



DNA Identification Fund:

Improvements Are Needed in Reporting Fund Revenues and Assessing and Distributing DNA Penalties, but Counties and Courts We Reviewed Have Properly Collected Penalties and Transferred Revenues to the State

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The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the Bureau of State Audits presents its audit report concerning the implementation of the DNA Fingerprint, Unsolved Crime, and Innocence Protection Act (DNA act).

This report concludes that, although the DNA act requires the Department of Justice (Justice) to post data on collections of DNA penalty assessments on its Web site based on annual reports submitted by counties, it does not require counties to report all collections of DNA penalty assessments. Specifically, counties are not required to report the collection of penalty assessments mandated by a July 2006 amendment to the DNA act. Additionally, the information on Justice's Web site is misleading because it indicates that many counties in 2005 and 2006 had not collected any DNA Identification Fund (DNA fund) money when in reality they simply failed to submit annual reports. Based on records maintained by the State Controller's Office, however, we found that these counties actually transferred \$1.6 million and \$3.8 million, respectively, to the State in these years. Consequently, anyone relying on Justice's Web site for DNA penalty collection information would not have a complete picture of all money collected or transferred to the State.

Further, judicial discretion and state laws can affect the amount and timing of DNA penalties assessed and collected by the courts. As a result, for some violations the State may not receive any DNA fund money or may receive a lesser amount. Court decisions and state law can also allow several months to lapse before fines must be paid and transferred to the State. Although the amount of money transferred to the State increased in 2006, these factors, along with early delays in implementing the requirements of the DNA act, may explain why transfers were lower in the first few quarters after implementation.

We also found that the counties we visited appropriately used money from their DNA funds, although they needed to use alternative funding sources to pay for some DNA program costs. However, more funding should be available to counties as their share of DNA fund money rises in accordance with the DNA act. Finally, although not significant, in assessing and distributing DNA penalty collections, we did note weaknesses in some courts' automated case management systems and internal controls that resulted in minor errors.

Respectfully submitted,



ELAINE M. HOWLE
State Auditor

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Summary

Results In Brief

On November 2, 2004, voters approved Proposition 69, the DNA Fingerprint, Unsolved Crime, and Innocence Protection Act (DNA act), which expanded the statewide program of collecting samples of deoxyribonucleic acid (DNA) and storing them in a database and data bank (DNA program). DNA analysis is a useful law enforcement tool for identifying and prosecuting criminal offenders and exonerating the innocent. Among the purposes of the DNA program are helping federal, state, and local criminal justice and law enforcement agencies quickly and accurately detect and prosecute people responsible for certain crimes, such as sex offenses, and excluding innocent persons under investigation for such crimes. The DNA act states that, like collecting fingerprints, collecting DNA samples is an administrative requirement for accurately identifying criminal offenders.

To assist local law enforcement agencies in collecting DNA samples, the DNA act requires the assessment of a penalty for all criminal and vehicle violations, excluding parking violations (initial DNA penalty). Each county collects payments of initial DNA penalties, deposits them into a county DNA Identification Fund (DNA fund), and on a quarterly basis transfers a percentage of the money in its DNA fund to the state DNA fund. The DNA act allows counties to retain a percentage of money in their DNA funds to reimburse local law enforcement agencies for costs related to collecting, processing, analyzing, tracking, and storing DNA samples. In July 2006 the DNA act was amended to levy an additional DNA penalty for all criminal and vehicle violations, excluding parking violations (additional DNA penalty). The additional DNA penalty is assessed and distributed in a manner similar to the initial DNA penalty. However, counties must transfer to the State 100 percent of the additional DNA penalty payments they collect.

The DNA act requires each county's board of supervisors to submit an Annual County DNA Identification Fund Report (annual report) to the Department of Justice (Justice) and the Legislature detailing collection and expenditure information related to the initial DNA penalty. Further, the DNA act requires Justice to post data from the annual reports on its Web site. However, state law does not require counties to report collections related to the additional DNA penalty. Therefore, Justice and other interested parties relying on the Justice Web site for information on DNA penalty collections would not be able to obtain a complete picture of all DNA penalty money collected and transferred to the State. In addition, viewers of the Web site information would not have any assurance that the counties are assessing or collecting the additional DNA penalties.

Audit Highlights . . .

Our review of the implementation of Proposition 69, the DNA Fingerprint, Unsolved Crime, and Innocence Protection Act (DNA act) revealed that:

» *State law does not require counties to report collections related to the additional DNA penalty imposed by the July 2006 amendment to the DNA act; therefore, interested parties would not be able to obtain a complete picture of all the DNA penalty money collected and transferred to the State.*

» *Information available on the Department of Justice's Web site as of June 2007 showed that 22 counties had not transferred any DNA money to the State in 2005 and 24 did not do so in 2006; however, based on the State Controller's Office's records, these counties actually transferred to the State \$1.6 million in 2005 and \$3.8 million in 2006.*

» *Various factors, such as court decisions and state law, may explain why DNA fund transfers to the State were lower than expected; however, transfers have increased since the initial implementation period.*

» *Los Angeles, Orange, and Sacramento counties appropriately used money from their DNA funds to reimburse local law enforcement agencies for their expenses.*

» *Although there were no significant errors in assessing and distributing DNA penalties at the three counties we reviewed, some weaknesses in the courts' automated case management systems and internal controls resulted in minor errors in the assessment and distribution of DNA penalties.*

Based on our review of records maintained by the State Controller's Office (state controller), counties transferred to the State about \$2.3 million in additional DNA penalties for 2006, an amount that is not reflected on the Justice Web site. However, the state controller's records also show that 11 counties did not report transferring any money from the additional DNA penalty to the State for 2006. We contacted each of these counties and were informed by representatives of nine of the 11 counties that they combined money they collected from the additional DNA penalty with their collections of the initial DNA penalty rather than identify their collections separately on the documentation sent to the state controller. However, three of the nine counties indicated that they failed to transfer 100 percent of their collections to the State, as required by law. Rather they only transferred 70 percent, the amount applicable to the initial DNA penalty. Additionally, an official from one county stated that, although the court was assessing and collecting the additional DNA penalty, due to a coding error, the county did not transfer its additional DNA penalty collections to the State until March 2007. Finally, an official from the court in the remaining county acknowledged that it did not begin assessing the additional penalty until September 2007.

Further, the information available on the Justice Web site related to the initial DNA penalty is incomplete and misleading. In particular, as of June 2007, 22 counties had not submitted the required annual reports to Justice for 2005 and 24 counties had not submitted the reports for 2006. Rather than report that the counties had failed to submit annual reports, the Justice Web site indicated that those counties had not transferred any DNA fund money to the State. Based on data obtained from the state controller, however, we found that all but two counties did transfer DNA fund money to the State from their 2005 collections of the initial DNA penalty and that all but one county transferred funds from their 2006 collections. The 22 counties that did not submit annual reports on their 2005 collections actually transferred almost \$1.6 million to the State, and the 24 counties that did not submit reports on their 2006 collections transferred almost \$3.8 million. Because the Justice Web site shows those counties as not transferring any money to the State, anyone attempting to use the data might erroneously conclude that many counties were not assessing any DNA penalties and that the State was not receiving money it was owed.

Judicial discretion and state laws can affect the amount of DNA penalties assessed by the courts. Specifically, although an offense may call for the assessment of DNA penalties, courts have the discretion to waive or reduce the penalties. For example, we identified 25 cases in which the courts sentenced offenders to jail time rather than assessing penalties. In those cases the State would not receive any DNA fund money. Similarly, when an individual

who committed a traffic violation is allowed to attend traffic school, state law allows the city and county where the violation occurred to retain most of the money collected rather than requiring distribution to any penalty assessment funds, and the State does not receive any DNA fund money.

We also found that the time between the date of the offense and when the county collects and transfers DNA fund money to the State can be extensive. One reason for delays is that some court decisions may allow several months before individuals must pay the required fines. Another reason for delays in transferring money to the state DNA fund is that state law allows individuals to pay fines in installments. Finally, state law allows up to 90 days before counties have to transfer to the State its share of DNA penalty collections. These factors, along with early delays in implementing the requirements of the DNA act, may explain why we noted that DNA fund transfers to the State were lower in the first few quarters after the DNA act's implementation than in later quarters. In the three counties we visited, DNA fund transfers have increased as the time since the effective date of the DNA act has lengthened and the money from penalties assessed shortly after the implementation date has been collected.

The counties we visited appropriately used money from their DNA funds to reimburse local law enforcement agencies for the expenses incurred to collect DNA samples and submit them to Justice. However, because the DNA act stipulated that in 2005 and 2006 counties could retain only 30 percent of the money they collected from DNA penalties in their DNA funds and had to transfer the remaining 70 percent to the State, counties had to use alternative funding sources to pay some DNA program costs. More funding should become available to counties as their share of DNA fund money rises in accordance with the DNA act: counties can retain 50 percent of their DNA funds in 2007 and will retain 75 percent beginning in 2008.

Our review of individual transactions at the three counties we visited did not reveal any significant errors in assessing DNA penalties and distributing penalty collections to counties' DNA funds. However, we did note weaknesses in courts' automated case management systems and internal controls that resulted in errors in the assessment and distribution of DNA penalties. For example, because of rounding errors caused by the automated case management system in Orange County Superior Court (Orange court) that ranged from 1 cent to 9 cents per case, the court did not properly distribute DNA penalty payments to the county DNA fund. The financial impact of the rounding errors was minimal on an individual case basis. However, the case management system used by the Orange court is a precursor to the

system under development for statewide implementation by the Administrative Office of the Courts (AOC), the administrative arm of the Judicial Council of California (Judicial Council). Therefore, unless the rounding errors are corrected, small errors occurring in the courts in all 58 counties could result in large monetary losses to county and state DNA funds.

According to a report compiled by the Judicial Council, the Orange court alone processed 569,000 criminal and traffic case filings in fiscal year 2005–06. Further, the report shows that in that same year courts statewide processed more than 6.4 million dispositions—the final outcomes of cases.¹ Although not all case filings result in dispositions and not all dispositions result in penalty assessments, the sheer number of annual dispositions strongly suggests that rounding errors could have a significant fiscal impact on the counties and the State if not corrected. Another error we noted in the Orange court case management system was its failure to consistently distribute installment payments to the various fines, fees, and penalties according to the priority order established by state law.

Additionally, we found that a Los Angeles County Superior Court (Los Angeles court) made several data entry errors related to a specific type of motor vehicle violation. Although the errors appeared to be isolated to one court employee who processes payments, the errors covered a period of at least 12 months. Further, we found that in three cases at another Los Angeles court location, the court overassessed DNA penalties. According to an official at the Los Angeles court, the excessive assessments were caused by manual errors. Finally, we found that because of a misinterpretation of the guidance provided by the state controller, Sacramento County Superior Court (Sacramento court) incorrectly transferred \$292,000 in traffic school fees, and an additional \$210,000 in fees related to red light violations, to the State rather than to the city or county general fund where the infraction occurred, as required by law.

Recommendations

To provide a full accounting of the DNA fund money counties collect and transfer, the Legislature should consider revising state law to require counties to include in their annual reports information on the additional DNA penalty established by Chapter 69, Statutes of 2006.

