

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF JUSTICE**

**FINANCIAL AND COMPLIANCE
AUDIT REPORT
FOR THE NINE MONTHS ENDED
MARCH 31, 2005**

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF JUSTICE**

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**STATE OF NEW HAMPSHIRE
DEPARTMENT OF JUSTICE**

Reporting Entity And Scope

The reporting entity of this audit and audit report is the New Hampshire Department of Justice for the nine months ended March 31, 2005.

The following report describes the financial activity of the Department of Justice, as it existed during the period under audit. Unless otherwise indicated, reference to the Department or DOJ refers to the Department of Justice.

Organization

The Department of Justice is under the executive direction of the Attorney General, a constitutional officer appointed by the Governor, with the consent of the Council, to a four-year term. The Attorney General nominates a Deputy Attorney General for appointment by the Governor, with the consent of the Council, also to a four-year term. Assistant Attorneys General are appointed by the Attorney General to five-year terms, subject to the approval of the Governor and Council.

The Department of Justice was established July 1, 1985 by RSA 21-M. In accordance with RSA 21-M, the Department is responsible for the following general functions:

- Advising and representing the State and its executive branch agencies in all civil legal matters.
- Supervising and conducting criminal investigations and prosecutions.
- Enforcing the various consumer protection and antitrust laws of the State.
- Assisting and advising those agencies charged with protecting the environment and enforcing the environmental laws of the State.

In addition, RSA 611-A establishes the Office of Chief Medical Examiner and RSA 7:8-b establishes the Charitable Trust Unit within the Department.

At March 31, 2005, the Department employed 118 full-time and four part-time employees.

Responsibilities

The New Hampshire Department of Justice administers a variety of programs which provide service to all areas of New Hampshire's criminal justice system. These programs are supported by federal, state, and dedicated funds.

The Criminal Justice Bureau (CJB) investigates and prosecutes major criminal cases throughout New Hampshire including homicides, drug trafficking, economic and public integrity crimes, and Medicaid Fraud. It also handles the appeals of all criminal cases tried in New Hampshire courts. The CJB works cooperatively with police agencies statewide. It also works with administrative agencies such as the Department of Revenue and the Department of Health and

Human Services to investigate and prosecute crimes unique to the areas within those agencies' purview.

The Consumer Protection and Antitrust Bureau (Bureau) is responsible for ensuring that the consumer protection and antitrust laws of New Hampshire are enforced and that trades and businesses operating within the State of New Hampshire are conforming to governing statutes. The Bureau is responsible not only for the investigation, regulation, and enforcement of the Consumer Protection Act and the antitrust laws, but also for more than thirty other statutes. The other statutes include such laws as Fair Debt Collection, Automated Telemarketing Calls, and the Condominium and Land Sales Full Disclosure Acts. In addition, the Administrative Prosecutions Unit (APU) is attached to the Bureau.

The Environmental Protection Bureau (Bureau) performs two central functions: enforcing environmental laws through civil and criminal court actions and providing legal counsel and representation to the agencies responsible for the protection, control, and preservation of the State's environment. Increasingly, the Bureau has taken a lead role in multi-state litigation initiatives aimed at protecting the State's air and water from threats that largely originate outside New Hampshire. Most notably, the Bureau filed the first and only state-initiated lawsuit against the manufacturers of MTBE, a gasoline additive that has contaminated surface and ground waters throughout the State, including public and private water supplies. Finally, the Bureau is involved in transactional matters, such as Brownfields redevelopment and bankruptcy proceedings, where its focus is typically to harmonize environmental cleanup and compliance with economic development of old and present industrial sites.

The mission of the Charitable Trusts Unit (the Unit) is to protect the integrity of the charitable sector in the State of New Hampshire through effective registration, education, and enforcement. During fiscal years 2004 and 2005, the Unit registered the highest number of charities in its history and the value of the charitable assets in New Hampshire was estimated to exceed \$12.2 billion dollars. The charitable sector in New Hampshire remains strong, diverse, and responsive to the growing demands placed upon the sector.

The Civil Law Bureau (Civil) acts as legal counsel for 114 executive branch agencies, boards, commissions, and councils. It provides legal advice and representation to 38 State agencies, many of which have multiple divisions with varied duties and functions. In addition to the State agencies, Civil also provides legal advice and representation to 53 licensing/regulatory boards and 23 councils/commissions.

The Transportation Law Bureau (Bureau) acts as legal counsel for the New Hampshire Department of Transportation (NHDOT). The Bureau represents the NHDOT in eminent domain, real estate, contract, construction, administrative, personnel, and personal injury cases related to the State's transportation systems and public works projects. The Bureau provides the NHDOT with general legal advice on a broad range of transactions and civil proceedings. Its role encompasses a wide range of trial and appellate advocacy in State and federal courts, as well as administrative law before a variety of boards. The Bureau performed legal roles in major projects, including the Conway Bypass, Keene Bypass, Manchester Airport Access Road, the Granite Street Extension, the implementation of E-ZPass, and the I-93 Expansion Project, as well as a multitude of smaller projects throughout the State.

The primary mission of the Office of the Chief Medical Examiner (OCME) is the investigation of sudden, unexpected, or violent death. By statute (RSA 611), there are twenty-five categories of death reportable to the medical examiner for inquiry. This inquiry includes an investigation into the circumstances of death and examination of the body, including performance of an autopsy. Goals and objectives of this process include determination of cause and manner of death as well as proffering, when scientifically defensible, a hypothesis regarding specific aspects of the fatal episode. While aiding law enforcement in the investigation of violent death, approximately 40% of all medical examiner's cases are the result of natural causes; thus the OCME serves a vital public health function in monitoring the overall health of citizens of the State. The OCME also serves as a consultant to various entities regarding wound pattern recognition and mechanisms of injury in non-fatally injured persons.

Funding

The financial activity of the Department of Justice is accounted for in the General, Capital Projects, and Education Trust Funds of the State of New Hampshire. A summary of the Department's revenues and expenditures for the nine months ended March 31, 2005 is shown in the following schedule.

Summary Of Revenues And Expenditures For The Nine Months Ended March 31, 2005

	General Fund	Capital Projects Fund	Education Trust Fund	Total Governmental Funds
Total Revenues	\$ 21,498,240	\$ -0-	\$ 464,629	\$ 21,962,869
Total Expenditures	<u>\$ 26,507,083</u>	<u>\$ 27,887</u>	<u>\$ -0-</u>	<u>\$ 26,534,970</u>
Excess (Deficiency) Of Revenues Over (Under) Expenditures	<u>\$ (5,008,843)</u>	<u>\$ (27,887)</u>	<u>\$ 464,629</u>	<u>\$ (4,572,101)</u>

Prior Audit

The most recent prior financial and compliance audit of the Department of Justice was for the year ended June 30, 1995 and the six months ended December 31, 1995. The appendix to this report on page 65 contains a summary of the current status of the observations contained in that report. Copies of the prior audit report can be obtained from the Office of Legislative Budget Assistant, Audit Division, 107 North Main Street, State House Room 102, Concord, NH 03301-4906.

Audit Objectives And Scope

The primary objective of our audit is to express an opinion on the fairness of the presentation of the financial statements of the Department of Justice for the nine months ended March 31, 2005. As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we considered the effectiveness of the internal controls in place at the

Department of Justice and tested the Department's compliance with certain provisions of applicable State laws, rules, and contracts. Major accounts or areas subject to our examination included, but were not limited to, the following:

- Revenues,
- Expenditures,
- State and federal compliance, and
- Equipment.

Our reports on internal control over financial reporting and on compliance and other matters and on management issues, the related observations and recommendations, our independent auditor's report, and the financial statements of the Department of Justice are contained in the report that follows.

Auditor's Report On Internal Control Over Financial Reporting And On Compliance And Other Matters

To The Fiscal Committee Of The General Court:

We have audited the accompanying financial statements of the governmental activities and each fund of the New Hampshire Department of Justice for the nine months ended March 31, 2005, as listed in the table of contents, and have issued our report thereon dated June 28, 2006, which was qualified with respect to the lack of presentation of the financial position of the Department of Justice in the government-wide and fund financial statements. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

Internal Control Over Financial Reporting

In planning and performing our audit, we considered the Department of Justice's internal control over financial reporting in order to determine our auditing procedures for the purpose of expressing our opinions on the financial statements and not to provide an opinion on the internal control over financial reporting. However, we noted certain matters involving the internal control over financial reporting and its operation that we consider to be reportable conditions. Reportable conditions involve matters coming to our attention relating to significant deficiencies in the design or operation of the internal control over financial reporting that, in our judgment, could adversely affect the Department of Justice's ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements. Reportable conditions are described in Observations No. 1 through No. 22 of this report.

A material weakness is a reportable condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements caused by error or fraud in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. Our consideration of the internal control over financial reporting would not necessarily disclose all matters in the internal control that might be reportable conditions and, accordingly, would not necessarily disclose all reportable conditions that are also considered to be material weaknesses. However, we believe that none of the reportable conditions described above is a material weakness.

Compliance And Other Matters

As part of obtaining reasonable assurance about whether the Department of Justice's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, rules, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*. However, we noted certain matters which are described in Observations No. 23 through No. 31 of this report.

We noted a certain other management issue, which is described in Observation No. 32, which we reported to the management of the Department in a separate letter dated June 28, 2006.

This auditor's report on internal control over financial reporting and on compliance and other matters is intended solely for the information and use of the management of the Department of Justice and the Fiscal Committee of the General Court and is not intended to be and should not be used by anyone other than these specified parties.

Office Of Legislative Budget Assistant
Office Of Legislative Budget Assistant

June 28, 2006

Internal Control Comments
Reportable Conditions

FINANCIAL ACCOUNTING AND REPORTING

Observation No. 1: Medicaid Fraud Control Unit Revenue Should Be Recognized Timely

Observation:

Medicaid Fraud Control Unit (MFCU) revenues are not consistently recorded in the MFCU revenue accounts in the proper accounting period. The Department, on occasion, intentionally defers the timely recognition of MFCU revenues by temporarily depositing the revenues into the Department's non-lapsing Consumer Protection Escrow Account, reportedly, to prevent the revenue from lapsing to the General Fund and to carry the revenue forward to satisfy the budgeted revenue estimates of subsequent fiscal years.

Managing the reporting of income in this manner is a violation of financial accounting and reporting standards.

The MFCU classifies Medicaid recoveries as either: 1) Medicaid restitution, deposited in N.H. Department of Health and Human Services revenue accounts; 2) Medicaid penalties, deposited to the Department's Judgment and Recoveries Account, which lapses to the General Fund at year end; or 3) investigative costs, recorded as program income to a lapsing MFCU revenue account. Any given Medicaid recovery could include one or more of the three revenue categories.

Periodically, and at year end, the MFCU analyzes its balances in the Consumer Protection Escrow Account and makes a determination as to: 1) how much to record as period revenue in its revenue accounts and 2) how much to defer current revenue recognition on by retaining the balances in the nonlapsing Escrow Account. Amounts remaining in the Escrow Account are carried forward to satisfy the budgeted revenue estimate of the subsequent fiscal year(s).

Recommendation:

The Department should not manage the recognition of revenue in order to meet budgeted revenue estimates. Revenue should be recorded in the financial statements as earned. MFCU recoveries should be recorded in the appropriate State accounting system (NHIFS) revenue accounts as the recoveries are received.

Auditee Response:

Concur. The Department will recognize and record penalty awards in the appropriate revenue accounts as earned, effective June 30, 2006.

While we concur with the audit's recommendations concerning penalty revenue, the Department seeks to document the fact that Medicaid recoveries that are restitution have been appropriately deposited directly into the NH Department of Health and Human Services revenue accounts and that Investigative costs are federally restricted funds that remain in escrow until approval to use the funds for a specific purpose is granted by the federal grant source. The current procedure of

placing these Investigative funds into the Consumer Protection Escrow Account will remain in place until a holding account is established within org 2601/Attorney General for holding funds (refer to Observation No. 2).

The Department further seeks to document that the penalty revenue, which is used to satisfy the bureau's requirement for agency income is the only source of funds available to meet the budgeted revenue requirement. If the bureau had no agency income requirement, all of these funds would go to Judgments and Recoveries, an unrestricted revenue source. The Department may seek legislative relief from this budgeted revenue requirement, or seek to establish a non-lapsing fund to support the annual revenue requirement, given the unpredictable nature of the funds.

Observation No. 2: Use Of The Consumer Protection Escrow Account Should Be Reviewed

Observation:

The Department uses its Consumer Protection Escrow Account for purposes not originally intended for the account. In addition to using the account for revenues and expenditures related to the Department's enforcement of consumer protection laws, the Department also uses the account as a depository and holding account for certain revenues not related to the consumer protection activities of the Department, pending proper identification and categorization of the revenues. In addition, the Department reportedly deposits revenue that should not lapse at fiscal year end into the Consumer Protection Escrow account, simply because the Department does not have another, more appropriate, account in which to deposit these funds. Confusion, inefficiencies, and financial reporting and budgeting problems result from commingling these unrelated revenues in the Consumer Protection Escrow Account.

Examples of funds that were temporarily deposited into the Consumer Protection Escrow Account include:

- Voluntary forfeiture from a drug law violator, \$229,295;
- Medicaid Fraud Control Unit settlements, \$300,000;
- Environmental Protection settlement, \$216,711;
- Charitable Trust settlement, \$160,372; and
- Autopsy related revenues, including reimbursement from counties and other revenues, the nature of which is unclear, totaling \$10,585.

Using escrow and other accounts for other than their intended purposes poses significant risks. Confusion can develop concerning the origin and purpose of amounts recorded in the accounts and intentional mispostings to accounts can also promote the risk that employees may incorrectly believe that management condones the avoidance of accounting controls for expediency or other reasons.

Recommendation:

The Department should review its current use of the Consumer Protection Escrow Account to ensure that the account is operating as intended. The account should not be used to deposit money unassociated with the account's purpose.

If the Department determines it needs a general-use holding account, the Department should request that its account structure be expanded to include such an account.

Auditee Response:

Concur. The Department will no longer use the Consumer Protection account for other bureaus court ordered settlements. We will work with the Department of Administrative Services and Treasury to establish an escrow account within the Attorney General's appropriation (010-020-2601) beginning with the new fiscal year (July 1, 2006) to deposit the funds that are not associated with Consumer Protection. Detailed records will continue to be maintained on all receipts deposited in the escrow account. We will also establish a holding account or a repository for those funds that are difficult to identify. Once the funds have been identified, action will be taken to ensure that they are transferred to the proper place. Detailed records will be maintained on all receipts deposited in the escrow account. Written procedures will be developed for the staff for both the escrow account and the holding account at the same time.

Observation No. 3: Staff Training For Recognizing And Recording Accounts Payable Should Be Provided

Observation:

The Department did not code \$290,000 of expenditures related to fiscal year 2004 transactions as payments on prior year accounts payable when the expenditures were processed during fiscal year 2005. The apparent cause of the error was lack of employee understanding of State accounting policies and procedures.

