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**INDEPENDENT STATE AUDITOR'S REPORT ON
CERTAIN ACTIVITIES OF THE
SUFFOLK COUNTY DISTRICT
ATTORNEY'S OFFICE
JULY 1, 2006 TO NOVEMBER 19, 2007**

**OFFICIAL AUDIT
REPORT
OCTOBER 6, 2008**

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The Suffolk County District Attorney's Office (SCDAO) was established under the provisions of Chapter 12, Section 13, of the Massachusetts General Laws (MGL), which provides for the administration of criminal law and the defense of civil actions brought against the Commonwealth in accordance with Chapter 258 of the General Laws (claims and indemnity procedures for the Commonwealth, its municipalities, counties and districts, and the officers and employees). As of November 19, 2007, the SCDAO consisted of 270 employees, including prosecutors/assistant district attorneys and administrative and program staff employees that represent citizens in nine district and municipal courts within the jurisdiction of Suffolk County, including: the Boston Municipal Court, Brighton, Charlestown, Chelsea, Dorchester, East Boston, South Boston, Roxbury, and West Roxbury. Pursuant to the SCDAO's mission of the administration of the criminal laws of the Commonwealth, the Suffolk County Asset Forfeiture Unit seizes assets for potential forfeiture in accordance with Chapter 94C, Section 47, of the General Laws, in order to prevent criminals from profiting from illegal narcotics distribution.

In accordance with Chapter 11, Section 12, of the General Laws, the Office of the State Auditor has conducted an audit of the SCDAO for the period July 1, 2006 to November 19, 2007. Our audit was conducted in accordance with applicable generally accepted government auditing standards. The purpose of the audit was to review internal controls over financial and program activities to determine whether financial records are accurate, up-to-date, and maintained in accordance with established criteria; costs and expenditures, including payroll and administrative costs, are appropriate and reasonable; controls over revenues, including forfeited funds, are proper and adequate; and the internal control structure is suitably designed and implemented to safeguard the SCDAO's assets in compliance with the Office of the State Comptroller (OSC) Internal Control Guides and Chapter 647 of the Acts of 1989, *An Act Relative to Improving the Internal Controls within State Agencies*.

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IMPROVEMENTS NEEDED IN INTERNAL CONTROL PLAN

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Our audit disclosed that SCDAO has prepared and developed an Internal Control Plan (ICP) that was generally in compliance with Chapter 647 of the Acts of 1989 and OSC requirements. Chapter 647 of the Acts of 1989 (An Act Relative to Improving the Internal Controls within State Agencies) requires that departments develop an ICP in accordance with OSC guidelines. However, our audit noted that improvements are needed in key areas and sections of the ICP. Specifically, the SCDAO needs to identify information and communication systems in place, identify related monitoring activities in place throughout the SCDAO for identified risks, update the ICP for the new OSC guidelines issued on September 13, 2007, and make the ICP available to all employees. Also, SCDAO needs to develop and update written departmental fiscal and programmatic policies and procedures that can be used to mitigate identified risks. In

response to the audit report, SCDAO agreed that its ICP needed to be updated and that it would make changes where appropriate.

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INTRODUCTION

Background

The Suffolk County District Attorney's Office (SCDAO) was established under the provisions of Chapter 12, Section 13, of the Massachusetts General Laws (MGL), which provides for the administration of criminal law and the defense of civil actions brought against the Commonwealth in accordance with Chapter 258 of the General Laws (claims and indemnity procedures for the Commonwealth, its municipalities, counties and districts, and the officers and employees).

As of November 19, 2007, the SCDAO consisted of 270 employees, including prosecutors/assistant district attorneys and administrative and program staff employees. Pursuant to the Suffolk District Attorney's Office mission of serving and protecting citizens of the county, SCDAO represents citizens of the Commonwealth in criminal and civil proceedings in nine district and municipal courts within the jurisdiction of Suffolk County, including: the Boston Municipal Court, Brighton, Charlestown, Chelsea, Dorchester, East Boston, South Boston, Roxbury, and West Roxbury. Each district court is staffed with assistant district attorneys, victim witness advocates, investigators, and administrative staff. In addition, SCDAO prosecutes cases in Suffolk Superior Court and the Boston Juvenile Court and presents legal arguments on conviction appeals to the Massachusetts Appeals Court or the Supreme Judicial Court.