¹ The Judicial Council of California was not able to provide us with the number of dispositions for the Orange County Superior Court.

Because state law requires Justice to make county-reported data available on its Web site, Justice should do the following to ensure that data on county DNA fund activities are accurate:

- Annually notify counties that they are statutorily required to submit reports on or before April 1 to the Legislature and Justice.
- Contact each county that does not submit an annual report by the deadline.
- Establish policies and procedures for posting county data on its Web site.
- Clearly indicate on its Web site any county that failed to submit an annual report.

County boards of supervisors should ensure that they promptly submit annual reports to Justice and the Legislature as required by the DNA act.

To ensure that the distribution of payments for all fines, fees, and penalty assessments charged to offenders comply with all applicable laws and regulations, the AOC should do the following:

- Work with the Orange court to estimate the total dollar effect of the rounding errors in calculating the penalty assessment distribution to determine whether it will have a significant financial impact on the State. If the AOC determines that the impact will be significant, it should ensure that the Orange court makes the necessary modifications to the distributions calculated by its case management system. Further, as it proceeds with developing the statewide case management system, the AOC should ensure that the system correctly distributes payments to the appropriate funds in accordance with all applicable laws and regulations.
- Ensure that the Orange court reevaluates and makes necessary corrections to the distribution priority order programmed into its case management system.
- Ensure that the Los Angeles court corrects any manual coding errors and strengthens internal controls over data entry.
- Ensure that the Sacramento court continues its efforts to correct any overpayments made to the state DNA fund.

- Contact the courts in the counties that did not report transferring to the State any money or only part of the money for the additional DNA penalty to determine whether they are appropriately assessing the penalty.

The state controller should contact the auditor-controllers in the counties that did not report transferring to the State any money or only part of the money for the additional DNA penalty to ensure that counties and courts correctly assess, collect, and transfer the money to the State.

Agency Comments

The state agencies and county superior courts we reviewed generally agree with our recommendations and will take steps to address them.

Introduction

Background

On November 2, 2004, voters approved Proposition 69, the DNA Fingerprint, Unsolved Crime, and Innocence Protection Act (DNA act). The DNA act amended state law by expanding the existing statewide program that collected samples of deoxyribonucleic acid (DNA) and created a database and data bank (DNA program). Among the purposes of the DNA program are helping federal, state, and local criminal justice and law enforcement agencies quickly and accurately detect and prosecute people responsible for certain crimes, including sex offenses, and excluding innocent persons who are being investigated for those crimes. Making a comparison with the collection of fingerprints, the DNA act states that the collection of DNA samples is an administrative requirement for accurately identifying criminal offenders.

Before passage of the DNA act, state law required any individual convicted of certain felony offenses to provide a blood sample to law enforcement from which a DNA profile was obtained for inclusion in the state DNA program. The Department of Justice (Justice), which manages the DNA program, includes the DNA profiles in the Combined DNA Index System database administered by the Federal Bureau of Investigation. The DNA act expanded the list of qualifying offenses for collecting DNA samples to include adults and juveniles convicted of, adjudicated for, or pleading guilty or no contest to any felony offense; any person who attempted to commit or was convicted of a sex or arson offense; and any adult who attempted to commit, was arrested for, or was charged with a felony sex offense, murder, or voluntary manslaughter. Additionally, the DNA act expanded the requirement to provide a DNA sample to some misdemeanor offenses. Further, all persons convicted of the qualifying offenses previously mentioned who are serving time in prison, on parole, or on probation are required to provide DNA samples. Beginning in 2009 the criteria specified in the DNA act for inclusion in the state DNA program will expand to include all adults arrested or charged with any felony offense, whether or not they are eventually convicted.

State, county, and municipal law enforcement agencies identify persons qualifying for entry into the state DNA program, collect DNA samples, and send the samples to Justice. The Justice DNA laboratory receives and processes DNA samples submitted by counties and state agencies like the Department of Corrections and Rehabilitation; then Justice stores the information in the state DNA program. Justice also administers the state DNA Identification Fund (DNA fund), which can only be used to support DNA testing

in the State and to offset the financial impacts of increased testing. According to a report issued by Justice, as of March 2007 it had received almost 928,000 DNA samples from county and state entities since the program began. Justice records show that expenditures from the state DNA fund have grown from \$9.5 million in fiscal year 2005–06 to \$12.7 million in fiscal year 2006–07, an increase of about 34 percent. The budget for expenditures from the state DNA fund in fiscal year 2007–08 is \$21 million.

Collection of DNA Samples and Penalty Payments

To assist law enforcement agencies and Justice in collecting DNA samples, the DNA act levies a penalty of \$1 for every \$10, or fraction thereof, on all fines, penalties, or forfeitures imposed and collected by the courts for all criminal offenses, including violations of the vehicle code but excluding parking violations (initial DNA penalty). As shown in Table 1, the State and counties share the revenues from this penalty, with the proportion of revenues retained by the counties gradually increasing.

Table 1
State and County Shares of Initial DNA Penalty Collections

YEAR	STATE'S SHARE	COUNTY'S SHARE
2005 and 2006	70%	30%
2007	50	50
2008 and beyond	25	75

Source: Government Code, Section 76104.6.

Each county must deposit DNA penalty payments in its DNA fund and, on a quarterly basis, transfer the appropriate percentage to the state DNA fund, along with any interest the county earned on its fund. The DNA act allows counties to use their share of DNA funds to reimburse local law enforcement agencies for costs related to collecting, processing, analyzing, tracking, and storing DNA samples, as well as the cost of the equipment and software needed to complete those tasks.

On July 12, 2006, changes to the DNA act (amended DNA act) took effect, levying an additional DNA penalty of \$1 for every \$10, or fraction thereof, on all criminal and vehicle violations, excluding parking violations (additional DNA penalty). As with initial DNA penalty payments, counties must deposit payments of the additional DNA penalty in their DNA funds and make quarterly transfers,

including interest, to the state DNA fund. However, the amended DNA act requires counties to transfer to the State 100 percent of the money they collect from the additional DNA penalty.

In addition to the DNA penalties, state law requires other penalties and restitution fines to be imposed on every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses and vehicle code violations, excluding parking violations. Figure 1 on the following page shows the calculation of some of the penalty assessments, including the DNA penalties, on a hypothetical vehicle code violation. Among the other fees courts can also levy are the state surcharge, an amount equal to 20 percent of the base fine for criminal and traffic violations, and restitution for a victim who has suffered economic loss as a result of the defendant's criminal conduct.

The courts collect fine payments from offenders and distribute the payments to the appropriate penalty funds managed by various county or state agencies. When an offender is allowed to pay a fine in installments rather than in full, state law establishes a priority order of how the amounts collected must be distributed (see the text box). Further, state law requires that payments distributed to the assessments in the third priority must be distributed to each fine and penalty category on a proportional basis. Thus, within the third priority, no fine or penalty, such as the initial or additional DNA penalty, would have priority over another. In the example shown in Figure 1, payments would first be distributed to the state surcharge. Once the state surcharge is paid in full, each subsequent payment would be distributed to the other penalties and fees proportionately. The court transfers collections to the county treasurer and notifies the auditor-controller, who deposits the money into the appropriate county funds, such as the county DNA fund. Under the requirements of the DNA act, the county auditor-controller must make quarterly transfers from the county DNA fund to the state DNA fund. Figure 2 on page 11 shows activities conducted at the county and state levels.

Priority of Installment Payments

1. Restitution ordered to, or on behalf of, the victim.
2. State surcharge.
3. The base fine, any other fines and penalties (including the DNA penalties), and other restitution fines.
4. Any other reimbursable costs.

Source: Penal Code, Section 1203.1.

Figure 1
Sample Calculation of Penalties

Violations result in fines paid to and collected by superior courts

Base fine	\$50	Violation penalties
State surcharge (20% of base fine)	\$10	
State penalty* (\$10 per \$10)	\$50	Penalty assessments
County penalty† (\$7 per \$10)	\$35	
Initial DNA penalty‡ (\$1 per \$10)	\$5	
Additional DNA penalty§ (\$1 per \$10)	\$5	
Court construction fee (\$0-\$5 per \$10)	\$10	
Emergency Medical Services# (\$2 per \$10)	\$10	
Total amount owed	\$175	

\$10 to the DNA program

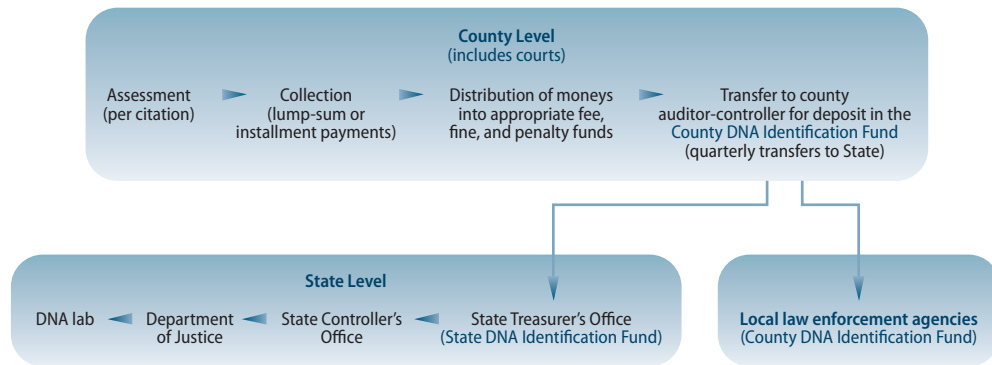


Sources: Penal Code and Government Code sections noted below.

Note: California penalty assessments can be as high as \$26 per \$10 of base fine. Sample calculation is not intended to include all fines, fees, and penalties.

- * Required by Penal Code, Section 1464.
- † Required by Government Code, Section 76000(e).
- ‡ Required by Government Code, Section 76104.6.
- § Required by Government Code, Section 76104.7.
- || Required by Government Code, sections 70372(a) and 70375(b). For this example we used \$2 per \$10.
- # Required by Government Code, Section 76000.5 for counties that elect to administer an Emergency Medical Services program.

Figure 2
Collection, Distribution, and Transfer of Money in County and State DNA Identification Funds



Sources: County policies and procedures and state laws.

To assist in tracking and managing the various amounts of penalties assessed and collected, the courts and counties use automated case management systems. The superior courts we visited in Los Angeles, Orange, and Sacramento counties used different case management systems to handle caseloads and payments of fines. However, the automated case management systems in all three courts used the uniform bail and penalty schedules as a means to determine the penalty assessments, total fines, and fees. The Judicial Council of California (Judicial Council), the policy-making body of the California courts, has developed uniform bail and penalty schedules for certain offenses to achieve consistency within the State. The bail amounts and penalty schedules reported are then input into the automated case management systems used by the courts. The amounts input into the case management systems incorporate the various penalty assessments, including the initial and additional DNA penalty assessments.

In an effort to improve court technology, the Judicial Council approved the development of the California Court Case Management System (CCMS) for implementation in all courts statewide. Currently, more than 70 case management systems are operating in the State's 58 superior courts. The CCMS is a statewide initiative to implement a single case management system for all case types, and a precursor of the system is currently being used by five counties. The Administrative Office of the Courts (AOC), the staff agency of the Judicial Council, expects the CCMS to be deployed in all courts by the end of 2012.

