



Commonwealth of Massachusetts  
Office of the State Auditor  
Suzanne M. Bump

*Making government work better*

Official Audit Report - Issued December 16, 2011

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## Berkshire Sheriff's Office

As of January 5, 2011



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**INTRODUCTION**

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The Berkshire Sheriff's Office (BSO) was established as an independent state agency as of July 1, 2000 after Berkshire County government was abolished pursuant to Chapter 300 of the Acts of 1998. Chapter 127 of the Acts of 1999 amended the Massachusetts General Laws by adding Chapter 34B, which established that the Sheriff became an employee of the Commonwealth but remained an elected official. The Sheriff also retained administrative and operational control over the BSO, the jail, and the house of correction, which has an inmate capacity of 500 and had an average daily inmate census of 303 inmates during our audit period.

In accordance with Chapter 11, Section 12, of the General Laws and in consideration of the election of a new Sheriff, the Office of the State Auditor (OSA) conducted a transition audit of the status of financial activities, accounts, and functions and the related systems and control environment of the BSO as of the transition date of January 5, 2011, including reviews of fiscal year 2011 transactions prior to and subsequent to the transition date. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence that provides a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The purpose of our review was to inform the new Sheriff of the status of fiscal and administrative operations as of the date he assumed office, to enhance the transition from the prior administration to the new administration, and to identify systems and internal accounting and administrative controls needing corrective action and improvement. In addition, our audit examined the status of issues that were identified in the prior audit (No. 2004-1437-3S) of the BSO.

As a result of our transition audit of the status of financial activities, accounts, and functions of the BSO as of January 5, 2011, we have identified certain operations of the prior administration that need improvements in the area of fiscal and administrative internal controls and have made recommendations intended to assist the new administration in implementing changes to its internal control structure and fiscal and administrative operations to ensure economical, effective, and efficient manner and in compliance with applicable laws, rules, and regulations.

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**1. PRIOR AUDIT RESULTS RESOLVED** **4**


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Our prior audit of the BSO disclosed issues regarding (a) compliance with the Office of the State Comptroller’s (OSC) Fiscal Year-End Closing Instructions, (b) reporting of non-Generally Accepted Accounting Principles (GAAP) fixed assets, (c) GAAP reporting, and (d) recording and usage of employee sick time. Our follow-up review revealed that these prior issues had been adequately resolved, as discussed below.

**a. Policies and Procedures Implemented for Compliance with the Office of the State Comptroller’s Fiscal Year-End Closing Instructions** **4**


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Our prior audit disclosed that the BSO purchased certain goods and services with funds appropriated from the previous fiscal year, contrary to the OSC’s fiscal year-end closing instructions. Our follow-up review disclosed that the BSO has incorporated the OSC’s fiscal year-end closing policies into its Fiscal Controls Policies and Procedures. In addition, our tests of selected transactions indicated that goods and services purchased were paid appropriately from the correct fiscal year appropriation.

**b. Internal Controls over Non-Fixed Assets Improved** **4**


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Our prior audit disclosed that the BSO needed to improve its inventory controls over non-GAAP fixed assets. Specifically, certain inventory items were not tagged, not included on the listing, or inaccurately valued, and the inventory listing was missing required fields such as condition and date of acquisition. Our follow-up review disclosed that the BSO, relying on the OSC’s Fixed Assets Subsystem Policy Manual and User Guide, Part 1, and Policy Memorandum No. 313A as guides, took the appropriate steps necessary to improve its inventory controls.

**c. Improvements Made in GAAP Reporting** **5**


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Our prior audit disclosed that even though the BSO submitted its GAAP Report to the OSC, certain assets were not reported or were reported inaccurately in the Assets Held in Trust section of the reporting form. Our follow-up review disclosed that this section is no longer applicable, since the BSO’s asset balances held in trust are less than \$500,000 and therefore do not need to be reported. The BSO should continue to monitor these account balances to ensure that future GAAP reports contain all necessary information as required by the OSC’s GAAP Instructions.

**d. Improvements Made in the Recording and Usage of Sick Time** **5**


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Our prior audit revealed that the sick time of BSO personnel, although posted on the employees’ timecards, occasionally was not posted to the employees’ cumulative leave records and reflected on the BSO payroll. Our follow-up review disclosed that the BSO corrected these deficiencies and adjusted employees’ sick time balances. Moreover, we found that all employee sick leave was supported by a sick leave affidavit as required by collective bargaining agreements.

