

ITEM 9

Statewide Cost Estimate

Penal Code Sections 1026 and 1026.5

Chapter 1114, Statutes of 1979

Chapter 650, Statutes of 1982

Not Guilty by Reason of Insanity

Executive Summary

This is a proposed statewide cost estimate for the state mandated program concerning extension commitments for persons in state hospitals who have been adjudged not guilty by reason of insanity. Counties are to be reimbursed for performing the following duties under this mandate:

- 1) Obtain and review necessary material on defendants criminal and hospital case, including original court file and original District Attorney records on defendants criminal case;
- 2) Necessary District Attorney travel to and from a state hospital;
- 3) Transporting defendants for arraignment;
- 4) Care and custody of defendant not reimbursed by other state funds; and
- 5) The District Attorney and indigent defense counsel review, preparation, trial, extended commitment hearing costs, and other court trial costs, including but not limited to judicial officer, clerk, court reporter, bailiffs, witnesses, juror fees, etc.
- 6) Court-appointed expert witnesses (psychiatric, psychological, other mental health professional), services and special investigator costs.

Interested party recommendations provided during a prehearing held in December 1996 have been used in developing this proposed statewide cost estimate. A prehearing held on May 22, 1996, provided staff input from the Department of Mental Health, State Controller's Office and Los Angeles County regarding jail rate costs and Welfare and Institutions Code section 4117 reimbursement costs. No comments were received from the Department of Finance.

Commission staff recommends that the Commission adopt the proposed statewide cost estimate described in Attachment A in the amount of \$2,665,000 for the costs incurred for complying with this mandate for fiscal years 1987-88 through 1996-97.

Party Requesting Amendment
County of Los Angeles

Chronology

- 2/19/80 Test Claim filed with Board of Control
- 7/16/80 Board of Control denied Test Claim
- 5/17/82 Court of Appeal directed Board of Control to approve claimant's parameters and guidelines and determine cost estimate
- 3/17/83 Parameters and guidelines originally adopted
- 9/27/84 Legislature deleted mandate claims bill funding and directed Board of Control to revise parameters and guidelines through Chapter 1436/84
- 10/9/92 Request filed for review of claiming instructions
- 3/18/93 Pre-hearing conference held
- 4/17/93 Request to amend parameters and guidelines replaces request for review of claiming instructions
- 10/26/95 Amended parameters and guidelines adopted

Summary of Mandate

The Commission on State Mandates found that Penal Code sections 1026.5 and 1026 as added and amended, respectively, by Chapter 1114, Statutes of 1979, require the District Attorney to bring petitions in a court of competent jurisdiction in the name of the State of California to effect extensions of commitments in state hospitals for individuals who have been found not guilty by reason of insanity (NGI) and committed to state hospitals.

The Commission also found that Penal Code section 1026 was further amended by Chapter 650, Statutes of 1982, to require the District Attorney to review all NGI cases prior to expiration of the defendant's maximum term of commitment, for a determination as to whether or not the petition for extended commitment should be filed. (Prior to this 1982 amendment, the District Attorney was only required to review matters in which the state hospital was requesting extended term commitment proceedings.)

Departmental Recommendations

No written recommendations on this estimate were received from state agencies, however a prehearing was held on May 22, 1996, and input on the draft calculations was received from Los Angeles County, Department of Mental Health and State Controller's Office. The staff analysis reflects the input received.

Staff Analysis

In developing the proposed statewide cost estimate, Commission staff obtained statewide data from the Department of Mental Health concerning Penal Code section 1026 patients who had been sent out to court since January 1, 1993, and were returned to the hospital by the court, or had been gone to court less than six months as of January 1, 1996. Information was not available prior to 1993. In conjunction with the Department of Mental Health, the claimant and other interested parties, Commission staff determined that although the data included other non-NGI patients, it would provide information to counties on a majority of the extension hearings for NGI patients within the time period given in the proposed survey. The survey specified fiscal years 1987-88

through 1992-93 as prior years since the interested parties, including the claimant, agreed that counties would not have documentation to submit claims covering the period from when this reimbursable mandate begins in 1979.

