

# DNA Identification Fund

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

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### *The Department of Justice's, State Controller's Office's, and Administrative Office of the Courts' responses as of November 2008*

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

### **Finding #1: Reporting of data on county DNA identification funds needs to improve.**

The DNA act requires the courts to levy a penalty of \$1 for every \$10, or fraction thereof, on all fines, penalties, or forfeitures imposed and collected by the courts for all criminal offenses, including violations of the vehicle code but excluding parking violations (initial DNA penalty). The DNA act also requires each county's board of supervisors to submit an Annual County DNA Identification Fund Report (annual report) to Justice and the Legislature detailing collection and expenditure information related to the initial DNA penalty. Further, the DNA act requires Justice to post data from the annual reports on its Web site. In July 2006 the DNA act was amended to levy an additional DNA penalty on all criminal and vehicle violations except parking violations (additional DNA penalty).

However, state law does not require counties to report collections related to the additional DNA penalty. Consequently, the information the counties report to Justice and the Legislature is incomplete and, as a result, the State cannot be fully assured that the counties are assessing and collecting all required DNA penalties. Based on our review of records maintained by the State Controller's Office (state controller), counties transferred to the State about \$2.3 million in additional DNA penalties from July 2006, the month the additional penalty became effective, through December 2006, an amount that is not reflected on the Justice Web site. Further, the state controller's records also show that 11 counties did not report transferring any money from the additional DNA penalty to the State for 2006. We contacted each of these counties and were informed by representatives

### **Audit Highlights . . .**

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

- » *State law does not require counties to report collections related to the additional DNA penalty imposed by the July 2006 amendment to the DNA act; therefore, interested parties would not be able to obtain a complete picture of all the DNA penalty money collected and transferred to the State.*
- » *Information available on the Department of Justice's Web site as of June 2007 showed that 22 counties had not transferred any DNA money to the State in 2005 and 24 did not do so in 2006; however, based on the State Controller's Office's records, these counties actually transferred to the State \$1.6 million in 2005 and \$3.8 million in 2006.*
- » *Although there were no significant errors in assessing and distributing DNA penalties at the three counties we reviewed, some weaknesses in the courts' automated case management systems and internal controls resulted in minor errors in the assessment and distribution of DNA penalties.*

of nine of the 11 counties that they combined money they collected from the additional DNA penalty with their collections of the initial DNA penalty rather than identify their collections separately on the documentation sent to the state controller. Moreover, three of the nine counties indicated that they failed to transfer 100 percent of their collections to the State, as required by law. Rather, they only transferred 70 percent, the amount applicable to the initial DNA penalty. Additionally, an official from one county stated that, although the court was assessing and collecting the additional DNA penalty, due to a coding error, the county did not transfer its additional DNA penalty collections to the State until March 2007. Finally, an official from the court in the remaining county acknowledged that it did not begin assessing the additional penalty until September 2007.

Additionally, many counties failed to submit annual reports in 2005 and 2006. In particular, as of June 2007, 22 counties had not submitted the required annual reports to Justice for 2005 and 24 counties had not submitted the reports for 2006. Rather than report that the counties had failed to submit annual reports, the Justice Web site indicated that they had not transferred any DNA fund money to the State. However, based on records from the state controller, all but two counties had transferred certain DNA fund money to the State in 2005, and only one county failed to make the required transfers in 2006. The counties that did not submit annual reports on their 2005 collections actually transferred almost \$1.6 million to the State, and the counties that did not submit reports on their 2006 collections transferred almost \$3.8 million. Because the Justice Web site shows those counties as not transferring any money to the State, anyone attempting to use the data might erroneously conclude that many counties were not assessing any DNA penalties and that the State was not receiving money it was owed.

We recommended that the Legislature consider revising state law to require that counties include in their annual reports information on the additional DNA penalty established by Chapter 69, Statutes of 2006.

We also recommended that the Administrative Office of the Courts (AOC) contact the courts in the counties that did not report transferring to the State any money or only part of the money for the additional DNA penalty to determine whether they are appropriately assessing the penalty. Additionally we recommended that the state controller contact the auditor-controllers in the counties that did not report transferring to the State any money or only part of the money for the additional DNA penalty to ensure that counties and courts correctly assess, collect, and transfer the money to the State.

Finally, because state law requires Justice to make county-reported data available on its Web site, we recommended that Justice take several steps to ensure that data on county DNA fund activities are accurate. We recommended that Justice annually notify counties that they are statutorily required to submit reports on or before April 1 to the Legislature and to contact each county that does not submit an annual report by the deadline. Additionally, we recommended that Justice establish policies and procedures for posting county data on its Web site and clearly indicate on its Web site any county that failed to submit an annual report.