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**2. PRIOR AUDIT RESULTS UNRESOLVED OR PARTIALLY RESOLVED** **6**


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Our prior audit also disclosed issues regarding (a) the collection and disposition of telephone commissions and (b) inadequate controls over compensatory time recording and usage. Our follow-up review indicated that these issues had not been fully resolved, as follows.

**a. Clarification Needed Regarding the Deposit of Telephone Commissions** **6**


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Our prior audit report noted that the BSO receives commissions on telephone services provided to inmates and deposits these commissions into its Canteen Fund. However, when the legal status of the BSO changed from county government to an independent agency of the Commonwealth, uncertainty existed regarding where these funds should be deposited and which General Laws were applicable. Arguably, conflicting legislation--Chapter 29, Section 1, and Chapter 127, Section 3, of the General Laws--identify how state revenue is to be processed. Because telephone commissions may meet the revenue criteria of both laws, it is unclear whether they should be paid into the Commonwealth's General Fund or the BSO's Canteen Fund. Accordingly, our prior audit report recommended that the BSO seek legal clarification on which law applies. Our follow-up audit disclosed that the BSO is still depositing telephone commissions, which totaled \$61,061 for the period July 1, 2010 through January 3, 2011, into its Canteen Fund and that there has been no clarification as to which General Law applies. The BSO maintains that the Legislature needs to clarify this matter and that, until such clarification is received, the BSO intends to maintain its current practice. The passage of Chapter 61, Section 12(a), of the Acts of 2009 (An Act Transferring Sheriff's Offices to the Commonwealth) expressly permits the seven recently transferred Sheriff's Offices to retain inmate telephone commissions. Since all Sheriff's Offices are now state agencies, there should be a uniform method for depositing telephone commissions. Accordingly, the OSA recommends that the special commission established to investigate and study the Commonwealth Sheriff's Offices take into consideration the inconsistencies in the various laws and address the lack of a uniform policy.

**b. Inadequate Internal Controls over Compensatory Time Recording and Usage** **8**


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Our prior audit noted deficiencies in the recording and usage of compensatory time by BSO employees. Specifically, the BSO was granting compensatory time in lieu of overtime payments but had not established formal, written compensatory time policies and procedures. In addition, compensatory time was not being consistently and accurately recorded. In response to the prior audit, the BSO stated that, as of January 1, 2004, employees were no longer allowed to earn compensatory time in lieu of overtime payments. However, our follow-up review found that the BSO continued to grant compensatory time in lieu of overtime payments and that it still lacked formal, written policies and procedures governing the recording, accumulation, and usage of compensatory time, which was still allowed to accrue indefinitely. As of February 12, 2011, 177 BSO employees had accumulated a total of 5,478 hours in compensatory time with an estimated value of \$134,209.

**3. STAFF OFFERED MEALS AT NO COST****9**

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When the BSO was part of county government, BSO staff was offered meals at no cost. Our audit found that this practice, which is not permissible under the General Laws, continued after the county government was abolished and the BSO was transferred to the Commonwealth. Specifically, Chapter 7, Section 3B, of the General Laws states that meals cannot be served to any employee of the Commonwealth by a state institution at less than the cost incurred by the Commonwealth for providing such meals. In addition, by offering staff meals at no cost, the BSO is incurring unnecessary costs that could otherwise be used for other institutional expenses.

**4. CIVIL PROCESS DIVISION USE OF CIVIL PROCESS REVENUE AND CHECKS OVER ONE YEAR OLD NOT TRANSFERRED TO THE OFFICE OF THE STATE TREASURER'S UNPAID CHECK FUND****11**

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Our audit disclosed that the BSO collects and retains revenues from processing fees without policies governing the use of these revenues or of any surpluses incurred. In addition, these revenues are maintained "off line" and are not accounted for, reported, and recorded in the Massachusetts Management Accounting and Reporting System (MMARS), the state's accounting management system that is designed to support the financial functions of the Commonwealth, including all revenue and expenditure activity. Moreover, we found that the BSO had not established policies and procedures for the Civil Process Division to ensure that outstanding checks are timely identified and that any outstanding unclaimed checks over one year old are promptly remitted to the Office of the State Treasurer (OST) as required by Chapter 29, Section 32, of the General Laws. In fact, our audit identified 1,667 checks totaling \$16,550 that had been outstanding for more than a year, including checks dating back to July 1, 2003.

