



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

*Making government work better*

Official Audit Report – Issued December 23, 2011

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## Middlesex Sheriff's Office

As of January 21, 2011



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**INTRODUCTION**

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The Middlesex Sheriff's Office (MSO) was established as an independent state agency on July 11, 1997 after Middlesex County government was abolished pursuant to Chapter 48 of the Acts of 1997. 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 MSO, the Middlesex Jail in Cambridge, and the Middlesex House of Correction (HOC) in Billerica, which, according to figures obtained from the Massachusetts Sheriffs' Association, had a rated inmate capacity of 822 and an inmate census of 1,144 inmates as of January 31, 2011.

In accordance with Chapter 11, Section 12, of the General Laws, and in consideration of the appointment of a new Sheriff, the Office of the State Auditor (OSA) conducted a transition audit of the status of financial activities, accounts, functions, and the related systems and control environment of the MSO as of the transition date of January 21, 2011, including reviews of fiscal year 2011 transactions prior 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 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. In addition, our audit examined the status of certain issues that were identified in our prior audit report (No. 2004-1431-3S).

As a result of our transition audit of the status of financial activities, accounts, and functions of the MSO as of January 21, 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 to assist the new administration in implementing changes to its internal control structure and fiscal and administrative operations to ensure that the MSO performs in an economical, effective, and efficient manner and in compliance with applicable laws, rules, and regulations.

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Our prior audit of the MSO disclosed issues regarding (a) the collection and disposition of telephone commissions, (b) the civil processing function and deposit of fees, and (c) the MSO's Internal Control Plan. Our follow-up review indicated that these issues had not been fully resolved, as discussed below.

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Our prior audit report noted that the MSO receives commissions on telephone services provided to inmates and deposits these commissions into its Canteen Account. However, when the legal status of the MSO changed from county government to an agency of the Commonwealth, uncertainty existed as to where these funds should be deposited and which General Laws were applicable. Arguably, conflicting legislation (Chapter 29, Sections 1 through 2, and Chapter 127, Section 3, of the General Laws) identify how 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 MSO's Canteen Account.

The MSO maintains that, pursuant to the provisions of Chapter 127, Section 3, of the General Laws, the Superintendent is authorized to expend funds generated by the sale or purchase of goods and services to persons in the correctional facilities for the general welfare of all the inmates. Further, the MSO indicated that there is no conflict in the cited legislation because Chapter 29, Section 2, of the General Laws describes an exception that allows this revenue to be maintained and applied with the statutory purposes of the fund. Also, Chapter 61 of the Acts of 2009, which transferred the remaining seven Sheriff's Offices to the Commonwealth, indicates that inmate funds shall remain with the Sheriff's Offices for those offices transferred.

The passage of Chapter 61 of the Acts of 2009 has further complicated the matter. Specifically, Section 12(a) of Chapter 61 of the Acts of 2009 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 inmate telephone commissions. Accordingly, the OSA recommends that the special commission established to investigate and study Commonwealth Sheriff's Offices take into consideration the inconsistencies in the various laws and address the lack of a uniform policy.

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In accordance with Chapter 37, Sections 3 and 11, of the General Laws, deputy sheriffs throughout the Commonwealth collect fees for the serving of legal papers and documents. Currently, the civil process fees retained by the Civil Process Division (CPD) are "off line" and not accounted for, reported, or recorded on the Massachusetts Management Accounting and Reporting System (MMARS). Due in part to 23 of its employees being on the state payroll who are no longer paid using CPD funds, the CPD

has accumulated a considerable surplus of funds. As of January 31, 2011, the CPD Operating Account had a balance of \$2,143,400. Other CPD accounts contributing to the surplus of funds within the CPD include the Officer Detail Account and the Escrow Account, which had balances of \$96,727 and \$340,733, respectively, as of January 31, 2011. Also, officer detail work is performed by trained MSO officers who are assigned to the Cambridge Jail or the Billerica HOC; however, details are worked only on an officer's off-duty time. The officer detail billing and payroll functions are administered by the CPD. Officers work the detail, submit their slip, and are paid for the detail by the CPD with funds from the CPD Officer Detail Account. In addition to the standard detail rate fee, a 10% administration fee is added to the invoice for private details. As of January 31, 2011, the MSO CPD Officer Detail Account had a balance of \$96,727.

