

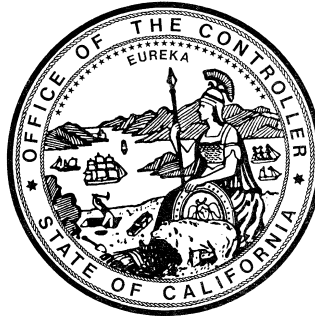
# **SAN BERNARDINO COUNTY**

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

Larry Walker  
Auditor/Controller-Recorder  
San Bernardino County  
222 West Hospitality Lane, 4<sup>th</sup> Floor  
San Bernardino, CA 92415-0018

Dear Mr. Walker:

The State Controller's Office audited the costs claimed by San Bernardino 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 \$1,222,606 for the mandated program. Our audit disclosed that \$62,857 is allowable and \$1,159,749 is unallowable. The unallowable costs occurred because the county claimed costs that were ineligible for reimbursement or were unsupported. The State paid the county \$11. The State will pay allowable costs claimed that exceed the amount paid, totaling \$62,846, 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 (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, Compliance Audits Bureau, at (916) 323-5849.

Sincerely,

*Original signed by*

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

JVB/jj:vb

cc: Bonnie Ter Keurst, Special Projects Manager  
Auditor/Controller's Office  
San Bernardino County  
Todd Jerue, Program Budget Manager  
Corrections and General Government  
Department of Finance  
Carla Castaneda  
Principal Program Budget Analyst  
Department of Finance  
Paula Higashi, Executive Director  
Commission on State Mandates

# Contents

## **Audit Report**

<b>Summary .....</b>	<b>1</b>
<b>Background .....</b>	<b>1</b>
<b>Objective, Scope, and Methodology .....</b>	<b>2</b>
<b>Conclusion .....</b>	<b>2</b>
<b>Views of Responsible Officials .....</b>	<b>2</b>
<b>Restricted Use .....</b>	<b>3</b>
<b>Schedule 1—Summary of Program Costs.....</b>	<b>4</b>
<b>Findings and Recommendations .....</b>	<b>5</b>
<b>Attachment—County’s Response to Draft Audit Report</b>	

# Audit Report

## Summary

The State Controller's Office (SCO) audited the costs claimed by San Bernardino 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 June 1, 2006.

The county claimed \$1,222,606 for the mandated program. Our audit disclosed that \$62,857 is allowable and \$1,159,749 is unallowable. The unallowable costs occurred because the county claimed costs that were ineligible for reimbursement or were unsupported. The State paid the county \$11. The State will pay allowable costs claimed that exceed the amount paid, totaling \$62,846, 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, 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 (CSM) determined that this legislation imposed a state mandate reimbursable under Government Code section 17561 and adopted the *Statement of Decision*. CSM 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. CSM 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, San Bernardino County claimed \$1,222,606 for costs of the Peace Officers Procedural Bill of Rights Program. Our audit disclosed that \$62,857 is allowable and \$1,159,749 is unallowable. The State paid the county \$11. The State will pay allowable costs claimed that exceed the amount paid, totaling \$62,846, contingent upon available appropriations.

**Views of  
Responsible  
Officials**

We issued a draft audit report on April 30, 2007. Bonnie Ter Keurst, Manager, Reimbursable Projects, of the County Auditor-Controller's Office, responded by letter dated June 4, 2007 (Attachment), disagreeing with the Interrogations component of Finding 1, not commenting on Finding 2, and agreeing with Finding 3. This final audit report includes the county's response.

We held a telephone conversation with representatives from the County Auditor-Controller's Office on June 27, 2007 regarding Finding 2. The Auditor-Controller's Office staff now agrees with the portion of the audit finding pertaining to the Probation Department and disagrees with the portion pertaining to the Sheriff's Department. However, staff also stated that it would not dispute the Sheriff's Department portion of the Finding due to its immateriality.