## INTRODUCTION

### *Background*

The Berkshire Sheriff's Office (BSO) was established as an independent state agency as of July 1, 2000 after Berkshire County government was abolished pursuant to Chapter 300 of the Acts of 1998. Chapter 127 of the Acts of 1999 amended the Massachusetts General Laws by adding Chapter 34B, which established that the Sheriff became an employee of the Commonwealth but remained an elected official. The Sheriff also retained administrative and operational control over the BSO, the jail, and the house of correction.

The BSO ensures protection of the community by providing a safe and secure environment as well as correctional and educational services at its facilities. The BSO received \$14,324,874 in funding for fiscal year 2011 for the operation of the jail, house of correction, and any other statutorily authorized facilities and functions. The BSO has approximately 216 employees. Its main facility, the Berkshire Sheriff's Office Jail and House of Correction, has an inmate capacity of 500 and during our audit period had an average inmate census of 303 inmates. As presently structured, the BSO is responsible for running and overseeing all aspects of its facilities, which consist of the BSO; the Jail and House of Correction, located on Cheshire Road in Pittsfield; and the Juvenile Resource Center, located on 2<sup>nd</sup> Street in Pittsfield. The BSO has an extensive inmate support network consisting of multiple programs, including various evening education classes, an education/vocation program, pre-GED/GED classes, parent education, anger awareness, life skills, substance abuse treatment, and other social and education programs.

In addition to its correctional programs, the BSO is responsible for the service of legal papers and notices through the Berkshire County Civil Process Division, which is under full control of the Berkshire Sheriff and employs four part-time deputies, and two full-time and one part-time administrative staff. The deputies and the part-time administrative staff in this division are paid from revenues collected in the service of civil process and are not employees of the Commonwealth. The division's two full-time administrative staff are paid a bi-weekly salary from the BSO's state-appropriated budget.

Annual audited financial statements for the fiscal year ended June 30, 2010 showed fees collected of \$632,310 and operating expenses of \$632,656, resulting in a deficit from operations of \$346. In past

years, the Civil Process Division retained all revenues collected; however, Chapter 26, Section 639, of the Acts of 2003 requires that, beginning in fiscal year 2004, the division must submit 50% of the increase in its fees to the Commonwealth. Effective February 1, 2004, Chapter 26, Section 649, of the Acts of 2003 requires the BSO to submit a report with the House and Senate Committees on Ways and Means detailing the civil process fees charged by the Civil Process Division. The report submitted by the BSO showed that fees collected from July 1, 2010 through December 31, 2010 totaled \$148,918, including \$38,128 in fee increases that were remitted to the Commonwealth's General Fund.

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

In accordance with Chapter 11, Section 12, of the General Laws, and in consideration of the election of a new Sheriff, the Office of the State Auditor conducted a transition audit of the status of financial activities, accounts, and functions and the related systems and control environment of the BSO as of the transition date of January 5, 2011, which included a review of transactions prior to and subsequent to the transition date for the fiscal year 2011. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The purpose of our review was to inform the new Sheriff of the status of fiscal and administrative operations as of the date he assumed office, to enhance the transition from the prior administration to the new administration, and to identify systems and internal accounting and administrative controls needing corrective action and improvement. The recommendations in the report are intended to assist the new administration in implementing its internal control structure to ensure that it is adequate to minimize errors, losses, shortages, or illegal acts from occurring.

The objectives of our audit were to:

- Review and examine fiscal operations to determine the status of accounts, activities, and records.
- Review and examine fiscal year 2011 spending from July 1, 2010 through the date of transition and perform a comparison of budget to actual expenditures.

- Review the BSO's internal control plan to determine whether it is up-to-date, suitably designed and implemented to safeguard Commonwealth assets, and in compliance with the Office of the State Comptroller's Internal Control Guide for Departments and Chapter 647 of the Acts of 1989.
- Review inventory controls over supplies and equipment and vehicle usage policies to determine their adequacy.
- Identify annual costs by services and activities that the BSO performs.
- Follow-up on the issues contained in our prior audit of the BSO (No. 2004-1437-3S).

To accomplish our objectives, we conducted interviews with BSO management and staff and reviewed prior audit reports, spending plans, applicable laws and regulations, and fiscal monitoring reports. We also obtained and reviewed policies and procedures, accounting records, and supporting source documents and performed tests of these records and transactions, where necessary. At the conclusion of our audit, we met with the Sheriff, BSO's Superintendent, and Chief Financial Officer to discuss the contents of the report.

