

ORANGE COUNTY

Audit Report

PEACE OFFICERS PROCEDURAL BILL OF RIGHTS PROGRAM

Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178,
Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980;
Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983;
Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990

July 1, 2001, through June 30, 2004



JOHN CHIANG
California State Controller

June 2007



JOHN CHIANG
California State Controller

June 29, 2007

The Honorable David Sundstrom, CPA
Auditor-Controller
Orange County
Hall of Finance and Records
12 Civic Center Plaza, Room 202
P.O. Box 567
Santa Ana, CA 92702-0567

Dear Mr. Sundstrom:

The State Controller's Office audited the costs claimed by Orange County for the legislatively mandated Peace Officers Procedural Bill of Rights Program (Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990) for the period of July 1, 2001, through June 30, 2004.

The county claimed \$1,676,796 for the mandated program. Our audit disclosed that \$95,984 is allowable and \$1,580,812 is unallowable. The unallowable costs occurred primarily because the county claimed reimbursement for ineligible activities. The State paid the county \$11. The State will pay allowable costs claimed that exceed the amount paid, totaling \$95,973, contingent upon available appropriations.

If you disagree with the audit findings, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (COSM). The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at COSM's Web site, at www.csm.ca.gov (Guidebook link); you may obtain IRC forms by telephone, at (916) 323-3562, or by e-mail, at csminfo@csm.ca.gov.

If you have any questions, please contact Jim L. Spano, Chief, Compliance Audits Bureau, at (916) 323-5849.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/jj:vb

cc: Michael Carona, Sheriff-Coroner
Orange County
Tony Rackauckas, District Attorney
Orange County
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Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by Orange County for the legislatively mandated Peace Officers Procedural Bill of Rights Program (Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990) for the period of July 1, 2001, through June 30, 2004. The last day of fieldwork was March 30, 2006.

The county claimed \$1,676,796 for the mandated program. Our audit disclosed that \$95,984 is allowable and \$1,580,812 is unallowable. The unallowable costs occurred primarily because the county claimed reimbursement for ineligible activities. The State paid the county \$11. The State will pay allowable costs claimed that exceed the amount paid, totaling \$95,984, contingent upon available appropriations.

Background

Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990, which added and amended *Government Code* Sections 3300 through 3310. This legislation, known as the Peace Officers Procedural Bill of Rights (POBOR) was enacted to ensure stable employer-employee relations and effective law enforcement services.

This legislation provides procedural protections to peace officers employed by local agencies and school districts when a peace officer is subject to an interrogation by the employer, is facing punitive action, or receives an adverse comment in his or her personnel file. The protections apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at will" employees), and peace officers on probation who have not reached permanent status.

On November 30, 1999, the Commission on State Mandates (COSM) determined that this legislation imposed a state mandate reimbursable under *Government Code* Section 17561 and adopted the *Statement of Decision*. COSM determined that the peace officer rights law constitutes a partially reimbursable state mandated program within the meaning of the *California Constitution*, Article XIII B, Section 6, and *Government Code* Section 17514. COSM further defined that activities covered by due process are not reimbursable.

Parameters and Guidelines establishes the state mandate and defines reimbursement criteria. COSM adopted the *Parameters and Guidelines* on July 27, 2000, and corrected it on August 17, 2000. *Parameters and Guidelines* categorized reimbursable activities into the four following components: Administrative Activities, Administrative Appeal, Interrogation, and Adverse Comment. In compliance with *Government Code* Section 17558, the SCO issues claiming instructions for mandated programs, to assist local agencies in claiming reimbursable costs.

Objective, Scope, and Methodology

We conducted the audit to determine whether costs claimed represent increased costs resulting from the Peace Officers Procedural Bill of Rights Program for the period of July 1, 2001, through June 30, 2004.

Our audit scope included, but was not limited to, determining whether costs claimed were supported by appropriate source documents, were not funded by another source, and were not unreasonable and/or excessive.

We conducted the audit according to *Government Auditing Standards*, issued by the Comptroller General of the United States, and under the authority of *Government Code* Sections 12410, 17558.5, and 17561. We did not audit the county's financial statements. We limited our audit scope to planning and performing audit procedures necessary to obtain reasonable assurance that costs claimed were allowable for reimbursement. Accordingly, we examined transactions, on a test basis, to determine whether the costs claimed were supported.

We limited our review of the county's internal controls to gaining an understanding of the transaction flow and claim preparation process as necessary to develop appropriate auditing procedures.

