an e-mail:

*I planned on staying in town as Feb. 10th was Corrections Day and there were things going on throughout Monday, 2/9. Plus water froze up in my apartment and I scurried. If this isn't possible or practical I understand and please delete the request. I felt I was in reason with submitting but stand corrected if necessary. Thanks.....*

On March 2, 2015, the Commissioner advised the Cabinet Secretary via email he was withdrawing the request and there was no need for further processing. (See Figure 1)

**Figure 1: E-mail from DOC Commissioner Withdrawing Reimbursement Request**



Sometime after withdrawing his initial request, the Commissioner resubmitted the request for reimbursement; however, this submission was made to the DOC former Chief of Staff/current Assistant Commissioner and the Director of Administration, who approved the request. The request was reimbursed on March 25, 2015. (See Figure 2)

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<sup>4</sup>DMAPS requires in-state and out-of-state travel reimbursements submitted by DMAPS Division heads to be approved in writing by the DMAPS Cabinet Secretary.



Further, regarding what steps his office has taken as a result of the Commissioner's actions, the Cabinet Secretary stated<sup>6</sup>:

*... After questioning the validity of the reimbursement request from Commissioner Rubenstein and when the request was withdrawn, I was left to believe the matter was at an end. I was certainly caught off guard when you advised the request for reimbursement was, without my approval, in turn submitted directly to the state [sic.] Auditor's Office for reimbursement without my signatory approval...*

***Recommendation***

- 3-1. The Legislative Auditor recommends the Commissioner reimburse DOC \$138.25 for the unauthorized hotel stay. Furthermore, the Legislative Auditor recommends DOC report back to the Legislative Post Audits Subcommittee no later than the September 2016 interim meeting with an update on DOC's progress over implementing the Auditor's recommendations.

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<sup>6</sup> See Appendix B on page 23 for a copy of the Commissioner's response to the Legislative Auditor's Office Inquiry. Page | 17

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## **APPENDIX A – AUDIT INFORMATION**

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### **BACKGROUND**

The West Virginia Division of Corrections is a state agency which houses convicted felons. The Division, formerly a major division within the Department of Public Institutions, was established under Chapter 70, Acts of the Legislature, in 1977. Under the executive reorganization of 1989, Corrections became a division of the Department of Public Safety (now the Department of Military Affairs and Public Safety). The Commissioner of the Division of Corrections directs the state's adult correctional system.

The various facilities within the DOC include Central Office, 12 Correctional Facilities, four Work Release Centers, 15 Parole Offices, one Training Academy and one Prison Industries main office. In addition, the Commissioner is also responsible for the supervision of parolees assigned to the Division's custody or accepted through interstate compact. As of 2014, the State's correctional system is responsible for approximately 2,400 employees; 6,800 inmates; and 3,100 parolees/probationers.

### **AUTHORITY**

The audit was conducted pursuant to WV Code §4-2, as amended, which requires the Legislative Auditor to "make post audits of the revenues and funds of the spending units of the state government, at least once every two years, if practicable, to report any misapplication of state funds or erroneous, extravagant or unlawful expenditures by any spending unit, to ascertain facts and to make recommendations to the Legislature concerning post audit findings, the revenues and expenditures of the State and of the organization and functions of the State and its spending units."

The Post Audit Division of the Office of the Legislative Auditor is organized under the Legislative Branch of the State and the audits are reported to the Legislative Post Audits Subcommittee. This organizational structure has historically allowed the Division to be organizationally independent when audits are performed on an agency, Board, or program of the Executive Branch of the State.

This communication is intended solely for the information and use of the Post Audits Subcommittee, the members of the Legislature, management of DOC, and WV taxpayers. Once presented to the Post Audits Subcommittee this report is public record and its distribution is not limited. The report is designed to assist the Subcommittee in exercising its legislative oversight function, to provide constructive recommendations for improving State operations, and as a report of agency activities to the WV taxpayers.

### **SCOPE**

The audit scope included a review of applicable internal control policies and procedures and compliance with the WV Code, Expenditure Schedule Instructions, Legislative Rules, Statewide Contracts, IRS Publications, best business practices, and DOC internal policies and procedures applicable for the audit period of July 1, 2013 through June 30, 2014. This includes all expenditures from the West Virginia Financial Information System (WVFIMS) for FY 2014, excluding the 13th month, which was input into the West Virginia Our Advanced Solution with Integrated Systems (wvOASIS).