As a result of our transition audit of the status of financial activities, accounts, and functions of the BSO, we have identified certain operations of the prior administration that need improvements in the area of fiscal and administrative internal controls (see the Audit Results section of this report). The recommendations in our report are intended to assist the new administration in implementing its internal control structure and fiscal and administrative operations to ensure that they are adequate and that the BSO is run in an economical, effective, and efficient manner and in compliance with all applicable rules, regulations, and laws.



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## AUDIT RESULTS

### 1. PRIOR AUDIT RESULTS RESOLVED

Our prior audit of the Berkshire Sheriff's Office (BSO) disclosed issues regarding (a) compliance with the Office of the State Comptroller's (OSC) Fiscal Year-End Closing Instructions, (b) reporting non-Generally Accepted Accounting Principles (GAAP) fixed assets, (c) GAAP reporting, and (d) recording and usage of sick time. Our follow-up review revealed that these prior issues had been adequately resolved, as discussed below.

#### a. Policies and Procedures Implemented for Compliance with the Office of the State Comptroller's Fiscal Year-End Closing Instructions

Our prior audit disclosed that the BSO purchased certain goods and services with funds appropriated from the prior fiscal year, contrary to the OSC's Fiscal Year-End Closing Instructions. Our follow-up review disclosed that the BSO has taken corrective action to ensure the proper implementation of OSC's Fiscal Year-End Closing Instructions and that adequate control procedures were put in place to prevent any such occurrences in the future. The BSO has included these actions in its Fiscal Controls Policies and Procedures, which state, in part,

*All items that are ordered must be ordered and received in the same fiscal year. Any item that arrives after the end of the fiscal year must be refused by the staff. . . .*

In addition, our follow-up review of controls over BSO purchases for selected transactions indicated that the tested goods and services purchased were paid appropriately from the correct fiscal year appropriation.

#### b. Internal Controls over Non-Fixed Assets Improved

Our prior audit disclosed that the BSO needed to improve its inventory controls over non-GAAP fixed assets. Specifically, certain inventory items were not tagged, not included on the listing, or inaccurately valued, and the inventory listing was missing required fields such as condition and date of acquisition. Our follow-up review disclosed that the BSO, relying on the OSC's Fixed Assets Subsystem Policy Manual and User Guide, Part 1, and Policy Memorandum No. 313A as guides, took the appropriate steps necessary to improve its inventory controls. The BSO's Fiscal Control Policies and Procedures, Inventory Control, which governs inventory control of property stores and other assets, states, in part:

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*Inventories shall be conducted at least annually or at times stipulated by applicable statutes or the appropriate regulations of the parent agency or other authority having jurisdiction.*

We found that all items are centrally delivered to the warehouse, where the warehouse manager is responsible for recording the item onto the computerized inventory list and assigning a tag number. In addition, BSO officials had performed a room-by-room physical inventory and updated the computerized database as to location, cost, condition, and identifying tag number.

**c. Improvements Made in GAAP Reporting**

Our prior audit disclosed that even though the BSO submitted its GAAP Report to the OSC, certain assets were not reported or were reported inaccurately in the Assets Held in Trust section of the reporting form. Assets held in trust represent cash and other assets that the Commonwealth holds in a trustee capacity for third parties. Special GAAP reporting is needed only for those assets that are held at the department or facility, or at a local bank, and are not accounted for through the Massachusetts Management Accounting and Reporting System (MMARS). Examples include patient or inmate canteen and gift funds, property, and bank accounts. Our follow-up review disclosed that this section is no longer applicable, since the BSO's asset balances held in trust are less than \$500,000 and therefore do not need to be reported. The OSC's GAAP Instructions for Departments - FY 2010 states, in part:

*Departments with asset balances held in trust of less than \$500,000 do not need to provide any GAAP detail. Please write "N/A" on the Transmittal Form and on the Assets Held In Trust form.*

The BSO should continue to monitor these account balances to ensure that future GAAP reports contain all necessary information as required by the OSC's GAAP Instructions.

**d. Improvements Made in the Recording and Usage of Sick Time**

Our prior audit revealed that the sick time of BSO personnel, although posted on employees' timecards, occasionally was not posted to the employees' cumulative leave records and reflected on the BSO payroll. Our follow-up review disclosed that the BSO corrected these deficiencies and adjusted employees' sick time balances. Moreover, we found that all employee sick leave was supported by a sick leave affidavit as required by collective bargaining agreements.