Oversight of the DNA Program, Penalties, and Funds

Justice is responsible for administering the DNA program and the state DNA fund. In addition, the DNA act requires Justice to make data from the annual reports it receives from the counties publicly available on its Web site. These reports, which each county board of supervisors must submit on or before April 1 each year, include the total amount of initial DNA penalty payments collected and transferred to the DNA fund, pursuant to the DNA act, and the amounts expended by the county for the DNA program. Although Justice is responsible for the administration of the DNA program and the state DNA fund, two other state departments have responsibility for oversight of the assessment of DNA penalties and the collection and transfer of DNA penalty payments: the State Controller's Office (state controller) and the AOC.

The state controller is responsible for establishing a uniform accounting system to ensure that trial court revenues, including payments of DNA penalties, are properly accounted for and distributed to all levels of government. To ensure that courts and counties properly assess and distribute the two DNA penalties, the state controller prepares and distributes guidelines such as the *DNA Penalty Assessment (Proposition 69) Distribution Guidelines*. Further, staff with the state controller are available to provide technical assistance to courts and counties with questions concerning the distribution of DNA penalty payments. In accordance with state law, the state controller also determines whether all court collections transferred to the State Treasurer's Office are complete by conducting audits of each county approximately once every five years. The audits focus on amounts transferred to the State and whether the county and courts appropriately followed state law and the guidelines provided to them.

The AOC reviews court activities to determine whether courts have appropriately assessed and distributed penalties. According to the AOC, its internal audit services unit conducts performance reviews of the courts on a three- to five-year cycle. The performance reviews of the courts focus on their compliance with the *Trial Court Financial Policies and Procedures Manual*, a statewide court policy manual. Additionally, the AOC reviews the courts' operational procedures, such as cash-handling and security practices. During its performance reviews, the AOC's internal audit services unit examines court assessment, collection, and distribution schedules for a sample of penalties, including the initial and additional DNA penalties.

Scope and Methodology

The Joint Legislative Audit Committee (audit committee) requested the Bureau of State Audits to review the implementation of the DNA act—specifically, the collection and management of money in county and state DNA funds. The audit committee noted that since the DNA act became effective, revenues associated with it were significantly lower than expected. Additionally, the Legislative Analyst’s Office suggested that the revenue shortfall might be the result of counties not collecting the DNA penalty assessments or receiving only partial payments. Further, information posted on the Justice Web site showed that many counties, including five of the 10 largest, did not report collecting any DNA fund money for 2005. Consequently, the audit committee was concerned that the State may not be receiving its fair share of DNA fund money and that counties may not be using the funds as intended.

To understand the funding process outlined in the DNA act, the roles and responsibilities of various entities involved in its implementation, and the expenditure of DNA funds, we reviewed relevant state laws, rules, and regulations. We also interviewed representatives from the AOC; the state controller; Justice; and officials from the counties’ law enforcement agencies, courts, and auditor-controllers.

To determine whether the counties and courts assessed, collected, allocated, and transferred the appropriate amounts of DNA fund money to the State, we reviewed a total of 120 criminal and vehicle citations from three counties for 2005 and 2006. We selected three counties—Los Angeles, Orange, and Sacramento—because they are among the most populous counties in California. To ensure that counties transferred the correct amounts from their DNA funds to the state DNA fund, we selected 20 citations included in the state controller’s files of amounts the counties transferred to the State. For each case, we obtained the original citation from the applicable superior court location; recalculated the DNA penalty assessments; and compared our calculation with the amount of DNA fund money collected, distributed, and transferred to the State. Further, to ensure that collections were complete, we selected another 20 cases from each court’s case files, for a total of 40 cases per county. For each case, we determined whether the penalty assessment was accurate and that the appropriate amount was distributed to the county DNA fund. Additionally, if an offender had paid any amount on the original fine, we assessed whether the appropriate amount had been transferred to the State.

To determine if counties were correctly transferring DNA fund money to the State and reporting the appropriate amounts in their annual reports, we obtained data from the state controller

on county transfers of funds to the State. The Appendix shows the amounts of the initial DNA penalty collections transferred by county for 2005 and 2006. To meet the data reliability standards of the U.S. Government Accountability Office, we assessed the reliability of the state controller's DNA fund database. Based on our assessment, we found the data to be sufficiently reliable for the purposes of our audit. For the counties that did not report transferring any money to the State, either for the initial DNA penalty or the additional DNA penalty funds, we contacted county representatives to determine whether, in fact, they had transferred DNA penalty collections to the State. However, we did not perform any specific audit procedures to validate the assertions made by representatives. Our procedures were limited to inquiries with county staff.

To ensure the counties spent the DNA fund money according to statutory requirements, we evaluated the processes that Los Angeles, Orange, and Sacramento counties followed to ensure their compliance with the requirements of the DNA act. We also reviewed a sample of expenditures from the DNA funds for the three counties. Specifically, we reviewed the appropriateness of reimbursements made to law enforcement agencies for their expenditures and other program-specific expenditures, such as for labs and equipment.

Audit Results

Reporting of Data on County DNA Identification Funds Needs to Improve

In November 2004 voters approved Proposition 69, the DNA Fingerprint, Unsolved Crime, and Innocence Protection Act (DNA act). The DNA act requires the courts to levy a penalty of \$1 for every \$10, or fraction thereof, on all fines, penalties, or forfeitures imposed and collected by the courts for all criminal offenses, including violations of the vehicle code but excluding parking violations (initial DNA penalty). The DNA act also requires each county's board of supervisors to submit an Annual County DNA Identification Fund Report (annual report) to the Department of Justice (Justice) and the Legislature, detailing the amounts of initial DNA penalty payments collected and deposited in the county and state DNA Identification Fund (DNA fund) and expenditures from that fund. Further, the DNA act requires Justice to post the counties' annual reports on its Web site. In July 2006 the DNA act was amended to levy an additional DNA penalty on all criminal and vehicle violations except parking violations (additional DNA penalty).

However, state law does not require counties to include all DNA fund revenues in their annual reports. Therefore, the State cannot be fully assured that the counties are assessing and collecting all required DNA penalties. Additionally, many counties failed to submit annual reports in 2005 and 2006. On its Web site Justice showed that those nonreporting counties did not transfer any DNA fund money to the State as required by law, rather than showing them as failing to submit annual reports. Consequently, anyone reviewing the information on the Justice Web site would conclude that many counties had not collected or transferred money to the State for those years. However, based on records from the State Controller's Office (state controller), all but two counties transferred certain DNA fund money to the State in 2005, and only one county failed to make the required transfers in 2006.

The Amended DNA Act Does Not Require Counties to Report Revenues From the Newly Initiated DNA Penalty

In July 2006 Government Code, Section 76104.7 was added by Chapter 69, Statutes of 2006, to require courts to levy an additional DNA penalty of \$1 for every \$10, or fraction thereof, on the same violations as the initial DNA penalty (additional DNA penalty). Each quarter counties must transfer DNA fund money to the State. In 2005 and 2006, counties had to transfer 70 percent of the initial DNA penalties collected and 100 percent of the additional DNA penalty collections beginning in July 2006. However, although the

DNA act requires counties to include data on collections of initial DNA penalty payments in the annual reports they submit to Justice, the amended DNA act does not require them to include their additional DNA penalty collections on that report. Consequently, the information the counties report to Justice and the Legislature is incomplete. For instance, based on data we obtained from the state controller, the total amount of additional DNA penalty collections that counties transferred to the State was about \$2.3 million from July 2006, the month the additional penalty became effective, through December 2006. Without this information from the annual reports, the State has little assurance that the courts and counties are assessing and collecting the additional penalty and transferring it to the state DNA fund.

Counties Reporting No Collections of Additional DNA Penalties for 2006

1. Butte
2. Contra Costa
3. Inyo
4. Lassen
5. Mariposa
6. Merced
7. Monterey
8. San Joaquin
9. Siskiyou
10. Trinity
11. Yolo

Source: State Controller's Office.

The importance of the counties including in their annual reports information on the amount of additional DNA penalties they collected is further illustrated by the fact that, according to the state controller's records, 11 counties did not report the transfer of any additional DNA penalty collections to the State in 2006 (see the text box). We contacted each of the counties that reported no additional DNA penalty collections to determine whether they were appropriately assessing the additional DNA penalty. It should be noted that we did not perform any audit procedures to validate the assertions made by representatives of the 11 counties. Rather, our procedures were limited to phone inquiries and e-mails in an attempt to ascertain why the state controller's records indicated the counties had not transferred any money to the State for the additional DNA penalty.

According to representatives of nine of the counties, the courts were assessing the additional DNA penalty; however, rather than identify the collections separately on the documentation sent to the state controller, the county combined them with their initial DNA penalty collections. Further, representatives of three of the nine counties—Inyo, Mariposa, and Siskiyou—stated that they did not transfer 100 percent of the additional DNA penalty collections to the State, as required by law. Rather, each county only transferred 70 percent of the collections, the percentage applicable to the initial DNA penalty. Additionally, an official from Yolo County stated that, although the court was assessing and collecting the additional DNA penalty, due to a coding error, the county did not transfer its additional DNA penalty collections to the State until March 2007. Finally, an official from the Merced County Superior Court (Merced court) acknowledged that the courts did not begin assessing the additional DNA penalty until September 2007, 15 months after it took effect. Although we were not able to determine the amount of

additional DNA penalties the Merced court should have assessed, the county did transfer almost \$125,000 to the State for the initial DNA penalty assessment in 2006.

Many Counties Did Not Submit the Required Annual Reports, but Contrary to the Information on the Justice Web Site, Most Did Collect DNA Penalties and Transfer Money to the State DNA Fund

We also found that many counties failed to submit their annual reports to Justice for 2005 and 2006. In the annual report, which must be submitted to Justice and the Legislature on or before April 1 each year, every county must include the total amount of initial DNA penalties collected and allocated as specified in the DNA act and the amount of DNA fund money expended. Justice then makes data from the annual reports available on its Web site, as required by the DNA act. However, rather than posting the individual county reports on its Web site, Justice prepares and posts a summary of the reports. Our review of the annual reports maintained by Justice and follow-up interviews with staff at selected counties revealed that many counties failed to meet the reporting requirement. Rather than indicate on its Web site that certain counties did not submit annual reports, Justice instead reported the collection and expenditure totals for the nonreporting counties as zero. Justice officials acknowledged that they did not make any attempts to contact the counties that failed to submit reports.

Our review of the annual reports submitted to Justice confirmed that as of June 2007 22 counties did not submit annual reports for 2005 and 24 did not submit reports for 2006. A review of the Justice Web site also revealed that several counties failed to submit annual reports for 2004; however, in that year Justice appropriately reported that the counties failed to submit reports rather than reporting that nothing was collected and expended by those counties. Because many counties did not submit annual reports in 2005 and 2006, we reviewed data provided by the state controller and found that all but two counties—Modoc and Mono—did transfer initial DNA penalty collections to the State.