Conclusion

Our audit disclosed instances of noncompliance with the requirements outlined above. These instances are described in the accompanying Summary of Program Costs (Schedule 1) and in the Findings and Recommendations section of this report.

For the audit period, Orange County claimed \$1,676,796 for costs of the Peace Officers Procedural Bill of Rights Program. Our audit disclosed that \$95,984 is allowable and \$1,580,812 is unallowable. The State paid the county \$11. The State will pay allowable costs claimed that exceed the amount paid, totaling \$95,973, contingent upon available appropriations.

Views of Responsible Official

We issued a draft audit report on May 11, 2007. David E. Sundstrom, CPA, Auditor-Controller, responded by letter dated June 7, 2007 (Attachment), disagreeing with the audit results but not disputing the disallowance of costs. This final audit report includes the county's response.

Restricted Use

This report is solely for the information and use of Orange County, the California Department of Finance, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

**Schedule 1—
Summary of Program Costs
July 1, 2001, through June 30, 2004**

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2001, through June 30, 2002</u>				
Salaries	\$ 328,653	\$ 7,365	\$ (321,288)	Finding 1
Benefits	100,020	1,270	(98,750)	Finding 1
Services and supplies	1,821	—	(1,821)	Finding 2
Total direct costs	430,494	8,635	(421,859)	
Indirect costs	78,000	1,397	(76,603)	Finding 1
Total program costs	<u>\$ 508,494</u>	10,032	<u>\$ (498,462)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 10,032</u>		
<u>July 1, 2002, through June 30, 2003</u>				
Salaries	\$ 286,109	\$ 15,169	\$ (270,940)	Finding 1
Benefits	117,354	4,458	(112,896)	Finding 1
Services and supplies	1,953	—	(1,953)	Finding 2
Total direct costs	405,416	19,627	(385,789)	
Indirect costs	107,896	8,260	(99,636)	Finding 1
Total program costs	<u>\$ 513,312</u>	27,887	<u>\$ (485,425)</u>	
Less amount paid by the State		(11)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 27,876</u>		
<u>July 1, 2003, through June 30, 2004</u>				
Salaries	\$ 337,479	\$ 29,729	\$ (307,750)	Finding 1
Benefits	163,865	12,881	(150,984)	Finding 1
Services and supplies	306	—	(306)	Finding 2
Total direct costs	501,650	42,610	(459,040)	
Indirect costs	153,340	15,455	(137,885)	Finding 1
Total program costs	<u>\$ 654,990</u>	58,065	<u>\$ (596,925)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 58,065</u>		
<u>Summary: July 1, 2001, through June 30, 2004</u>				
Salaries	\$ 952,241	\$ 52,263	\$ (899,978)	
Benefits	381,239	18,609	(362,630)	
Services and supplies	4,080	—	(4,080)	
Total direct costs	1,337,560	70,872	(1,266,688)	
Indirect costs	339,236	25,112	(314,124)	
Total program costs	<u>\$ 1,676,796</u>	95,984	<u>\$ (1,580,812)</u>	
Less amount paid by the State		(11)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 95,973</u>		

¹ See the Findings and Recommendations section.

Schedule 1 (continued)

	<u>Actual Costs Claimed</u>	<u>Allowable per Audit</u>	<u>Audit Adjustment</u>
<u>Summary by Cost Component</u>			
Administrative activities	\$ 3,117	\$ 2,229	\$ (888)
Administrative appeals	12,733	12,759	26
Interrogations	1,487,182	52,781	(1,434,401)
Adverse comment	173,764	28,215	(145,549)
Total	<u>\$ 1,676,796</u>	<u>\$ 95,984</u>	<u>\$(1,580,812)</u>

Findings and Recommendations

**FINDING 1—
Unallowable salary
and benefit costs, and
related indirect costs**

The county claimed \$1,333,480 in salary and benefit costs and \$339,236 in related indirect costs for the audit period. Salary and benefit costs, totaling \$1,262,608, were unallowable because the activities claimed were not identified in the *Parameters and Guidelines* as reimbursable costs, were not adequately documented, or were due to misstatement of the productive hourly rates. The related indirect costs total \$314,124.

Following is a summary of the claimed, allowable, and unallowable costs for the audit period.