The audit included examining, on a test basis, evidence of compliance with those requirements referred to above and performing other procedures, as necessary. The audit does not provide a legal determination of DOC's compliance with those requirements.

DOC management is responsible for accurately and efficiently accounting for all State monies, performing all duties mandated under WV Code Chapter 25 as well as other applicable areas of WV Code, the Code of State Rules, its own internal policies, and as a result of its own audits. To achieve this DOC must create and maintain policies and procedures to ensure all duties mandated are performed.

DOC management is also responsible for establishing and maintaining effective internal control. Internal control is a process designed to provide reasonable assurance pertaining to the reliability of financial records, effectiveness and efficiency of operations including safeguarding assets, and compliance with applicable laws, rules, and regulations. Due to inherent limitations in internal control, errors and fraud may nevertheless occur and not be detected.

The scope over internal controls involved only assessing controls significant to the audit objectives. To conclude on the adequacy of internal controls regarding DOC as a whole was not a specific objective of the audit. Any significant internal control weaknesses discovered were reported in the findings.

This report includes findings regarding significant instances of noncompliance with applicable laws, rules and regulations as related to the objectives. Instances of noncompliance deemed insignificant to warrant inclusion in the report, or instances outside the scope of the audit, but still merited the attention of DOC management, were communicated in a letter to DOC management, if applicable.

### **EXIT CONFERENCE**

DOC was sent a draft report on May 4, 2016. DOC did not elect to hold an exit conference.

### **OVERALL SUFFICIENCY OF EVIDENCE**

All testimonial evidence obtained by the audit team was evaluated for objectivity, credibility, and reliability and was obtained under conditions in which the employee was able to speak freely without intimidation. The employees had direct knowledge of their working area and there was no evidence employees were biased. Additionally, we assessed the sufficiency and appropriateness of computer processed information by using an Internal Control Questionnaire, assessing the reliability and integrity of data, performing analytical reconciliations, and testing the supporting documentation.

The auditors performed and documented an overall assessment of the collective evidence used to support findings and conclusions, including the results of any specific assessments conducted to conclude on the validity and reliability of specific evidence, according to Section 6.69 of the Yellow Book, by documenting internal controls, and performing tests of an appropriate size.

The overall evidence obtained was relevant to the objectives and findings. All evidence supported the findings, giving validity in having a reasonable basis for measuring what was being evaluated. The overall evidence was reliable when tested and can be verified and supported. In establishing the appropriateness of the evidence as a whole, the auditors tested reliability by obtaining supporting documentation, used original documents when available, verified the credibility of testimonial evidence, evaluated analytical review, analytically assessed risk, and applied auditor judgment on the overall evidence.

When assessing the sufficiency and appropriateness of evidence, the auditors evaluated the expected significance of evidence to the audit objectives, findings, and conclusions, available corroborating evidence, and the level of audit risk as described in Section 6.71 of the Yellow Book, by using professional judgment and statistical sampling to determine a sufficient quantity for the testing and to determine the type of evidence needed based on the audit objectives.

The auditors did not identify any limitations or uncertainties in evidence that were significant to the audit findings and conclusions. The evidence obtained in the course of the audit provides a reasonable basis for the findings and conclusions based on the audit objectives.

## **METHODOLOGY**

### ***OBJECTIVE ONE***

We reviewed DOC internal policies and procedures and source documents, and made inquiries with department personnel, as well as 50 states and the Federal Government.

To account for adequate documentation of program results and adequate accounting of the medical respite applications, we designed and performed a test to determine how many medical respite applications submitted during FY 2014 were approved or denied and if these applications were properly documented and maintained by DOC. The test consisted of reviewing all medical respite applications submitted during FY 2014 (three). We then used the information in the application to determine the amount of time it took to process the application from one step to the next and whether or not any of the offenders had been recommended for medical respite by the Commissioner and were still subsequently denied by the Governor.