Since the civil processing function is within the MSO's legislatively defined duties and responsibilities, fees collected and retained by deputy sheriffs since the transfer from county government to state government should be considered Commonwealth revenue in accordance with Chapter 29, Section 1, of the General Laws. Civil processing fees should be recorded in MMARS via a retained revenue account or some other appropriate accounting mechanism that is in compliance with applicable laws, rules, and regulations. Additionally, uniform guidelines should be established to stipulate how any surpluses generated from the civil process function at the MSO and other Sheriff's Offices should be used.

### **c. Internal Control Plan Needs Improvement**

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The MSO's Internal Control Plan (ICP) has not been maintained in accordance with Chapter 647 of the Acts of 1989 and the Office of the State Comptroller's (OSC) Internal Control Guide. Specifically, the MSO's ICP has not been revised since June 1, 2004 and does not describe internal controls for all MSO departments, programs, functions, and financial activities, including those related to the CPD. Additionally, the ICP had not incorporated all eight components of Enterprise Risk Management as identified in the Committee of Sponsoring Organizations of the Treadway Commission's (COSO) Internal Control - Integrated Framework. Accordingly, the ICP may not provide adequate safeguards to protect MSO assets against waste, loss, theft, or misuse.

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

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When the MSO was part of county government, MSO staff members were 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 MSO became an agency of the Commonwealth. 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 to the Commonwealth. Moreover, by offering staff meals at no cost, the MSO is incurring unnecessary costs that could otherwise be used for other institutional expenses.

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Our review of CPD bank accounts identified persistent reconciliation variances for the CPD operating and payroll accounts. CPD operating account bank reconciliations from October 2010 through January 2011 included variances ranging from \$9,269 to \$10,564. The CPD operating account reconciliation variance as of January 31, 2011 was \$10,564. Moreover, the

CPD payroll account from October 2010 through January 2011 had bank reconciliation variances ranging from \$1,316 to \$4,467. The CPD payroll account reconciliation variance as of January 31, 2011 was \$1,316.

We discussed these reconciliation variances with CPD officials and recommended that a more detailed analysis of these accounts be performed. The Director of the CPD stated that CPD staff would take a more aggressive effort to reduce/eliminate these variances. The CPD Director stated that the operating account variance had been reduced to \$2,700 and the reconciliation effort is ongoing

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The MSO does not have a system in place to forward abandoned inmate funds to the Office of the State Treasurer (OST) within the two-year timeframe stipulated by Chapter 127, Section 96A, of the General Laws. As of January 31, 2011, the total amount of abandoned inmate funds remaining unclaimed for more than two years was \$81,419. In addition, we found that the MSO was not complying with its internal policies and procedures that allow abandoned inmate funds to remain unclaimed for a three-year period prior to their being remitted to the OST. Summary information provided to the OSA showed that in excess of \$33,000 in unclaimed inmate funds was on-hand for the period June 30, 1998 through June 30, 2007.

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Due to multiple factors, including the number of inventory lists maintained, the number of MSO employees responsible for maintaining the lists, the size and distance between locations, and insufficient documentation, MSO officials were unable to readily determine the MSO's actual inventory. Moreover, of the 15 separate inventory lists that the MSO provided for our review, none included the inventory items' date of purchase or cost, contrary to Office of the State Comptroller and Operational Services Division regulations for recording non-GAAP fixed assets. We also noted that the MSO equipment inventory list contained 5,057 inventory items, of which 273 were identified as misplaced. The high number of misplaced items leads to concerns regarding internal controls and the effectiveness of the MSO annual inventory and reconciliation process. In addition, the lack of complete and accurate inventory records subjects MSO property and equipment to potential loss, theft, or misuse.

## **INTRODUCTION**

### ***Background***

The Middlesex Sheriff's Office (MSO) was established as an independent state agency on July 11, 1997 after Middlesex County government was abolished pursuant to Chapter 48 of the Acts of 1997. 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 MSO, the Middlesex Jail in Cambridge, and the Middlesex House of Correction (HOC) in Billerica.

