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An Audit Report on

# Performance Measures at the Office of Capital and Forensic Writs

August 2021  
Report No. 21-032



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## Overall Conclusion

The Office of Capital and Forensic Writs (Office) did not have adequate controls in place over the collection, calculation, and reporting of its performance measures.

As a result, the Office reported unreliable results into the Automated Budget and Evaluation System of Texas (ABEST) for three of its five key performance measures for fiscal year 2020. The Office reported reliable results for the remaining two key performance measures in fiscal year 2020.

For fiscal year 2020, the following three key performance measures were **inaccurate**:

- Number of Writ Applications for Which Hearings are Granted by the Trial Court.
- The Number of Writ Applications Filed.
- The Number of New Cases Accepted.

The remaining two key performance measures were **certified with qualification**:

- Percentage of Writs Filed on a Timely Basis.
- Number of New Non-capital Cases Accepted.

A performance measure result is considered reliable if it is certified or certified with qualification.

For all five key performance measures, the Office did not have documented policies and procedures describing the collection, calculation, and reporting of performance measures. The Office performed an independent review of the ABEST data entry; however, the Office did not document its collection of performance measure information and did not perform or document its reviews of performance measure calculations prior to entering those results into ABEST. In addition, the Office did not have a process in place to report output measures quarterly as required.

Table 1 on the next page summarizes the certification results for the Office's five key performance measures.

### Performance Measures

Agencies report results for their key performance measures to the Legislative Budget Board using the Automated Budget and Evaluation System of Texas (ABEST). Key performance measures are:

- Budget drivers that are generally externally focused.
- Closely relate to the goals identified in the statewide strategic plan.
- Reflective of the characteristics of good performance measures.

Source: *Guide to Performance Measure Management* (State Auditor's Office Report No. 12-333, March 2012).

### Background Information

The Office of Capital and Forensic Writs (Office) is a Texas state public defender office. The Office was established in 2010 to represent death-sentenced persons in state post-conviction proceedings exclusively.

On September 1, 2015, the scope of the Office's mission expanded to include the representation of a select number of individuals raising challenges to their convictions through forensic science writs.

Source: The Office.

Table 1

Performance Measure Results for the Office of Capital and Forensic Writs				
Related Objective or Strategy, Classification	Description of Measure	Fiscal Year	Results Reported in ABEST	Certification Results <sup>a</sup>
A, Outcome	Number of Writ Applications for Which Hearings are Granted by the Trial Court	2020	14	Inaccurate
A, Outcome	Percentage of Writs Filed on a Timely Basis	2020	100%	Certified With Qualification
A.1.1, Output	The Number of Writ Applications Filed <sup>b</sup>	2020 First Quarter 2021 Second Quarter 2021	5 Not Reported Not Reported	Inaccurate
A.1.1, Output	The Number of New Cases Accepted <sup>b</sup>	2020 First Quarter 2021 Second Quarter 2021	5 Not Reported Not Reported	Inaccurate
A.1.1, Output	Number of New Non-capital Cases Accepted <sup>b</sup>	2020 First Quarter 2021 Second Quarter 2021	6 Not Reported Not Reported	Certified With Qualification

<sup>a</sup> A measure is **Certified** if reported performance is accurate within plus or minus 5 percent of actual performance and if it appears that controls to ensure accuracy are in place for collecting and reporting performance data.

A measure is **Certified With Qualification** when reported performance appears accurate but the controls over data collection and reporting are not adequate to ensure continued accuracy. A measure is also certified with qualification when controls are strong but source documentation is unavailable for testing. A measure is also certified with qualification if agency calculation of performance deviated from the measure definition but caused less than a 5 percent difference between the number reported to ABEST and the correct performance measure result.

A measure is **Inaccurate** when the actual performance is not within 5 percent of reported performance, or when there is more than a 5 percent error in the sample of documentation tested. A measure is also inaccurate if the agency's calculation deviated from the measure definition and caused more than a 5 percent difference between the number reported to ABEST and the correct performance measure result.

A **Factors Prevented Certification** designation is used if documentation is unavailable and controls are not adequate to ensure accuracy. This designation also will be used when there is a deviation from the measure definition and the auditor cannot determine the correct performance measure result.

