

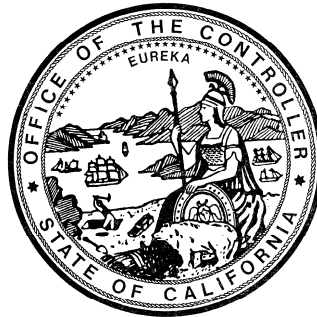
# **CITY OF SAN JOSE**

Audit Report

## **DOMESTIC VIOLENCE ARREST POLICIES AND STANDARDS PROGRAM**

Chapter 246, Statutes of 1995

*July 1, 2002, through June 30, 2005*



**JOHN CHIANG**  
California State Controller

November 2008



**JOHN CHIANG**  
**California State Controller**

November 12, 2008

The Honorable Chuck Reed  
Mayor of the City of San Jose  
200 East Santa Clara Street  
San Jose, CA 95113

Dear Mayor Reed:

The State Controller's Office audited the costs claimed by the City of San Jose for the legislatively mandated Domestic Violence Arrest Policies and Standards Program (Chapter 246, Statutes of 1995) for the period of July 1, 2002, through June 30, 2005.

The city claimed \$466,079 for the mandated program. Our audit disclosed that \$313,744 is allowable and \$152,335 is unallowable. The costs are unallowable because the city claimed ineligible domestic violence cases. The State paid the city \$154,439. Allowable costs claimed exceed the amount paid by \$159,305.

If you disagree with the audit finding, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (CSM). 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 CSM's Web site, at [www.csm.ca.gov](http://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](mailto:csminfo@csm.ca.gov).

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

Sincerely,

*Original signed by*

**JEFFREY V. BROWNFIELD**  
Chief, Division of Audits

JVB/sk

cc: Russell Bence, Detective Sergeant  
City of San Jose  
Walter Rossmann, Deputy Director of Finance  
City of San Jose  
Todd Jerue, Program Budget Manager  
Corrections and General Government  
Department of Finance

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# Audit Report

## Summary

The State Controller's Office (SCO) audited the costs claimed by the City of San Jose for the legislatively mandated Domestic Violence Arrest Policies and Standards Program (Chapter 246, Statutes of 1995) for the period of July 1, 2002, through June 30, 2005.

The city claimed \$466,079 for the mandated program. Our audit disclosed that \$313,744 is allowable and \$152,335 is unallowable. The costs are unallowable because the city claimed ineligible domestic violence cases. The State paid the city \$154,439. Allowable costs claimed exceed the amount paid by \$159,305.

## Background

Penal Code section 13701 (added by Chapter 246, Statutes of 1995) requires local law enforcement agencies to develop, adopt, and implement written arrest policies for domestic violence offenders by July 1, 1996. The legislation also requires local law enforcement agencies to obtain input from local domestic violence agencies in developing the arrest policies. Under previous law, local law enforcement agencies were required to develop, adopt, and implement written policies for response to domestic violence calls and were encouraged, but not obligated, to consult with domestic violence experts.

On September 25, 1997, the Commission on State Mandates (CSM) determined that Chapter 246, Statutes of 1995, imposed a state mandate reimbursable under Government Code section 17561.

The program's parameters and guidelines establish the state mandate and define reimbursement criteria. CSM adopted the parameters and guidelines on August 20, 1998. In compliance with Government Code section 17558, the SCO issues claiming instructions to assist local agencies and school districts in claiming mandated program reimbursable costs.

## Objective, Scope, and Methodology

We conducted the audit to determine whether costs claimed represent increased costs resulting from the Domestic Violence Arrest Policies and Standards Program for the period of July 1, 2002, through June 30, 2005.

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 city'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 city'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 an instance of noncompliance with the requirements outlined above. This instance is described in the accompanying Summary of Program Costs (Schedule 1) and in the Finding and Recommendation section of this report.

For the audit period, the City of San Jose claimed \$466,079 for costs of the Domestic Violence Arrest Policies and Standards Program. Our audit disclosed that \$313,744 is allowable and \$152,335 is unallowable.

For the fiscal year (FY) 2002-03 claim, the State paid the city \$27. Our audit disclosed that \$96,858 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$96,831, contingent upon available appropriations.

For the FY 2003-04 claim, the State made no payment to the city. Our audit disclosed that \$105,312 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$105,312, contingent upon available appropriations.

For the FY 2004-05 claim, the State paid the city \$154,412. Our audit disclosed that \$111,574 is allowable. The State will offset \$42,838 from other mandated program payments due to the city. Alternatively, the city may remit this amount to the State.

