

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



January 29, 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: Draft Staff Analysis, Comment Period, 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 draft staff analysis is enclosed for your review and comment.

Written Comments

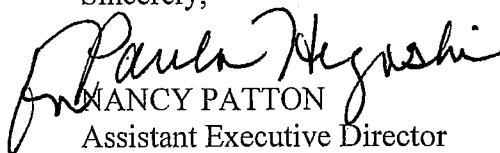
Any party or interested person may file written comments on the draft staff analysis by Friday, **February 19, 2009**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. (Cal. Code Regs., tit. 2, § 1181.2.) If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the regulations.

Hearing

This test claim is set for hearing on **Friday, March 27, 2009**, at 9:30 a.m., in Room 447, State Capitol, Sacramento California. The final staff analysis will be issued on or about March 13, 2009. 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.

Please contact me at (916) 323-8217 with questions.

Sincerely,


NANCY PATTON
Assistant Executive Director

Enclosure

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



ITEM ____
DRAFT 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 \$3,560,063.¹ 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.*
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.

¹ Claims data reported as of January 27, 2009.

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 \$3,560,063.² 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. 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

² 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
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2002-2003	1	757,835
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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: 01/29/2009
Claim Number: 00-TC-28
Issue: Mentally Disordered Offenders: Treatment as a Condition of Parole

Mailing Information: Draft 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.)

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

Office of the County Counsel
County of San Luis Obispo
County Government Center, Room 386
San Luis Obispo, CA 93408

Tel: (805) 781-5400
Fax: (805) 781-4221

Ms. Susan Geanacou
Department of Finance (A-15)
915 L Street, Suite 1280
Sacramento, CA 95814

Tel: (916) 445-3274
Fax: (916) 449-5252

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

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

	Claimant
Ms. Bonnie Ter Keurst County of San Bernardino Office of the Auditor/Controller-Recorder 222 West Hospitality Lane San Bernardino, CA 92415-0018	Tel: (909) 386-8850 Fax: (909) 386-8830
Ms. Cynthia Rodriguez Department of Mental Health (A-31) 1600 9th Street, Room 153 Sacramento, CA 95814	Tel: (916) 654-2316 Fax:
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
Ms. Donna Ferebee Department of Finance (A-15) 915 L Street, 11th Floor Sacramento, CA 95814	Tel: (916) 445-3274 Fax: (916) 323-9584
Ms. Diana Fuentes-Michel California Student Aid Commission P.O. Box 419026 Rancho Cordova, CA 95741-9026	Tel: (916) 526-8271 Fax: 916-526-8033
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. Carla Castaneda Department of Finance (A-15) 915 L Street, 12th 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) 366-4838
Mr. Leonard Kaye County of Los Angeles Auditor-Controller's Office 500 W. Temple Street, Room 603 Los Angeles, CA 90012	Tel: (213) 974-9791 Fax: (213) 617-8106

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. 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