The effect of not properly recording these expenditures as payments on June 30, 2004 accounts payable was to understate the fiscal year 2004 expenditures of the Department included in the State's Comprehensive Annual Financial Report (CAFR). Department expenditures included in the State's 2005 CAFR were also overstated by the same amount.

Apparently, business office employees were not clear on the State's criteria for determining when a Department expenditure should be coded as an accounts payable. This confusion resulted in \$290,000 of expenditures that met the State's criteria for accruing accounts payable not being properly coded. Approximately \$150,000 of the uncoded items related to the Department's federal grant payments to subrecipients. These errors resulted from employee confusion as to whether the period end date or the grant end date was the appropriate criterion. Approximately \$140,000 related to an invoice for services provided in June 2004 that was mistakenly not coded as a prior period accounts payable when the invoice was paid during fiscal year 2005.

Recommendation:

The Department should provide additional training and support to its business office personnel responsible for coding accounts payable at fiscal year end. Employees should be provided with sufficient training and resources to accurately record accounting transactions.

The Department should ensure that its accounting policies and procedures include controls which encourage employees to obtain supervisory assistance to process unusual transactions and other transactions the employees are not sufficiently trained to process.

Auditee Response:

Concur. The error noted was the result of an employee misunderstanding the requirements for year-end accruals. Additional training has since been provided to personnel responsible for coding accounts payable, and greater review of the coding by the supervisor is now in place.

The additional accounts payable concerns expressed in this area the Department also concurs with. We have taken steps to rectify them for the future and will incorporate these in our Policies and Procedures Manual.

Observation No. 4: Revenue Should Not Be Recorded As Negative Expenditures

Observation:

The Department records the receipt of certain federal funds as reductions of expenditures and not as revenues.

During the nine months ended March 31, 2005, the Department received \$24,000 of federal funding to pay overtime costs for certain officers working with the Drug Task Force. The Department recorded the receipt of these funds as negative expenditure amounts and not as federal revenues. The effect of posting these receipts as negative expenditures is to increase the amount of available appropriations to expend by the amount of the negative expenditure as well as to understate the Department's cost of operations and the revenues from those operations.

Negative expenditures are generally used to post reimbursement of minor expenditures or refunds on prior expenditures. These are generally non-routine transactions, unforeseen at the time of the budget. The recording of these amounts as negative expenditures is intended to make the original appropriations whole so the organization's budgeted plans can be achieved.

A similar comment was issued in the prior audit of the Department.

Recommendation:

Negative expenditure transactions should not be used to increase spending authority.

The Department should record the receipts derived from its normal operations, including federal programs, as revenues and not negative expenditures.

Auditee Response:

Concur. The Department is in full agreement and will be accepting Streetsweeper Grant funds through the normal granting process in the future.

CHIEF MEDICAL EXAMINER'S OFFICE

Observation No. 5: Controls Over The Collection Of Statutory Fees Should Be Improved

Observation:

Statutorily established fees, including fees for the Chief Medical Examiner's (CME) or Deputy Medical Examiner's certification of a dead body prior to cremation and fees related to death scene investigations, are not collected and recorded as State revenue but instead are collected and kept by Assistant Deputy Medical Examiners (ADMEs) appointed by the CME. These fees are kept by the ADMEs in lieu of payment from the State for their activities.

The Forensic Investigator, a full-time employee of the CME Office, on occasion, also performs the duty of an ADME. During the nine months ended March 31, 2005, it was the CME's policy to waive fees for certified viewings and scene investigations performed by the Forensic Investigator during normal work hours. If the Forensic Investigator performed the ADME responsibilities outside of normal State business hours, the Forensic Investigator was allowed to accept and keep the fees for the services provided.

According to RSA 325-A:3, "...the body [deceased] shall not be received or cremated by any person or firm authorized to cremate the bodies of the dead until such person or firm has received...a certificate from a medical examiner or deputy medical examiner that he has viewed the body and made personal inquiry into the cause and manner of death, and is of the opinion that no further examination or judicial inquiry concerning the same is necessary. For said certificate, the medical examiner shall receive a fee of \$35, payable by the person requesting the same." The viewing and certification of a dead body prior to cremation is generally performed by an ADME who receives and keeps the \$35 as payment for the service.

Other fees, including \$125 scene investigations, telephone consultation fees, travel, and other expenses not established in statute or rule during the nine months ended March 31, 2005, were also accepted and kept by the ADMEs performing the services under the appointing authority of the CME.

Allowing payments to be made directly to State employees or others performing State employee functions creates a significant risk of errors, frauds, or other matters affecting the controls over the processes concerned. Allowing a CME employee to accept and keep direct payments for State-mandated services, whether provided during or outside of normal business hours, significantly increases the risk of fraud and abuse occurring in the activities of the CME. Also, allowing CME employees to be seen as wearing two hats confuses the public's perception of when an employee is performing an official CME function and when the employee is acting as an ADME.

During the nine months ended March 31, 2005, the CME kept no statistics or readily available information on the activity of or the fees collected by the ADMEs or of the CME employees performing these functions after normal business hours.

Recommendation:

The Department must improve controls over the collection of fees related to CME operations.

- Fees should not be paid directly to CME employees and appointees. Fees should be recorded as State revenues and State expenditures should be recorded for the cost of services provided by CME employees and appointees.
- CME employees that perform ADME functions should do so as CME employees. All fees related to the services provided, whether performed during business hours or outside of normal business hours, should be deposited as CME revenues. CME employees that perform ADME functions after hours should be compensated by compensatory time or overtime pay as appropriate.
- All fees should be authorized by statute or rule.
- Statistics and other information on the performance of CME responsibilities should be maintained to allow for regular review of financial and operational activities.

Auditee Response:

Concur in Part. The Department has unsuccessfully sought a change to the statutes to address fees related to the Office of the Chief Medical Examiner (OCME). See HB 649 as introduced. The issue is currently subject to further Legislative consideration. See HB 649, as amended and adopted, establishing a study committee on the costs of medicolegal investigations and autopsies generally. The Department agrees to ask the study committee to consider restructuring these laws to make the ADMEs state compensated employees, with any remaining fees paid to the State. This would, however, be a significant change in public policy that would shift the burden for these expenses from the counties to the state. Such policy changes are solely within the province of the Legislative Branch.

Under the current law, RSA 325-A:3; the language of this statute provides that the person performing the inquiry into the cause and manner of death and for the issuing the cremation certificate is to be paid \$35 by the person who requests the certificate. Similarly, the long established practice, which evolved from the county medical examiner system, for death scene investigations has the fee paid by the county directly to the ADME.

The Department agrees that fees established and collected by the ADMEs should be accounted for through the Department, however doing so is not permitted by current law. The ADMEs are not State employees. The Department has completed drafting administrative rules relative to death scene investigations, cremation certificates, and the related fees and will be submitting them to JLCAR [Joint Legislative Committee on Administrative Rules] no later than September 2006.

Currently, the full-time CME employee who also serves as an ADME and responds to death scenes or fulfills requests for cremation certificates during non-work hours when no other ADME is available does not schedule ADMEs. Therefore, this employee is not in a position to

manipulate the schedule. The current structure for staffing the ADME and staffing levels during the audit period necessitated having this individual cover gaps in coverage by non-employee ADMEs. The Department has since recruited and trained additional ADMEs to minimize the number of cases the State employee, who also serves as an ADME, has to cover.

The Department does agree, that for the State employee serving as an ADME, if funding was available and the related statutes were amended, it would be more appropriate to pay the individual overtime and subsequently collect the fees on the State's behalf.

The Department will continue to work with the Chief Medical Examiner's Office, the Legislature, and the Department of Administrative Services to record performance information to allow a regular review of financial and operational activities of the OCME.

Observation No. 6: Employment Status Of Assistant Deputy Medical Examiners Should Be Clarified And Documented

Observation:

The employment status of the Assistant Deputy Medical Examiners (ADMEs) was unclear during the nine months ended March 31, 2005.

Under the authority granted by RSA 611:2, II, the Chief Medical Examiner (CME) can appoint ADMEs to assist in carrying out the responsibilities of the CME. During the nine months ended March 31, 2005, 22 ADMEs assisted the CME. ADMEs are dispatched by county sheriff offices to the scene of a death to evaluate whether an autopsy should be performed on the dead body. ADMEs may also be called to investigate a death in a hospital. ADMEs report their findings to the CME.

According to the CME, approximately 1,400 of the over 10,000 deaths in New Hampshire each year fall under the jurisdiction of the CME requiring review by the CME or the ADMEs.

The CME does not consider ADMEs to be employees of the State or the counties. According to the CME, the ADMEs are independent contractors working under the appointing authority, direction, and supervision of the CME, but are paid by the counties or others. During the nine months ended March 31, 2005, the CME had not formalized the working relationship with the ADMEs through contracts, memorandum of understandings, or other documentation.

The level of direction and control exerted by the CME over the work performed by ADMEs and the level of integration of the ADMEs services to the CME responsibilities implies an employer and employee relationship exists between the CME and ADMEs. The Department's failure to properly recognize and account for an employer and employee relationship may present risk of future liability if the relationship is challenged by an ADME or by the Internal Revenue Service.

Recommendation:

The Department should review the employment status of the ADMEs.

If ADMEs are to be properly classified as contractors, their responsibilities and activities must be in accordance with that classification. A first step would be to establish contracts with the ADMEs to document the contractual relationship.

If the relationship is more properly classified as an employer and employee relationship, the Department will need to ensure that the relationship is properly accounted for and reported and appropriate State statutes and rules are complied with.

Auditee Response:

Concur. We concur and will establish a contractual relationship with appointed Assistant Deputy Medical Examiners by September 30, 2006.

Observation No. 7: Controls Should Be Established For The Receipt Of Revenue In The Chief Medical Examiner's Office

Observation:

There were insufficient controls over the receipt of revenues in the Chief Medical Examiner's Office (CME) during the nine months ended March 31, 2005.

- Checks were not restrictively endorsed or initially recorded upon receipt. While the receipts were recorded in case-file documents, the employee who initially accepted the payment, either over the counter or by opening the mail, did not complete a listing of the receipts that could be used as a reference to ensure that all checks received by the CME were deposited timely.
- Checks received at the CME generally were stored in an envelope on or in a secretary's desk while awaiting deposit.

While the level of revenue receipt activity at the CME was relatively low, as few as several checks per week, the lack of controls over the receipt of revenue process increased the risk that errors, frauds, or other matters could occur and not be detected and corrected in a timely manner.

Recommendation:

The Department should review the necessity and appropriateness of collecting revenue in the CME. If the Department continues to accept revenue in the CME, policies and procedures should be established to ensure that the revenue receipt process is reasonably controlled. The controls should include an effective monitoring process.

Auditee Response:

Concur. The Department has ordered a deposit stamp for the Office of the Chief Medical Examiner so all checks can be endorsed upon receipt. These checks will now be listed on their own deposit spreadsheet for inclusion with the Department's deposit. Checks and the spreadsheet are picked-up on Monday, Wednesday and Friday when the messenger run is done. The Department has to do their own messenger run because they are outside the normal State

delivery area. Checks come to OCME very infrequently in very small amounts of \$10-\$50 with only two or three checks coming in on average per week. Checks will now be locked in a desk prior to messenger pickup. This new procedure will be operational by May 1, 2006. Policies and procedures will be written to address the control and oversight of this process.

OTHER REPORTABLE CONDITIONS

Observation No. 8: Reliance On Key Employees Should Be Limited

Observation:

Reliance on a key grants management employee for maintenance of the grant tracking and recording system poses a risk of disruption to the Department if this key employee leaves service.

One employee in the Department's Grants Management Unit has played a key role in the development of the grant tracking and recording system. The Department has relied upon this key employee to perform critical and complex tasks with the system, such as administrative cost allocations and reconciliations. It is not clear that other Department employees are sufficiently familiar with the system to be able to perform those same functions. In addition, it is not clear that sufficient system documentation is in place to allow other employees to develop the knowledge of the system necessary to quickly be able to perform the functions of the key employee if that key employee left State service.

Recommendation:

The Department should take steps to mitigate its risk of reliance on key employees for the completion of critical functions. Employees should be cross-trained in critical functions to provide for a reasonable assurance of uninterrupted operations during employee transitions.

All critical information systems, such as the grant tracking and recording system, should be adequately documented to allow knowledgeable employees to properly maintain and operate the systems.

Auditee Response:

Concur. In August of 2004, the new Director of Administration identified the risks associated with having a single key employee as the only staff member trained to complete complex grant administration tasks. Starting in the spring of 2005, a second individual was identified to be trained to complete these tasks. Training of a second person in administrative cost allocations and reconciliations has been completed. Training began in August of 2005 and was completed in October of 2005. A program of periodic use of the "back-up" staff member for these duties has been established to ensure that at least two staff members maintain current skills for these complex tasks.

Observation No. 9: Monitoring Of Federal Program Subrecipients Should Be Improved

Observation:

The Department's *Grant Management Unit General Operating Guidelines* (Guidelines) are not sufficiently explicit to clearly describe an effective monitoring system for its federal program subrecipients.

The Department is a pass-through entity for 16 federal grant programs, six of which are materially significant to the Department's financial statements. Subrecipients include other State and local agencies including law enforcement and other governmental and nongovernmental entities. During the nine months ended March 31, 2005, the Department distributed \$13.7 million of program resources to these subrecipients.

The Department's Guidelines include descriptions of the Department's grant monitoring efforts categorized as either desk or site monitoring.

The Guidelines describe desk monitoring to include an annual review of audit reports for all subrecipients receiving more than \$25,000 and regular review of subrecipient required reporting.

The Guidelines describe site monitoring to include:

- All first-time subrecipients receive a site visit within the first three months of the grant,
- Most subrecipients receive annual site monitoring. Programs that have been running successfully for a number of years and have an additional level of administrative oversight (i.e. N.H. Drug Task Force, N.H. State Police, N.H. Coalition) may be site monitored every other year or through the receipt of written documentation,
- Equipment-purchase only grants may be monitored by requesting and reviewing copies of all appropriate invoices and other documentation (often done at the closeout of the grant).

Allowing document reviews at the Department's offices, normally considered to be desk monitoring, to be categorized as site monitoring potentially overstates the controls provided by the review efforts. None of the six material federal grant programs were site monitored on an annual basis with the exception of some subrecipients of the Byrne Formula grant program. In addition, by placing the Department's principal monitoring efforts for equipment-purchase only grants at the closeout of the grant, the Department limits its ability to detect problems occurring in a subrecipient's grant operations in a timely manner.

The Department's database for tracking its review of subrecipient audit reports, onsite visits, and desk review monitoring efforts has not been kept current. According to the Department, responsibility for maintaining the database has remained unassigned.

Recommendation:

The Department should review its current grant monitoring Guidelines and efforts to determine whether the Guidelines satisfy its responsibility for an effective subrecipient monitoring program for the federal grants it administers. The Department should also review whether its practice of substituting in-office document reviews for site monitoring reviews satisfies the level of monitoring of subrecipient program operations intended by the Department's management.

