

LEGISLATIVE AUDIT REPORT

# WEST VIRGINIA DIVISION OF CORRECTIONS

## Study of the Division of Corrections Fleet

### FINDINGS

- The Legislative Auditor Requests Justification for the 309 Vehicles in the Division of Corrections Fleet, Its Use of Commuting Vehicles, and Its Method of Taxing Commuters Using State Vehicles.

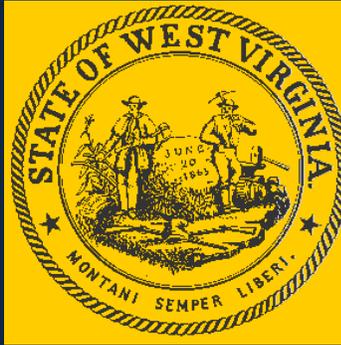


WEST VIRGINIA LEGISLATIVE AUDITOR  
POST AUDIT DIVISION



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**A REPORT TO THE  
WEST VIRGINIA  
LEGISLATURE  
JANUARY 9, 2017**

**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  
The Honorable Timothy Mile

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**LEGISLATIVE AUDITOR'S OFFICE  
STATE OF WEST VIRGINIA  
Aaron Allred, Legislative Auditor**

**POST AUDIT DIVISION  
Denny Rhodes, Director**

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Mike Jones, Audit Manager  
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**DIVISION OF CORRECTIONS  
DOC VEHICLE FLEET**

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Denny Rhodes  
Director

The Honorable William P. Cole III, President  
West Virginia State Senate  
Post Audits Subcommittee, Co-Chair  
Room 229 M, Building 1  
State Capitol Complex  
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 *West Virginia Code, Chapter 4, Article 2*, as amended, the Legislative Auditor conducted a performance audit of the Division of Corrections – Fleet Study for 2016.

The audit was *not* conducted in accordance with *all* Generally Accepted Government Auditing Standards (GAGAS) due to a previous Post Audit report – Special Report on Statewide Fleet which raised doubts regarding the reliability of the data obtained from the Fleet Management Office, and the lack of time for a test of reliability to be performed on the data obtained from Fleet Management for this report. However, we planned and performed the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives by increasing the level of independent review and verification of all data. 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. The Division of Corrections 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* \_\_\_\_\_

## **ISSUE: The Legislative Auditor Requests Justification for the 309 Vehicles in the Division of Corrections Fleet, Its Use of Commuting Vehicles, and Its Method of Taxing Commuters Using State Vehicles.**

### **Introduction**

During the September 2016 Legislative Post Audits Subcommittee meeting, President Cole directed the Legislative Auditor's Office to review why the Division of Corrections (DOC) has 309 vehicles. The DOC is currently in the process of justifying the need for each of its vehicles, and is scheduled to provide that information to the Legislative Auditor by January 9, 2016. At that time, the Legislative Auditor will analyze DOC's response, and conduct an analysis, which will be provided in a future report. While awaiting the response, the Legislative Auditor has identified the following concerns regarding the DOC's fleet:

1. DOC should evaluate the need for 115 vehicles that do not meet the monthly minimum 1,100-mile requirement stated in Legislative Rule Title 148 Series 3. If those vehicles are justified, then the proper exemption should be requested.
2. DOC continues to not properly apply the appropriate taxable fringe benefit for employees commuting in a state vehicle.
3. DOC should evaluate the necessity of 19 employees commuting in a state vehicle.
4. DOC should evaluate whether underutilized vehicles could be reallocated rather than purchasing new vehicles.

As of September 19, 2016, DOC had an **active vehicle fleet of 309 vehicles**. Fifty-three of the vehicles are owned by DOC and the majority of those are specialized or limited use vehicles<sup>1</sup>. The remaining 256 vehicles are leased through the State's Fleet Management Office within the Department of Administration.

**The Division of Corrections should evaluate the need for 115 vehicles that do not meet the monthly minimum 1,100-mile requirement stated in Legislative Rule §148-3-6.2.1. If those vehicles are justified, then the proper exemption should be requested.**

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<sup>1</sup> Generally, these vehicles are used on prison grounds such as dump trucks, box trucks, passenger buses, older model pickup trucks, etc.