	<u>Claimed Costs</u>	<u>Allowable Costs</u>	<u>Audit Adjustment</u>
<u>Salaries and Benefits</u>			
Administrative activities:			
Sheriff-Coroner’s Department	\$ 2,192	\$ 1,459	\$ (733)
Probation Department	326	326	—
District Attorney’s Office	—	—	—
Subtotal	<u>2,518</u>	<u>1,785</u>	<u>(733)</u>
Administrative appeals:			
Sheriff-Coroner’s Department	5,746	5,669	(77)
Probation Department	3,898	3,983	85
District Attorney’s Office	—	—	—
Subtotal	<u>9,644</u>	<u>9,652</u>	<u>8</u>
Interrogations:			
Sheriff-Coroner Department	170,192	—	(170,192)
Probation Department	225,824	34,535	(191,289)
District Attorney’ Office	784,624	—	(784,624)
Subtotal	<u>1,180,640</u>	<u>34,535</u>	<u>(1,146,105)</u>
Adverse comment:			
Sheriff-Coroner’s Department	134,533	18,427	(116,106)
Probation Department	6,145	6,473	328
District Attorney’s Office	—	—	—
Subtotal	<u>140,678</u>	<u>24,900</u>	<u>(115,778)</u>
Total salary and benefits costs	1,333,480	70,872	(1,262,608)
Related indirect costs	339,236	25,112	(314,124)
Total	<u>\$ 1,672,716</u>	<u>\$ 95,984</u>	<u>\$(1,576,732)</u>
Recap of salaries and benefits by department:			
Sheriff-Coroner’s Department	\$ 312,663	\$ 25,555	\$ (287,108)
Probation Department	236,193	45,317	(190,876)
District Attorney’s Office	784,624	—	(784,624)
Total	<u>\$ 1,333,480</u>	<u>\$ 70,872</u>	<u>\$(1,262,608)</u>

Administrative Activities

For Administrative Activities, the county claimed \$2,518 in salary and benefit costs (\$2,192 by the Sheriff-Coroner’s Department and \$326 by the Probation Department) for the audit period. We determined that \$633 was unallowable due to unsupported Sheriff-Coroner’s Department costs for training and \$100 was unallowable due to overstated Sheriff-Coroner’s Department productive hourly rates.

Parameters and Guidelines allows the following ongoing activities:

- Developing or updating internal policies, procedures, manuals, and other materials pertaining to the conduct of the mandated activities;
- Attendance at specific training for human resources, law enforcement, and legal counsel regarding the requirements of the mandate; and
- Updating the status of the Peace Officers Procedural Bill of Rights (POBOR) cases.

However, the county was unable to support 8.5 hours of training totaling \$633 that was included in the claim for FY 2001-02. For FY 2002-03, the county overstated productive hourly rates by \$100. For a discussion of overstated Sheriff-Coroner's Department productive hourly rates, see the Overstated Productive Hourly Rates section.

Administrative Appeals

For Administrative Appeals, the county claimed \$9,644 in salary and benefit costs (\$5,746 by the Sheriff-Coroner's Department and \$3,898 by the Probation Department) for the audit period. We determined that \$77 was unallowable due to overstated Sheriff-Coroner's Department productive hourly rates for FY 2002-03; \$27 was underclaimed due to understated Probation Department productive hourly rates in FY 2001-02; and \$58 was underclaimed for FY 2002-03 due to the inadvertent exclusion from the claim of two employees who had performed reimbursable activities under the mandated program.

Parameters and Guidelines allow reimbursement for providing the opportunity for, and the conduct of, an administrative appeal for the following disciplinary actions:

- Dismissal, demotion, suspension, salary reduction, or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent employees for purposes of punishment;
- Denial of promotion for permanent employees for reasons other than merit; and
- Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss or hardship, and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; and the preparation and service of any rulings or orders of the administrative body.

Sheriff-Coroner's Department

The Sheriff-Coroner's Department properly claimed costs for preparing documents for administrative hearings. However, productive hourly rates for the department were overstated by the total amount of \$75 in FY 2002-03.

Probation Department

The Probation Department properly claimed costs for the preparation and review of administrative appeal cases. However, the department's productive hourly rates were understated by the total amount of \$27 for FY 2001-02. The department also excluded from the county's claim costs totaling \$55 of two employees who had performed reimbursable activities under the mandated program in FY 2002-03.

For a discussion of understated Probation Department and overstated Sheriff-Coroner Department productive hourly rates, see the Overstated Productive Hourly Rates section.

