

Office of Traffic Safety

Although It Exercises Limited Oversight of
Sobriety Checkpoints, Law Enforcement Agencies
Have Complied With Applicable Standards

February 2012 Report 2011-110



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February 16, 2012

2011-110

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

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the California State Auditor presents this audit report concerning the Office of Traffic Safety's (OTS) oversight of sobriety checkpoints (checkpoints).

This report concludes that neither federal nor state laws establish standards by which law enforcement agencies must administer checkpoints. Instead, rulings issued by the California Supreme Court (court) have resulted in a set of guidelines for administering checkpoints. OTS does not formally monitor grant recipients' adherence to these court rulings—nor is it required to under federal or state law—but instead focuses its monitoring efforts on ensuring grant recipients perform the expected number of checkpoints and spend grant funds properly. All of OTS's funding for checkpoints comes from the federal government and OTS's monitoring efforts are focused on ensuring that federal requirements are met. Our review found that OTS's monitoring practices were reasonable and also noted that the National Highway Traffic Safety Administration (NHTSA) commended OTS for its grant monitoring practices in 2010.

In addition, we reviewed documentation for a single checkpoint at five different law enforcement agencies to assess compliance with the court's rulings and to document the outcomes of these checkpoints. Our review found that law enforcement could reasonably demonstrate their adherence to the court's guidelines. We also noted that checkpoints often resulted in citations for nonalcohol-related offenses, and in many cases, these citations resulted in the motorist's vehicle being towed. Based on our review of federal regulations and discussions with NHTSA, we also determined that revenue resulting from federally funded checkpoints, such as vehicle release fees assessed on impounded vehicles towed from checkpoints, can be used by law enforcement for their own purposes. Finally, our discussions with these five law enforcement agencies, as well as the results of a survey performed by the University of California at Berkeley, found that the amount of these vehicle release fees vary.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

Office of Traffic Safety

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Summary

Results In Brief

The mission of the Office of Traffic Safety (OTS) is to effectively and efficiently administer traffic safety grant funds to reduce traffic deaths, injuries, and economic losses. OTS awards traffic safety grants to local law enforcement and state agencies, such as the Department of Public Health, the California Highway Patrol, and the University of California at Berkeley. OTS primarily uses federal funding to administer the traffic safety program by making grants available to local and state agencies for programs to enforce traffic laws and educate the public about traffic safety. Examples of OTS-funded grant activities include conducting sobriety checkpoints (checkpoints) and serving warrants on drivers with multiple driving under the influence of drugs or alcohol offenses. According to its review, OTS grantees reported conducting 2,562 checkpoints and claimed \$16.8 million in overtime expenditures between October 2009 and September 2010.

No federal or state statutes or regulations exist governing the operation of checkpoints. However, a set of guidelines resulted from the California Supreme Court's (court) decision in *Ingersoll v. Palmer* (Ingersoll guidelines), a case which considered whether a checkpoint violated state and federal constitutional protections against unreasonable searches and seizures. For example, one of the characteristics that made the checkpoint valid included having a neutral formula for screening vehicles—every fifth vehicle passing through the checkpoint was stopped—so that drivers would not be subject to the unrestricted discretion of the officers operating the checkpoint.

Federal regulation and state law require that OTS produce an Annual Performance Report (annual report), which contains information on various traffic safety statistics, including fatality statistics on passengers not using seat belts and fatalities from alcohol-impaired driving. OTS also provides information on OTS-funded checkpoints, including the number of vehicles passing through checkpoints, the number of drivers screened, and the number of arrests for drug- and alcohol-related offenses. These statistics show that checkpoints more often result in citations for unlicensed motorists or for those with suspended or revoked driver's licenses than for alcohol-related offenses. For example, OTS reported that between October 2009 and September 2010 the 2,562 checkpoints administered by law enforcement resulted in nearly 28,000 citations to unlicensed motorists while there were approximately 7,000 arrests for driving under the influence. However, such statistics do not suggest that these checkpoints were performed improperly or are not achieving their intended outcomes. As noted in the court's ruling and as

Audit Highlights . . .

Our review of the Office of Traffic Safety's (OTS) oversight of grants it provides for sobriety checkpoints (checkpoints), highlighted the following:

- » *OTS grantees reported conducting 2,562 checkpoints and claimed \$16.8 million in overtime expenditures between October 2009 and September 2010.*
- » *Statistics show that checkpoints more often result in citations for unlicensed motorists or for those with suspended or revoked driver's licenses than for alcohol-related offenses.*
 - *The 2,562 checkpoints administered by law enforcement resulted in nearly 28,000 citations to unlicensed motorists and approximately 7,000 arrests for driving under the influence.*
- » *OTS is not required to nor does it verify the checkpoint information—in its annual reports, the checkpoint data was self-reported by its grantees.*
- » *On a limited and informal basis, OTS monitors whether its grantees comply with guidelines.*
- » *Our review of five checkpoints conducted by different law enforcement agencies disclosed that each could reasonably demonstrate compliance with the Ingersoll guidelines.*

explained by OTS's management, a key component of a checkpoint is that it provides a publicized deterrent to alcohol-impaired driving. Nevertheless, these statistics should be viewed with some caution since OTS's grantees self-report this information and it is not verified for accuracy. Neither state law nor federal regulation expressly requires that checkpoint data be included in OTS's annual report. According to the assistant director of operations, OTS does not verify the checkpoint information because it is not required, and doing so would be overly burdensome on its staff. As a result of our audit, OTS began disclosing in its 2011 annual report that its checkpoint data was self-reported by its grantees and was unverified.

Since no federal statutes or regulations define how law enforcement should operate checkpoints, we did not expect OTS to systematically monitor whether its grantees comply with the Ingersoll guidelines. In fact, OTS does not explicitly refer to these guidelines in agreements with its grantees. Nevertheless, our review found that OTS does perform such monitoring on a limited and informal basis. OTS uses two retired police officers (law enforcement liaisons) to witness grantees' execution of checkpoints and to report their findings to the OTS director. One of the law enforcement liaisons we spoke with indicated that he had visited at least 24 checkpoints between January 2007 and September 2011. The other law enforcement liaison asserted that he had visited nine checkpoints between September 2010 and September 2011. According to OTS, the results of these reviews and a survey of law enforcement agencies suggest that the court's checkpoint guidelines are being followed.

Although we were unable to observe the checkpoints as they happened, we reviewed the documentation related to five checkpoints conducted by different law enforcement agencies in 2010 and found that each could reasonably demonstrate compliance with the Ingersoll guidelines. For example, each law enforcement agency provided either checkpoint-planning documents or policies demonstrating that it had practices to limit the discretion of field officers by following a neutral formula for screening vehicles. At the Oakland Police Department checkpoint, for instance, the commanding officer initially directed every fifth car for screening but retained discretion to alter intervals, directing more vehicles for screening during low traffic periods. As the checkpoint progressed, we noted that the Oakland Police Department periodically changed the interval to every third car or every 10th car.

OTS grantees operate checkpoints using federal funds and may use any revenue derived from these checkpoints, such as fines from citations and fees from towing and storing vehicles,

without restriction under federal requirements. Our review of documentation from five checkpoints found that law enforcement agencies charge different amounts for releasing towed vehicles to the registered owners or their designated agents (release fees). In addition to charging vehicle release fees, some police departments or cities we reviewed receive other revenue from vehicles impounded at checkpoints. For example, the Los Angeles Police Department collects 7 percent of all gross revenue earned by tow contractors for police-related tows.