The inquiry to all the states and the federal government included requesting information regarding the following: whether or not it has a medical parole program, the statutory/administrative provision governing the program, program name, internal policy, eligibility requirements, number of inmates released under the program, number of inmates released who were rearrested, program recidivism rate, estimated annual savings and average annual cost of housing inmates excluding medical costs.

#### ***APPLICABLE LAWS, POLICIES, OR AGREEMENTS***

- DOC Policy 410.12
- Sentencing Reform Act of 1984
- 18 U.S.C. § 3582(c)(1)(A)
- 18 U.S.C. § 4205(g)
- Other States Laws Regarding Medical Parole
- WV Code §5A-8-9
- WV Code Chapter 25
- WV Code Chapter 62

### ***OBJECTIVE TWO***

We contacted all 50 states inquiring about the policies and procedures for their Geriatric Release and Medical Respite programs; made inquiries with department personnel; and researched geriatric release programs in other states and the Federal Compassionate Release Program.

To determine if implementation of a geriatric release program would be beneficial to WV, we designed and performed a test to determine how many offenders currently incarcerated in DOC prisons would be eligible for release under a Geriatric Release Program with eligibility requirements similar to programs in other states and the Federal Government program. We also researched how public safety could be affected by releasing inmates before the completion of their sentence and the recidivism rates in older offenders.

We first acquired a demographical “snapshot” of the DOC population as of June 30, 2015. This spreadsheet included the demographic information for 5,790 inmates that were housed in DOC facilities as of June 30, 2015. Each offender was then stratified into age categories based on their birth date and the age requirements that other states and the federal government considered for their geriatric release programs. These age categories included: 50 and under, 50-54, 55-59, 60-64, 65-69, 70-74, 75-79, and 80 and over.

All offenders contained in the snapshot were divided into three categories based on their convicted crime: violent offenders, sex offenders, and non-violent or sex offenders. We removed offenders with a “diagnostic” sentence, as these offenders are usually only incarcerated for up to six months.

We then calculated the annual costs of housing an inmate excluding medical expenses based on the DOC’s total expenditures for the year (See the methodology for objective 3 for more details on this process). We then assigned the annual cost of housing (excluding medical) to each offender based on the facility they were housed in on the date of the report. We then created a pivot table for each category (all offenders, sexual or violent offenders only, and non-sexual or violent offenders only) showing the number of offenders in each age category and the sum of the estimated costs of housing for those offenders in each age category. This information coupled with the information obtained from the inmate health services provider related to the on-site and off-site costs of providing health care to inmates was used to show the estimated amount paid to incarcerate non-violent/non-sexual offenders in the following categories: 50 +, 55 +, 60 +, and 65+.

***APPLICABLE LAWS, POLICIES, OR AGREEMENTS***

- DOC Policy 410.12
- Sentencing Reform Act of 1984
- 18 U.S.C. § 3582(c)(1)(A)
- 18 U.S.C. § 4205(g)
- Other States Laws Regarding Medical Parole
- WV Code §5A-8-9
- WV Code Chapter 25
- WV Code Chapter 62

***OBJECTIVE THREE***

We reviewed DOC’s process of tracking inmate medical and transport costs, interviewed DOC staff, contacted DOC’s contracted inmate healthcare providers, obtained and reviewed various reports from DOC’s Inmate Management Information System (IMIS) and obtained and reviewed DOC FY 2014 expenditures from the state’s Financial Information Management System (WVFIMS). Because DOC did not track the information, we used the information related to DOC’s FY 2014 expenditures and generalized information obtained from DOC’s contracted inmate healthcare providers to generalize the annual costs of incarceration per inmate.

***APPLICABLE LAWS, POLICIES, OR AGREEMENTS***

- WV Code §5A-8-9

- WV Code Chapter 25
- WV Code Chapter 62
- DOC Policy 306.02

#### ***OBJECTIVE FOUR***

We reviewed the Child Protection Act of 2006, and made inquiries with department personnel. To account for adequate documentation of payments from the Children’s Protection Act Fund, we designed and performed a test to determine if DOC received the appropriate amount from the Children’s Protection Act Fund to pay for the monitoring fees of certain sex offenders.

