



A Report
to the
**Board of
Supervisors**

*Maricopa County
Internal Audit
Department*

Ross L. Tate
County Auditor

Internal Audit Report

Constables

*Performance Review of the
Maricopa County Constables*

April ■ 2006

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The **County Auditor** is appointed by the Board of Supervisors. The mission of the Internal Audit Department is to provide objective, accurate and meaningful information about County operations so the Board and management can make informed decisions to better serve County citizens. Internal Audit evaluates the adequacy of the management established internal control environment, the operating environment, related accounting, financial, and operational policies, and reports the results accordingly.

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April 20, 2006

Don Stapley, Chairman, Board of Supervisors
Fulton Brock, Supervisor, District I
Andrew Kunasek, Supervisor, District III
Max Wilson, Supervisor, District IV
Mary Rose Wilcox, Supervisor, District V

We have completed our review of the Maricopa County Constables. This audit was performed in accordance with the annual audit plan approved by the Board of Supervisors. The specific areas reviewed were selected through a formal risk-assessment process.

Highlights of this report include the following:

- Four Constables carry firearms without required training, increasing the Constables' and the County's liability related to a firearm incident
- Constables appear to be generating and collecting appropriate fees
- Constables' MfR data is not being collected and reported

Within this report you will find an executive summary, specific information on the areas reviewed, and the Constables' responses to our recommendations. We have reviewed this information with the Constables and Constable Administration and appreciate the excellent cooperation provided by management and staff. If you have any questions or wish to discuss the information presented in this report, please contact me or Richard Chard at 506-7539.

Sincerely,

A handwritten signature in cursive script that reads "Ross L. Tate".

County Auditor

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Executive Summary

Firearm Training (Page 5)

Four Constables who occasionally carry firearms on duty have not completed Sheriff's firearm training and are not AZ POST certified. Failure to complete the required training could expose Constables to personal civil liability as well as increase the County's liability for a weapons incident. These Constables should complete required training or discontinue carrying firearms.

Constables Activity Logs (Page 8)

Only 8 of 23 Constables completed and filed all required activity logs with the Clerk of the Board of Supervisors and their precinct Justice Court. Failure to maintain activity logs limits public access to the logs and results in non-compliance with a statutory requirement. All Constables should maintain and file copies of their logs with the Clerk of the Board and their respective Justice Courts.

Fee Collection (Page 10)

Appropriate fees are charged by the Constables and Justice Courts, including mileage charges. These fees generate \$1.7 million in revenue annually. The Constables and Constable Administration should consider the effect the new regional locations will have on service and mileage charges and revise fee policy accordingly.

Performance Measure Certification (Page 12)

Our review of Constables Key Results Measures, developed for the Managing for Results (MfR) program, found that the Constables did not provide all necessary data to the Constable Administrator to enable him to accurately report on the measures; there was therefore no performance data to review.

Introduction

Background

Constables are elected officials who serve the County Justice Courts. The County has 23 Justice Courts, with a Constable serving each. In general, persons must be at least 18 years of age, United States citizens, Arizona residents, and be able to speak, read, and write English to be eligible to run for Constable. Constables are elected to four-year terms and their salaries are set by statute based on the number of registered voters in their precincts. The duties and responsibilities of Constables are set forth in the Arizona Revised Statutes.

Constables are responsible to attend to the Justice Courts within their precincts and to execute, serve, and return all processes and notices delivered to them by a Justice of the Peace or other authority. Constables must serve summonses, subpoenas, writs of execution, writs of restitution, writs of replevin, levies, and other court papers within established time limits and legal rules. Constables impact citizens by performing their duties efficiently and timely to assist Justice Courts and by protecting citizens through serving orders of protection and orders prohibiting harassment.