Recommendations

If the Legislature desires to receive periodic information on whether law enforcement agencies comply with existing sobriety checkpoint guidelines across the State, it should consider amending state law to require OTS to evaluate and include this information in its annual report. Such an amendment should also require OTS to recommend statutory changes if it identifies widespread problems at checkpoints.

Agency Comment

OTS agrees with the audit report's conclusions.

Introduction

Background

The mission of the Office of Traffic Safety (OTS) is to effectively and efficiently administer traffic safety grant funds to reduce traffic deaths, injuries, and economic losses. In 1966 the U.S. Congress passed the National Highway Safety Act, which provides federal traffic safety funds to states in an effort to reduce the number of traffic collision fatalities. The following year the Legislature enacted the California Traffic Safety Program (traffic safety program) to provide authority for the State to take all action necessary to fully benefit from the national legislation. Subsequently, OTS was created in the Business, Transportation and Housing Agency to administer the traffic safety program. OTS uses federal funding primarily to administer the traffic safety program, doing so by making grants available to local and state agencies for programs to enforce traffic laws and to educate the public about traffic safety.

Each year OTS develops a Highway Safety Plan, which establishes key highway safety performance goals—for example, reducing traffic fatalities by 3 percent—and lists the strategies it will use to achieve these goals. OTS solicits grant proposals from local law enforcement to address these problems. Examples of OTS-funded grant activities include conducting sobriety checkpoints (checkpoints) and serving warrants on drivers with multiple driving under the influence of drugs or alcohol offenses. According to OTS, other grants are awarded to encourage seat belt use, train parents in proper installation of child safety seats, and to fund motorcycle safety programs. OTS also awards traffic safety grants to state agencies, such as the Department of Public Health, the California Highway Patrol, and the University of California at Berkeley.

OTS Uses Federal Funds to Support Its Grant Activities

More than 99 percent of all OTS funding comes from the federal government. As shown in Table 1 on the following page, records from the State Controller's Office show that OTS disbursed \$97.2 million in federal funds and \$396,000 in state funds for state fiscal year 2010–11. The state funding covers some administrative expenses, such as rent for office space and the salaries of employees. OTS pays all expenditures related to grant activities from federal funds, including overtime for law enforcement officers conducting checkpoints.

Table 1
Office of Traffic Safety's Total Disbursements
Fiscal Years 2008–09 Through 2010–11

FISCAL YEAR	FEDERAL FUNDS	STATE FUNDS	TOTALS*
2008–09	\$97,523,818	\$415,341	\$97,939,159
2009–10 [†]	135,520,165	311,545	135,831,710
2010–11	97,205,504	396,448	97,601,952

Source: State Controller's Office.

* The amounts shown are disbursements recorded by the State Controller's Office for spending activity at the Office of Traffic Safety (OTS) from the Federal Trust Fund and the State Transportation Fund, Motor Vehicle Account. The amounts shown are not limited to disbursements for sobriety checkpoint activity.

† OTS attributes its increase in disbursement activity for fiscal year 2009–10 to increased federal funding for hazard elimination activities, such as the installation of metal beam guardrails, concrete barriers, and chain link railings performed by the California Department of Transportation through an interagency agreement.

The exact amount spent on OTS-funded checkpoints is difficult to determine because federal reporting requirements do not mandate that OTS track and report its spending on checkpoints. Nevertheless, we asked OTS to approximate its spending on checkpoints. According to OTS's review, law enforcement grantees reported conducting 1,740 checkpoints and claimed \$11.7 million in overtime between October 2008 and September 2009. In the following 12-month period, the number of checkpoints grantees reportedly conducted increased to 2,562, with a total of \$16.8 million in overtime expenditures. However, according to OTS's assistant director of operations, these amounts represent only overtime, benefits, and administration costs for conducting the checkpoints; the totals do not include equipment purchases or any other costs related to checkpoint activity. Although we reviewed OTS's methodology for calculating the amount of overtime by verifying certain amounts, we noted that a significant number of these expenditures are based on assertions from the California Highway Patrol and the University of California at Berkeley. We did not verify the claimed overtime amounts provided by these two entities.

Federal and State Laws Do Not Establish Standards for Administering Checkpoints

No federal or state statutes or regulations exist governing the operation of checkpoints. However, a set of guidelines resulted from the California Supreme Court's (court) decision in *Ingersoll v. Palmer*, which considered whether a sobriety checkpoint violated the state and federal constitutional protections against unreasonable searches and seizures. In the 1987 decision, the court upheld the validity of the checkpoint because of

eight characteristics that minimized its intrusiveness, as shown in Table 2. For example, one of the characteristics that validated the checkpoint included having a neutral formula for screening vehicles—every fifth vehicle passing through the checkpoint was stopped—so that drivers would not be subject to the unrestricted discretion of the officers operating the checkpoint. Another characteristic was that the law enforcement agency considered the safety of motorists and law enforcement in setting up the roadblock, using clearly marked police vehicles and signage. In a survey conducted in 2011 of law enforcement agencies, the University of California at Berkeley’s Safe Transportation Research and Education Center found that all 276 respondents claimed to follow the Ingersoll guidelines.

Table 2
The Guidelines of a Constitutionally Valid Sobriety Checkpoint Under *Ingersoll v. Palmer*

GUIDELINE	DESCRIPTION
1. Decision making at the supervisory level	The decision to establish a sobriety checkpoint (checkpoint), the selection of the site, and the procedures for the checkpoint operation should be made and established by supervisory law enforcement personnel and not by an officer in the field.
2. Limits on discretion of field officers	Motorists should not be subject to the unbridled discretion of the officer in the field as to who is to be stopped. Instead, a neutral formula such as stopping every driver or stopping every third, fifth or 10 th driver should be employed.
3. Maintenance of safety conditions	Safety for motorists and officers is maintained. Proper lighting, warning signs and signals, and clearly identifiable official vehicles and personnel are necessary to minimize the risk of danger to motorists and police.
4. Reasonable location	The location of checkpoints should be determined by policy-making officials rather than by officers in the field. The sites chosen should be those that will be most effective in achieving the governmental interest (i.e., on roads having a high incidence of alcohol-related accidents and/or arrests).
5. Time and duration	The time of day that a checkpoint is established and how long it lasts also bear on its intrusiveness as well as its effectiveness. No hard and fast rules as to timing and duration were laid down, but law enforcement officials are expected to exercise good judgment in setting times and durations, with an eye to effectiveness of the operation and with the safety of motorists a coordinate consideration.
6. Official nature of roadblock	Those aspects of a checkpoint that evidence its official nature are critical in minimizing its intrusiveness. The checkpoint should be established with high visibility, including warning signs, flashing lights, adequate lighting, police vehicles, and the presence of uniformed officers.
7. Length and nature of detention	Minimizing the average time each motorist is detained is critical both to reducing the intrusiveness of the stop on the individual driver and to maintaining safety by avoiding traffic tie-ups.
8. Advance publicity*	Advance publicity both reduces the intrusiveness of the stop and increases the deterrent effect of the roadblock.

Source: *Ingersoll v. Palmer*.

* In *People v. Banks*, the California Supreme Court determined that a checkpoint conducted without advance publicity but otherwise conforming to the Ingersoll guidelines is not invalid under the Fourth Amendment to the U.S. Constitution.