Legislative Rule §148-3-6.2.1 states:

*6.2.1. To ensure proper utilization and justify retention in the state fleet, state owned or leased vehicles must be utilized a minimum of 1,100 miles monthly. State spending units must request an exemption for vehicles that are under utilized and the Fleet Management Office shall determine whether the vehicle meets one of the exemptions. At a minimum, the spending units shall retrieve the month ending odometer reading of each vehicle and report it in OASIS at the end of every month.*

During fiscal year 2016, DOC had 115 out of 256 vehicles leased from the State’s Fleet Management Office that did not meet the 1,100 mile monthly requirement. Table 1 displays the number and type of vehicles that did not meet the 1,100-mile monthly requirement.

Vehicle Type	Total*	Leased*	Vehicles not meeting the 1,100 Mile requirement	Percentage of vehicles
Sport Utility Vehicle (SUV)	99	96	35	36%
Van	85	77	40	52%
Car	64	64	24	38%
Light Duty (LD) Truck	37	19	16	84%
Heavy Duty (HD) Truck	13	0	0	0%
Medium Duty (MD) Truck	6	0	0	0%
Bus	4	0	0	0%
Box Van	1	0	0	0%
<b>Total</b>	<b>309</b>	<b>256</b>	<b>115</b>	<b>45%</b>

*\*Unaudited data from the Office of Fleet Management and Division of Corrections*

As shown in Table 2, these vehicles cost DOC approximately \$523,000 annually in lease payments, operating costs and administration fees.

Vehicle Type And Number	Yearly Lease Payments*	Yearly Operating Costs*	Yearly Administration Fees*	Yearly Total*
SUV - 35	\$157,085	\$57,615	\$1,656	\$216,356
Van - 40	\$102,163	\$45,131	\$3,240	\$150,534
Car - 24	\$73,594	\$27,000	\$1,584	\$102,178
Light Duty Truck - 16	\$33,240	\$18,889	\$1,368	\$53,497
<b>Total - 115</b>	<b>\$366,082</b>	<b>\$148,635</b>	<b>\$7,848</b>	<b>\$522,565</b>

*\*Unaudited cost estimates provided by Fleet Management*

The Legislative Rule requires state agencies to request an exemption from the Fleet Management Office for every vehicle that is underutilized each fiscal year; however, DOC has not submitted any exemption requests to the Fleet Management Office. **The Legislative Rule consigns the Fleet Management Office the ability to reassign state vehicles for which agencies cannot justify continued assignment of the vehicle due to underutilization.** The Legislative Auditor recommends the DOC submit the appropriate exemption request for vehicles it finds necessary to maintain.

**The Division of Corrections continues to not properly apply the appropriate taxable fringe benefit for all employees commuting in a state vehicle.**

DOC continues to not properly apply the Internal Revenue Service (IRS) rules on taxable fringe benefits described in IRS Publication 15-B. Incorrect application of taxable fringe benefit rules can result in improper reporting of income and taxes. Currently, 41 DOC employees are assigned a state vehicle, and are commuting from their home to their worksite in that state vehicle. The 41 employees are:

- Commissioner
- Deputy Commissioner
- Assistant Commissioner of Operations
- Director of Safety
- Director of Security
- Director of Construction and Engineering
- Director of Investigation Division
- Director of Parole Services
- Northern District Supervisor of Parole Services
- Southern District Supervisor of Parole Services
- Five Enhanced Parole Officers
- Warden at McDowell County Correctional Center
- Special Operations Threat Assessment Officer
- Chief of Special Operations
- Absconder/Escapee Coordinator
- Twenty-two K-9 Officers

In September 2016, the Commissioner of the DOC informed the 41 employees they were required to take state vehicles home because of the nature of their official duties and responsibilities required them to be capable of responding to emergency situations. **However, these employees have historically never responded to emergencies.** The Commissioner appears to conclude that by calling vehicles, “emergency vehicles”, and requiring the employees to take unmarked vehicles home, the employees would be exempt from claiming income for the fringe benefit. Based upon this office’s review of the applicable IRS statutes and regulations, the Legislative Auditor is concerned the vehicles, and DOC employees in question, do not meet the requirements established to receive an exemption from the IRS for use of a qualified non-personal use vehicle.