<sup>b</sup> The Office did not report the results for the performance measure into ABEST for quarter 1 and quarter 2 of fiscal year 2021.

## **Summary of Management's Response**

At the end of certain chapters in this report, auditors made recommendations to address the issues identified during this audit. The Office agreed with the recommendations in this report.

## ***Audit Objectives and Scope***

The objectives of this audit were to determine whether the Office:

- Is reporting accurate performance measures results to ABEST.
- Has adequate controls over the collection, calculation, and reporting of its performance measures.

The scope of this audit included the Office's five key performance measures reported for the entirety of fiscal year 2020 and the first two quarters of 2021 (September 1, 2020, through February 28, 2021). The scope also included a review of significant internal control components related to the Office's performance measure processes.

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# Detailed Results

Chapter 1

## ***The Office Should Strengthen Controls Over Performance Measures***

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The Office of Capital and Forensic Writs (Office) did not have adequate controls over performance measures audited. Specifically, the Office did not have adequate controls in the following areas:

**Written Policies and Procedures.** The Office did not have documented policies and procedures describing the collection, calculation, and reporting of performance measure results as required by the State's *Guide to Performance Measure Management*<sup>1</sup>. Developing written policies and procedures would help the Office ensure consistency and accuracy in its performance measure process. Without documented policies and procedures, a performance measure cannot receive a rating of **certified**.

**Collection and Review of Performance Measure Calculations.** The Office did not document its collection and calculation of performance measure results. Specifically, the Office did not record the individual cases that it counted for each of its five key performance measures during the reporting period. Although the Office maintained underlying source documentation, recording individual cases used to calculate results would help ensure that accurate results are reported over time.

In addition, while the Office reviewed the data entry of results into the Automated Budget and Evaluation System of Texas (ABEST), it did not perform documented independent reviews of its calculations of performance measure results prior to entering those results into ABEST. According to the *State's Guide to Performance Measure Management*<sup>1</sup>, an independent review of calculations of the performance measure results is required to help ensure that calculations are consistent with the measure definition and are accurate.

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<sup>1</sup> State Auditor's Office Report No. 12-333, March 2012.

**Reporting of Quarterly Performance Measures.** The Office did not have a process in place to report output measures quarterly as required (see text box for more information about those requirements). The Office asserted that it understood that quarterly reporting was not required. As a result, the Office reported annual results instead of quarterly results for its three key output performance measures for fiscal year 2020:

- The Number of Writ Applications Filed.
- The Number of New Cases Accepted.
- Number of New Non-capital Cases Accepted.

In addition, as of April 2021, the Office had not reported the results for the first and second quarters of fiscal year 2021.

### Recommendations

The Office should develop, document, and implement:

- Policies and procedures for the collection, calculation, and reporting of its performance measure results.
- Processes to record cases counted for performance measure calculations and to independently review results.
- A process to report output performance measure results quarterly as required.

### Management's Response

***Recommendation: The Office should develop, document and implement policies and procedures for the collection, calculation and reporting of its performance measure results.***

*OCFW accepts this recommendation. Within the first quarter of fiscal year 2022, OCFW will develop, document, and implement written policies and procedures for the collection, calculation and reporting of its performance measure results. The policy will include general guidelines, applicable definitions, and responsibilities of various staff members. The procedure for obtaining and reporting performance measure information will include the*

#### Performance Measure ABEST Submission Requirements

Agencies are expected to accurately report actual performance data on a quarterly basis for key output and efficiency measures and on an annual basis for key outcome and explanatory measures. According to the *Guide to Performance Measure Management's* Calendar of Performance Measure Events, quarterly performance measures are due in January, April, July, and October for the first, second, third, and fourth quarters, respectively.

Source: *Guide to Performance Measure Management* (State Auditor's Office Report No. 12-333, March 2012).

