

COMMISSION ON STATE MANDATES

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March 10, 2009

Ms. Bonnie Ter Keurst
County of San Bernardino
Auditor/Controller-Recorder, County Clerk
222 W. Hospitality Lane, Fourth Floor
San Bernardino, CA 92415-0018

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

RE: Final Staff Analysis, Proposed Statewide Cost Estimate, and Hearing Date
Mentally Disordered Offenders: Treatment as a Condition of Parole
00-TC-28, 05-TC-06
Penal Code section 2966
Statutes 1985, Chapter 1419; Statutes 1986, Chapter 858;
Statutes 1987, Chapter 687; Statutes 1988, Chapter 658; Statutes 1989,
Chapter 228; Statutes 1994, Chapter 706
County of San Bernardino, Claimant

Dear Ms. Ter Keurst:

The final staff analysis and proposed statewide cost estimate is enclosed.

Hearing

This matter is set for hearing on **Friday, March 27, 2009**, at 9:30 a.m., in Room 447, State Capitol, Sacramento, California. This matter is proposed for the consent calendar. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Please contact Nancy Patton at (916) 323-8217 if you have questions.

Sincerely,

A handwritten signature in cursive script that reads "Paula Higashi".

PAULA HIGASHI
Executive Director

Enclosure

j:mandates/2000/00tc28/sce/fsa

ITEM 13
FINAL STAFF ANALYSIS
STATEWIDE COST ESTIMATE

Penal Code Section 2966

Statutes 1985, Chapter 1419

Statutes 1986, Chapter 858

Statutes 1987, Chapter 687

Statutes 1988, Chapter 658

Statutes 1989, Chapter 228

Statutes 1994, Chapter 706

Mentally Disordered Offenders:
Treatment as a Condition of Parole
00-TC-28, 05-TC-06

County of San Bernardino, Claimant

EXECUTIVE SUMMARY

The proposed statewide cost estimate includes nine fiscal years for a total of **\$4,872,312**. This averages to \$541,368 annually in costs for the state. Following is a breakdown of estimated total costs per fiscal year:

Fiscal Year	Number of Claims Filed with SCO	Estimated Cost
2000-2001	1	\$235,446
2001-2002	1	565,634
2002-2003	1	757,835
2003-2004	1	396,893
2004-2005	1	368,055
2005-2006	1	627,286
2006-2007	1	608,914
2007-2008	N/A	644,840
2008-2009	N/A	667,409
TOTAL	7	4,872,312

Summary of the Mandate

The test claim statutes set forth procedures for civil court hearings that are initiated by a prisoner or parolee who wishes to contest a finding, made at the time of parole that he or she meets the mentally disordered offender criteria, as defined in Penal Code section 2962. Once the petition for civil hearing is filed, the superior court shall conduct such a hearing; the district attorney is required to represent the people; and the public defender is required to represent the petitioner if he or she is indigent.

The Commission on State Mandates (Commission) adopted the Statement of Decision for the *Mentally Disordered Offenders: Treatment as a Condition of Parole* program, finding that Penal

Code section 2966 constitutes a new program or higher level of service and imposes a state-mandated program upon counties within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Statewide Cost Estimate

Staff reviewed the claims data submitted by one county and compiled by the SCO. The actual claims data showed that seven claims were filed between fiscal years 2000-2001 and 2006-2007 for a total of \$3,560,063. Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

Assumptions

1. *The actual amount claimed for reimbursement may increase if late or amended claims are filed.*
2. *An average of 565 prisoners or parolees will continue to request the County of San Bernardino to conduct the civil hearings each year.*
3. *The county that filed reimbursement claims will continue to incur costs over \$1,000 and will continue to file reimbursement claims.*
4. *The total amount of reimbursement for this program may be lower than the statewide cost estimate, because the SCO may reduce any reimbursement claim for this program.*

Methodology

Fiscal Years 2000-2001 through 2006-2007

The proposed statewide cost estimate for fiscal years 2001-2002 through 2006-2007 is completed by totaling the seven unaudited actual reimbursement claims filed with the SCO for these years.

Fiscal Year 2007-2008

Staff estimated fiscal year 2007-2008 costs by multiplying the 2006-2007 estimate by the implicit price deflator for 2007-2008 (5.9%), as forecast by Department of Finance.

Fiscal Year 2008-2009

Staff estimated fiscal year 2008-2009 costs by multiplying the 2007-2008 estimate by the implicit price deflator for 2008-2009 (3.5%), as forecast by Department of Finance.

Staff Recommendation

Staff recommends that the Commission adopt the proposed statewide cost estimate of **\$4,872,312** (\$541,368 in annual costs) for costs incurred in complying with the *Mentally Disordered Offenders: Treatment as a Condition of Parole* program.

STAFF ANALYSIS

Summary of the Mandate

The test claim statutes set forth procedures for civil court hearings that are initiated by a prisoner or parolee who wishes to contest a finding, made at the time of parole that he or she meets the mentally disordered offender criteria, as defined in Penal Code section 2962. Once the petition for civil hearing is filed, the superior court shall conduct such a hearing; the district attorney is required to represent the people; and the public defender is required to represent the petitioner if he or she is indigent.

The Commission on State Mandates (Commission) adopted the Statement of Decision for the *Mentally Disordered Offenders: Treatment as a Condition of Parole* program, finding that Penal Code section 2966 constitutes a new program or higher level of service and imposes a state-mandated program upon counties within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

The claimant filed the test claim on July 5, 2001. The Commission adopted a Statement of Decision on July 28, 2006 and the parameters and guidelines on January 31, 2008. Eligible claimants were required to file initial reimbursement claims with the State Controller's Office (SCO) by August 4, 2008, and late claims by August 4, 2009.