To establish a population, we obtained a list of all 3M Electronic Monitoring Inc. (electronic monitoring contractor) transactions from the Children’s Protection Act Fund (0450 Account 090). The population consisted of 12 transactions totaling \$14,671.96, all of which were tested. To complete a test, we reviewed the 3M invoices and all payment information for any offenders identified on the 3M invoices.

We then designed a test to determine if the offenders were properly identified as a sex offender. We did so by looking up the offender on the State Police’s Sex Offender Registry on its website (<https://apps.wv.gov/StatePolice/SexOffender>) based on the information pertaining to the offender on the invoice. In the event we were unable to trace the offender to the State Police’s Registry, we contacted DOC to determine why there was a difference. Next we determined the amount of payments that DOC received from the offenders identified as sex offenders and whether or not any of these payments were used to reimburse the Children’s Protection Act Fund.

#### ***APPLICABLE LAWS, POLICIES, OR AGREEMENTS***

- WV Code §15-11
- WV Code §62-11D
- WV Code §5A-8-9

#### ***OBJECTIVE FIVE***

We reviewed applicable internal controls and compliance with the IRS procedures for calculating taxable fringe benefits for personal use of issued state vehicles, WV Code, Legislative Rules, DOC travel policies and procedures, WV State Travel Policies and Procedures, and WV Fleet Management Office Policies and Procedures; made inquiries with various department personnel.

We obtained a list of all Central Office employees commuting in a state vehicle, of which there were five. We then designed a test to determine if the taxable fringe benefit for commuting in a State vehicle for Central Office employees using the applicable IRS valuation method was calculated correctly.

The test consisted of reviewing all supporting documentation for commuting for the five individuals. However, because DOC failed to adequately monitor the use of State vehicles by its employees (See Findings 2 and 3), we were unable to complete the test as designed. We proceeded by reviewing the internal controls and processes over the program and issuing a finding over the weaknesses and non-compliance.

#### ***APPLICABLE LAWS, POLICIES, OR AGREEMENTS***

- Legislative Rule §148-3
- WVFMO Policies and Procedures – Edition 7

- Internal Revenue Service’s (IRS) Publication 15-B,
- WV Code §5A-8-9
- WV Code Chapter 25
- WV Code Chapter 62

### ***OBJECTIVE SIX***

We reviewed applicable internal control and compliance with the WV Code, Expenditure Schedule Instructions, Legislative Rules, IRS Publications, best business practices, and DOC internal policies and procedures, reviewed the source documents, and made inquiries with department personnel.

To account for adequate documentation of program results and adequate accounting of expenditures, we designed and performed a test to determine if travel expenditures were properly documented and maintained by DOC and funds were spent on allowable items. The test consisted of reviewing all supporting travel reimbursement documents from FY 14 for the five individuals of DOC management.

We tested the entire population of reimbursements for each of the aforementioned individuals (Commissioner [50 reimbursements from July 1, 2011 – April 15, 2015 totaling \$9,585.74], the former Deputy Commissioner [61 reimbursements from July 1, 2011 through May 30, 2015 totaling \$7,430.73], the former Assistant Commissioner (current Deputy Commissioner) [27 reimbursements during July 1, 2013 through June 30, 2014 totaling \$4,816.63], one of the Assistant Commissioners [nine reimbursements during July 1, 2013 through June 30, 2014 totaling \$1,334.95], and the former Chief of Staff (current Assistant Commissioner) [six reimbursements during July 1, 2013 through June 30, 2014 totaling \$603.58]). We then recalculated and reviewed the travel expenditures based on the supporting documentation present in accordance with the test designed.