SCDAO, working with the Trial Court, implemented two specialized programs within Suffolk County: 1) a fully operational Special Grand Jury dedicated exclusively to hearing and indicting homicide and complex gun- and gang-related cases, and 2) the Gun Priority Disposition Sessions, commonly known as Gun Court, which was instituted to handle certain cases of illegal gun possession was transferred from three Boston courts to one location for hearings and adjudication, resulting in a case disposition rate of less than six months with a 90% conviction rate.

For fiscal year 2007, the SCDAO received state maintenance appropriations totaling \$15,446,370 to fund its administrative operations. In addition, the SCDAO received \$1,209,891 in fiscal year 2007 from other state and federal funding sources to support various programs, including state police overtime for investigations, sexual abuse intervention network, witness protection assistance, and safe neighborhood programs. Finally, for fiscal year 2008, the SCDAO is scheduled to receive \$16,075,834 in state maintenance appropriations.

The Suffolk County Asset Forfeiture Unit, in accordance with Chapter 94C, Section 47, of the General Laws, works to ensure that goods and funds are properly seized in order to prevent criminals from illegally profiting from narcotics distribution. After the criminal case is adjudicated and the funds are declared forfeited by the court, these funds may be used for many purposes as set forth in the General Laws, such as defraying the costs of protracted investigations, providing the SCDAO with technical equipment or expertise, providing matching funds to obtain federal grants, or such other law enforcement purposes as the District Attorney deems appropriate. The Suffolk County District Attorney expends up to 10% of the forfeited funds and proceeds for grants to neighborhood non-profit groups working to steer young people away from drugs, gangs, and risky behavior. The SCDAO deposited \$1,023,844 in court-awarded forfeited funds with the Office of the State Treasurer during the period July 1, 2006 to November 19, 2007.

Audit Scope, Objectives, and Methodology

In accordance with Chapter 11, Section 12, of the General Laws, the Office of the State Auditor has conducted an audit of the SCDAO for the period July 1, 2006 to November 19, 2007. Our audit was conducted in accordance with applicable generally accepted government auditing standards. The purpose of the audit was to review internal controls over financial and program activities to determine whether financial records are accurate, up-to-date, and maintained in accordance with established criteria; costs and expenditures, including payroll and administrative costs, are appropriate and reasonable; controls over revenues, including forfeited funds, are proper and adequate; and the internal control structure is suitably designed and implemented to safeguard the SCDAO's assets in compliance with the Office of the State Comptroller (OSC) Internal Control Guides and Chapter 647 of the Acts of 1989, *An Act Relative to Improving the Internal Controls within State Agencies*.

To accomplish our objectives, we:

- Reviewed applicable MGLs, OSC Internal Control Guides, and Chapter 647 of the Acts of 1989, *An Act Relative to Improving the Internal Controls within State Agencies*.
- Reviewed the budgetary appropriations and funding sources.
- Reviewed the ICP, risk assessments, and internal control structure along with existing verbal and written administrative and accounting policies and procedures.

- Interviewed various officials.
- Reviewed selected revenue (forfeited funds), expenditure, advance, and payroll transactions to verify that these transactions are appropriately accounted for, recorded, and safeguarded in accordance with established criteria.
- Examined the inventory control system for the furnishings and equipment in place during our audit period.

On March 31, 2008 we met with SCDAO and discussed the results of our audit.

Except as noted in the Audit Results section of this report, we have determined that for the areas tested, SCDAO's financial records were accurate, up-to-date, and maintained in accordance with established criteria; costs and expenditures were appropriate and reasonable; internal controls over revenue were proper and adequate; and the internal control structure was suitably designed to safeguard the Commonwealth's assets in compliance with OSC's Internal Control Guides and Chapter 647 of the Acts of 1989.