As elected officials, Constables are responsible to the citizens in their precincts. Absent gross neglect of duty or criminal behavior, County administration has limited authority over enforcement of policies, procedures, and statutory requirements. Although the Internal Audit Department has the authority to audit the Constables, the Constables exercise professional and personal discretion regarding any implementation of audit recommendations. Each Constable's constituents ultimately evaluate the Constable's performance, including compliance with County policies, procedures, statutes, and audit recommendations.

Organizational Structure

There are 31 budgeted positions related to the Constables: 23 Constables, 7 Deputy Constables and 1 Constables Administrator. Although each Constable is assigned to a Justice Court precinct, in practice the Constables have developed functional groups that differ from the formal groups. Constables within a functional group share deputies and assist one another during vacation, sick and exceptionally busy periods to ensure all process is served timely.

Revenues & Expenditures

During FY 2005 Constables collected \$1.7 million in revenues and incurred \$1.8 million for expenditures. Constable and Deputy Constable salaries and benefits comprised 86 percent of expenditures, with vehicle expenses comprising 11 percent.

Scope and Methodology

The objectives of this audit were to determine if:

- Constables who carry firearms have received appropriate training or certification
- All appropriate Constable fees are charged and collected
- Controls over the handling of defendant payments are adequate
- Constable activity logs are completed as required by statute
- Managing for Results performance measures are accurately reported

This audit was performed in accordance with generally accepted government auditing standards.

Constables Reported Accomplishments

Maricopa County Constables provided the following information for inclusion in this report.

Reorganization

On March 23, 2005, the Maricopa County Board of Supervisors approved a resolution regarding the organizational alignment of the 23 Constable precincts.

By resolution, the Constables are now organized according to the six Justice Court Co-locations/Regional Court Centers. This reorganization will allow the 23 Constables to be relocated based solely on the newly created Justice Court Co-locations in order to distribute County resources and manpower more efficiently among the six Regional Court Centers.

New Regional Court Center

On September 13, 2005, the new Northeast Regional Court Center was dedicated. Three Constables representing the Northeast Phoenix, Scottsdale, and Northwest Phoenix Justices Courts will be working to serve our citizens at a state-of-the art and regionally-located court center.

New Constable Appointed by Board of Supervisors to Replace the Late Bill Stout

Sadly, Glendale Constable Bill Stout passed away after serving the Glendale citizens for many years. Leonard McCloskey was appointed by the Board of Supervisors on April 20, 2005, and continues to carry out of his duties in an exemplary manner.

Revenue

The 23 Constable Precincts collected \$1,693,111 in revenue for fees related to service of process, enforcement of writs and orders of the Justice Court.

Issue 1 Firearms Training

Summary

Four Constables who occasionally carry firearms on duty have not completed the Sheriff's Office firearm training and are not AZ POST certified. Failure to complete the required training could expose Constables to personal civil liability as well as increase the County's liability for a weapons incident. These Constables should complete required training or discontinue carrying firearms.

Background

In December 2000 the County Attorney's Office issued an opinion stating that Constables should not carry firearms in the course of their duties unless they possess Arizona Peace Officer Standards and Training Board (AZ POST) certification. In response, Maricopa County issued policy A2232, Personal Safety Training, which required all Constables who carry firearms to be certified by the Arizona Peace Officer Standards and Training Board (AZ POST), or complete Personal Safety Training offered by the Sheriff's Office. The Constables' response to the opinion and new policy was mixed because it imposed a higher standard on the Constables than is imposed on the general public (most Arizona residents can carry firearms without special certification or training).

