

**Full Performance Evaluation**

---

**Division of Personnel**

---

**The Division of Personnel's Policies Should  
Require More Stringent Pre-Employment  
Screening**



**JOINT COMMITTEE ON GOVERNMENT OPERATIONS**

**Senate**

**Edwin J. Bowman**  
*Chair*

**Billy Wayne Bailey, Jr.**  
*Vice Chair*

**Walt Helmick**

**Joseph M. Minard**

**Sarah M. Minear**

**House Of Delegates**

**J.D. Beane**  
*Chair*

**Earnest H. Kuhn**  
*Vice Chair*

**Joe Talbott**

**Craig P. Blair**

**Otis Leggett**

**Scott G. Varner, Ex  
Officio Non-Voting  
Member**

**Citizen Members**

**Dwight Calhoun**

**John Canfield**

**James Willison**

**W. Joseph McCoy**

*(Vacancy)*



---

**OFFICE OF THE LEGISLATIVE AUDITOR**

**Aaron Allred**  
*Legislative Auditor*

**John Sylvia**  
*Director*

**Michael Midkiff**  
*Research Manager*

**Shannon Riley Berman**  
*Research Analyst*

**Performance Evaluation and Research Division**

*Building 1, Room W-314*

*State Capitol Complex*

*Charleston, West Virginia 25305*

*(304) 347-4890*

---

**WEST VIRGINIA LEGISLATURE**  
*Performance Evaluation and Research Division*

Building 1, Room W-314  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0610  
(304) 347-4890  
(304) 347-4939 FAX



John Sylvia  
Director

December 7, 2003

The Honorable Edwin J. Bowman  
State Senate  
129 West Circle Drive  
Weirton, West Virginia 26062

The Honorable J.D. Beane  
House of Delegates  
Building 1, Room E-213  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Full Performance Evaluation of the Division of Personnel, which will be presented to the Joint Committee on Government Operations on Sunday, December 7, 2003. The issue covered herein is "The Division of Personnel's Policies Should Require More Stringent Pre-Employment Screening."

We transmitted a draft copy of the report to the Division of Personnel on November 26, 2003. The Division of Personnel opted not to have an exit conference. We received the agency response on December 5, 2003.

Let me know if you have any questions.

Sincerely,

Handwritten signature of John Sylvia in cursive script.  
John Sylvia

JS/wsc

---

*Joint Committee on Government and Finance*

---



# Contents

---

<b>Executive Summary</b> .....	5
<b>Review Objective, Scope and Methodology</b> .....	7
<b>Issue 1:</b> The Division of Personnel’s Policies Should Require More Stringent Per-Employment Screening.....	9
<b>Table 1:</b> Estimated Costs of Criminal Investigations if Required for Employees Hired in FY 03.....	12
 <b>List Of Appendices</b>	
<b>Appendix A:</b> Transmittal Letter to Agency.....	17
<b>Appendix B:</b> Agency Response.....	19



# Executive Summary

---

## Issue 1: The Division of Personnel's Policies Should Require More Stringent Pre-Employment Screening

Current Division of Personnel rules require classified agencies to conduct limited background inquiries of potential state employees. These requirements include verification of previous employment and education. They do not include more stringent screening methods such as criminal background investigations, credit checks or reviews of driving records. Many state employees have access to state vehicles, confidential information, state funds or vulnerable populations. Hiring individuals for these positions without conducting comprehensive pre-employment screening creates a risk to the State of West Virginia and a potential threat to public health and safety.

---

*The Commission on Special Investigation investigated at least 9 state employees in the past six years who have been prosecuted for theft and embezzlement. Prior to their employment, these individuals had convictions for serious crimes. Had the state employer conducted a criminal background investigation, it is unlikely that these individuals would have been placed in a position of public trust.*

---

Criminal background investigations may uncover information that a job applicant has not revealed in a job application or a resume. They assist state employers in determining if applicants are fit to serve the public. The Commission on Special Investigation investigated at least 9 state employees in the past six years who have been prosecuted for theft and embezzlement. Prior to their employment, these individuals had convictions for serious crimes. Had the state employer conducted a criminal background investigation, it is unlikely that these individuals would have been placed in a position of public trust.