**Restricted Use**

This report is solely for the information and use of San Bernardino County, 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 <sup>1</sup>
<u>July 1, 2001, through June 30, 2002</u>				
Salaries and benefits	\$ 157,815	\$ 1,573	\$ (156,242)	Finding 1
Services and supplies	6,656	2,742	(3,914)	Finding 3
Total direct costs	164,471	4,315	(160,156)	
Indirect costs	106,996	742	(106,254)	Findings 1, 2
Total program costs	<u>\$ 271,467</u>	5,057	<u>\$ (266,410)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 5,057</u>		
<u>July 1, 2002, through June 30, 2003</u>				
Salaries and benefits	\$ 206,732	\$ 16,443	\$ (190,289)	Finding 1
Services and supplies	4,585	1,379	(3,206)	Finding 3
Total direct costs	211,317	17,822	(193,495)	
Indirect costs	163,892	2,920	(160,972)	Findings 1, 2
Total program costs	<u>\$ 375,209</u>	20,742	<u>\$ (354,467)</u>	
Less amount paid by the State		(11)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 20,731</u>		
<u>July 1, 2003, through June 30, 2004</u>				
Salaries and benefits	\$ 325,212	\$ 30,060	\$ (295,152)	Finding 1
Services and supplies	5,835	2,925	(2,910)	Finding 3
Total direct costs	331,047	32,985	(298,062)	
Indirect costs	244,883	4,073	(240,810)	Findings 1, 2
Total program costs	<u>\$ 575,930</u>	37,058	<u>\$ (538,872)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 37,058</u>		
<u>Summary: July 1, 2001, through June 30, 2004</u>				
Salaries and benefits	\$ 689,759	\$ 48,076	\$ (641,683)	Finding 1
Services and supplies	17,076	7,046	(10,030)	Finding 3
Total direct costs	706,835	55,122	(651,713)	
Indirect costs	515,771	7,735	(508,036)	Findings 1, 2
Total program costs	<u>\$ 1,222,606</u>	62,857	<u>\$ (1,159,749)</u>	
Less amount paid by the State		(11)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 62,846</u>		
<u>Recap by Components</u>				
Administrative activities	\$ 334,626	\$ 37,185	\$ 297,441	
Administrative appeals	68,347	1,443	66,904	
Interrogation	819,633	24,229	795,404	
Total program costs	<u>\$ 1,222,606</u>	<u>\$ 62,857</u>	<u>\$ 1,159,749</u>	

<sup>1</sup> See the Findings and Recommendations section.



# Findings and Recommendations

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

The county claimed \$689,759 in salary and benefit costs, and \$515,771 in related indirect costs for the audit period. Salary and benefit costs, totaling \$641,683, 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 the overstatement of the countywide productive hourly rates. Indirect costs from the unallowable costs total \$477,763.

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>
Salaries and benefits:			
Administrative activities:			
Sheriff’s Department	\$ 119,085	\$ 1,439	\$ (117,646)
Probation Department	67,738	29,406	(38,332)
District Attorney	—	—	—
Total administrative activities	<u>186,823</u>	<u>30,845</u>	<u>(155,978)</u>
Administrative appeals:			
Sheriff’s Department	33,631	—	(33,631)
Probation Department	6,565	—	(6,565)
District Attorney	880	853	(27)
Total administrative appeals	<u>41,076</u>	<u>853</u>	<u>(40,223)</u>
Interrogations:			
Sheriff’s Department	115,575	6,513	(109,062)
Probation Department	346,285	9,865	(336,420)
District Attorney	—	—	—
Total interrogations	<u>461,860</u>	<u>16,378</u>	<u>(445,482)</u>
Total salary and benefit costs	689,759	48,076	(641,683)
Related indirect costs	<u>515,771</u>	<u>38,008</u>	<u>(477,763)</u>
Total	<u>\$ 1,205,530</u>	<u>\$ 86,084</u>	<u>\$ (1,119,446)</u>
Recap by department:			
Sheriff’s Department	\$ 268,291	\$ 7,952	\$ (260,339)
Probation Department	420,588	39,271	(381,317)
District Attorney	880	853	(27)
Total	<u>\$ 689,759</u>	<u>\$ 48,076</u>	<u>\$ (641,683)</u>

**Administrative Activities**

For Administrative Activities, the county claimed \$186,823 in salary and benefit costs (\$119,085 by the Sheriff’s Department and \$67,738 by the Probation Department) for the audit period. We determined that \$155,978 was unallowable (\$117,602 due to overstated Sheriff’s Department costs, \$27,630 due to ineligible Probation Department activities, \$9,794 due to unsupported Probation Department costs, and \$952 in overstated 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 claimed \$32,600 for the Sheriff's Department activities of transcribing tape recordings of interrogations under the administrative activities cost component instead of under the Interrogations cost component, and \$86,485 for the costs of tracking and updating cases. The department's claim was based entirely upon estimates and included 490 hours in the claims for each of the three fiscal years of the audit period for "transcribing POBOR cases" and 980 hours for "tracking, updating, and transcribing POBOR cases." However, it was determined that the county did incur some reimbursable costs under both of these activities and the county offered to provide additional documentation in support of claimed costs. The county completed a time study to support \$1,483 of costs incurred for the reimbursable activity of updating the status of POBOR cases. See the Interrogations section of this report for a discussion of the review of the additional documentation provided for the activity of transcribing POBOR cases.