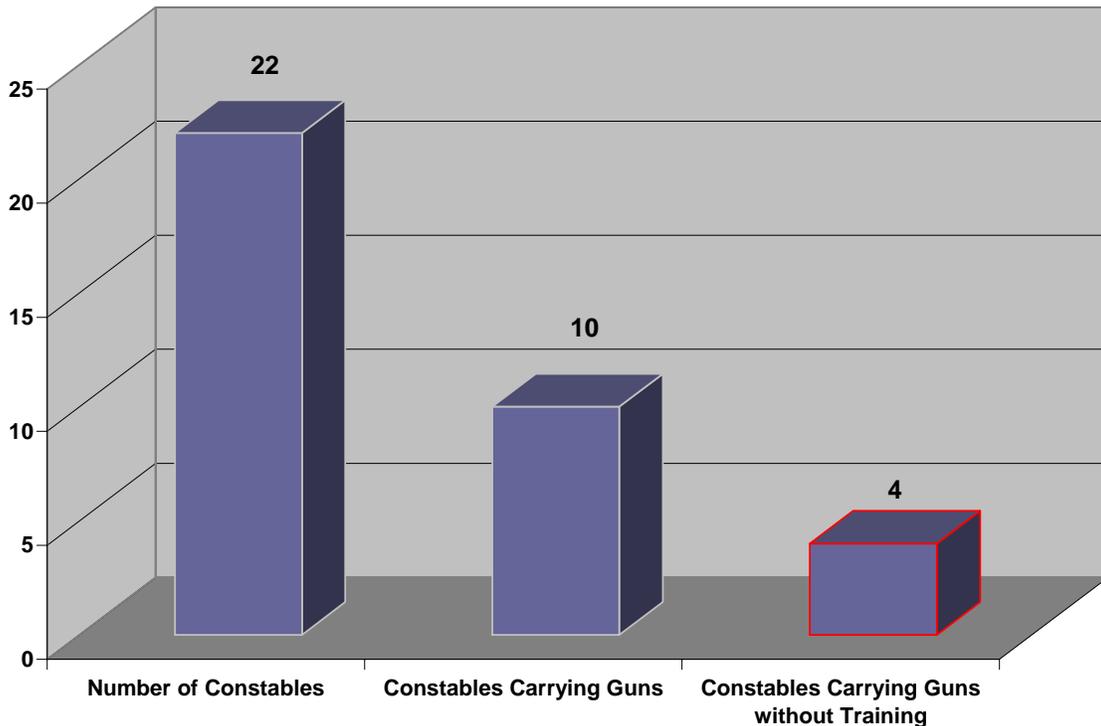
In the course of their duties, Constables sometimes confront volatile individuals and some Constables feel they need to have access to a firearm to defend themselves in extreme situations. However, some Constables feel that the Sheriff's Office firearms training is not appropriate since it is designed for law enforcement personnel; some Constables continue to argue that Constables should have the same privilege as the general public in respect to carrying a firearm.

Risk Management has no record of a Constable incident that involves firearms. However, due to the nature of their work, the possibility of a Constable being involved in a firearms incident still exists. In 1996, a civil action was brought against Harris County, Texas, one Constable, and four Deputy Constables for a firearms incident involving lack of training. The action resulted in a \$5 million judgment against the Deputy Constables in their *official capacity* and was paid out by Harris County. Absent gross negligence or intentional misconduct, officials are typically protected from personal civil liability for acts committed in the course of their duties. However, it is prudent to minimize risk to both the County and its employees.

Review Results

Through interviews with the Constables and other court personnel we determined that 10 of 22 active Constables (one Constable is currently inactive) carry firearms regularly or occasionally. We reviewed those Constables' training and certification records to verify that they were either AZ POST certified or had completed the Sheriff's Office training.

CONSTABLES CARRYING FIREARMS



Of the 10 Constables that carry firearms, 4 are not AZ POST certified and have not completed the Sheriff's Office training. These Constables give the following reasons for not completing training:

- The weapons course portion of the training is not consistent with the Constables scope of duties and work environment
- Adequate weapons training has been received from another source (concealed weapons permit training, training by other Constables, training by family members and long history of firearm use, etc.)
- Firearms carried only occasionally in bad situations and, "Constitutionally it is my right to carry a fire arm."
- Firearms are no longer carried

Recommendation

The Constables identified should complete required training or discontinue carrying firearms.