The DNA act requires counties to transfer the State's share of DNA funds to the State Treasurer's Office and submit a notice of transfer to the state controller on a quarterly basis. According to records from the state controller, which maintains data on transfers from county DNA funds, the 22 counties that did not submit annual reports for 2005 transferred to the State a total of almost \$1.6 million in initial DNA penalty collections for 2005, and the 24 counties that did not submit annual reports for 2006 transferred almost \$3.8 million for 2006. For instance, based on the state controller's records, Kern County transferred about \$263,000

As of June 2007 22 counties did not submit annual reports for 2005 and 24 did not submit reports for 2006.

State controller records show that county transfers to the State for the initial DNA penalty collections totaled almost \$8 million in 2005 and \$14.6 million in 2006.

and \$417,000 in initial DNA penalty fund money for 2005 and 2006, respectively. However, the Justice Web site indicates that Kern County collected nothing in either year.

As shown in the Appendix, based on our review of records maintained by the state controller, county transfers to the State for the initial DNA penalty collections totaled almost \$8 million in 2005 and \$14.6 million in 2006. Thus, the information published on the Justice Web site that makes it appear that many counties were not properly assessing the initial DNA penalty or transferring money to the State is misleading.

A director at the Justice DNA laboratory (lab director) acknowledged that it does not have any written policies or procedures that specify how the information is to be posted on the Web site. However, he stated that Justice is in the process of developing those procedures. Additionally, when asked what prompted the change in the way Justice listed counties that failed to submit annual reports, the lab director stated that when he reviewed the 2004 summary spreadsheet, he requested that counties failing to submit annual reports be listed as “not reported.” However, the lab director admitted he did not make a similar request for a change to the 2005 and 2006 postings. He agreed that it would make more sense to list counties that failed to submit annual reports as “not reported” and further indicated that Justice will edit the 2005 and 2006 Web site information. The lab director emphasized that it is each county’s responsibility to submit the annual reports and that Justice’s responsibility is not to follow up with counties that fail to do so but to make data from the reports publicly available on its Web site.

Despite the lab director’s assertions, anyone relying on the Web site information to make decisions, such as the Legislative Analyst’s Office and the Legislature, could be misled by the data. Because Justice is responsible for receiving the reports, presenting the data on its Web site, and administering the DNA fund, it seems reasonable to expect Justice to perform limited procedures to ensure that counties are aware of and comply with the reporting requirements.

Some Counties Were Unaware of the Requirements of the DNA Act Regarding Reporting, Collecting, and Transferring DNA Fund Money

Based on interviews with county personnel, it appears that Justice does not always receive the required annual DNA fund reports because some counties are not aware that they are required to submit them. As shown in the text box, Justice posts forms, reports, and guidelines on its Web site that should provide

sufficient information to counties regarding the requirements for submitting the annual reports. For instance, the Web site specifies that the board of supervisors in each county is responsible for submitting an annual report on or before April 1. Based on our review of the information available on the Web site, the instructions for completing and submitting the annual report appear adequate. However, despite this information, we found that three of the six counties we contacted that had not submitted annual reports did not know that a report on the DNA fund was required. Representatives of the three remaining counties that were aware of the requirement cited staff turnover as the reason for not submitting annual reports.

We also contacted the Mono County Superior Court to determine why the county had not transferred any DNA fund money to the State. According to an official at the court, the DNA penalties were collected in 2005 and 2006 and sent to the county. An official at the Mono County auditor-controller's office acknowledged that it had received the money and also confirmed that it was not being transferred to the State because staff were not aware of the DNA act requirements. However, as a result of our audit, Mono County stated that it plans to transfer the \$27,800 accumulated in its DNA fund and will continue to do so on a quarterly basis in the future.

Additionally, we asked the Modoc County Superior Court (Modoc court) why it did not transfer DNA funds to the State in 2005. An official stated that it had collected approximately \$3,000 in DNA penalties; however, the money was distributed to the incorrect fund. Moreover, according to an official at the Modoc court, between January 2006 and August 2006, the court distributed an additional \$5,000 to the incorrect fund. The Modoc court did not correct the erroneous distribution until September 2006. Although, according to the court official, it began distributing the DNA penalty collections to the correct fund, the Modoc court mistakenly transferred all collections to the State, rather than retaining the county's 30 percent share. According to the Modoc court, it began transferring the appropriate amounts as of December 2006 after some guidance from the state controller.

Publications Available to Counties on the Justice Web Site Related to the DNA Act

- DNA Database and Data Bank Program Annual DNA Identification Fund Report Form and Instructions
- TC-31 Form: Report to State Controller of Remittance to State Treasurer
- DNA penalty assessment guidelines issued by the state controller
- *Manual of Accounting and Auditing: Penalty, Additional Penalty, and Assessment Distribution Chart, Chart of Penalty and Assessment Distribution*, issued by the state controller

Source: Department of Justice Web site.

Various Factors Affect the Amount and Timing of DNA Fund Money Transferred to the State

Because of certain decisions rendered by the courts, the State is not entitled to DNA fund money for every traffic and criminal violation. For example, if an individual is incarcerated, the initial fine and any

associated penalties may be reduced or eliminated for time served. Consequently, the State will receive less DNA penalty fund money. Further, when the court allows a person with a traffic violation to attend traffic school, state law requires the court to collect a fee from the individual attending traffic school that is equal to the total bail that would have been assessed if the violation was disposed as a conviction, which would include penalty assessments. However, the State does not receive any DNA penalty money from traffic school fees.

We also found that certain factors may lead to a significant length of time between when a fine or penalty is imposed and when the State receives its full share of the DNA fund money. For instance, court policy may permit an individual several months before making any payment, and state law allows up to 90 days before counties must transfer money from their DNA funds to the State. Additionally, a court may allow an offender to pay a fine in installments rather than in a lump sum. Besides extending the time between the assessment and collection of the fine, installment payments are first used to pay for victim restitution and the state surcharge, if any, before going toward any penalty assessments, further delaying the transfer of money to the State. Finally, two of the three counties we visited experienced delays in implementing the requirements of the DNA act. When combined, these factors appear to have resulted in the counties transferring less DNA fund money to the State during the first few quarters after the effective date of the law. However, quarterly transfers to the State have since increased.

The State Does Not Receive DNA Fund Money for Every Criminal and Traffic Violation

Although a particular offense may call for the assessment of DNA penalties, courts have the discretion to waive the penalties under certain circumstances. For instance, we identified examples where the courts often waive or reduce fines for offenders who are sentenced to, or have served jail time. In reviewing a sample of 30 misdemeanor and felony violations we selected at the three courts we visited, we found 25 cases in which the courts sentenced offenders to jail time rather than assessing fines. State law also gives the courts the discretion to reduce total fines imposed on offenders who have served jail time. In these cases the offender receives a credit not to exceed \$30 for each day of time served, and the credit applies to any fine on a proportional basis, including, but not limited to, base fines and victim restitution. When such credits are applied, they can ultimately reduce the amount of DNA fund money transferred to the State.

State law gives the courts the discretion to reduce total fines imposed on offenders who have served jail time, which can ultimately reduce the amount of DNA fund money transferred to the State.

Additionally, when the court orders or permits an offender to attend traffic school, the State correctly does not receive any DNA penalty payments. From a sample of 30 traffic citations we selected at the three courts visited, we found four cases in which the individual was ordered or allowed to attend traffic school. State law requires the court to collect a fee equal to the total bail that would have been assessed if the violation had been disposed as a conviction, which includes penalty assessments, from every person ordered or permitted to attend traffic school or any other court-supervised program of traffic safety instruction. However, no DNA penalty revenues are derived from the fees collected for traffic school are transferred to the State.

The Time Required to Assess, Collect, and Transfer DNA Fund Money to the State Can Be Lengthy

Judicial discretion and state laws related to collecting and transferring DNA penalty payments may prolong the time from the citation date to the date the money ultimately reaches the State, making the task of estimating when the State will receive its share of DNA penalty assessments difficult. For instance, for a typical traffic violation in Orange County, the court usually sends a courtesy notice to the offender within 21 days of the violation stating that the offender must pay the fine within a specific period, generally 30 days, or take further action, such as contesting the citation. The court clerk may also grant a 45-day extension for payment of the fine. The court will accept payment in full or may allow the individual to make monthly payments. If the offender pays the full fine, the court transfers the money collected for the fine and all related penalty assessments to the county auditor-controller and must notify the county within 35 days of the amount to be deposited in the county DNA fund.

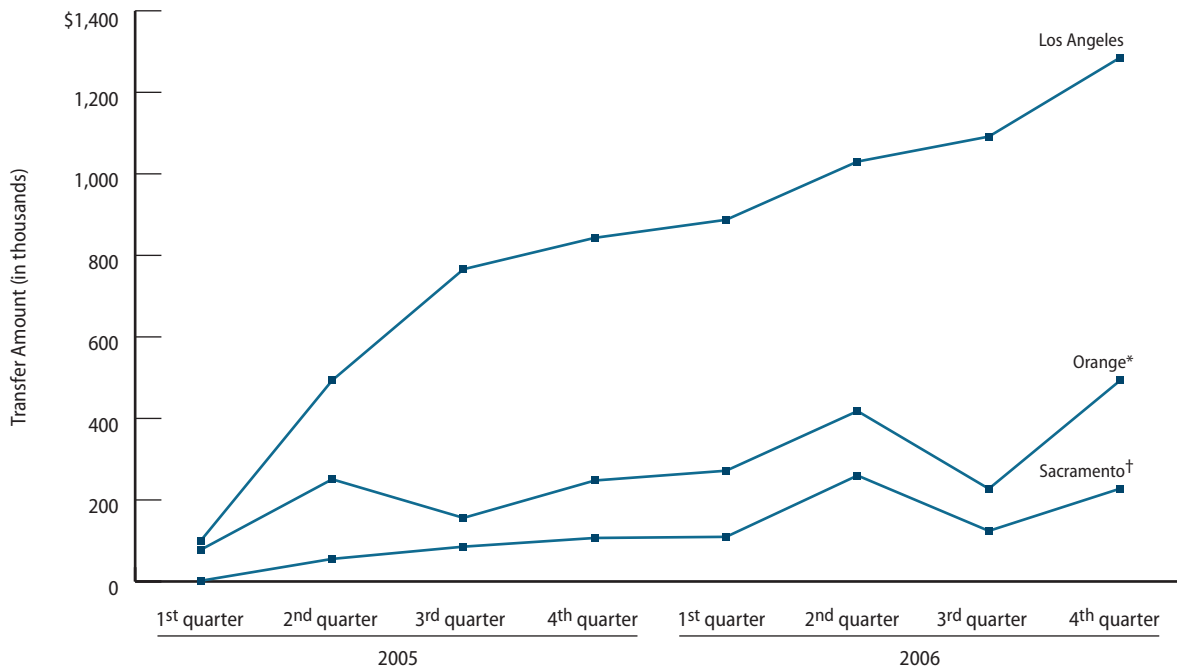
After depositing the money in the DNA fund, the county auditor-controller has, by state law, up to three months to transfer the State's share to the state treasurer and the corresponding remittance advice to the state controller. Such lengthy timelines were evident in our sample of 48 items paid in a lump sum, in which it took between 114 to 250 days from the date of the citation to the date the county transferred the funds to the State.