*process for capturing, calculating, reviewing, and reporting performance measure information. Previously, OCFW had just a single accountant to manage all financial, payroll, reporting, travel, and ABEST reporting for an agency staff of 20.5 FTEs. By the end of the year, OCFW will hire an additional accountant to help implement policies for the collection, calculation, and reporting of performance measure results.*

*The person responsible for the corrective action is the Director. OCFW anticipates that these changes will be implemented by December 31, 2021.*

***Recommendation: The Office should develop, document, and implement policies to record cases counted for performance measure calculations and to independently review results.***

*OCFW agrees with the recommendation. OCFW will enhance review procedures to ensure cases counted for performance measures are done so accurately and the results are independently reviewed. OCFW is developing a formal written policy for the calculation of performance measures and the independent review of ABEST data prior to submission. In addition, OCFW is developing a written policy for the documentation of the raw data and the calculation of performance measure results. Lastly, as noted, OCFW is converting an existing FTE position to hire an additional accountant.*

*The person responsible for the corrective action is the Director. OCFW anticipates that these changes will be implemented by December 31, 2021.*

***Recommendation: The Office should develop, document, and implement policies to report output performance measures quarterly.***

*OCFW agrees with the recommendation, and will develop, document, and implement policies to ensure that output performance measures are reported quarterly. OCFW will hire an additional accountant to help develop, document, and implement policies to report performance measures quarterly.*

*The person responsible for the corrective action is the Director. OCFW anticipates that these changes will be implemented by December 31, 2021.*

## **The Office Reported Unreliable Results for Three Key Performance Measures**

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The Office reported unreliable results for three of its five key performance measures for fiscal year 2020: Number of Writ Applications for Which Hearings are Granted by the Trial Court; The Number of Writ Applications Filed; and The Number of New Cases Accepted.

**Number of Writ Applications for Which Hearings are Granted by the Trial Court.** The Office reported **inaccurate** results for fiscal year 2020 (see text box for definition). The Office’s methodology for calculating this performance measure was not consistent with ABEST, causing an error rate greater than 5 percent. The performance measure definition in ABEST requires that the Office count cases in which the Office obtained a hearing during fiscal year 2020. Instead, the Office counted all cases that were in the hearing phase, even if the hearing was granted in a previous year. The Office reported 14 cases, but hearings were granted during fiscal year 2020 for only 4 of those cases.

### **Inaccurate**

A performance measure is inaccurate when the actual performance is not within 5 percent of the reported performance, or when there is a 5 percent or greater error rate in the sample of documentation tested. A performance measure also is inaccurate if the agency’s calculation deviated from the performance measure definition and caused a 5 percent or greater difference between the number reported to ABEST and the correct performance measure result.

Source: *Guide to Performance Measure Management* (State Auditor’s Office Report No. 12-333, March 2012).

**The Number of Writ Applications Filed and The Number of New Cases Accepted.** The Office reported **inaccurate** results for fiscal year 2020. The Office reported that five writ applications were filed and five new cases were accepted. However, six applications were filed and six new cases were accepted, causing an error rate greater than 5 percent. The Office did not detect those errors because of the control weaknesses discussed in Chapter 1.

### **Recommendation**

The Office should calculate performance measures in accordance with ABEST definitions.

### **Management’s Response**

*OCFW agrees with the recommendation, and the importance of consistent and accurate performance measure reporting. OCFW is developing written guidelines for the calculation, documentation, reporting, and verification of reported performance measures. With written, step-by-step protocols, OCFW*

*trusts that performance measures will be accurately reported, consistent with operative measure definitions.*

*The number of evidentiary hearings handled by OCFW performance measure has explanatory value for two different reasons. First, it serves a rough measure of a resource-intensive portion of the OCFW capital workload. As such, the number of evidentiary hearings can serve as a limiting factor on the number of cases that OCFW has the human and financial resources to handle at any given time. Second, the number of evidentiary hearings can serve as an imperfect qualitative proxy for the robustness of litigation and advocacy performed by OCFW. Most, but not all, deserving writ applications are granted hearings to resolve disputed issues of fact. As such, the number of evidentiary hearings serves as a rough, qualitative proxy for the quality of the advocacy that preceded the decision to grant a hearing.*

*Litigation timelines, however, often do not neatly match up with fiscal years. For instance, it is common that the decision about whether to grant an evidentiary hearing might occur six to nine months after a writ application is filed. Consequently, the decision by a court to conduct evidentiary development often occurs in a different fiscal year than the writ application was filed.*

