

**ITEM 7**  
**PROPOSED STATEMENT OF DECISION**  
**AND**  
**PARAMETERS AND GUIDELINES**

Penal Code Sections 290.05, 290.06, 290.07, 1202.8, 1203, 1203c, and 1203e  
Statutes 2006, Chapter 336 (SB 1178); Statutes 2006, Chapter 337 (SB 1128); Statutes 2006,  
Chapter 886 (AB 1849); Statutes 2007, Chapter 579 (SB 172)  
California Department of Mental Health's Executive Order, State Authorized Risk Assessment  
Tool for Sex Offenders Review Committee Notification, issued on February 1, 2008

*State Authorized Risk Assessment Tool for Sex Offenders (SARATSO)*  
08-TC-03

County of Los Angeles, Claimant

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**EXECUTIVE SUMMARY**

The following is the proposed statement of decision for this matter prepared pursuant to section 1188.1 of the Commission on State Mandates' (Commission's) regulations. As of January 1, 2011, Commission hearings on the adoption of proposed parameters and guidelines are conducted under article 7 of the Commission's regulations.<sup>1</sup> Article 7 hearings are quasi-judicial hearings. The Commission is required to adopt a decision that is correct as a matter of law and based on substantial evidence in the record.<sup>2</sup> Oral or written testimony is offered under oath or affirmation in article 7 hearings.<sup>3</sup>

**I. SUMMARY OF THE MANDATE**

These proposed parameters and guidelines pertain to the *State Authorized Risk Assessment Tool for Sex Offenders (SARATSO)* test claim, adopted January 24, 2014. Based on the filing date of the test claim, the period of reimbursement begins on July 1, 2007, or later for specified activities added by subsequent statutes or executive orders.

The test claim statutes and alleged executive order impose a reimbursable state mandated program for county probation departments and authorized local law enforcement agencies to perform the following activities: (1) designate persons within their organization to attend SARATSO training, and to train others within their organization, as specified; and (2) ensure that persons administering the SARATSO receive training no less than every two years. In addition, the test claim statutes impose a reimbursable state-mandated program for county probation departments to (1) perform SARATSO evaluations and include the results of those evaluations in presentencing reports, as specified; (2) compile a Facts of Offense Sheet, including the

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<sup>1</sup> California Code of Regulations, Title 2, section 1187.

<sup>2</sup> Government Code section 17559(b); California Code of Regulations, Title 2, 1187.5.

<sup>3</sup> *Ibid.*

SARATSO results, and send the Facts of Offense Sheet to the Department of Justice Sex Offender Tracking Program within 30 days of a person's sex offense conviction; (3) report to the Corrections Standards Authority on the effectiveness of continuous electronic monitoring at every two years; and (4) grant access to all relevant records pertaining to a sex offender to any person authorized to administer the SARATSO, as specified.

## **II. PROCEDURAL HISTORY**

The statement of decision on this test claim was adopted on January 24, 2014. Draft expedited parameters and guidelines were issued on February 2, 2014. On February 14, 2014, the State Controller's Office submitted written comments on the draft expedited parameters and guidelines. No other comments have been received.

## **III. DISCUSSION**

### **A. Period of Reimbursement (Section III. of Proposed Parameters and Guidelines)**

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The County of Los Angeles filed the test claim on January 22, 2009, establishing eligibility for reimbursement for the 2007-2008 fiscal year. Therefore, costs incurred are reimbursable on or after July 1, 2007, or later periods as specified in section IV, Reimbursable Activities, for statutes or executive orders effective after July 1, 2007.

### **B. Reimbursable Activities (Section IV. of Parameters and Guidelines)**

The activities for which reimbursement is provided under these parameters and guidelines were taken from the test claim statement of decision and issued in the draft expedited parameters and guidelines without substantial analysis. The analysis below will clarify and refine, as necessary, the activities that the Commission approved in the test claim statement of decision.

## **IV. STAFF RECOMMENDATION**

Staff recommends that the Commission adopt the attached proposed statement of decision and proposed parameters and guidelines; and authorize staff to make any non-substantive, technical corrections to these parameters and guidelines following the Commission hearing on this matter.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

**IN RE PARAMETERS AND GUIDELINES:**

Penal Code Sections 290.05, 290.06, 290.07, 1202.8, 1203, 1203c, and 1203e

Statutes 2006, Chapter 336 (SB 1178); Statutes 2006, Chapter 337 (SB 1128); Statutes 2006, Chapter 886 (AB 1849); Statutes 2007, Chapter 579 (SB 172)

Period of reimbursement begins on July 1, 2007 or later for specified activities added by subsequent statutes.