The Lack of Statutory Standards for Conducting Checkpoints Has Received Recent Attention From the Legislature

The Legislature recently considered two bills that together attempted to address the lack of statutory standards for conducting checkpoints and the frequency with which unlicensed drivers could have their

vehicles impounded at checkpoints. Assembly Bill 1389 would have required law enforcement agencies to follow standards that mirror, and at times go beyond, the Ingersoll guidelines. For example, the bill would have required law enforcement agencies to provide advance notice of a checkpoint's general location at least 48 hours prior to the checkpoint operation as well as the exact location at least two hours prior. The governor vetoed the bill in October 2011, stating that the measure would impose greater restrictions than currently required by the court and would be too restrictive of local law enforcement.

To address vehicle impounds for unlicensed driving at checkpoints, the Legislature passed Assembly Bill 353. This bill prevents law enforcement from impounding a vehicle at a checkpoint if the driver's only offense is failure to hold a valid driver's license. In such a circumstance, the officer must make a reasonable attempt to identify the vehicle's registered owner and to release the vehicle to the owner, if licensed, or to another licensed driver authorized by the registered owner. The governor signed the bill in October 2011, and it went into effect January 1, 2012.

Scope and Methodology

The Joint Legislative Audit Committee (audit committee) directed the California State Auditor's Office to review OTS's oversight of grants it provides for sobriety checkpoints. Specifically, the audit committee directed us to address the objectives listed in Table 3.

Table 3
Methods of Addressing Audit Objectives

AUDIT OBJECTIVE	METHOD
1. Review and evaluate the laws, rules, and regulations significant to the audit objectives.	Our legal counsel reviewed state and federal statutes and regulations to determine whether criteria exists governing how law enforcement should conduct sobriety checkpoints (checkpoints). In addition, we reviewed applicable rulings from the California Supreme Court such as <i>Ingersoll v. Palmer</i> and <i>People v. Banks</i> .
2. Determine the source of funds that the Office of Traffic Safety (OTS) used to fund grants for checkpoints.	We obtained and reviewed accounting records maintained by the State Controller's Office to identify the funding sources that support OTS's operations. Between fiscal years 2008–09 and 2010–11, roughly 99 percent of all funding for OTS came from the federal government. We also reviewed OTS's accounting records to assess whether state funds have paid for checkpoints.
3. Review OTS's role in overseeing the entities that receive grant funds. Determine if OTS monitors the entities to ensure checkpoints are conducted according to any guidelines or standards that exist.	We interviewed OTS's management and reviewed its policies and procedures to determine how it monitors entities that receive grant funds. For key monitoring activities, we assessed how frequent and in-depth these monitoring efforts were. We also interviewed OTS's management to determine whether it monitors grant recipients' compliance with the checkpoint standards cited in the Ingersoll guidelines.
4. Determine whether statewide guidelines exist governing how and when checkpoints are announced and publicized, and the extent to which OTS monitors whether law enforcement agencies adhere to those guidelines.	Our legal counsel concluded that neither state nor federal statutes, regulations, or case law establish standards governing how checkpoints are announced or publicized. We interviewed OTS's management and reviewed its standard grant agreement language to assess what requirements OTS places on grant recipients. We also reviewed OTS's practices for monitoring the issuance of press releases.

AUDIT OBJECTIVE	METHOD
5. Determine whether centralized statewide data exist on checkpoints funded by OTS grants, and to the extent this information is available, identify the following for the last five-year period.	OTS collects various statistics from its grant recipients regarding checkpoints that are self-reported and are unaudited. OTS uses this information when preparing its Annual Performance Report for the Legislature and the federal government. We present information to address this objective in Table 4 on page 12 of the report. However, we concluded that the information presented in this table was of undetermined reliability for the purpose of the trending analyses outlined in this audit objective. During the audit, we noted that OTS did not consistently collect information from all grant recipients, and in some cases changed its definition for when grant recipients should report vehicle impound data.
a) Trend in the total number of citations issued each year at checkpoints by type of violation.	
b) Ratio of citations issued at checkpoints to the number of vehicles going through checkpoints each year.	
c) Trend in the total number of cars impounded each year at the checkpoints categorized by type of citation causing the vehicle impound.	
d) Ratio of citations that caused vehicle impound to the total number of citations issued at checkpoints for each year.	
e) Frequency of checkpoints by day of the week and time of day for each year.	
6. If statewide data is not maintained centrally, select a sample of regional coordinators and perform the trend and ratio analysis above.	During the audit, we noted that the regional coordinators discussed in this objective are OTS employees that work in Sacramento and do not have any additional information beyond the limited data discussed in the previous objective. As a result, we visited the following five law enforcement agencies to obtain data on citations issued and vehicles impounded: Folsom Police Department, San Diego Sheriff's Department, Los Angeles Police Department, Oakland Police Department, and the Fresno Police Department. Our review focused on one single checkpoint at each of the five law enforcement agencies. All checkpoints were performed during 2010.
7. Conduct a survey of selected law enforcement agencies that use grant funds from OTS to operate checkpoints and obtain information that includes the following:	While performing site visits at the five law enforcement agencies discussed in the previous objective, we performed the following procedures:
a) The methods used by the law enforcement agency to identify the location, day and time, frequency, and number of officers to conduct checkpoints and whether the methods comply with any established guidelines or criteria.	We interviewed local law enforcement to determine how they established the location of the checkpoint and assessed whether they could provide data, such as collision statistics, demonstrating that the location of the checkpoint was reasonable. Our review of documents for the five selected checkpoints also involved noting the time of day when the checkpoints occurred, and how many officers worked on the checkpoint.
b) The revenue generated from citations issued at checkpoints, including fees from towing firms.	For the five checkpoints we reviewed, we documented the number of citations issued and vehicles impounded, and estimated the potential revenue police departments or cities/counties would receive from the assessed vehicle release fees. We also attempted to provide a range of potential revenue based on the citations issued at the five checkpoints. This information is presented in Table 6 on page 20.
c) The amount of overtime paid to officers operating these checkpoints.	For the five checkpoints we reviewed, we documented the number of officers and other personnel assigned to work the checkpoint and obtained records demonstrating the amount charged to OTS.
8. Review and assess any other issues that are significant to the OTS and the checkpoints it funds.	Given that funding for checkpoints comes from the federal government, we considered whether the federal awarding agency—the National Highway Traffic Safety Administration (NHTSA)—had specific expectations for how OTS monitors grant recipients and how revenue earned from checkpoints, such as citation and impound fees, should be used. We discuss NHTSA's perspective on OTS's monitoring efforts and generated revenue on pages 13 and 22, respectively.

Sources: California State Auditor's analysis of audit request 2011-110 and its analysis and documentation of information identified in the "Method" column of the table above.

Audit Results

The Office of Traffic Safety Focuses Primarily on Reporting Unverified Traffic Safety Statistics and Monitoring Grantees' Use of Federal Funds

Although the Office of Traffic Safety (OTS) performs some limited monitoring to ensure that its grant recipients administer sobriety checkpoints (checkpoints) in accordance with court guidelines, its primary focus involves reporting checkpoint data submitted by its grantees and monitoring whether these grantees spend federal funds appropriately. Our review found that OTS has reasonable practices for monitoring its grantees and noted that its federal oversight agency—National Highway Traffic Safety Administration (NHTSA)—was satisfied with OTS's monitoring efforts during a review in 2010.