Reimbursable Activities

The Commission approved the following reimbursable activities:

One-time Activity

1. Initial training of employees on policies and procedures for mandated Penal Code section 2966 activities (one time per employee). Training for psychiatrists and psychologists is not reimbursable.

On-going Activities

The following activities conducted by attorneys, investigators, and paralegal and secretarial staff:

2. Review relevant documentation, which includes: the petition appealing the Board of Prison Terms (BPT) decision; the decision of the BPT commissioner and the recording of the BPT hearing with supporting documentation; pertinent prison, parole and medical records; Conditional Release Program records; police and probation reports; criminal histories; the evaluations by CDC, DMH and BPT evaluators; and records of prior MDO proceedings.
3. Prepare and file motions with the Superior Court.
4. Retain necessary experts, investigators, and professionals to prepare for and testify at the civil trial conducted pursuant to Penal Code section 2966.
5. Travel to and from state hospitals, prisons and county jails where detailed medical records and case files are maintained.
6. Travel to and from state hospitals, prisons and county jails by the defense counsel in order to meet with the prisoner client.
7. Transport to and from the court facility, and care, and custody only during the civil hearing of each Penal Code section 2966 petitioner by the County Sheriff's Department. Reimbursement for this activity is limited to incarcerated prisoners that requested Penal Code section 2966 hearings.

8. Prepare and represent the people or the indigent prisoner or parolee in a trial to determine whether or not the petitioner meets the criteria to be committed under Penal Code section 2966.

Statewide Cost Estimate

Staff reviewed the claims data submitted by one county and compiled by the SCO. The actual claims data showed that seven claims were filed between fiscal years 2000-2001 and 2006-2007 for a total of \$3,560,063.¹ Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

Assumptions

1. *The actual amount claimed for reimbursement may increase if late or amended claims are filed.*

This program primarily affects only two counties because most mentally disordered offenders are placed in Patton State Hospital in San Bernardino County or Atascadero State Hospital in San Luis Obispo County.

Only San Bernardino County filed reimbursement claims for this program. Claimant representatives indicate that San Luis Obispo will file late claims for this program. Thus, if San Luis Obispo County files reimbursement claims, the amount of reimbursement claims may exceed the statewide cost estimate.

2. *An average of 565 prisoners or parolees will continue to request the County of San Bernardino to conduct the civil hearings each year.*

This program requires eligible counties to conduct civil court hearings at the request of prisoners and parolees. San Bernardino County has conducted 3,958 hearings during the initial reimbursement period as shown below:

Table 1. Number of Hearings Conducted

Fiscal Year	Number of Hearings
2000-2001	448
2001-2002	711
2002-2003	762
2003-2004	191
2004-2005	100
2005-2006	811
2006-2007	520
2007-2008	415
Total	3,958
Average # of Hearings Per year	565

¹ Claims data reported as of January 27, 2009.

3. *The county that filed reimbursement claims will continue to incur costs over \$1,000 and will continue to file reimbursement claims.*
4. *The total amount of reimbursement for this program may be lower than the statewide cost estimate, because the SCO may reduce any reimbursement claim for this program.*

If the SCO audits this program and deems any reimbursement claim to be excessive or unreasonable, it may be reduced.

Methodology

Fiscal Years 2000-2001 through 2006-2007

The proposed statewide cost estimate for fiscal years 2001-2002 through 2006-2007 is based on the seven unaudited actual reimbursement claims filed with the SCO for these years.

Fiscal Year 2007-2008

Staff estimated fiscal year 2007-2008 costs by multiplying the 2006-2007 estimate by the implicit price deflator for 2007-2008 (5.9%), as forecast by Department of Finance.

Fiscal Year 2008-2009

Staff estimated fiscal year 2008-2009 costs by multiplying the 2007-2008 estimate by the implicit price deflator for 2008-2009 (3.5%), as forecast by Department of Finance.

The proposed statewide cost estimate includes nine fiscal years for a total of **\$4,872,312**. This averages to \$541,368 annually in costs for the state. Following is a breakdown of estimated total costs per fiscal year:

TABLE 2. BREAKDOWN OF ESTIMATED TOTAL COSTS PER FISCAL YEAR

Fiscal Year	Number of Claims Filed with SCO	Estimated Cost
2000-2001	1	\$235,446
2001-2002	1	565,634
2002-2003	1	757,835
2003-2004	1	396,893
2004-2005	1	368,055
2005-2006	1	627,286
2006-2007	1	608,914
2007-2008	N/A	644,840
2008-2009	N/A	667,409
TOTAL	7	4,872,312

Comments on the Draft Staff Analysis

Department of Finance submitted comments on February 19, 2009, concurring with the draft staff analysis.²

² Exhibit A.

Staff Recommendation

Staff recommends that the Commission adopt the proposed statewide cost estimate of **\$4,872,312** (\$541,368 in annual costs) for costs incurred in complying with the *Mentally Disordered Offenders: Treatment as a Condition of Parole* program.

Commission on State Mandates

Original List Date: 7/10/2001
Last Updated: 7/19/2006
List Print Date: 03/09/2009
Claim Number: 00-TC-28
Issue: Mentally Disordered Offenders: Treatment as a Condition of Parole

Mailing Information: Final Staff Analysis

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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