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Issue 2 Constable Activity Logs

Summary

Only 8 of 23 Constables completed and filed all required activity logs with the Clerk of the Board of Supervisors and their precinct Justice Court. Failure to maintain activity logs limits public access to the logs and results in non-compliance with a statutory requirement. All Constables should maintain and file copies of their logs with the Clerk of the Board and their respective Justice Courts.

Statutory Requirements

ARS 11-445(I) requires each Constable to keep a log of process attempts and include:

- 1) Number of processes attempted to be served, by case number
- 2) Names of the plaintiffs and defendants
- 3) Names and addresses of persons to be served (unless precluded by law)
- 4) Date of process

ARS 11-445(J) requires each Constable to file a copy of this log with the appropriate Justice Court (JC) and the Clerk of the Board of Supervisors (COB).

In addition to being a statutory requirement, maintaining Constable activity logs on file with the COB and the Justice Courts provides information that can be accessed by citizens outside of the Constables' control. This ability could be important if the Constable is unavailable, or if the requestor is involved in a dispute with the Constable.

Findings

Our review of the 22 active (one Constable is inactive) Constables' FY 2005 logs noted that compliance with this requirement varied widely. Although eight Constables completed and filed all required activity logs, several Constables complied with this requirement sporadically, and in one Constable's case, not at all. Individual Constable's performance is shown in the table on the following page.

Several Constables submitted their missing logs to the COB and the Justice Courts after we contacted them. One Constable maintains copies of this paperwork and does not currently keep logs; however he is working to resolve the issue. The remaining Constables did not file copies with COB or the courts because they felt it served no practical purpose. Secondly, we found the majority of Constable logs contained most information required by statute.

**Maricopa County Constables
Percent of Activity Logs
Completed and on File with
Justice Courts and Clerk of the Board**

Precinct	Constable	Percentage of Logs on file with JCs	Percentage of Logs on file with COB
Buckeye	Murel Stephens	0	92
Central Phoenix	Armando Saldate	100	100
Chandler	Kevin Jones	100	100
East Mesa	Bill Taylor	100	75
East Phoenix #1	John Powers	0	83
East Phoenix #2	Annette Clark	Not Active	Not Active
Gila Bend	Billy Joe Spurlock	0	50
Glendale	Lenny McCloskey	100	83
Maryvale	Frank Canez	100	50
North Mesa	Ed Malles	100	50
North Valley	Phil Hazlett	100	100
NE Phoenix	Doug Middleton	75	100
NW Phoenix	Robert Weaver	100	100
Peoria	Ron Myers	100	100
Scottsdale	Frank Outcalt	100	100
S. Mesa / Gilbert	Phil Freestone	83	58
S. Phx	Jimmie Munoz	50	50
Tempe East	Joe Arredondo	100	100
Tempe West	Don Calendar	100	75
Tolleson	Alfredo Gamez	100	100
W. Mesa	Fred Arnett	0	0
W. Phx	Joe Reyes	0	25
Wickenburg	Glenn Gill	0	100

Recommendation

All Constables should file copies of their logs, containing ARS 11-445(I) requirements, with the Clerk of the Board and their respective Justice Court.

Issue 3 Fee Collection

Summary

Appropriate fees are charged by the Constables and Justice Courts, including mileage charges. These fees generate \$1.7 million in revenue annually. The Constables and Constable Administration should consider the effect the new regional locations will have on service and mileage charges and revise fee policy accordingly.

Constables Fees

Fees chargeable in civil actions by Constables are established by ARS 11-445. In general, Constables charge:

- Fees for serving civil process, writs, orders, pleadings, papers, and similar activities
- Fees for performing skip tracing or storing personal property
- Fees for collecting money on a writ of execution
- Mileage charges for each service attempt

Justice Courts are responsible for collecting fees for serving civil process, writs, orders, pleadings or papers, and similar papers at the time of filing. They are also responsible for calculating mileage charges. However, in general, the courts charge the minimum statutory mileage as part of their fee structure.