OTS Voluntarily Reports Statewide Checkpoint Data, but Does Not Verify Its Accuracy

Each year OTS produces an Annual Performance Report (annual report) as required by state law and federal regulation. State law requires the annual report to be sent to the Legislature, and federal law requires submittal to the federal Department of Transportation, which provides OTS's federal awards. The report includes information on various traffic safety statistics, including fatality statistics on passengers not using seat belts and fatalities from alcohol-impaired driving. As shown in Table 4 on the following page, OTS also aggregates some data in its annual report, providing information on OTS-funded checkpoints, such as the number of vehicles passing through checkpoints, the number of drivers screened, and the number of arrests for drug- and alcohol-related offenses. OTS grantees submit this information on a quarterly basis, as required by their grant agreements.

However, neither state law nor federal regulation expressly requires that checkpoint data be included in the OTS annual report. OTS collects this information from grantees and includes it voluntarily, and has no process in place to verify the accuracy of the submitted checkpoint information, but did not disclose this fact in its reports. According to the assistant director of operations, OTS does not verify the checkpoint information because it is not required to, and doing so would be overly burdensome on its staff. To add another reason, a deputy regional administrator at NHTSA stated that although it uses the statistics aggregated by OTS as indicators of the overall effectiveness of the programs OTS oversees, the availability of federal funds in the future is not tied to the grantee checkpoint data. Based on our own review of checkpoint data at five law enforcement agencies, verifying such information would be

difficult. For example, one difficulty OTS might encounter in trying to verify data submitted by grantees is that record-keeping systems used by law enforcement agencies vary throughout the State. Once we advised OTS that the checkpoint data it was reporting could potentially be misleading, it added clarification to its 2011 annual report, disclosing that the checkpoint data was self-reported by grantees and was not verified by OTS.

Table 4
Characteristics and Outcomes of Sobriety Checkpoints—Statewide Data
Federal Fiscal Years 2006 Through 2010

FEDERAL FISCAL YEAR	CHARACTERISTICS OF SOBRIETY CHECKPOINTS (CHECKPOINTS)		OUTCOMES OF CHECKPOINTS							
	CHECKPOINTS COMPLETED	VEHICLES THROUGH CHECKPOINTS	DRIVING UNDER THE INFLUENCE OF DRUGS OR ALCOHOL ARRESTS	VEHICLES IMPOUNDED*	CRIMINAL ARRESTS	DRUG ARRESTS	SUSPENDED CITATIONS	UNLICENSED DRIVER CITATIONS	RECOVERED STOLEN VEHICLES	ALL OTHER ARRESTS / CITATIONS
2010	2,562	2,733,469	6,990	42,659	2,943	1,020	15,382	27,938	135	34,862
2009	1,740	1,791,481	5,015	32,179	3,568	613 [†]	6,269 [†]	‡	19 [†]	20,502 [†]
2008	1,632	1,559,466	5,845	20,381	3,633 [§]	329 [†]	5,350 [†]	‡	24 [†]	12,041 [†]
2007	917	867,388	3,384	15,724	2,168	‡	‡	‡	‡	‡
2006	710	652,409	2,500	14,327	1,704	‡	‡	‡	‡	‡

Source: Office of Traffic Safety (OTS), checkpoint data and Annual Performance Reports.

Note: The information provided in this table is unaudited and is of undetermined reliability for the purpose of analyzing trends in the outcomes of sobriety checkpoints (checkpoints) over a five-year period. For federal fiscal years 2006 and 2007, OTS lacks supporting data from grant recipients that would allow us to verify the amounts reported. Further, as noted in the following footnotes, our review found inconsistencies in OTS's methodology for collecting and defining certain data elements.

* OTS changed the definition for the data field "vehicles impounded", which may explain the increase in the number of vehicles impounded over time. Beginning in federal fiscal year 2009, OTS changed the definition to include all vehicle impounds. Previously, OTS only collected data on vehicles impounded for 30 days.

[†] These data fields are potentially incomplete because OTS did not request the same data elements from all grant recipients. For federal fiscal years 2008 and 2009, OTS requested this information for less than half of all checkpoints performed by grant recipients.

[‡] OTS did not collect this data for the federal fiscal years shown.

[§] The California Highway Patrol was not required to report its total number of criminal arrests at checkpoints during federal fiscal year 2008.

OTS Uses a Reasonable Grant Monitoring Process to Ensure It Stays Informed of How Federal Funds Are Spent

OTS has various mechanisms in place to provide reasonable assurance that grantees' claimed costs are justified and are fulfilling the goals and objectives outlined in their grant agreements. One of its primary monitoring mechanisms is a Grantee Performance Review (performance review). The performance review process involves OTS staff interviewing grantees and reviewing their documents in order to obtain answers for a checklist of questions. The 16 questions that comprise the performance review are divided

into two sections: the fiscal review and the program review. The fiscal review considers such issues as whether the grantee established a separate account to track grant funds, spent the funds in a timely manner, and can provide documentation—such as payroll reports and invoices—to support the amounts billed to OTS for one quarter’s worth of grant activity. The program review focuses on whether the grantee is providing OTS with required performance data—such as the number of checkpoints conducted and the resulting number of driving under the influence of drugs or alcohol (DUI) arrests—in a timely manner.

According to OTS’s operations manual, performance reviews provide grantees with an opportunity to showcase their strengths and underscore improvement needs as well as provide OTS staff with an opportunity to give constructive feedback and guidance. The operations manual requires OTS to conduct a performance review of local agency grantees, such as police and sheriff’s departments, receiving more than \$100,000 during a particular grant period, while allowing OTS to review state agencies receiving grant funding on an as-needed basis.

OTS indicated it had completed 121 performance reviews for grants that were active during federal fiscal year 2010. Our examination of 10 of these found that OTS staff addressed all the financial and program-related questions on the performance review checklist. We also found that OTS could generally provide the payroll records and invoices it had examined to demonstrate it was verifying whether grantees could support their claimed costs. However, in one of the 10 cases, OTS staff could not locate these supporting documents, even though the reviewer indicated he had obtained them. In addition, we found that OTS had completed reviews for 115 out of 141 (82 percent) of state and local agencies receiving federal grants in excess of \$100,000. The completion of these reviews appears to provide reasonable assurance that OTS remains informed about the performance of many of its grant recipients.

The federal government also appears to be satisfied with OTS’s monitoring efforts. Specifically, a 2010 review conducted by NHTSA commended OTS for its grant monitoring process. During this review, NHTSA evaluated OTS’s oversight activities during a three-year period and focused on the adequacy of its program and financial management, organizational staffing, and policies and procedures as they relate to its highway safety program. In its previous 2006 management review, NHTSA recommended that OTS improve its grant monitoring policies. The 2010 review found that OTS had amended its policies, leading to an increase in the number of grantees it monitored. For example, NHTSA reported that OTS conducted 28 performance reviews of its grantees in 2005, which increased to 132 in 2008.

OTS had completed reviews for 115 out of 141 (82 percent) of state and local agencies receiving federal grants in excess of \$100,000.

By receiving quarterly reports that discuss how many checkpoints have been performed and when, OTS is in a better position to ensure that grantees remain on track to accomplish the expected number of checkpoints in their grant periods.