Case No.: 08-TC-03

*State Authorized Risk Assessment Tool for Sex Offenders (SARATSO)*

STATEMENT OF DECISION  
PURSUANT TO GOVERNMENT  
CODE SECTION 17500 ET SEQ.;  
CALIFORNIA CODE OF  
REGULATIONS, TITLE 2, DIVISION 2,  
CHAPTER 2.5, ARTICLE 7

*(Adopted March 28, 2014)*

**STATEMENT OF DECISION**

The Commission on State Mandates (Commission) adopted this statement of decision and parameters and guidelines during a regularly scheduled hearing on March 28, 2014. [Witness list will be included in the final statement of decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the parameters and guidelines and statement of decision by a vote of [Vote count will be included in the final statement of decision].

**I. SUMMARY OF THE MANDATE**

These proposed parameters and guidelines pertain to the *State Authorized Risk Assessment Tool for Sex Offenders (SARATSO)* test claim, adopted January 24, 2014. Based on the filing date of the test claim, the period of reimbursement begins on July 1, 2007 or later for specified activities added by subsequent statutes or executive orders.

The test claim statutes and alleged executive order impose a reimbursable state mandated program for county probation departments and authorized local law enforcement agencies to perform the following activities: (1) designate persons within their organization to attend SARATSO training, and to train others within their organization, as specified; and (2) ensure that persons administering the SARATSO receive training no less than every two years. In addition, the test claim statutes impose a reimbursable state-mandated program for county probation departments to (1) perform SARATSO evaluations and include the results of those evaluations in presentencing reports, as specified; (2) compile a Facts of Offense Sheet, including the SARATSO results, and send the Facts of Offense Sheet to the Department of Justice Sex

Offender Tracking Program within 30 days of a person's sex offense conviction; (3) report to the Corrections Standards Authority on the effectiveness of continuous electronic monitoring at every two years; and (4) grant access to all relevant records pertaining to a sex offender to any person authorized to administer the SARATSO, as specified.

## **II. PROCEDURAL HISTORY**

The statement of decision on this test claim was adopted on January 24, 2014. Draft expedited parameters and guidelines were issued on February 3, 2014. On February 14, 2014, the State Controller's Office (Controller) submitted written comments on the draft expedited parameters and guidelines. No other comments have been received.

## **III. COMMISSION FINDINGS**

### **A. Period of Reimbursement (Section III. of Parameters and Guidelines)**

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The County of Los Angeles filed the test claim on January 22, 2009, establishing eligibility for reimbursement for the 2007-2008 fiscal year. Therefore, costs incurred are reimbursable on or after July 1, 2007, or later periods as specified in section IV, Reimbursable Activities, for statutes or executive orders effective after July 1, 2007.

Based on the foregoing, section III. Period of Reimbursement reflects a reimbursement period beginning July 1, 2007, or later for specified activities added by subsequent statutes.

### **B. Reimbursable Activities (Section IV. of Parameters and Guidelines)**

The reimbursable activities approved in the test claim statement of decision were included in the draft expedited parameters and guidelines without substantial analysis. The analysis below will clarify and refine, as necessary, the activities that the Commission approved in the test claim statement of decision.

#### **1. Training, as approved in the test claim statement of decision, constitutes an ongoing or recurring activity.**

In the test claim statement of decision, the Commission approved reimbursement for training, as expressly required by the test claim statutes, as follows:

Based on the foregoing, the Commission finds that Penal Code section 290.05, as added by Statutes 2006, chapter 337 (SB 1128) and amended by Statutes 2007, chapter 579 (SB 172) requires probation departments and authorized local law enforcement agencies, beginning February 1, 2008 to (1) designate key persons within their organizations to attend training and, as authorized by the department, to train others within their organizations; and (2) ensure that persons administering the SARATSO receive training no less frequently than every two years.<sup>4</sup>

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<sup>4</sup> Exhibit A, Test Claim Statement of Decision, at p. 14.

The activity of ensuring that persons administering the SARATSO receive training no less frequently than every two years is, by its own terms, an ongoing activity. The requirement to “designate key persons...to attend training” appears, by its plain language, to be a one-time activity. However, the Review Committee’s selection of the SARATSO is not permanent, and therefore the training program required under section 290.05 must be periodically updated, and thus the designation of “key persons...to attend training and...to train others” must be approved on an ongoing or recurring basis, as discussed below.