Auditee Response:

Concur. While the agency's current guidelines and practices for monitoring federal subgrants meet the relevant federal requirements, we agree that a review of current policies would improve documentation of monitoring efforts. Specifically our policies will be modified to:

- Establish a periodic review of the agency's guidelines as compared to all federal requirements to document compliance.
- Review and modify as necessary all classifications of monitoring procedures to achieve the intended level of monitoring required by funding sources.
- Assign the duty of tracking subrecipient audit reports, onsite visits and desk reviews to a specific position to ensure current and accurate documentation.

The Department will implement these procedures and practices by September 30, 2006.

Observation No. 10: Controls Should Be Established Over Revenues Collected For The Department By Other State Organizations

Observation:

The Department does not have control procedures in place to ensure the accuracy and completeness of the revenues collected on its behalf by the Administrative Office of the Courts (AOC) and the Departments of Safety (DOS) and Corrections (DOC). Instead, the Department relies upon the internal controls in place at these other organizations.

Approximately 25% of the penalty assessments on motor vehicle and other fines collected by AOC and DOS is posted to the Department's Victims' Assistance Fund revenue account. The remainder is posted to the Police Standards and Training Council Training Fund. In addition, the DOC collects an additional 2% administrative fee on restitution collected by the DOC and posts the amounts collected as revenue to the Victims' Assistance Fund. Approximately \$835,000 of revenue was posted to the Department's Victim's Assistance Fund from these sources during the nine months ended March 31, 2005.

The Department does not have policies and procedures in place to monitor the accuracy and completeness of the amounts posted to its revenue accounts by these organizations. The Department does not receive any documentation supporting the amounts posted, does not perform any review or analytical procedures to gain any assurance on the reasonableness of the revenue amounts, and has not reviewed the controls in place at these other organizations to more fully understand its revenue process and the risks it faces.

Recommendation:

The Department should establish and implement controls over revenue collected on its behalf by other State organizations. At a minimum, the Department should establish adequate review procedures so that it has reasonable assurance that revenues collected by these organizations are accurate and complete.

The Department should work with the AOC, DOS, and DOC to institute reasonable procedures that will allow the Department to become more knowledgeable about its revenue processes and participate in the controls over that revenue collection.

Auditee Response:

Concur. The Department will work to review the revenue collection process in place at AOC, DOS and DOC. We will then establish policies and procedures as to how best to review these revenues received by DOJ in the future.

Observation No. 11: Payroll Duties Should Be Properly Segregated

Observation:

There was a general lack of segregation of payroll responsibilities at the Department during the nine months ended March 31, 2005.

Primarily, one Department employee was responsible for the incompatible functions of: 1) recording payroll information in the State's payroll system (GHRS), 2) certifying the accuracy of the payroll data in GHRS, and 3) maintaining custody of paychecks prior to their being claimed. Allowing Department payroll responsibilities to operate without an effective review and approval function incumbent in a controlled process with properly segregated responsibilities increases the risk that errors or frauds that may occur in the payroll process will not be detected and corrected in a timely manner.

Recommendation:

The Department should segregate the job responsibilities of recording payroll transactions, authorizing those transactions, and maintaining custody of employee paychecks.

Auditee Response:

Concur. We agree payroll duties should be segregated for risk minimization. The Department of Justice's business office is a small office consisting of three individuals with one individual's duties primarily being the payment of statewide Witness Payments. The remaining individual presently in the Business Office does the leave accounting so it is not an option for this person to also perform payroll functions.

The Department has come to the conclusion they are incredibly short staffed in the financial area and will be requesting a financial position in the SFY 08/09 budget. This is the Attorney General's number one priority request to address multiple financial areas needing more attention including payroll oversight.

Observation No. 12: Compliance With State Purchasing Policies Should Be Improved

Observation:

The Department does not consistently comply with State policies for contracts and grants. The Department does not always establish and maintain current contracts with service providers nor bring all contracts and grants meeting certain criteria before Governor and Council for approval.

It is the State's general policy to require all contracts, including grant awards, meeting certain criteria to be brought before Governor and Council for approval. The policy, established in the Department of Administrative Services (DAS) expired *Manual of Procedure* and adjusted by a 1994 Governor and Council action, continues to be in effect according to the DAS. Guidance on the application of the policy is included in training and an administrative handbook and other material presented to State agency business office personnel.

During the nine months ended March 31, 2005, the Department did not obtain Governor and Council approval for contracts procuring outside legal counsel or other services paid from its litigation account or for grants paid from its victims assistance program.

- The Department had two significant agreements with outside legal firms for legal services during the nine months ended March 31, 2005. One firm was paid \$55,000 for services provided during this period and was under current contract with the Department. The other firm was paid \$65,000 for services provided during this period but provided those services to the Department under an expired contract. Neither contract was submitted to Governor and Council for approval.
- The Department paid significant amounts to three medical consultants during the nine months ended March 31, 2005. None of the services provided by the three consultants, who were paid \$11,000, \$37,000, and \$35,000, respectively, during the period, were subject to a contract with the Department.
- The Department paid a firm \$70,000 for toxicology services during the nine months ended March 31, 2005. While some of the costs for services provided by the firm were charged to the litigation account, some were charged to other Department accounts including the Office of the Chief Medical Examiner and the Consumer Protection Escrow Account. These services were acquired without a contract being issued or documentation of any bidding procedures having taken place.
- The Department made a \$34,000 grant award to the Sullivan County Attorney's Office for the 2005 fiscal year. During the nine months ended March 31, 2005, the Department paid \$27,000 to the County Attorney's Office on the grant. The grant award contract was not submitted to Governor and Council for approval.

The Department provided two primary reasons why it does not bring litigation account contracts and other expenditures that would normally require contracts to Governor and Council for approval: 1) concerns over prematurely publicly disclosing attorney work product, causing disadvantage to the State's ability to successfully litigate cases, and 2) Governor and Council approval may not always be available in a timely manner.

The Department reports that it does not bring grants for the establishment and maintenance of victim assistance programs to Governor and Council as it interprets RSA 21-M:8-i, the statute

that directs the Department to issue grants, to allow the grants to be issued without Governor and Council review and approval.

Recommendation:

The Department should ensure that all significant purchases of services are supported by valid contracts. All significant contracts, including grant agreements, should be brought before Governor and Council for approval.

The Department should reconsider the circumstances it sees that prevent it from bringing certain contracts to Governor and Council for approval. The controls provided to the State's operations by requiring agencies to obtain Governor and Council approval of significant State contracts, and thereby providing public exposure of the government's business, is considerable and should not be unduly avoided. Concerns over providing advanced notice to defendants or inability to obtain timely approvals can be mitigated by requesting retroactive approval when appropriate. Perceived authority for avoiding a control procedure should not be seen as precluding the control from being applied.

Auditee Response:

Do Not Concur. Regarding the first and second bullets concerning Litigation Expenses, we do not concur. RSA 7:12 provides that, "[w]ith the approval of the joint legislative fiscal committee and the governor and council, the attorney general may employ counsel, attorneys, detectives, experts, accountants and other assistants in case of reasonable necessity, and may pay them reasonable compensation, on the warrant of the governor, out of any money in the treasury not otherwise appropriated."

Through the process authorized by the biennial budget bill and RSA 7:12 the Attorney General gets advance approval of funds for litigation. It has been the practice of the Legislature to under fund this account, thereby providing typically at least one opportunity each fiscal year for the Attorney General to report to the fiscal committee and the Governor and Council on how the previously approved funds have been used, while seeking approval for additional funds for that fiscal year.

The Department's practice is not properly characterized as avoiding a control procedure because RSA 7:12 has the effect of providing an alternative control that better serves the interests of the State. The reports provided to the fiscal committee and the Governor and Council that accompany the requests for additional litigation account funds function to provide a fundamentally equivalent level of public exposure and scrutiny of the Department's management of these funds.

The nature of litigation expenses makes it impractical and potentially contrary to the state's interests to pursue the acquisition process used for other types of services. First, in many cases the time required to prepare and release bids or requests for proposals, to evaluate each, to select vendors, and then to seek prior Governor and Council approval would prevent obtaining the services in time to comply with deadlines imposed by statute, court rule, or court order. In other cases, for example in many homicide cases, it is necessary to retain experts and have them available on the same day that the need for an expert is first identified.

Second, in many cases the State competes with opposing parties to obtain the services of the most cost-effective experts in a narrow field. If the State were required to engage in the public acquisition process this would afford inappropriate notice to those opposing the state. When specialized services are purchased or experts are retained in the course of criminal investigations, the public disclosure inherent in the standard acquisition process would often significantly compromise or inappropriately make public aspects of the investigation. Untimely public disclosure in many cases would compromise the State's ability to successfully represent the State's interests.

To address the concerns over full public disclosure, the Department will document its current policies and procedures concerning litigation contracts and expenditures and submit them to Administrative Services for approval.

Concur. Regarding the third bullet on toxicology services, the Department concurs. When DOJ's front office became aware there was not a contract in place for toxicology services, we sought to rectify the situation. National Medical Services has a contract in place for all of SFY 06 and we are in the process of establishing a SFY 07 contract. Costs for National Medical Services are primarily funded from the Autopsy Account 010-020-2614-091. On occasion toxicology work is done related to a criminal case on an individual not deceased and that is a charge against the litigation account. If National Medical Services performs work related to a sexual assault, it is a charge against the Victim's Fund. It is no longer the practice to charge any of these costs against the Escrow Account.

Do Not Concur. Regarding the fourth bullet concerning victim services, we do not concur. The State Victim Assistance Fund was established by the Legislature to provide a means for the NH Department of Justice to receive and dispense funds for the purposes of assisting victims of crime. Fund revenues consist of penalty assessments, restitution payments and donations. RSA 21-M:8-i states, "the attorney general shall make grants for the establishment and maintenance of victim assistance programs" and includes as eligible programs ones "within the office of a county attorney." This RSA gives the power to the attorney general to "make grants" as opposed to the normal process of recommending grants to Governor and Council for their approval. The specific sub-grant in question is one of the six rural county victim witness advocacy programs that was a major impetus of the original establishment of the fund in 1990. The attorney general cannot "make grants" if Governor and Council approval is required first.

To address the audit's concern that the Department provides full public exposure, the Department will present to Governor and Council all grant awards made by the attorney general from the State Victim Assistance Fund.

Observation No. 13: Policies And Procedures Manuals Should Be Established

Observation:

The Department does not have comprehensive policies and procedures manuals for all of its functional units that could benefit from such manuals.

The lack of policies and procedures manuals causes inefficiencies in the Department's operations by increasing the risk that decisions may be made on an ad hoc basis, based on employee experience and understanding, which may not necessarily be consistent with management's plans and objectives. The risk facing an organization that lacks appropriate policies and procedures manuals is often first recognized upon employee turnover, when the organization finds it difficult to: 1) understand how its processes are performed and 2) train replacement employees.

Recommendation:

The Department should undertake a concerted effort to establish appropriate policies and procedures manuals for its major functional units. The policies and procedures manuals should provide for: 1) consistency in decision making and transaction processing in accordance with management's plan and design, and 2) useful guidance to employees. Written policies and procedures should include control procedures established by management intended to provide for safeguarding Department operations.

While it is recognized that preparing meaningful policies and procedures manuals is a time consuming task, well-conceived manuals increase long-term efficiency as employees become more accustomed to performing their duties in accordance with management's plans and objectives.

Auditee Response:

Concur. The Department will undertake to establish further written documentation of policy and procedure for its non-legal functions.

Observation No. 14: Controls Over Department Checking Account Should Be Improved

Observation:

Controls over the Department's checking account are not sufficient to ensure that errors or frauds that may occur in the use of the account would be detected in a timely manner.

The Department maintains a \$10,000 revolving fund checking account used primarily for the furtherance of investigations into various criminal activities. The Department also uses the account for various petty-cash type expenses such as postage, training and travel expenses, transcripts, etc.

A primary control for all checking accounts is a regular reconciliation of the ledger balance and activity to the bank's records for the same account. During the nine months ended March 31, 2005, the Department reconciliation procedures did not include the retention of a record of the reconciliation or include a supervisor's review and approval of the reconciliation. The monthly reconciliation was performed with a computer spreadsheet that was overwritten by the subsequent month's reconciliation. No printouts of the reconciliations were retained and no one at the Department reviewed the reconciliation to ensure it was completed timely and the reconciling items were appropriate.

Recommendation:

The Department should improve its controls over its revolving fund checking account. The preparation and completion of the reconciliations should be evidenced and retained for potential future use. Documentation should include the identity of the preparer, the date the reconciliation was completed, and any documentation needed to support the reconciling items. The reconciliations should be reviewed by a responsible Department employee to evidence agreement with the successful completion of the reconciliation.

Auditee Response:

Concur. The reconciliation had been occurring each month in Excel, but was not saved in hard copy and attached to the bank statement. At the time the Department became aware of the auditor's concerns, copies of all reconciliations were printed and attached to the bank statement and this process will continue to be followed in the future. The supervisor is now reviewing each of those reconciliations for accuracy.

It is the practice of the Department to segregate all duties regarding the revolving account to include authorization for payment from the account, actual payment, reconciliation of the checkbook, receipt of reimbursement, deposit for reimbursement, reconciliation of bank statements and now to include the oversight of reconciled bank statements. Four different individuals are involved in these processes to ensure segregation of duties and oversight.

Observation No. 15: Formal Fraud Risk Mitigation Efforts Should Be Developed And Implemented

Observation:

The Department has not established a formal fraud assessment, prevention, deterrence, and detection program and has not established a fraud reporting policy.

Fraud encompasses an array of irregularities and illegal acts characterized by intentional deception. Persons outside or inside the organization can perpetrate it for the benefit or to the detriment of the organization. Fraud runs the spectrum from minor employee theft and unproductive behavior to misappropriation of assets, fraudulent financial reporting, and intentional noncompliance with a law or rule to an undue benefit.

Management is responsible for assessing the risk of fraud and implementing measures to reduce the risks of fraud to an organization. Fraud assessment, prevention, deterrence, and detection are crucial to the controlled operations of an organization.

- Assessment is critical since risks can only be effectively managed if risks are identified.
- Prevention reduces opportunities. Preventative methods are typically part of the organization's internal control – tone at the top and control procedures.
- Deterrence consists of those actions taken to discourage the perpetration of fraud and limit the exposure if fraud does occur. The principal mechanism for deterring fraud is the

establishment of effective internal controls. Management has the primary responsibility for establishing and maintaining controls.

- Detection consists of identifying indicators of fraud sufficient to warrant recommending an investigation. These indicators may arise as a result of controls established by management, tests conducted by management or staff, and other sources both within and outside the entity.

Management is responsible for assisting in the deterrence and detection of fraud by examining and evaluating the adequacy and effectiveness of controls, commensurate with the extent of the potential exposure/risk in the various segments of an entity's operations.

The attributes of an effective fraud reporting policy include:

- The policy is in writing;
- The reporting policy describes fraudulent activities and the actions required when fraud is suspected or detected;
- The policy is communicated to all employees; and
- Management obtains written assurance from each employee that the policy and related reporting mechanism is understood.