When offenders are allowed to make installment payments, the time between assessment and full collection of the penalty can take several months to several years. The collection of penalty payments can be delayed even more if the individual is required to pay restitution to the victim or the state surcharge (20 percent of the base fine), because state law requires the courts and counties to apply payments to reimburse those costs before considering

For our sample of 48 items that were paid in a lump sum, it took between 114 to 250 days from the date of the citation to the date the county transferred the funds to the State.

any penalty assessments. For example, an individual was cited for a misdemeanor in Orange County in January 2005 and was subsequently required to pay \$942: a \$250 base fine; court fees of \$205, which included a \$50 state surcharge; and various penalty assessments totaling \$487. The offender was allowed to make monthly installment payments rather than pay the entire amount in a lump sum. The first payment was received 54 days after the date of the original citation. However, none of that first payment was distributed to the DNA penalty assessment. Rather it was distributed to higher-priority costs, such as the state surcharge, that, in accordance with state law must be paid first. The final installment payment, of which a portion was used to pay the remaining balance of the DNA penalty, was not made until November 2005, more than 300 days after the date of the original citation.

Figure 3
Quarterly Transfers From Three Counties to the State DNA Identification Fund



Sources: Reports from Los Angeles, Orange, and Sacramento counties to the State Controller’s Office on DNA Identification Fund (DNA fund) money transferred to the State Treasurer’s Office (Form TC-31).

* Orange County included four months of DNA penalty collections in its second-quarter 2005 and 2006 transfers of DNA funds to the State. Consequently, the county’s third-quarter transfers for 2005 and 2006 contained only two months of DNA penalty collections. All other quarterly transfers to the State included three months of DNA penalty collections.

† Sacramento County included four months of DNA penalty collections in its second-quarter 2006 transfer of DNA funds to the State. Therefore, the third-quarter 2006 transfer contained only two months of DNA penalty collections. All other quarterly transfers to the State included three months of DNA penalty collections.

Finally, delays in implementing the requirements of the DNA act may have resulted in lower initial transfers to the State. According to officials at Los Angeles and Sacramento counties, the DNA act provided little implementation time and required the courts to reprogram their case management and cashiering systems. We believe it is likely that, because of court decisions, state laws, and implementation delays, counties transferred less DNA fund money to the State in the first few months after the effective date of the DNA act, as shown in Figure 3. However, the figure also shows that the quarterly transfer totals of the counties we visited have generally increased as the time since initial implementation has increased.

Counties Are Appropriately Using Their DNA Fund Money, but the Money Is Not Sufficient to Pay for All Their Costs

The three counties we visited complied with the state requirements for the use of money from the DNA fund. State law stipulates that each county use its share of money from the DNA fund to pay for specific goods and services, such as collecting DNA samples from individuals that qualify and maintaining a work space sufficient for collecting the DNA samples for submission to Justice. Our review of expenditures at Los Angeles, Orange, and Sacramento counties revealed that each county spent its DNA fund money in accordance with state law. We also noted that each of the three counties incurred allowable costs that exceeded its share of DNA fund money. Consequently, the three counties had to use alternative funding sources to pay the excess costs. This likely occurred because counties retained only 30 percent of the DNA fund money they collected in initial DNA penalties in 2005 and 2006; the DNA act required counties to transfer the remaining 70 percent to the State. However, the mandated county share rose to 50 percent in 2007 and will be 75 percent beginning in 2008. These increases should enable counties to reimburse a greater portion of their costs related to the DNA database and data bank program (DNA program).

Counties Are Using DNA Fund Money for Allowable Purposes

Los Angeles, Orange, and Sacramento counties used their DNA fund money for purposes allowed by state law. As the text box shows, the law specifies several appropriate uses; however, each county we visited generally limited its use of DNA fund money to reimbursing local law enforcement agencies for the collection of DNA samples. The DNA act requires the collection of DNA samples following the conviction of an individual, and local law

Allowable Uses of DNA Fund Money

Counties must reimburse costs local law enforcement agencies incur to collect DNA specimens and fingerprint impressions. Such costs include the following:

- Expenditures and administrative costs related to procuring equipment and software for confirming that a person qualifies for inclusion in the DNA program.
- Expenditures and administrative costs related to processing, analyzing, tracking, and storing DNA samples.

Source: Government Code, Section 76104.6(b)(3).

enforcement agencies are typically charged with the responsibility of collecting the samples. According to unaudited data provided by Los Angeles, Orange, and Sacramento counties, each collects a large number of DNA samples from individuals eligible to be entered into the state DNA program. For example, in 2005 the sheriff's department and various police departments in Los Angeles County indicated that they had collected 30,285 DNA samples. That year the sheriff's and probation departments in Orange County reported collecting 26,304 DNA samples, and Sacramento County reported that its sheriff's department collected 5,701 DNA samples. All three counties appropriately used DNA fund money to partially cover the costs of collecting these DNA samples. Sacramento County also properly used a portion of its DNA fund for a one-time purchase of equipment.

Although the rates charged for the collection of DNA samples differed somewhat among the three counties, each county generally charged a flat fee for every DNA sample collected. The DNA act does not specify how the counties or local law enforcement agencies should calculate costs or determine reimbursement. Therefore, we did not attempt to assess whether the specific rates charged were appropriate. However, we did review the methodology each county used to set its rates and determined that all three methods were reasonable. For example, Orange and Sacramento counties based their reimbursement rates on cost studies completed by local law enforcement agencies. Los Angeles County based its rate on an amount previously approved by Justice.

After Experiencing Shortfalls, Counties May Be Better Able to Pay the Costs Related to the DNA Program Because They Will Retain Larger Portions of the DNA Penalty Assessments

In 2005 and 2006, the three counties we visited generally did not have sufficient money in their DNA funds to fully reimburse all local law enforcement agencies that reported incurring costs associated with the DNA program. In these years, counties were allowed to retain only 30 percent of their total initial DNA penalty collections and were required to transfer the remaining 70 percent to the State. For example, records from Orange County show that in 2005 local law enforcement agencies requested reimbursement for at least \$1.4 million in costs related to the DNA program. However, the county's share of the DNA penalty collections totaled only \$314,000. Similarly, local law enforcement agencies in Los Angeles County requested at least \$1.9 million in reimbursable costs in 2006, yet the county retained only \$1.7 million in DNA funds.

Local law enforcement agencies in Los Angeles County requested at least \$1.9 million in reimbursable costs in 2006, yet the county retained only \$1.7 million in DNA funds.

Because of the inadequate funding, the counties we visited could reimburse the costs of only a few departments. For example, Sacramento County used its DNA fund to reimburse only one

agency, the County Sheriff's Department. To reimburse the County Probation Department and the District Attorney's Office for DNA program-related expenses incurred in 2005 and 2006, Sacramento County used its general fund rather than the DNA fund. Similarly, Orange County used its DNA fund money to reimburse two agencies, the County Sheriff's Department and the County Probation Department. Although in 2005 and 2006 the Orange County District Attorney's Office also incurred expenses related to implementing the DNA act, it did not receive reimbursements from the DNA fund. Any other agency that incurred DNA program-related costs had to be reimbursed for the costs using other county resources.

Beginning in 2009 counties will likely see DNA program-related costs increase because they will be required to collect samples from a larger pool of subjects. However, the increased share of DNA penalty assessments counties will be allowed to keep in their DNA funds should help prevent further shortfalls. Currently, only persons convicted of or pleading no contest to a felony or persons arrested or charged with a felony sex offense, arson, murder, or voluntary manslaughter must submit DNA samples. Beginning in 2009 any individual arrested or charged with a felony offense will be required to submit a DNA sample. Although the counties will likely need to collect more samples, the share of DNA penalty assessment collections that state law allows counties to retain will be 75 percent beginning in 2008. Therefore, despite the heavier burden on counties to collect and process more DNA evidence, the additional funding should allow counties to pay for more of the reimbursable costs they incur.

Despite the heavier burden on counties to collect and process more DNA evidence in 2009, the additional funding from the increased share of DNA penalty assessments should allow counties to pay for more of the reimbursable costs they incur.

Courts Need to Improve Their Methods of Ensuring the Accuracy of DNA Penalty Assessments and Distributions

Although we did not discover any significant errors in the transactions we reviewed for the counties of Los Angeles, Orange, and Sacramento superior courts, we identified weaknesses in data entry and processing and internal controls that could affect many of the DNA penalties processed by all three superior courts. The monetary impact of the errors ranged from 1 cent to \$54 per case. While not individually significant, the potential volume of the errors could prove significant.

The DNA penalty distributions calculated by the case management system used by the Orange County Superior Court (Orange court) resulted in rounding errors affecting 22 of the 40 cases we reviewed. According to an official of the Administrative Office of the Courts (AOC), the case management system the Orange court uses is a precursor to the case management system that the AOC plans to

eventually implement statewide. Additionally, based on a report issued by the Judicial Council of California (Judicial Council), California Superior Court criminal case dispositions totaled more than 6.4 million statewide for fiscal year 2005–06. Not every case disposition—the final outcome of a case, such as a case dismissal or criminal sentencing—results in penalty assessments. Nonetheless, the magnitude of the rounding errors will be greatly increased unless the AOC ensures that the cause of the rounding errors in the precursor system is identified and corrected before it implements the new statewide system. Moreover, when an individual was allowed to make installment payments, the Orange court’s case management system did not always distribute the payments according to the priority order established by law.

We also identified a data entry error related to a specific type of motor vehicle code offense occurring at one location of the Los Angeles County Superior Court (Los Angeles court). The resulting error appears to have been committed by one court employee and covered at least a 12-month period between 2005 and 2006. Additionally, for three other cases we reviewed involving another Los Angeles court location, the court did not properly assess the DNA penalty for a particular type of misdemeanor offense. Finally, we found that the Sacramento County Superior Court (Sacramento court) erroneously transferred \$292,000 to the State for payments received for various vehicle code violations. Because the relevant vehicle code violations had resulted in the court allowing the offenders to attend traffic school, by law the county should have retained the payments received from the offenders.

Table 2 shows the number of errors we identified in the 40 cases we reviewed at each county. As the table illustrates, of the 120 violations, we identified 35 (29 percent) that had either a distribution or an assessment error.

Table 2
Penalty Assessment and Distribution Errors in a Sample of Cases From 2005 and 2006

TESTING RESULT	SACRAMENTO COUNTY SUPERIOR COURT	LOS ANGELES COUNTY SUPERIOR COURT	ORANGE COUNTY SUPERIOR COURT	TOTALS
No error	37	32	16	85
Distribution error	2	5	23	30
Assessment error	1	3	1	5
Totals	40	40	40	120

Sources: Case files from the superior courts of Sacramento, Los Angeles, and Orange counties.

Rounding Errors Caused by Its Case Management System Affect the Distribution of DNA Penalties in Orange Court

The Orange court uses the Court Case Management System (CMS), which is a precursor to the California Court Case Management System being developed for statewide deployment by the AOC, to track criminal and traffic cases. The Orange court is one of five courts currently involved in piloting the development of the statewide case management system. Among other functions, the CMS calculates the total fine and the corresponding penalties, including the initial and additional DNA penalties. A payment made by an offender for a case or citation, whether a lump sum or an installment payment, is automatically distributed, using calculations programmed in the CMS, to the outstanding fees, fines, and penalties included in the total fine. However, based on our review of the distribution of payments for 40 cases, the amounts calculated by the Orange court case management system did not result in the correct amount of money being distributed to the DNA fund in 22 of 40 cases because of rounding errors. Further, the errors also resulted in an under- or overpayment to another penalty fund.