Interrogations

For Interrogations, the county claimed \$1,180,640 in salary and benefit costs (\$170,192 by the Sheriff-Coroner's Department, \$225,824 by the Probation Department, and \$784,624 by the District Attorney's Office) for the audit period. We determined that \$1,146,104 was unallowable (\$784,624 due to ineligible District Attorney's Office activities, \$191,779 due to ineligible Probation Department activities, and \$169,969 due to ineligible Sheriff-Coroner's Department activities. In addition, \$223 was overstated due to overstated Sheriff-Coroner's Department productive hourly rates in FY 2003-04; \$48 was understated due to the exclusion from the county's claim of the costs for a Probation Department employee who had performed reimbursable activities in FY 2003-04; and \$442 was understated due to understated Probation Department productive hourly rates in FY 2001-02.

Parameters and Guidelines states that specifically identified Interrogation activities are reimbursable when a peace officer is under investigation or becomes a witness to an incident under investigation and is subjected to an interrogation by the commanding officer or any other member of the employing public safety department during off-duty time if the interrogation could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. Section IV(C) identifies reimbursable activities under compensation and timing of an interrogation, interrogation notice, tape-recording of an interrogation, and documents provided to the employee.

Parameters and Guidelines, Section IV(C), states that claimants are not eligible for Interrogation activities when an interrogation of a peace officer is in the normal course of duty. It further states:

When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures.

In reference to compensation and timing of the interrogation pursuant to *Government Code* Section 3303, subdivision (a), the Commission on State Mandates Final Staff Analysis to the adopted *Parameters and Guidelines* states:

It does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review the responses given by the officers and/or witnesses, as implied by the claimant's proposed language. Certainly, local agencies were performing these investigative activities before POBOR was enacted.

Parameters and Guidelines, Section IV(C), also states that claimants are also not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities.

District Attorney's Office

The county claimed \$784,624 for the unallowable District Attorney's Office activity of conducting interrogations of officers that it does not employ for investigations. A department spokesman noted that the department has informal agreements with the various city police departments within the county to perform investigations whenever one of their police officers is involved in an officer-involved shooting or an in-custody death situation. The department conducts these investigations to avoid an apparent conflict of interest that could result if police departments investigated their own officers under circumstances that could lead to the filing of criminal charges against the officers. The department also conducts interrogations of peace officers at the request of local law enforcement agencies for other issues that do not involve alleged criminal activities. In addition, the department also claimed the ineligible activities of conducting initial investigations, performing data collection and review, performing crime scene investigations, writing summary reports, preparing for interrogations, and conducting interrogations of civilian witnesses.

Sheriff-Coroner's Department

The county claimed \$169,969 for the unallowable Sheriff-Coroner's Department activities of conducting interrogations during regular duty hours, conducting initial investigations, performing data collection and review, writing summary reports, and preparing for interrogations. A department spokesman confirmed that virtually all interrogations occurred during regular duty hours. The department also overstated its productive hourly rates by \$223 for FY 2003-04. However, the department also claimed \$14,811 of allowable costs under this cost component for the Adverse Comment activity of command staff review of recommended findings. These allowable costs were reclassified under the Adverse Comment cost component.

Probation Department

The county claimed \$191,779 for the unallowable Probation Department activities associated with conducting investigations (preliminary case review, gathering data, and inter-office

communication to coordinate case investigations), conducting interviews during regular duty hours, and writing summary reports. Probation Department staff confirmed that nearly all interrogations were conducted during normal duty hours. In addition, the case logs used by the department did not indicate the times that interrogations took place, meaning that no determination could even be made as to whether or not interrogations occurred during non-duty hours.

The Probation Department properly claimed costs for various activities under the Interrogations costs component. However, the department's productive hourly rates were understated by the total amount of \$442 for FY 2001-02. The department also excluded an employee from the county's claim totaling \$48 that performed reimbursable activities under the mandated program in FY 2003-04. For a discussion of understated Probation Department productive hourly rates, see the Overstated Productive Hourly Rates section.

Adverse Comment

For Adverse Comment, the county claimed \$140,678 (\$134,533 by the Sheriff-Coroner's Department and \$6,145 by the Probation Department) during the audit period. We determined that \$115,777 was unallowable (\$115,839 due to ineligible Sheriff-Coroner's Department costs, \$267 due to overstated Sheriff-Coroner's Department productive hourly rates in FY 2002-03; \$173 due to understated Probation Department productive hourly rates for FY 2001-02 and \$3 of overstated productive hourly rates for FY 2002-03; and \$158 of understated Probation Department costs due to the exclusion from the county's claim of the costs for two employees for FY 2002-03 and three employees each for FY 2001-02 and FY 2003-04 who had performed reimbursable activities).

