

Adopted: November 6, 2008

## **STATEWIDE COST ESTIMATE**

Penal Code Sections 1405 and 1417.9

Statutes 2000, Chapter 821; Statutes 2001, Chapter 943

*Post Conviction: DNA Court Proceedings*

00-TC-21, 01-TC-08

County of Los Angeles, Claimant

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### **EXECUTIVE SUMMARY**

#### **Summary of the Mandate**

On July 28, 2006, the Commission on State Mandates (Commission) adopted the Statement of Decision for the *Post Conviction: DNA Court Proceedings* test claim, which provides a post-conviction remedy for convicted felons to obtain DNA testing of biological evidence. The Commission found that test claim statutes constitute a new program or higher level of service and impose a partially reimbursable state-mandated program upon local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

This program reimburses local agencies for indigent defense counsel and district attorney hearing preparation costs when a convicted felon requests DNA testing of biological evidence, and for the costs of storing that biological material that is secured in connection with a criminal case for the period of time that any person remains incarcerated in connection with that case. According to local agency representatives, there are two primary reasons that only five counties have filed reimbursement claims for this program. First, counties have received very few requests from convicted felons for additional DNA testing of biological evidence. Second, counties are finding it difficult to carve out costs specifically dedicated to storing biological evidence under this program. For these reasons, local agency representatives contend that there are few late claims pending, and a larger number of claims will not be filed in future years.

#### **Statewide Cost Estimate**

Staff reviewed the claims data submitted by one city and five counties, and compiled by the SCO. The actual claims data showed that 21 claims were filed between fiscal years 2001-2002 and 2007-2008 for a total of \$1,087,423.<sup>1</sup>

Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program. If the Commission adopts this proposed statewide cost estimate, it will be reported to the Legislature along with staff's assumptions and methodology.

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<sup>1</sup> Claims data reported as of August 13, 2008.

## Assumptions

Staff made the following assumptions:

1. *The actual amount claimed may increase if late or amended claims are filed.* Only six local agencies in California have filed 21 reimbursement claims for this program. Thus, if reimbursement claims are filed by any of the remaining cities and counties, the amount of reimbursement claims may exceed the statewide cost estimate. For this program, late claims for 2001-2002 through 2007-2008 may be filed until December 17, 2008.
2. *The cost of this program may increase if the number of felony convictions increases.*  
This program requires counties to store any biological evidence secured in connection with a felony conviction. In some counties, felony convictions are increasing. For example, in Sacramento County, felony convictions increased from 8,400 in 2001 to 14,794 in 2005. Therefore, if the number of felony convictions increases, the number of convictions with related biological evidence may also rise, causing increase in the cost of this program.
3. *The costs of this program may remain constant.*  
According to local agency representatives, counties have received few requests from convicted felons for additional DNA testing of biological evidence. And, counties are finding it difficult to carve out costs specifically dedicated to storing biological evidence under this program. For these reasons, local agency representatives contend that there are few late claims pending, and a larger number of claims will not be filed in future years.
4. *The one city and five counties that filed reimbursement claims for the initial reimbursement period will continue to file reimbursement claims.*
5. *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 2001-2002 through 2007-2008*

The proposed statewide cost estimate for fiscal years 2001-2002 through 2007-2008 is completed by adding the 21 unaudited actual reimbursement claims filed with the SCO for these years.

The proposed statewide cost estimate includes seven fiscal years for a total of \$1,087,423. This averages to \$155,346 annually in costs for the state.

## State Agency Comments

Department of Finance submitted comments on October 20, 2008, concurring with the staff analysis and recommendation.

## **STAFF RECOMMENDATION**

Staff recommends that the Commission adopt the proposed statewide cost estimate of **\$1,087,423** (\$155,356 in annual costs) for costs incurred in complying with the *Post Conviction: DNA Court Proceedings* program.

## STAFF ANALYSIS

### Summary of the Mandate

In 2000, the Legislature enacted the test claim statutes as a post-conviction remedy for convicted felons to obtain DNA testing of biological evidence. The statutes also establish procedures and timelines for the retention of biological evidence.

The post-conviction remedy applies to cases where biological evidence is available and is previously untested or tested by a less reliable test, and where identity of the perpetrator was an issue. The test claim statutes specify how a defendant files a motion to obtain DNA testing and what conditions must be met before the court grants the testing motion.

In 2001, the original test claim statute was amended (Stats. 2001, ch. 943) to clarify that the defendant's right to file a motion for post-conviction DNA testing cannot be waived, nor can the right be waived to receive notice of a governmental entity's intention to dispose of biological material before expiration of the period of imprisonment.<sup>2</sup>

The Commission on State Mandates (Commission) found that test claim statutes constitute a new program or higher level of service and impose a partially reimbursable state-mandated program upon school districts 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 June 29, 2001. The Commission adopted a Statement of Decision on July 28, 2006, and the parameters and guidelines on May 31, 2007. Eligible claimants were required to file initial reimbursement claims with the State Controller's Office (SCO) by December 17, 2007.