Certain state agencies, such as the Department of Health and Human Resources and the Lottery Commission conduct criminal background investigations as well as credit checks for potential employees. However, these policies are not consistent across all state agencies. According to information available from the Department of Administration, approximately 1,261 state employees have the ability to encumber or to expend state funds. In addition to these employees, approximately 5,100 purchasing cards are in use. Neither credit checks, nor background investigations, are currently required for employees with access to state monies.

---

*The Board of Risk and Insurance Management (BRIM) reports that automobile claims are expensive for the State and that many could be avoided. BRIM's loss control representatives routinely recommend that State agencies order driver records from the Division of Motor Vehicles prior to hiring an applicant.*

---

The Division of Personnel does not require agencies to check an individual's driving record before allowing that individual to operate a state vehicle or a vehicle on the State's behalf. The Board of Risk and Insurance Management (BRIM) reports that automobile claims are expensive for the State and that many could be avoided. BRIM's loss control representatives routinely recommend that state agencies order driver records from the Division of Motor Vehicles prior to hiring an applicant.

The cost to the State of conducting a comprehensive background

---

investigation on potential employees will be as low as \$34.00 per individual. This extra effort helps the employer avoid liability for negligent hiring and creates an environment of trust and confidence in state employees. It is the determination of the Legislative Auditor that at a minimum, state law should require more extensive pre-employment screening of all persons employed by the State who have access to confidential information, financial resources and vulnerable populations.

### **Recommendations**

1. *The Legislature should consider amending the state Code to require background investigations of all state employees prior to employment.*
2. *The Division of Personnel should promulgate rules and amend its policy to require background investigations of all new applicants prior to employment.*
3. *The Legislature should consider requiring the Division of Personnel to conduct investigations of the driving records of employees authorized to operate state vehicles. The DOP should develop policies regarding what would disqualify an employee from operating a state vehicle.*
4. *The Division of Personnel should identify all classified personnel in positions with access to financial resources or information databases which pose a financial risk to the state or to the public. Credit checks should then be conducted on these employees.*



# Review Objective, Scope and Methodology

---

This full performance evaluation of the Division of Personnel is required and authorized by the West Virginia Sunset Law, Chapter 4, Article 10, Section 4 of the West Virginia Code, as amended. A full performance evaluation is used to determine whether or not an agency is operating in an effective and efficient manner, and the need for continuation of the agency.

## **OBJECTIVE**

The objective of this evaluation is to examine the Division of Personnel's requirements for screening job applicants.

## **SCOPE**

The scope of this evaluation included a review of Division of Personnel policies regarding pre-employment screenings for job applicants.

## **METHODOLOGY**

The methodology included interviews with Acting Director of the Division of Personnel, as well as interviews with the staff of other state agencies. Information was collected from WVFIMS, the State Auditor's Office and the Department of Administration. Every aspect of this evaluation complied with Generally Accepted Government Auditing Standards (GAGAS) as set forth by the Comptroller General of the United States.



# Issue 1

---

## **The Division of Personnel's Policies Should Require More Stringent Pre-Employment Screening.**

### **Issue Summary**

Under current Division of Personnel (DOP) rules, classified agencies are required to conduct limited background inquiries of potential employees, which includes the verification of previous employment, education and other information provided by the applicant on the application and in interviews. Agencies covered by the DOP requirements are also to obtain an assessment of an applicants skills, abilities and performance.

---

*The Division of Personnel does not require criminal background investigations, credit checks or driving record checks of individuals prior to employment for the majority of the State's 35,348 full time positions.*

---

The Division of Personnel does not require criminal background investigations, credit checks or driving record checks of individuals prior to employment for the majority of the State's 35,348 full time positions. Many state positions involve fiduciary responsibilities, operating state-owned vehicles, or other activities which place the public or other employees at risk. Hiring individuals for such positions without comprehensive pre-employment screening creates both a financial risk to the state of West Virginia and a potential threat to the public trust and safety.