## **Views of Responsible Officials**

We issued a draft audit report on July 9, 2008. Scott P. Johnson, Director of Finance and Robert L. Davis, Chief of Police responded by letter dated August 28, 2008 (Attachment), disagreeing with the audit results. This final audit report includes the city's response.

## **Restricted Use**

This report is solely for the information and use of the City of San Jose, 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

November 12, 2008

**Schedule 1—  
Summary of Program Costs  
July 1, 2002, through June 30, 2005**

<u>Cost Elements</u>	<u>Actual Costs Claimed</u>	<u>Allowable per Audit</u>	<u>Audit Adjustment</u> <sup>1</sup>
<u>July 1, 2002, through June 30, 2003</u>			
Direct costs:			
Salaries	\$ 81,301	\$ 68,565	\$ (12,736)
Benefits	18,049	15,222	(2,827)
Total direct costs	99,350	83,787	(15,563)
Indirect costs	15,499	13,071	(2,428)
Total direct and indirect costs	<u>\$ 114,849</u>	96,858	<u>\$ (17,991)</u>
Less amount paid by the State		(27)	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 96,831</u>	
<u>July 1, 2003, through June 30, 2004</u>			
Direct costs:			
Salaries	\$ 127,088	\$ 68,001	\$ (59,087)
Benefits	29,739	15,913	(13,826)
Total direct costs	156,827	83,914	(72,913)
Indirect costs	39,991	21,398	(18,593)
Total direct and indirect costs	<u>\$ 196,818</u>	105,312	<u>\$ (91,506)</u>
Less amount paid by the State		—	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 105,312</u>	
<u>July 1, 2004, through June 30, 2005</u>			
Direct costs:			
Salaries	\$ 97,176	\$ 66,790	\$ (30,386)
Benefits	31,776	21,840	(9,936)
Total direct costs	128,952	88,630	(40,322)
Indirect costs	33,785	22,944	(10,841)
Subtotal	162,737	111,574	(51,163)
Less costs not claimed <sup>2</sup>	(8,325)	—	8,325
Total direct and indirect costs	<u>\$ 154,412</u>	111,574	<u>\$ (42,838)</u>
Less amount paid by the State		(154,412)	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (42,838)</u>	

**Schedule 1—  
Summary of Program Costs  
July 1, 2002, through June 30, 2005**

<u>Cost Elements</u>	<u>Actual Costs Claimed</u>	<u>Allowable per Audit</u>	<u>Audit Adjustment</u> <sup>1</sup>
<u>Summary: July 1, 2002, through June 30, 2005</u>			
Direct costs:			
Salaries	\$ 305,565	\$ 203,356	\$ (102,209)
Benefits	79,564	52,975	(26,589)
Total direct costs	385,129	256,331	(128,798)
Indirect costs	89,275	57,413	(31,862)
Subtotal	474,404	313,744	(160,660)
Less costs not claimed <sup>2</sup>	(8,325)	—	8,325
Total direct and indirect costs	<u>\$ 466,079</u>	313,744	<u>\$ (152,335)</u>
Less amount paid by the State		(154,439)	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 159,305</u>	

<sup>1</sup> See the Finding and Recommendation section.

<sup>2</sup> Costs not claimed represent the amount reported in the filed claim detail schedules that was not certified by the claimant in the FAM-27 Certification of Claim form. The claimant did not file an amended claim for the increased amount within the statutory period to file an amended claim pursuant to Government Code section 17561 subdivision (d)(3).



# Finding and Recommendation

**FINDING—  
Unallowable salaries  
and benefits, and  
related indirect costs**

The city claimed a total of \$128,798 in unallowable salaries and benefits related to the implementation of written arrest policies. The related indirect costs total \$23,537.

The costs are unallowable because the city claimed an unsupported number of city-reported domestic violence incident responses. We measured the error through statistical sampling.

For each year, we selected a statistical sample from the total population of domestic violence cases based on a 95% confidence level, a precision rate of +/-8%, and an expected error rate of 50%. We used a statistical sample so that the results could be projected to the total domestic violence case population. We reviewed a random sample of 146 domestic violence cases in the first fiscal year and 145 domestic violence cases for the subsequent years. The results are as follows:

For fiscal year (FY) 2002-03, the city reported 4,951 domestic violence cases. Of the sampled cases, 95 were reimbursable at 29 minutes and 40 were reimbursable at 12 minutes. We projected the results of the sampled cases to the population to arrive at 1,832 reimbursable hours.

For fiscal year (FY) 2003-04, the city reported 4,270 domestic violence cases. Of the sampled cases, 77 were reimbursable at 29 minutes and 61 were reimbursable at 12 minutes. We projected the results of the sampled cases to the population to arrive at 1,452 reimbursable hours.

