

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov



November 7, 2008

Leonard Kaye, Esq.
County of Los Angeles
Auditor-Controller's Office
Kenneth Hahn Hall of Administration
500 West Temple Street, Room 603
Los Angeles, CA 90012-2766

Ms. Ginny Brummels
State Controller's Office
Division of Accounting and Reporting
Local Reimbursement Section
3301 C Street, Suite 501
Sacramento, CA 95816

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

Re: Adopted Parameters and Guidelines

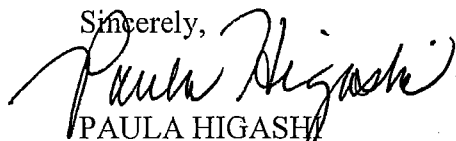
Post Conviction: DNA Court Proceedings (00-TC-21, 01-TC-08)
Penal Code Sections 1405 and 1417.9 as added by Statutes 2000, Chapter 821, and
amended by Statutes 2001, Chapter 943
County of Los Angeles, Claimant

Dear Mr. Kaye and Ms. Brummels:

On November 6, 2008, the Commission on State Mandates adopted the enclosed statewide cost estimate for the above-named program. This amount will be included in our next Report to the Legislature.

If you have any questions, please contact Nancy Patton at (916) 323-8217.

Sincerely,


PAULA HIGASHI
Executive Director

Enclosure



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

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 \$1,087,423.¹

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.

¹ 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.²

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)).

² 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 counties³, 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 \$1,087,423.⁴

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.

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

⁴ 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.
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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.
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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.
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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**

Fiscal Year	Number of Claims Filed with SCO	Estimated Cost
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
TOTAL	21	\$1,087,423

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.

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

November 7, 2008, I served the:

RE: Adopted Parameters and Guidelines

Post Conviction: DNA Court Proceedings (00-TC-21, 01-TC-08

Penal Code Sections 1405 and 1417.9 as added by Statutes 2000, Chapter 821, and amended by Statutes 2001, Chapter 943

County of Los Angeles, Claimants

By placing a true copy thereof in an envelope addressed to:

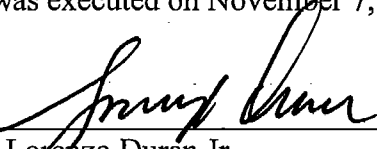
Mr. Leonard Kay, Esq.
County of Los Angeles
Auditor-Controller's Office
Kenneth Hahn Hall of Administration
500 West Temple Street, Room 603
Los Angeles, CA 90012-2766

Ms. Ginny Brummels
State Controller's Office
Division of Accounting and Reporting
Local Reimbursement Section
3301 C Street, Suite 501
Sacramento, CA 95816