According to the IRS, commuting in a state vehicle is generally considered a taxable fringe benefit, even if the vehicle is taken home for the convenience of the employer. The IRS allows commuting to be classified as a working condition fringe benefit, and therefore can be excluded from the employee’s income if the employee is assigned a qualified non-personal use vehicle. The IRS defines a non-personal use vehicle as a vehicle that is not likely to be used more than minimally for personal use because of its design. The IRS defines nine categories of vehicles that are qualified non-personal use vehicles. [26 C.F.R. 1.274-5(k)(2)]. Of the nine types of qualified non-personal use vehicles established by the IRS, it appears that the DOC’s vehicles could only fall under the following:

1. Clearly marked, through painted insignia or words, police, fire, and public safety officer vehicles.
2. Unmarked vehicles used by law enforcement officers if the use is officially authorized.

A police, fire, or public safety officer vehicle is a vehicle, owned or leased by a governmental unit, or any agency or instrumentality thereof, **that is required to be used for commuting by a police officer, fire fighter, or public safety officer** (as defined in 26 U.S.C. §402(1)(4)(C)) who, when not on a regular shift, is on call at all times, provided that any personal use (other than commuting) of the vehicle outside the limit of the police officer's arrest powers or the fire fighter's or public safety officer's obligation to respond to an emergency is prohibited by such governmental unit. A police, fire, or public safety officer vehicle is clearly marked if, through painted insignia or words, it is readily apparent that the vehicle is a police, fire, or public safety officer vehicle. A marking on a license plate is not a clear marking.

With regard to the “unmarked vehicles” exemption:

*The substantiation requirements of section 274(d) and this section do not apply to officially authorized uses of an unmarked vehicle by a "law enforcement officer". To qualify for this exception, any personal use must be authorized by the Federal, State, county, or local governmental agency or department that owns or leases the vehicle and employs the officer, and must be incident to law-enforcement functions, such as being able to report directly from home to a stakeout or surveillance site, or to an emergency situation.*

According to the regulations, the only positions that would qualify for the exemptions are: a police officer, firefighter, law enforcement officer, chaplain, or member of a rescue squad or ambulance crew. Based upon this guidance, it would appear that the DOC Commissioner has determined that DOC employees are either police officers or law enforcement officers. However, in order to be considered a law enforcement officer, **all** of the following requirements must be met:

- 1. The employee must be a full-time employee of a governmental unit that is responsible for preventing or investigating crimes involving injury to persons or property (including catching or detaining persons for these crimes);*
- 2. The officer must be authorized by law to carry firearms, execute search warrants and make arrests; **and***
- 3. The officer must regularly carry a firearm, except when it is not possible to do so because of the requirements of undercover work.*

According to the DOC Chief of Staff, **no DOC employees are authorized to execute search warrants.** In addition, limited staff is authorized to carry firearms (and actually carry while on duty), investigate crimes or make arrests, all of which are a requirement to meet the IRS definition of a “law enforcement officer.” As a result, the Legislative Auditor is unsure how any DOC employee could qualify as a “law enforcement officer” per IRS definitions. **Thus, the Legislative Auditor has concerns that the employees are not being taxed appropriately.** The DOC Commissioner is to respond to these concerns by January 13, 2017.

## **The Division of Corrections should evaluate the necessity for 19 employees commuting in a state vehicle.**

Of the 41 vehicles assigned to employees, DOC should evaluate whether 19 of those should be used for commuting from the employee's home. DOC can save up to \$173,000 annually in monthly lease payments and estimated operating costs by reducing the number of take-home vehicles to only the 22 K-9 Officers that require a take-home vehicle to perform their job duties.