For fiscal year (FY) 2004-05, the city reported 4,324 domestic violence cases. Of the sampled cases, 71 were reimbursable at 29 minutes and 66 were reimbursable at 12 minutes. We projected the results of the sampled cases to the population to arrive at 1,427 reimbursable hours.

The following table summarizes the audit adjustment:

	Fiscal Year		
	2002-03	2003-04	2004-05
Sampled cases reimbursable at 29 minutes per case	95	77	71
Multiplied by 29 minutes (in hours)	× 0.48	× 0.48	× 0.48
Subtotal	45.60	36.96	34.08
Sampled cases reimbursable at 12 minutes per case	40	61	66
Multiplied by 12 minutes (in hours)	× 0.20	× 0.20	× 0.20
Subtotal	8.00	12.20	13.20
Number of reimbursable hours per sampled cases	53.60	49.16	47.28
Number of cases sampled	÷ 146	÷ 145	÷ 145
Number of reimbursable hours per case	0.37	0.34	0.33
Number of cases in population	×4,951	×4,270	×4,324
Number of reimbursable hours	1,832	1,452	1,427
Less number of claimed hours	(2,172)	(2,714)	(2,076)
Unallowable hours	(340)	(1,262)	(649)

The following table summarizes the unallowable costs:

	Fiscal Year			Total
	2002-03	2003-04	2004-05	
Number of unallowable hours	(340)	(1,262)	(649)	
Productive hourly rate claimed	× \$37.46	× \$46.82	× \$46.82	
Unallowable salaries	\$ (12,736)	\$ (59,087)	\$ (30,386)	\$(102,209)
Unallowable benefits	(2,827)	(13,826)	(9,936)	(26,589)
Total unallowable salaries and benefits	(15,563)	(72,913)	(40,322)	(128,798)
Unallowable indirect costs	(2,428)	(18,593)	(2,516)	(23,537)
Audit adjustment	\$ (17,991)	\$ (91,506)	\$ (42,838)	\$(152,335)

The program's parameters and guidelines allow claimants to be reimbursed based on a unit time allowance of 29 minutes (0.48 of an hour) for each reimbursable domestic violence incident response, consisting of 17 minutes (0.283 of an hour) to interview both parties and 12 minutes (0.20 of an hour) to consider the factors listed in the parameters and guidelines.

The parameters and guidelines require claimants to support claimed costs with source documents that include, but are not limited to, time logs and other documents evidencing actual costs claimed to implement the written arrest policies.

#### Recommendation

We recommend that the city claim eligible costs and maintain adequate documentation to support costs claimed, in accordance with the parameters and guidelines.

#### City's Response

The audit disallowed 17 minutes out of the unit time allowance of 29 minutes for 167 out of the 436 sample domestic violence cases selected for review during the three year period from July 1, 2002 through June 30, 2005. The unit time allowance of 29 minutes includes 17 minutes to interview both parties involved in the domestic violence incident. The disallowance of the 17 minutes was a major factor in the unallowable salary, benefit and indirect costs totaling \$152,335 cited in the audit report.

The parameters and guidelines that define reimbursement criteria for state mandates indicate that, for domestic violence cases, peace officers must make reasonable efforts to identify the primary aggressor in any incident to be eligible for reimbursement. It is the City's position that the Police Department exercises due diligence in identifying the primary aggressor an interviewing both parties, or in follow-up attempts to interview those parties whose whereabouts are unknown.

San Jose Police Department officers are guided by two law enforcement manuals – the Domestic Violence Protocol for Law Enforcement issued by the Police Chiefs' Association of Santa Clara County and the San Jose Police Department (SJPD) Duty Manual:

- The Patrol Officer Response/Investigation section of the Domestic Violence Protocol for Law Enforcement, by the Police Chiefs' Association of Santa Clara County requires officers to interview everyone separately – victim, suspect, children and other witnesses during the preliminary investigation. The Follow-up Investigation section of the document states that all domestic violence reports prepared by the officers should be reviewed and given follow-up investigation as needed, including interview/re-interview of the victim, witnesses, and suspect as necessary.
- The SJPD Duty Manual Section L7307 states in effect that a crime report and a domestic violence supplementary report will be completed in all cases of domestic violence cases, officers will report all facts surrounding the incident, the statements of the participants or reporting party and witnesses, and the action taken by the officer. In addition, if officers are unable to make an arrest because the suspect has fled the scene, those facts will be fully documented and explained in the crime report. Officers may also fill out a felony affidavit (if applicable) and put it on file in the Warrants Unit.

Given the guidance of the two documents, the City believes reasonable efforts have been exercised under the parameters and guidelines and the auditor's decision to disallow the 167 sample cases should be reversed. Allowing the cases would reduce the total unallowable costs of \$152,335 to approximately \$60,924, or a reduction of approximately \$91,411 to the unallowed costs cited in the audit report (Schedule 1, attached).