The Constables perform a cash receipts function for writs of execution. Our review of 381 writs, and review of information provided by the Constables, showed that less than one percent of writs served are writs of execution. This equates to about two writs of execution per year per Constable, and is a very small part of the Constables' function.

Findings

Mileage

Mileage charges total over \$300,000 per year and are a significant revenue stream to the Justice Courts and the County. Our testing showed that the minimum statutory mileage charge of \$16 covers actual trip costs in most cases. In other instances, such as the Buckeye precinct where greater distances are traveled, additional mileage is appropriately charged and collected by Constables to cover County costs.

Currently mileage costs charged and collected are appropriate. To ensure this remains consistent in the future, Constables Administration should establish standard mileage charges that will reflect the new regional locations of the Justice Courts.

Cash Receipts for Writs of Execution

Constables generally collect cash only for writs of execution. For some writs of execution, Constables collect cash, checks, or property from defendants and deliver them to plaintiffs. There is no structure in place for this cash receipts function such as receipt books, written procedures, or training for the Constables. This would be an immediate concern, except that these writs and the accompanying cash receipts occur infrequently; as noted above, only two or three times per year for each Constable.

The County's exposure from a financial standpoint is minimal. From a fiduciary perspective, an instance of inappropriate handling of cash could impact citizen's confidence in County government. Establishing better procedures for writs of execution cash receipts would show due diligence on the part of Constables Administration and may protect the County in the event of lost or missing funds. A possible procedure, since writs of execution occur infrequently, would be to have a Deputy Constable accompany the serving Constable and collect the funds in dual custody.

Recommendations

Constables Administration should consider:

- A. Working with Justice Court Administration to perform an analysis on how the new regional co-location plan will affect mileage fees.
- B. Setting procedures for the collection and distribution of cash receipts related to service of writs of execution.

Issue 4 Performance Measure Certification

Summary

Our review of Constables Key Results Measures, developed for the Managing for Results (MfR) program, found that the Constables did not provide necessary data to the Constable Administrator to enable him to accurately report on the measures; there was therefore no performance data to review.

Results Summary Table

Constables Performance Measures Summary Table	Certified	Certified with Qualifications	Not Certified
1. Percent of Writs of Restitution served within five days of issue			✓
2. Percent of Writs of Execution served within sixty days of issue			✓

County Policy Requirements

Maricopa County Board of Supervisors Policy B6001 (4.D Evaluating Results) requires the Internal Audit Department to review County departments' strategic plans and performance measures. The policy also requires that a report of the results be issued. The following information defines the results categories that are used in the certification process.

Definitions

Certified: The reported performance measurement is accurate (+/-5%) and adequate procedures are in place for collecting/reporting performance data.

Certified with Qualifications: The reported performance measurement is accurate (+/-5%) but procedures are not in place for collecting and reporting performance data.

Not Certified:

- 1) Actual performance is not within five percent of reported performance and/or the error rate of tested documents is greater than five percent.
- 2) Actual performance measurement data could not be verified due to inadequate procedures or insufficient documentation. This rating is used when there is a deviation from the

department's definition, preventing the auditor from accurately determining the performance measure result.

- 3) Actual performance measurement data was accurately calculated but not consistently posted to the public database.

Measure Testing

Key Measure #1: Percent of Writs of Restitution served within five working days of issue

Results: Not Certified

Measure #1	FY03	FY04	FY05 Qtr 1	FY05 Qtr 2	FY05 Qtr 3	FY05 Qtr 4	FY05 TOTAL
Reported	Nothing reported	Nothing reported					Nothing reported
Actual	Data not available for review	Data not available for review					Data not available for review

Measure is not accurate. Data not available for review, no written procedures. The Constables did not provide all necessary data to the Constable Administrator.

