



**March 12, 2019**  
**Durham County Audit Oversight Committee Minutes**

**I. Call to order**

The meeting was called to order at 3:30pm in the Durham County Manager's Conference Room located at 200 East Main Street, Durham, NC 27701.

**II. Members**

Present: Mr. Arnold Gordon, Chair; Mr. Manuel Rojas, Vice Chair, Commissioner Wendy Jacobs; Dr. Nicole McCoy, Secretary; Commissioner James Hill and Mr. Wendell Davis, County Manager (Ex-Officio).

Absent: None;

Presenter: Darlana M. Moore, Internal Audit Director; Sheriff Clarence Birkhead; Curtis Massey, Assistant County Attorney.

Others Present: Preston Edwards; Chief of Staff (Sheriff); Thomas "Butch" Hinton, Finance Manager (Sheriff), Lowell Siler, County Attorney; Jodi Miller, General Manager; Stephany Hand-Biggs, Legal Advisor (Sheriff); Gayle Harris, Public Health Director/General Manager.

**III. Business**

**A. Prior Meeting Minutes – Mr. Arnold Gordon**

Mr. Rojas moved and Dr. McCoy seconded the motion to approve the minutes (as amended by Dr. McCoy) from December 11, 2018. The minutes were approved unanimously.

**B. Discuss Confiscated Weapons – Curtis Massey, Attorney**

Mr. Gordon stated that after reading the three statutes (N.C. G.S. 15-11.1-2, N.C. G.S. 14-269.1, and N.C. G.S. 50B-3.1) and being a lawyer for many years, he understands the confusion concerning confiscated weapons. Mr. Gordon stated the weapons are piling up and in storage. This may not be costly but greatly increases the level of risk. There should be a way to dispose of the weapons under provisions

of the law; destroying them, donating them and keeping some for evidence as required by law.

Sheriff Birkhead asked Mr. Massey, "Since the Office of the Sheriff is amassing a large number of weapons, is there any language in the statute that allows the Sheriff flexibility to petition the court in order to formally dispose of these weapons." Mr. Massey stated, "Historically, there have been two problems within the Sheriff Office, 1) there had been problems with record keeping and identifying which weapons are related to each criminal case, and 2) the problem of the District Attorney's (DA) office not keeping the Sheriff's office informed as to when cases had been disposed, and 3) the ability to dispose of a weapon seized for evidence requiring a court order to destroy (initiated by the DA's office). Even when there is the authority from the court to dispose of a weapon from the court either because of the acts by the DA or because it was a founded surrendered weapon. There was reticence because the law was changed in 2013 to require the weapon not be destroyed unless the serial number had been altered or the weapon was unsafe to operate. Sheriff Hill and Sheriff Andrews were both opposed to reintroducing weapons into the stream of coffers. They were concerned that weapons being used in a crime and then being sold and reintroduced into criminal activity."

Sheriff Birkhead asked Mr. Massey, "Which of the three statutes govern the destruction or the reassignment of weapons for training purposes or to give back to the defendant?" Mr. Massey stated, "Per the memo I wrote, if you would look at G.S. 15-11.1 under B1<sup>1</sup>, you have options for disposition.

Mr. Gordon stated, "Let's look at B4<sup>2</sup>. Mr. Gordon then asked if the County has weapons where the identification number has been tampered with? Sheriff Birkhead replied, "Yes, however, they are normally tied to a case." Mr. Gordon asked if there were any weapons without an identification number that were not tied to a case? Sheriff Birkhead replied, "Not, that I am aware of." Mr. Gordon stated, "that should be an easy fix, just destroy them." Sheriff Birkhead stated,

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<sup>1</sup> **(b1)** Notwithstanding subsections (a) and (b) of this section or any other provision of law, if the property seized is a firearm and the district attorney determines the firearm is no longer necessary or useful as evidence in a criminal trial, the district attorney, after notice to all parties known or believed by the district attorney to have an ownership or a possessory interest in the firearm, including the defendant, shall apply to the court for an order of disposition of the firearm. The judge, after hearing, may order the disposition of the firearm in one of the following ways:

**(1)** By ordering the firearm returned to its rightful owner, when the rightful owner is someone other than the defendant and upon findings by the court (i) that the person, firm, or corporation determined by the court to be the rightful owner is entitled to possession of the firearm and (ii) that the person, firm, or corporation determined by the court to be the rightful owner of the firearm was unlawfully deprived of the same or had no knowledge or reasonable belief of the defendant's intention to use the firearm unlawfully.