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## 2. PRIOR AUDIT RESULTS UNRESOLVED OR PARTIALLY RESOLVED

Our prior audit also disclosed issues regarding (a) the collection and disposition of telephone commissions and (b) inadequate controls over compensatory time recording and usage. Our follow-up review indicated that these issues had not been fully resolved, as follows.

### a. Clarification Needed Regarding the Deposit of Telephone Commissions

Our prior audit report noted that the BSO receives commissions on telephone services to inmates and that these commissions are deposited into its Canteen Fund. (This issue was also noted in our prior report No. 2002-1437-3S) However, when the legal status of the BSO changed from county government to an independent agency of the Commonwealth, uncertainty existed regarding where these funds should be deposited and which Massachusetts General Laws were applicable. Specifically, Chapter 29, Section 2, of the General Laws states, in part:

*All revenue payable to the Commonwealth shall be paid into the general fund, except revenue required by law to be paid into a fund other than the general fund and revenue for or on account of sinking funds, trust funds,, trust deposits and agency funds, which funds shall be maintained and the revenue applied in accordance with law or the purposes of the fund.*

Moreover, Chapter 29, Section 1, of the General Laws defines state revenue as follows:

*All income from state taxes, state agency fees, fines, assessments, charges, and other departmental revenues, retained revenues, federal grants, federal reimbursements, lottery receipts, court judgments and the earning on such income.*

However, Chapter 127, Section 3, of the General Laws states, in part:

*Any monies derived from interest earned upon the deposit of . . . money and revenue generated by the sale or purchase of goods or services to persons in the correctional facilities may be expended for the general welfare of all the inmates at the discretion of the superintendent.*

Because telephone commissions may meet the criteria of both laws, it is unclear whether they should be paid into the Commonwealth's General Fund or the BSO's Canteen Fund. Therefore, our prior audit reports recommended that the BSO seek legal clarification as to which law applies.

Our follow-up review found that for the period July 1, 2010 through January 3, 2011 the BSO deposited \$61,061 in telephone commissions into the Canteen Fund. The BSO maintains that there is a need for the Legislature to clarify this matter and that, until such clarification is received, the BSO intends to continue with this practice.

Prior to our audit, Chapter 61 of the Acts of 2009 was approved by the Legislature on August 6, 2009, which transferred certain county Sheriffs' Offices (Barnstable, Bristol, Dukes, Nantucket, Norfolk, Plymouth, and Suffolk) operations to the Commonwealth. The law states that inmate telephone funds shall remain with the Office of the Sheriff. Chapter 61, Section 12 (a) through (c), of the Acts of 2009 states, in part:

- a. Notwithstanding any general or special law to the contrary and except for all counties the governments of which have been abolished by chapter 34B of the General Laws or other law, revenues of the office of sheriff in Barnstable, Bristol, Dukes, Nantucket, Norfolk, Plymouth and Suffolk counties for civil process, inmate telephone and commissary funds shall remain with the office of sheriff*
- b. Notwithstanding any general or special law to the contrary, in order to encourage innovation and enterprise, each sheriff's office shall annually confer with the house and senate committees on ways and means regarding that sheriff's efforts to maximize and maintain grants, dedicated revenue accounts, revolving accounts, fee for service accounts and fees and payments from the federal, state, and local governments and other such accounts and regarding which revenue shall remain with the sheriff's office.*
- c. Any sheriff who has developed a revenue source derived apart from the state treasury may retain that funding to address the needs of the citizens within that county.*

### **Recommendation**

Chapter 61, Section 22, of the Acts of 2009 establishes a special commission to investigate and study the Sheriff's Offices throughout the Commonwealth; make recommendations for their reorganization and consolidation; and recommend legislation to effectuate such recommendations relating to their operation, administration, regulation, governance, and finances. We recommend that the special commission take into consideration the inconsistencies in the various laws regarding the handling and use of telephone commissions and recommend legislation for their consistent disposition.

### **Auditee's Response**

In response to the audit report, the BSO stated that there is not a conflict in the cited statutes and that Chapter 127, Section 3, authorizes the BSO's longstanding practice of retaining the telephone commissions. In addition, the BSO indicated that Chapter 61 of the Acts of 2009 appears to be a legislative attempt to codify the existing practice of Sheriff's Offices retaining the telephone revenue and expending funds for the benefit of the inmates and that preventing other Sheriff's Offices from retaining these commissions is illogical. BSO added that, accordingly, it would continue its practice of retaining telephone commission revenue until such time as there is clarification.