The county also claimed costs totaling \$27,630 for the following Probation Department activities that are not reimbursable:

- Gathering information for interrogations; and
- Preparing interrogation questions.

The Probation Department also claimed \$9,794 for costs incurred during FY 2001-02 that were not supported by any documentation. Department representatives stated that the accounting staff members who prepared the FY 2001-02 claim were no longer with the department and that they did not leave the source documentation behind. Therefore, the Probation Department was unable to substantiate any reimbursable activities.

For a discussion of unallowable costs for overstated Probation Department and Sheriff's Department productive hourly rates, see the overstated Productive Hourly Rates section.

### **Administrative Appeals**

For Administrative Appeals, the county claimed \$41,076 in salary and benefit costs (\$33,631 by the Sheriff's Department, \$6,565 by the Probation Department, and \$880 by the District Attorney's Office) for the audit period. We determined that \$40,223 was unallowable (\$33,631 for ineligible Sheriff's Department activities, \$6,565 for ineligible Probation Department activities, and \$27 for overstated productive hourly rates).

*Parameters and Guidelines* allows 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.
- 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.

However, the county claimed \$33,631 for the following Sheriff's Department activities that are not reimbursable.

- Board of Chiefs Discipline Hearings—This hearing takes place when a peace officer brings his/her case before a board for a determination of the discipline that the officer will receive. This activity occurs *before* any disciplinary action is taken against a peace officer and, therefore, is an unallowable activity.
- Mitigation Hearings—This hearing takes place at the request of a peace officer after the officer has received a notice of proposed discipline. The mitigation hearing process is an internal procedure developed by the county to afford additional protection for their peace officers. According to the procedures in place, an officer has three days after a disciplinary action has been imposed to request a mitigation hearing. An assistant sheriff conducts the hearing with the officer. The assistant sheriff has authority only to reduce the discipline imposed, but not to reduce the disciplinary action entirely. Once this final hearing has taken place and a "final" disciplinary action has been determined, the officer can then file a formal administrative appeal. A Sheriff's Department representative also stated that most of the mitigation hearings that have been held were requested by permanent peace officers who received a notice of termination. Accordingly, we determined that mitigation hearings are an unallowable activity.
- Skelly Hearings—A Skelly hearing is a due process requirement that predates the test claim legislation that is the basis of this mandated program and is, therefore, unallowable. A Sheriff's Department representative also stated that most of the permanent peace officers that have requested a Skelly hearing had already been terminated.

The county also claimed \$6,565 for the unallowable Probation Department activity of conducting interviews.

A Probation Department representative also stated that most of the permanent peace officers who filed an administrative appeal have already received notices of termination, which is also an unallowable activity.

For a discussion of unallowable costs for overstated Probation Department and Sheriff's Department productive hourly rates, see the Overstated Productive Hourly Rates section.

### **Interrogations**

For Interrogations, the county claimed \$461,860 in salary and benefit costs (\$115,575 by the Sheriff's Department and \$346,285 by the Probation Department) for the audit period. We determined that \$445,482 was unallowable (\$336,116 due to ineligible Probation Department costs, \$108,859 due to ineligible Sheriff's Department costs, and \$507 for overstated productive hourly rates).

*Parameters and Guidelines* states that specific 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 tape recording the interrogation, when the peace officer employee records the interrogation, is reimbursable.

However, the county claimed \$336,116 for the unallowable Probation Department activity of conducting interrogations during regular duty hours. A department spokesman also noted that its payroll system did not

have the capability to link any overtime costs paid to a particular POBOR case, if any overtime costs were incurred. The spokesman confirmed that the majority of interrogations occurred during regular duty hours.