<sup>2</sup> **(2)** By ordering the firearm returned to the defendant, but only if the defendant is not convicted of any criminal offense in connection with the possession or use of the firearm, the defendant is the rightful owner of the firearm, and the defendant is not otherwise ineligible to possess such firearm.

"Any weapon that is linked to a case, I would have to petition the courts in order to destroy the weapon."

Mr. Gordon asked if there are any weapons that the Sheriff does not have to keep under B3<sup>3</sup> which would be of use to law enforcement within the County and City, etc.? Sheriff Birkhead replied, "Yes." Mr. Gordon asked, "How big of a job would it be for you to identify those and take them into your inventory as police weapons?" Sheriff Birkhead replied, "It would be a significant undertaking in manpower and time to go back as far as we need to go back. We're currently petitioning for additional storage because of the amount of weapons we have on hand. It would take years." Commissioner Jacobs asked the Sheriff to give the committee an idea of to what he is talking about. The Sheriff stated that he would need a storage unit for nothing but weapons. Sheriff Birkhead stated he would need a facility larger than the room in which we were meeting in order to house only weapons.

Mr. Gordon stated, "It is my understanding that the majority of these weapons can be used for training purposes?" The Sheriff replied, "There has not been a complete inventory of the weapons; however, the majority would be destroyed, and a small number utilized for training purposes." Mr. Gordon asked, "What is preventing us from destroying that category of weapon?" Sheriff Birkhead referred the question to Mr. Massey. Mr. Massey stated that he is not aware of the number of weapons that needed to be destroyed or if the appropriate court order had been filed requesting weapons to be destroyed.

Mr. Rojas asked the Sheriff if he knew when the last inventory had been performed of the weapons room? Sheriff Birkhead referred this question to Mr. Massey. Mr. Massey stated he thought one was done prior to the change of the administration. Mrs. Moore stated that was her review of the weapon room which included only a sample of the weapons conducted in November 2018. Sheriff Birkhead asked Mr. Massey if he knew of a full inventory ever being conducted of the room? Mr. Massey asked Sheriff Birkhead to speak with Corporal Campen. Mrs. Moore stated that during the audit she asked Corporal Campen when was the evidence room last inventoried? Mr. Campen replied, "It has been an on-going process for three years. We only have three full-time employees."

Mr. Rojas suggested that a proper inventory is conducted in the presence of an independent person prior to moving forward. This inventory would determine whether there are any weapons that could be immediately destroyed. This inventory would also determine the Office of the Sheriff's next steps concerning the use of the weapons. Mr. Rojas stated that he did not know the Sheriff's thoughts concerning putting the weapons back into the field. Sheriff Birkhead responded

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<sup>3</sup>(3) By ordering the firearm turned over to be destroyed by the sheriff of the county in which the firearm was seized or by his duly authorized agent if the firearm does not have a legible, unique identification number or is unsafe for use because of wear, damage, age, or modification. The sheriff shall maintain a record of the destruction of the firearm.

that the weapons would be utilized for training purposes only. Mr. Rojas asked that a written process be put in place in order to eliminate any liability to the Office of the Sheriff. Mr. Rojas stated there needs to be an inventory documenting what is evidence and what is not evidence and what may be included within the grey area in between. Mr. Rojas stated the DA cannot do anything without knowledge of this information.

Mr. Gordon asked if the weapons were stored on racks? Mrs. Moore confirmed the weapons being stored on racks. Mr. Gordon stated it is the BOCC's responsibility to ensure the Office of the Sheriff has the necessary resources to complete this inventory. This is a big risk. Mr. Rojas also stated this could lead to bad press.