### ***APPLICABLE LAWS, POLICIES, OR AGREEMENTS***

- WV Code §5A-8-9
- WV Code Chapter 25
- WV Code Chapter 62
- WV State Travel Policy
- IRS Publication 463
- DMAPS Division Head Travel Protocol

## APPENDIX B – UNAUTHORIZED TRAVEL RESPONSES



STATE OF WEST VIRGINIA  
DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY  
DIVISION OF CORRECTIONS



EARL RAY TOMBLIN  
GOVERNOR

JIM RUBENSTEIN  
COMMISSIONER

JOSEPH C. THORNTON  
SECRETARY

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Office of the Commissioner  
1409 Greenbrier Street  
Charleston, WV 25311  
(304) 558-2036 Telephone - (304) 558-5934 Fax

May 6, 2016

Denny Rhodes, Director  
West Virginia Legislature  
Legislative Post Audit Division  
Building 1, Room W-329  
1900 Kanawha Boulevard, East  
Charleston, WV 25305

Dear Mr. Rhodes:

I have received your letter of May 4, 2016, wherein you posed the following question:

*“Why did was {sic} the reimbursement request submitted to DOC staff after you had advised Cabinet Secretary Thornton it was being withdrawn?”*

The request sought reimbursement for appropriate travel expenses and was properly processed by the Division in compliance with (and pursuant to) applicable State travel regulations. If you have any additional questions, please do not hesitate to let me know.

Sincerely,

Jim Rubenstein



State of West Virginia  
**OFFICE OF THE SECRETARY**  
**DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY**  
1900 Kanawha Blvd., E.  
Bldg. 1, Suite W-400  
Charleston, West Virginia 25305  
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Facsimile: (304) 558-6221

**EARL RAY TOMBLIN**  
**GOVERNOR**

**JOSEPH C. THORNTON**  
**CABINET SECRETARY**

11 May 2016

Denny Rhodes, Director  
Legislative Post Audit Division  
Building 1, Room W- 329  
Charleston, West Virginia 25305

Dear Director Rhodes,

In response to the questions posed in your correspondence dated 4 May 2016, I am appreciative of the opportunity to respond to your letter. Furthermore, I am appreciative of your office bringing to my attention, the unauthorized expense reimbursement your auditors uncovered. Otherwise, I certainly would have never known that the expense was reimbursed.

As you may recall from our earlier conversations, and as your letter discusses, after questioning the validity of the reimbursement request from Commissioner Rubenstein and when the request was withdrawn from my office, I was left to believe the matter was at an end. I was certainly caught off guard when you advised the request for reimbursement was, without my approval, in turn submitted directly to the state Auditor's Office for reimbursement without my signatory approval.

You inquire whether or not any additional action was taken by my office and if I'd asked for reimbursement. It was my understanding that your office and the Commission on Special Investigations were still in the midst of conducting additional inquiries to determine whether or not this was a pattern, or if any additional matters would be revealed that would require action. I did note that the draft report I received indicated other unauthorized expense reimbursements for other employees at DOC central office, but your report did not include the finding relative to this request for comment. By not including in the audit findings, does this mean your office believes the issue inconsequential to your audit findings?

**Denny Rhodes, Director**

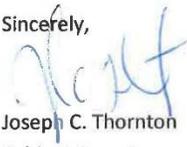
**11 May 2016**

**Page 2**

Accordingly, this office opted to wait on the results of all these investigations to determine the appropriate action to take.

Again, thank you for allowing me the opportunity to respond.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joseph C. Thornton".

Joseph C. Thornton  
Cabinet Secretary

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## APPENDIX C – DOC MANAGEMENT RESPONSE

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**EARL RAY TOMBLIN**  
GOVERNOR

**STATE OF WEST VIRGINIA**  
**DEPARTMENT OF MILITARY AFFAIRS & PUBLIC SAFETY**  
**DIVISION OF CORRECTIONS**

**JIM RUBENSTEIN**  
*Commissioner of Corrections*  
*Deputy Cabinet Secretary of Military Affairs and Public Safety*



**JOSEPH C. THORNTON**  
CABINET SECRETARY

OFFICE OF THE COMMISSIONER  
1409 GREENBRIER STREET  
CHARLESTON, WV 25311  
(304) 558-2036 Telephone - (304) 558-5934 Fax

May 11, 2016

Mr. Denny Rhodes, Director  
Legislative Post Audit Division  
Building 1, Room W-329  
1900 Kanawha Boulevard, East  
Charleston, WV 25305-0610

Dear Mr. Rhodes,

Please accept the attached as the West Virginia Division of Corrections' response to the Draft Audit Report for the Division's Central Office, issued by letter, authored by you, to Secretary Thornton dated May 3, 2016.

