

State of Arizona
Office
of the
Auditor General

**PERFORMANCE AUDIT** 

DEPARTMENT OF PUBLIC SAFETY

**Sunset Factors** 

Report to the Arizona Legislature By Debra K. Davenport Auditor General October 2001 Report No. 01-29 The Auditor General is appointed by the Joint Legislative Audit Committee, a bipartisan committee composed of five senators and five representatives. Her mission is to provide independent and impartial information and specific recommendations to improve the operations of state and local government entities. To this end, she provides financial audits and accounting services to the state and political subdivisions and performance audits of state agencies and the programs they administer.

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DEBRA K. DAVENPORT, CPA
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DEPUTY AUDITOR GENERAL

October 1, 2001

Members of the Arizona Legislature

The Honorable Jane Dee Hull, Governor

Colonel Dennis Garrett, Director Department of Public Safety

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Department of Public Safety—Agency-wide Sunset Factors. This report is in response to a June 16, 1999, resolution of the Joint Legislative Audit Committee. The analysis of the 12 Sunset Factors was prepared as part of the Sunset review set forth in A.R.S. §41-2951 et seq.

This is the ninth in a series of reports issued on the Department of Public Safety.

This report summarizes the recommendations directed to the Department of Public Safety that are included in the other eight reports. As such, the Department of Public Safety did not provide a written response to this report.

My staff and I will be pleased to discuss or clarify items in the report.

This report will be released to the public on October 2, 2001.

Sincerely,

Debra K. Davenport Auditor General

**Enclosure** 

## TABLE OF CONTENTS

<u>Pa</u>	<u>age</u>	
Introduction and Background	1	
Sunset Factors	5	

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## INTRODUCTION AND BACKGROUND

The Office of the Auditor General has prepared agency-wide Sunset Factors for the Arizona Department of Public Safety (DPS). The analysis of the 12 Sunset Factors was prepared as a part of the Sunset review set forth in Arizona Revised Statutes (A.R.S.) §§41-2951 et seq.

Pursuant to a June 16, 1999, resolution of the Joint Legislative Audit Committee, the Sunset review of DPS also included a series of eight performance audits. The audited areas covered aspects of four of DPS' five divisions, representing 69 percent of DPS' \$168.6 million budget and 80 percent of DPS' 2,057 full-time equivalent (FTE) employee positions in fiscal year 2001.

### **Department Organization**

The Arizona Department of Public Safety is divided into five divisions as described below. Performance audits were conducted within all divisions except the Director's Office.

- **Director's Office (48 FTEs)**—The Office of the Director is responsible for establishing DPS' goals, policies, procedures, and organizational structure. It also provides administrative support for the Governor's Office of Highway Safety, the Arizona Peace Officer Standards and Training Board, and the Law Enforcement Merit System Council.
- Agency Support (214 FTEs)—The Agency Support Division provides a variety of services, including legal support, strategic planning, grants administration, and public information. In addition, it provides each agency division with accounting, payroll, budgeting, human resources, training, procurement, and facilities and vehicle management services. The audited area within this Division was the Drug Abuse Resistance Education (D.A.R.E.) program.

- Criminal Investigations (396 FTEs)—The Criminal Investigations Division provides statewide investigative, specialized enforcement, and high-risk response support to federal, state, and local criminal justice agencies. The Division conducts investigations involving narcotic trafficking, organized crime, vehicle theft, and gangs. In addition, the Division provides specialized high-risk response to acts of extraordinary violence. One audit was conducted, which covered all the Division's functions.
- Criminal Justice Support (523 FTEs)—The Criminal Justice Support Division develops and coordinates scientific, technical, regulatory, and support services essential to the promotion of public safety. These services include fingerprint identification, criminal history and sex offender information, scientific analysis, data processing, law enforcement and medical emergency dispatch, and background checks of firearm purchasers. The Division also develops, operates, and maintains DPS' statewide radio and voice/data communications systems. The four audits conducted within this Division covered the criminal justice information and fingerprint identification, telecommunications, licensing, and scientific analysis functions.
- Highway Patrol (876 FTEs)—The Highway Patrol Division ensures the safe and expeditious use of the highway transportation system for the public and provides assistance to local law enforcement agencies. It also provides hazardous materials training for DPS and other agencies' personnel; enforces commercial motor vehicle, tow truck, and school bus safety regulations; and provides air ambulance and rescue services. The two audits conducted within this Division covered the Highway Patrol and aviation functions.