The patient information for each county was provided together with a survey identifying four reimbursable components. The four components were costs associated with the District Attorney, Public Defender, Sheriff and Superior Court. To determine cost estimates for this mandate, counties were asked to deduct any estimated cost for this mandate already funded, or eligible for reimbursement under Welfare and Institutions Code section 4117, as well as costs covered under the Brown-Presley Trial Court Funding Act. Twenty-four counties with Penal Code section 1026 patients were surveyed, with 19 responding.

Eighteen responses were used to develop an estimate based on actual cost under the assumption that counties responding will be the counties filing reimbursement claims. Due to the complexity of the reimbursable mandate, and the fact that only four counties have recently filed reimbursement claims under Welfare and Institutions Code section 4117, many county representatives completing the surveys were unfamiliar with 4117 costs and the associated offset. Although Commission staff along with Los Angeles County (claimant) explained the 4117 reimbursement program as well as Trial Court Funding Program, it is likely that a few of the respondents may have included offset costs in their responses. Staff was unable to quantify the likelihood of included offset costs, and therefore did not reduce the survey amount to account for that possibility. However, one response was omitted that reported an estimate by calculating current year costs and multiplying by a four percent COLA factor downward for prior years and upward for future years. After communicating with the respondent, staff concluded that the estimate was not based on data that would be accurate enough to include in this estimate. Further, according to the Department of Mental Health (DMH), that particular county has never filed a 4117 reimbursement claim.

Under the Sheriff's cost component in the survey, most counties provided information regarding daily jail rates for which they would be claiming costs. Under Welfare and Institutions Code section 4117, DMH reimburses counties for a maximum daily jail rate of \$59 per day, with a maximum reimbursement of 30 days per stay.¹

All respondents, with one exception, stated costs below \$59 for NGI defendant jail rates. Los Angeles County submitted an estimate stating \$563 to \$743 as a daily jail rate cost (based on a Department of Corrections approved rate for hospital care) for NGI patients under this mandate. Staff acknowledges that costs related to care and custody of defendants for their extended commitment proceedings under the parameters and guidelines for this reimbursable mandate are not necessarily limited to the \$59 daily jail rate maximum allowed by DMH. However, DMH has questioned the rate submitted by Los Angeles County, and has stated that the hospital care jail facility should be unnecessary for most NGI defendants (as well as excessive in cost). Although the daily jail rate for NGI defendants in Los Angeles County might, in fact, be higher than \$59, that county was the only one to respond with a rate higher than that allowed by DMH. This leads staff to conclude that the ultimately allowable reimbursable costs for Los Angeles County might be lower than the \$563 to \$743 which county reported. Therefore, the cost provided in the Los Angeles response for the jail rates was not used in this estimate.

¹ Information provided by Howard Auble, Chief of Accounting and Fiscal Systems, Department of Mental Health.

For purposes of this estimate, Commission staff used the \$59 jail rate for the Los Angeles County response, resulting in a reduction of \$2,938,602 in the total estimate. Staff acknowledges that if the County of Los Angeles is successful in quantifying and obtaining a higher jail rate reimbursement through the claiming process, that a claims appropriation deficiency might result.

Staff Recommendation

Staff recommends that the Commission adopt the proposed statewide cost estimate (Attachment A) in the amount of \$2,665,000 for fiscal years 1987-88 through 1992-93, 1993-4, 1994-5, 1995-6 and 1996-7 for complying with the provisions of that Penal Code sections 1026.5 and 1026 as added and amended by Chapter 1114, Statutes of 1979, and Penal Code section 1026 as further amended by Chapter 650, Statutes of 1982, as follows:

<u>Fiscal Year</u>	<u>Total Cost</u>
1987/88 - 1992/93	\$1,417,397
1993/94	\$ 335,843
1994/95	\$ 306,131
1995/96	\$ 335,495
1996/97	<u>\$ 269,977</u>
Total Estimate	<u>\$2,665,000</u> (R)

Staff further recommends amendment of the Parameters and Guidelines to specify a means of handling exceptional jail rate reimbursement claims. (This amendment would be prepared for a subsequent meeting.)