The impact of the rounding errors for each case was minimal, ranging from a 9-cent underpayment to a 1-cent overpayment, but the errors occurred in more than half of our sample from the Orange court. According to the *2007 Court Statistics Report: Statewide Caseload Trends* compiled by the Judicial Council, the Orange court had more than 569,000 criminal and traffic case filings in fiscal year 2005–06. However, not every case filing—the initiation of a legal action with the court—results in a disposition. Further, not every case with a disposition results in penalty assessments. Yet, because of the large volume of case filings in the Orange court, the number of cases affected by the rounding errors we discovered could be significant. Moreover, although the fiscal impact of the errors we identified at the Orange court was small, if left uncorrected, the errors would continue for years, thereby magnifying the monetary significance. More importantly, if the AOC does not ensure that this type of distribution error is addressed when developing the statewide system, the impact of rounding errors will be even more significant. For example, based on the Judicial Council’s report, criminal and traffic case dispositions of the California Superior Court totaled more than 6.4 million statewide in fiscal year 2005–06.²

The amounts calculated by the Orange court case management system did not result in the correct amount of money being distributed to the DNA fund in 22 of 40 cases because of rounding errors.

² The Judicial Council of California was not able to provide us with the number of dispositions for the Orange County Superior Court.

An official with the Orange court agreed with our conclusion, acknowledging that the errors are the result of the rounded percentages programmed into the CMS. According to the official, when setting up the distribution percentages, the court determined the most accurate result possible; however, occasional rounding issues may occur as the base fines, and thus penalty payments, increase. The official stated that at this time the court is not pursuing any system changes but will review the current programming for penalty distributions using a 15-digit decimal place system to determine if updates are necessary. She also reported that the court has not done any internal analysis to determine the impact of the rounding issue over a fiscal year.

Besides the rounding errors, we identified two other errors related to the CMS used by the Orange court. In one case the court allowed a defendant to attend traffic school instead of paying a fine. However, the system incorrectly identified the individual as ineligible for traffic school. Consequently, the system distributed the offender's payment, totaling \$435, to the various fines, fees, and penalty funds, including the DNA penalty fund, instead of transferring it to the city or county general fund. In the other case the CMS incorrectly used a penalty assessment formula that became effective after the date of the violation, resulting in a DNA penalty that was just slightly larger than it should have been.

Further, for six of the 23 cases where we identified distribution errors at the Orange court the offender was allowed to make installment payments. However, the CMS did not distribute the payments to the various fines, fees, and penalties in accordance with the priority order established in state law. In one case, for example, installment payments were distributed to the various penalty assessments before the state surcharge was paid in full as required by law. As discussed in the Introduction, fine payments must first be distributed to restitution ordered to or on behalf of the victim, followed by distribution to the state surcharge. The third priority of installment payments includes any fines, penalty assessments (including the DNA penalties), and other restitution fines. An official at the Orange court agreed that the court should reevaluate the distribution priorities programmed in the CMS.

Sacramento County Overpaid the State DNA Fund Because its Superior Court Misinterpreted the Requirements for the Distribution of Traffic School and Red-Light Violation Fees

Because of a misinterpretation of the guidance issued by the state controller regarding how the distribution of penalty payments should occur when offenders are sentenced to traffic school, the Sacramento court allocated traffic school fees to the county's DNA fund rather

than to the city or county's general fund for one of the cases we reviewed. After researching the issue further, the court determined that it instructed the county to transfer substantially more money to the state DNA fund than it should have because the misinterpretation affected many cases. Specifically, between January 2005 and March 2007, the county auditor-controller under direction from the Sacramento court, incorrectly transferred \$292,000 in traffic school fees to the State. Further, according to an official of the Sacramento court, when researching the errors we brought to her attention, she found that an additional \$210,000 in fees related to red-light violations were mistakenly transferred to the State. The official stated that the court has since corrected the problem as a result of our audit and is now distributing funds correctly.

A budget analyst at the Sacramento court stated that she misinterpreted the state controller's distribution guidelines for traffic school fees, which states that the fees should not be included in remittances of DNA funds to the State. This misinterpretation of guidelines does not appear to be isolated to the Sacramento court. During its audits of court revenues, the state controller found that another county included traffic school fees in its DNA fund transfers to the State. In its audit of Fresno County court revenues from July 2000 through June 2005, the state controller found that the court incorrectly transferred more than \$43,000 to the State.

We also found an assessment error at the Sacramento court that resulted from a manual calculation error. For this case the court assessed the additional DNA penalty even though the date of the violation was before the effective date of the additional DNA penalty. Further, we found that the Sacramento County Department of Revenue Recovery, which acts as the collection agency for installment payments, did not properly distribute payments to the DNA penalties proportionately as required by state law. Both these errors appear to be isolated.

The Los Angeles Court Did Not Accurately Assess and Distribute Money to the DNA Fund for Two Types of Cases

One of the Los Angeles court locations failed to distribute money to the DNA fund for some misdemeanor traffic offenses. In four criminal traffic cases—two for 2005 and two for 2006—the Los Angeles court did not distribute any money to the DNA fund. In each case, processed by the same court employee, the correct amount of money was assessed and collected; however the required distribution of money to the DNA fund was not made. Although the total amount that should have been allocated to the DNA fund for the four cases

Sacramento County transferred substantially more money to the state DNA fund than it should have because the court allocated traffic school fees to the county's DNA fund rather than to the city or county's general fund.

we reviewed was only \$135, it appears likely that the court employee was applying the wrong distribution code for all similar offenses she processed during at least 2005 and 2006, the period of our review.

These errors occurred because the court employee, one of 13 judicial assistants, used an incorrect penalty assessment distribution code when processing the cases. The assistant forwarded the distribution code and fine amount to the court cashier who manually entered the data into the cashiering system. The distribution code contains the formula for how the system should distribute the penalty payment. Officials with the court stated that most traffic violation fines it assesses are not manually coded but are automatically distributed correctly by the court's cashiering system. Although the officials emphasized that errors made by one clerk out of one courtroom are not representative of all criminal cases in the system, they plan to correct any manual coding errors made by the cashiers.

We identified three additional manual processing errors at another Los Angeles court location. In each case the court overassessed the total amount for all penalty assessments by \$5 to \$7. Although the total dollar amount of the errors was insignificant, because the errors were at the same court location and involved similar types of offenses, it is possible that more errors occurred than the three we identified. An official at the Los Angeles court acknowledged that procedures were not being followed. In addition to the errors previously discussed, we identified one case in which the Los Angeles court did not distribute installment payments according to the priority order established in state law. Unlike the priority order errors we found at the Orange court, the error in this case involved manually distributed funds and appears to be an isolated occurrence.

Recommendations

To provide a full accounting of the DNA fund money counties collect and transfer, the Legislature should consider revising state law to require counties to include in their annual reports information on the additional DNA penalty established by Chapter 69, Statutes of 2006.

Because state law requires Justice to make county-reported data available on its Web site, Justice should do the following to ensure that the data on county DNA fund activities are accurate:

- Annually notify counties that they are statutorily required to submit reports on or before April 1 to the Legislature and Justice.

- Contact each county that does not submit an annual report by the deadline.
- Establish policies and procedures for posting the county data on its Web site.
- Clearly indicate on its Web site if a county failed to submit an annual report.

County boards of supervisors should ensure that they promptly submit annual reports to Justice and the Legislature as required by the DNA act.

To ensure that the distribution of payments for all fines, fees, and penalty assessments charged to offenders comply with all applicable laws and regulations, the AOC should do the following:

- Work with the Orange court to estimate the total dollar effect of the rounding errors in calculating the penalty assessment distribution to determine whether it will have a significant financial impact on the State. If the AOC determines that the impact will be significant, it should ensure that the Orange court makes the necessary modifications to the distributions calculated by its case management system. Further, as it proceeds with developing the statewide case management system, the AOC should ensure that the system correctly distributes payments to the appropriate funds in accordance with all applicable laws and regulations.
- Ensure that the Orange court reevaluates and makes necessary corrections to the distribution priority order programmed into its case management system.
- Ensure that the Los Angeles court corrects any manual coding errors and strengthens internal controls over data entry.
- Ensure that the Sacramento court continues its efforts to correct any overpayments made to the state DNA fund.
- Contact the courts in the counties that did not report transferring to the State any money or only part of the money for the additional DNA penalty to determine whether they are appropriately assessing the penalty.

The state controller should contact the auditor-controllers in the counties that did not report transferring to the State any money or only part of the money for the additional DNA penalty to ensure that counties and courts correctly assess, collect, and transfer the money to the State.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of the report.

Respectfully submitted,



ELAINE M. HOWLE
State Auditor

Date: November 29, 2007

Staff: Steven A. Cummins, CPA, Audit Principal
Heather Kopeck, MPP
Chuck Kocher
Daniel Hoang, MPP
Joseph Archuleta, MPA

For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at (916) 445-0255.

Appendix

COUNTY TRANSFERS TO THE STATE DNA IDENTIFICATION FUND

To comply with the 2004 DNA Fingerprint, Unsolved Crime, and Innocence Protection Act (DNA act), each county must make a quarterly transfer of money from its DNA Identification Fund (DNA fund) to the State Treasurer’s Office for deposit in the state DNA fund. At the same time, each county submits a Report to State Controller of Remittance to State Treasurer (TC-31 Form) to notify the State Controller’s Office of the amount transferred. Because the transfer occurs after the county collects DNA penalty payments and deposits them in its DNA fund, the TC-31 Form identifies the applicable month and year the county collected the payments related to the transfers.

Using data the counties reported to the state controller, we calculated the total annual DNA fund money that counties collected from the penalty required by the DNA act (initial DNA penalty) in 2005 and 2006 and transferred to the State as of July 2007. The transferred amounts are shown in Table A. The table does not include any amounts the counties transferred to the State related to the additional DNA penalty required by the 2006 amendment to the DNA act. As described in the body of our report, the amendment to the DNA act did not mandate that counties report data regarding the additional DNA penalty to the Department of Justice or the Legislature.