*With respect to the number of evidentiary hearings granted performance measure, OCFW previously reported the number of evidentiary hearings in the aggregate, irrespective of whether the hearing on the writ application was granted in the same fiscal year as the writ application was filed, because both that was how OCFW interpreted that measure, and that interpretation provided the most insight about OCFW operations.*

*OCFW, however, agrees with the Auditor's interpretation of the current ABEST definition and will report accordingly starting immediately. In addition, OCFW anticipates working with the Office of the Governor as well as the Legislative Budget Board through the strategic planning process in the coming biennium to refine the definitions of OCFW performance measures so that they paint the fullest picture possible of OCFW operations.*

## The Office Reported Reliable Results for Two Key Performance Measures

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The Office reported reliable results for two of its five key performance measures for fiscal year 2020. Those two measures were **certified with qualification** (see text box for definition). A performance measure result is considered reliable if it is certified or certified with qualification.

Because of the control weaknesses discussed in Chapter 1, the following performance measures were certified with qualification:

- Percentage of Writs Filed on a Timely Basis.
- Number of New Non-capital Cases Accepted<sup>2</sup>.

Although the reported results for those two measures were accurate, the Office's controls were not adequate to ensure continued accuracy.

See Chapter 1 for details on the identified control weaknesses.

### Certified with Qualification

A performance measure is certified with qualification when reported performance appears accurate but the controls over data collection and reporting are not adequate to ensure continued accuracy. A performance measure is also certified with qualification when controls are strong but source documentation is unavailable for testing. A performance measure is also certified with qualification if the agency calculation of performance deviated from the performance measure definition but caused a difference of less than 5 percent between the number reported to ABEST and the correct performance measure result.

Source: *Guide to Performance Measure Management* (State Auditor's Office Report No. 12-333, March 2012).

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<sup>2</sup> Due to attorney-client privilege, the Office provided an affidavit to confirm the acceptance of non-capital cases. That affidavit was signed and provided by the Office's Director.

# Appendices

Appendix 1

## **Objectives, Scope, and Methodology**

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### **Objectives**

The objectives of this audit were to determine whether the Office of Capital and Forensic Writs (Office):

- Is reporting accurate performance measures results to the Automated Budget and Evaluation System of Texas (ABEST).
- Has adequate controls over the collection, calculation, and reporting of its performance measures.

### **Scope**

The scope of this audit included the Office's five key performance measures reported for the entirety of fiscal year 2020 and the first two quarters of 2021 (September 1, 2020, through February 28, 2021). The scope also included a review of significant internal control components related to the Office's performance measure processes (see Appendix 2 for more information about internal control components).

### **Methodology**

The audit methodology consisted of reviewing reported performance measure results for accuracy and adherence to performance measure definitions; evaluating controls over the Office's performance measure calculation processes; and testing documentation that supported the reported performance results.

### **Sampling Methodology**

Auditors did not use a sampling methodology for this audit; instead, auditors tested the entire population of cases for accuracy and to assess whether the controls over the performance measures were operating effectively to ensure that all five key performance measure results were accurate.

Information collected and reviewed included the following:

- Performance measure information reported in ABEST.
- The Office's scanned documentation used to support the figures reported in ABEST.

Procedures and tests conducted included the following:

- Interviewed Office staff to gain an understanding of the processes used to calculate the performance measures tested.
- Reviewed the Office's performance measure calculations for accuracy and to determine whether the calculations were consistent with the definitions in ABEST.
- Tested the Office's scanned source documents to verify the accuracy of numbers reported into ABEST and the effectiveness of controls over reporting the performance.
- Reviewed an affidavit signed and provided by the Office confirming the acceptance of the non-capital cases.
- Assessed performance data results and assigned to them one of the following four categories: (1) certified, (2) certified with qualification, (3) inaccurate, or (4) factors prevented certification.

Criteria used included the following:

- The *Guide to Performance Measure Management* (State Auditor's Office Report No. 12-333, March 2012).
- ABEST performance measure definitions.