The MSO ensures protection of the community by providing a safe and secure environment as well as correctional and educational services at its facilities. The MSO received \$59,316,597 in funding from its General Appropriation for fiscal year 2011 for the operation of the Middlesex Jail, the HOC, and any other statutorily authorized facilities and functions. The MSO has approximately 786 employees. According to figures obtained from the Massachusetts Sheriffs' Association, the Middlesex Jail and the HOC had a rated inmate capacity of 822 and an inmate census of 1,144 inmates as of January 31, 2011. As presently structured, the MSO is responsible for running and overseeing all aspects of its facilities, which comprise the Middlesex Jail at 40 Thorndike Street, Cambridge; the HOC at 269 Treble Cove Road, North Billerica; the MSO Administrative Office at 400 Mystic Avenue, Medford; the Cambridge Civil Process Building at 271 Cambridge Street, Cambridge; the Framingham Civil Process Building at 188 Concord Street, Framingham; the Lowell Civil Process Building at 321 Central Street, Lowell; and the Lowell Community Counseling Center at 291 Summer Street, Lowell.

The MSO has an extensive inmate support network consisting of multiple programs and various education classes, including parenting, anger awareness, life skills, substance abuse treatment, English as a Second Language, business, culinary arts, and other social and education programs. These programs are funded from the MSO operating budget and administered by staff of the MSO. The cost of these programs from July 1, 2010 through January 31, 2011 was \$2,079,040.

The MSO also sponsors the Youth Public Safety Academy (YPSA), a free summer program for children ages nine to 12 that exposes children to role models in public safety, namely their local police, fire, emergency medical services, and Sheriff's Office personnel. The total cost of the YPSA

for fiscal year 2011 was \$275,030 which, due to MSO budget constraints, was funded by the MSO's Civil Process Division (CPD).

In addition to its correctional programs, the MSO is responsible for the service of legal papers and notices through the CPD, which has a main office in Cambridge and two satellite offices in Framingham and Lowell. The CPD is under full control of the Middlesex Sheriff and employs 16 full-time administrative staff, 13 serving deputies, six Enforcement Unit staff, four Warrant Apprehension Unit staff, three interns, and one part-time administrative staff person. The 13 serving deputies, three of the Warrant Apprehension Unit staff, three interns, and one part-time administrative staff person are paid from revenues collected in the service of civil process and are not employees of the Commonwealth of Massachusetts.

The 16 full-time administrative staff, six Enforcement Unit staff, and one Warrant Apprehension Unit staff person are paid a bi-weekly salary from the MSO's state-appropriated budget. Annual audited financial statements for the fiscal year ended June 30, 2010 showed total operating revenues collected of \$3,231,758 and operating expenses of \$2,731,491, resulting in operating income of \$500,267. In past years, the CPD retained all revenues collected; however, Chapter 26, Section 639, of the Acts of 2003 required that, starting in fiscal year 2004, the CPD 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 required the MSO to submit a report to the House and Senate Committees on Ways and Means detailing the civil process fees charged by the CPD. The reports submitted by the MSO showed that fees collected from July 1, 2010 to December 31, 2010 totaled \$923,899, including \$223,492 in fee increases that were remitted to the General Fund.

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

In accordance with Chapter 11, Section 12, of the General Laws, and in consideration of the appointment of a new Sheriff, the Office of the State Auditor conducted a transition audit of the status of financial activities, accounts, functions, and the related systems and control environment of the MSO as of the transition date of January 21, 2011, which includes a review of transactions prior to and subsequent to the transition date of January 21, 2011. We conducted this performance audit in accordance with applicable 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 adequately minimizes errors, losses, shortages, or illegal acts from occurring.

The objectives of our review were to:

- Review and examine fiscal operations to determine the status of all 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 budgeted to actual expenditures.
- Review the MSO'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 MSO performs.
- Follow up on certain issues contained in our prior audit of the MSO (No. 2004-1431-3S).

To accomplish our objectives, we conducted interviews with 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 representatives of the MSO 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 MSO, we have identified certain operations of the prior administration that need improvements in the area of fiscal and administrative internal controls. 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 MSO is run in an economical, effective, and efficient manner and in compliance with all applicable laws, rules, and regulations.

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## AUDIT RESULTS

### 1. PRIOR AUDIT RESULTS UNRESOLVED

Our prior audit of the Middlesex Sheriff's Office (MSO) disclosed issues regarding (a) the collection and disposition of telephone deposits, (b) the civil processing function and deposit of fees, and (c) the MSO's Internal Control Plan. Our follow-up review indicated that these issues had not been fully resolved, as discussed below.