Please contact me at your earliest convenience with the time and date for the presentation of said report and response to the Joint Committee on Government Operations and the Joint Committee on Government Organization.

On behalf of the Division, thank you for your consideration of the attached documents. If you have any further questions, please do not hesitate to contact me.

Respectfully,

Michael V. Coleman,  
Deputy Commissioner

Cc: Joseph C. Thornton, Cabinet Secretary, MAPS  
Jim Rubenstein, Commissioner, DOC  
Kristina Taylor, CPA, Senior Auditor, Legislative Post Audit Division  
File

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### OBJECTIVE ONE

Determine if DOC has clear standards/policies on when Medical Respite is warranted.

#### *Conclusion*

DOC Policy Directive 410.12 has set a clear standard/policy on when Medical Respite is warranted; however, the program has not been codified nor has DOC implemented a Legislative Rule to govern the program.

**Agency Response:** DOC Policy Directive 410.12 has been incorporated by reference into W. Va. Code R § 90-01.

### OBJECTIVE TWO

Determine if the implementation of a Geriatric Release Program similar to programs in other states and the Federal Government's Compassionate Release Program could reduce the overall costs of incarcerating inmates in West Virginia.

#### *Sub-Objective:*

a. Determine how many offenders currently incarcerated in DOC prisons would be eligible for release under a Geriatric Release Program with eligibility requirements similar to programs in other states and the Federal Government program.

#### *Conclusion*

The potential for cost savings from implementing a geriatric release program exist; however, WV may not be able to reproduce the cost savings seen in other states operating similar programs due to the high concentration of sexual and violent offenders in the WV prison system. As of June 30, 2015, only 12 inmates would have potentially been considered for release under such a program, as sexual and violent offenders are typically excluded from consideration.

**Agency Response:** The WV DOC strives to cut costs where possible while following its agency mission.

### OBJECTIVE THREE

Is DOC able to gather management data related to inmate medical costs and transport costs to determine if the cost of incarcerating inmates in DOC prisons could be reduced?

#### *Conclusion*

DOC is able to gather management data related to inmate medical costs and transport costs to determine if the cost of incarcerating inmates in DOC prisons could be reduced; however, DOC can improve the data it is tracking to make more effective decisions when determining areas where the cost of incarcerating inmates in DOC prisons could be reduced.

**Agency Response:** WVDOC will strive to utilize and track its data regarding this.

\*DOC requests a copy of the report specified in Footnote 1 of the document.

#### **OBJECTIVE FOUR**

Determine if DOC received the appropriate amount from the “Children’s Protection Act” money to offset the cost of electronically monitoring certain sex offenders as prescribed by WV Code during FY 2014.

##### **Conclusion**

DOC did receive the appropriate amount of funds to offset the cost of electronically monitoring certain sex offenders as prescribed by WV Code during FY 2014.

**Agency Response:** None.

#### **OBJECTIVE FIVE**

Determine if DOC properly reported the taxable fringe benefit for commuting in a State vehicle for Central Office employees using the applicable Internal Revenue Service (IRS) valuation method.

##### **Conclusion**

DOC did not properly report taxable fringe benefits for commuting in a State vehicle for Central Office employees using the applicable IRS valuation method.

##### **Related Findings and Recommendations**

###### **Finding 2: Improper Calculation of Taxable Income**

2-1. The Legislative Auditor recommends DOC review any amounts paid via the agency’s United Bank Travel Account or by direct invoicing for the former Deputy Commissioner and determine if any of the amounts paid should be included as wages as a result of the misapplication of IRS Publication 463. In addition, the Legislative Auditor recommends DOC report back to Legislature the results of the review by September 2016.

**Agency Response:** The WV DOC will commence an audit regarding the former Deputy Commissioner and use of the United Bank Travel Account or direct invoicing for the years of 2013, 2014, and 2015. Several years of invoices and account statements will have to be examined, and a report back date of September 2016 is not reasonable.

2-2. The Legislative Auditor recommends DOC issue the former Deputy Commissioner amended W-2s (Form W-2c) for 2013, 2014 and 2015 with the appropriate amounts reported, and consult the IRS to determine whether or not it should recalculate the taxable fringe benefit for the employees who commuted in a State vehicle using the proper IRS valuation method and whether or not it should file amended W-2s for those employees.