### **Project Information**

Audit fieldwork was conducted from February 2021 through July 2021. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The following members of the State Auditor's staff performed the audit:

- Namita Pai, CPA (Project Manager)
- Sarah Jane Puerto, CIA, CFE, CGAP (Assistant Project Manager)
- Nimita Azam, M.Sc. Finance
- Rebecca Franklin, CISA, CFE, CGAP
- Allison Fries, CFE

- Alton Gamble
- Ann E. Karnes, CPA (Quality Control Reviewer)
- Lauren Godfrey, CIA, CGAP (Audit Manager)

## Internal Control Components

Internal control is a process used by management to help an entity achieve its objectives. The U.S. Government Accountability Office's *Government Auditing Standards* require auditors to assess internal control when internal control is significant to the audit objectives. The Committee of Sponsoring Organizations of the Treadway Commission (COSO) established a framework for 5 integrated components and 17 principles of internal control, which are listed in Table 2.

Table 2

Internal Control Components and Principles		
Component	Component Description	Principles
Control Environment	The control environment sets the tone of an organization, influencing the control consciousness of its people. It is the foundation for all other components of internal control, providing discipline and structure.	<ul style="list-style-type: none"> <li>▪ The organization demonstrates a commitment to integrity and ethical values.</li> <li>▪ The board of directors demonstrates independence from management and exercises oversight of the development and performance of internal control.</li> <li>▪ Management establishes, with board oversight, structures, reporting lines, and appropriate authorities and responsibilities in the pursuit of objectives.</li> <li>▪ The organization demonstrates a commitment to attract, develop, and retain competent individuals in alignment with objectives.</li> <li>▪ The organization holds individuals accountable for their internal control responsibilities in the pursuit of objectives.</li> </ul>
Risk Assessment	Risk assessment is the entity's identification and analysis of risks relevant to achievement of its objectives, forming a basis for determining how the risks should be managed.	<ul style="list-style-type: none"> <li>▪ The organization specifies objectives with sufficient clarity to enable the identification and assessment of risks relating to objectives.</li> <li>▪ The organization identifies risks to the achievement of its objectives across the entity and analyzes risks as a basis for determining how the risks should be managed.</li> <li>▪ The organization considers the potential for fraud in assessing risks to the achievement of objectives.</li> <li>▪ The organization identifies and assesses changes that could significantly impact the system of internal control.</li> </ul>
Control Activities	Control activities are the policies and procedures that help ensure that management's directives are carried out.	<ul style="list-style-type: none"> <li>▪ The organization selects and develops control activities that contribute to the mitigation of risks to the achievement of objectives to acceptable levels.</li> <li>▪ The organization selects and develops general control activities over technology to support the achievement of objectives.</li> <li>▪ The organization deploys control activities through policies that establish what is expected and procedures that put policies into action.</li> </ul>

Internal Control Components and Principles		
Component	Component Description	Principles
Information and Communication	Information and communication are the identification, capture, and exchange of information in a form and time frame that enable people to carry out their responsibilities.	<ul style="list-style-type: none"> <li>▪ The organization obtains or generates and uses relevant, quality information to support the functioning of internal control.</li> <li>▪ The organization internally communicates information, including objectives and responsibilities for internal control, necessary to support the functioning of internal control.</li> <li>▪ The organization communicates with external parties regarding matters affecting the functioning of internal control.</li> </ul>
Monitoring Activities	Monitoring is a process that assesses the quality of internal control performance over time.	<ul style="list-style-type: none"> <li>▪ The organization selects, develops, and performs ongoing and/or separate evaluations to ascertain whether the components of internal control are present and functioning.</li> <li>▪ The organization evaluates and communicates internal control deficiencies in a timely manner to those parties responsible for taking corrective action, including senior management and the board of directors, as appropriate.</li> </ul>

Source: Internal Control - Integrated Framework, Committee of Sponsoring Organizations of the Treadway Commission, May 2013.

Copies of this report have been distributed to the following:

### **Legislative Audit Committee**

The Honorable Dan Patrick, Lieutenant Governor, Joint Chair

The Honorable Dade Phelan, Speaker of the House, Joint Chair

The Honorable Jane Nelson, Senate Finance Committee

The Honorable Robert Nichols, Member, Texas Senate

The Honorable Greg Bonnen, House Appropriations Committee

The Honorable Morgan Meyer, House Ways and Means Committee

### **Office of the Governor**

The Honorable Greg Abbott, Governor

### **Office of Capital and Forensic Writs**

Mr. Benjamin Wolff, Director



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