OTS also receives Quarterly Performance Reports (quarterly reports) informing it of grantee progress in meeting the objectives outlined in their grant agreements. The quarterly reports provide OTS with the grantees' perspectives on the accomplishments achieved and reveal problems that require resolution. Following a general overview of grant accomplishments, grantees provide an update on their progress relative to each specific objective in their grant agreement. For example, the Palm Springs Police Department's quarterly report for July through September 2010 addressed the requirement that it conduct four checkpoints during the grant period from October 2009 through September 2010. The quarterly report explained that it had completed three of these checkpoints between October and December 2009, while completing the remaining checkpoint in January 2010. By receiving quarterly reports that discuss how many checkpoints have been performed and when, OTS is in a better position to ensure that grantees remain on track to accomplish the expected number of checkpoints in their grant periods. During our review, we also examined 10 quarterly reports to assess whether OTS should have responded to potential problems with grantee performance. Our review did not find any instances in which grant recipients identified problems in their quarterly reports requiring a response from OTS.

OTS also contracts with the Department of Finance (Finance) to conduct audits of grantees selected by OTS. The purpose of these audits is to determine whether grantees are complying with relevant laws, regulations, and grant agreement requirements. Finance issues findings that are then followed up by OTS to ensure that the grantee has adequately addressed the problems identified. We reviewed 10 of 33 audits issued between December 2007 and July 2011 and found that OTS followed up on the findings that Finance reported. For example, in an audit issued in October 2009, Finance found that the Judicial Council had claimed \$4,710 in ineligible costs and recommended that it reimburse OTS. OTS then followed up to confirm that it received those funds.

Although Not Required to Ensure Grantees Follow Supreme Court Guidelines When Operating Checkpoints, OTS Does Conduct Limited Monitoring

OTS's mission is to effectively and efficiently administer traffic safety grant funds to reduce traffic deaths, injuries, and economic losses. Because funding for OTS's grant activities comes from the federal government, OTS has a responsibility to ensure that its grant recipients comply with federal requirements. As described in the Introduction, no federal statutes or regulations define how law enforcement should operate checkpoints; therefore, we did

not expect OTS to systematically monitor whether its grantees comply with the guidelines established by the California Supreme Court's decision in *Ingersoll v. Palmer* (Ingersoll guidelines). In fact, OTS does not explicitly refer to these guidelines in agreements with its grantees. Nevertheless, our review found that OTS does perform some limited and informal monitoring of its grantees' compliance with the Ingersoll guidelines. According to OTS, the results of these reviews and a survey of law enforcement suggest that the court's checkpoint guidelines are being followed.

Although it does not have a formal process to evaluate its grantees' compliance with the Ingersoll guidelines—such as procedures and checklists documenting what was assessed and the conclusions reached—OTS uses two retired police officers (law enforcement liaisons) to witness grant recipients' execution of checkpoints and to report their findings to the OTS director. According to the director, a law enforcement liaison first visited checkpoints in 2008 as part of his grantee outreach duties, but these initial visits were not recorded in a written narrative as were later visits. One of the law enforcement liaisons we spoke with indicated that he visited at least 24 checkpoints between January 2007 and September 2011. The other law enforcement liaison asserted that he visited nine checkpoints during the one-year period between September 2010 and 2011. According to the liaisons, they selected checkpoints based on the liaison's availability and the checkpoint's time and location.

While there is no formal process for conducting the site visits, one of the liaisons stated that he speaks with the checkpoint's supervising officer to discuss the operation and to review the Ingersoll guidelines. The liaison also stated that he asks how the location was selected and observes the checkpoint for two to three hours, watching officers stop vehicles and noting the overall checkpoint operation.

Both law enforcement liaisons stated that they now write narratives of their experiences for submission to the OTS director. Our review of one report from a checkpoint conducted in May 2011 found that it discussed some, but not all, of the Ingersoll guidelines. For example, the narrative explained the local law enforcement agency's press release procedure before setting up the checkpoint as well as the use of lighting and signage, but it did not mention the screening formula for vehicles or indicate how the law enforcement agency selected the checkpoint's location.

According to the OTS director, these monitoring visits tend to add value by helping agencies enhance their checkpoint operations. When explaining what issues he has observed during his reviews, one law enforcement liaison explained that he typically makes minor recommendations such as advising and helping law enforcement to

OTS uses two retired police officers to witness grant recipients' execution of checkpoints and to report their findings to the OTS director.

adjust their lighting equipment, warning signs, and the placement of their police vehicles. Aside from these recommendations, the law enforcement liaison explained that he also notes any equipment needs the law enforcement agency might have and passes along this information to OTS management. The OTS director stated that the law enforcement liaisons have not reported finding any major issues during a checkpoint-monitoring visit and have found that all agencies they visited are following the Ingersoll guidelines.

According to the OTS director, there is no evidence that law enforcement is not following the Ingersoll guidelines. Specifically, the OTS director cited the results of two surveys: one, a 2011 survey of 19 district attorney offices conducted by the California District Attorney's Association at the request of OTS, and a second of 276 law enforcement entities conducted by the University of California at Berkeley's Safe Transportation Research and Education Center (SafeTREC). In the SafeTREC survey, which is discussed later in this report, only 10 of the 276 law enforcement entities—roughly 3.6 percent—reported that they lost the ability to present evidence obtained from a DUI arrest at an OTS-funded checkpoint. The 19 respondents to the district attorney's office survey reported that they infrequently lose the ability to present evidence obtained at checkpoints. The director also stated that OTS has conducted its own monitoring visits with 10 percent of all grantees funded to conduct checkpoints and found 100 percent compliance with the Ingersoll guidelines. As previously noted, the narrative report submitted by a liaison that we reviewed did not demonstrate that all of the Ingersoll guidelines were examined. Nevertheless, the results of the Berkeley survey indicates that evidence obtained from checkpoints is seldom successfully challenged, which tends to support the OTS director's point of view.

OTS requires that grantees issue advance notification to the public before conducting a checkpoint, but OTS does not monitor grantees to ensure that this notice occurs.

In addition to informal checkpoint monitoring, OTS requires that grantees issue advance notification to the public before conducting a checkpoint, but OTS does not monitor grantees to ensure that this notice occurs. The standard OTS grant agreement includes a provision that grantees issue a press release before conducting each checkpoint. OTS also requests that grantees include a copy of the press release in their quarterly reports. The OTS assistant director of operations explained that there is no federal or state requirement that grantees must submit a press release before conducting a checkpoint. Nevertheless, OTS believes that requiring a grantee to issue a press release adds to the checkpoint's visibility and its overall deterrent effect. Therefore, OTS includes a provision in its grant agreement to encourage this practice. However, the assistant director of operations believes it would be overly burdensome to monitor whether every checkpoint has a corresponding press release when there is no federal or state requirement that OTS do so and when newspapers may not print each announcement.

A Review of Documentation From Five Checkpoints Found Law Enforcement Agencies Complied With the Observable Ingersoll Guidelines

Although we were unable to observe the checkpoints as they happened, we reviewed the documentation related to five checkpoints conducted by different law enforcement agencies in 2010. Each checkpoint could reasonably demonstrate compliance with the Ingersoll guidelines, as shown in Table 5 on the following page. For example, each law enforcement agency provided a checkpoint-planning document demonstrating that it had placed limits on the discretion of field officers by following a neutral formula for screening vehicles, as specified in the second Ingersoll guideline. At the Oakland Police Department checkpoint, for instance, the commanding officer initially directed every fifth car for screening but retained discretion to alter intervals based on traffic flow, directing more vehicles for screening during low traffic periods. We noted that as the checkpoint progressed, the Oakland Police Department periodically changed the interval to every third car or every 10th car.