### Scope and Methodology

DPS' performance was analyzed in accordance with the 12 statutory Sunset Factors. The following audits were completed:

■ Aviation Section (Report No. 00-7);

- Scientific Analysis Bureau (Report No. 00-12);
- Drug Abuse Resistance Education Program (Report No. 01-3);
- Telecommunications Bureau (Report No. 01-5);
- Licensing Bureau (Report No. 01-10);
- Highway Patrol Division (Report No. 01-20);
- Criminal Investigations Division (Report No. 01-22); and
- Criminal Information Services and Fingerprint Identification Bureaus (Report No. 01-28).

Information obtained from DPS officials, the Governor's Regulatory Review Council, the Department of Administration, Office of the Secretary of State, the Department of Liquor Licenses and Control, and the Office of the Attorney General is also included.



## **SUNSET FACTORS**

In accordance with A.R.S. §41-2954, the Legislature should consider the following 12 Factors in determining whether the Arizona Department of Public Safety (DPS) should be continued or terminated. The evidence assembled under these 12 Factors indicates the continued need for DPS. However, the eight performance audits identified opportunities for DPS to improve operations in a variety of ways.

1. The objective and purpose in establishing the agency.

The Legislature passed Laws 1968, Chapter 209, establishing DPS to create and coordinate services for use by local law enforcement agencies in protecting the public safety. Prior to its formation, DPS' current duties were carried out by the Arizona Highway Patrol, the Department of Liquor Licenses and Control's Enforcement Division, and the Department of Law's Narcotics Division.

DPS began operating as a state agency on July 1, 1969, and has defined its mission as follows:

"To enforce state laws, deter criminal activity, assure highway and public safety, and provide vital scientific, technical, and operational support to other criminal justice agencies in furtherance of the protection of human life and property."

In support of this mission, the five divisions within DPS perform three central functions:

■ **Enforcement**—DPS enforces Arizona state and federal laws. Specifically, DPS has responsibilities in the areas of motor vehicle traffic, narcotics, organized crime, racketeering, and liquor regulatory functions.

- Operational and technical assistance—DPS provides operational and technical assistance, such as scientific analysis, aircraft support, and criminal information systems, to local and state government agencies and other members of the criminal justice community.
- Promote and enhance public safety—DPS promotes and enhances the quality of public safety through cooperative enforcement, intelligence gathering, training, and increasing public awareness of criminal activities.
- 2. The effectiveness with which the agency has met its objective and purpose and the efficiency with which it has operated.

DPS has met its overall objective and purpose. However, in a series of eight performance audit reports, the Auditor General has identified ways DPS could improve its efficiency and effectiveness. Specifically,

- Shift Focus of Aviation Services—DPS could improve its efficiency by shifting the focus of its Aviation Section's mission. This would entail providing only backup air ambulance services, seeking additional funds to obtain more powerful helicopters, and charging user agencies the full cost of the air transport services it provides. By making these changes, DPS could increase its focus on law enforcement and air searchand-rescue missions, limit competition with the private sector, and more fully recoup its costs. (Report No. 00-7)
- Resolve Crime Lab Backlogs—DPS needs to take additional steps to reduce the crime lab's backlog of unanalyzed DNA samples and expand its efforts to analyze crime-scene evidence. Without these steps, Arizona's DNA database program, which compares DNA evidence from crime scenes and DNA profiles of certain convicted criminals, will not reach its full

potential to help law enforcement personnel solve crimes. Similarly, DPS should take steps to address its backlog of blood and urine samples to ensure delays do not jeopardize criminal prosecutions. (Report No. 00-12)