**Agency Response:** The WV DOC will issue, to the extent necessary, amended W-2 reporting forms once the audit is complete, and include any previously not reported income, as guided by the IRS after consultation with that entity.

2-3. The Legislative Auditor recommends DOC require employees who commute in a State vehicle to fill out a Fleet Statement of Commuting Value, and calculate the taxable fringe benefit of commuting using the appropriate valuation method as determined by the IRS.

**Agency Response:** The WV DOC has already taken corrective actions regarding the Fleet Statement of Commuting Value, and will require any employee assigned to a State Vehicle for non-de minimis use to utilize the form when commuting in a State owned vehicle.

## **OBJECTIVE SIX**

Determine whether DOC Central Office upper management's travel expenditures and reimbursements complied with applicable State laws, rules and regulations and is free from fraud, waste and abuse.

### **Conclusion**

DOC Central Office upper management's travel expenditures and reimbursements did not comply with their own DOC Travel Policy (Policy 139.01) and were not following the state travel policy.

### **Related Findings and Recommendations**

#### **Finding 1: Inadequate Monitoring of 237 State Vehicles**

1-1. The Legislative Auditor recommends DOC follow the current Legislative Rule.

**Agency Response:** The WV DOC is currently following the active Legislative Rule

1-2. The Legislative Auditor recommends DOC enforce WV Legislative Rule §148-3. Specifically, utilization of the State of WV Mileage Log, documenting all assignment of vehicles to individuals who have been authorized to commute, restricting takehome vehicles to those individuals who truly need the vehicle to perform their job responsibilities, and utilizing the available data to implement effective fleet management. Furthermore, the Legislative Auditor recommends DOC report back to the Legislative Post Audits Subcommittee no later than the September 2016 interim meeting with an update on DOC's progress over implementing the Auditor's recommendations.

**Agency Response:** The WV DOC will follow the current W.Va. Code R. § 148-03. However, it should be noted that the agency has reviewed all those which were active during the years of this audit and is unable to locate within any version enacted during the time frame of this audit, a clearly delineated direction that a mileage log be maintained. The WVDOC will submit a report updating this agency on its progress of implementing the suggested changes by September 2016.

#### **Finding 2: Improper Calculation of Taxable Income**

2-1. The Legislative Auditor recommends DOC review any amounts paid via the agency's United Bank Travel Account or by direct invoicing for the former Deputy Commissioner and determine if any of the amounts paid should be included as wages as a result of the misapplication of IRS Publication 463. In addition, the Legislative Auditor recommends DOC report back to the Legislative Post Audits subcommittee the results of the review by September 2016.

**Agency Response:** The WV DOC will review any amounts paid via the agency's United Bank Travel Account or direct invoicing for the former Deputy Commissioner and determine if any of the amounts paid should be included as wages or income. Several years of invoices and account statements will have to be examined, and a report back date of September 2016 is not reasonable.

2-2. The Legislative Auditor recommends DOC issue the former Deputy Commissioner amended W-2s (Form W-2c) for 2013, 2014 and 2015 with the appropriate amounts reported, and consult the IRS to determine whether or not it should recalculate the taxable fringe benefit for the employees who commuted in a State vehicle using the proper IRS valuation method and whether or not it should file amended W-2s for those employees.

**Agency Response:** The WV DOC will issue, to the extent necessary, amended W-2 reporting forms once the review is complete, and include any previously not reported income, as guided by the IRS after consultation with that entity. Further, the WV DOC will consult with the IRS regarding the calculation of fringe benefits for employees who commuted in a State Vehicle during the time frame of the audit and, to the extent necessary, issue amended W-2 reporting forms once the review is complete, and include any previously not reported income

2-3. The Legislative Auditor recommends DOC require employees who commute in a State vehicle to fill out a Fleet Statement of Commuting Value, and calculate the taxable fringe benefit of commuting using the appropriate valuation method as determined by the IRS.

**Agency Response:** The WV DOC has been requiring employees who commute in a State vehicle to fill out a Fleet Statement of Commuting Value, and will calculate the taxable fringe benefit of commuting using the appropriate method.