In addition to recommending that law enforcement follow a neutral formula for screening vehicles, the Ingersoll guidelines also discuss how law enforcement should exercise good judgment in setting the times and durations of their checkpoints. Although the California Supreme Court stated that no hard-and-fast rules could be established, law enforcement should consider both the effectiveness of the checkpoint operation and the safety of motorists. Our review of the five checkpoints found that law enforcement exercised good judgment based on the other areas evaluated in Table 5. Specifically, we found that law enforcement demonstrated awareness of the effectiveness of the operation by locating checkpoints in areas it believed had histories of collisions or alcohol-related offenses. For example, the Folsom checkpoint occurred at a location with eight DUI arrests and 24 accidents (two of which were alcohol-related) between July 1, 2005, and July 1, 2010. The Fresno Police Department chose for its checkpoint a location around which 17 DUI arrests occurred between January 1, 2007, and March 20, 2010. The five checkpoints also contemplated motorist safety by considering factors such as signage and by changing vehicle-screening intervals to avoid traffic tie-ups. In its checkpoint planning document, for example, the Folsom Police Department instructed officers to set out safety cones and signs and established that all vehicles would be screened unless traffic delays or other circumstances required the screening patterns to be altered.

Although the California Supreme Court stated that no hard-and-fast rules could be established regarding the times and duration of checkpoints, law enforcement should consider both the effectiveness of the checkpoint operation and the safety of motorists.

Table 5
Review of Law Enforcement Compliance With the Supreme Court of California’s *Ingersoll v. Palmer* Guidelines for Sobriety Checkpoints

INGERSOLL V. PALMER GUIDELINES	AGENCY CONDUCTING SOBRIETY CHECKPOINT					EXAMPLE OF DOCUMENTATION EXAMINED
	FOLSOM POLICE DEPARTMENT	SAN DIEGO COUNTY SHERIFF’S OFFICE	FRESNO POLICE DEPARTMENT	OAKLAND POLICE DEPARTMENT	LOS ANGELES POLICE DEPARTMENT	
1. Decision making at the supervisory level	✓	✓	✓	✓	✓	Law enforcement provided planning documents, after-action reports, or other material demonstrating that supervisory personnel were responsible for administering the sobriety checkpoint (checkpoint).
2. Limits on discretion of field officers	✓	✓	✓	✓	✓	Law enforcement provided planning documents, checkpoint vehicle logs, or other material specifying the use of a neutral formula.
3. Maintenance of safety conditions	✓	✓	✓	✓	✓	Although we did not witness checkpoint operations, law enforcement provided planning documents, after-action reports, or other materials indicating the use of warning signs, adequate lighting, and clearly identifiable official law enforcement vehicles.
4. Reasonable location	✓	✓	✓	✓	✓	Law enforcement provided statistics or a narrative explaining their rationale for choosing the location of the checkpoint because it was generally in an area with a history of alcohol-related arrests or collisions.
5. Time and duration	✓	✓	✓	✓	✓	The guidelines resulting from <i>Ingersoll v. Palmer</i> do not establish hard-and-fast rules for the timing or duration of checkpoints, other than law enforcement is expected to use good judgment while considering the effectiveness of the checkpoint and motorist safety. In our opinion, each entity exercised reasonable judgment.
6. Official nature of roadblock	✓	✓	✓	✓	✓	Law enforcement provided planning documents or after-action reports describing the use of official police vehicles and/or uniformed officers during the checkpoint.
7. Length and nature of detention	✓	✓	✓	✓	✓	Law enforcement provided policies, planning documents, or after-action reports that generally demonstrated an awareness of the need to limit how long drivers were stopped.
8. Advance publicity*	✓	✓	✓	✓	✓	Law enforcement provided us with evidence that it notified the press in advance, such as through e-mails or press releases, about the checkpoint.

Sources: Documents and interviews from the Folsom, Los Angeles, Fresno, and Oakland Police Departments and the San Diego County Sheriff’s Department.

✓ = Checkpoint met the requirements for this characteristic based on interviews or other documentation received from law enforcement agency.

* The Supreme Court of California ruled this characteristic unnecessary for a constitutionally valid checkpoint in *People v. Banks*.

While not necessary for a constitutionally valid checkpoint under *People v. Banks*, the eighth Ingersoll guideline—issuing a press release before conducting the checkpoint—was met by all five checkpoints we reviewed. All five law enforcement agencies supplied copies of the press releases, which gave a specific date and time the checkpoint would begin and were somewhat general about the exact location of the checkpoint. Although the content of the press releases remained consistent, the timetables for issuing the notices varied. For example, the Oakland Police Department released its press notification one week prior to conducting the checkpoint, while Fresno issued its press notification the day the checkpoint was scheduled.

Checkpoints Often Resulted in More Citations for Nonalcohol-Related Offenses Than for Alcohol-Related Offenses, and Many Citations Resulted in Vehicles Being Towed

The data collected from our review of five OTS-funded checkpoints revealed that these checkpoints resulted in more citations being issued for offenses related to driver's licenses than were issued for offenses related to alcohol. As shown in Table 6 on the following page, at the five checkpoints we reviewed, the law enforcement agencies issued a total of 177 citations, but only 13 were drinking-and-driving related. Although most citations issued at the five checkpoints were related to driver's license violations, such as citations for unlicensed driving or for driving with a suspended or revoked license, we found no indication that these checkpoints were conducted inappropriately. Checkpoints have also been shown to be an effective deterrent in reducing impaired driving. For example, in a February 2011 publication prepared by the University of North Carolina's Highway Safety Research Center and distributed by NHTSA, checkpoints were identified among the most effective countermeasures to address alcohol-impaired driving. The publication cited the results of various studies from 2002, 2008, and 2009 indicating that checkpoints can result in a roughly 10 percent to 20 percent reduction in alcohol-related crashes and fatalities.

Using checkpoints to screen for improperly licensed drivers may also have a public safety benefit. According to guidance from the Attorney General's Office in 1997, using checkpoints to also check for driver's license violations is constitutionally permissible and is an effective traffic enforcement tool. Statistics published by NHTSA in December 2009 found that 21 percent of the fatal crashes in California occurring between 1997 and 2008 involved at least one driver with an invalid license.

At the five checkpoints we reviewed, the law enforcement agencies issued a total of 177 citations, but only 13 were drinking-and-driving related.

Table 6
Statistics for the Five Sobriety Checkpoints Reviewed

LAW ENFORCEMENT AGENCY	DAY OF WEEK/ CHECKPOINT WAS CONDUCTED	NUMBER OF OFFICERS AND PERSONNEL USED AT THE CHECKPOINT	FEE CHARGED TO RELEASE TOWED VEHICLE	NUMBER OF CARS THAT PASSED THROUGH THE CHECKPOINT	NUMBER OF CITATIONS ISSUED			NUMBER OF TOWED VEHICLES			POTENTIAL REVENUE FROM CITATIONS (MINIMUM-MAXIMUM)					
					DRINKING-AND-DRIVING RELATED	UNLICENSED	LICENSE SUSPENDED/REVOKED	TOTAL CITATIONS	DRINKING-AND-DRIVING RELATED	UNLICENSED		LICENSE SUSPENDED/REVOKED	TOTAL TOWS			
1 Folsom Police	Friday 7 p.m. – 3 a.m.	15	\$150	917	2	11	5	4	22	0	9	5	0	14	\$2,100	\$1,805–23,000
2 San Diego County Sheriff's Police	Saturday 8 p.m. – 3 a.m.	21	58	949	0	8	2	5	15	0	5	2	0	7	406	500–12,000
3 Los Angeles Police	Friday 7 p.m. – 1 a.m.	25	100	1,458	4	29	6	1	40	4	29	6	1	40	4,000	3,185–45,000
4 Oakland Police	Thursday 7 p.m. – 5 a.m.	22	250	1,381	2	30	6	29	67	1	20	3	1	25	6,250	2,430–44,000
5 Fresno Police	Saturday 6 p.m. – 4 a.m.	21	184 or 294	348	5	15	12	1	33	5	10	10	1	26	7,534	4,125–44,000
Totals		104	\$52,653	5,053	13	93	31	40	177	10	73	26	3	112	\$20,290	\$12,045–168,000
Percentage of motorists receiving citations at checkpoints					DRINKING-AND-DRIVING RELATED	UNLICENSED	LICENSE SUSPENDED/REVOKED	MISC.	TOTAL CITATIONS							
					0.26% (13 of 5,053)	1.84% (93 of 5,053)	0.61% (31 of 5,053)	0.79% (40 of 5,053)	3.50% (177 of 5,053)							
Percentage of citations resulting in towed vehicles					DRINKING-AND-DRIVING RELATED	UNLICENSED	LICENSE SUSPENDED/REVOKED	MISC.	TOTAL CITATIONS							
					5.65% (10 of 177)	41.24% (73 of 177)	14.69% (26 of 177)	1.69% (3 of 177)	63.28% (112 of 177)							