As the Commission found in the test claim statement of decision, section 290.05 expressly provides that “[o]n or before January 1, 2008, the SARATSO Training Committee, in consultation with the Corrections Standards Authority and the Commission on Peace Officer Standards and Training, shall develop a training program for persons authorized by this code to administer the SARATSO, as set forth in Section 290.04.”<sup>5</sup> Section 290.04, in turn, provides for the membership of the SARATSO Review Committee, and provides for an *initial selection* by the Committee of an appropriate risk assessment tool for sex offenders of different populations.<sup>6</sup>

Section 290.04 also provides that the Review Committee “shall periodically evaluate the SARATSO for each specified population,” and adopt or change a selected tool for a specified population by unanimous agreement.<sup>7</sup> Therefore, if the Review Committee determines, based on its periodic evaluation, that the SARATSO established for a given population (for example, adult males) should be changed, or that an appropriate tool is available for a population for which a SARATSO had not previously been established, the Committee shall advise the Governor and the Legislature, and the selected tool shall become the SARATSO for that population. In that event, the training program developed by the SARATSO Training Committee would have to be updated, because section 290.05 requires a training program for persons authorized to “administer the SARATSO *as set forth in Section 290.04.*”<sup>8</sup> In other words, if the SARATSO is modified, or supplemented, or changed, pursuant to section 290.04, the training program for persons authorized to administer “the SARATSO as set forth in Section 290.04” must be modified or updated accordingly. In addition, section 290.05 expressly states that the SARATSO “may be performed...only by persons trained pursuant to this section,”<sup>9</sup> while section 290.06 states that “the SARATSO, as set forth in Section 290.04, shall be administered as follows...”<sup>10</sup>

An update of the training program has indeed occurred, in the manner described, due to at least three occurrences of a SARATSO Review Committee decision to select a new or supplemental risk assessment tool. Penal Code section 290.04, as added by Statutes 2006, chapter 337 (SB

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<sup>5</sup> Penal Code section 290.05 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)).

<sup>6</sup> Penal Code section 290.04(b-d) (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)).

<sup>7</sup> Penal Code section 290.04(e) (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)).

<sup>8</sup> Penal Code section 290.05 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)) [emphasis added].

<sup>9</sup> Penal Code section 290.05 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)).

<sup>10</sup> Penal Code section 290.06 (Stats. 2006, ch. 337 (SB 1128)).

1128), provided that “[c]ommencing January 1, 2007, the SARATSO for adult males required to register as sex offenders shall be the STATIC-99 risk assessment scale.”<sup>11</sup> Section 290.04 then directed the SARATSO Review Committee, on or before January 1, 2008, to determine whether the STATIC-99 “should be supplemented with an actuarial instrument that measures dynamic risk factors” or simply replaced with another assessment tool.<sup>12</sup> In addition, section 290.04 directed the Review Committee to research risk assessment tools for female offenders and juvenile offenders required to register, and determine if an appropriate SARATSO should be selected for those populations.<sup>13</sup> Pursuant to that direction, the Review Committee issued its initial determinations in the SARATSO Review Committee Notification, pled in the test claim as an executive order. The Notification affirmed the use of the STATIC-99 for adult male offenders, and selected the JSORRAT- II for juveniles. The Review Committee Notification announced that training for the STATIC-99 would begin in “Winter/Spring of 2008.”<sup>14</sup>

In 2011, and again in 2013, the Review Committee updated its findings, triggering a requirement to update the training available to law enforcement agencies and probation departments. The Commission takes official notice of three letters addressed to the Governor, and made public by the SARATSO Review Committee, indicating the selection of a new risk assessment instrument. One letter states that the Review Committee “has selected a violence risk assessment instrument for sex offenders.” The letter states that the “LSCMI must be used by sex offender management professionals beginning in 2012 to assess registered sex offenders while they are on probation or parole,” and that this violence risk assessment tool “will supplement the static risk assessment now done in California using the Static-99R.”<sup>15</sup> Another letter states that the Committee “has selected a dynamic risk instrument for use in California beginning in 2012,” and that the “SRA-FV must be used by sex offender management professionals beginning in 2012 to assess registered sex offenders while they are on probation or parole.” This letter states that “[d]ynamic risk assessment will supplement the static risk assessment now done in California using the Static-99R, and will give a better picture of the overall risk of reoffense presented by sex offenders on supervision.”<sup>16</sup> The third letter states that the Committee “has selected a *new dynamic risk assessment instrument* for use in California beginning in 2014.” The letter states

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<sup>11</sup> Penal Code section 290.04(b) (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)).

<sup>12</sup> Penal Code section 290.04(b)(2) (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)).

<sup>13</sup> Penal Code section 290.04(c-e) (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)).

<sup>14</sup> Exhibit X, SARATSO Review Committee Notification, issued February 1, 2008 [excerpted from Test Claim, Volume IV, pp. 262-263].

<sup>15</sup> Exhibit X, 2011 SARATSO Committee Letter to the Governor Regarding Violence Risk Instrument.