Table A
Initial DNA Penalty Collections Transferred From Counties to the State DNA Identification Fund in 2005 and 2006

COUNTY	2005	2006	TOTALS
Alameda	\$69,310	\$907,194	\$976,504
Alpine	2,385	2,705	5,090
Amador	6,609	28,299	34,908
Butte	20,647	54,574*	75,221
Calaveras	9,983	17,656	27,639
Colusa	10,655	24,242	34,897
Contra Costa	110,707	244,170*	354,877
Del Norte	6,168	12,094	18,262
El Dorado	22,632	37,325	59,957
Fresno	209,438	326,940	536,378
Glenn	14,315	22,681	36,996
Humboldt	22,299	54,878	77,177
Imperial	40,197	103,650	143,847

continued on next page

COUNTY	2005	2006	TOTALS
Inyo	21,946	36,749*†	58,695
Kern	263,195	417,071	680,266
Kings	25,077	50,600	75,677
Lake	7,527	16,272	23,799
Lassen	13,024	26,490*	39,514
Los Angeles	2,202,713	3,979,857	6,182,570
Madera	14,197	38,868	53,065
Marin	102,934	153,848	256,782
Mariposa	405	17,594*†	17,999
Mendocino	21,866	55,369	77,235
Merced	42,648	124,782	167,430
Modoc†	0	2,021	2,021
Mono†	0	0	0
Monterey	111,897	233,512*	345,409
Napa	36,320	53,069	89,389
Nevada	28,302	74,889	103,191
Orange	732,285	1,488,520	2,220,805
Placer	137,282	154,216	291,498
Plumas	8,441	13,775	22,216
Riverside	377,192	716,783	1,093,975
Sacramento	301,660	673,848	975,508
San Benito	13,975	26,629	40,604
San Bernardino	256,657	445,183	701,840
San Diego	1,008,499	903,704	1,912,203
San Francisco	91,040	126,943	217,983
San Joaquin	218,066	437,009*	655,075
San Luis Obispo	99,032	126,077	225,109
San Mateo	107,832	276,487	384,319
Santa Barbara	91,878	105,231	197,109
Santa Clara	130,601	496,837	627,438
Santa Cruz	59,450	81,905	141,355
Shasta	32,836	72,087	104,923
Sierra	1,931	4,183	6,114
Siskiyou	68,337	98,597*†	166,934
Solano	101,871	168,201	270,072
Sonoma	66,611	175,068	241,679
Stanislaus	86,868	140,396	227,264
Sutter	21,061	59,168	80,229
Tehama	22,950	43,962	66,912
Trinity	3,258	5,217*	8,475
Tulare	29,377	56,394	85,771

COUNTY	2005	2006	TOTALS
Tuolumne	11,443	23,527	34,970
Ventura	423,908	460,690	884,598
Yolo	18,323	35,918	54,241
Yuba	35,655	75,166	110,821
Totals	\$7,995,715	\$14,609,120	\$22,604,835

Sources: Reports from the counties to the State Controller's Office (state controller) on DNA Identification Fund money transferred to the State Treasurer's Office (Form TC-31).

Note: The shaded amounts indicate that the county did not submit the Annual DNA Identification Fund Report to Justice for that calendar year.

- * As discussed on page 16 of the report, according to representatives from these counties, rather than identify the collections separately on the documentation sent to the state controller, the counties combined their DNA penalty collections. Thus, the amount of the county's 2006 DNA penalty collections includes both initial and additional penalty collections.
- † As discussed on page 16 of the report, these counties asserted that they transferred 70 percent of their additional DNA penalty collections to the State rather than 100 percent, as required by law.
- ‡ As described in the report, Modoc and Mono counties did not transfer any initial DNA penalty money to the State for 2005, and Mono did not transfer any of this money to the State for 2006.

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(Agency response provided as text only.)

Department of Justice
P.O. BOX 903281
Sacramento, CA 94203-2810

November 15, 2007

Ms. Elaine M. Howle, State Auditor*
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

RE: BSA Audit Response - DNA Identification Fund

Dear Ms. Howle:

We have carefully reviewed the findings of the Bureau of State Audits (BSA) in your November 2007 report entitled "DNA Identification Fund: Improvements Are Needed in Reporting Fund Reserves and Assessing and Distributing DNA Penalties, but Counties and Courts Properly Collect Penalties and Transfer Revenues to the State." Our Responses to your recommendations are as follows:

FINDING: The reporting of data on county DNA Identification (ID) Funds needs to improve.

RECOMMENDATIONS: Because state law requires the Department of Justice (DOJ) to make county reported data available on its Web site, to ensure that the county DNA ID fund activity data is accurate, DOJ should do the following:

- **Annually notify counties that they are statutorily required to submit an Annual County DNA Identification Fund Report (annual report) on or before April 1 of each year to the Legislature and the DOJ.**

Every February, the Bureau of Forensic Services (BFS) Data Bank currently sends out a form letter to all counties reminding them that the report for the previous year is due on or before April 1. The letter includes the link to the Web site where the report form can be found. Since not all counties have been compliant, BFS agrees to send a follow-up reminder by mass e-mail in March to all counties. ①

- **Contact counties that do not submit the annual report by the deadline.**

A formal letter from the Attorney General will be sent in May to those counties that have not submitted an annual report by the April 1 deadline.

- **Establish policies and procedures for posting the county data on its Web site.**

BFS is currently preparing internal policies and procedures specific to posting county DNA ID Fund data on its Web site.

* California State Auditor's comments begin on page 41.

Ms. Elaine M. Howle, State Auditor
November 15, 2007
Page 2

- **Clearly indicate on its Web site any counties that failed to submit an annual report.**

BFS confirms that formal policies and procedures will dictate that Web-postings will reflect future collections as "not reported" should a county fail to submit an annual report by April 1.

② The only other recommendations of the BSA audit additionally focused on reporting improvements:

- To provide users with a complete picture of the DNA ID funds counties collect and transfer, the Legislature should consider revising Government Code Section 76104.7, established by Chapter 69, Statutes of 2006, to require counties to include in their annual reports information related to the additional DNA penalty.
- The County Boards of Supervisors should ensure that they promptly submit the annual reports to DOJ and the Legislature as required by the DNA act.

② Neither of these recommendations speaks to the need to improve the accuracy of violation assessments, collections, distribution and remittance of the DNA penalties to the State as prescribed by the State Controller.

② Of critical importance to DOJ and the Proposition 69 DNA Program, is the viability of the ongoing DNA ID Fund revenue stream. Historically, total collections from the counties significantly under ran expectations of both the Department of Finance and the Legislative Analyst's Office. These funding shortfalls were sufficiently severe that Prop 69 operations were abruptly curtailed mid-fiscal year 2005/06. Emergency support from the legislature arrived in the form of the mandated additional dollar of penalty collections, as well as in General Fund budget augmentations appropriated for 2006/07 and 2007/08. However, it must be noted that these collection deficiencies were real shortfalls, completely unrelated to the DOJ reporting issues highlighted in this audit.

③ Although revenues have improved, a summary of DNA ID Fund revenues received by the State Controller in the month of July 2007 shows that 34 counties remitted DNA ID Fund penalties attributed to the quarter ending June 2007. Of those 34 counties reporting, 28 remitted both the initial DNA penalty and the additional penalty; five counties were attributed with only initial penalty remittances and one county with only additional penalties. In comparing the dollars submitted for each type of penalty, the ratio of additional penalties to initial penalties should be 2:1 (\$1 additional penalty dollar vs. \$0.50 of the initial dollar that is remitted to the State). However, actual receipts from the 28 counties submitting both penalties reflected a ratio of only 1:29. Assuming that the same violation base is used for the initial and additional penalties, a ratio of less than 2:0 indicates collection or remittance issues at the county level.

⑤ A similar comparison of revenues received in October 2007 attributed to the quarter ending September 2007, shows 25 counties remitted both the initial and additional penalties, with an improved ratio of penalty dollars at 1:58. It is believed that the initiation of the BSA audit this past summer certainly helped educate a number of the counties and resulted in improved collections. However, the dollar ratio remaining at less than 2:0 continues to reflect discrepancies that are inconsistent with the findings of this BSA audit, namely "Counties and Courts Properly Collect Penalties and Transfer Revenues to the State."

Ms. Elaine M. Howle, State Auditor
November 15, 2007
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Without knowing the number of dollars of violations assessed, DOJ can only question the methodology by which penalties are collected and remitted to the State, and whether county procedures are consistent with the guidelines provided to them by the State Controller. DOJ also has a direct responsibility to the State of California to carry out the people's Proposition 69 Initiative mandate. DOJ therefore requires assurances that the counties' assessment of violations, collection, distribution and remittance of DNA penalties to the State are being appropriately handled. Without those assurances, DOJ will never be able to verify the correct level of DNA ID Fund support, we may not have sufficient funding to meet required program growth with the all-arrestee provision in January 2009, and may be forever dependent on General Fund support.

Should you have any questions or additional concerns, please do not hesitate to contact me.

Sincerely,

(Signed by: Richard J. Lopes)

RICHARD J. LOPES, Deputy Director
Division of Law Enforcement

For EDMUND G. BROWN JR.
Attorney General

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Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE DEPARTMENT OF JUSTICE

To provide clarity and perspective, we are commenting on the Department of Justice's (Justice) response to our audit. The numbers below correspond to the numbers we have placed in its response.

We are pleased that Justice indicates that it now has a policy in place to remind counties of the requirement to submit the annual reports. We contacted an official of Justice to determine the effective date of the policy. The official acknowledged that the policy was not in effect for 2005 and 2006, the period of our review. Rather, Justice plans to move forward with implementing the policy based on our recommendation.

①

We concur that the recommendations we directed to Justice relate to reporting improvements as opposed to improvements in the accuracy of violation assessments, collections, distributions, and remittances of DNA penalties to the State, because Justice is responsible for making county-reported data available on its Web site. However, our report also includes recommendations directed to other parties responsible for the accurate assessment, collection, distribution, and transfer of DNA penalties. As explained at the exit conference and indicated in the cover letter accompanying the draft of the audit report we shared with Justice, the draft report was redacted and included only the findings and recommendations that pertain to Justice. To comply with sections 8545(b) and 8545.1 of the Government Code, which require that we keep the results of audits confidential until the public release of the audit report, we are not able to share with each party the entire draft of an audit report when it includes findings and recommendations related to multiple parties.

②

Moreover, requiring and monitoring county reporting plays an important part in ensuring that counties and courts correctly assess, collect and transfer DNA fund money to the State. This is illustrated on page 19 of the report where we note that two counties that failed to submit the reports—Modoc and Mono—did not transfer DNA penalty collections to the State.

Justice did not share this data with us during the audit and therefore we cannot confirm the analysis that they performed. Additionally, the scope of our audit covered 2005 and 2006 and, thus, the July 2007 data was outside of the period of our review. However, we are concerned with Justice's implication that only 34 of the counties transferred any funds to the State for the quarter ending June 2007.

③

During our review of the state controller's records, we noted that many counties do not transfer collections to the State in the month immediately following the end of a quarter. For example, during our review of the three counties we visited, we noted instances when the State did not receive the funds until two to three months after the end of a quarter. However, because the money was ultimately transferred with interest, as required by law, a minor delay in transferring money does not have any fiscal impact on the State.

- ④ To the extent that the State and county shares of DNA penalties remained constant for an extended period of time, Justice's expectation of a 2-to-1 ratio between the additional and initial DNA penalty might be reasonable. However, as shown in Table 1 of our report, the State share of the initial penalty was 70 percent prior to 2007 and will drop to 25 percent in 2008. These changes coupled with the lengthy timelines we observed from the date of a citation to the date a county transfers money to the State make Justice's expectation unrealistic. In particular, as described on page 21 of our report, it took between 114 to 250 days from the date of the citation to the date the county transferred money to the State for 48 of our sample items that were paid in a lump sum.
- ⑤ Our report title was modified slightly during our quality control process to reflect that counties and courts we reviewed have properly collected penalties and transferred revenues to the State. Our title accurately reflects the results of our testing of a sample of DNA penalties assessed in Los Angeles, Orange, and Sacramento counties during 2005 and 2006 where, as indicated on page 25 of our report, we did not discover any significant errors.

(Agency response provided as text only.)