The effectiveness of a fraud reporting policy is enhanced when employees have a clear understanding of fraud indicators and what constitutes a fraudulent act. It is important that the reporting procedure is non-threatening for the reporter and provides for the reasonable protection of all parties.

Recommendation:

The Department should establish formal fraud risk mitigation policies to help limit the Department's exposure to fraud and to promote timely detection.

- The Department should establish a formal fraud assessment, prevention, deterrence, and detection policy to help limit the Department's exposure to fraud and promote early detection of fraud that might occur. The Department should take measures to foster a high degree of control consciousness among its employees and ensure that its employees understand that adhering to controls is a primary concern of management.
- The Department should establish a fraud reporting policy and provide its employees with fraud awareness training. The Department should take measures to ensure that the policy facilitates and encourages reporting and protects all parties involved.

Auditee Response:

Concur. The Department will develop a formal written fraud assessment, prevention, deterrence and detection program and policy. The Department agrees to have a written policy and program in place by July 1, 2007.

Observation No. 16: Formal Risk Assessment Policies And Procedures Should Be Established

Observation:

The Department does not have formal risk assessment policies and procedures in place for recognizing and responding to risks potentially affecting the Department's operations.

The Department does not have formal policies and procedures in place for periodically reviewing its operations for risks that could jeopardize the Department's ability to continue to function as management intends. Currently, when risks are identified, the Department may take action; however, there are no formal policies and procedures to continuously review operations for risks. A lack of understanding of risks generally pushes an entity toward a reactive mode when significant risks are realized/occur. A reactive mode may compromise the efficiency and effectiveness of a response due to the lack of prior identification and understanding of the risks and ramifications.

Management's assessment of risks facing the organization is an integral component of internal control. The purpose of an entity's risk assessment is to identify, analyze, and, where appropriate, respond to risks and thereby manage risks that could affect the entity's ability to reach its objectives. Effective risk assessment practices should be a core element of management's planning activities. Risk assessment should be an ongoing activity.

An entity faces many risks. Risk can be defined as the threat that an event or action will adversely affect an entity's ability to achieve its objectives. Risk can be classified in many ways. For example:

External risks - threats from broad factors external to the entity including changes in the political arena, statutes and rules, and funding availability.

Operational risks - threats from ineffective or inefficient processes for acquiring and providing goods and services, as well as loss of physical, financial, or information assets.

Information risks - threats from the use of poor quality information for operational, financial, or strategic decision-making within the entity and providing misleading information to others.

A continuous review of the Department's processes and activities using a risk-based mindset would promote effective planning and assist in resource allocation decision-making. Risks identified should be analyzed to determine whether current internal controls mitigate risk to a level desired by management or whether other actions are required in response to the risk.

Recommendation:

The Department should formalize its risk assessment process and conduct a risk assessment of its operations. A formal risk assessment process is a necessary tool the Department needs to assist in the effective management of risks. Identifying risks significant to the Department and other State operations that it is involved with and strategies to mitigate those risks should enhance the effectiveness of the Department's planning and resource allocation processes and the Department's and State government's control processes.

Auditee Response:

Concur. The Department agrees that a formal process of risk assessment is important and will develop and implement a comprehensive plan that requires periodic review.

The Department wishes to note that there are already in place many components of a risk assessment plan, including a comprehensive Notification and Deployment plan specifying the initial response to a wide variety of risks. The Department currently is engaged, through its work on the State Emergency Operations Plan, in formalizing its plans for establishing operations in an alternative location in the event that our current office site is unavailable. In addition, the Department is working with the Office of Information Technology to implement off site access to information technology resources that are necessary to continue providing legal services in the event that our current space is unavailable.

Observation No. 17: Controls Over Department IT Systems Should Be Improved

Observation:

The Department has not established comprehensive information technology (IT) control procedures to control access to, and data integrity of, certain systems and applications.

1. While access to the Department's computer room is restricted, there are no policies and procedures for monitoring who enters the room.
2. There are no policies and procedures controlling employee use of personal external memory devices (flash-type memory cards) to download Department IT system data and information for access on standalone computers, including home systems, and to upload information from the standalone systems to the Department networked systems.
3. There are no policies and procedures requiring changes to the Department's witness fee software to be fully documented including reason for the changes, authorization of the changes, and testing of all changes made.
4. The Department does not have policies and procedures equivalent to an Intrusion Response Plan (IRP) for its IT systems.

Recommendation:

The Department should fully review its IT risks, and controls intended to mitigate those risks, to ensure that its IT systems and information remain reliable and secure.

The Department should consider adopting responsive policies and procedures, such as those noted above, to improve the security of its IT systems.

Auditee Response:

Concur. The Department agrees that a periodic review of its IT risks and controls is important. The following are in response to specific observations made during the audit.

1. The agency's employee security card limits who has access to the IT room. The Director of Administration now monitors and reviews the list to ensure only authorized employees have access to the IT room. Written procedures will be established by August 30, 2006 to document the process.
2. The agency agrees that the use of personal external memory devices, such as flash-type memory cards, to download and upload information between IT system data and standalone systems requires policies and procedures. Subsequent to the audit's observation the issue was addressed through the agency's IT Policies and Procedures manual, which states that only encrypted flash drives issued by the office are to be used.
3. The agency agrees that written policies and procedures for modifications to agency-critical software are important. While actual agency practice requires written requests, documentation and testing, these procedures are not documented. The agency will expand its IT policy to include documentation of these procedures for changes to agency software by December 30, 2006.
4. The Department does not have an IRP plan in place for its IT systems. As part of the agency's IT Plan for the coming year, DOJ will work with OIT to develop the procedures and assign duties to personnel for responding in the event of an intrusion. Based on information from OIT, IRP plans are not in place throughout State agencies and we anticipate this project to take some time to develop.

Observation No. 18: Invoicing For Legal Services Should Be Supported By Analysis Of Costs Of Providing Service

Observation:

The Department does not maintain an information system, cost allocation system, or other documentation to support the appropriateness of costs charged to certain State agencies for provided legal services.

Twelve State agencies pay an amount established in the budget for legal services provided by the Department. The agencies are invoiced and pay the full budgeted amount, regardless of the amount of Department legal services used during the fiscal year. While the Department indicated the appropriateness of the budgeted amounts were reviewed during each budget cycle, the Department was not aware of any documented analysis that established the appropriateness of the budgeted amounts and their relationship to the cost to the Department to provide the services.

During the nine months ended March 31, 2005, the Department collected \$1.2 million from these twelve agencies representing either full or partial payments of their annual amounts.

A similar comment was issued in the prior audit of the Department.

Recommendation:

The Department should review the propriety of the amounts billed to State agencies to ensure the amounts submitted in the budget represent a reasonable allocation of Department costs of providing these services. This review should be documented and available for future reference.

The Department should consider establishing a formal billing system to allow billing agencies for actual services provided and not billing based on budgeted amounts.

Auditee Response:

Concur in Part. The Department has purchased the ProLaw case management system in part to improve on tracking and accounting for attorney's hours. As of July 1, 2004, all bureaus are enrolled in ProLaw with the exception of Grants and Victim's Compensation. This has allowed for a vast improvement in the documentation of attorney hours which will assist the Department and the State in a number of ways, two of which are with the SWICAP [State-wide indirect cost allocation plan] and the budgeting process. SFY 2005 interagency hours are 219.5% higher than SFY 2003. This is due to improved timekeeping, increased workloads and changing laws. This information will be valuable for the SFY 2008-2009 biennial budget. We concur there was improvement to be made in this area.

We however do not concur with the agencies being billed the full budgeted amounts. While the agencies are invoiced for the budgeted amounts for the first three quarters of the year, there is a truing up of the revenue billed as it relates to the actual expenditure in the fourth quarter billing. In this manner, the agencies are not overbilled when compared to actual expenditures.

The Department does not support a formal billing system, since our budget is established through a two-year legislative process which designates the funding streams to support staff and operations. We are not in control of determining our workload in support of agencies needing those services, and likewise their respective funding sources. That changing mix of agencies receiving those services and their respective funding sources is addressed through the Statewide Cost Allocation Plan (SWCAP).

Observation No. 19: Controls Should Be Improved For The Receipt Of Revenue Through The Mail

Observation:

Weaknesses exist in the Department's procedures for processing revenue received in the mail at its main offices.

- Checks are not recorded or restrictively endorsed at the point and time of receipt,
- The passing of checks among employees during processing is excessive,
- The duties of recording revenue on the daily cash receipt record (Form A-17), check handling, and delivery of the deposit to the bank are not segregated, and
- There is no independent check of the Form A-17 and supporting documentation to review for posting to the proper revenue accounts.

Standard State procedures, as described in N.H. Admin Rule, Adm 402.02, the State's expired *Manual of Procedures*, direct agencies to record all revenue daily as it is received at the point of receipt. The State's *Record of Daily Receipts* (Form A-15) is the form suggested for use to record the initial receipt of cash and checks. The initial recording of receipts is subsequently available to be compared with deposit documents to ensure that all receipts are ultimately

deposited. This initial recording and comparison of the initial recording to the deposits would be a significant control at the Department where checks are routinely routed to various bureaus and offices prior to deposit.

It was also noted that the Department does not consistently deposit receipts daily. Eleven out of a sample of 25 Form A-17s reviewed (44%) included checks that had been held by the Department for two or more days. While none of the checks reviewed were held undeposited more than three days, the regular delay in the depositing of receipts indicates inefficiency in the receipt and deposit procedures.

A similar comment was issued in the prior audit of the Department.

Recommendation:

The Department should consistently prepare a record of the initial receipt of cash and checks as well as restrictively endorse checks at the point of receipt and use the record to control for timely and complete deposits.

The Department should review the factors that currently require the routing of checks among its bureaus and offices prior to depositing. Efforts should be made to limit this activity to reduce the risk that checks may become lost or misdirected and delayed in depositing.

The Department should improve its segregation of duties over its revenue recording and depositing procedures. Duties should be sufficiently segregated to minimize the risk that errors, frauds, or other matters related to the receipt and deposit of revenue received in the mail could occur and remain undetected.

Auditee Response:

Concur. The receptionists are recording all checks received as they open the mail each morning. The checks are listed on a roster identifying sender, purpose, amount, date, check number and which bureau the check belongs to. They do not endorse the checks. That is done by the business office who reviews them for appropriateness of purpose because on occasion we receive checks that are not properly for DOJ or that may be related to a settlement and absolutely should not be deposited or cashed. These checks are to be held pending negotiations. Checks are no longer passed amongst employees to determine correct purpose. Now a copy of the check goes to the bureau when clarification is needed. The functions of preparing the A-17 and the deposit to the bank are now segregated. The Accountant II is now reviewing the Form A-17 for verification of correct Revenue Source Codes. In greater than 98% of cases, checks are now deposited daily. In the 2% of cases where that does not occur, checks are kept in the safe. Those checks are documented on the spreadsheet noting the outstanding information needed, and inquiries are sent out to the bureaus the same day with follow up calls. Those checks are deposited the next day as soon as that information is received.

Observation No. 20: Commuting Use Of State Vehicles Should Be Reported As A Component Of Employee Wages

Observation:

Eight Department investigators are assigned State motor vehicles for official and commuting use. The commuting use of these vehicles is not reported to the Department of Administrative Services (DAS) for inclusion in the employees' annual reported salary.

The State vehicles provided to the investigators are unmarked undercover police vehicles. There are no State registration plates or seals indicating the vehicle is State-owned.

As part of every year-end tax reporting processing, all agencies are required to report to the DAS the agency employees who had the personal use of a State vehicle for commuting. All employees who use a State vehicle for commuting have the value for the use of the State vehicle included in their reported gross wages for tax purposes at \$3 per day, a rate set by federal law. Any employee's use of a State vehicle for commuting purposes not covered by certain exceptions must be reported as income. Exceptions are limited and include, among others, nonpersonal use vehicles such as fire trucks, school buses, heavy trucks, and clearly marked police or fire vehicles whose operators are on call at all times.

There are limited circumstances under which an unmarked police car qualifies as a nonpersonal use vehicle. First, the driver must be a "law enforcement officer." A law enforcement officer must satisfy all of the following requirements. He or she must be a full-time employee of a governmental unit that is responsible for preventing or investigating crimes *involving injury to persons or property* [emphasis added] (including catching or detaining persons for these crimes). The officer must be authorized by law to carry firearms, execute search warrants, and to make arrests. The officer must regularly carry firearms, except when it is not possible to do so because of the requirements of undercover work. A "public safety director," or any employee, regardless of title, must meet these tests to qualify under this exclusion.

Second, any personal use of the vehicle must be authorized by the government agency or department that owns or leases the vehicle and employs the officer, and, third, the use 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. Use of an unmarked vehicle for vacation or recreation trips cannot qualify as an authorized use.

Whether the individual's use of the vehicle is authorized by the governmental agency which employs him or whether the use is incident to law-enforcement functions depends on the facts and circumstances. If the individual is allowed to use the vehicle as a courtesy and for commuting purposes, it does not qualify as a nonpersonal use vehicle, and the commuting value is income subject to FICA and income tax withholding.¹

The Department reports that, on occasion, and without prior notice, the employees have been called from home to go directly to incident sites to assist in investigations being performed.

¹ <http://www.irs.gov/govt/fslg/article/0,,id=112717,00.html>

While this activity could be regarded as supporting a claim for a nonpersonal use vehicle exemption, we were not provided any support to indicate the level of this activity was any more than incidental to the employees' commuting use of the vehicles.

Recommendation:

The Department, in conjunction with the DAS, should review the proper tax reporting implications of the employees' use of State vehicles for commuting.

Auditee Response:

Concur. We concur and will consult with the Department of Administrative Services and take the steps necessary to ensure that either the volume of calls out and direct reporting to investigatory scenes satisfies the non-personal use exemption or that the commuting use of the vehicles is appropriately reported. The Department will initiate a use survey in July 2006 and will determine the proper course of action once the survey results are received and analyzed.

Observation No. 21: Controls Over Equipment Inventory Should Be Improved

Observation:

The Department has not properly segregated responsibilities for accounting for its equipment inventory.

The employee responsible for maintaining the Department's equipment records is also responsible for the incompatible functions of performing the annual physical inventory inspection, investigating discrepancies between the physical count and the records, and, when necessary, adjusting the records.

The Department was apparently unaware it was required by Statewide equipment management policy to perform investigatory and discrepancy reporting procedures for equipment determined by its annual equipment inventory observation to be lost, stolen, destroyed, or damaged. The P-18 *Discrepancy Report* process is intended in part to ensure that there is a supervisory review and approval of the resolution of the status of missing equipment. Currently, when the Department cannot locate an item of equipment during the physical inventory count, the item is listed on the monthly P-21 *Equipment Adjustment Report* as a disposal and is removed from the equipment listing. The Department does not perform State equipment discrepancy procedures or complete the required P-18 reports.