<sup>16</sup> Exhibit X, 2011 SARATSO Committee Letter to the Governor Regarding Dynamic Risk Instrument.

that the “STABLE-2007/ACUTE-2007 must be used by sex offender management professionals beginning in 2014 to assess registered sex offenders on probation or parole.”<sup>17</sup>

Each time the SARATSO Review Committee selects a new risk assessment tool, new trainings would be expected to be provided by the State, pursuant to sections 290.04 and 290.05. Accordingly, the web site for the SARATSO Review and Training Committees provides for trainings for the STATIC-99, the JSORRAT-II, the STABLE-2007/ACUTE-2007, and the LS/CMI (Violence Risk). The SARATSO Committee web site states that “[i]n September 2013, the SARATSO Committee adopted a new dynamic risk instrument, the STABLE-2007/ACUTE-2007.” The site goes on to state that “[s]tatewide training will be offered on these tools in winter-spring 2014 for certified treatment providers.” The site further states that “[u]ntil providers obtain such training, the previous dynamic tool, the SRA-FVL, should still be used.”<sup>18</sup> Thus, although there is no clear announcement of a new training program for each new selection of a SARATSO, the Commission finds that training programs are offered on each new SARATSO selected. And, pursuant to the requirements of sections 290.05 and 290.06 that the SARATSO be administered as provided in section 290.04, and that those persons administering the SARATSO be trained no less frequently than every two years, participation in the updated training programs each time a new SARATSO is selected is reasonably necessary to comply with the mandate.

Based on the foregoing, the Commission finds that the training requirements approved for cities, counties, and cities and counties constitute *ongoing* reimbursable activities, as follows:

- A. For county, city, and city and county beginning February 1, 2008 to:
  1. Designate key persons within their organizations to attend training and, as authorized by the department, to train others within their organizations;<sup>19</sup> and
  2. Ensure that persons administering the SARATSO receive training no less frequently than every two years.<sup>20</sup>

*These activities are approved on an ongoing basis, and will be triggered each time the SARATSO Review Committee exercises its discretion to review the SARATSO selected for a given population and adopts a new or additional risk assessment tool, in accordance with Penal Code section 290.04.*

2. **The activity of assessing eligible persons should be listed as two separate activities, for purposes of clarity, in a manner similar to that proposed by the State Controller, but is not limited in time to the period between July 1, 2007, and January 1, 2010.**

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<sup>17</sup> Exhibit X, 2013 SARATSO Committee Letter to the Governor Regarding Dynamic Risk Instrument [emphasis added].

<sup>18</sup> Exhibit X, SARATSO.org Description and Calendar of Trainings, visited February 25, 2014.

<sup>19</sup> Penal Code section 290.05 (added, Stats. 2006, ch. 337 (SB 1128); as amended, Stats. 2007, ch. 579 (SB 172)); and SARATSO Review Committee Notification, issued February 1, 2008.

<sup>20</sup> Ibid.

The test claim statement of decision and the draft expedited parameters and guidelines provided reimbursement for county probation departments to:

Assess, using the SARATSO, as set forth in section 290.04, every eligible person for whom the department prepares a presentencing report pursuant to section 1203 and every eligible person under the department's supervision who was not assessed pursuant to a presentencing report, prior to the termination of probation but no later than January 1, 2010.<sup>21</sup>

The Controller's comments proposed revising that activity to provide for county probation departments to:

a. Assess, using the SARATSO, as set forth in section 290.04, every eligible person for whom the department prepares a presentencing report pursuant to section 1203. (Penal Code section 290.06 (6)).

b. Beginning July 1, 2007 until January 1, 2010: ~~and~~-Assess every eligible person under the department's supervision who was not assessed pursuant to a presentencing report, prior to termination of probation, but no later than January 1, 2010. (Penal Code section 290.06 (7)).<sup>22</sup>

This formulation of the approved activity to assess eligible individuals quite reasonably separates the activities pertaining to assessment into one activity that pertains to current and future offenders, and one activity that pertains to past offenders (those currently under the supervision of a county probation department). However, the Controller's proposed language could be interpreted to provide for reimbursement for assessing offenders currently under supervision to end as of January 1, 2010; ending reimbursement is not supported by the statute, or consistent with the test claim statement of decision, as discussed herein.

The test claim statement of decision followed closely the language of the test claim statute, and approved reimbursement to assess "...every eligible person under the department's supervision who was not assessed pursuant to a presentencing report, prior to the termination of probation but no later than January 1, 2010."<sup>23</sup> However, there is no indication in the test claim statute that the activity of assessing persons under a county probation department's supervision should no longer be required after January 1, 2010; rather, the phrase "no later than January 1, 2010" takes the character of a target or goal for assessing individuals who have already been sentenced to probation and are currently under the supervision of the county probation department. The test claim statute provides, in pertinent part:

(4) Each probation department shall assess every eligible person for whom it prepares a report pursuant to Section 1203.

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<sup>21</sup> Exhibit B, Draft Expedited Parameters and Guidelines, at p. 3. [citing Penal Code section 290.06 (added, Stats. 2006, ch. 337 (SB 1128)).].

<sup>22</sup> Exhibit C, Controller's Comments on Draft Expedited Parameters and Guidelines.

<sup>23</sup> Exhibit A, Test Claim Statement of Decision, at p. 18.