DOC stated that the Commissioner was assigned a take-home state vehicle due to the nature of the official duties and responsibilities of the Commissioner under state law. The other 40 employees were assigned take-home state vehicles because of the duties and responsibilities the Commissioner has assigned to each employee. These duties include: the enforcement of state law, maintenance and restoration of order, management of emergency response operations, investigation of crimes and the apprehension of escapees and parole absconders for the DOC that require them to be capable of immediately responding to an emergency situation anywhere in the State.

The estimated \$173,000 annual savings that could be realized through the elimination of up to 19 commuting vehicles currently assigned to DOC employees is comprised of the annual estimated expenses from Fleet Management: estimated maintenance costs, estimated fuel costs, monthly debt payments, and applicable administration fees. Reimbursement for travel in lieu of an assigned state vehicle would negate some savings. The estimated costs for the 19 employees assigned a vehicle for commuting are shown in Table 3.

Yearly Cost Estimate Per Vehicle Assigned for Take-Home Use		
Title	Year and Model	Annual Expense*
Deputy Commissioner	2015 TAURUS	\$9,375
Commissioner	2015 TAURUS	\$10,095
Director of Safety	2016 EXPLORER	\$10,570
Special Operations Threat Assessment	2016 EXPLORER	\$8,915
Director of Security	2013 EXPLORER	\$10,009
Chief of Special Operations	2011 EXPEDITION	\$2,956
Enhanced Parole Officer	2015 TAURUS	\$9,904
Absconder/Escapee Coordinator	2012 IMPALA	\$1,685
Enhanced Parole Officer	2015 EXPLORER	\$10,636
Northern District Supervisor Parole Services	2015 EXPLORER	\$11,011
Director of Parole Services	2015 EXPLORER	\$9,810
Enhanced Parole Officer	2014 EXPLORER	\$12,375
Enhanced Parole Officer	2014 EXPLORER	\$18,237
Enhanced Parole Officer	2014 EXPLORER	\$9,759
Southern District Supervisor Parole Services	2016 EXPLORER	\$9,676
Director of Construction and Engineering	2012 IMPALA	\$3,104
Warden at McDowell Co. Corrections	2012 FUSION	\$5,740
Assistant Commissioner - Operations	2016 EXPLORER	\$10,073
Director of Corrections Investigation	2013 EXPLORER	\$9,021
	<b>Total</b>	<b>\$172,951</b>

*\*Unaudited estimated amounts from Fleet Management Office*

According to data provided by DOC for FY 2016, **no DOC employees received an emergency call-out to respond to any situation to enforce state law, maintain or restore order, manage an emergency response, investigate a crime, or apprehend escapees or parole absconders other than the 22 K-9 Officers.** Since K-9 Officers must use their vehicles to transport their animals and have a documented history of being called out for emergency responses, it appears that the K-9 Officers are the only DOC employees that require a state take-home vehicle to complete their assigned job duties.

All other employees currently assigned a state vehicle for take-home use can perform the essential functions of their job duties by obtaining one of the motor pool vehicles DOC has in its possession on an as needed basis or receive reimbursement for use of their personal vehicle. The Legislative Auditor recommends that the DOC evaluate the necessity for these employees being assigned a vehicle for commuting and report back to the Post Audits Subcommittee.

**Before the purchase of new vehicles is requested from the Cabinet Secretary of the Department of Military Affairs and Public Safety, the Division should determine whether underutilized vehicles could instead be reallocated.**

In October and November of 2016, DOC purchased 7 SUVs and 10 vans for motor pool assignment at a total cost of approximately \$456,000 (Table 4). These 17 vehicles will incur additional annual lease payments from DOC totaling approximately \$119,000.