Depending on the circumstances surrounding an Adverse Comment, *Parameters and Guidelines* allows some or all of the following four activities upon receipt of an Adverse Comment:

- Providing notice of the adverse comment;
- Providing an opportunity to review and sign the adverse comment;
- Providing an opportunity to respond to the adverse comment within 30 days; and
- Noting on the document the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.

Included in the foregoing are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment, preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment; and attaching same to adverse comment and filing.

However, the Sheriff-Coroner's Department claimed \$115,389 for the ineligible activities to take in and document civilian complaints, conduct preliminary investigations, and review complaints. The department also overstated productive hourly rates by \$267 for FY 2002-03.

The Probation Department properly claimed costs for the presentation of the adverse comment document. However, the department's productive hourly rates were understated by the total amount of \$173 for FY 2001-02. The department overstated productive hourly rates by \$3 in FY 2002-03. The department also excluded costs for employees who performed reimbursable activities under the mandated program, totaling \$158, from the county's claims (\$34 in FY 2001-02, \$73 in FY 2002-03, and \$51 in FY 2003-04).

For a discussion of understated Probation Department productive hourly rates, see the Overstated Productive Hourly Rates section.

Overstated Productive Hourly Rates

The county understated salary and benefit costs by the net amount of \$28 (\$639 understated Probation Department costs and \$667 overstated Sheriff-Coroner's Department costs) because it misstated productive hourly rates during the audit period.

The Sheriff-Coroner's Department calculated a productive hourly rate for all of its employees. In its calculation of productive hours, 40 hours were deducted for performance incentive pay. The SCO's claiming instructions include guidelines for preparing mandated cost claims. The instructions do not identify time spent on performance incentive pay as deductions (excludable components) from total hours when productive hours are computed. In addition, the time excluded by the county for performance incentive pay was estimated and not based on any actual time records associated with this activity. As a result, productive hourly rates were overstated by \$444 in FY 2002-03 and \$223 in FY 2003-04. The development of productive hours based on estimated costs is not consistent with Office of Management and Budget (OMB) Circular A-87, *Cost Principles for State, Local, and Indian Tribal Governments*. If the county chooses to deduct time for performance incentive pay in calculating productive hours, its accounting system must separately identify the actual time taken.

The Probation Department understated productive hourly rates by \$639 in FY 2001-02 because it used the prior year's pay rate reports in error when calculating its employees' productive hourly rates.

Summary

The audit adjustments for salaries and benefits are summarized as follows.

Cost Category	Fiscal Year			Total
	2001-02	2002-03	2003-04	
Sheriff-Coroner's Department	\$ (132,996)	\$ (87,706)	\$ (66,406)	\$ (287,108)
Probation Department	(32,735)	(51,797)	(106,344)	(190,876)
District Attorney's Office	(254,307)	(244,333)	(285,984)	(784,624)
Subtotal	(420,038)	(383,836)	(458,734)	(1,262,608)
Related indirect costs	(76,603)	(99,636)	(137,885)	(314,124)
Audit adjustment	<u>\$ (496,641)</u>	<u>\$ (483,472)</u>	<u>\$ (596,616)</u>	<u>\$ (1,576,732)</u>

Parameters and Guidelines for POBOR, adopted by the COSM on July 27, 2000, defines the criteria for procedural protection for the county's peace officers.

Parameters and Guidelines, Section IV, Reimbursable Activities, outlines specific tasks that are deemed above the due process clause. The Statement of Decision on which *Parameters and Guidelines* was based noted that due process activities were not reimbursable.

Parameters and Guidelines, Section VA1, Salaries and Benefits, requires that the claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee.

Parameters and Guidelines, Section VI, Supporting Data, requires that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the State-mandated program.

Recommendation

We recommend that the county establish and implement procedures to ensure that claimed costs include only eligible costs and that claimed costs are based on actual costs that are properly supported.

County's Response

District Attorney's Response

The Office of the District attorney does not concur with the State Controller's finding, but will not dispute the disallowance of costs. The Office's Bureau of Investigation (BOI) conducts interrogations at the request of the involved local law enforcement agencies in Orange County with or without concerns for alleged criminal activities, thereby providing procedural protections to peace officers employed by these agencies when a peace officer is subject to an interrogation.

Probation's Response

The Probation Department does not concur with the finding, but will not dispute the disallowance of costs. The majority of the costs claimed by the Probation Department were disallowed due to the claiming of ineligible activities per the parameters and guidelines for the POBOR program. The State Controller's Office (SCO) found that the Department claimed costs for activities that did not exceed the duties of due process of law. The claimed hours were adjusted by the SCO in order to reflect only those hours that were spent performing eligible POBOR activities.