(5) Each probation department shall assess every eligible person under its supervision who was not assessed pursuant to paragraph (4). The assessment shall take place prior to the termination of probation, but no later than January 1, 2010.<sup>24</sup>

The “report pursuant to Section 1203,” as explained in the test claim decision, is a presentencing report, prepared for a sentencing judge after conviction but prior to a sentencing hearing.<sup>25</sup> By requiring each county probation department, beginning “on or before July 1, 2008,” to assess every eligible individual for whom it prepares a presentencing report, section 290.06(a)(4) should capture all current and future sex offenders convicted of one of the specified offenses (every eligible person) *prior to their sentencing*. For sex offenders who have already been sentenced to probation or incarceration, sections 290.06(a)(1-2) require the Department of Corrections and Rehabilitation to assess every eligible person incarcerated in state prison or on parole,<sup>26</sup> and section 290.06(a)(5) requires probation departments to assess persons who are currently under probation supervision “prior to the termination of probation, but no later than January 1, 2010.”<sup>27</sup> The phrase “no later than January 1, 2010,” might be interpreted, as suggested by the Controller, to require assessments of persons currently under probation supervision only until January 1, 2010, but there is no indication in the test claim statute that this activity is meant to end.

Time limits in a statute “are usually deemed to be directory unless the Legislature clearly expresses a contrary intent.”<sup>28</sup> The courts have “expressed a variety of tests” to determine probable intent of time limiting language.<sup>29</sup> The courts may examine what the likely consequences would be of holding a particular limitation mandatory; for example, the mandatory effect of a time limitation may deprive a government agency or a court of the power to act. In other cases the courts have held that a time limitation is “deemed merely directory” unless the statute expressly provides for a consequence or penalty for failure to do the act within the time allotted.<sup>30</sup>

Here, there is no express consequence or penalty for failure to perform the risk assessments within the time allotted, and there is no indication in the plain language that county probation departments would be deprived of authority to perform the SARATSO risk assessments for persons under probation supervision if those assessments are not completed prior to January 1, 2010. Therefore, the time provision of the test claim statute is directory in nature, and

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<sup>24</sup> Section 290.06(a)(4-5) (Stats. 2006, ch. 337(SB 1128)).

<sup>25</sup> Exhibit A, Test Claim Statement of Decision, at p. 17.

<sup>26</sup> Section 290.06(a)(1-2) (Stats. 2006, ch. 337(SB 1128)).

<sup>27</sup> Section 290.06(a)(5) (Stats. 2006, ch. 337(SB 1128)).

<sup>28</sup> *California Correctional Peace Officers Association v. State of California* (1995) 10 Cal.4th 1133, at p. 1145.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

a county probation department remains eligible for reimbursement for SARATSO assessments conducted pursuant to section 290.06(a)(5) after January 1, 2010.

Based on the foregoing analysis, the Commission finds that the Controller's proposed modifications to the approved activity of assessing eligible persons under section 290.06 cannot be accepted exactly as written. The "no later than January 1, 2010" language therefore is omitted from the approved activity, to eliminate the potential for confusion with respect to reimbursement. However, the Commission finds that the Controller's suggestion of separating the two activities required by sections 290.06(a)(4) and 290.06(a)(5) constitutes a reasonable and expedient modification, and therefore the activity will be stated in the parameters and guidelines as follows:

B. For county probation departments only to:

1. Assess eligible individuals, as set forth in section 290.04, as follows:

- a. Assess, using the SARATSO, as set forth in section 290.04, every eligible person for whom the department prepares a presentencing report pursuant to section 1203; and
- b. Assess, using the SARATSO, as set forth in section 290.04, every eligible person under the department's supervision who was not assessed pursuant to a presentencing report, prior to the termination of probation.<sup>31</sup>

3. **All activities related to performing SARATSO assessments, and including the results of SARATSO assessments in presentencing reports or other documentation, are limited in scope and applicability by Penal Code section 290.04 and by subsequent notices issued by the SARATSO Review Committee.**

Section 290.04 provides, in pertinent part,

The purpose of the committee, which shall be staffed by the State Department of Mental Health, shall be to ensure that the SARATSO reflects the most reliable, objective and well-established protocols for predicting sex offender risk of recidivism, has been scientifically validated with multiple cross-validations, and is widely accepted by the courts. The committee shall consult with experts in the fields of risk assessment and the use of actuarial instruments in predicting sex offender risk, sex offending, sex offender treatment, mental health, and law, as it deems appropriate.<sup>32</sup>

As discussed above, section 290.04 requires the Review Committee to "determine whether the STATIC-99 should be supplemented with an actuarial instrument...[or] should be replaced as the SARATSO," and to "research risk assessment tools" for females and juveniles, and to adopt a SARATSO for those populations "[i]f the committee unanimously agrees on an appropriate risk

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<sup>31</sup> Penal Code section 290.06 (added, Stats. 2006, ch. 337 (SB 1128)).