Sources: California State Auditor's review of selected sobriety checkpoints (checkpoint); Uniform Bail and Penalty Schedule (July 2011)—Judicial Council of California; and the California Vehicle and Penal codes.

Notes: Unless otherwise indicated, the information displayed in the table is based on source documents, such as issued citations and vehicle tow records, that law enforcement agencies were able to provide during the audit and may not represent all activity at the checkpoints shown.

Certain columns in the table are defined below:

- Number of officers and personnel used at each checkpoint**—these counts are based on the personnel whose costs were charged to a grant awarded by the Office of Traffic Safety (OTS) and may not represent all officers or personnel used on the checkpoint.
- Cost of overtime per checkpoint**—personnel costs charged to OTS.
- Vehicle release fee**—amounts law enforcement charges for authorizing the release of towed/impounded vehicles and are separate from additional towing and storage fees tow companies may charge motorists.
- Number of cars that pass through each checkpoint**—counts of vehicles that passed through each checkpoint, not the subset of vehicles actually stopped for screening.
- Drinking-and-driving related**—citations issued and vehicles towed under this category generally pertain to offenses under Section 23152 of the California Vehicle Code (driving under the influence).
- Unlicensed and Suspended/Revoked**—citations issued and vehicles towed under these categories generally pertain to offenses under sections 12500 (failure to hold a valid driver's license) and 14601.1 (driving with a suspended or revoked license) of the California Vehicle Code, respectively.
- Potential revenue from vehicles towed at checkpoints**—derived by multiplying vehicle release fee and number of vehicles towed. Fresno Police Department adds an additional \$110 to its vehicle release fee for alcohol-related offenses and for citations to unlicensed motorists and those with suspended/revoked licenses.
- Potential revenue from citations**—derived by considering minimum and maximum base fines that could be imposed on a first-time offender. Our calculations excluded miscellaneous citations and the additional state and local fees that could be added to the base fine amounts. For simplicity, our calculation assumes that all citations for drinking and driving, unlicensed, and suspended/revoked licenses pertain to violations of sections 23152, 12500, and 14601.1 of the California Vehicle Code, respectively.

In addition, we found that the majority of citations issued for any type of violation at a checkpoint resulted in a towed vehicle. Of the 177 citations issued at the five checkpoints we reviewed, 112 (63 percent) resulted in a towed vehicle. In general, each of the five law enforcement agencies we visited appeared to use discretion when deciding whether to impound a vehicle for either a 30-day period or for a shorter time, even when the cited offense was the same. For example, the Los Angeles Police Department issued 29 citations to unlicensed drivers during a checkpoint and in every case towed the vehicle. However, according to available towing records, officers did not place a 30-day hold on the vehicle in three of these 29 instances. In a checkpoint operated by the San Diego County Sheriff's Department, eight drivers received citations for operating a vehicle without a valid driver's license, but only five of the eight had their vehicles towed, based on available records.

Overall, records indicated that more than half (61 of the 112) of the vehicles towed from the five checkpoints we reviewed had some indication that the car was to be impounded for 30 days. However, available records do not always clearly show how long these 112 cars were actually impounded. In some cases vehicles were released within a few days, regardless of the indicated 30-day impound period. At times, law enforcement provided the registered owner with an opportunity to request a hearing to reduce the duration of the impound. State law also prescribes instances when the 30-day impound period may be reduced.

The frequency with which law enforcement impounds vehicles for 30 days may decrease with the recent passage of Chapter 653, Statutes of 2011 (Assembly Bill 353), which went into effect on January 1, 2012. The new law restricts a law enforcement officer's ability to impound a vehicle at a checkpoint if the driver's only offense is failure to hold a valid driver's license. In such cases, the officer must make a reasonable attempt to identify the vehicle's registered owner in order to release the vehicle to that individual or another licensed driver authorized by the registered owner. The new law does not define what a *reasonable attempt* might entail.

Local Law Enforcement Agencies May Permissibly Use Revenue Generated Through OTS-Funded Checkpoints for Discretionary Purposes

OTS grantees operate checkpoints using federal funds and may use any revenue derived from these checkpoints, such as fines from citations and fees from towing and storing of vehicles, without restriction under federal requirements. Federal regulations encourage recipients of federal funds, such as the State or local

Of the 177 citations issued at five checkpoints, 112 (63 percent) resulted in a towed vehicle and it appeared that each of the five law enforcement agencies used discretion when deciding whether to impound a vehicle.

Of the checkpoints we reviewed, none of the law enforcement agencies tracked fees earned from checkpoint operations separately from other fees and could have charged between \$406 and \$7,534 for authorizing the release of the towed or impounded vehicles.

agencies, to use earned revenue—called program income—to defray the costs of federally supported programs or activities. Federal regulations do exclude certain types of revenue from the definition of program income: governmental revenues raised by the State in the form of taxes, special assessments, levies, or fines are not considered program income unless specified as such by the awarding federal agency. Our correspondence with the deputy regional administrator for NHTSA confirmed that NHTSA does not believe that revenue generated as a result of a police activity, such as fees collected for towing and storage, represent program income. As a result, local law enforcement agencies can collect and use revenue generated from OTS's federally funded checkpoints without federal restrictions.

Of the checkpoints we reviewed, none of the law enforcement agencies tracked fees earned from checkpoint operations separately from fees received during the course of normal enforcement activities. As shown in Table 6 on page 20, law enforcement could have charged between \$406 and \$7,534 for authorizing the release of the towed or impounded vehicles, not including additional towing or storage fees that tow companies might charge motorists. However, it should be noted that law enforcement agencies might not recover these amounts. For instance, some owners may not reclaim their vehicles, thereby avoiding the release fee.

Further, we were unable to determine the exact amount of revenue the five checkpoints collected from issuing citations. State law requires that citation fees be deposited with the county treasurer unless otherwise specified in statute. The county treasurer then splits the amount paid for each citation among various funds, also as specified in statute. Because we did not get information from the county superior courts to determine whether the 177 citations were paid or what the amount paid was for each citation, we could not calculate the citation revenue or its division among the state, county, and local entities. In certain cases courts retain discretion to set citation fee amounts within a range, potentially varying the amounts paid for the same violation. Thus, we can only estimate a potential range of checkpoint revenue, as shown in Table 6.