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

Our prior audit report noted that the MSO receives commissions on telephone services to inmates and that these commissions are deposited into its Canteen Account. (This issue was also noted in our previous audit report, No. 2004-1431-3S.) However, when the legal status of the MSO was changed from county government to an agency of the Commonwealth, uncertainty existed as to 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.*

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 such 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 MSO's Canteen Fund. Therefore, our prior audit report recommended that the MSO seek legal clarification as to which law applies.

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The MSO maintains that, pursuant to the provisions of Chapter 127, Section 3, of the General Laws, the Superintendent is authorized to expend funds generated by the sale or purchase of goods and services to persons in the correctional facilities for the general welfare of all the inmates. Further, the MSO indicated that there is no conflict in the cited legislation because Chapter 29, Section 2, of the General Laws describes an exception that allows this revenue to be maintained and applied with the statutory purposes of the fund. The MSO stated that it intends to continue with its current practice until legislative clarification is received. For the period July 1, 2010 through January 31, 2011, the MSO deposited inmate telephone funds totaling \$235,976 into the Canteen Fund.

Prior to our audit, Chapter 61 of the Acts of 2009 was approved by the Legislature on August 6, 2009, which transferred the remaining county Sheriff's Offices (Barnstable, Bristol, Dukes, Nantucket, Norfolk, Plymouth, and Suffolk) to the Commonwealth. The law states that inmate telephone funds shall remain with the Office of the Sheriff. Specifically, Chapter 61, Section 12(a) - (c), of the Acts of 2009 state, 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 established a special commission to investigate and study the Sheriff's Offices throughout the Commonwealth and make recommendations for the reorganization and consolidation of their operation, administration, regulation, governance, and finances, including recommending legislation. The special commission should take into

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consideration the inconsistencies in the various laws regarding the handling and use of inmate telephone commissions and recommend legislation for their consistent disposition.

***Auditee's Response***

*The Middlesex Sheriff's Office (MSO) will continue to operate in accordance with [General Law] Chapter 127, Section 3 until this issue is further clarified.*

**b. Clarification Needed Regarding the Organization of the Civil Processing Function and the Deposit of Fees**

Deputy Sheriffs throughout the Commonwealth collect fees for their service of civil process conducted in accordance with Chapter 37, Section 11, of the Massachusetts 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 where in 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 such things as serving summonses, warrants, subpoenas, and other procedures requiring legal notification.

The MSO operates its Civil Process Division (CPD) as a separate division of its total operation. CPD provided a list of 43 employees that work at the three CPD locations in Cambridge, Lowell, and Framingham. CPD staff stated that all employees receive Internal Revenue Service (IRS) Form W-2 income information forms. Of the 43 staff listed (37 CPD staff, three interns, and three Warrant Apprehension Unit staff), 23 employees are on the state payroll and participate in the state retirement system. The remaining 20 employees are paid using CPD funds generated from serving process and are not members of the state retirement system. The 20 employees paid using CPD funds include 13 serving deputies, three Warrant Apprehension Unit employees, three interns, and one part-time clerk.

Due in part to 23 of its employees being on the state payroll, who are no longer paid using CPD funds, the CPD has accumulated a considerable surplus of funds. As of January 31, 2011, the CPD Operating Account had a balance of \$2,143,400. Other CPD accounts contributing to the surplus of funds within the CPD include the Officer Detail Account and the Escrow Account,

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which had balances of \$96,727 and \$340,733, respectively, as of January 31, 2011. Officer detail work is performed by trained MSO officers who are assigned to the Middlesex Jail in Cambridge or the Middlesex House of Correction (HOC) in Billerica; however, details are worked only on an officer's off-duty time. The officer detail billing and payroll functions are administered by the CPD. Officers work the detail, submit their slip, and are paid for the detail by the CPD with funds from the CPD Officer Detail Account. When billing for private officer detail work, the CPD includes a 10% administrative fee for the work being performed and deposits those funds into the CPD Officer Detail Account. The CPD administers the billing and payroll functions because, according to MSO officials, the MSO did not have a mechanism in place to receive, retain, and distribute these funds.