<sup>32</sup> Penal Code section 290.04(a)(2) (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)).

assessment tool.”<sup>33</sup> In addition, section 290.04 provides that “[i]f a SARATSO has not been selected for a given population pursuant to this section, *no duty to administer the SARATSO elsewhere in this code shall apply with respect to that population.*”<sup>34</sup> Therefore, the requirements of sections 290.06, 1203, 1203c, and 1203e, to administer the SARATSO to eligible persons, and to include the results of the SARATSO in the presentencing report, the report prepared for the Department of Corrections and Rehabilitation, and the Facts of Offense Sheet, are each limited by section 290.04, and by the Review Committee’s determinations under section 290.04 that there is or is not an appropriate risk assessment tool for a given population, which have been and shall be periodically issued in the form of a letter to the Governor and the Legislature, as described above.

For example, section 290.06 provides that “[e]ffective on or before July 1, 2008, the SARATSO, *as set forth in Section 290.04*, shall be administered as follows...”<sup>35</sup> The express invocation of section 290.04 makes clear that there is no duty, absent the Review Committee’s determination of an appropriate risk assessment tool, to assess a sex offender who is a member of a particular population. Section 290.06 goes on to require county probation departments to assess *every eligible individual* for whom a presentencing report is prepared under section 1203, and every person under the department’s supervision that was not assessed pursuant to a presentencing report.<sup>36</sup> However, all of the requirements of section 290.06 are limited by the selection of a SARATSO for a given population, pursuant to section 290.04.

Similarly, section 1203 provides that “[i]f the person was convicted of an offense that requires him or her to register as a sex offender pursuant to Section 290, the probation officer’s report shall include the results of the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) administered pursuant to Sections 290.04 to 290.06, inclusive...”<sup>37</sup> Again, the express invocation of sections 290.04 to 290.06, inclusive, makes clear that there is no duty to assess a sex offender who is a member of a population for whom no SARATSO has been selected by the Review Committee.<sup>38</sup>

Accordingly, as discussed above, the test claim statute named the STATIC-99 as the SARATSO for adult males,<sup>39</sup> and directed the Review Committee to consider whether to supplement or

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<sup>33</sup> Penal Code section 290.04(b-d) (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)).

<sup>34</sup> Penal Code section 290.04(a)(1) (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)) [emphasis added].

<sup>35</sup> Penal Code section 290.06 (Stats. 2006, ch. 337, SB 1128)).

<sup>36</sup> Penal Code section 290.06(a)(4-5) (Stats. 2006, ch. 337, SB 1128)).

<sup>37</sup> Penal Code section 1203(b)(2)(C) (Stats. 2006, ch. 337, SB 1128)).

<sup>38</sup> Penal Code section 290.04(a)(1) (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)).

<sup>39</sup> Penal Code section 290.04(b)(1) (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)).

replace the STATIC-99.<sup>40</sup> The test claim statute further directed the Committee, as discussed above, to research risk assessment tools for females and juvenile offenders to determine whether an appropriate SARATSO could be selected.<sup>41</sup> In its 2008 SARATSO Review Committee Notification, the Committee selected a risk assessment tool for juveniles (the JSORRAT-II), but not for females.<sup>42</sup> Therefore, pursuant to section 290.04, no duty to administer the SARATSO “elsewhere in this code shall apply with respect to that population.”<sup>43</sup> Until or unless the Review Committee selects a risk assessment tool for female offenders, no duty to administer the SARATSO shall apply.

Based on the foregoing, the Commission finds that all requirements in the test claim statutes to administer the SARATSO are limited by section 290.04 and by the SARATSO Review Committee Notification, issued February 1, 2008, or later published notices of the Review Committee’s determinations selecting a risk assessment tool for other populations. Therefore, the following language is added to the parameters and guidelines for each activity pertaining to the assessment of eligible persons pursuant to sections 290.04 to 290.06, inclusive:

*This activity is limited by section 290.04 and the SARATSO Review Committee’s determination, issued February 1, 2008, selecting an appropriate risk assessment tool for adult male offenders and juvenile male offenders, or any subsequent published notice of the Review Committee’s determinations selecting a risk assessment tool for other populations.*

#### **IV. CONCLUSION**

For the foregoing reasons, the Commission hereby adopts the attached proposed parameters and guidelines, providing for actual cost reimbursement of the activities approved in the test claim statement of decision, as analyzed above.

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<sup>40</sup> Penal Code section 290.04(b)(2) (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)).

<sup>41</sup> Penal Code section 290.04(c-e) (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)).

<sup>42</sup> Exhibit X, SARATSO Review Committee Notification, issued February 1, 2008.

<sup>43</sup> Penal Code section 290.04(a)(1) (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)).