- Evaluate D.A.R.E. Participation—DPS should work with the Arizona Drug and Gang Policy Council to determine if its participation in the Drug Abuse Resistance Education (D.A.R.E.) program is in the State's best interest. Despite D.A.R.E.'s popularity and widespread use, over a decade of research has failed to show that the program's most widely used component has any lasting impact on preventing or reducing substance abuse behavior among youth (Report No. 01-3). However, on September 1, 2001, DPS concluded its participation in D.A.R.E. due to the elimination of federal funding for regional training centers, one of which DPS administered.
- Prepare to Upgrade the Statewide Telecommuni**cation System**—DPS needs to prepare to convert its aging microwave telecommunication network. The system currently relies on obsolete analog technology that is no longer being manufactured and can no longer accommodate DPS' needs. DPS should develop a plan for converting to a digital system, seek grants to help finance the cost of the system, and seek additional funding from the Legislature. Likewise, DPS needs to take additional steps to ensure that it can recruit and retain its telecommunication technicians who will be key in converting to the new digital technology. For example, DPS should better promote its entry-level technician positions by making presentations and posting job notices at technical institutes and assess the feasibility of offering hiring bonuses and counter-offers to attract and retain technicians. (Report No. 01-5)
- Improve the Firearm Background Check Process— DPS needs to take several steps to improve its processing of firearm background checks. Although most background checks can be completed in minutes,

some require additional research. Federal and state law provides DPS three business days to conduct this research and dealers may sell the firearm after the three business days have elapsed if DPS has not advised them that the individual is ineligible to purchase a firearm. However, DPS was unable to complete background checks within three days for about 5,000 people during calendar year 2000. Therefore, DPS needs to make these checks more effective by beginning research more quickly and seeking statutory authority to extend the amount of research time, if necessary, up to 30 days to confirm a gun buyer's eligibility. This would ensure that firearms are only sold to qualified individuals, rather than allowing some purchases to continue by default. (Report No. 01-10)

- Improve Criminal Investigation Processes—DPS needs to make several improvements to its criminal investigations processes. Specifically, DPS needs to develop processes to formally evaluate its participation on task forces, ensure that investigators assigned to task forces are appropriately supervised, and regularly evaluate its continued participation on task forces, since more than half its investigators are assigned to task forces. In addition, DPS needs to better screen new investigations and requests for services to ensure it balances the requests of local jurisdictions with statewide law enforcement needs and priorities. Additionally, DPS should ensure that sufficient management information is captured about investigations in its case management system. Without these procedures, DPS cannot fully monitor its investigative efforts and, therefore, ensure that it is using limited investigative resources effectively. (Report No. 01-22)
- Ensure the completeness of Criminal History Records—DPS needs to ensure the accuracy and completeness of criminal history records. Nearly 50 percent of arrest charges in Arizona's criminal history database dating between 1995 and 1999 lack complete information on the results of the arrests. Because DPS is ultimately responsible for the completeness and ac-

curacy of the State's criminal history information in the central repository, it should significantly enhance its reviews of agencies who submit the information and adopt rules clarifying the manner and methods by which they should forward this information to DPS. (Report No. 01-28)

■ Expedite and Improve Background Checks—DPS needs to complete background checks in a more timely manner. Fingerprint background checks are completed to determine eligibility for employment and include both state- and national-level criminal history searches. However, these checks can take a long time. While DPS is pursuing electronic processing of fingerprints with the FBI to help expedite the process, it needs to re-evaluate its cost estimates for electronic processing since many factors have changed since DPS originally estimated the costs. In addition, DPS should also take the steps necessary to become a full participant in the National Crime Prevention and Privacy Compact, an interstate compact that was established to facilitate the direct exchange of criminal history information between participating states and the FBI. Although the Governor ratified the Compact in August 2001, DPS should obtain legislative approval of the Compact. (Report No. 01-28).

## 3. The extent to which the agency has operated within the public interest.

DPS has generally operated in the public interest by providing a variety of services to the public and Arizona's law enforcement community:

■ Law Enforcement—DPS officers enforce state laws with primary responsibility in the areas of traffic, narcotics, organized crime/racketeering, and liquor. Additionally, DPS officers patrol nearly 6,000 miles of state and federal highways, including investigating traffic collisions, rendering aid to crash victims, controlling motor vehicle traffic, and aiding stranded motorists. DPS also assists other law enforcement agen-

cies in Arizona. For example, DPS participates on task forces, maintains a statewide telecommunication system, scientifically analyzes evidence, provides aircraft for various missions, and provides manpower when needed to respond to critical events. However, auditors identified several ways in which DPS could further improve its law enforcement services. For example, DPS should improve the model it uses to estimate the number of highway patrol officers needed to adequately patrol the State's highways and should develop comprehensive policies for its motor vehicle fleet size and replacement. (Report No. 01-20)