The county also originally claimed \$115,575 for the unallowable Sheriff's Department activity of conducting interrogations during regular duty hours. A Sheriff's Department spokesman confirmed that the majority of interrogations occurred during regular duty hours. However, it was noted that the department's payroll system did record a POBOR case number and had the ability to provide a direct link to overtime charges incurred. The county offered to provide additional information in support of claimed costs and performed an analysis of overtime costs incurred by peace officers per fiscal year for time spent in interrogations. Allowable costs per this analysis totaled \$2,533 for the audit period.

As noted in the section on administrative activities, the county claimed estimated costs totaling \$32,600 for the Sheriff's Department activities of transcribing tape recordings of interrogations under the Administrative Activities cost component instead of the Interrogations cost component. The costs incurred for transcription of a tape recording is only reimbursable when the peace officer under interrogation also records the interrogation. Discussions with a Sheriff's Department spokesperson revealed that the only time when this occurred was when a union representative was present at an interrogation session, because it is the policy of the San Bernardino County Safety Employees' Benefit Association (SEBA) to record all interrogations for represented members, be they accused peace officers or peace officer witnesses. The county offered to provide additional information in support of claimed costs for this activity.

First, the county provided information detailing when a union representative was present at interrogation sessions and how long the sessions lasted. Next, the county performed a time study in the current year to determine the amount of time it took a county clerical employee to transcribe a page of taped interrogation. The time study was performed; it was determined that it took 4 minutes and 40 seconds to transcribe one page of interrogation. We reviewed the supporting data and determined that the average time appeared reasonable. We then determined how many minutes of eligible interrogations occurred each fiscal year (those that included a union representative). This analysis disclosed that \$4,183 was allowable for transcription costs. Therefore, allowable costs for the interrogations cost component totaled \$6,716 and unallowable costs totaled \$108,859 for the audit period.

#### **Adverse Comment**

The county did not claim any costs under this cost component during the audit period.

### Overstated Productive Hourly Rates

The county overstated salary and benefit costs by \$1,486 (\$1,212 for the Probation Department, \$247 for the Sheriff's Department, and \$27 for the District Attorney's Office) because it overstated its productive hourly rates. The county calculates a countywide productive hourly rate for all of its employees. In its calculation, the county deducted 52 hours for estimated administration and meeting time to compute the number of annual productive hours. However, for FY 2002-03, the county incorrectly subtracted 47 hours instead of 52 hours for estimated administration and meeting time. Subsequently, as productive hours were understated, the productive hourly rates were overstated.

The SCO's claiming instructions include guidelines for preparing mandated cost claims. The instructions do not identify time spent on administration and meetings as deductions (excludable components) from total hours when productive hours are computed. In addition, the time excluded by the county for administration and meetings was estimated and not based on any actual time records associated with this activity. However, if a county chooses to deduct time for administration activities and/or meetings in calculating countywide productive hours, its accounting system must separately identify the actual time associated with these two components.

### Summary

Following is a summary of the audit adjustments for salaries and benefits.

	Fiscal Year			Total
	2001-02	2002-03	2003-04	
Salaries and benefits:				
Sheriff's Department	\$ (85,508)	\$ (83,248)	\$ (91,583)	\$ (260,339)
Probation Department	(70,734)	(107,014)	(203,569)	(381,317)
District Attorney's Office	—	(27)	—	(27)
Subtotal	(156,242)	(190,289)	(295,152)	(641,683)
Related indirect costs	(106,065)	(150,356)	(221,342)	(477,763)
Audit adjustment	<u>\$(262,307)</u>	<u>\$(340,645)</u>	<u>\$(516,494)</u>	<u>\$(1,119,446)</u>

*Parameters and Guidelines* for POBOR, adopted by the CSM 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

We continue to disagree with the State Controller's interpretation of the *Parameters and Guidelines* (P&Gs). Our position is that the P&Gs must reflect and support the Statement of Decision which included as reimbursable activities: "Conducting an interrogation of a peace officer while the peace officer is on duty, or compensating the peace officer for off-duty time in accordance with regular department procedures." A second statement reads "Conducting the investigation when the peace officer is on duty, and compensating the peace officer for off-duty time in accordance with regular department procedures are new requirements not previously imposed on local agencies and school districts." We would also note the *Pasadena Police Officers Association v. City of Pasadena* Supreme Court Case [(1990) 51 Cal. 3d 564] in finding "To maintain the public's confidence in its police force, a law enforcement agency must promptly, thoroughly, and fairly investigate allegations of officer misconduct." We would submit that the cost for conducting interrogations during regular time are reimbursable, as is preparation/investigation for those interrogations.