Since the civil processing function is within the MSO's legislatively defined duties and responsibilities, fees collected and retained by deputy sheriffs since the transfer from county government to state government should be considered Commonwealth revenue. 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 earnings on such income.*

In addition, 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 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. In the event that a question arises as to the correct fiscal year and the determination of the comptroller shall be conclusive.*

The civil process fees collected by the MSO, which are defined in Chapter 262, Section 8, of the General Laws, are generally used to subsidize the operations of the CPD 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 MSO and other Sheriff's Offices should be used. Civil processing fees retained by the MSO are "off-line" and are not deposited in the General Fund or some other fund, such as a retained revenue

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account, and are not accounted for, reported, and recorded in the Massachusetts Management Accounting and Reporting System (MMARS), the state's accounting management system designed to support the financial functions of the Commonwealth, including all revenue and expenditure activity.

The OSA has reported on numerous occasions the need for state officials, including the State Comptroller and the Secretary of the Executive Office for 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. 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 Process Division of Sheriff's Offices. All such funds should be remitted to the OST. The Civil Process Division should expend funds from this account for all expenses associated with its operation. Expenses from the account would be made in conformance with 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).

It is the CPD's position that civil processing funds can be spent under the direct control of the Sheriff; however, MSO officials stated that the MSO files legislation each year to reform the civil process offices in the Commonwealth.

***Recommendation***

The MSO, along with the special commission, should review the accounting, reporting, processing, and management of civil processing fees, consult with the Office of the State Comptroller (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 processing fees into a retained revenue account or an authorized OST bank account, or depositing civil processing fees in the Commonwealth's General Fund. Additionally, the MSO and the special commission should consider either filing legislation or establishing uniform guidelines to stipulate how any surpluses generated from the civil process function at the MSO and other Sheriff's Offices should be used.

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***Auditee's Response***

*As recommended, the MSO agrees that it would be prudent for uniform guidelines to be established for the utilization of civil process funds and we have proposed legislation to this effect since 2001. Until that clarification is defined, the MSO has implemented steps to ensure the fiscal integrity of the Civil Process Division (CPD) by conducting an external financial audit every year.*

**c. Internal Control Plan Needs Improvement**

The MSO's Internal Control Plan (ICP) has not been maintained in accordance with Chapter 647 of the Acts of 1989, An Act Relative to Improving the Internal Controls within State Agencies, and OSC guidelines. Specifically, the MSO's ICP has not been revised since June 1, 2004 and does not describe internal controls for all MSO departments, programs, functions, and financial activities. Also, although the ICP has incorporated a risk assessment that describes actions taken to mitigate identified risks, the specific policies and procedures used to guard against the identified risks are not referenced within the ICP. Additionally, the ICP does not incorporate all eight components of Enterprise Risk Management (Internal Environment, Objective Setting, Event Identification, Risk Assessment, Risk Response, Control Activities, Information & Communication, and Monitoring) as identified in the Committee of Sponsoring Organizations of the Treadway Commission's (COSO) Internal Control - Integrated Framework of September 2004. Lastly, the CPD does not have an ICP and is not referenced within the context of the MSO's ICP.

Chapter 647 of the Act of 1989, An Act Relative to Improving the Internal Controls within State Agencies, states, in part:

*Notwithstanding any general or special law to the contrary, the following internal control standards shall define the minimum level of quality acceptable for internal control systems in operation throughout the various state agencies and departments and shall constitute the criteria against which such internal control systems will be evaluated. Internal control systems for the various state agencies and departments of the commonwealth shall be developed in accordance with internal control guidelines established by the office of the comptroller.*

The OSC's Internal Control Guide, dated September 13, 2007, states, in part:

*An internal control plan is a description of how a department expects to meet its various goals and objectives by using policies and procedures to minimize risk. The Commonwealth has defined the internal control plan to be a high-level summary supported by lower level policy and procedures. Each department's internal control plan will be unique; however, it should be based on the same framework – the organization's*

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*mission statement, goals and objectives, and components of internal control recommended by COSO. The plan should be reviewed and updated as conditions warrant, but at least annually.*

*The Office of the Comptroller defines an internal control plan as a high level department-wide summarization of the department's risks and the controls used to mitigate those risks. This high level summary must be supported by lower level detail, i.e. departmental policies and procedures. . .*

*In September 2004, COSO issued its framework for enterprise-wide risk management, Enterprise Risk Management – Integrated Framework also known as COSO II. Enterprise Risk Management (ERM) is a broader framework that incorporates key concepts set out in COSO's earlier Internal Control – Integrated Framework. . . . It expands and elaborates on the risk assessment and internal environment components of the Internal Control – Integrated Framework. For example, it breaks out internal environment into two components (internal environment and objective setting) and risk assessment into three components (event identification, risk assessment and risk response). . . .*

Because the MSO's ICP does not provide adequate support and guidance for all MSO departments, programs, and functions, it may not provide adequate safeguards to protect MSO assets against waste, loss, theft, or misuse.