Dr. McCoy asked if there were current procedures in place. Sheriff Birkhead confirmed there are current procedures in place. Dr. McCoy asked then why are the weapons continuing to stockpile? Sheriff Birkhead replied, "The accumulation has been over time." Dr. McCoy stated, "then the weapons should remain stagnate." Sheriff Birkhead replied, "No. By law, these weapons cannot be eliminated due to the lack of information from the DA's office and the Clerk's office linking these guns to a case to petition the court for proper disposition. We cannot destroy potential evidence."

Mr. Davis stated that Mr. Rojas is correct. The inventory and stratification process need to be completed as best we can. Then we need to discuss with the courts and DA to find out what is what. Next, we need to deal with the biggest challenge which is space. Mr. Rojas stated the inventory should occur first and then a policy written going forward.

Mr. Rojas asked how long does the court require you to hold a weapon? Mrs. Moore stated there are none. The Sheriff concurred. Commissioner Jacobs stated that the City of Durham is being innovative by dismissing traffic violations related to drivers' license revocations. They are doing this to streamline the process and maybe we could do something similar concerning this process.

Mr. Siler asked the Sheriff if there was a difference between the evidence room and the room that is used to store the weapons? The Sheriff replied there use to be but now there is a space issue; evidence is being commingled with weapons or seized property. Sheriff Birkhead continued to say that all stakeholders need to be identified from his office and the DA's office to identify a procedure to immediately address some of the low hanging fruit.

Mr. Rojas asked if the City has a storage problem like the County? The Sheriff answered, "yes." Mr. Massey stated the City purchased a business that had gone under which had a lot of storage and currently utilize that space.

Mr. Gordon stated the Sheriff would meet with his counterparts at the City and the DA's office and discuss this issue. The Sheriff is then to report his findings at the next AOC meeting.

Mr. Siler asked that with the weapons you currently have, is each weapon indexed and tagged so that you will know what case the weapon is associated with? The Sheriff responded, "yes." Mr. Rojas stated this process cannot be adequately confirmed as the evidence room has not been inventoried. There needs to be an inventory.

Mr. Gordon asked Sheriff Birkhead to return to the next AOC meeting to discuss:

- What resources are needed to determine what weapons are involved.
- A rough guess of what weapons and in what category.
- A written timeline concerning next steps of previously mentioned items.

### **C. Discuss Internal Audit Submission – Mrs. Darlana Moore**

Mrs. Moore gave a brief overview of the audit objectives and explained that Internal Audit selected samples from the Sheriff evidence room and Inventory listing to examine. Audit selected a sample of items for review from the inventory list and evidence room. There were no findings or issues during this review. Any assets that could not be located within the evidence room had its proper chain of custody documentation to support the location of the item.

There were no major or material findings from this audit. However, there was a finding in the amount of \$14,211.83 (Inmate Welfare Account) that had been posted in the incorrect fiscal year.

There are no written policies and procedures. Audit reviewed contracts, the contract with Animal Protection Services did not contain the appropriate bond. Also, the contract file did not contain adequate documentation to support any contract monitoring activities by management within the Office of the Sheriff.

Audit follow-up will be conducted later.

Mr. Davis asked Mr. Siler to follow-up on the required performance bond with Animal Services. Mr. Siler stated he will discuss this with the new Risk Manager and disseminate the information to the group.

Commissioner Jacobs asked when was the last audit of the Office of the Sheriff? Ms. Moore stated she would research the information and respond via email to Commissioner Jacobs.

Mr. Rojas stated the Office of the Sheriff was audited several years ago subsequent Sheriff Andrews appointment to the position. Commissioner Andrews questioned whether there had been a turnover audit during the time of Sheriff Mike Andrew's appointment or his election? Mrs. Moore responded, "No. Mr. Siler and I researched the North Carolina General Statutes and there are no statutes requiring a turnover audit once a Sheriff leaves office. Sheriff Mike Andrews requested this audit prior to his departure. Upon audit's research, most counties do conduct an audit once an elected official leaves office."

Mr. Gordon suggested Commissioner Jacobs discuss this issue with the other Commissioners to make this type of audit mandatory when any elected official or some other high-ranking official leaves office.