AUDIT RESULTS

IMPROVEMENTS NEEDED IN INTERNAL CONTROL PLAN

Our audit disclosed that the Suffolk County District Attorney's Office (SCDAO) has prepared and developed an Internal Control Plan (ICP) in compliance with Chapter 647 of the Acts of 1989 and the Office of the State Comptroller (OSC) requirements. However, improvements are needed in key areas and sections of the ICP, and SCDAO needs to improve documentation of its policies and procedures.

Chapter 647 of the Acts of 1989, which defines the minimum level of quality acceptable for internal control systems in operation throughout the various state agencies and departments, establishes the criteria against which such internal controls systems will be evaluated. Chapter 647 requires departments to develop an ICP in accordance with OSC guidelines. 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 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. Because the department's policies and procedures provide the detail for the internal control plan, it is important that they be reviewed in conjunction with the plan.

Among the minimum criteria for evaluating a department's internal control system are various internal control components outlined in Chapter 647 and OSC guidelines, which are inherent to establishment and reporting within an ICP. For the ICP to be considered an effective high-level summarization, five interrelated components of internal control must be present: control environment, risk assessment, control activities, information and communication, and monitoring.

The SCDAO has developed a risk assessment that identifies three categories of risks: case management, personnel management, and finance and budget management.

The SCDAO's ICP specifically discusses the three internal control elements of control environment, control activity, and risk assessment for the identified risks. However, the internal

control elements of monitoring and information and communication are addressed with general references only, and need to be expanded to identify controls within those areas. Further, the SCDAO's ICP includes an agency mission statement; however, it primarily discusses internal control concepts and key internal controls as they relate to budgetary and fiscal transactions, and assigns applicability to one department, rather than the entire agency, as follows:

The provisions of this policy apply to all employees assigned to the Office of Administration and Finance.

Areas where the SCDAO can make improvements are discussed below:

- Improve its ICP to address controls over risks identified in the SCDAO's risk assessment, including the internal control elements that mitigate risks.
- Update and develop written fiscal and programmatic policies and procedures that support the controls identified in its ICP and referenced in the ICP.
- Identify information and communication systems in place to support the daily activities of its operations.
- Identify related monitoring activities in place throughout the SCDAO.
- Make the ICP applicable and available to all SCDAO employees.
- Review and update the ICP as conditions warrant, but at least annually. Because the department's policies and procedures provide the detail for the internal control plan, it is important that they be reviewed in conjunction with the plan.

Monitoring

Monitoring is a process that assesses the quality of internal control performance over time. The purpose of monitoring is to determine whether internal controls are adequately designed, properly executed, and effective. The effectiveness of internal controls needs to be monitored periodically to ensure that controls continue to function properly for achievement of the organization's mission, goals, and objectives. For monitoring to be most effective, all employees need to understand the organization's mission, goals, objectives, risk levels, and their own responsibilities.

The SCDAO risk assessment discusses some general monitoring controls; however, SCDAO needs to improve its ICP to include and identify specific monitoring activities, such as assigning accountability either by responsibility or employee monitoring roles within the programmatic

and fiscal operations, to ensure that controls are functioning and effective in mitigating the identified risks. SCDAO should include controls specific to programmatic operations in its ICP, including Case Management, Court Activities, Victim Witness, Domestic Violence, and Child Advocacy units.

Information and Communication

Information and communication is the means by which risks, policies, and procedures are shared with members of the organization, and consists of the identification, capture, and exchange of information in a form and timeframe that enable employees to carry out their responsibilities. Communication must be ongoing both within and between various levels and activities of the organization.

SCDAO's ICP would be improved by identifying and incorporating more specific references to information data (e.g., DAMION, Case Management, and any other management information systems (MIS), including any information technology (IT) system in use by SCDAO) and communication activity used during the daily activities of its operations. General statements regarding the application and relationship of these various systems to the SCDAO's risks and corresponding control activities would serve to improve and enhance its ICP.