Key Measure #2: Percent of Writs of Execution served within sixty days of issue

Results: Not Certified

Measure #2	FY03	FY04	FY05 Qtr 1	FY05 Qtr 2	FY05 Qtr 3	FY05 Qtr 4	FY05 TOTAL
Reported	Nothing reported	Nothing reported					Nothing reported
Actual	Data not available for review	Data not available for review					Data not available for review

Measure is not accurate. Data not available for review, no written procedures. The Constables did not provide all necessary data to the Constable Administrator.

Goals

The Constables' stated Strategic Goals and related comments as shown in the FY 2005 – 06 Final Budget are as follows:

- By calendar year end 2006, all Writs of Restitution shall be served within 5 business days of issuance from the court. Status: Constables fully expect to attain this goal.
- By calendar year end 2006, all Writs of Execution shall be served within 60 working days of issuance from the court. Status: By more evenly assigning Deputy Constables, the Constables intend to meet this goal.
- By the end of FY 2006, all citizen concerns and complaints will be resolved within 3 days of receipt. Status: Constables intend to meet this goal.

The two key measures we reviewed directly relate to the first two published goals. We understand that the department is comprised of 23 elected officials who rely on the Constable Coordinator to streamline the business aspects of this mandated enterprise. In the interest of accountability to citizens and justifying budget requests we submit the following recommendations.

Recommendations

The Maricopa County Constables and the Constables Administrator should:

- A. Report key measure data in a regular and timely manner as prescribed by County MfR policy (B6001).
- B. Establish and follow written procedures for the collection, review, and reporting of performance data.
- C. Establish control mechanisms to ensure the quality of performance data.

Constables Response

AUDIT RESPONSE
Maricopa County Constables – February 23, 2006

Issue 1- Firearms Training

Four Constables who occasionally carry firearms on duty have not completed Sheriff's firearm training and are not AZ POST certified. These Constables should complete required training or discontinue carrying firearms.

Response: Concur.

The 23 Constables are aware of the Maricopa County policy regarding the carrying of firearms while on duty. They are also aware of the civil responsibility and risks that accompany this practice.

Several Constables feel that it is their decision whether to carry weapons and that they have a right to protect themselves as any other citizen can.

Some Constables feel that the required Sheriff's Office training does not fulfill the Constable needs, or is technically beyond what is needed. i.e.: baton training, arrest procedures, felony car stops etc. They believe that the posse academy is aimed at law enforcement skills rather than defensive weapons training.

Constable Leonard McCloskey has just completed the Sheriff's office training.

Target Completion Date: 2/25/07

Benefits/Costs

Adherence to this policy will insure the safety of the Constables and the citizens they serve. It will also reduce the exposure to civil liability and negative publicity of Maricopa County and its Constables. There is no budgetary cost to this program

Issue 2 – Constable Activity Logs

Only 8 of 23 Constables completed and filed all required activity logs with the Clerk of the Board of Supervisors and their precinct Justice Court. All Constables should maintain and file copies of their logs with the Clerk of the Board and their respective Justice Courts

Response: Concur.

All Constables are aware of their statutory responsibilities as to the filling of logs. After publication of the "draft" Audit Report, several Constables have stated that they are in the process of compiling and submitting their required logs.

Constable Leonard McCloskey has noted that logs for his initial month in Office were deficient due to his recent appointment and the time needed to learn the requirements of his office.

Constable John Powers is noted in the report as not having his logs on file with the Chief Clerk of his Justice Court. He states that all of his logs are kept in his office at the court under mutual agreement with the Chief Clerk. Constable Powers also stated that he has sent all of his logs to the Clerk of the Court as required.

Target Completion Date: 2/25/07

Benefits/Costs

The submissions of Constable Logs is mandated by state statute. The Constables are responsible for this task. The adherence to the laws of the State of Arizona strengthens the public trust of elected officials. There is no cost factors related to this requirement.