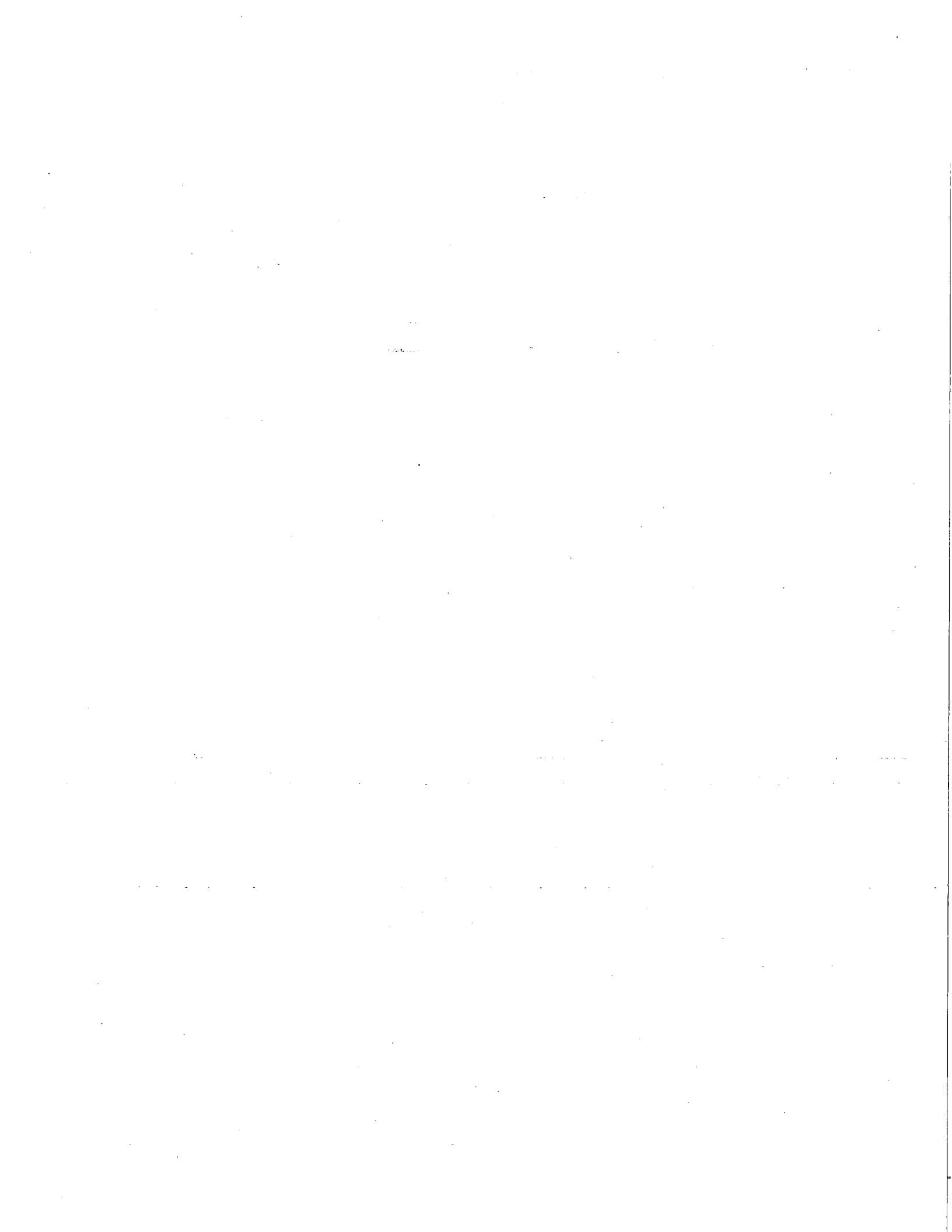
State Agencies and Interested Parties (See attached mailing list);

And by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully paid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 7, 2008 at Sacramento, California.



Lorenzo Duran Jr.



Commission on State Mandates

Original List Date: 7/6/2001
Last Updated: 2/20/2007
List Print Date: 11/07/2008
Claim Number: 00-TC-21
Issue: Post Conviction: DNA Court Proceedings

Mailing Information: Notice of Adopted SCE

Mailing List

Related Matter(s)

01-TC-08 Post Conviction: DNA Court Proceedings Test Claim Amendment (00-TC-21)

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.)

Ms. Carla Castaneda
Department of Finance (A-15)
915 L Street, 11th Floor
Sacramento, CA 95814

Tel: (916) 445-3274
Fax: (916) 323-9584

Mr. Allan Burdick
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Tel: (916) 471-5538
Fax: (916) 485-0111

Ms. Ginny Brummels
State Controller's Office (B-08)
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Tel: (916) 324-0256
Fax: (916) 323-6527

Ms. Julie Basco
Department of Justice BCIA (D-08)
4949 Broadway
Sacramento, CA 95820

Tel: (916) 227-3854
Fax: (916) 000-0000

Mr. Glen Everroad
City of Newport Beach
3300 Newport Blvd.
P. O. Box 1768
Newport Beach, CA 92659-1768

Tel: (949) 644-3127
Fax: (949) 644-3339

Ms. Bonnie Ter Keurst
County of San Bernardino
Office of the Auditor/Controller-Recorder