Commissioner Jacobs asked how the Board of County Commissioners (BOCC) would impose such an action? She asked if the action would originate at the Audit Oversight Committee (AOC) level or at the BOCC level? Mr. Rojas asked that this discussion be tabled. Commissioner Jacobs stated, "I was just wondering what the issues were in the last audit and why these issues did not come up earlier?" Mr. Rojas interjected, "There were some issues that did come before this committee during Mike Andrews time; however, it has been so long I do not recall." Mr. Gordon stated, "When you change a CFO or CEO in private practice, there should be an audit." Mr. Rojas asked that this discussion of establishing a precedence to audit areas of an outgoing elected official or high-ranking member of management be tabled until the next AOC meeting amongst committee members only. All agreed to table this discussion until the next AOC meeting.

#### **D. Closed Session**

**MOTION TO ADJOURN INTO CLOSED SESSION PURSUANT TO N.C.G.S SECTION 143-318.11 (3) and (7) "TO CONSULT WITH AN ATTORNEY EMPLOYED OR RETAINED BY THE COUNTY OF DURHAM TO PRESERVE THE ATTORNEY- CLIENT PRIVILEGE; AND, TO DISCUSS A MATTER RELATED TO THE PLANNING, EXECUTING AND REPORTING OF AN INVESTIGATION REGARDING AN ALLEGATION OF CRIMINAL MISCONDUCT BY A FORMER EMPLOYEE."**

Mr. Rojas made a motion to seal the minutes. Commissioner Jacobs seconded, and it was agreed unanimously.

#### **E. Status of the 2019 Annual Audit Plan – Mrs. Darlana M. Moore**

Ms. Moore discussed the status of the 2019 Annual Audit Plan. She explained that the Sheriff Turnover Audit report is being finalized. Commissioner Jacobs asked when the Sheriff Turnover report would be discussed with the new Sheriff. Mrs. Moore explained a meeting had already been held and the report provided to the Sheriff. The report will be presented at the next Audit Oversight Committee meeting on March 12, 2019.

Mr. Rojas asked if there were occurring issues that were not on the audit plan. Ms. Moore replied there were issues that had arisen; however, time was built into the audit plan for investigations. Mrs. Moore stated she had completed the Sheriff Turnover Audit and an investigation on her own. Ms. Moore assigned audit staff to do a County Cash Audit. Mr. Gordon requested clarification that Ms. Moore had been performing the audit and investigation on her own. Ms. Moore clarified that was correct. Mr. Gordon stated the need for more staff within Internal Audit. Commissioner Jacobs responded there is not a department within the County that does not have a list of staffing requests. Commissioner Jacobs stated she is on the Health and Human Services Board and there are requests for many employees to help with case work.

#### **F. Status of audit staffing – Mrs. Darlana M. Moore**

Mr. Gordon stated there is an inadequate number of audit staff and acknowledged there is market competition. Mr. Davis explained that audit staffing has been a challenge since 2004, it was recommended at that time there should be four audit staff members. There are currently three positions dedicated to Internal Audit, including the Director's position. Mr. Davis will look for opportunities to expand staffing during the budget process. This will give the opportunity to review the vacancy rates in terms of resources available. Mr. Gordon stated it is very critical to have audit staff to prevent potentially very public incidents. Mr. Rojas responded that audit teams are often short staffed and that is why it is critical to have a risk assessment. He also explained that there needs to be a limitation to added projects.

#### **G. New Business**

Mr. Gordon motioned to have the New Business discussion be held as a closed session. Mr. Gordon read N.C. G.S. 143-318.11 (3) and (7). Dr. McCoy seconded to enter closed session, and all were unanimous.

Mr. Rojas motioned to seal the minutes and Commissioner Jacobs seconded, all were unanimous.

#### **H. Old Business**

Mr. Gordon addressed his concern relating to the shortage of staff within the Internal Audit department. He stated he would hope the Manager would address the situation and do whatever is necessary to assist with the matter. Mr. Davis stated the issue is being addressed.

#### **I. Next Meeting Date:**

June 11, 2019, 3:30pm.

#### **IV. Adjournment**

There being no further business, the meeting was adjourned at approximately 5:02pm.