Issue 3A - Fee Collection

Appropriate fees are charged by the Constables and Justice Courts, including mileage charges. Constables and Constables Administrations should consider the effect the new regional locations will have on service and mileage charges and revise fee policy accordingly.

Response: Concur

The Constables met with Justice Court Administration on February 14, 2006. The subject of additional mileage fees was discussed as well as several possible courses of action to be taken. The Constables and Justice Court Administration agree that a procedure will be needed to insure the proper collection of fees.

- The justice court staff will continue to collect fees on behalf of the Constables as long as the responsibility for assessing and policing the correct mileage amount is born by them and those who are filing. This will be done by the requesting party attaching a "map quest" or equivalent report along with the proper fees. The Constable in each precinct will "police" the amounts that are reflected on the paperwork. If incorrect the Constable will be responsible for notifying the party and directing them how they can perfect the filing.
- In the regional centers a PC will be installed in the self help/lobby area for "map quest" calculations with printout capabilities.
- The court will change all hand out materials and web information regarding fees.
- The Constables may see a legislative change requiring a flat fee to simplify the procedures.

Target Completion Date: Pending

Benefits/Costs

The costs for formalizing a standardized fee collection procedure will be minimal.

Issue 3B – Cash Receipts for Writs of Execution:

There is no structure in place for cash collected for writs of execution, such as receipt books, written procedures, or training for Constables. Although the County's exposure to financial risk is minimal because processing writs of execution occurs infrequently, better procedures for processing writs of execution should be established to demonstrate due diligence on the part of Constables in the event of lost or missing funds.

Response: Concur

The audit additionally notes that Constables should have a policy and procedure with regards to the issuance of receipts when a Constable collects cash or valuables from defendants. Some, if not most, Constables do possess some type of receipt book or procedure to document the acceptance of cash or valuables. The Constable Policy and Procedure manual does address this issue. *“The defendant shall be given a receipt for all seized property and the property must be held in a secure place”.*

As a result of this audit, a standardized receipt book will be issued to each Constable and a more definitive procedure will be developed to insure precise accountability.

Target Completion Date: 5/01/07

Benefits/Costs

The Constables have a fiduciary responsibility to insure that all funds are handled and deposited according to the policies of Maricopa County. A standardized receipt system will insure that all funds are accounted for. The cost factor for implementing a receipt procedure will be minimal.

Issue 4 Fee –Performance Measure Certification

Our review of Constables Key Results Measures, developed for the Managing for Results (MfR) program, found that the Constables did not provide necessary data to the Constable Administrator to enable him to accurately report on the measures; there was therefore no performance data to review.

Response: Concur

Subsequent to this audit the Constable Administration has updated activity performance measures. Constable Administration has updated the Fiscal Year 05-06 MFR data.

Some data required for performance measures was non-existent, difficult or impractical to collect. For example:

Key measure # 2 Percent of Writs of Execution served within sixty days of issue.
Each Constable completes a writ of execution only a few times a year. These are rather lengthy processes to which no realistic time line could be established. It was a measure that did not accurately account for Constable activity.

There is a system in place where data sheets were to be completed each month indicating in raw numbers the various activities performed by the Constables and Deputies. There was some compliance but most Constables did not submit the data sheets with any consistency.

Constable Administration is now using other sources for data to extrapolate meaningful measures.

Constable Administration will be working with OMB to develop meaningful measures which can be based upon attainable stats.

Target Completion Date: 2/25/07

Benefits/Costs

The collection and processing of MFR data will aid Maricopa County and the Constable Department in future expansion and budgetary decisions. The cost factor for participating in this program is minimal.

Approved By:



David Alster
Constable Department Administrator

4-5-06

Date



Chris Pinuelas
Executive Manager, CAO

4-5-06

Date



David Smith
County Administrative Officer

4/2/06

Date