Fiscal Year 2017 Vehicle Purchases					
Year	Make	Model	Acquisition Date*	Purchase Price*	Annual Lease Payment*
2017	Jeep	Grand Cherokee	11/4/2016	\$37,205	\$9,445
2017	Ford	Explorer	11/4/2016	\$27,574	\$7,038
2017	Ford	Explorer	11/4/2016	\$27,574	\$7,038
2017	Ford	Explorer	11/4/2016	\$27,574	\$7,038
2017	Ford	Explorer	11/4/2016	\$27,574	\$7,038
2017	Ford	Explorer	11/4/2016	\$27,574	\$7,038
2017	Ford	Explorer	11/4/2016	\$27,574	\$7,038
2016	Dodge	Grand Caravan	11/4/2016	\$21,767	\$5,586
2016	Dodge	Grand Caravan	11/4/2016	\$21,767	\$5,586
2017	Chevrolet	Express	10/25/2016	\$27,533	\$7,308
2017	Chevrolet	Express	10/25/2016	\$27,533	\$7,308
2017	Chevrolet	Express	10/25/2016	\$27,523	\$7,316
2017	Chevrolet	Traverse	10/25/2016	\$25,849	\$6,869
2017	Chevrolet	Traverse	10/25/2016	\$25,849	\$6,869
2017	Chevrolet	Traverse	10/25/2016	\$25,849	\$6,869
2017	Chevrolet	Express	10/25/2016	\$24,957	\$6,637
2017	Chevrolet	Express	10/25/2016	\$24,957	\$6,637
<b>Total</b>				\$456,233	\$118,658
<i>*Unaudited data provided by Division of Corrections</i>					

There may not be a demonstrable need to purchase 17 additional vehicles when up to 107 vehicles in the fleet may not be fully utilized. Thus, the Legislative Auditor recommends that DOC evaluate its vehicle allocation before procuring additional vehicles.

### **Recommendations**

1. *The Legislative Auditor recommends DOC and Fleet Management review DOC vehicle fleet, determine the most efficient use of state resources, and determine whether 107 DOC vehicles defined as underutilized should be reassigned to other state agencies. DOC should report back to the Post Audits Subcommittee at the first interim meeting following the 2017 Legislative Session.*

2. *The Legislative Auditor recommends DOC appropriately seek exemptions from Fleet Management for any vehicles that do not meet the minimum mileage requirements of Legislative Rule Title 148 Series 3 but are determined to be needed. DOC should report back to the Post Audits Subcommittee at the first interim meeting following the 2017 Legislative Session.*
  
3. *The Legislative Auditor recommends DOC evaluate its vehicle allocation before procuring additional vehicles.*
  
4. *The Legislative Auditor recommends DOC evaluate the need for 19 vehicles assigned to employees for take-home use. The DOC should report back to the Post Audits Subcommittee at the first interim meeting following the 2017 Legislative Session.*
  
5. *The Legislative Auditor recommends DOC require all 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 IRS valuation method. Amended tax returns should be filed for any employees that had their taxable fringe benefit incorrectly calculated. DOC should report back to the Post Audits Subcommittee at the first interim meeting following the 2017 Legislative Session.*



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



EARL RAY TOMBLIN  
GOVERNOR

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January 6, 2017

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Director Rhodes:

Please see below for the DOC's response to the "DOC Fleet Study" report included in a letter to DMAPS Secretary Joe Thornton on January 3, 2017 from the Post Audit Division:

The DOC is looking into the information and recommendations included in the Post Audit Division's Draft "DOC Fleet Study" report. The DOC will provide formal written response at the first interim meeting following the 2017 Legislative Session as the draft report requests.

Sincerely,

Brad Douglas  
Chief of Staff  
West Virginia Division of Corrections



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3 January 2017

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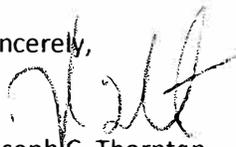
Re: Draft Copy of Post Audit Division Report on DOC Fleet

Dear Director Rhodes:

Thank you for providing a copy of the draft Post Audit Report on the Division of Corrections (DOC) Fleet. I appreciate the work you and your staff have put into this review. By this letter I am asking DOC to have a representative attend the meeting to respond to questions.

It appears Post Audits is currently scheduled for 9 January 2017 at 11 a.m. in the Senate Finance Committee room. Please advise of any changes in that schedule.

If I may be of further assistance, please do not hesitate to contact me.

Sincerely,  
  
Joseph C. Thornton  
Cabinet Secretary

Cc: Jim Rubenstein, DOC Commissioner