### **Background Investigations Provide Essential Information**

Background investigations may uncover information left out of interviews and applications. A national payroll and benefits management company that conducted 2.6 million background checks on applicants in 2001 found that 44% of applicants lied about work histories, 41% lied about their education and 23% falsified professional credentials or licenses. Given such statistics, it stands to reason that many applicants would not be honest about criminal histories. Background investigations, combined with reference checks, could assist state employers in determining if applicants are fit to serve the public. As lawsuits for negligent hiring are increasing nationwide, some employers now carefully screen their employees in order to provide a safe workplace and public accountability. Negligent hiring results when an employee's background is not properly checked and the employees actions cause damage to others. For example, if a maintenance worker with access to offices had prior arrests for theft, and a background investigation was not conducted, the employer could be held responsible for damages if the employee stole from another agency or employee.

---

*The Commission on Special Investigations (CSI) informed the Legislative Auditor that in the past six years its investigations have resulted in the conviction of at least 9 state employees for embezzlement and theft who had criminal records prior to being hired by the state of West Virginia.*

---

The Commission on Special Investigations (CSI) informed the Legislative Auditor that in the past six years its investigations have resulted in the conviction of at least 9 state employees for embezzlement and theft who

---

had criminal records prior to being hired by the state of West Virginia. These prior crimes include

- Public Intoxication;
- Assault;
- Leaving the scene of an accident;
- DUI;
- Carrying a concealed weapon;
- Felony theft and forgery;
- Battery;
- Sexual assault;
- Domestic violence;
- Embezzlement and;
- Armed robbery.

Without comprehensive background investigations, state agencies are unaware of the potential for prospective state employees to commit crimes. In the cases prosecuted by CSI, pre-employment background investigations would have given the state employer the ability to assess the risk to the State prior to extending an offer of employment.

### **Requirements to Conduct Background Checks are Inconsistent**

---

*The Legislative Auditor has found that certain state agencies do perform criminal background checks on persons who will be dealing with sensitive information or with certain sectors of the population deemed to be vulnerable to abuse.*

---

The Legislative Auditor has found that certain state agencies do perform criminal background checks on persons who will be dealing with sensitive information or with certain sectors of the population deemed to be vulnerable to abuse. The Legislative Auditor also found however, that such policies are not consistent across all state agencies. While some agencies are required by code to conduct background checks, others do so as a matter of agency policy. Due to the lack of statutory provisions addressing such matters the Legislative Auditor has also found that many agencies who deal with sensitive information or people vulnerable to abuse do not conduct preemployment criminal background checks, essentially putting the people of West Virginia at risk for abuse or fraud.

### **Certain Agencies are Required by Code to Conduct Background Checks**

The Lottery Commission, for example, conducts background investigations on each prospective applicant prior to employment. This investigation includes an FBI criminal background check based on the employee's fingerprints and is required by West Virginia Code §29-22-14(a)(1). In addition,

---

as a matter of policy, the Lottery reviews applicants credit report and runs a check with the DMV for driving offenses. The Lottery maintains that reviewing an applicant's credit report and DMV record are reasonable inquiries into the background of persons who will represent the State and the agency.

### **Certain Agencies Conduct Background Checks as a Matter of Policy**

Similarly, the Bureau for Children and Families within the Department of Health and Human Resources conducts more extensive pre-employment screening than is required by the DOP. The Bureau reports that all potential employees must submit to a criminal background check and if hired are issued a Criminal Investigation Background (CIB) card on the first day of employment if the employee is to have access to the Bureau's information management system due to the sensitive and private nature of the information contained therein.

Many higher education institutions in West Virginia also conduct criminal background checks as a matter of institution policy. Some institutions however do not report the conducting of criminal background checks as a matter of policy.

### **Agencies Dealing With Similar Sensitive Information do Not Conduct Background Checks**

---

*The Legislative Auditor has found that the Division of Rehabilitation Services does not perform criminal background investigations of potential employees despite its dealing with sensitive information and vulnerable populations.*

---

In contrast, the Legislative Auditor has found that the Division of Rehabilitation Services does not perform criminal background investigations of potential employees despite its dealing with sensitive information and vulnerable populations. The Division of Rehabilitation Services reports that it adheres to the DOP's policy which requires work and academic references of every individual to be hired for all job classifications, but does not require inquiries into the possible criminal background of potential employees. The Legislative Auditor finds this to be inconsistent with statutory requirements and policies of agencies who serve similar sectors of the population. **It is the determination of the Legislative Auditor that checking only work and academic references does not provide adequate information for the Division of Rehabilitative Services, which reported providing services to 14,364 individuals, including minors, with significant disabilities in its 2002 Annual Report.**