### Reimbursable Activities

The Commission approved the following reimbursable activities for this program:

- **Representation and investigation:** For indigent defense counsel investigation of the DNA-testing and representation of the convicted person (except for drafting and filing the DNA-testing motion) effective January 1, 2001 (Pen. Code, § 1405, subd. (c) as added by Stats. 2000, ch. 821).
- **Prepare and file motion for DNA testing & representation:** If the person is indigent and has met the statutory requirements, and if counsel was not previously appointed by the court, for counsel to prepare and file a motion for DNA testing, if appropriate, effective January 1, 2002 (Pen. Code, § 1405, subs. (a) & (b)(3)(A)). Also, providing notice of the motion to "the Attorney General, the district attorney in the county of conviction, and, if known, the governmental agency or laboratory holding the evidence sought to be tested" is mandated as of January 1, 2002 (Pen. Code, § 1405, subd. (c)(2)).
- **Prepare and file response to the motion:** Effective January 1, 2001, to prepare and file a response to the motion for testing, if any, by the district attorney "within 60 days of the date on which the Attorney General and the district attorney are served with the motion, unless a continuance is granted for good cause" (Pen. Code, § 1405, subd. (c)(2)).

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<sup>2</sup> Penal Code section 1405 was technically amended by Statutes 2004, chapter 405. Staff makes no finding on this amendment.

- **Provide prior test lab reports and data:** When the evidence was subjected to DNA or other forensic testing previously by either the prosecution or defense, the prosecution or defense, whichever previously ordered the testing, provides all parties and the court with access to the laboratory reports, underlying data, and laboratory notes prepared in connection with the DNA or other biological evidence testing effective January 1, 2001 (Pen. Code, § 1405, subd. (d)).
- **Agree on a DNA lab:** Effective January 1, 2001, for the public defender and the district attorney to agree on a DNA-testing laboratory (Pen. Code, § 1405, subd. (g)(2)).
- **Writ review:** Effective January 1, 2001, prepare and file petition, or response to petition, for writ review by indigent defense counsel and the district attorney of the trial-court's decision on the DNA-testing motion (Pen. Code, § 1405, subd. (j)).
- **Retain biological material:** Effective January 1, 2001, retain all biological material that is secured in connection with a felony case for the period of time that any person remains incarcerated in connection with that case (Pen. Code, § 1417.9, subd. (a)).

The Commission finds that all other statutes in the test claim, including holding a hearing on the DNA testing motion, are not a reimbursable state-mandated program within the meaning of article XIII B, section 6 and Government Code section 17514.

### **Statewide Cost Estimate**

Staff reviewed the claims data submitted by one city and five counties<sup>3</sup>, and compiled by the SCO. The actual claims data showed that 21 claims were filed between fiscal years 2001-2002 and 2007-2008 for a total of \$1,087,423.<sup>4</sup>

This program reimburses local agencies for indigent defense counsel and district attorney hearing preparation costs when a convicted felon requests DNA testing of biological evidence, and for the costs of storing that biological material that is secured in connection with a criminal case for the period of time that any person remains incarcerated in connection with that case.

According to local agency representatives, there are two primary reasons that only five counties and one city have filed reimbursement claims for this program. First, counties have received few requests from convicted felons for additional DNA testing of biological evidence. Second, counties are finding it difficult to carve out costs specifically dedicated to storing biological evidence under this program. For these reasons, local agency representatives contend that there are few late claims pending, and a larger number of claims will not be filed in future years.

Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program. If the Commission adopts this proposed statewide cost estimate, it will be reported to the Legislature along with staff's assumptions and methodology.

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<sup>3</sup> Counties of Los Angeles, Monterey, Sacramento, San Bernardino, Santa Clara, and the City of Fairfield

<sup>4</sup> Claims data reported as of August 13, 2008.

## Assumptions

Staff made the following assumptions:

1. *The actual amount claimed may increase if late or amended claims are filed.* Only six local agencies in California have filed 21 reimbursement claims for this program. Thus, if reimbursement claims are filed by any of the remaining cities and counties, the amount of reimbursement claims may exceed the statewide cost estimate. For this program, late claims for 2001-2002 through 2007-2008 may be filed until December 2008.

2. *The cost of this program may increase if the number of felony convictions increases.*

This program requires counties to store any biological evidence secured in connection with a felony conviction. Therefore, if the number of felony convictions increases, the number of convictions with related biological evidence may also rise, causing increase in the cost of this program.

3. *The costs of this program may remain constant.*

According to local agency representatives, counties have received few requests from convicted felons for additional DNA testing of biological evidence. And, counties are finding it difficult to carve out costs specifically dedicated to storing biological evidence under this program. For these reasons, local agency representatives contend that there are few late claims pending, and a larger number of claims will not be filed in future years.

4. *The one city and five counties that filed reimbursement claims for the initial reimbursement period will continue to file reimbursement claims.*

5. *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 2001-2002 through 2007-2008*

The proposed statewide cost estimate for fiscal years 2001-2002 through 2007-2008 is based on the 21 unaudited actual reimbursement claims filed with the SCO for these years.

The proposed statewide cost estimate includes seven fiscal years for a total of \$1,087,423. This averages to \$155,346 annually in costs for the state.

Following is a breakdown of estimated total costs per fiscal year:

**TABLE 1. BREAKDOWN OF ESTIMATED  
TOTAL COSTS PER FISCAL YEAR**

<b>Fiscal Year</b>	<b>Number of Claims Filed with SCO</b>	<b>Estimated Cost</b>
2001-2002	2	\$ 62,375
2002-2003	3	112,687
2003-2004	3	124,059
2004-2005	1	17,053
2005-2006	4	134,566
2006-2007	4	334,797
2007-2008	4	301,886
<b>TOTAL</b>	<b>21</b>	<b>\$1,087,423</b>

State Agency Comments

Department of Finance submitted comments on October 20, 2008, concurring with the staff analysis and recommendation.

**Staff Recommendation**

Staff recommends that the Commission adopt the proposed statewide cost estimate of **\$1,087,423** (\$155,346 in annual costs) for costs incurred in complying with the *Post Conviction: DNA Court Proceedings* program.