### ***Recommendation***

In order to adequately safeguard assets and promote operational efficiency, the MSO should update its ICP in accordance with Chapter 647 of the Acts of 1989 and OSC guidelines. Furthermore, once the ICP is updated, the MSO should ensure that its internal control system is reviewed and evaluated and that any necessary changes are implemented when conditions warrant, but at least annually. All MSO departments, programs, and functions, including financial activities and the CPD, should be included in the ICP. Internal controls for all functions should be summarized, and the supporting procedures documented elsewhere should be referenced within the plan. Additionally, the ICP's risk response should be properly supported by lower-level policies and procedures, and the updated ICP should incorporate all eight components of Enterprise Risk Management.

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

*The MSO has begun reviewing the current Internal Control Plan (ICP) and is working to comply with all components of Chapter 647 of the Acts of 1989 as well as Office of the State Comptroller guidelines. The revised ICP will be evaluated annually, properly supported with department policies and will incorporate all eight components of the Enterprise Risk Management internal control framework as well as the COSO standards.*

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**2. STAFF OFFERED MEALS AT NO COST**

During our audit, we found that MSO staff is offered meals at no cost. This practice, which had been MSO policy when it was part of county government, continued after the county government was abolished and the MSO became an agency of the Commonwealth. However, Chapter 7, Section 3B, of the General Laws requires that no meal may 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.*

Moreover, by offering staff meals at no cost, the MSO is incurring unnecessary costs that could otherwise be used for other institutional expenses.

In response to this issue, MSO officials noted that this meals benefit was enjoyed by MSO staff when they were county employees and that the county takeover legislation expressly provides that employees were not to suffer any loss of benefits or past practice. The MSO officials added 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.

Chapter 34B, Section 14(a), of the General Laws, Abolition of County Government, states, in part:

*Notwithstanding the provisions of any general or special law or rule or regulation to the contrary, the sheriff, all deputies, jailers, superintendents, keepers, officers, assistants and other employees of the sheriff of an abolished county, employed immediately before the transfer date, . . . in the discharge of their responsibilities set forth in section 24 of chapter 37 and section 16 of chapter 126, shall be transferred to the commonwealth with no impairment of employment rights held immediately before the transfer date without*

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*interruption of service, without impairment of seniority, retirement or other rights of employees, without reduction in compensation or salary grade and without change in union representation. Any collective bargaining agreement in effect immediately before the transfer date shall continue in effect and the terms and conditions of employment therein shall continue as if the employees had not been so transferred.*

Moreover, the Massachusetts Labor Relations Commission (MLRC) has ruled that the conditions pertaining to employee meals are a mandatory subject of bargaining that the employer is not free to unilaterally change. (City of Boston [Deer Island House of Correction], 15 MLRC 1209 (1988) affirmed on appeal 16 MLC 1086 [1989]).

### ***Recommendation***

The MSO should review its current policy, state laws, and costs associated with furnishing meals to MSO employees and determine whether it should consider charging a nominal amount for the meals 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 conflicts with Chapter 7, Section 3B, of the General Laws, the MSO 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***

*The MSO will continue to operate in accordance with [General Law] Chapter 34B and honor its current collective bargaining agreements until this issue is further clarified.*

## **3. CIVIL PROCESS DIVISION BANK ACCOUNT RECONCILIATION VARIANCES**

Our review of CPD bank accounts identified persistent reconciliation variances for the CPD operating and payroll accounts. CPD operating account bank reconciliations from October 2010 through January 2011 included variances ranging from \$9,269 to \$10,564. The CPD operating account reconciliation variance as of January 31, 2011 was \$10,564. Moreover, the CPD payroll account from October 2010 through January 2011 had bank reconciliation variances ranging from \$1,316 to \$4,467. The CPD payroll account reconciliation variance as of January 31, 2011 was \$1,316.