- Information Services—DPS maintains and provides critical information to a variety of law enforcement customers and the public. For example, DPS serves as the central repository of criminal history information in Arizona by maintaining the Arizona Criminal Justice Information System and the Arizona Fingerprint Identification System. Similarly, DPS confirms and updates the addresses of sex offenders registered in Arizona, maintains a Web site of public information about certain sex offenders, and monitors the sex offender communication notification process carried out by Arizona's local law enforcement agencies.
- Regulation—DPS regulates individual security guards and private investigators, and the agencies that provide these services. DPS also certifies school bus drivers, inspects school buses, and certifies tow trucks. However, auditors found that DPS could enhance its oversight of security guards and private investigators by changing to a primarily mail-inapplication process and devoting more time to other regulatory functions, such as conducting compliance site visits and investigating complaints. (Report No. 01-10)
- Official Protection—DPS officers provide security for members of Arizona's Senate and House of Representatives, and for the Governor.

# 4. The extent to which rules and regulations promulgated by the agency are consistent with legislative mandate.

According to the staff of the Governor's Regulatory Review Council (GRRC), DPS has not promulgated all of the rules needed to operate effectively and some of DPS' rules have not been revised since the early 1970s. First, GRRC staff noted that rules were needed for several aspects of the State's criminal justice information services. For example, rules are needed to establish guidelines for submission and retention of criminal justice information; to set fees to cover the costs of federal noncriminal justice fingerprinting processing and copies of departmental reports; and to formalize requirements that agencies who collect, store, or disseminate criminal justice information establish effective security measures. Similarly, the Auditor General recommended that DPS should adopt rules clarifying how criminal justice agencies should submit criminal records to the central state repository. (Report No. 01-28)

Additionally, GRRC staff reports that DPS lacks necessary rules for several of its regulatory functions. For example, rules are needed regarding time frames for security guard certificates, private investigator licenses, and tow truck permits; minimum limits of liability insurance policies applicants are required to maintain a license to operate a security guard business; training curriculum for security guards; and various processes regarding private investigator licenses and security guard certificates. Further, auditors recommended that DPS needs to develop administrative rules for responding to delayed and denied gun buyers' inquiries and appeals. (Report No. 01-10)

Auditors have provided GRRC's recommendations to DPS. Additionally, DPS reports that it is already working to amend its rules on private investigators, security guards, tow trucks, and concealed weapons permits.

5. The extent to which the agency has encouraged input from the public before promulgating its rules and regulations and the extent to which it has informed the public as to its actions and their expected impact on the public.

DPS reports that the public is informed of proposed rules through the GRRC rules promulgation process. For example, the Secretary of State publishes the proposed rules in the *Arizona Administrative Register*. Similarly, GRRC hears public testimony at its meetings. DPS also reports that stakeholder input is sought in some cases through letters, group meetings, and other means.

Additionally, DPS utilizes several other avenues to provide information to the public. For example, DPS provides information about its services through:

- A Web site, which includes information on DPS' organization and how to obtain DPS reports, apply for permits and licenses, and contact DPS;
- A Public Awareness and Community Education program, which includes public information officers who respond to all media requests for information, conduct school visits to teach children about safety, and operate a booth at the annual State Fair; and
- Citizen Academies, where information about DPS is presented to citizens. Approximately ten academies are presented throughout the State each year. Attendees spend one night a week for approximately seven weeks learning about DPS. For example, representatives from each of DPS' functions speak about their responsibilities and activities. Similarly, attendees may tour DPS facilities or equipment, such as DPS' helicopters, or ride along with DPS officers.

6. The extent to which the agency has been able to investigate and resolve complaints that are within its jurisdiction.

A representative from the Attorney General's Office reports that DPS has adequate authority to investigate and resolve complaints against its employees and regulated businesses and individuals. Additionally, DPS management voices a strong commitment to investigating and resolving complaints regarding employees. For example, DPS has designated a high-level manager to handle complaints received through the Arizona Office of the Ombudsman—Citizens' Aide.

DPS reports that it has not been able to adequately investigate complaints or conduct proactive investigations of regulated security guards or private investigators because it lacks resources. However, auditors made several recommendations to streamline the application process for security guard and private investigator employees, which should allow DPS to spend more time on these regulatory functions without needing additional staff resources. (Report No. 01-10)

7. The extent to which the Attorney General or any other applicable agency of state government has the authority to prosecute actions under enabling legislation.