***Auditor's Reply***

As noted in our report, there are inconsistencies in the various laws and regulations governing the collection, retention, and expenditure of funds derived from telephone commissions. Accordingly, we reiterate that the special commission should take into consideration the inconsistencies in the various laws regarding the deposition and use of the telephone commissions and recommend legislation for their consistent handling and use.

**b. Inadequate Internal Controls over Compensatory Time Recording and Usage**

Our prior audit noted deficiencies in the recording and usage of compensatory time by BSO employees. Specifically, the BSO was granting compensatory time in lieu of overtime payments but had not established formal, written compensatory time policies and procedures. In addition, compensatory time was not being consistently and accurately recorded. In response to the prior audit, the BSO stated that, as of January 1, 2004, employees were no longer allowed to earn compensatory time in lieu of overtime payments. However, our follow-up review found that BSO employees continued to earn compensatory time in lieu of overtime due to budget restraints by electing to defer to the future any payroll liabilities resultant from the compensatory time. BSO staff may elect to be paid or accrue compensatory time for overtime hours worked, and such compensatory time is allowed to accrue indefinitely, resulting in future liabilities that may extend into future fiscal periods. Moreover, the BSO still lacks formal, written policies governing the recording, accumulation, and usage of compensatory time.

As of February 12, 2011, 177 employees of the BSO had accumulated a total of 5,478 hours in compensatory time with an estimated value of \$134,209. (Only the Sheriff is exempt from accruing and using compensatory time.) This practice of allowing indefinite accruals to remain as an informal policy could impact future fiscal periods when rates of pay for the employees normally would increase, thus increasing the BSO's liability for services provided in prior fiscal years.

***Recommendation***

The BSO should establish formal, written policies governing the recording, accumulation, and usage of compensatory time, which should be used within a reasonable amount of time. Since the BSO has not set a maximum amount of compensatory time allowed per year, per employee, it should

consider keeping accruals to a minimum and establishing a time limit to resolve or distribute the funds owed during the fiscal year in which it was earned.

### ***Auditee's Response***

In response to this issue, the BSO stated that employee collective bargaining agreements expressly contain provisions stating how compensatory time is earned, accrued, and may be used. Also, the BSO indicated that it disagrees that it has not set a maximum amount of compensatory time allowed per year, per employee. The BSO also stated that it abides by the limits established by the Fair Labor Standards Act (FLSA) and that no BSO employee exceeds the allowable legal limit.

### ***Auditor's Reply***

It is our position that collective bargaining agreements and specific laws do not constitute and are not a substitute for clearly articulated policies and procedures. Adequate internal controls require control procedures, accountability systems, and documentation of internal controls that should appear in management directives; administrative policies and procedures; and accounting policies, procedures, and manuals. Accordingly, the BSO should develop written compensatory-time policies and procedures consistent with applicable laws and agreements that should be clearly articulated and communicated to all BSO employees and that detail all important information, rules, and regulations that employees should be aware of and comply with (e.g., who is eligible, maximum hours, required forms to be completed and authorized by a supervisor, FLSA limits, recordkeeping procedures, appeals process).

### **3. STAFF OFFERED MEALS AT NO COST**

When the BSO was part of county government, BSO staff was offered meals at no cost. Our audit found that this practice, which is not permissible under the General Laws, continued after the county government was abolished and the BSO was transferred to the Commonwealth. Chapter 7, Section 3B, of the General Laws states that no meal shall be served to any Commonwealth employee at less than the cost to the Commonwealth, as follows:

*No service shall be performed for the sole benefit of any person at less than cost . . . by any personnel or agency of the commonwealth, . . . nor shall any meal be served to any employee of the commonwealth by an institution thereof at less than the cost to the commonwealth.*

*The secretary of administration shall, on or before January first, nineteen hundred and seventy-six and from time to time thereafter, after notice and a hearing in the manner provided by chapter thirty A, determine the cost hereinbefore mentioned and shall inform each department, agency and institution of the commonwealth furnishing such services or meals or having control of such property or equipment of the cost so determined. Thereafter the cost determined by the secretary shall be collected by such department, agency or institution unless a greater charge has been fixed by the general court. . . .*

*Notwithstanding any other general or special law to the contrary, for the period beginning March first, nineteen hundred and ninety-one, the secretary of administration . . . (3) shall determine the charge to be made by the commonwealth for all meals served in state institutions or facilities to employees thereof . . . .*

By offering staff meals at no cost, the BSO is incurring unnecessary costs that could have otherwise be used for other institutional expenses.