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We discussed these reconciliation variances with CPD officials and recommended that a more detailed analysis of these accounts be performed. Prudent business practices advocate that bank accounts be reconciled monthly, without exception. In addition, Chapter 647 of the Acts of 1989 requires that “periodic comparisons shall be made between the resources and recorded accountability or resources to reduce the risk of unauthorized use or loss and protect against waste and wrongful acts.” CPD staff acknowledged the variances and explained that periodic attempts to reconcile these variances are made. Also, the Director of the CPD stated that CPD staff would make a more aggressive effort to address these variances. During our fieldwork, the CPD Director informed us that the operating account variance had been reduced to \$2,700 and that the reconciliation effort is ongoing. The CPD Director also informed us that a portion of the operating account variance decrease was a result of the CPD Comptroller’s reviewing the voided checks for the past six months and removing them from her accounting program, and added that she will now do this review on a monthly basis when she reconciles the account.

### ***Recommendation***

The MSO should strengthen its internal controls and establish written policies and procedures to ensure its bank accounts are reconciled monthly without exception to safeguard against loss or unauthorized activity that could reduce agency funds.

### ***Auditee’s Response***

*The CPD has incorporated into its monthly bank reconciliation a review of voided checks. This will reduce the variance further as the Division conducts its monthly reconciliations. MSO management has also requested that during our current external audit of the civil division, the CPD Controller consult with our auditors to correct the outstanding variances.*

## **4. UNCLAIMED INMATE FUNDS**

The MSO is holding former inmate funds that have remained unclaimed for more than two years. However, the MSO does not have a system in place to forward abandoned inmate funds to the OST within the two-year timeframe stipulated by Chapter 127, Section 96A, of the General Laws, which states, in part:

*So much of any funds as represent monies belonging to, or deposited for the benefit of, inmates who have died or have been discharged or have escaped from any correctional institution of the commonwealth, which shall have remained unclaimed for more than two years, shall be paid by the superintendent of such institution to the state treasurer to be held subject to be paid to the person establishing a lawful right thereto. After six*

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*years from the date when any such monies were paid to the state treasurer the same or any balance thereof then remaining in his hands may be used as a part of the ordinary revenue of the commonwealth. . . .*

Based on our review of data provided to us from MSO staff, we determined that the total amount of inmate funds remaining unclaimed for more than two years as of January 31, 2011 was \$81,419.

The MSO internal policy and procedure that addresses unclaimed inmate funds allows for a three- year period prior to remitting the unclaimed funds to the OST. The MSO is also not in compliance with its internal written procedure that requires the transfer of unclaimed inmate funds to the OST after being held for three years. The abandoned inmate funds summary information provided to the OSA by the MSO shows in excess of \$33,000 in unclaimed inmate funds on-hand for the period June 30, 1998 through June 30, 2007.

During our fieldwork, the MSO indicated that it has begun to address the abandoned inmate funds issue for both facilities (the HOC and the Middlesex Jail) in the following manner:

*Funds for both facilities that were determined to be abandoned through June 30, 2007 and having a value of \$100.00 or less were turned over to the Office of the State Treasurer. [For] funds for both facilities that were determined to be abandoned through June 30, 2007 and having a value of \$100.01 or more, a letter has been sent to the inmate at his last known address. On June 15, 2011, any of the funds in this category that remain unclaimed will be turned over to the Office of the State Treasurer.*

### **Recommendation**

The MSO should dispose of all abandoned inmate funds currently in its possession in compliance with Chapter 127, Section 96A, of the General Laws. In addition, the MSO should implement a system to ensure that all future abandoned inmate funds are forwarded to the OST as required. The MSO should also revise its internal policies and procedures to reflect the two-year requirement for the transfer of funds, rather than the current MSO policy of transferring these funds after three years.

### **Auditee's Response**

*The MSO has disposed of all inactive abandoned inmate funds in our possession through June 30, 2009 and we are now in complete compliance with Chapter 127, Section 96A. In addition, the MSO has implemented a system to ensure that all future abandoned inmate funds be forwarded to the Treasurer's Office on June 30. Finally, the MSO Policy Board revised policy number 405 to reflect that funds abandoned for two years are transferred to the Commonwealth rather than the previous policy of three years.*

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**5. INVENTORY CONTROLS NEED IMPROVEMENT**

Due to multiple factors, including the number of inventory lists maintained, the number of MSO employees responsible for maintaining the lists, the size and distance between locations, and insufficient documentation, MSO officials were unable to readily determine the MSO's actual inventory. The MSO did provide separate inventory lists for our review; however, none of the lists included the date of purchase or the cost of the item as required by the OSC and the Operational Services Division (OSD) regulations for non-GAAP fixed assets. Without complete and accurate inventory records, the MSO's property and equipment is exposed to potential loss, theft, or misuse.