#### SCO's Comment

The finding and recommendation remain unchanged.

The county responded only to the audit finding related to the cost component of Interrogations. The county did not respond to the audit findings related to the cost components of Administrative Activities, Administrative Appeal, and Adverse Comment.

The State Controller's interpretation of the *Parameters and Guidelines* for the cost component of Interrogations is consistent with that of the Commission on State Mandates (CSM). At a CSM hearing held on December 4, 2006, one of the agenda items (item #13) concerned Requests to Amend *Parameters and Guidelines* for the Peace Officer Procedural Bill of Rights Program. During testimony for this item, a representative from the county testified that a request had been submitted for an amendment to clarify what was adopted in the original Statement of Decision. The county representative disagreed with the CSM staff's conclusion regarding interrogation because it was inconsistent with the original Statement of Decision, and she urged the Commission to reconsider the amendments. The Chief Legal Counsel for the CSM responded that some statements in the original Statement of Decision were being taken out of context. She clarified that the test claim legislation does not mandate local agencies to interrogate an officer and it does not mandate local agencies to investigate. Rather, these activities

are based on local policy and regulation. She maintained that the COSM made those clarifications in the Statement of Decision on reconsideration and explained that the COSM is bound by those findings.

**FINDING 2—  
Unallowable indirect  
cost rates**

The county overstated indirect cost rates by \$30,273 during the audit period (\$189 in FY 2001-02, \$10,616 in FY 2002-03, and \$19,468 in FY 2003-04).

The Probation Department overstated its indirect cost rates by 68.42%, 74.87%, and 71.09% during FY 2001-02, FY 2002-03, and FY 2003-04, respectively. This resulted in overstated indirect costs totaling \$28,427 during the audit period (\$10,079 in FY 2002-03 and \$18,348 in FY 2003-04). During the course of the audit, it was noted that certain salary and benefit costs that were claimed as 100% direct within the county's mandate claims were also included in the county's indirect cost pools. Accordingly, we noted that the indirect cost rates would need to be re-calculated after eliminating these directly claimed salary and benefit costs from the department's indirect cost rate plans (ICRPs).

Probation Department representatives requested that the department be allowed to claim the standard default indirect cost rate of 10% for all three years of the audit period. We complied, noting that for FY 2001-02, all indirect costs claimed were already found to be unallowable within audit Finding 1 (unallowable salaries and benefits). This resulted in additional unallowable indirect costs totaling \$274 for FY 2002-03 and \$619 for FY 2003-04 because the 10% default rate can only be applied against direct salaries instead of salaries and benefits.

The Sheriff's Department overstated its indirect cost rates by 12.04%, 12.31%, and 11.79% during FY 2001-02, FY 2002-03, and FY 2003-04, respectively. This resulted in overstated indirect costs totaling \$952 during the audit period (\$189 in FY 2001-02, \$262 in FY 2002-03, and \$501 in FY 2003-04). This occurred because the county was unable to support the manner in which it originally classified services and supplies costs as direct and indirect. We reviewed the department's Cost Center Listing with department representatives to determine whether cost centers were either direct or indirect. The county then generated reports showing services and supplies costs by cost center for FY 2002-03 and FY 2003-04, from which the correct total amount of direct, unallowable, and indirect costs for services and supplies was determined. We replaced the original services and supplies amounts within the department's ICRP with these amounts and revised the resulting indirect cost rates accordingly. For FY 2001-02, the county was unable to generate a report showing services and supplies costs by cost center. For this fiscal year, we determined "weighted average" amounts of direct, unallowable, and indirect costs using verified percentages from FY 2002-03 and FY 2003-04. We recalculated the department's original ICRP for FY 2001-02 using the revised allocated services and supplies amounts and revised the rate accordingly.



The following is a summary of the misstated indirect costs.