During the course of the audit, BSO officials stated that BSO employees continue to enjoy this benefit because the county takeover legislation, Chapter 34B, Section 15, of the General Laws, expressly provides that county employees were not to suffer any loss of benefits or past practices.

BSO officials also stated that they consider it to be a small benefit for employees who are required to remain at their place of work during their meal break, and that the Massachusetts Labor Relations Commission has ruled that the conditions pertaining to employee meals are a mandatory subject of bargaining which the employer is not free to unilaterally change (City of Boston [Deer Island House of Correction], 15 MLC 1209 [1988] affirmed on appeal 16 MLC 1086 [1989]).

### ***Recommendation***

The BSO should review its current policy, state laws, and costs associated with furnishing meals to BSO employees and consider charging a nominal amount for meals provided to employees to defray the cost. This consideration should be given in conjunction with any collective bargaining sessions scheduled or to be scheduled. In addition, because this practice is not in compliance with Chapter 7, Section 3B, of the General Laws, the BSO should further discuss this issue with the special commission reviewing Sheriff's Offices. The special commission should take into consideration this matter as an example of the inconsistencies in the various laws that have occurred when the Sheriff's Offices transitioned into state government and recommend legislation for the consistent handling of employee meals at all Sheriff's Offices.

***Auditee's Response***

In response to this issue, the BSO stated that the meals are provided as a longstanding practice for the convenience of the employees who are not allowed to leave the premises to obtain lunch and are expected to respond to any emergencies that may occur during their lunch period. The BSO also indicated that it was currently under contract with three bargaining units to provide meals to employees and that, given the repeated and dramatic reductions to the BSO budget, there is nothing of economic value to offer employees other than the meals.

***Auditor's Reply***

We understand the BSO's reasoning for providing free meals to its employees. Nevertheless, as this practice is not in compliance with the law, the BSO should petition the special commission and the Legislature to effect changes in the law that would allow Sheriff's Offices to provide free meals to their employees.

**4. CIVIL PROCESS DIVISION USE OF CIVIL PROCESS REVENUE AND CHECKS OVER ONE YEAR OLD NOT TRANSFERRED TO THE OFFICE OF THE STATE TREASURER'S UNPAID CHECK FUND**

Deputy Sheriffs throughout the Commonwealth collect fees for their service of civil process conducted in accordance with Chapter 37, Section 11, of the General Laws, which states:

*Sheriffs and their deputies shall serve and execute, within their counties, all precepts lawfully issued to them and all other process required by law to be serviced by an officer. They may serve process in cases wherein a county, city, town, parish, religious society or fire or other district is a party or interested, although they are inhabitants or members thereof.*

The serving of civil process in accordance with Chapter 262, Section 8 of the General Laws includes the execution of summons, warrants, subpoenas, and other procedures requiring legal notification.

Our audit identified issues within the Civil Process Division that need to be addressed both by the BSO and the special commission reviewing all the existing, laws, rules and regulations governing the operations of Sheriff's Office statewide. Specifically, our audit revealed deficiencies in the areas of (a) use of civil process revenue, and (b) outstanding checks not remitted to the Office of the State Treasurer (OST), as follows.



**a. Use of Civil Process Revenue**

Since the civil processing function is within the BSO's legislatively defined duties and responsibilities, fees collected and retained by the deputy sheriffs since the transfer should be considered Commonwealth revenue. Chapter 29, Section 1, of the General Laws defines "fees" as state revenue, as follows:

*"State revenue", all income from state taxes, state agency fees, fines, assessments, charges, and other departmental revenues, retained revenues, federal grants, federal reimbursements, lottery receipts, court judgments and the earnings on such income.*

Moreover, Chapter 29, Section 2, of the General Laws requires that all Commonwealth revenue be paid into a Commonwealth fund, as follows:

*All revenue payable to the commonwealth shall be paid into the General Fund, except revenue required by law to be paid into a fund other than the General Fund and revenue for or on account of sinking funds, trust funds, trust deposits and agency funds, which funds shall be maintained and the revenue applied in accordance with law or the purposes of the fund.*

*All such revenue shall be deposited in and credited to the General Fund or other state funds during the fiscal year in which it is received.*