The Fixed Assets - Acquisition Policy, issued jointly by the OSC and OSD, states, in part:

*Non-GAAP Fixed Assets must be recorded in a Department's inventory and reconciled at least annually. This inventory can be either electronic or on paper, as long as it records the date of purchase, amount, description, location and disposition of an item. Non-GAAP Fixed Assets Inventory are subject to review in the audit process by the State Auditor's Office or the Commonwealth's Independent auditors.*

The MSO internal inventory procedures did not require that the date of purchase or the cost of the item be recorded.

We also noted that one MSO equipment inventory list contained 5,057 items, of which 273 were identified as misplaced. The high number of misplaced items raises concerns regarding the MSO's inventory controls and the effectiveness of the MSO's annual inventory and reconciliation process.

During our fieldwork, the MSO Purchasing Director provided an update regarding the steps taken through March 31, 2011 to address some of the inventory issues, stating:

*All new and used equipment obtained by the MSO from this point forward will be entered into the Hardcat inventory database with the purchase date and price. This has been put into effect immediately and for all future purchases as well. Furthermore, a comprehensive list of all inventories will be kept by the Purchasing Director in order to keep better track of all inventory lists in the MSO.*

On April 14, 2011, the MSO Budget Director provided an updated reconciled department equipment inventory list (the "Hardcat" inventory list referenced above) and noted that only three items remained misplaced as of April 14, 2011. On April 22, 2011, the Budget Director

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provided additional information regarding the disposition of misplaced items and other steps taken to improve internal controls associated with inventory maintenance, as follows:

1. *A Master/Comprehensive list of all MSO inventory lists (department wide) is being implemented into policy in the very near future and will be properly monitored;*
2. *Purchase date, price and date of acquisition on all newly acquired equipment have been implemented when practical;*
3. *The disposition of "misplaced" equipment from previously submitted department equipment inventory is as follows:*
  - a. *Desk phones were miscoded as "misplaced." Existing contract with phone vendor stipulates phones that are not working will be sent back to the vendor and replaced with new phones at no cost. So in actuality, the phones were never "misplaced" but rather they were sent back to the vendor for replacement;*
  - b. *Laptops listed as "misplaced" have all been properly inventoried;*
  - c. *Other miscellaneous items were either located and/or disposed of properly (chairs/printers/monitors etc.); and*
  - d. *The proper disposition of items will be conducted in a more prompt fashion on the department equipment inventory list.*

### ***Recommendation***

For control purposes, the MSO should consolidate, where possible, its inventory listings and maintain one primary inventory listing centrally. Each inventory listing of non-GAAP fixed assets should include, at a minimum, the date of purchase, amount, description, location, and disposition of an item. Misplaced and surplus items should be reconciled and disposed of periodically, as needed, but at least annually. Additionally, the MSO needs to develop and institute policies, procedures, and internal controls to safeguard its inventory assets in compliance with Massachusetts laws, rules, and regulations. These policies, procedures, and internal controls should include provisions for processing and monitoring inventories of property and equipment, including taking periodic physical inventories and developing equipment-replacement planning steps, to adequately protect MSO inventory assets from potential loss, waste, and misuse. In addition, these policies and procedures should be referenced in the MSO's ICP.

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***Auditee's Response***

*The MSO has taken the following steps to strengthen inventory procedures: a) A Master/Comprehensive list of all MSO inventory lists is being compiled and the purchase date, price and date of acquisition on all newly acquired equipment will be part of that list; b) Our current policy and procedure, 'Inventory Control and Central Supply' policy will be updated to reflect recommendations made by the Auditor's Office; c) The disposition of "misplaced" equipment has been reconciled and the disposition of items going forward will be conducted on a timelier basis; and d). We will consult with all applicable Commonwealth oversight agencies to ensure MSO inventory records are incorporated within our internal control plan [compliant with] and all laws, rules, and regulations.*