Finally, our review of the department's policies and procedures noted that 1) the department lacked formal written policies and procedures for certain departmental functions, including: the management of cases and personnel by various department heads, which SCDAO identified as key risks in its risk assessment; 2) fiscal transaction policies and procedures are documented in the ICP rather than referenced as a separate document; and 3) the SCDAO's Employee Policy Manual (the Manual) dated February 16, 2006, which is provided to all employees, contained outdated information and discrepancies. Specifically, we noted that travel per diem and auto mileage were out-dated and the current policy rates, effective July 1, 2005, were not included in the Manual. Conflicting policy discrepancies were also noted in various sections of the Manual. For example, Section 2.4 (Employment Status) states that part-time work ranges from 20-40 hours per week and staff under 20 hours are not eligible for benefits, while Section 3.4 (Benefits) defines part-time staff as individuals who work a minimum of 18.75 hours per week. SCDAO needs to improve the documentation of departmental policies and procedures, which provide

the details supporting the department's ICP, and mitigate the risks of meeting its goals and objectives.

The OSC's Internal Control Guide, Policies and Procedures, states:

Controls are most frequently comprised of policies and procedures. After identifying and assessing risks, managers need to evaluate (and develop, when necessary) methods to minimize these risks. A policy establishes what should be done and serves as the basis for the procedures. Procedures describe specifically how the policy is to be implemented. It is important that an organization establish policies and procedures so that staff knows what is to be done and compliance can be properly evaluated.

SCDAO personnel stated that the ICP, employee handbook, and other policies and procedures were not updated due to the SCDAO's prioritizing of investigations and court proceedings and its limited personnel.

Prior to the audit, the OSC issued new policy guidance on internal controls. In a memorandum introducing the new Internal Control Guide, dated September 13, 2007, the Comptroller commented; "this revised Internal Control Guide streamlines the content of the existing manuals and incorporates the principles of Enterprise Risk Management (ERM) that tie risk to strategic planning. These principles reflect the concepts of broad-based objective setting, event identification and risk response." Agencies are now required to update their current ICPs to conform to the new guidelines. This ERM model has expanded the methods and definition of the original components of risk assessment and control environment, stressing that management tie internal controls to the agency's mission, goals, and objectives while continuing to safeguard assets from loss, unauthorized use, or disposition.

SCDAO also needs to update its ICP to comply with recently released OSC guidelines to include ERM, which requires further delineation in the ICP in addition to internal control components established by the original guidelines. For example, it breaks down internal environment into two components (internal environment and objective setting) and risk assessment into three components (event identification, risk assessment, and risk response).

Without a complete ICP in place, the possibility exists that SCDAO might not achieve its goals and objectives efficiently, effectively, and in compliance with applicable laws, rules, and regulations; provide guidance in the event of employee turnover; and properly safeguard its assets against loss, theft, or misuse.

Recommendation

The SCDAO should update its ICP to include a high level summarization of controls to meet the agency's goals and objectives, including the following components of internal control: identifying information and communication systems in place within the operation of the SCDAO, including identification of monitoring roles and responsibilities in the ICP, and ensuring compliance with all provisions of Chapter 647 of the Acts of 1989 and the new guidelines established by the OSC on September 13, 2007.

In updating its plan and overall system, the SCDAO should:

- Review the updated Internal Control guidelines established by the Comptroller and include the ERM principles and guidelines in its updated ICP.
- Include within the ICP all administrative and programmatic areas of the SCDAO, including Case and Personnel Management identified as key risk areas.
- Upon adding any updates or changes, re-visit the SCDAO's risks to assess the need for modifying or adding additional risks identified within other areas. If deemed necessary, further develop and implement additional written internal controls to mitigate any new identified risks, providing management the means to identify future internal control risks.
- Identify and incorporate more specific references to information and communication systems in place that facilitate the daily activities of SCDAO's operations.
- Ensure that all internal controls, including written policies and procedures, are documented, current, and readily available to both management and staff for daily use to assess the integrity of the internal control structure and overall operations.
- Include language describing how and by whom the ICP and its related control activities are to be monitored.
- Ensure that its internal control system is evaluated at least annually, or when conditions warrant, that any necessary changes are implemented, and that sufficient controls are in place to address these changes.

Auditee's Response

In response to the audit report, SCDAO agreed that its Internal Control Plan needed to be updated and that it would make changes where appropriate.