The civil process fees collected by the BSO are defined in Chapter 262, Section 8, of the General Laws. The civil process fees earned in the civil process accounts are usually used to subsidize the operations of the BSO Civil Process Division as reviewed and authorized by the Sheriff. However, there is no legislation or uniform guidelines in place to stipulate how any surpluses generated from operations of the civil process function at the BSO and other Sheriff's Offices should be used. In addition, civil processing fees retained by the BSO are "off line" and not deposited in the General Fund or some other fund, such as a retained revenue account, and are not accounted for, reported, and recorded in MMARS, the state's accounting management system that is designed to support the financial functions of the Commonwealth, including all revenue and expenditure activity. As a state agency, the BSO's financial activities should be managed through MMARS.

In fiscal year 2010, the BSO used \$174,106 in civil processing funds to supplement its state appropriation. Moreover, during the period July 1, 2010 through January 31, 2011, the BSO expended \$95,060 in civil processing funds to supplement its state appropriation.

The OSA has reported on numerous occasions the need for state officials, including the State Comptroller and the Secretary of the Executive Office of Administration and Finance, to review

the statewide performance and fragmented processes in place for managing the civil process function of Sheriff's Offices that have been transferred to the Commonwealth. Subsequent legislation has been filed each year since 2001 to effect change to the methods and management of civil process fees. Annually, legislation has been filed to establish a retained revenue account within MMARS for reporting and recording receipts, fees, and revenues collected by the Civil Processing Divisions of Sheriff's Offices. All such funds should be remitted to the OST. The Civil Processing Division could expend funds from this account for all expenses associated with its operation. Expenses from the account would conform to existing expenditure regulations and generally accepted accounting principles and comply with all relevant provisions of Chapter 29 of the General Laws (the State Finance Law).

**b. Checks Over One Year Old Not Transferred to the Office of the State Treasurer**

Our audit disclosed that the BSO needs to improve its internal controls over cash management and make improvements in the monitoring and investment policies and procedures for locally held funds. Specifically, we found that the BSO is not remitting in a timely manner to the OST's Unpaid Check Fund outstanding checks not presented for payment from its bank accounts within one year from their date of issue. Our review of the Civil Process Division checking account disclosed 1,667 checks totaling \$16,550 that had been outstanding for more than a year, including checks dating back to July 1, 2003.

Chapter 29, Section 32, of the General Laws requires that checks outstanding over one year be transferred to the Unpaid Check Fund, as follows:

*Any check issued by the State Treasurer or by any agent or agency of the Commonwealth, other than checks issued in payment of obligations of the State Board of Retirement and the Teachers' Retirement Board, which is not presented for payment within one year from its date shall be payable only at the Office of the State Treasurer. On the thirtieth day of June in each year the Comptroller shall transfer to the abandoned property fund all funds which are identified by the State Treasurer as funds of the Commonwealth which have remained in the unclaimed check fund for at least one year.*

***Recommendation***

The BSO should establish policies and procedures to ensure that outstanding checks are timely identified and that any outstanding unclaimed checks over one year old are promptly remitted to the OST as required. Also, the BSO, along with the special commission, should review the accounting, reporting, processing, and management of civil processing fees; consult with the OSC; and file

legislation to ensure that civil processing fees are recorded in MMARS via a retained revenue account or some other appropriate accounting mechanism that is in compliance with applicable laws, rules, and regulations. Consideration should be given to depositing civil process fees into a retained revenue account or an authorized OST bank account, or depositing civil process fees in the Commonwealth's General Fund. Additionally, the BSO and the special commission should consider either filing legislation or establishing uniform guidelines to stipulate how any surpluses generated from operations of the civil process function at the BSO and other Sheriff's Offices should be used.

***Auditee's Response***

In response to this issue, the BSO indicated that it has incorporated changes in its fiscal policies designed to address the monitoring of funds in the Civil Process Division and that it will continue to update these policies during annual reviews. Also, the BSO stated that it contacted the OST and remitted the uncashed checks to the OST and will continue to do so annually. However, the BSO also asserted that its powers in the area of civil process are still a county function and that therefore revenue generated by the civil process does not fall within Chapter 29, Section 1, of the General Laws, which defines state revenue.

***Auditor's Reply***

Chapter 300 of the Acts of 1998 abolished Berkshire County government and transferred all BSO duties and functions to the Commonwealth. Accordingly, civil process revenue is Commonwealth revenue. We recommend that the BSO petition the special commission and the Legislature for clarification on this issue.