Judicial Council of California
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, California 94102

November 14, 2007

Ms. Elaine M. Howle
State Auditor
555 Capitol Mall, Suite 300
Sacramento, California 95814

Dear Ms. Howle:

I am responding on behalf of Chief Justice Ronald M. George to the audit report prepared by your office which examined the assessment, distribution, and collection of penalty assessments established under Government Code sections 76104.6 and 76104.7 (aka the DNA Initiative penalty assessments). I appreciate the time and effort expended by your staff in conducting this examination and preparing a helpful report on the results of the audit. Reviews, such as this audit, of the activities of the California courts contribute to their continued improvement and assists in ensuring compliance with applicable laws and regulations.

The audit report recommends that the Administrative Office of the Courts (AOC) should assist and monitor correction, as necessary, in addressing the issues and recommendations identified in the report. We have discussed the issues identified and are working with the courts mentioned to address the recommendations in the report. The issues, recommendations, and responses are detailed below. The responses were received from the courts and were reviewed by AOC personnel.

The discussion below responds to the four recommendations contained in the report. These recommendations were reviewed with the courts identified; their responses to the issues and recommendations in your report are contained below. The Internal Audit Services Unit (IAS) of the AOC will ensure that the audit's results continue to be emphasized in their future audits and will follow-up on corrective actions as outlined below.

Superior Court of Orange County

- "Work with the Orange Superior Court to estimate the total dollar effect of the penalty assessment distribution rounding error to determine whether it will have a significant financial impact on the State. If the AOC determines that the impact will be significant it should ensure that the court makes the necessary modifications to the system distribution calculations. Further, the AOC should ensure that as it proceeds with the development of the statewide California Court Case Management System that the system correctly distributes payments to the appropriate funds in accordance with all applicable laws and regulations."
- "Ensure that the Orange Superior Court re-evaluates, and corrects if necessary, the payment priority order programmed into its case management system."

Ms. Elaine M. Howle
November 14, 2007
Page 2

Court Response

“The Superior Court of Orange County concurs with the two above recommendations and will make all necessary corrections to the Court Case Management System (Vision 1.59). The corrections will be as follows:

Bullet One: The Superior Court of Orange County will increase the field definition to the number of decimal points in order to accommodate appropriate precision for fund distribution. Estimated time of completion: March 31, 2008.

Bullet Two: The Superior Court of Orange County will evaluate current distribution priorities programmed in our Court Case Management System (Vision 1.59) to ensure that they are in compliance with PC 1203.1d and SCO Assembly Bill 3000. As discrepancies are noted, the appropriate action will be taken to correct the distribution priority for current and future distributions. Estimated time of completion: January 31, 2008.”

In conjunction with the Court, the AOC has evaluated the potential impact of the rounding errors. We agree that an error rate of 55 percent (22 out of 40 distributions tested) is too high. The impact of the rounding errors for each case was minimal, ranging from a 9-cent underpayment to a 1-cent overpayment. Given that the sampling was not on a random basis, the sample cannot be validly extrapolated to the entire population.

For purposes of our evaluation, the following is the AOC extrapolation. According to the 2007 *Court Statistics Report: Statewide Caseload Trends* for fiscal years 1996–1997 through 2005–2006 compiled by the Judicial Council of California, the Superior Court of Orange County had 569,231 criminal filings in fiscal year 2005–2006; with a statewide disposition rate of 91 per 100 filings there would be approximately 518,000 dispositions. If we take the worst case assumption of a 9-cent underpayment, the impact is only approximately \$46,600, or only 0.4 percent of the approximately \$13 million of remittances for the same period to the state for the Proposition 69 Fund. It is our goal and the goal of the court to implement all of these activities accurately and, as such, the court will correct the system programming as noted above.

Further, during the development of the statewide California Court Case Management System (CCMS), the AOC will ensure that complete reviews will be conducted to ensure to the best of our ability that the system correctly distributes payments to the appropriate funds in accordance with all applicable laws and regulations.

Superior Court of Los Angeles County

- “Ensure that the Los Angeles Superior Court corrects any manual coding errors and strengthens internal controls over data entry.”

Court Response

“The Superior Court of Los Angeles County agrees with the recommendation and has taken steps to ensure that manual coding cashier errors are identified and corrected.”

Ms. Elaine M. Howle
November 14, 2007
Page 3

Superior Court of Sacramento County

- "Ensure that the Sacramento Superior Court continues its efforts to correct any overpayments made to the State's DNA penalty fund."

Court Response

"The Superior Court of Sacramento County concurs with the BSA finding concerning the distribution of the DNA penalty, which resulted from a misinterpretation of the guidelines issued by the State Controller's Office. Similarly, the noted red light penalties were incorrectly distributed following a similar misinterpretation. The Superior Court of Sacramento County has made all necessary corrections to processes and database systems to properly capture and distribute these penalties going forward in accordance with the interpretation provided from this audit.

Concerning the prior incorrectly distributed amounts of these two penalties, the Superior Court of Sacramento County has made corrections to an estimated 25 percent of the amounts. This process of reversing the distributions will take a number of months as the reversal is incumbent on the amount of monthly collections for the respective penalties. The Superior Court of Sacramento County estimates that corrections to prior distributions will be completed by March 2008."

Administrative Office of the Courts (AOC)

- "Contact the courts in the counties that did not report transferring any money to the State for the additional DNA penalty to determine whether they are appropriately assessing the penalty."

AOC Response

The AOC concurs with the recommendation and will take appropriate corrective action if needed.

As we hope the responses above make clear, we are committed to taking the necessary steps on an immediate basis to correct issues identified in any audit of the judicial branch. As the audit was only a sampling of the superior courts of California, I have requested that the Manager of IAS monitor the corrections of the issues identified by the state audit and also ensure that IAS's audit programs continue to cover the testing of distributions, such as those above, in each of their future audits. As you are aware, however, with an audit cycle of approximately four years, it is possible that IAS may not be able to review implementation of changes in distributions at individual courts in as timely a manner as we would prefer.

As previously discussed with the audit team, AOC audits of the superior courts include the testing of distributions, but only on a sample basis for a limited number of distributions. As an example, during our audit of the Superior Court of Orange County this year, IAS identified rounding problems, similar to those identified in the state audit, and other distribution issues, which the Court was in the process of correcting.

Ms. Elaine M. Howle
November 14, 2007
Page 4

Additionally, as the administrative office for the branch, we provide support to the courts regarding the implementation of new legislation and information about changes in assessments and distributions. This support assists the courts in the discharge of their duties with respect to ensuring that distribution changes are made on an accurate and timely basis. This support includes:

- Systemwide notices concerning new legislation and its impact on the courts;
- Training sessions at regional meetings; and
- New law workshops sponsored jointly by the California Trial Court Clerks Association and Judicial Council.

On a long-term basis, we are in the process of developing a statewide case management system for all courts to utilize. Development is scheduled to be completed in approximately three years, and anticipated deployment to all courts by 2012. Among its many advantages, the one most directly affecting the assessment and distribution processes is the use of one statewide distribution table for all courts. This table will be updated after appropriate reviews of statewide legislative and local ordinance changes. The system will also make it easier to monitor and audit distributions.

Thank you for the assistance provided through the audit process and final report. I look forward to working with you in the future.

Sincerely,

(Signed by: John A. Judnick for)

William C. Vickrey
Administrative Director of the Courts

(Agency response provided as text only.)

Office of the State Controller
300 Capitol Mall, Suite 1850
Sacramento, CA 95814

November 15, 2007

Elaine M. Howle
California State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Re: November 2007 Audit of the DNA Identification Fund

Dear Ms. Howle:

The California State Controller's Office (SCO) appreciates the opportunity to respond to the November 2007 draft audit of the DNA Identification Fund. We acknowledge the Bureau of State's Audits' (BSA) time and effort dedicated to preparing this comprehensive report. The following is our response to the findings and recommendations of the audit:

Recommendation:

"The state controller should contact the auditor-controllers in the counties that did not report any transfers of the additional DNA penalty to the State to ensure that the penalty is being assessed and the money is correctly transferred to the State."

Response:

As indicated in this report, the SCO regularly conducts audits of the counties court remittances to the state as required by law, and as such, informs the counties when remittances are not properly transferred. We agree there needs to be greater communication on the subject of DNA revenue remittances and the SCO will inform all county auditor-controller's of the specific requirements of the DNA penalties. In addition, SCO staff will ensure this subject is addressed at the next meeting between the State Controller's Office and County Auditor-Controller's.

Again, we appreciate the opportunity to respond to your draft audit report. If you have additional questions, please contact John Korach, Chief, Division of Accounting and Reporting, at (916) 327-4144.

Sincerely,

(Signed by: John Chiang)

JOHN CHIANG
California State Controller

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(Agency response provided as text only.)

Superior Court of California
County of Los Angeles
111 North Hill Street
Los Angeles, CA 90012

November 15, 2007

Elaine M. Howle, State Auditor
Bureau of State Audits
555 Capital Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle:

SUBJECT: RESPONSE TO DNA IDENTIFICATION FUND AUDIT REPORT

Below is our response to the audit report entitled "DNA Identification Fund: Improvements Are Needed in Reporting Fund Revenues and Assessing and Distributing DNA Penalties, but Counties and Courts Properly Collect Penalties and Transfer Revenues to the State".

Audit Recommendation:

Ensure that the Los Angeles Superior Court corrects any manual coding errors and strengthens internal controls over data entry.

Los Angeles Superior Court Response:

The Los Angeles Superior Court agrees with the recommendation and has taken steps to ensure that manual coding errors are corrected, and that internal controls are strengthened over data entry.

If you have any questions or need further information, please contact Debbie SooHoo of my staff at dsoohoo@lasuperiorcourt.org or (213) 974-6091.

Sincerely,

(Signed by: William H. Mitchell)

William H. Mitchell, Deputy Executive Officer
Administration/Finance

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(Agency response provided as text only.)

Superior Court of California
County of Sacramento
720 Ninth Street
Sacramento, California 95814

November 9, 2007

Elaine M. Howle, State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Re: *Review and Comment in "DNA Identification Fund: Improvements are Needed in Reporting Fund Revenues and Assessing and Distributing DNA Penalties, but Counties and Courts Properly Collect Penalties and Transfer Revenues to the State."*

Dear Ms. Howle:

Thank you for the opportunity to review and comment on your draft audit report cited above. The Sacramento Superior Court appreciates the need for such audits as we all owe it to the public to insure that the systems and processes required by our laws are actually functioning properly.

The identification of isolated errors in the assessment and distribution of DNA penalties has allowed Sacramento Superior Court to correct those isolated errors and to improve data entry and processing internal controls to minimize any future errors. The fact that your auditors didn't view the isolated errors as "significant" in no way affects our commitment to correct all identified errors as the goal is always 100% accuracy in compliance with the law.

The ultimate conclusion that the courts are properly collecting penalties and properly transferring revenues to the State is viewed by the Sacramento Superior Court as a welcome validation that the system is working properly. Thanks again for your Bureau's efforts in preparing this report as requested by the Joint Legislative Audit Committee.

Sincerely,

(Signed by: Roland L. Candee)

ROLAND L. CANDEE
Presiding Judge

cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State
Government Organization and Economy
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press