It should be noted that the disallowance identified by the SCO are the result of our interpretation of eligible activities. The lack of specificity in the POBOR parameters and guidelines require each local agency to interpret which activities are claimable to the program. Based on the audit findings, the Probation Department has revised the POBOR Time Tracking Categories form to reflect ineligible activities and eligible activities. Ineligible activities include: preparing initial cases, performing data collection and data reviews, conducting pre-administrative staffing, coordinating communications through phone calls and e-mails, writing and preparing reports, and conducting interviews during regular on-duty hours. Eligible activities include: witness and internal audit interviews conducted only during off-duty overtime hours where the interviewee is a sworn officer, time spent on providing a notice of interrogation to a sworn officer, producing copies of tapes, producing copies of reports, reviewing case details by a Chief Deputy Probation Officer, Director, or Assistant Division Director prior to finalizing a case, presenting adverse comments to a sworn officer, and administrative appeals, including agreements, grievances, and pre-disciplinary and arbitration hearings.

Sheriff-Coroner's Response

The Sheriff-Coroner Department does not concur, but will not dispute the finding. A significant portion of the State's disallowance of cost was a result of interpretation of eligible activities. Statewide, there are differences of opinion between local agencies and the SCO over the eligibility of certain activities for reimbursement. The Department believes that the State parameters and guidelines for claiming have been narrowed beyond the scope of initial draft guidelines (and the intent of the legislation), that there is a higher level of service imposed by the mandate and that the resulting costs should be eligible for reimbursement.

The procedural requirements of the mandate have resulted in expanding the time and effort by local law enforcement agencies to ensure their officers are given all their POBOR rights. It takes considerably more time and effort than allowable under the revised guidelines. The Department will continue to partner with other local agencies in working with the State to develop a reasonable reimbursement process or methodology in regard to eligible activities.

Based upon the audit findings, the Department has (1) revised procedures used to validate productive rates used in claims and (2) revised document retention policies to ensure that copies of support documents for valid costs claimed are maintained in the claim file in addition to copies maintained by the division which received the service or materials claimed.

SCO's Comment

The finding and recommendation remain essentially unchanged. The finding has been updated to include the fact that the District Attorney's Office also performs interrogations of peace officers at the request of local law enforcement agencies for issues other than alleged criminal activities.

District Attorney

The office concurs, in its response, that its Bureau of Investigations conducts interrogations of peace officers employed by local law enforcement agencies at the request of the individual agencies. We concur that this provides procedural protections to peace officers employed by these agencies when a peace officer is subject to an interrogation. However, the costs for performing these activities are based on a discretionary decision made by the county department, not by state mandate. *Parameters and Guidelines* clearly states, in Section IV(C), Reimbursable Activities–Interrogations, that:

Claimants are eligible for reimbursement of the activities listed in this section only when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of *the employing public safety department* [emphasis added], that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.

In addition, Section I, Summary and Source of the Mandate, states that:

This test claim legislation provides procedural protections to peace officers employed by local agencies and school districts when a peace officer is subject to an interrogation by *the employer* [emphasis added], is facing punitive action, or receives an adverse comment in his or her personnel file.

Based on the above sections of *Parameters and Guidelines*, the test claim legislation does not require the county to provide procedural protections for peace officers that it does not employ; therefore, interrogation activities involving these officers do not constitute reimbursable activities.

Probation Department

The department's response appears to indicate a disagreement regarding the activities eligible for reimbursement under the mandated program. However, the department does not indicate specifically why it disagrees with our interpretation of eligible activities per *Parameters and Guidelines*. We concur with the department that the *Parameters and Guidelines*, as adopted by the COSM on July 27, 2000, lacks specificity. We believe that the recently amended *Parameters and Guidelines*, adopted by the COSM on December 4, 2006, provide much greater clarity as to the activities eligible for reimbursement. We urge the county to refer to these *Parameters and Guidelines* for assistance in claiming eligible activities in future mandate claims.

Sheriff-Coroner's Department

The department indicates in its response that it disagrees with the SCO interpretation of eligible activities under *Parameters and Guidelines*. We concur that there have been differences of opinion between our office and local agencies over the eligibility of certain activities for reimbursement. We would point out that this mandate has already been plead twice before the COSM, resulting in the adoption of the original Statement of Decision, dated November 30, 1999, and *Parameters and Guidelines*, dated July 27, 2000. In 2005, Statutes 2005, Chapter 72, Section 6 (AB 138), added Section 3313 to the *Government Code* and directed the COSM to review the Statement of Decision to clarify whether the subject legislation imposed a mandate consistent with the California Supreme Court Decision in *San Diego Unified School Dist. V. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions.