	Fiscal Year			Total
	2001-02	2002-03	2003-04	
<u>Sheriff's Department</u>				
Allowable indirect cost rate <sup>1</sup>	47.13%	59.18%	49.65%	
Claimed indirect cost rate	(59.17)%	(71.49)%	(61.44)%	
Overstated indirect cost rate	(12.04)%	(12.31)%	(11.79)%	
Allowable salaries and benefits	× \$ 1,573	×\$ 2,128	×\$ 4,251	
Audit adjustment, Sheriff's Dept.	\$ (189)	\$ (262)	\$ (501)	\$ (952)
<u>Probation Department</u>				
Allowable indirect cost rate <sup>1</sup>	10.00%	10.00%	10.00%	
Claimed indirect cost rate	(78.42)%	(84.87)%	(81.09)%	
Overstated indirect cost rate	(68.42)%	(74.87)%	(71.09)%	
Allowable salaries and benefits	\$ —	\$13,462	\$25,809	
Subtotal	—	(10,079)	(18,348)	
Less 10% of allowable benefits	—	(275)	(619)	
Audit adjustment, Probation Dept.	\$ —	\$ (10,354)	\$ (18,967)	(29,321)
Total audit adjustment	\$ (189)	\$ (10,616)	\$ (19,468)	\$ (30,273)

<sup>1</sup> The 10% default rate is only applied to direct labor, excluding fringe benefits. However, the county's allowable direct salary and benefit costs are computed using a countywide productive hourly rate that includes both salaries and benefits. An analysis of Probation Department salaries and benefits for FY 2002-03 and FY 2003-04 determined that allowable benefit costs totaled \$2,750 and \$6,185, respectively. Accordingly, in addition to overclaimed costs due to overstatement of the indirect cost rate, an adjustment is also made for 10% of allowable fringe benefit amounts. A related adjustment for the Sheriff's Department was not material.

*Parameters and Guidelines* states that indirect costs are defined as costs which are incurred for a common or joint purpose that benefit more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. The guidelines also state that compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the OMB Circular A-87, *Cost Principles for State, Local, and Indian Tribal Government*. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an ICRP for the department if the indirect cost rate claimed exceeds 10%. If more than one department is claiming indirect costs for the mandated program, each department must have its own ICRP prepared in accordance with OMB Circular A-87.

Recommendation

We recommend that the county ensure that the indirect cost calculations are consistent with the methodology outlined in OMB Circular A-87, *Cost Principles for State, Local, and Indian Tribal Governments*.

County's Response

Our indirect cost methodology, along with examples, has been submitted to your offices for review. Our process was submitted in response to an audit question early on, concerning the development of individual ICRPs for each department. We have not reached a resolution on this item. As a result, we do not feel a response is appropriate at this time.

SCO's Comment

The finding and recommendation remain unchanged.

We held a telephone conversation with representatives from the County Auditor-Controller's Office on June 27, 2007, concerning any remaining issues with this finding. The county stated that the only unresolved issue also related to another SCO audit ongoing in the county that had been resolved with the audit manager for the other audit.

The Auditor-Controller's Office staff now agrees with the Probation Department portion of the finding, but disagrees with the Sheriff's Department portion of the finding. However, staff also stated that it would not dispute the Sheriff's Department portion of the finding due to its immateriality. Staff also stated that Sheriff's Department employees, who are not well versed on OMB Circular A-87 issues, made the determination of which services and supplies cost centers were direct and indirect, without subsequent concurrence from the Auditor-Controller's Office.

**FINDING 3—  
Ineligible services and  
supplies**

The county claimed costs for services and supplies totaling \$10,030 during the audit period (\$9,044 under the administrative activities cost component and \$986 under the interrogations cost component) that are unallowable (\$6,152 for costs that were overstated and \$3,878 for costs that are not reimbursable under the mandated program).

Specifically, the Sheriff's Department overstated by \$6,152 the cost of leasing a computer to track and update POBOR cases (\$2,152 in FY 2001-02, \$2,000 in FY 2002-03, and \$2,000 in FY 2003-04). This occurred because the department claimed \$2,366 for the computer lease costs during each year of the audit period, a total of \$7,098. However, a review of the supporting invoices revealed that the county actually paid \$946 for computer lease costs, a difference of \$6,152.

The Sheriff's Department also incorrectly claimed \$6,664 for the purchase of audiocassette tapes under the Administrative Activities cost component instead of under the Interrogations cost component. These costs were reclassified under the Interrogations cost component. However, we determined that \$2,892 of these costs were unallowable because the tapes were used to record interrogations when a peace officer or peace officer witness did not also record the interrogation. A Sheriff's Department spokesperson revealed that the only time that a peace officer or peace officer witness recorded an interrogation was when a union representative was present at the interrogation session. A Sheriff's Department spokesperson stated that it is the policy of the San Bernardino County Safety Employees' Benefit Association (SEBA) to record all interrogations for represented members, be they accused peace officers or a peace officer witnesses. The county provided additional information indicating when a union representative was present at interrogation sessions. We used this information to determine reimbursable costs for audiocassette tapes.