RSA 21-I:11,VII, requires each State agency to report annually, in such form as prescribed by the Department of Administrative Services'(DAS) Director of Plant and Property Management, an inventory of real property and equipment under the agency's jurisdiction. The most recent guidance provided by the Director was dated April 1993. This technical assistance manual includes detail equipment inventory procedures and requirements and directs agencies to complete additional procedures and reporting when the inventory detects missing or destroyed State-owned equipment. The P-18 *Discrepancy Report* includes a sworn statement by the custodian of the equipment, a statement of an employee assigned to investigate the subject

equipment item, and the signature of the agency head. According to the DAS, the technical assistance manual is no longer a regularly issued manual, however copies are made available when requested by agency personnel and agencies are expected to comply with the manual's procedures.

Recommendation:

The Department should establish an appropriate segregation of responsibilities over its equipment inventory. An effective supervisory review and approval function should be established to ensure that equipment transactions are accurately recorded and reported and State equipment policies and procedures are consistently performed.

Auditee Response:

Concur. As soon as the Department became aware of the inventory problem, immediate corrective steps were taken to rectify the situation. P-18's (Discrepancy Reports) are being used for the reporting of inventory, which will be submitted to the Department of Administrative Services. In addition, this Department has instituted tighter inventory controls on all equipment. The equipment inventory will be maintained in a manner that associates equipment with the office where it is primarily used, beginning with Fiscal Year 2007. This will restrict the movement and assist with the location of the equipment at the end of the year. All equipment transactions are now being reviewed and approved by the Director of Administration.

Observation No. 22: Controls For Department-Owned And Borrowed Assets Should Be Improved

Observation:

The Department's asset safeguard controls are weak. A number of equipment and other inventory control-related issues were noted during the audit that indicate the Department has not emphasized the control of the equipment owned by the Department as well as artwork borrowed by the Department and displayed in the Department's offices.

For example:

- The Department did not maintain a listing of the approximately 50 pieces of artwork on display at the Department. The artwork is on loan from the New Hampshire State Council on the Arts.
- Four equipment items out of a sample of 30 items (13%) could not be located, including a \$3,400 laptop computer, a \$3,000 Drug Task Force audio receiver, a \$1,000 camera, and a \$300 computer-related accessory.
- Six equipment items out of a different sample of 55 items (11%) did not have identifying barcode stickers attached. While it was apparent that some of these items previously had stickers that had either fallen off or been removed, it also appeared that at least one of these items never had a sticker attached.
- A firearm located at the Department, which was judgmentally selected for audit testing, was not included on the inventory listing of Department firearms.

While controlling equipment and other assets in an organization with multiple locations is challenging, failing to adequately control the assets increases the risk of error, fraud, and other matters occurring and not being detected in a timely manner.

Recommendation:

The Department should improve its controls over Department-owned and borrowed assets.

Department policies and procedures should be established, documented, and effectively communicated to employees responsible for safeguarding Department equipment and borrowed assets. Effective control monitoring procedures should be established that allow for timely detection of control effectiveness.

Auditee Response:

Concur. The Department concurs with the above observation and had recognized the need for better inventory controls and had begun to address these issues prior to the audit.

The Department has listed and established a procedure to inventory all items currently on loan from the New Hampshire State Council on the Arts each month. Written procedures are being developed to ensure that any additional artwork or the return of artwork is added to or deleted from this inventory.

The Department is currently in the process of verifying and inventorying all equipment, adding to our database the office or room where equipment is assigned. This will enable the Department to track all items by individual office. Procedures are in place for the purchasing, receipt, and tagging of all equipment as it is received in the Department. All Department personnel are being notified that equipment must be received and inventoried through the Business Office and must not be moved from one location to the other until the Business Office is notified and the transaction approved by the Director of Administration.

The Department will continue to address the recommendations made by the auditors to ensure that effective controls are in place for safeguarding Department equipment and borrowed assets.

State Compliance Comments

Observation No. 23: Required Administrative Rules Should Be Adopted

Observation:

The Department has not adopted or kept current required administrative rules.

<u>RSA/Rule</u>	<u>Description Of Rule</u>	<u>Status</u>
RSA 7:22	Charitable Trusts, Charitable Solicitations, and Charitable Sales Promotion	Not Adopted
RSA 21-M:8-d	Standardized Rape Protocol And Kit And Domestic Violence Protocol	Not Adopted
RSA 421-B:15-a	Uniform Limited Offering Registration	Not Adopted
RSA 541-A:16, I	Rules; Filing Required	Not Complete
RSA 541-D:9	Tobacco Products Manufacturers	Not Adopted
RSA 592-A:12	Payment Of Witnesses In Criminal Cases	Not Adopted
RSA 611:18	Establishment Of Chief Medical Examiner Fee Schedule	Not Adopted
RSA 611:19	The Forms Of Documents That Are Necessary For Medical Examiners	Not Adopted
Jus 602.01	Victims Compensation Claim	Expired
Jus 604.01	Victims Assistance Commission	Expired
Jus 604.05	Victims Assistance Commission Quorum	Expired
Jus 1001	Definitions	Expired
Jus 1002.01	Motor Vehicle Manufacturers To Provide Notice And Demand Of Arbitration Rights Form To All Purchasers Of New Motor Vehicles In New Hampshire	Expired
Jus 1002.02	Notice Of New Motor Vehicle Arbitration Rights, Form CPMVA-1	Expired
Jus 1003	Availability Of Forms	Expired

A similar comment was issued in the prior audit of the Department.

Recommendation:

The Department should adopt and keep current administrative rules required by statute. If the Department determines that rules are not necessary, it should pursue a timely change in statute to eliminate the requirement for the rules.

Auditee Response:

Concur. We will either have draft proposed rules to the Division of Administrative Rules by November 30, 2006 or propose legislative amendment to the pertinent statute at the 2007 session of the legislature relative to:

- RSA 21-M:8-d
- RSA 541-A:16, I
- RSA 541-D:9
- RSA 592-A:12
- RSA 611:18
- RSA 611:19 (Substantial progress has already been made on a comprehensive set of administrative rules for the Office of the Chief Medical Examiner.)
- Jus 602.01
- Jus 604.01
- Jus 604.05

We concur with regard to the following statutes/rules, for which we will seek a legislative amendment to the statutes at the 2007 session of the legislature to remove the rulemaking requirement from law:

- RSA 7:22 (A determination has been made that statutes in this area are sufficiently detailed that rules are not appropriate.)
- RSA 421-B:15-a (A determination has been made that the administrative rules called for by this statute are no longer necessary.)
- Jus 1001, Jus 1002.01, Jus 1002.02, and Jus 1003 address the New Motor Vehicle Arbitration statutes. RSA 357-D:5 provides the New Motor Vehicle Arbitration Board with authority to adopt all rules necessary to implement the chapter. See Administrative Rules “Arb.” The Department will work with the New Motor Vehicle Arbitration Board to seek legislative transfer of the rule making authority currently assigned to the Attorney General’s Office to the board.

Observation No. 24: Seized Asset Account Should Be Established And Utilized

Observation:

The Department is not in compliance with the provision of the Controlled Drug Act statute regarding the holding of moneys seized pursuant to RSA 318-B:17-b, Forfeiture of Items Used in Connection With Drug Offense.

Per RSA 318-B:17-b, II-a, “[p]ending forfeiture and final disposition, the law enforcement agency making the seizure shall:

- (e) In the case of moneys, file a motion for transfer of evidence under RSA 595-A:6. Upon the court’s granting of the motion the moneys shall be immediately forwarded to an interest-bearing seized asset escrow account to be administered by the attorney general. Upon resolution of the forfeiture proceeding the moneys deposited shall be transferred to the drug forfeiture fund or returned to the owners thereof as directed by the court. Unless otherwise ordered by a court in a specific case, interest on all moneys deposited in the seized asset escrow account shall be deposited annually into the drug forfeiture fund established under RSA 318-B:17-c.”

During the nine months ended March 31, 2005, the Department did not utilize a seized asset escrow account. The Department either placed the money in a Drug Task Force evidence storage area (a statutorily allowed option for non-money seized assets) or deposited the money in the Department's Consumer Protection Escrow Account. When asked, the Department reported it was unfamiliar with the statutory requirement for a seized asset escrow account.

Holding currency in evidence storage, contrary to statute, increases the risk of loss through mishandling of storage items and does not allow for the accrual of interest ultimately to the benefit of the State or the owner of the money. Depositing the money into the Consumer Protection Escrow Account, while presumably more secure than evidence storage, also does not strictly comply with statutory directive.

Recommendation:

The Department should comply with the statute for holding money seized pursuant to RSA 318-B:17-b.

If the Department does not consider the provisions of the statute to be in the best interests of the Department and the State, the Department should request an amendment to the statute to allow for different handling of seized money.

Auditee Response:

Concur. By December 31, 2006, the following steps will be taken to address the concern raised in this comment:

- 1) A free-standing interest-bearing account will be established at a bank with state-wide coverage, into which all currency slated for forfeiture pursuant to RSA 318-B:17 will be deposited by the seizing agency.
- 2) The Attorney General will issue a law enforcement memorandum to all law enforcement agencies alerting them to their obligations under RSA 318-B:17-b, II-a(e).
- 3) The Attorney General will establish an internal policy requiring that any currency seized and being held for forfeiture pursuant to RSA 318-B:17-b shall, within 3 business days of receiving court authorization, be deposited into the interest bearing escrow account pending resolution of the forfeiture proceedings.

Observation No. 25: Drug Asset Forfeiture Guidelines Should Be Adopted And Maintained

Observation:

The Department has not adopted drug asset forfeiture guidelines required by statute. Without guidelines, the determination of when and how to pursue asset forfeiture appears to be determined by one Department employee and can appear arbitrary.

RSA 318-B:17-e states, "[t]he department of justice shall adopt and maintain drug asset forfeiture guidelines. The attorney general shall submit the guidelines and any proposed amendments to such guidelines to the house judiciary and family law committee and to the

senate judiciary committee for review and comment at least as often as annually. The attorney general shall submit any proposed amendments to the guidelines for legislative review and comment prior to their becoming effective.”

Currently, the Commander of the Drug Task Force is responsible for deciding whether to seize assets using a judicial (State) forfeiture action or an administrative (federal) forfeiture action. The Department could not provide any documentation (e.g. State law, federal law, administrative rule, policies and procedures, etc.) that would provide guidance on determining the appropriate action methodology for the seizure of assets. According to the Commander, the Attorney General verbally gave him the authority to make this determination on a case-by-case basis. While federal action generally provides for more rapid result, federal action results in greater restrictions being placed on how the proceeds of the seized assets can be used.

A similar comment was issued in the prior audit of the Department.

Recommendation:

The Department should adopt and maintain drug asset forfeiture guidelines as required by statute. The Department should regularly review and request proposed amendments of the guidelines as required by the statutes.

In addition to statutorily required guidelines, the Department should also consider implementing policies and procedures requiring support for Department determinations made related to the seizure of assets.

Auditee Response:

Concur in Part. The Department does produce a document titled, “New Hampshire Attorney General Drug Asset Forfeiture Guidelines.” The guidelines describe the internal policy of the Attorney General’s office regarding the handling of asset forfeitures pursuant to RSA 318-B:17-b and 17-d. The guidelines were provided to police departments as far back as 1996 and are continually provided in the various trainings that are done numerous times throughout the year as well as upon request by police departments.

It was an oversight in not providing these guidelines to the house judiciary and family law committee as well as to the senate judiciary committee. Letters will be going out by July 30, 2006 to those committees with a copy of the guidelines. To date there have been no amendments to these guidelines, but as amendments are proposed, the Attorney General will submit those to the various committees for review and comment prior to their becoming effective.

The Drug Task Force is responsible for deciding whether to seize assets using a judicial (State) forfeiture action or an administrative (federal) forfeiture action. This process is completed on a case-by-case basis with consideration of other entities involved such as other police departments or other states. The Department will develop Departmental policy and procedures that will provide guidance and control for the determinations made related to the seizure of assets by October 2006.

Observation No. 26: Gifts And Donations Should Be Subject To Governor And Council Approval

Observation:

The Department has not been consistent in bringing gifts and donations before Governor and Council for official acceptance by the State.

Per RSA 4:8, the Governor is authorized to accept donations on behalf of the State. Customarily, the authority to accept gifts has been delegated by the Governor to the Governor and Council.

During the nine months ended March 31, 2005, the Department accepted a number of gifts without bringing the gifts to Governor and Council for official acceptance. For example:

- Various office-related equipment of minor value was received from Department employees.
- A computer valued at \$850 and 100 hours of computer programming time was donated to the Office of the Chief Medical Examiner.

While the Department business office reported it was aware of the requirement for bringing gifts and donations before Governor and Council for acceptance, it is not clear that the functional units of the Department regularly notified the business office when gifts and donations were received.

Recommendation:

The Department should establish policies and procedures regarding the acceptance of gifts. Department managers should be periodically reminded of the statutory requirement to bring gifts and donations received by the Department to Governor and Council for official acceptance unless otherwise exempted by statute.

Auditee Response:

Concur. Generally speaking, the Department agrees that gifts to the State should be brought before Governor and Council for acceptance per customary practice under RSA 4:8, unless another statute authorizes the acceptance of gifts or exempts the gifts. In the case noted of the donation of computer equipment/programming to Office of the Chief Medical Examiner, the Department has corrected that oversight and notified all functional units of the Department of the requirement to go before Governor and Council for the acceptance of gifts. The Department has received gifts other than those gifts noted in the audit comment, and the Department has brought those before Governor and Council since this finding.

The Department will incorporate language stipulating the receipt of gifts and donations in their Policies and Procedures Manual in each of these areas.

Observation No. 27: Statutes Should Be Reviewed For Continued Applicability

Observation:

Two statutes referencing Department operations appear to be outdated and no longer applicable to current Department and State operations.

RSA 622:7-b establishes a surcharge on prison commissary sales to be deposited in the Department's Victims' Assistance Fund. The surcharge was declared unconstitutional, yet remains in statute.

RSA 7:32-a establishes the authority for the Director of Charitable Trusts to set the price and sell a directory of charitable trusts. The Department currently provides the directory electronically on the Department's website and no longer collects directory fees.

Recommendation:

The Department should accept responsibility for continuously reviewing statutes affecting the Department's operations to ensure that the Department is able to remain in compliance with statutes. The Department should request that the legislature amend or repeal outdated statutes which no longer address current Department and State operations.

Auditee Response:

Do Not Concur. The Department primarily satisfies its duty to provide public access to information on charitable trusts established by RSA 7:32-a by posting that information on the Department of Justice web site. Members of the public with access to the web site can obtain the information for free. However, should a citizen request the information in paper form, that information would be produced and provided in paper form. While typically a partial report, that is, information on a particular charity, would be provided free of charge as a public service, were a full report requested, a fee of \$15 would be charged pursuant to this statute. While rarely used, the statute is nonetheless operational and should remain in place.

RSA Chapter 622, entitled "The State Prisons" is within the jurisdiction of the Department of Corrections. While RSA 622:7-b in its current form has been declared unconstitutional, the defense of that statute relied in part on evidence that the commissary is not currently fully self-funding. The underlying issue of whether the commissary should charge users an additional surcharge to more fully cover the costs of its operations is a policy decision within the jurisdiction of the Commissioner of the Department of Corrections. This Office has informed the Department of Corrections of the outcome of the litigation over the current wording of RSA 622:7-b and believes it is the prerogative of the Commissioner of the Department of Corrections and not this Office to determine what changes to the statute should be proposed.