***Legislative Action: Unknown.***

***AOC's Action: Corrective action taken.***

The AOC stated that it is committed to taking immediate, necessary steps to correct issues identified in any audit of the judicial branch. The Administrative Director of the Courts has requested that AOC's internal audit services unit ensure that its audit programs continue to cover the testing of distributions in each of their future audits. However, AOC indicated that with an audit cycle of approximately four years, it is possible that the internal audit services unit may not be able to review implementation of changes in distributions at individual courts in as timely a manner as it would prefer.

Finally, the AOC stated that it provides support to the courts regarding the implementation of new legislation and information about changes in assessments and distributions. This support helps the courts discharge their duties with respect to ensuring that distribution changes are made on an accurate and timely basis.

***State Controller's Action: Corrective action taken.***

The State Controller indicated that it notified the 11 counties identified as not transferring or improperly transferring additional DNA penalty assessments to the State in April 2008. These counties were directed to the State Controller's Web site containing the July 2006 DNA Penalty Assessment Distribution Guidelines. Personnel contact information for the State Controller was also provided should counties require additional assistance. The State Controller also stated that all counties have remitted assessments to the DNA Identification Fund through November 2008. Finally, the State Controller's Division of Audits stated it will continue to monitor county compliance with the DNA Penalty Assessment Distribution Guidelines through its court audit program.

***Justice's Action: Corrective action taken.***

In its 60-day response dated February 8, 2008, Justice stated that it would begin sending out form letters every February to all counties reminding them that the report for the previous year was due. Additionally, Justice stated that if a county had not submitted a report by the April 1<sup>st</sup> due date, a formal reminder letter would be sent on May 1<sup>st</sup>. Also included in this response, Justice submitted its procedures for posting county DNA fund data on its Web site.

In its one-year response, Justice indicated that it sent a formal reminder letter dated May 1, 2008, to 13 counties that had not yet submitted the required report by the April 1, 2008, due date. However, nine of these counties still did not submit the required report. As a result, according to documents provided with its one-year response, Justice's Web site noted that these counties failed to submit an annual report.

**Finding #2: Courts need to improve their methods of ensuring the accuracy of DNA penalty assessments and distributions.**

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

For example, the DNA penalty distributions calculated by the case management system used by the Orange County Superior Court (Orange court) resulted in rounding errors affecting 22 of the 40 cases we reviewed. According to an official of the AOC, the case management system the Orange court uses is a precursor to the case management system that the AOC plans to eventually implement statewide. Additionally, based on a report issued by the Judicial Council of California (Judicial Council), California Superior Court criminal case dispositions totaled more than 6.4 million statewide for fiscal year 2005–06. Not every case disposition—the final outcome of a case, such as a case dismissal or criminal sentencing—results in penalty assessments. Nonetheless, the magnitude of the errors will be greatly increased unless the AOC ensures that the cause of the rounding errors in the precursor system is identified and corrected before it implements the new statewide system. Moreover, when an individual was allowed to make installment payments, the Orange court's case management system did not always distribute the payments according to the priority order established by law.

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

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

**AOC's Responses:*****Orange County's Action: Corrective action taken.***

Although the AOC agreed that the 55 percent error rate we found in our sample was too high, it noted that the impact for each case was minimal, ranging from a 9-cent underpayment to a 1-cent overpayment. Nonetheless, the AOC stated that the Superior Court of Orange County implemented a change to its case management system on July 1, 2008, to address the rounding errors made by the system when it calculates the penalty assessment distribution.

The AOC also stated that the court reviewed approximately 750 funds to determine what the appropriate fund distribution should be and make any corrections needed. The distribution priority review was completed on April 8, 2008.

Finally, the AOC stated that the court and AOC personnel have devoted a significant amount of time to the development of the statewide California Court Case Management System (CCMS). Among the CCMS's many advantages, the one most directly affecting the assessment and distribution processes is the use of one statewide distribution table for all courts. This table will be updated after appropriate reviews of statewide legislation and local ordinance changes. The system will also make it easier to monitor and audit distributions.

***Los Angeles County's Action: Corrective action taken.***

The AOC affirmed that the Superior Court of Los Angeles County has taken steps to ensure that manual coding cashier errors are corrected and that internal controls are strengthened over data entry.

***Sacramento County's Action: Corrective action taken.***

The AOC stated that the Superior Court of Sacramento County has made all the necessary corrections to processes and database systems to properly capture and distribute penalties going forward. Additionally, in May 2008, the court successfully completed the reversal of all affected fees that caused the erroneous transfer.