The Attorney General and county attorneys have the authority to prosecute actions taken by DPS. DPS officers enforce Arizona traffic, criminal, and state and federal laws. Additionally, officers conduct investigations involving narcotics trafficking, organized crime, vehicle theft, gangs, and computer and financial crimes; enforce state drug and liquor laws; and apprehend fugitives. These cases are forwarded to the Attorney General and County Attorney for prosecution when warranted.

8. The extent to which the agency has addressed deficiencies in its enabling statutes that prevent it from fulfilling its statutory mandate.

DPS worked on several pieces of legislation that were enacted during the 2001 legislative session to address deficiencies in its own and other law enforcement statutes. Specifically:

- Laws 2001, Chapter 337 amended various statutes within A.R.S. Title 28, Chapter 3, including mandating the quick clearance of roadways after accidents when appropriate and the use of traffic control devices and double penalties in work zones;
- Laws 2001, Chapter 350 amended various statutes to require fingerprinting of certain people working with vulnerable populations;
- Laws 2001, Chapter 126 amended A.R.S. §28-930 and §28-3228 to require applicants for school bus driver certificates to be subjected to fingerprint checks;
- Laws 2001, Chapter 49 amended A.R.S. Title 32 and added §32-2638 to increase requirements for security guard licensees and created a private investigator and security guard study committee; and
- Laws 2001, Chapter 212 amended A.R.S. §41-1713 and §41-1830.12 to enhance the DPS director's responsibilities regarding employee leave.

DPS has also worked with several pieces of legislation in the past several years. For example:

■ Laws 1999, Chapter 254 expanded A.R.S. §13-1210 to allow public safety officers to obtain blood specimens from suspects in order to conduct tests for the presence of life-threatening disease when an exchange of bodily fluids may have occurred.

- Laws 1998, Chapter 159 modified A.R.S. Title 28, Chapter 3, Article 5 to define and set violations for "aggressive driving."
- Laws 1997, Chapter 17 modified A.R.S. §13-1209toallow seizure of a vehicle used in a drive-by shooting.

# 9. The extent to which changes are necessary in the laws of the agency to adequately comply with the factors in the Sunset Laws.

DPS reports that omnibus legislation is needed to address problems in its statutes and the current series of audits identified several areas where statutory changes should be considered. Many of DPS' statutes have not been rewritten since 1969. As a result, some of the language concerning organizational structure is outdated, and there is inconsistent language in other areas. DPS is considering sponsoring an omnibus bill in the 2002 legislative session to address these issues.

As a part of this effort, the Legislature may want to consider clarifying or eliminating DPS' statutory provisions regarding liquor enforcement.<sup>1</sup> For example, A.R.S.§41-1712(A)(5) directs DPS to create a Division of Liquor Control. While this may have been appropriate at the time the statute was written in 1968, this may no longer be necessary. In 1982, the Department of Liquor Licenses and Control was also directed to form a similar division, which currently employs over 20 investigators. As a result, both DPS and the Department of Liquor have similar statutory mandates to enforce Arizona's liquor laws. Removing DPS' explicit statutory responsibilities to investigate liquor law violations would not preclude it from enforcing liquor laws and regulations when appropriate, such as when liquor violations are detected as a part of larger criminal investigation. This would also enable DPS to refocus its valuable resources away from misdemeanor-level liquor violations and toward more serious crimes.

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<sup>&</sup>lt;sup>1</sup> A.R.S. §41-1712(A)(5) and §§41-1791 to 41-1794.

Additionally, the current series of audits identified the following areas where statutory changes should be considered:

- The Legislature should consider transferring the responsibility of conducting firearm background checks to the Federal Bureau of Investigation. This change would require repealing A.R.S. §13-3114. (Report No. 01-10)
- If the Legislature decides that DPS should retain responsibility for conducting firearm background checks, it should consider providing DPS the statutory authority to recover its operating costs by assessing a nominal fee. If this authority is granted, the Legislature should also consider providing DPS with authority to establish a separate fund to account for the fees remitted to the program, and use these fees to cover the program's operating expenses. (Report No. 01-10)
- DPS should seek legislative authority to allow it to delay the sale of a firearm from 3 to 30 days, and to indicate how it will resolve the cases that it cannot determine eligibility for within 30 days. (Report No. 01-10)
- DPS should seek legislative authority to amend Title 32, Chapter 26 to require security guard applicants to receive training before they receive a provisional certificate, establish the minimum amount of training required, and include continuing education requirements for security guards. (Report No. 01-10)
- 10. The extent to which the termination of the agency would significantly harm the public health, safety, or welfare.