### **Risk Created for Employers and Vulnerable Populations**

Given that many state employees have access to information systems that contain confidential, personal, and sensitive information, there exists the

*If an employer can't show that the character of its employees was researched during preemployment screening, the agency in question opens itself up to greater legal liability should an employee commit an act of negligence, fraud or abuse.*

potential for such information to be used in an unlawful manner that could be harmful to the people of West Virginia. In such cases, if an employer can't show that the character of its employees was researched during preemployment screening, the agency in question opens itself up to greater legal liability should an employee commit an act of negligence, fraud or abuse. Similarly, should an employee of a state agency commit such an act, harm can be inflicted on the person or population which the agency was created to serve. Ultimately such harm affects the entire population of West Virginia as the integrity of state government in general is compromised. Therefore, the benefits of requiring preemployment criminal background checks are twofold and serve to benefit all West Virginians by protecting the employer in terms of legal liability and by assuring public safety to those receiving government services.

### **Safe Work Environments An Employer Responsibility**

Background investigations protect not only the public, but also other employees. According to a report released by the Missouri Department of Public Safety, homicide in the workplace is the fastest growing form of murder in the United States today. Between 1980 and 1989, workplace violence constituted the third leading cause of occupational death for men and the first leading cause of occupational death for women. Since 1990, it has risen to second for men.

Criminal background investigations may screen out individuals with the potential to commit violent crimes. The financial cost of conducting background investigations on all new hires is negligible in comparison to the costs associated with the loss of one employee arising from an incident of workplace violence. Table 1 estimates the financial costs of conducting background investigations on every new state employee hired in fiscal year 2003, if criminal background investigations were required.

<b>Table 1</b>			
<b>Estimated Costs of Criminal Investigations if Required for Employees Hired in FY 03</b>			
<b>Type of Investigation</b>	<b>Cost of Investigation</b>	<b>Number New Employees</b>	<b>Total Cost</b>
State	\$20	3,952	\$79,040
Central Abuse Registry	\$10	3,952	\$39,520
Federal	\$24	3,952	\$94,848
Central Abuse Registry and Federal	\$34	3,952	\$134,368
Source: Post Audit Analysis of 2003 employment data.			

---

The cost of conducting criminal background investigations on new hires is low, as documented in Table 1. Agencies wishing to hire an applicant should be able to absorb the cost into the existing budget. Criminal background investigations would only be conducted on selected applicants.

*Criminal histories are useful indicators of behavior. However, this is not to say that a criminal history should always disqualify an individual from working for the State.*

Criminal histories are useful indicators of behavior. However, this is not to say that a criminal history should always disqualify an individual from working for the State, unless a pattern of criminal behavior is demonstrated. For example, if an applicant was convicted of a DUI offense ten years ago, this would not necessarily preclude this individual from being hired. A more recent DUI conviction, or a pattern of DUI offenses may well prevent an individual from being employed by the State. It is the opinion of the Legislative Auditor that the decision to hire should remain within the agency but information pertaining to an applicant's criminal history should not go below the director's level in order to protect the privacy of applicants.

## **Employees with Fiduciary Responsibilities**

According to data available from the West Virginia Financial Information Management System, approximately 1,261 state employees have the ability to encumber or to expend funds. Most of these state employees have had no criminal background or credit investigations conducted. In addition to these individuals, the State Auditor's Office reports that there are approximately 5,100 purchasing cards in use. As with those employees with FIMS authority, no criminal background or credit investigations were conducted prior the issuance of the purchasing card.

The federal Fair Credit Reporting Act allows credit agencies to share information with those who have a legitimate business need for the information. Employers are given access to employees' or potential employees' credit histories, as allowed under the federal Fair Credit Reporting Act. Information available from the National Conference of State Legislatures (NCSL) indicates that several states, including Kentucky and Maryland, allow access to credit reports for employment purposes in state law.