Tel: (909) 386-8850
Fax: (909) 386-8830

222 West Hospitality Lane
San Bernardino, CA 92415-0018

Ms. Beth Hunter
Centration, Inc.
8570 Utica Avenue, Suite 100
Rancho Cucamonga, CA 91730

Tel: (866) 481-2621

Fax: (866) 481-2682

Ms. Juliana F. Gmur
MAXIMUS
2380 Houston Ave
Clovis, CA 93611

Tel: (916) 485-8102

Fax: (916) 485-0111

Mr. Lance Gima
Department of Justice
Bureau of Forensic Services
1102 Q Street, 6th Floor
Sacramento, CA 95814

Tel: (916) 319-9365

Fax:

Mr. Dean Gialamas
Orange County Sheriff-Coroner
Forensic Science Services
320 N. Flower Street
Santa Ana, CA 92703

Tel:

Fax:

Mr. Gus Arroyo
Fremont Police Department
2000 Stevenson Blvd.
Fremont, CA 94538

Tel:

Fax:

Mr. Nick Warner
Nick Warner & Associates
1415 L Street, Suite 200
Saramento, CA 95814

Tel:

Fax:

Mr. John Tonkyn
Department of Justice
B.F.S., DNA Laboratory
1001 W. Cutting Blvd., Suite 110
Richmond, CA 94804-2028

Tel: (510) 231-8744

Fax: (510) 620-3315

Mr. Ash Kozuma
Sacramento Police Department
555 Sequoia Pacific Blvd.
Sacramento, CA 95814

Tel: (916) 264-5237

Fax:

Ms. June Clark
Administrative Office of the Courts
Office of Governmental Affairs
455 Golden Gate Ave.

Tel: (415) 865-4200

Fax:

Mr. Dave LaBahn
California District Attorneys Association
731 K Street, 3rd Floor
Sacramento, CA 95814
Tel: (916) 443-2017
Fax:

Mr. Leroy Baca
Los Angeles County Sheriffs Department
4700 Ramona Boulevard
Monterey Park, CA 91754-2169
Tel: (323) 526-5541
Fax: (323) 000-0000

Mr. Jim Spano
State Controller's Office (B-08)
Division of Audits
300 Capitol Mall, Suite 518
Sacramento, CA 95814
Tel: (916) 323-5849
Fax: (916) 327-0832

Executive Director
California State Sheriffs' Association
P O Box 980790
West Sacramento, CA 95798
Tel: (916) 375-8000
Fax: (916) 375-8017

Ms. Susan Geanacou
Department of Finance (A-15)
915 L Street, Suite 1190
Sacramento, CA 95814
Tel: (916) 445-3274
Fax: (916) 324-4888

Mr. Leonard Kaye
County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012
Claimant
Tel: (213) 974-8564
Fax: (213) 617-8106

Mr. Dale Mangram
Riverside County Auditor Controller's Office
4080 Lemon Street, 11th Floor
Riverside, CA 92502
Tel: (951) 955-3883
Fax: (951) 955-8133

Mr. David Wellhouse
David Wellhouse & Associates, Inc.
9175 Kiefer Blvd, Suite 121
Sacramento, CA 95826
Tel: (916) 368-9244
Fax: (916) 368-5723

Ms. Jean Kinney Hurst
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814-3941
Tel: (916) 327-7500
Fax: (916) 441-5507

Ms. Cindy Monfort
County of San Bernardino
Office of the District Attorney
316 No. Mountain View Avenue
San Bernardino, CA 92415-0004

Tel: (909) 387-6631
Fax:

Ms. Donna Ferebee
Department of Finance (A-15)
915 L Street, 11th Floor
Sacramento, CA 95814

Tel: (916) 445-3274
Fax: (916) 323-9584

Sgt. J. Bricker
Alameda County Sheriff's Office
15001 Foothill Blvd.
San Leandro, CA 94578-0192

Tel: (510) 667-3609
Fax: (510) 667-3654

Ms. Jolene Tollenaar
MGT of America
455 Capitol Mall, Suite 600
Sacramento, CA 95814

Tel: (916) 712-4490
Fax: (916) 290-0121