As Arizona's statewide law enforcement agency, DPS' major role is to ensure public safety; therefore, its termination would significantly harm the public. For example, DPS has primary responsibility for enforcing laws on Arizona's state and federal highways. Similarly, DPS offi-

cers investigate crimes that present a threat to society, such as narcotics trafficking, organized crime, vehicle theft, gangs, and computer and financial crimes. Likewise, DPS' criminal information systems help to ensure that felons are not able to purchase firearms and assist law enforcement agencies in identifying criminal histories. DPS also protects the State's highest elected official—the Governor—and her family.

# 11. The extent to which the level of regulation exercised by the agency is appropriate and whether less or more stringent levels of regulation would be appropriate.

Audit work did not identify any areas where more or less stringent levels of regulation would be appropriate. However, the report on DPS' Licensing Bureau identified several steps DPS could take to enhance its regulation of security guards (see Report No. 01-10). Practices used in other states and recommended by national security associations are stricter than Arizona's. Specifically, DPS should establish the type and amount of training required; require applicants to receive training prior to receiving their provisional certificate; require continuing education during the certification period; conduct state criminal history background checks before issuing a provisional certificate; and conduct additional background checks annually during the certificate period. Some of these changes will require statutory revisions, as discussed in Sunset Factor No. 9.

# 12. The extent to which the agency has used private contractors in the performance of its duties and how effective use of private contracts could be accomplished.

As a law enforcement agency, many of DPS' functions cannot be reasonably or easily outsourced; however, DPS uses private contractors in several areas, such as custodial and landscaping services. Similarly, private contractors affix DPS emblems to highway patrol vehicles. However,

auditors identified an area where DPS could expand its use of outside contractors to eliminate its backlog of unanalyzed convicted sex offender DNA samples. DPS reports that it obtained a federal grant to contract out the analysis of 5,000 convicted sex offender samples, and as a result, the backlog at the time of the audit has been eliminated. In addition, it is using the remaining grant funds to contract out the analysis of DNA samples of individuals convicted of homicide or burglary in the first or second degree as required in A.R.S. §13-4438.

## Other Performance Audit Reports Issued Within the Last 12 Months

01-1	Department of Economic Security—		Department of Real Estate
	Child Support Enforcement	01-16	Department of Veterans' Services
01-2	Department of Economic Security—		Arizona State Veteran Home,
	Healthy Families Program		Veterans' Conservatorship/
01-3	Arizona Department of Public		Guardianship Program, and
	Safety—Drug Abuse Resistance		Veterans' Services Program
	Education (D.A.R.E.) Program	01-17	Arizona Board of Dispensing
01-4	Arizona Department of		Opticians
	Corrections—Human Resources	01-18	Arizona Department of Correct-
	Management		ions—Administrative Services
01-5	Arizona Department of Public		and Information Technology
	Safety—Telecommunications	01-19	Arizona Department of Education—
	Bureau		Early Childhood Block Grant
01-6	Board of Osteopathic Examiners in	01-20	Department of Public Safety—
	Medicine and Surgery		Highway Patrol
01-7	Arizona Department	01-21	Board of Nursing
	of Corrections—Support Services	01-22	Department of Public Safety—
01-8	Arizona Game and Fish Commission		Criminal Investigations Division
	and Department—Wildlife	01-23	Department of Building and
	Management Program		Fire Safety
01-9	Arizona Game and Fish	01-24	Arizona Veterans' Service
	Commission—Heritage Fund		Advisory Commission
01-10	Department of Public Safety—	01-25	Department of Corrections—
	Licensing Bureau		Arizona Correctional Industries
01-11	Arizona Commission on the Arts	01-26	Department of Corrections—
01-12	Board of Chiropractic Examiners		Sunset Factors
01-13	Arizona Department of	01-27	Arizona Board of Regents
	Corrections—Private Prisons	01-28	Department of Public Safety—
01-14	Automobile Theft Authority		Criminal Information Services Bu-
	-		reau, Access Integrity Unit, and Fin-
			gerprint Identification Bureau

## **Future Performance Audit Reports**

Perinatal Substance Abuse Pilot Program

Family Builders Program