The Probation Department claimed \$986 during the audit period for interrogation supplies, although department representatives stated that they could not substantiate any of the supply costs. Accordingly, these costs are unallowable.

Following is a summary of the audit adjustments.

	Fiscal Year			Total
	2001-02	2002-03	2003-04	
Sheriff's Department:				
Computer lease costs	\$ (2,152)	\$ (2,000)	\$ (2,000)	\$ (6,152)
Audiocassette tapes	(1,762)	(884)	(246)	(2,892)
Subtotal	(3,914)	(2,884)	(2,246)	(9,044)
Probation Department:				
Interrogation supplies	—	(322)	(664)	(986)
Audit adjustment	<u>\$ (3,914)</u>	<u>\$ (3,206)</u>	<u>\$ (2,910)</u>	<u>\$ (10,030)</u>

*Parameters and Guidelines*, Section VI, Supporting Data, states that all costs claimed should be traceable to source documentation that show evidence of validity and their relationship to the state-mandated program.

*Parameters and Guidelines*, Section IV(C), Interrogations, states that tape recording the interrogation when the peace officer employee records the interrogation is reimbursable. Included in the foregoing is the cost of the tape.

#### Recommendation

We recommend that the county ensure that claimed costs include only eligible costs, which are based on actual direct expenditures that occurred as a result of performing mandated activities.

#### County's Response

The county agreed with this finding.

#### SCO's Comment

The Finding and Recommendation remain unchanged.

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

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# AUDITOR/CONTROLLER-RECORDER COUNTY CLERK



COUNTY OF SAN BERNARDINO

**AUDITOR/CONTROLLER** • 222 West Hospitality Lane, Fourth Floor  
San Bernardino, CA 92415-0018 • (909) 387-8322 • Fax (909) 386-8830

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**LARRY WALKER**  
Auditor/Controller-Recorder  
County Clerk

**ELIZABETH A. STARBUCK**  
Assistant Auditor/Controller-Recorder  
Assistant County Clerk

June 4, 2007

Mr. James L. Spano, Chief  
Compliance Audits Bureau  
Division of Audits  
State Controller's Office  
Post Office Box 942850  
Sacramento, California 94250-5874

RE: San Bernardino County's Response  
State Controller's Office (SCO) Draft Audit Report  
Peace Officers Procedural Bill of Rights (POBOR)

Dear Mr. Spano:

We have examined the draft audit report for periods covering July 1, 2001 through June 30, 2004. As presented, only costs of \$62,857 are being allowed with \$1,159,749 being disallowed.

Our response to each of the findings follows:

## FINDING 1:

We continue to disagree with the State Controller's interpretation of the Parameters and Guidelines (P&Gs). Our position is that the P&Gs must reflect and support the Statement of Decision which included as reimbursable activities: "Conducting an interrogation of a peace officer while the officer is on duty, or compensating the peace officer for off-duty time in accordance with regular department procedures." A second statement reads "Conducting the investigation when the peace officer is on duty, and compensating the peace officer for off-duty time in accordance with regular department procedures are new requirements not previously imposed on local agencies and school districts." We would also note the *Pasadena Police Officers Association v. City of Pasadena* Supreme Court Case [(1990) 51 Cal. 3d 564] in finding "To maintain the public's confidence in its police force, a law enforcement agency must promptly, thoroughly, and fairly investigate allegations of officer misconduct." We would submit that the costs for conducting interrogations during regular time are reimbursable, as is preparation/investigation for those interrogations.

FINDING 2:

Our indirect cost methodology, along with examples, has been submitted to your offices for review. Our process was submitted in response to an audit question early on, concerning the development of individual ICRPs for each department. We have not reached a resolution on this item. As a result, we do not feel a response is appropriate at this time.

FINDING 3:

We agree.

If you have any questions, please contact me at (909) 386-8850.

Sincerely,



Bonnie Ter Keurst  
Manager, Reimbursable Projects  
Auditor/Controller Recorder's Office

**State Controller's Office  
Division of Audits  
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