Observation No. 28: Biennial Seized Asset Report Should Be Filed

Observation:

The Department had not filed a biennial report relative to the seizure of items or property interests under RSA Chapter 318-B, the Controlled Drug Act, when we inquired about the required filing during the audit.

RSA 318-B:17-f states, “[t]he attorney general shall submit a biennial report to the governor, senate president, and speaker of the house relative to the seizure of any items or property interests under RSA 318-B:17-b.” The statute lists what information shall be included in the report.

Subsequent to the auditor’s inquiry, the Department filed the seized asset report for the biennium ending June 30, 2005 which disclosed that \$300,624 of cash was seized during the two-year period, as well as five vehicles and some weapons.

It is unclear whether the Department was unaware of the reporting requirement or otherwise was unable to meet the requirement.

Recommendation:

The Department should establish policies and procedures to effectively report the information required by RSA 318-B:17-f on a biennial basis.

If the Department determines that it is unable to meet this reporting requirement, the Department should request the statute be amended to eliminate this reporting requirement.

Auditee Response:

Concur. The Department has filed the report required in RSA 318-B:17-f for the period July 1, 2003 through June 30, 2005. We were unaware of this required filing and have taken steps to ensure the future filings are done on time. The requirements for the filing of this report will be reflected in the Policies and Procedures Manual for the Department.

Federal Compliance Comments

Observation No. 29: Income From Federal Programs Should Be Reported In Compliance With Program Requirements

Observation:

During the nine months ended March 31, 2005, the Department was not in compliance with the federal Byrne Formula Grant requirement for reporting program income.

At March 31, 2005, the DOJ reported \$485,937 of cumulative Byrne program income from Drug Task Force (DTF) activities on its Federal Financial Status Reports (FSRs). Of that amount, \$142,225 related to activity of the nine months ended March 31, 2005. The Department reports revenues recorded in the State's Drug Forfeiture Fund (Org 8500 in the State's accounting system) as program income on the FSRs. The following errors were noted in the reporting of program income under the Byrne Formula grant:

- The Department recorded a \$229,295 cash forfeiture in the Consumer Protection Escrow Account on November 15, 2004, instead of in the Drug Forfeiture Fund. Because the forfeiture was not recorded in the correct account, the forfeiture was not reported as program income on the FSR. Apparently, the Grant Manager preparing the FSR was not aware that cash forfeitures were being posted to the Consumer Protection Escrow Account.
- Only activity related to expenditure classes 091 and 093 in Org 8500 is reported as expenditures funded by income on the FSR. However, all Org 8500 expenditures are associated with drug forfeiture activity. It is unclear why, during the nine months ended March 31, 2005, approximately \$41,000 of expenditures in Org 8500 classes other than 091 and 093 were not reported on the FSR. In addition, it is unclear why approximately \$55,000 more of drug forfeiture revenues were reported in Org 8500 than were reported on the FSRs for the same period.

The Grant Manager reported that the criteria for FSR reporting used during the nine months ended March 31, 2005 was the same criteria used at the time he became responsible for the reporting. The Grant Manager was unaware of any documented policies and procedures that explained the reporting criteria.

Recommendation:

The Department should ensure that all cash forfeitures and expenditures are reported as required on the FSRs.

The Department should seek guidance from the Byrne Formula Grant federal representative to determine if the current method of reporting only expenditure classes 091 and 093 as expenditure activity on the FSR satisfies federal program requirements. The Department should also establish the correct revenue reporting requirements.

Once the criteria is formally recognized as accurate, the Department should establish policies and procedures for the FSR reporting to ensure that the criteria is understood by the responsible parties and is adhered to.

Auditee Response:

Concur. Documented procedures that comply with federal requirements will be established and monitored for reporting all forfeitures and expenditures on Federal Financial Status Reports (FSR's). These procedures will be developed with appropriate input from the Byrne Formula Grant representative to ensure that all required classes are included in the FSR reports. Parties responsible for reporting will be fully trained by September 30, 2006.

While we concur with the audit recommendation, the Department seeks to document the fact that the \$229,295 cash forfeiture was placed in the Consumer Escrow Account when the funds were initially seized. As noted in our auditee response to Observation No. 24, the Department will establish a separate account for all seized currency slated for forfeiture. However, at the time of this seizure, the Consumer Escrow Account was the only available account for depositing the funds.

Observation No. 30: Grant Expenditures Should Be Made On Reimbursement Basis Unless Otherwise Allowed

Observation:

The Department paid the Police Standards and Training Council (PSTC) \$222,000 in federal Byrne Earmark Grant funds to reimburse the PSTC for program costs that had not been substantively incurred by the PSTC when the request for reimbursement was submitted. The Department could not provide documentation to support the allowability of advance grant payments. The early payment of the grant funds result in questioned costs.

On April 4, 2004, the Governor and Council approved the Department to subgrant \$222,000 of federal Byrne Earmark Grant funds to the PSTC to create two interactive learning centers in the State. The original grant to the Department and the subgrant to the PSTC had an end date of August 31, 2004. The PSTC subsequently entered into a memorandum of agreement with the N.H. Community Technical College System (NHCTCS), the parent organization of the PSTC, to establish and operate the interactive learning centers.

On July 28, 2004, the PSTC paid the entire \$222,000 grant award amount to the NHCTCS even though the NHCTCS had not incurred any grant-related costs.

On August 23, 2004, the PSTC completed a request for reimbursement noting contractual expenditures in the amount of \$222,000 having been paid to the NHCTCS. On August 31, 2004, the Department processed the \$222,000 grant payment to the PSTC.

The first expenditure incurred by the NHCTCS in furtherance of the grant objectives occurred December 15, 2004. At March 31, 2005, approximately \$80,000 of the original \$222,000 remained on hand and unspent by the NHCTCS.

Because the \$222,000 was paid by the Department to the PSTC prior to the actual program expenditure of funds, and because the entire \$222,000 was/will be expended outside the grant period of availability, the allowability of the entire \$222,000 is questioned.

CFDA #: 16.580

Questioned Costs: \$222,000.

Recommendation:

The Department should review with its federal grantor agency the above noted circumstances related to the Byrne Earmark Grant funds to determine the allowability of the reported \$222,000 expenditure amount.

The Department should be aware of the potential for grantees to misreport program activity either through misunderstanding, error, or fraud and establish appropriate controls and procedures to ensure compliance with grant conditions.

Auditee Response:

Do Not Concur. It is not stipulated under the grant making guidelines that expenditures should be made on a reimbursement basis and in some cases grants are actually mandated to be advance payments. The Bureau of Justice Assistance (BJA) is the parent grantor in this case and not only do they not prohibit advance payment of grant dollars, they explicitly require it in the case of their LLEBG [Local Law Enforcement Block Grants] grant dollars.

As stated, the grant funds the State received from BJA were sub-granted to the Police Standards and Training Council (PSTC) to develop video conferencing capability. PSTC entered into a contract with the NH Community Technical College (NHCTC) to assist them with this endeavor. As this organization was deemed to be capable of providing this service without defaulting and no federal guidelines discouraged it, DOJ gave permission to PSTC to contract with this known vendor for service. PSTC sought and received permission to advance fund NHCTC. The vendor was a known entity, a component of State government, default was highly unlikely, and other funds were not available. State processes were followed by establishing an MOU [memorandum of understanding] that was reviewed by the Attorney General's Office for substance and execution and the Governor and Council approved the transfer.

The belief this was done to circumvent the end date of the program is not justified. Part III, Chapter Two of the Office of the Comptroller's Financial Guide, specifies the steps necessary to obtain a grant end date extension. It is generally unheard of for an initial sub-grant extension request to be denied, especially a federal earmark grant when no cost extensions are involved.

Observation No. 31: Earmarking Requirements Should Be Met

Observation:

The Department was not in compliance with the earmarking requirement for the 2002 Violence Against Women Formula grant, as it did not allocate at least 30% of the grant to nonprofit, nongovernmental victim services.

The grant, which was active during the nine months ended March 31, 2005, allocated 29.2% of the grant amount to nonprofit, nongovernmental victim services resulting in a \$4,873 shortfall to the earmark requirement.

Reportedly, the Department did not make a clear distinction between governmental and nongovernmental entities when making the grant allocations.

CFDA #: 16.588

Questioned Costs: \$4,873.

Recommendation:

The Department should ensure that employees responsible for grant allocations are aware of all allocation criteria and that policies and procedures exist to promote the Department's compliance with that criteria.

The Department should contact the federal awarding agency to determine the resolution of the questioned costs.

Auditee Response:

Concur. The Department recognizes the error noted in the auditor's observations. The Violence Against Women Formula (VAWA) grant has restrictions and covers multiple fiscal years. From the 2002 VAWA grant the agency believed it had met the requirement that at least 30% of the federal dollars from the total award be subgranted to "nonprofit, nongovernmental agencies to provide victim services." Of the 31% awarded, \$17,000 was awarded to a service provider that did not meet the federal definition, in that it was a county service provider. This reduced our allocation to 29.2% resulting in a \$4,873 shortfall. The agency has reviewed all subsequent distributions and found no repeat of this error. We have notified the federal awarding agency to resolve the issue. The agency will review allocation procedures with those responsible for grant allocations to ensure compliance with grant requirements by September 30, 2006.

Auditor's Report On Management Issues

To The Fiscal Committee Of The General Court:

We have audited the accompanying financial statements of the governmental activities and each fund of the New Hampshire Department of Justice for the nine months ended March 31, 2005, as listed in the table of contents, and have issued our report thereon dated June 28, 2006, which was qualified with respect to the lack of presentation of the financial position of the Department of Justice in the government-wide and fund financial statements.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

In planning and performing our audit of the financial statements of the Department of Justice for the nine months ended March 31, 2005, we noted an issue related to the operation of the Department of Justice that merits management consideration but does not meet the definition of a reportable condition as defined by the American Institute of Certified Public Accountants, and was not an issue of noncompliance with laws, rules, regulations, contracts, and grant agreements.

The issue that we believe is worthy of management consideration but does not meet the criteria of reportable condition or noncompliance is included in Observation No. 32 of this report.

This auditor's report on management issues is intended solely for the information of the management of the Department of Justice and the Fiscal Committee of the General Court and is not intended to be and should not be used by anyone other than these specified parties.

Office Of Legislative Budget Assistant
Office Of Legislative Budget Assistant

June 28, 2006

Management Issues Comment

Observation No. 32: Policies And Procedures For The Timely Use Of Consumer Settlement Moneys Should Be Established

Observation:

The Department has not made timely use of consumer protection settlement moneys.

During fiscal year 2002, the Department received a \$530,000 consumer protection settlement from a tire company and, in fiscal year 2003, the Department received an additional \$300,000 from a car manufacturer in a related settlement. The Agreed Final Judgments for both settlements stated that amounts “shall be used for New Hampshire at the sole discretion of the Attorney General for consumer protection and antitrust purposes, unfair and deceptive trade practices purposes, consumer education projects or any other lawful purpose.” As of March 31, 2005, none of the \$830,000 has been put to use by the Department and the \$830,000 remained as a balance in the Consumer Protection Escrow Account. At March 31, 2005, the Department had not developed a plan on how to use the settlement funds.

Recommendation:

The Department should develop policies and procedures for the timely and appropriate use of consumer protection settlement moneys. While the Department should be deliberate in evaluating and establishing programs to be funded by settlement moneys, settlement moneys should not be held unused for extended periods of time, unnecessarily delaying the benefits to the State’s consumers intended by the settlements.

Auditee Response:

Concur. The Department concurs with the observation. Since the audit, the Department has prepared a plan for how to use the settlement funds currently held in the Consumer Escrow Account. In addition, as any additional sums are paid into the Consumer Escrow Account, the Consumer Protection Bureau Chief, after consultation with the other attorneys in the Bureau, will update this plan and seek approval from the Attorney General on expenditure of any additional funds.

Independent Auditor's Report

To The Fiscal Committee Of The General Court:

We have audited the accompanying financial statements of the governmental activities and each fund of the New Hampshire Department of Justice for the nine months ended March 31, 2005, as listed in the table of contents. These financial statements are the responsibility of the Department of Justice's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

As discussed in Note 1, the financial statements referred to above are not intended to present the financial position of the Department of Justice in the government-wide or fund financial statements.

As discussed in Note 1, the financial statements of the Department of Justice are intended to present certain financial activity of only that portion of the governmental activities of the State that is attributable to the transactions of the Department of Justice. They do not purport to, and do not, present fairly the financial position of the State of New Hampshire as of March 31, 2005 and the changes in its financial position for the nine months ended March 31, 2005 in conformity with accounting principles generally accepted in the United States of America.

In our opinion, except for the matter discussed in the third paragraph, the financial statements referred to above present fairly, in all material respects, certain financial activity of the governmental activities and each fund of the Department of Justice for the nine months ended March 31, 2005, in conformity with accounting principles generally accepted in the United States of America.

The Department has not presented the management discussion and analysis that the Government Accounting Standards Board has deemed necessary to supplement, although not required to be part of, the basic financial statements.

The Budget to Actual (Non-GAAP Budgetary Basis) Schedule on page 60 is not a required part of the financial statements but is supplementary information required by accounting principles generally accepted in the United States of America. We have applied certain limited procedures, which consist principally of inquiries of management regarding the methods of measurement and presentation of the required supplementary information. However, we did not audit the information and express no opinion on it.

Our audit was conducted for the purpose of forming an opinion on the financial statements referred to in the first paragraph. The Schedule Of Expenditures Of Federal Awards on page 63 is presented for the purpose of additional analysis and is not a required part of the financial statements of the Department of Justice. Such information has been subjected to the auditing procedures applied in our audit of the financial statements referred to in the first paragraph and, in our opinion, is fairly presented in all material respects in relation to the financial statements taken as a whole.

In accordance with *Government Auditing Standards*, we have also issued a report dated June 28, 2006 on our consideration of the Department of Justice's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, rules, regulations, grant agreements, contracts, and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be considered in assessing the results of our audit.

Office Of Legislative Budget Assistant
Office Of Legislative Budget Assistant

June 28, 2006

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF JUSTICE**

**STATEMENT OF ACTIVITIES
FOR THE NINE MONTHS ENDED MARCH 31, 2005**

<u>Functions/Programs</u>	<u>Expenses</u>	<u>Charges For Services</u>	<u>Program Revenues Operating Grants And Contributions</u>	<u>Capital Grants And Contributions</u>	<u>Net (Expenses) Revenues And Changes In Net Assets</u>
Governmental Activities:					
<i>Administration Of Justice And Public Protection</i>					
Department Of Justice	\$ 26,554,846	\$ 1,737,053	\$ 10,152,034	\$ 9,455,654	\$ (5,210,105)
Total Governmental Activities	<u>\$ 26,554,846</u>	<u>\$ 1,737,053</u>	<u>\$ 10,152,034</u>	<u>\$ 9,455,654</u>	<u>(5,210,105)</u>
General Revenues					
					6,978,114
					464,629
					<u>153,499</u>
					<u>7,596,242</u>
					<u>\$ 2,386,137</u>

The accompanying notes are an integral part of this financial statement.