The COSM reviewed its original findings and adopted a Statement of Decision upon reconsideration on May 1, 2006. Amended *Parameters and Guidelines* were adopted on December 4, 2006, for costs incurred subsequent to July 1, 2006. Except for changes to allowable activities for the cost components of administrative appeal for probationary and at-will peace officers (pursuant to amended *Government Code* Section 3304) and adverse comment (for punitive actions protected by the due process clause), reimbursable activities did not change from the original *Parameters and Guidelines*, although much greater clarity was provided as to what activities are allowable under the mandated program.

We believe that our audit findings accurately reflect the eligible activities as described in the adopted *Parameters and Guidelines*. If the county still disagrees, it can certainly exercise its right to take its case to the Legislature or legal venue for resolution.

We concur that the development of a reasonable reimbursement methodology for this mandate is a goal worth pursuing. Accordingly, our office supports a methodology that appropriately reimburses local agencies for the increased costs actually incurred pursuant to the COSM adopted reimbursable activities.

**FINDING 2—
Ineligible services and
supplies**

The county claimed costs for services and supplies, totaling \$4,080 under Interrogations during the audit period. These costs are not reimbursable under the mandated program.

Specifically, the Sheriff-Coroner's Department claimed \$534 for audio recording tapes used by the Professional Standards Unit during interrogation sessions of accused peace officers. However, a department spokesman noted that, with very few exceptions, accused officers do not record interrogations and the Professional Standards Unit does not provide a copy of the file to the accused. Accordingly, the costs claimed for audio recording tapes were determined to be unallowable since they did not meet the criteria for reimbursement.

The District Attorney's Office claimed \$3,546 for audio recording tapes used by the department during interrogation sessions of accused officers. Due to the serious nature of the investigations performed by the department, accused officers usually request to record their interrogation sessions. The department provides a copy of the tape to the accused officer immediately following the interrogation. However, the interrogations performed by the District Attorney's Office were for peace officers employed by various cities within the county (non-county employees) that were involved in officer-involved shootings or in-custody death situations. These are both alleged criminal activities.

Parameters and Guidelines, Section IV-C(3), includes the reimbursable activity of "tape recording the interrogation when the peace officer employee records the interrogation. Included in the foregoing is the cost of tape and storage, and the cost of transcription."

Parameters and Guidelines, Section IV-C, states that "claimants are eligible for reimbursement for the performance of the activities listed in this section only when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for the purposes of punishment." Section IV-C goes on to say "claimants are also not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities."

The audit adjustments are summarized as follows.

	Fiscal Year			Total
	2001-02	2002-03	2003-04	
Audio Recording costs:				
Sheriff-Coroner's Department	\$ (165)	\$ (63)	\$ (306)	\$ (534)
District Attorney's Office	(1,656)	(1,890)	—	(3,546)
Audit adjustment	<u>\$ (1,821)</u>	<u>\$ (1,953)</u>	<u>\$ (306)</u>	<u>\$ (4,080)</u>

Recommendation

We recommend that the county establish and implement procedures necessary to ensure that claimed costs include only eligible costs and are based on expenditures that occurred as a result of performing mandated activities.

County's Response

District Attorney's Response

The Office of the District Attorney does not concur with the State Controller's finding, but will not dispute the disallowance of costs. This is similar to the explanation provide in response to Finding #1 on interrogation activities.

Sheriff-Coroner's Response

The Sheriff-Coroner Department does not concur, but will not dispute the finding. The Department believes that the determination of eligible costs has been narrowly defined and is not consistent with the intent of the legislation and with the level of service imposed by the mandate. This is similar to the explanation provided in response to Finding #1 for related comment on eligible activities.

SCO's Comment

The finding and recommendation remain unchanged.

Both the District Attorney's Office and Sheriff-Coroner's Department note their disagreement with the SCO's interpretation of allowable activities under the terms of the mandated program, as in their responses to Finding 1. Accordingly, we reiterate our response to Finding 1, in that our audit findings accurately reflect eligible activities as described in adopted *Parameters and Guidelines* for the state-mandated program.