## **PROPOSED PARAMETERS AND GUIDELINES**

Penal Code Sections 290.05, 290.06, 290.07, 1202.8, 1203, 1203c, and 1203e  
Statutes 2006, Chapter 336 (SB 1178); Statutes 2006, Chapter 337 (SB 1128); Statutes 2006,  
Chapter 886 (AB 1849); Statutes 2007, Chapter 579 (SB 172)  
California Department of Mental Health's Executive Order, State Authorized Risk Assessment  
Tool for Sex Offenders Review Committee Notification, issued on February 1, 2008

### ***State Authorized Risk Assessment Tool for Sex Offenders (SARATSO)*** 08-TC-03

County of Los Angeles, Claimant

Period of reimbursement begins July 1, 2007, or later for specified activities added by  
subsequent statutes or executive order

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## **I. SUMMARY OF MANDATE**

These parameters and guidelines address activities performed by counties and cities relating to the statutory requirement that registered sex offenders shall be subject to an assessment of the offender's risk of recidivism using the *State Authorized Risk Assessment Tool for Sex Offenders*, or SARATSO.

On January 24, 2014, the Commission on State Mandates (Commission) adopted a statement of decision on the *State Authorized Risk Assessment Tool for Sex Offenders (SARATSO)* test claim (08-TC-03) finding that the test claim statutes and executive order impose a reimbursable state mandated program for county probation departments and authorized local law enforcement agencies to perform the following activities: (1) designate persons within their organization to attend SARATSO training, and to train others within their organization, as specified; and (2) ensure that persons administering the SARATSO receive training no less than every two years. In addition, the test claim statutes impose a reimbursable state-mandated program for county probation departments to (1) perform SARATSO evaluations and include the results of those evaluations in presentencing reports, as specified; (2) compile a Facts of Offense Sheet, including the SARATSO results, and send the Facts of Offense Sheet to the Department of Justice Sex Offender Tracking Program within 30 days of a person's sex offense conviction; (3) report to the Corrections Standards Authority on the effectiveness of continuous electronic monitoring at every two years; and (4) grant access to all relevant records pertaining to a sex offender to any person authorized to administer the SARATSO, as specified.

## **II. ELIGIBLE CLAIMANTS**

Any county, city, or city and county that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

### **III. PERIOD OF REIMBURSEMENT**

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The County of Los Angeles filed the test claim on January 22, 2009, establishing eligibility for reimbursement for the 2007-2008 fiscal year. Therefore, costs incurred are reimbursable on or after July 1, 2007, or later periods as specified in section IV, Reimbursable Activities, for statutes or executive orders effective after July 1, 2007.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller (Controller) within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code §17560(b)).
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

### **IV. REIMBURSABLE ACTIVITIES**

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities.

Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant that incurs increased costs, the following *ongoing* activities are reimbursable:

**A. For a county, city, and city and county beginning February 1, 2008 to:**

1. Designate key persons within their organizations to attend training and, as authorized by the department, to train others within their organizations;<sup>1</sup> and
2. Ensure that persons administering the SARATSO receive training no less frequently than every two years.<sup>2</sup>

*These activities are approved on an ongoing basis, and will be triggered each time the SARATSO Review Committee exercises its discretion to review the SARATSO selected for a given population and adopt a new or additional risk assessment tool, in accordance with Penal Code section 290.04.*

**B. For county probation departments only to:**

1. Assess eligible individuals, as set forth in section 290.04, as follows:
  - a. Assess, using the SARATSO, as set forth in section 290.04, every eligible person for whom the department prepares a presentencing report pursuant to section 1203; and
  - b. Assess, using the SARATSO, as set forth in section 290.04, every eligible person under the department's supervision who was not assessed pursuant to a presentencing report, prior to the termination of probation but no later than January 1, 2010.<sup>3</sup>

*This activity is limited by section 290.04 and the SARATSO Review Committee's determination, issued February 1, 2008, selecting an appropriate risk assessment tool for adult male offenders and juvenile male offenders, or any subsequent published notice of the Review Committee's determinations selecting a risk assessment tool for other populations.*

2. Include the results of the SARATSO assessment administered pursuant to sections 290.04 to 290.06 in the presentencing report made to the court pursuant to section 1203, if the person was convicted of an offense that

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<sup>1</sup> Penal Code section 290.05 (added, Stats. 2006, ch. 337 (SB 1128); as amended, Stats. 2007, ch. 579 (SB 172)); and SARATSO Review Committee Notification, issued February 1, 2008.