Administrative Fees Charged by Law Enforcement Agencies for Releasing Impounded Vehicles Vary Across the State

Statewide, law enforcement agencies reported charging different amounts for releasing towed vehicles to the registered owners or their designated agents (release fees). These release fees are in addition to those fees charged by the tow companies. For example, the Folsom Police Department charges a release fee of \$150 and contracts with a tow company that can charge the person retrieving

the vehicle additional amounts, including up to \$180 per hour for towing, \$45 per day for storage, and not more than \$80 to release a vehicle after 5 p.m. or on a weekend.

In 2011 OTS requested that SafeTREC conduct a survey of law enforcement agencies that received OTS funds for checkpoints conducted between October 1, 2007, and September 30, 2010. SafeTREC compiled 276 responses and found that release fees vary widely, from no fees at some law enforcement agencies to \$776 reported by one police department. The survey also found that a minority of respondents collect additional revenue from tow companies beyond release fees from drivers of towed vehicles. This additional revenue included dividing the proceeds from storing and selling impounded vehicles with tow companies. As shown in Table 7, 8 percent of law enforcement agencies responding to the survey reported that they receive a portion of the tow companies' fees for storing a vehicle, and 7 percent receive part of lien sale proceeds.

Table 7
University of California at Berkeley Survey Responses to Vehicle Towing and Storage Fee Questions

SURVEY QUESTIONS	YES	NO	COMMENTS
Does your city or department receive any form of payment or cost recovery from tow companies resulting from tows? If yes, please explain.	19% (53 of 276)	81% (223 of 276)	Seven of the 53 cities or departments answering yes reported that they deposited payments into police department funds and 42 deposited payments into the city's general fund.*
Does your city or department receive any portion of the storage fees that are charged by the tow company? If yes, please explain.	8% (22 of 276)	92% (254 of 276)	Three of the 22 cities or departments answering yes reported that they deposited payments into police department funds and the remaining 19 deposited payments into the city's general fund.
Does your department receive a franchise fee from the tow companies? If yes, please explain.	17% (46 of 276)	83% (230 of 276)	Seven of the 46 departments answering yes reported that they deposited payments into police department funds and the remaining 39 deposited payments in the city's general fund.
Does your city or department receive any portion of the lien sale proceeds? If yes, please explain.	7% (19 of 276)	93% (257 of 276)	Three of the 19 cities or departments answering yes reported that they deposited payments into police department funds, and the remaining 16 deposited payments into the city's general fund.
Does your city or department maintain its own storage yard?	2% (6 of 276)	98% (270 of 276)	NA
Does your city or department maintain its own tow trucks?	1% (1 of 276)	99% (275 of 276)	NA

Source: 2011 Checkpoint Survey Summary Report conducted by the University of California at Berkeley Safe Transportation Research and Education Center for the Office of Traffic Safety.

NA = Not applicable.

* The survey did not specify where the remaining four respondents deposited payments.

Similar to the survey results, our review of five checkpoints found disparities in the range of release fees charged by the law enforcement agencies that operated them. Release fees for towing a vehicle ranged from \$58 in San Diego to \$294 in Fresno. In addition to

charging vehicle release fees, some police departments and cities we reviewed receive other revenue from vehicles impounded at checkpoints. For example, the Los Angeles Police Department collects 7 percent of all gross revenue earned by tow contractors for police-related tows. Similarly, the cities of Oakland and Fresno receive \$40 per towed vehicle as a franchise fee under their tow agreements.

Recommendations

If the Legislature desires to receive periodic information on whether law enforcement agencies comply with existing checkpoint guidelines across the State, it should consider amending state law to require OTS to evaluate and include this information in its annual report. Such an amendment should also require OTS to recommend statutory changes if it identifies widespread problems at checkpoints.

We conducted this audit under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. 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 specified in the scope section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

Date: February 16, 2012

Staff: Grant Parks, Audit Principal
Aaron Fellner, MPP
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Legal Counsel: Scott A. Baxter, JD

For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

(Agency response provided as text only.)

January 24, 2012

Business, Transportation and Housing Agency
980 9th Street, Suite 2450
Sacramento, CA 95814

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

Dear Ms. Howle:

Attached is a response from the Office of Traffic Safety (OTS) to your draft audit report titled "Office of Traffic Safety: Although It Exercises Limited Oversight of Sobriety Checkpoints, Law Enforcement Agencies Have Complied With Applicable Standards" (#2011-110). Thank you for allowing OTS and the Business, Transportation and Housing Agency (BTH) the opportunity to review and respond to the report.

We are pleased to note that there are no adverse findings regarding OTS's administration of the grant program related to the sobriety checkpoints. Further, to echo OTS's comments, we are thankful the BSA acknowledged many of the positive aspects of OTS's sobriety checkpoint program.

If you need additional information regarding OTS's response, please do not hesitate to contact Michael Tritz, BTH Deputy Secretary for Audits and Performance Improvement, at (916) 324-7517.

Sincerely,

(Signed by: Traci Stevens)

TRACI STEVENS
Acting Undersecretary

(Agency response provided as text only.)

January 20, 2012

Office of Traffic Safety
2208 Kausen Drive, Suite 300
Elk Grove, CA 95758

Traci Stevens
Acting Secretary
Business, Transportation and Housing Agency
980 Ninth Street, Suite 2450
Sacramento, CA 95814

Dear Secretary Stevens:

The Office of Traffic Safety (OTS) thanks the Bureau of State Audits (BSA) for the opportunity to review and comment on its draft audit report titled "Office of Traffic Safety: Although It Exercises Limited Oversight of Sobriety Checkpoints, Law Enforcement Agencies Have Complied With Applicable Standards" (#2011-110) issued on January 19, 2012.

At the request of the Joint Legislative Audit Committee, the BSA conducted an audit of OTS and sobriety checkpoints operated by law enforcement agencies with grant funds from OTS. We are pleased to report there were no findings or recommendations directed at OTS.

OTS also thanks the BSA not only for their diligence, thoroughness, and professionalism, but also for recognizing several positive aspects of OTS's sobriety checkpoint program that include:

- OTS has various mechanisms in place to provide reasonable assurance that grantees' claimed costs are justified and that grantees are fulfilling goals and objectives as outlined in their grant agreements.
- OTS is informed about the performance of many of its grant recipients.
- Although not required to ensure grantees follow Supreme Court guidelines when operating checkpoints, OTS does conduct some onsite checkpoint monitoring of its grantees' compliance.
- The federal government also appears to be satisfied with OTS' monitoring efforts as evidenced by the fact that, in 2010, the federal oversight agency, the National Highway Traffic Safety Administration, gave OTS a "commendation" for its grant monitoring process.
- The use of checkpoints to screen for improperly licensed drivers may also have a public safety benefit as suggested by the audit report's citation of guidance from the Office of the California Attorney General in 1997, which stated that using sobriety checkpoints to also check for driver license violations is constitutionally permissible and is an effective traffic enforcement tool.

Further, we are pleased that the BSA's after-the-fact review of five checkpoints found that the law enforcement agencies under review all complied with the observable Supreme Court guidelines.

Secretary Stevens
January 20, 2012
Page 2

Again, we appreciate the opportunity to respond to the draft audit report. If you have any questions or comments, please do not hesitate to contact me at (916) 509-3066.

Sincerely,

(Signed by: Christopher J. Murphy)

CHRISTOPHER J. MURPHY
Director

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