APPENDIX

Chapter 647, Acts of 1989, An Act Relative to
Improving the Internal Controls within State Agencies

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Chapter 647

THE COMMONWEALTH OF MASSACHUSETTS

In the Year One Thousand Nine Hundred and Eighty-nine

AN ACT RELATIVE TO IMPROVING THE INTERNAL CONTROLS WITHIN STATE AGENCIES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

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.

(A) Internal control systems of the agency are to be clearly documented and readily available for examination. Objectives for each of these standards are to be identified or developed for each agency activity and are to be logical, applicable and complete. Documentation of the agency's internal control systems should include (1) internal control procedures, (2) internal control accountability systems and (3), identification of the operating cycles. Documentation of the agency's internal control systems should appear in management directives, administrative policy, and accounting policies, procedures and manuals.

(B) All transactions and other significant events are to be promptly recorded, clearly documented and properly classified. Documentation of a transaction or event should include the entire process or life cycle of the transaction or event, including (1) the initiation or authorization of the transaction or event, (2) all aspects of the transaction while in process and (3), the final classification in summary records.

(C) Transactions and other significant events are to be authorized and executed only by persons acting within the scope of their authority. Authorizations should be clearly communicated to managers and employees and should

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Include the specific conditions and terms under which authorizations are to be made.

(D) Key duties and responsibilities including (1) authorizing, approving, and recording transactions, (2) issuing and receiving assets, (3) making payments and (4), reviewing or auditing transactions, should be assigned systematically to a number of individuals to ensure that effective checks and balances exist.

(E) Qualified and continuous supervision is to be provided to ensure that internal control objectives are achieved. The duties of the supervisor in carrying out this responsibility shall include (1) clearly communicating the duties, responsibilities and accountabilities assigned to each staff member, (2) systematically reviewing each member's work to the extent necessary and (3), approving work at critical points to ensure that work flows as intended.

(F) Access to resources and records is to be limited to authorized individuals as determined by the agency head. Restrictions on access to resources will depend upon the vulnerability of the resource and the perceived risk of loss, both of which shall be periodically assessed. The agency head shall be responsible for maintaining accountability for the custody and use of resources and shall assign qualified individuals for that purpose. Periodic comparison shall be made between the resources and the recorded accountability of the resources to reduce the risk of unauthorized use or loss and protect against waste and wrongful acts. The vulnerability and value of the agency resources shall determine the frequency of this comparison.

Within each agency there shall be an official, equivalent in title or rank to an assistant or deputy to the department head, whose responsibility, in addition to his regularly assigned duties, shall be to ensure that the agency has written documentation of its internal accounting and administrative control system on file. Said official shall, annually, or more often as conditions warrant, evaluate the effectiveness of the agency's internal control system and establish and implement changes necessary to ensure the continued integrity of the system. Said official shall in the performance of his duties ensure that: (1) the documentation of all internal control systems is readily available for examination by the comptroller, the secretary of administration and finance and the state auditor, (2) the results of audits and recommendations to improve departmental internal controls are promptly evaluated by the agency management, (3) timely and appropriate corrective actions are effected

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by the agency management in response to an audit and (4), all actions determined by the agency management as necessary to correct or otherwise resolve matters will be addressed by the agency in their budgetary request to the general court.

All unaccounted for variances, losses, shortages or thefts of funds or property shall be immediately reported to the state auditor's office, who shall review the matter to determine the amount involved which shall be reported to appropriate management and law enforcement officials. Said auditor shall also determine the internal control weaknesses that contributed to or caused the condition. Said auditor shall then make recommendations to the agency official overseeing the internal control system and other appropriate management officials. The recommendations of said auditor shall address the correction of the conditions found and the necessary internal control policies and procedures that must be modified. The agency oversight official and the appropriate management officials shall immediately implement policies and procedures necessary to prevent a recurrence of the problems identified.

House of Representatives, December 21, 1989.

Passed to be enacted,

George J. Livanos

, Speaker.

In Senate, December 22, 1989.

Passed to be enacted,

William W. Burgin

, President.

January 3, 1990.

Approved,

Richard H. Kohn

Governor.