<sup>2</sup> *Ibid.*

<sup>3</sup> Penal Code section 290.06 (added, Stats. 2006, ch. 337 (SB 1128)).

requires him or her to register as a sex offender, or if the probation report recommends that registration be ordered at sentencing.<sup>4</sup>

*Preparing the presentencing report under section 1203 is not a new activity and, thus, not eligible for reimbursement.*

*This activity is limited by section 290.04 and the SARATSO Review Committee's determination, issued February 1, 2008, selecting an appropriate risk assessment tool for adult male offenders and juvenile male offenders, or any subsequent published notice of the Review Committee's determinations selecting a risk assessment tool for other populations.*

3. Include in the report prepared for the department pursuant to section 1203c the results of the SARATSO, administered pursuant to sections 290.04 to 290.06, inclusive, if applicable, whenever a person is committed to the jurisdiction of the Department of Corrections and Rehabilitation for a conviction of an offense that requires him or her to register as a sex offender.<sup>5</sup>

*Preparing the report under section 1203c is not a new activity and, thus, not eligible for reimbursement.*

*This activity is limited by section 290.04 and the SARATSO Review Committee's determination, issued February 1, 2008, selecting an appropriate risk assessment tool for adult male offenders and juvenile male offenders, or any subsequent published notice of the Review Committee's determinations selecting a risk assessment tool for other populations.*

4. Beginning January 1, 2010:
  - (a) Compile a Facts of Offense Sheet for every person convicted of an offense that requires him or her to register as a sex offender and who is referred to the department pursuant to section 1203;
  - (b) Include in the Facts of Offense Sheet all of the information specified in section 1203e, including the results of the SARATSO, as set forth in section 290.04, if required;
  - (c) Include the Facts of Offense Sheet in the probation officer's report to the court made pursuant to section 1203; and
  - (d) Send a copy of the Facts of Offense Sheet to the Department of Justice Sex Offender Tracking Program within 30 days of the person's sex offense conviction.

*Obtaining information required to complete the presentencing report pursuant to section 1203, as amended by Statutes 1996, chapter 719 (AB 893), or the report to the Department of Corrections and Rehabilitation under section*

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<sup>4</sup> Penal Code section 1203 (as amended, Stats. 2006, ch. 337 (SB 1128)).

<sup>5</sup> Penal Code section 1203c (as amended, Stats. 2006, ch. 337 (SB 1128)).



*1203c if applicable, as amended by Statutes 1963, chapter 1785 is not new or reimbursable under this activity.<sup>6</sup>*

*This activity is limited by section 290.04 and the SARATSO Review Committee's determination, issued February 1, 2008, selecting an appropriate risk assessment tool for adult male offenders and juvenile male offenders, or any subsequent published notice of the Review Committee's determinations selecting a risk assessment tool for other populations.*

5. Beginning January 1, 2009, and every two years thereafter, report to the Corrections Standards Authority all relevant statistics and relevant information regarding the effectiveness of continuous electronic monitoring of sex offenders, including the costs of monitoring and recidivism rates of those persons who have been monitored.<sup>7</sup>
6. Grant access to all relevant records pertaining to a registered sex offender to any person authorized by statute to administer the SARATSO.<sup>8</sup>

*This activity is limited to granting access to records exempt from disclosure under the California Public Records Act. (Gov. Code § 6250, et seq.).*

## **V. CLAIM PREPARATION AND SUBMISSION**

Each of the following cost elements must be identified for each reimbursable activity identified in section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in section IV. Additionally, each reimbursement claim must be filed in a timely manner.

### **A. Direct Cost Reporting**

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

#### **1. Salaries and Benefits**

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

#### **2. Materials and Supplies**

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are

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<sup>6</sup> Penal Code section 1203e (added, Stats. 2006, ch. 337 (SB 1128)).

<sup>7</sup> Penal Code section 1202.8 (as amended, Stats. 2006, ch. 336 (SB 1178); Stats. 2006, ch. 886 (AB 1849)).

<sup>8</sup> Penal Code section 290.07 (added, Stats. 2006, ch. 337 (SB 1128)).

withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

### 3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

### 4. Fixed Assets

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

### 5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1., Salaries and Benefits, for each applicable reimbursable activity.

### 6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1., Salaries and Benefits, and A.2., Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3., Contracted Services.

## B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both: (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in 2 Code of Federal Regulations (CFR), part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using 10 percent of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10 percent.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR, part 225, appendices A and B (OMB Circular A-87 attachments A & B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR, part 225, appendices A and B (OMB Circular A-87 attachments A & B)). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be: (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.); (2) direct salaries and wages; or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 attachments A & B) shall be accomplished by: (1) classifying a department's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 attachments A & B) shall be accomplished by: (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected.

## **VI. RECORD RETENTION**

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in section IV, must be retained during the period subject to audit. If an audit has been initiated by

the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

## **VII. OFFSETTING REVENUES AND REIMBURSEMENTS**

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

## **VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS**

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from these parameters and guidelines and the statements of decision on the test claim and parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute a notice of the right of local agencies to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

## **IX. REMEDIES BEFORE THE COMMISSION**

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.2.

## **X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

The statements of decision adopted for the test claim and parameters and guidelines are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.