**Attachment—
County's Response to
Draft Audit Report**



DAVID E. SUNDSTROM, CPA
AUDITOR-CONTROLLER

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June 7, 2007

Mr. Jim L. Spano, Chief
State Controller's Office
Compliance Audits Bureau
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Subject: Draft Audit Report Response
Peace Officers Procedural Bill of Rights Program

We have examined the draft audit report regarding the claim filed by Orange County for the legislatively mandated *Peace Officers Procedural Bill of Rights (POBOR) Program* (Chapter 465, Statutes of 1976; Chapter 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990) for the period of July 1, 2001 through June 30, 2004. Our comments on the findings are as follows:

Finding 1 – Unallowable salary and benefit costs, and related indirect costs

Recommendation: The State recommends the County establish and implement procedures to ensure that claimed costs include only eligible costs and that claimed costs are based on actual costs that are properly supported.

District Attorney's Response

The Office of the District Attorney does not concur with the State Controller's finding, but will not dispute the disallowance of costs. The Office's Bureau of Investigation (BOI) conducts interrogations at the request of the involved local law enforcement agencies in Orange County with or without concerns for alleged criminal activities, thereby providing procedural protections to peace officers employed by these agencies when a peace officer is subject to an interrogation.

Probation's Response

The Probation Department does not concur with the finding, but will not dispute the disallowance of costs. The majority of the costs claimed by the Probation Department were disallowed due to the claiming of ineligible activities per the parameters and guidelines for the POBOR program. The State Controller's Office (SCO) found that the Department claimed costs for activities that did not exceed the duties of due process of law. The claimed hours were adjusted by the SCO in order to reflect only those hours that were spent performing eligible POBOR activities.

It should be noted that the disallowances identified by the SCO are the result of our interpretation of eligible activities. The lack of specificity in the POBOR parameters and guidelines require each local agency to interpret which activities are claimable to the program. Based on the audit findings, the Probation Department has revised the POBOR Time Tracking Categories form to reflect ineligible activities and eligible activities. Ineligible activities include: preparing initial cases, performing data collection and data reviews, conducting pre-administrative staffing, coordinating communications through phone calls and e-mails, writing and preparing reports, and conducting interviews during regular on-duty hours. Eligible activities include: witness and internal audit interviews conducted only during off-duty overtime hours where the interviewee is a sworn officer, time spent on providing a notice of interrogation to a sworn officer, producing copies of tapes, producing copies of reports, reviewing case details by a Chief Deputy Probation Officer, Director, or Assistant Division Director prior to finalizing a case, presenting adverse comments to a sworn officer, and administrative appeals, including agreements, grievances, and pre-disciplinary and arbitration hearings.

Sheriff-Coroner's Response

The Sheriff-Coroner Department does not concur, but will not dispute the finding. A significant portion of the State's disallowance of cost was a result of interpretation of eligible activities. Statewide, there are differences of opinion between local agencies and the SCO over the eligibility of certain activities for reimbursement. The Department believes that the State parameters and guidelines for claiming have been narrowed beyond the scope of initial draft guidelines (and the intent of the legislation), that there is a higher level of service imposed by the mandate and that the resulting costs should be eligible for reimbursement.

The procedural requirements of the mandate have resulted in expanding the time and effort by local law enforcement agencies to ensure their officers are given all of their POBOR rights. It takes considerably more time and effort than allowable under the revised guidelines. The Department will continue to partner with other local agencies in working with the State to develop a reasonable reimbursement process or methodology in regard to eligible activities.

Based upon the audit findings, the Department has (1) revised procedures used to validate productive rates used in claims and (2) revised document retention policies to ensure that copies of support documents for valid costs claimed are maintained in the claim file in addition to copies maintained by the division which received the service or materials claimed.

Finding 2 – Ineligible services and supplies

Recommendation: The State recommends the County establish and implement procedures necessary to ensure that claimed costs include only eligible costs and are based on expenditures that occurred as a result of performing mandated activities.

District Attorney's Response

The Office of the District Attorney does not concur with the State Controller's finding, but will not dispute the disallowance of costs. This is similar to the explanation provided in response to Finding #1 on interrogation activities.

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Sheriff-Coroner's Response

The Sheriff-Coroner Department does not concur, but will not dispute the finding. The Department believes that the determination of eligible costs has been narrowly defined and is not consistent with the intent of the legislation and with the level of service imposed by the mandate. This is similar to the explanation provided in response to Finding #1 for related comment on eligible activities.

If you have any questions regarding this response, please contact Ana Roach, Financial Reporting and Mandated Costs, at (714) 834-5888 or email her at ana.roach@ac.ocgov.com.



David E. Sundstrom, CPA
Auditor-Controller

DES:ds

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