## **Most State Employees' Driving Records are not Reviewed before Operating a State Vehicle**

The Division of Personnel indicates that there are no job classifications designating who is permitted to operate state fleet vehicles. While DOP requires driver's record checks for state employees required to possess valid commercial

---

drivers licenses, no drivers record checks are conducted on state employees before they are permitted to operate a state fleet vehicle.

Information available from the Department of Administration indicates that there are approximately 1,900 vehicles in the state fleet. This number does not include vehicles from the Division of Highways, the Department of Transportation, the West Virginia State Police, Military Affairs and Public Safety, the Division of Natural Resources, the Division of Forestry, the Department of Agriculture or the Higher Education Policy Commission, as set forth by §5A-3-48. The Higher Education Policy Commission reports that as of October 2002, it owns a total of 961 vehicles.

West Virginia Code (§17A-2A-7) allows any governmental agency access to personal driving records. Governmental agencies are allowed access for any purpose construed as *carrying out its functions*. Additionally, existing statute allows the use of personal information in the driving record for the purpose of verifying the accuracy of information provided by an individual to a business or entity.

---

*Automobile claims are expensive for the State and many could be avoided.*

---

The Board of Risk and Insurance Management informs the Legislative Auditor that automobile claims are quite expensive for the state and many could be avoided. BRIM's loss control representatives routinely recommend that state agencies order a driver record from the Division of Motor Vehicles on all job candidates prior to hiring, as well as on current employees who have reason to drive on state business so that irresponsible and unfit drivers are not permitted to operate state vehicles.

## Conclusion

The Division of Personnel was created to provide leadership in personnel management for the state workforce. The Division of Personnel's mission is:

*To provide personnel management, training, and development for State government agencies and employees, in order to create an environment that engenders trust and confidence at all levels, and promotes personal and professional growth.*

In its annual report, the DOP reports that its goal is to ensure that government is staffed by a workforce that is skilled, dedicated and responsive to the needs of the citizens of West Virginia. Individuals convicted of crimes or having poor credit histories may not be, under certain circumstances, appropriate candidates for public employment. The Board of Risk and Insurance Management (BRIM) reports to the Legislative Auditor that:



---

*Employment practices claims are very expensive to handle and are difficult to defend and win in court. Given the current fear of being sued for their recommendations, most employers will only verify that an applicant previously worked for them for a certain period in a particular position. This severely limits the ability to see how an applicant has performed in the past and makes all the more important any and all investigation that can be conducted prior to a hiring decision being made. We only want the best people working for us and we must continually train them after hiring to help avoid expensive claims...*

***Background investigations increase the likelihood that employees will succeed in their jobs and demonstrate that an employer has made the extra effort to screen out unwanted applicants.***

Background investigations increase the likelihood that employees will succeed in their jobs and demonstrate that an employer has made the extra effort to screen out unwanted applicants. The cost to the State of conducting a comprehensive background investigation will be as low as \$34.00 a person. This extra effort helps the employer avoid potential liability for negligent hiring. Therefore, it is the determination of the Legislative Auditor that at a minimum, West Virginia Code should be amended to require more extensive pre-employment screening of all persons employed by the State who have fiduciary responsibilities, work in direct contact with sensitive information or with populations deemed vulnerable to fraud or abuse. The Legislative Auditor also contends that driving records should be examined by agencies before an employee is permitted to operate a state vehicle. The Division of Personnel should work with agencies to develop a procedure for assuring the safe and legal operation of state vehicles, in order to protect the public, as well as the employer from the physical and financial damages which may result from an unsafe driver.

## **Recommendations**

1. *The Legislature should consider amending the state Code to require background investigations of all state employees prior to employment.*
2. *The Division of Personnel should promulgate rules and amend its policy to require background investigations of all new applicants prior to employment.*
3. *The Legislature should consider requiring the Division of Personnel to conduct investigations of the driving records of employees authorized to operate state vehicles. The DOP should develop*

---

*policies regarding what would disqualify an employee from operating a state vehicle.*

4. *The Division of Personnel should identify all classified personnel in positions with access to financial resources or information databases which pose a financial risk to the State or to the public. Credit checks should then be conducted on these employees.*

# Appendix A: Transmittal Letter

---

## WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

Building 1, Room W-314  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0610  
(304) 347-4890  
(304) 347-4939 FAX



John Sylvia  
Director

November 26, 2003

Willard Farley, Acting Director  
WV Division of Personnel  
Building 6, Room 416  
1900 Kanawha Boulevard, East  
Charleston, WV 25305-3950

Dear Mr. Farley:

This is to transmit a draft copy of the Full Performance Evaluation of the West Virginia Division of Personnel. This report is scheduled to be presented during the December interim meeting of the Joint Committee on Government Operations. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committee may have.