The City believes the information provided is sufficient for the State Controller's Office to reverse the decision to disallow the costs at 17 minutes per case. Should you have any further questions regarding this matter, or need clarification of any issue, please contact Patrick Sawicki, Principal Accountant, at (408) 535-7031.

#### SCO's Comments

The findings remain unchanged.

The program's parameters and guidelines state that for any domestic violence incident, a city, county, or city and county may claim a uniform cost allowance of 29 minutes—12 minutes to consider specified factors and 17 minutes to interview both parties. Consequently, we did not allow the 17-minute uniform cost allowance if both parties were not interviewed.

The reference in the parameters and guidelines that allows a city to be reimbursed for requiring peace officers to make reasonable efforts to identify the primary aggressor in any incident relates to developing written arrest policies. For ongoing costs of implementing the new domestic violence arrest policies to identify the primary aggressor, the parameters and guidelines only reimburse costs related to interviewing both parties involved in the domestic violence incident. As noted above, the parameters and guidelines only allow reimbursement of the 17-minute uniform cost allowance for interviewing both parties.

The parameters and guidelines state, “The standard time to identify the primary aggressor is based on the Declaration of Bernice K. Abram, dated July 14, 1998, and August 4, 1998.” The actual declaration, dated July 14, 1998, states, “I believe that determining the ‘primary aggressor’ in making a domestic violence arrest as now called for under Penal Code subsection 13701(b), requires interview of both parties and observation and consideration of the following factors. . . .” The declaration also states, “I declare that it took, on average, about 17 minutes to interview both parties.”

Consequently, the 17-minute uniform cost allowance was developed based on interviews of both parties and the parameters and guidelines only allow reimbursement of this allowance if both parties were interviewed. The city can request that the Commission on State Mandates (CSM) amend the parameters and guidelines to allow a uniform cost allowance for interviewing only one party when a reasonable effort was made to interview both parties. However, if such amendment was submitted to and adopted by the CSM, such uniform cost allowance would only be reimbursable prospectively.

**Attachment—  
City’s Response to  
Draft Audit Report**

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August 28, 2008

State Controller's Office  
Division of Audits  
PO Box 942850  
Sacramento, CA 94250-5874

Attn: Jim L. Spano, Chief  
Mandated Cost Audits Bureau

Re: City of San José  
Domestic Violence Arrest Policies and Standards Program

Dear Jim,

Please accept this letter as the City of San José's (City) response to the State Controller's Office Draft Audit Report dated July 2008 relative to Domestic Violence Arrest Policies and Standards Program. The State Controller's Office approved the City's request to extend the response deadline to August 29, 2008. The format of the response lists the audit finding, followed directly by the City's response to the finding.

*Finding: The City claimed a total of \$128,798 in unallowable salaries and benefits related to the implementation of written arrest policies. The related indirect costs totaled \$23,537.*

**Response:** The audit disallowed 17 minutes out of the unit time allowance of 29 minutes for 167 out of the 436 sample domestic violence cases selected for review during the three year period from July 1, 2002 through June 30, 2005. The unit time allowance of 29 minutes includes 17 minutes to interview both parties involved in the domestic violence incident. The disallowance of the 17 minutes was a major factor in the unallowable salary, benefit and indirect costs totaling \$152,335 cited in the audit report.

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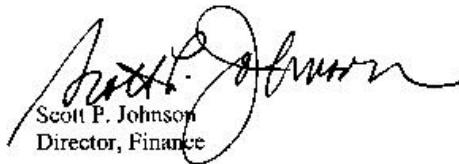
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Given the guidance of the two documents, the City believes reasonable efforts have been exercised under the parameters and guidelines and the auditor's decision to disallow the 167 sample cases should be reversed. Allowing the cases would reduce the total unallowable costs of \$152,335 to approximately \$60,924, or a reduction of approximately \$91,411 to the unallowed costs cited in the audit report (Schedule 1, attached).

The City believes the information provided is sufficient for the State Controller's Office to reverse the decision to disallow the costs at 17 minutes per case. Should you have any further questions regarding this matter, or need clarification of any issue, please contact Patrick Sawicki, Principal Accountant, at (408) 535-7031.

Sincerely,



Scott P. Johnson  
Director, Finance



Robert L. Davis  
Chief of Police

Attachment

c: Deputy Chief Andrew Galea, Police Department  
Lt. Ernest Kong, Police Department  
Walter Rossmann, Finance Department  
Mike Ryder, Finance Department  
Patrick Sawicki, Finance Department  
Cindy Sconce, Maximus





**State Controller's Office  
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