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF JUSTICE
STATEMENT OF REVENUES AND EXPENDITURES
GOVERNMENTAL FUNDS
FOR THE NINE MONTHS ENDED MARCH 31, 2005**

	General	Capital Projects	Education Trust	Total
	<u>Fund</u>	<u>Fund</u>	<u>Fund</u>	<u>Governmental</u>
				<u>Funds</u>
<u>Revenues</u>				
Federal Program Grants	\$ 17,761,446	\$ -0-	\$ -0-	\$ 17,761,446
Inter-Agency Transfers	1,391,835	-0-	-0-	1,391,835
Penalty Assessment -Victims Assistance	836,790	-0-	-0-	836,790
Other	<u>1,508,169</u>	<u>-0-</u>	<u>464,629</u>	<u>1,972,798</u>
Total Revenues	<u>21,498,240</u>	<u>-0-</u>	<u>464,629</u>	<u>21,962,869</u>
<u>Expenditures</u>				
Grants To Subrecipients	16,079,187	-0-	-0-	16,079,187
Administration	2,027,805	-0-	-0-	2,027,805
Criminal Justice	1,830,915	-0-	-0-	1,830,915
Civil Law	1,282,138	-0-	-0-	1,282,138
Victim's Compensation	925,877	-0-	-0-	925,877
Consumer Protection	765,521	-0-	-0-	765,521
Federal Grants Administration	652,462	-0-	-0-	652,462
Chief Medical Examiner	606,819	-0-	-0-	606,819
Environmental Protection	515,662	-0-	-0-	515,662
Medicaid Fraud	467,416	-0-	-0-	467,416
Other	<u>1,353,281</u>	<u>27,887</u>	<u>-0-</u>	<u>1,381,168</u>
Total Expenditures	<u>26,507,083</u>	<u>27,887</u>	<u>-0-</u>	<u>26,534,970</u>
Excess (Deficiency) Of Revenues				
Over (Under) Expenditures	<u>(5,008,843)</u>	<u>(27,887)</u>	<u>464,629</u>	<u>(4,572,101)</u>
Other Financing Sources (Uses)				
Net Appropriations	<u>7,414,856</u>	<u>27,887</u>	<u>(464,629)</u>	<u>6,978,114</u>
Total Other Financing Sources (Uses)	<u>7,414,856</u>	<u>27,887</u>	<u>(464,629)</u>	<u>6,978,114</u>
Excess (Deficiency) Of Revenues And				
Other Financing Sources Over (Under)				
Expenditures And Other Financing Uses	<u>\$ 2,406,013</u>	<u>\$ -0-</u>	<u>\$ -0-</u>	<u>\$ 2,406,013</u>

The accompanying notes are an integral part of this financial statement.

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF JUSTICE**

**RECONCILIATION OF THE STATEMENT OF REVENUES
AND EXPENDITURES - GOVERNMENTAL FUNDS - TO THE
STATEMENT OF ACTIVITIES
FOR THE NINE MONTHS ENDED MARCH 31, 2005**

Excess (Deficiency) Of Revenues And Other Financing Sources Over (Under) Expenditures And Other Financing Uses	\$ 2,406,013
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Amounts Reported For Governmental Activities In The Statement Of
Activities Are Different Because (See Note 1-C):

Governmental Funds Report Capital Outlays As Expenditures. However, In The Statement Of Activities, The Cost Of Those Assets Is Allocated Over Their Estimated Useful Lives As Depreciation Expense. This Is The Amount By Which Depreciation Exceeded Capital Outlays In The Current Period	<u>(19,876)</u>
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Change In Net Assets Of Governmental Activities	<u>\$ 2,386,137</u>
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The accompanying notes are an integral part of this financial statement.

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF JUSTICE**

**NOTES TO THE FINANCIAL STATEMENTS
FOR THE NINE MONTHS ENDED MARCH 31, 2005**

NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The accompanying financial statements of the Department of Justice have been prepared in accordance with accounting principles generally accepted in the United States of America (GAAP) and as prescribed by the Governmental Accounting Standards Board (GASB), which is the primary standard-setting body for establishing governmental accounting and financial reporting principles.

A. Financial Reporting Entity

The Department of Justice is an organization of the primary government of the State of New Hampshire. The accompanying financial statements report the financial activity of the Department.

The financial activity of the Department of Justice is accounted for and reported in the State's General, Capital Projects, and Education Trust Funds in the State of New Hampshire's Comprehensive Annual Financial Report (CAFR). Assets, liabilities, and fund balances are reported by fund for the State as a whole in the CAFR. The Department of Justice, as a department of the primary government, accounts for only a small portion of the General, Capital Projects, and Education Trust Funds and those assets, liabilities, and fund balances as reported in the CAFR that are attributable to the Department cannot be determined. Accordingly, the accompanying financial statements are not intended to show the financial position or change in fund balances of the Department in the General, Capital Projects, and Education Trust funds.

B. Government-Wide And Fund Financial Statements

Government-Wide Financial Statements

The Statement of Activities reports information on the financial activities of the Department of Justice. As none of the Department's activities are business-type, the activities reported in the Statement are all governmental. Business-type activities rely significantly on fees and charges for support. Governmental activities are normally supported through taxes and intergovernmental revenues.

The Statement of Activities demonstrates the degree to which the direct expenses of a given function or segment are offset by program revenues. Direct expenses are those that are clearly identifiable with a specific function or segment. Program revenues include: 1) charges to customers or applicants who purchase, use, or directly benefit from goods, services, or privileges provided by a given function or segment and 2) grants and contributions that are restricted to meeting the operational or capital requirements of a particular function or segment. Taxes and other items not meeting the definition of program revenues, including resources that are

dedicated internally, are reported as general revenues. Certain indirect costs are included in program expenses reported for individual functions.

Fund Financial Statements

Separate financial statements are provided for governmental funds. The General, Capital Projects, and Education Trust Funds are reported as separate columns in the fund financial statement.

C. Measurement Focus and Basis of Accounting

The government-wide financial statements are reported using the economic resources measurement focus and the accrual basis of accounting. Revenues are recorded when earned and expenses are recorded when a liability is incurred, regardless of the timing of related cash flows. Grants and similar items are recognized as revenue as soon as all eligibility requirements have been met.

Governmental fund financial statements are reported using the current financial resources measurement focus and the modified accrual basis of accounting. Revenues are recognized as soon as they are both measurable and available. Revenues are considered to be available when they are collectible within the current period or soon enough thereafter to pay the liabilities of the current period. For this purpose, the State generally considers non-grant revenues to be available if they are collected within 60 days of the end of the current fiscal period. Grant revenues that the State earns by incurring obligations are recognized in the same period the obligations are recognized. Expenditures generally are recorded when a liability is incurred, as under accrual accounting. However, expenditures related to debt service, compensated absences, and claims and judgments are recorded only when payment is due.

D. Financial Statement Presentation

The State of New Hampshire and the Department of Justice use funds to report on their financial position and the results of their operations. Fund accounting is designed to demonstrate legal compliance and to aid financial management by segregating transactions related to certain government functions or activities. A fund is a separate accounting entity with a self-balancing set of accounts. The Department of Justice reports its financial activity in the funds described below:

Governmental Fund Types:

General Fund: The General Fund accounts for all financial transactions not specifically accounted for in any other fund. All revenues of governmental funds, other than certain designated revenues, are credited to the General Fund. Annual expenditures that are not allocated by law to other funds are charged to the General Fund.

Capital Projects Fund: The Capital Projects Fund is used to account for certain capital improvement appropriations which are or will be primarily funded by the issuance of State bonds or notes, other than bonds and notes for highway or turnpike purposes, or by the application of certain federal matching funds.

Education Trust Fund: The Education Trust Fund was created in fiscal year 2000 in accordance with Chapter 17:41, Laws of 1999. The fund is non-lapsing and is used to distribute adequate education grants to school districts.

E. Receivables

Receivables in the government-wide financial statements represent amounts due to the Department of Justice at March 31, recorded as revenue, which will be collected sometime in the future and consist primarily of federal grants receivable and fees for legal services provided to other State agencies. In the governmental fund financial statements, receivables are primarily federal grants receivable and fees for legal services provided to other State agencies, which are received by the Department of Justice within 60 days after period-end.

F. Capital Assets

Capital assets, which include property, plant, equipment, and infrastructure assets, are reported by the State in its CAFR in the government-wide financial statements. Such assets, whether purchased or constructed, are recorded at historical cost or estimated historical cost. Donated capital assets are recorded at estimated fair value at the date of donation. The Department of Justice's capital assets are reported in Note 3.

Equipment is capitalized when the cost of the individual items exceeds \$10,000 and all other capital assets are capitalized when the cost of the individual items or projects exceeds \$100,000. The costs of normal maintenance and repairs that do not add to the value of the asset or materially extend asset lives are not capitalized. Depreciation expense is recognized in the government-wide financial statements. Capital assets are depreciated using the straight-line method over the following useful lives:

Equipment	5 years
Computer Software	5 years
Building Improvements	20 years
Buildings	40 years
Infrastructure	50 years

G. Revenues And Expenditures/Expenses

In the government-wide Statement of Activities, revenues and expenses are listed by activity type (governmental or business-type). Additionally, revenues are classified between program and general revenues. The Department of Justice's program revenues include charges for services provided, operating grants and contributions, and capital grants and contributions. In general, resources not dedicated to a program, as well as resources that are internally dedicated, are reported as general revenues rather than program revenues. The general revenues reported on the Department's Statement of Activities include net appropriations and unrestricted revenues. These unrestricted revenues are collected by the Department but are not dedicated for use by the Department.

In the governmental fund financial statements, revenues are reported by source and expenditures are reported by function. For budgetary control purposes, revenues are further classified as either “general purpose” or “restricted”. General-purpose revenues are available to fund any activity accounted for in the fund. Restricted revenues are, either by State law or by outside restriction, available for only specified purposes. When both general purpose and restricted funds are available for use, it is the State’s policy to use restricted resources first.

Other Financing Sources – these additions to governmental resources in the fund financial statements result from financing provided by net appropriations.

H. Interfund And Intra-Agency Transactions

As a general rule, the effect of interfund and intra-agency activity is eliminated from the government-wide statements, with the exception of activities between funds that are reported in different functional categories of governmental activities. Elimination of these activities would distort the direct costs and program revenues for the functions concerned.

I. Budget Control And Reporting

General Budget Policies

The statutes of the State of New Hampshire require the Governor to submit a biennial budget to the Legislature for adoption. This budget, which includes a separate budget for each year of the biennium, consists of three parts: Part I is the Governor's program for meeting all expenditure needs and estimating revenues. There is no constitutional or statutory requirement that the Governor propose, or that the Legislature adopt, a budget that does not resort to borrowing. Part II is a detailed breakdown of the budget at the department level for appropriations to meet the expenditure needs of the government. Part III consists of draft appropriation bills for the appropriations made in the proposed budget.

The operating budget is prepared principally on a modified cash basis and adopted for the governmental and proprietary fund types with the exception of the Capital Projects Fund. The Capital Projects Fund budget represents individual projects that extend over several fiscal years. Since the Capital Projects Fund comprises appropriations for multi-year projects, it is not included in the budget and actual comparison schedule. In addition, since the Education Trust Fund has no budget for Department of Justice financial activity, it is not included in the budget and actual comparison schedule.

In addition to the enacted biennial operating budget, the Governor may submit to the Legislature supplemental budget requests to meet expenditures during the current biennium. Appropriation transfers can be made within a department without the approval of the Legislature; therefore, the legal level of budgetary control is at the department level.

Additional fiscal control procedures are maintained by both the Executive and Legislative Branches of government. The Executive Branch, represented by the Commissioner of the Department of Administrative Services, is directed to continually monitor the State’s financial operations, needs, and resources, and to maintain an integrated financial accounting system. The Legislative Branch, represented by the Joint Legislative Fiscal Committee, the Joint Legislative

Capital Budget Overview Committee, and the Office of Legislative Budget Assistant, monitors compliance with the budget and the effectiveness of budgeted programs.

Unexpended balances of appropriations at year-end will lapse to undesignated fund balance and be available for future appropriations unless they have been encumbered or legally defined as non-lapsing, which means the balances are reported as reservation of fund balance. The balance of unexpended encumbrances is brought forward into the next fiscal year. Capital Projects Fund unencumbered appropriations lapse in two years unless extended or designated as non-lapsing by law.

Contracts and purchasing commitments are recorded as encumbrances when the contract or purchase order is executed. Upon receipt of goods or services, the encumbrance is liquidated and the expenditure and liability are recorded. The Department of Justice's unliquidated encumbrance balances in the General and Capital Projects Funds at March 31, 2005 were \$14,599,273 and \$11,985, respectively.

A Budget To Actual (Non-GAAP Budgetary Basis) Schedule - General Fund is included as required supplemental information.

NOTE 2 – CASH AND CASH EQUIVALENTS

The Department of Justice maintains a checking account for the main purpose of making disbursements to Drug Task Force personnel for the purchase of evidence. The checking account was authorized by Governor and Council as a \$10,000 revolving account.

GASB Statement No. 40, *Deposit and Investment Risk Disclosures – an amendment of GASB Statement No. 3* was implemented by the State during the fiscal year ended June 30, 2005. As a result, the disclosures related to deposit and investment risks were changed.

Deposits

The following statutory requirements and New Hampshire Treasury Department policies have been adopted to minimize risk associated with deposits.

RSA 6:7 establishes the policy the State Treasurer must adhere to when depositing public moneys. Operating funds are invested per investment policies that further define appropriate investment choices and constraints as they apply to those investment types.

Custodial Credit Risk

Custodial credit risk is the risk that, in the event of a bank failure, the Department of Justice's deposits may not be returned to the Department. Custodial credit risk is managed in a variety of ways. Although State law does not require deposits to be collateralized, the Treasurer does utilize such arrangements where prudent and/or cost effective. All banks where the State has deposits and/or active accounts are monitored as to their financial health through the services of Veribanc, Inc., a bank rating firm. In addition, ongoing reviews with officials of depository institutions are used to allow for frequent monitoring of custodial credit risk.

All depositories used by the State must be approved at least annually by the Governor and Executive Council. All commercial paper must be from issuers having an A1/P1 rating or better and a AA- or better long-term debt rating from one or more of the nationally recognized rating agencies. Certificates of deposit must be with State or federally chartered banking institutions with a branch in New Hampshire. The institution must have the highest rating as measured by Veribanc, Inc.

Whereas all payments made to the State are to be in U.S. dollars, foreign currency risk is essentially nonexistent on State deposits.

As of March 31, 2005, the Department's bank balance for demand deposits totaled \$9,925, which is subject to Federal Deposit Insurance Corporation coverage.