If you would like to schedule an exit conference to discuss any concerns you may have with the report between December 1 and December 4, 2003, please notify us. We need your written response by noon on December 5, in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 340-3192 by Thursday, December 4 to make arrangements.

We request that your personnel treat the draft report as confidential and that it not be disclosed to anyone not affiliated with your agency. If you have any questions, please contact Michael Midkiff, Research Manager or Shannon Riley Berman, Research Analyst. Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia

Attachment

---

*Joint Committee on Government and Finance*

---



# Appendix B: Agency Response



## West Virginia Division of Personnel

Willard M. Farley, Acting Director

Department of Administration

Bob Wise, Governor  
Tom Susman, Acting Cabinet Secretary  
STATE PERSONNEL BOARD  
Eugene Stump, Chairman  
Rev. Paul Gilmer ♦ Elizabeth Harter  
Sharon Lynch

December 5, 2003

Mr. John Sylvia, Director  
Performance Evaluation and Research Division  
Building 1, Room W-314  
State Capitol Complex  
Charleston, West Virginia

RECEIVED  
DEC 05 2003  
PERFORMANCE EVALUATION AND  
RESEARCH DIVISION

Dear Mr. Sylvia,

Thank you for the opportunity to respond to the recent Performance Evaluation of the Division of Personnel.

We have reviewed the report and found that it is substantially correct. Further, we fully agree that more stringent pre-employment screening should be required for all State government employers.

In regard to the recommendations:

1. *The Legislature should consider amending the state Code to require background investigations of all state employees prior to employment.*

We **strongly support** all efforts to use the full force of state law to improve and standardize background investigations for applicants for state government employment.

2. *The Division of Personnel should promulgate rules and amend its policy to require background investigations of all new applicants prior to employment.*

We **fully agree** that the rule-making process is the most appropriate method of establishing the specific requirements of background investigations as it provides a forum for a full and public discussion of all of the issues surrounding background investigations.

3. *The Legislature should consider requiring the Division of Personnel to conduct investigations of the driving records of employees authorized to operate state vehicles. The DOP should develop policies regarding what would disqualify an employee from operating a state vehicle.*

We **fully agree** with this recommendation, and have already been working with the Board of Risk and Insurance Management on establishing methods and standards for such investigations.

TEL.: 304/558-3950 ♦

Building 6, Room 420, 1900 Kanawha Boulevard, East, Charleston, West Virginia 25305-0139 ♦

FAX:

304/558-1587

VISIT OUR WEBPAGE AT: [www.state.wv.us/admin/personnel](http://www.state.wv.us/admin/personnel)

THE DIVISION OF PERSONNEL IS AN EQUAL OPPORTUNITY EMPLOYER

---

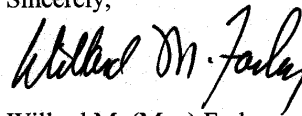
Mr. John Sylvia  
December 5, 2003  
Page two

4. *The Division of Personnel should identify all classified personnel in positions with access to financial resources or information databases which pose a financial risk to the state or to the public. Credit checks should then be conducted on these employees.*

We **agree in principle** that applicants for positions which pose a financial risk to the state or to the public require a higher level of scrutiny than applicants for most other positions. Furthermore, we **are committed** to developing "best practices" investigation methods and procedures that protect both the financial interests of the state and the privacy interests of individuals and comply with all Federal and state non-discrimination statutes.

Again, thank you for the opportunity to respond to the Performance Evaluation. Please let me know if you have questions or need additional information.

Sincerely,



Willard M. (Max) Farley  
Acting Director