NOTE 3 - CAPITAL ASSETS AND OTHER EQUIPMENT

In addition to capital assets, the Department of Justice also accounts for equipment and other assets with an original cost between \$100 and \$10,000. While only capital assets are reported on the Department's financial statements, State policies require departments to inventory all assets with an original cost of \$100 or more and a useful life of greater than one year for accountability purposes.

Capital asset and other equipment activity for the nine months ended March 31, 2005 was as follows.

	Balance			Balance
	<u>July 1, 2004</u>	<u>Additions</u>	<u>Deletions</u>	<u>March 31, 2005</u>
Capital Assets Being Depreciated:				
Capital Equipment	\$ 680,184	\$ 75,813	\$ 109,044	\$ 646,953
Total Capital Assets	<u>680,184</u>	<u>75,813</u>	<u>109,044</u>	<u>646,953</u>
Less Accumulated Depreciation For:				
Capital Equipment	(407,237)	(95,689)	(109,044)	(393,882)
Total Accumulated Depreciation	<u>(407,237)</u>	<u>(95,689)</u>	<u>(109,044)</u>	<u>(393,882)</u>
Capital Assets, Net	<u>\$ 272,947</u>	<u>\$ (19,876)</u>	<u>\$ -0-</u>	<u>\$ 253,071</u>
Equipment With Original Cost				
Between \$100 And \$10,000	<u>1,540,521</u>	<u>60,462</u>	<u>73,975</u>	<u>1,527,008</u>
Net Capital Assets And Other Equipment	<u><u>\$ 1,813,468</u></u>	<u><u>\$ 40,586</u></u>	<u><u>\$ 73,975</u></u>	<u><u>\$ 1,780,079</u></u>

NOTE 4 - EMPLOYEE BENEFIT PLANS

New Hampshire Retirement System

The Department, as an organization of the State government, participates in the New Hampshire Retirement System (Plan). The Plan is a contributory defined-benefit plan and covers substantially all full-time employees of the Department. The Plan qualifies as a tax-exempt organization under Sections 401 (a) and 501 (a) of the Internal Revenue Code. RSA 100-A established the Plan and the contribution requirements. The Plan, which is a cost-sharing, multiple-employer Public Employees Retirement System (PERS), is divided into two membership groups. Group I consists of State and local employees and teachers. Group II consists of firefighters and police officers. All assets are in a single trust and are available to pay retirement benefits to all members.

Group I members at age 60 qualify for a normal service retirement allowance based on years of creditable service and average final compensation (AFC). The yearly pension amount is 1/60 (1.67%) of AFC multiplied by years of creditable service. AFC is defined as the average of the three highest salary years. At age 65, the yearly pension amount is recalculated at 1/66 (1.5%) of AFC multiplied by years of creditable service. Members in service with ten or more years of creditable service who are between ages 50 and 60 or members in service with at least 20 or more years of service, whose combination of age and service is 70 or more, are entitled to a retirement allowance with appropriate graduated reduction based on years of creditable service.

Group II members who are age 60, or members who are at least age 45 with at least 20 years of creditable service can receive a retirement allowance at a rate of 2.5% of AFC for each year of creditable service, not to exceed 40 years.

All covered Department of Justice employees are members of either Group I or Group II.

Members of both groups may qualify for vested deferred allowances, disability allowances, and death benefit allowances subject to meeting various eligibility requirements. Benefits are based on AFC or earnable compensation, service, or both.

The Plan is financed by contributions from the members, the State and local employers, and investment earnings. During the nine months ended March 31, 2005, Group I and II members were required to contribute 5% and 9.3%, respectively, of gross earnings. The State funds 100% of the employer cost for all of the Department's employees enrolled in the Plan. The annual contribution required to cover any normal cost beyond the employee contribution is determined every two years based on the Plan's actuary.

The Department of Justice's payments for normal contribution costs for the nine months ended March 31, 2005 amounted to 5.9% of the covered payroll for its Group I employees and 12.11% of the covered payroll for its Group II employees. The Department's normal contributions for the nine months ended March 31, 2005 were \$250,578.

A special account was established by RSA 100-A:16, II (h) for additional benefits. The account is credited with all the earnings of the account assets in the account plus the earnings of the remaining assets of the plan in excess of the assumed rate of return plus ½ of 1%.

The New Hampshire Retirement System issues a publicly available financial report that may be obtained by writing to them at 54 Regional Drive, Concord, NH 03301 or from their web site at <http://www.nh.gov/retirement>.

Health Insurance For Retired Employees

In addition to providing pension benefits, RSA 21-I:30 specifies that the State provide certain health care benefits for retired employees. These benefits include group hospitalization, hospital medical care, and surgical care. Substantially all of the State's employees who were hired on or before June 30, 2003 may become eligible for these benefits if they reach normal retirement age while working for the State and receive their pensions on a periodic basis rather than a lump sum. During fiscal year 2004, legislation was passed that requires State Group I employees hired after July 1, 2003 to have 20 years of State service in order to qualify for health insurance benefits. These and similar benefits for active employees are authorized by RSA 21-I:30 and provided through the Employee Benefit Risk Management Fund, which is the State's self-insurance fund implemented in October 2003 for active State employees and retirees. The State recognizes the cost of providing these benefits on a pay-as-you-go basis by paying actuarially determined contributions into the fund. The New Hampshire Retirement System's medical premium subsidy program for Group I and Group II employees also contributes to the fund.

The cost of the health benefits for the Department's retired employees and spouses is a budgeted amount paid from an appropriation made to the administrative organization of the New Hampshire Retirement System. Accordingly, the cost of health benefits for retired Department of Justice employees and spouses is not included in the Department's financial statements.

NOTE 5 - FEDERAL FUNDS

The Schedule of Expenditures of Federal Awards (the Schedule), on page 63, is presented for the purpose of additional analysis. The expenditures presented in the Schedule are presented on the cash basis of accounting; expenditures are recorded when paid rather than when the obligation is incurred.

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF JUSTICE
REQUIRED SUPPLEMENTARY INFORMATION**

**BUDGET TO ACTUAL (NON-GAAP BUDGETARY BASIS) SCHEDULE
GENERAL FUND
FOR THE NINE MONTHS ENDED MARCH 31, 2005**

	<u>Budgeted Amounts</u>		<u>Actual Amounts</u>	Favorable/ (Unfavorable)
	<u>Original</u>	<u>Final</u>	<u>(Budgetary Basis)</u>	<u>Variance - Final</u>
<u>Revenues</u>				
Federal Program Grants	\$ 31,388,451	\$ 23,154,468	\$ 12,385,034	\$ (10,769,434)
Inter-Agency Transfers	1,990,405	2,025,905	1,463,093	(562,812)
Penalty Assessment -Victims Assistance	-0-	-0-	836,790	836,790
Other	<u>1,004,874</u>	<u>1,234,838</u>	<u>1,696,728</u>	<u>461,890</u>
Total Revenues	<u>34,383,730</u>	<u>26,415,211</u>	<u>16,381,645</u>	<u>(10,033,566)</u>
<u>Expenditures</u>				
Grants To Subrecipients	29,213,544	14,302,912	13,955,280	347,632
Administration	2,191,873	2,542,028	1,871,197	670,831
Criminal Justice	2,499,541	2,501,057	1,752,356	748,701
Civil Law	1,910,686	1,889,728	1,238,977	650,751
Victim's Compensation	1,462,088	1,188,854	749,584	439,270
Consumer Protection	1,809,087	1,784,430	790,147	994,283
Federal Grants Administration	976,658	1,137,652	679,328	458,324
Chief Medical Examiner	676,651	698,716	562,971	135,745
Environmental Protection	802,868	770,945	494,973	275,972
Medicaid Fraud	726,838	714,608	441,662	272,946
Other	<u>2,459,836</u>	<u>2,296,066</u>	<u>1,281,352</u>	<u>1,014,714</u>
Total Expenditures	<u>44,729,670</u>	<u>29,826,996</u>	<u>23,817,827</u>	<u>6,009,169</u>
Excess (Deficiency) Of Revenues				
Over (Under) Expenditures	<u>\$ (10,345,940)</u>	<u>\$ (3,411,785)</u>	<u>\$ (7,436,182)</u>	<u>\$ (4,024,397)</u>

The accompanying note is an integral part of this schedule.

Note To The Required Supplementary Information - Budgetary Reporting For The Nine Months Ended March 31, 2005

The Department of Justice's biennial budget is prepared principally on a modified cash basis and adopted for governmental and proprietary funds. The "actual" results column of the Budget To Actual Schedule is presented on a "budgetary basis" to provide a meaningful comparison to budget.

The budget is composed of the initial operating budget, supplemented by additional appropriations. These additional appropriations and estimated revenues from various sources are authorized by Governor and Council action, annual session laws, and existing statutes which require appropriations under certain circumstances. For reporting purposes, the original budget is equal to the initial operating budget plus any balances brought forward, additional appropriations, and other legally authorized legislative and executive changes made before the beginning of the fiscal year. The final budgeted amount includes the original budget plus supplemental appropriation warrants and transfers made throughout the fiscal year.

The variance column on the Budget To Actual Schedule highlights differences between the final budget and actual revenue and expenditures. For revenue, a favorable variance is caused by actual revenue exceeding budget. For expenditures, a favorable variance results from actual expenditures being less than the amount budgeted for the fiscal year. For interim period financial statements, the variance is largely due to comparison of an annual budget amount with actual financial activity of a partial year.

Budgetary vs GAAP basis

Because the budget is prepared on a budgetary basis and not in accordance with generally accepted accounting principles (GAAP), there are differences in the revenue and expenditure amounts reported in the Statement of Revenues and Expenditures and the Budget To Actual Schedule. The major differences between the budgetary basis and the GAAP basis are:

1. Expenditures are recorded when cash is paid or committed (budgetary), rather than when the obligation is incurred (GAAP). In addition, revenue based on these accruals is adjusted on a GAAP basis only.
2. On a GAAP basis, major intra-agency transactions are eliminated in order to not double count revenues and expenditures reported in the Department of Justice's financial statements.

The following schedule reconciles the differences between budgetary accounting methods and the GAAP basis accounting principles for the nine months ended March 31, 2005.

**RECONCILIATION OF BUDGETARY TO GAAP
FOR THE NINE MONTHS ENDED MARCH 31, 2005**

Excess (Deficiency) Of Revenues

Over (Under) Expenditures (Budgetary Basis) \$ (7,436,182)

Adjustments :

To Record Net Accounts Receivable	6,115,994
To Record The Effect Of Encumbrances	174,825
To Record Net Accrued Salaries And Benefits And Other Accounts Payable	(3,863,480)
To Record Other Financing Sources	<u>7,414,856</u>
Net Adjustments	<u>9,842,195</u>

Excess (Deficiency) Of Revenues And Other

Financing Sources Over (Under) Expenditures

And Other Financing Uses (GAAP Basis) \$ 2,406,013

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF JUSTICE**

**SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS (CASH BASIS)
FOR THE NINE MONTHS ENDED MARCH 31, 2005**

Federal Catalog <u>Number</u>	Federal Grantor <u>Federal Program Title</u>	<u>Expenditures</u>	Pass Thru <u>Percent</u>
U.S. Department of Justice			
16.527	<i>Supervised Visitation, Safe Havens for Children</i>	\$ 259,306	97%
16.550	<i>State Justice Statistics Program for Statistical Analysis Centers</i>	17,037	100%
16.554	<i>National Criminal History Improvement Program (NCHIP)</i>	377,916	100%
16.560	<i>National Institute of Justice Research, Evaluation, and Development Project Grants</i>	21,657	43%
16.575	<i>Crime Victim Assistance</i>	1,356,099	97%
16.576	<i>Crime Victim Compensation</i>	115,890	96%
16.579	<i>Byrne Formula Grant Program</i>	1,276,824	76%
16.580	<i>Edward Byrne Memorial State and Local Law Enforcement Assistance Discretionary Grants Program</i>	1,532,030	99%
16.586	<i>Violent Offender Incarceration and Truth in Sentencing Incentive Grants</i>	5,450,999	100%
16.588	<i>Violence Against Women Formula Grants</i>	799,725	90%
16.589	<i>Rural Domestic Violence and Child Victimization Enforcement Grant Program</i>	196,229	99%
16.592	<i>Local Law Enforcement Block Grants Program</i>	59,118	85%
16.593	<i>Residential Substance Abuse Treatment for State Prisoners</i>	133,827	94%
16.609	<i>Community Prosecution and Project Safe Neighborhoods</i>	47,220	88%
16.727	<i>Enforcing Underage Drinking Laws Program</i>	246,242	93%
16.999	<i>Operation StreetSweeper</i>	23,767	0%
U.S. Department of Health and Human Services			
93.643	<i>Children's Justice Grants to States</i>	51,628	0%
93.775	<i>State Medicaid Fraud Control Units</i>	439,912	0%
U.S. Department of Homeland Security			
97.004	<i>State Domestic Preparedness Equipment Support Program</i>	<u>1,811,291</u>	98%
Total		<u>\$ 14,216,717</u>	

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APPENDIX

CURRENT STATUS OF PRIOR AUDIT FINDINGS

The following is a summary, as of June 28, 2006, of the current status of the observations contained in the audit report of the Department of Justice for the fiscal year ended June 30, 1995 and the six months ended December 31, 1995. A copy of the prior report can be obtained from the Office of Legislative Budget Assistant, Audit Division, 107 North Main Street, State House Room 102, Concord, NH 03301-4906.

	<u>Status</u>		
<i>Internal Control Comments</i>			
<i>Reportable Conditions</i>			
1. Revenue Processing And Recording (<i>See Current Observation No. 19</i>)	○	○	○
2. Checks Issued To Drug Task Force Personnel	●	●	●
3. Revolving Fund Bank Account	●	●	○
4. Revenue Recognition	●	●	●
5. Negative Expenditures – Understatement Of Revenue And Expenditures (<i>See Current Observation No. 4</i>)	○	○	○
6. Lack Of Supporting Documentation For Cash Receipts	●	●	●
7. Equipment Acquisitions – Receiving Reports	●	●	●
8. Equipment Disposals	●	●	●
9. Monthly Equipment Adjustment Reports – Untimely Preparation	●	●	●
<i>State Compliance Comments</i>			
10. Review Of Drug Asset Forfeiture Guidelines (<i>See Current Observation No. 25</i>)	○	○	○
11. Unadopted Administrative Rules (<i>See Current Observation No. 23</i>)	○	○	○
12. Calculation Of Audit Set Aside Payment	●	●	●
<i>Federal Compliance Comments</i>			
13. Medicaid Fraud Control Unit – Questioned Costs Charged To Federal Grant	●	●	●
14. Federal Financial Reports Not Filed Timely	●	●	●
<i>Management Issue</i>			
15. Billing For Legal Services Provided To State Organizations (<i>See Current Observation No. 18</i>)	○	○	○

<u>Status Key</u>	●	●	●	<u>Count</u>
Fully Resolved	●	●	●	9
Substantially Resolved	●	●	○	1
Partially Resolved	●	○	○	0
Unresolved	○	○	○	5

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