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November 13, 2007

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, Proposed Parameters and Guidelines and Hearing Date
Mentally Disordered Offenders: Treatment as a Condition of Parole (00-TC-28, 05-TC-06)
Penal Code section 2966
County of San Bernardino, Claimant
Statutes 1985, chapter 1419; Statutes 1986, chapter 858; Statutes 1987, chapter 687; Statutes 1988, chapter 658; Statutes 1989, chapter 228; Statutes 1994, chapter 706

Dear Ms. Ter Keurst:

The draft staff analysis and proposed parameters and guidelines are enclosed for your review and comment.

Written Comments
Any party or interested person may file written comments on the draft staff analysis by Friday, **November 20, 2007**. 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 **Thursday, December 6, 2007**, at 9:30 a.m., in Room 126, State Capitol, Sacramento California. The final staff analysis will be issued on or about November 21, 2007. 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

Enc. Draft Staff Analysis

Hearing Date: December 6, 2007
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ITEM __

DRAFT STAFF ANALYSIS
PROPOSED PARAMETERS AND GUIDELINES

Penal Code Section 2966

Statutes 1985, Chapter 1419[1]
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 Executive Summary will be provided with the final staff analysis.

[1] The test claim was amended on March 2, 2006 to add this statute. The amendment was accepted based on provisions of Government Code section 17557, subdivision (c), that were in effect on the date of the filing of the original test claim.

STAFF ANALYSIS

Claimant

County of San Bernardino

Chronology

07/05/01	County of San Bernardino filed test claim with Commission (00-TC-28)
08/03/01	The Department of Corrections submitted comments
08/09/01	The Department of Finance submitted comments
09/05/01	County of San Bernardino requested an extension of time through October 25, 2001 to respond to comments
09/07/01	Commission staff granted request for extension to respond to comments on or before October 25, 2001
11/08/01	County of San Bernardino requested an extension of time until December 3, 2001 to respond to comments
11/09/01	Commission staff granted request for extension to respond to comments on or before December 3, 2001
02/05/02	County of San Bernardino requested an extension of time until February 22, 2002 to respond to comments
02/06/02	Commission staff granted request for extension to respond to comments on or before March 8, 2002
02/27/02	County of San Bernardino filed reply to Department of Finance comments
01/19/06	Commission staff issued draft staff analysis
02/03/06	County of San Bernardino filed comments on draft staff analysis
03/02/06	County of San Bernardino filed amendment to test claim (05-TC-06)
05/26/06	Department of Finance waived its comment period on the amendment
05/26/06	Commission staff issued draft staff analysis based on amended test claim
06/23/06	County of San Bernardino filed comments on amended draft staff analysis
07/11/06	Commission staff issued final staff analysis
07/28/06	Commission adopted Statement of Decision
08/07/06	Commission staff issued draft parameters and guidelines
08/22/06	Claimant submitted comments on draft parameters and guidelines
10/27/06	Department of Finance issued comments on draft parameters and guidelines
11/08/07	Commission staff issued draft staff analysis and proposed parameters and guidelines

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 or upon termination of parole, that he or she meets the mentally disordered offender criteria, as defined. If the person requests it, the court shall conduct such a hearing; the district attorney is required to represent the people and the public defender is required to represent the person if he or she is indigent.

On July 28, 2006, the Commission adopted the Statement of Decision for *Mentally Disordered Offenders (MDO): Treatment as a Condition of Parole* (00-TC-28, 05-TC-06).[2] The Commission found that the test claim legislation constitutes a new program or higher level of service and imposes a state-mandated program on local agencies within the meaning of article XIII B, section 6, of the California Constitution and Government Code section 17514 to perform the following activities resulting from Penal Code section 2966 hearings:

- district attorney services to represent the people; and
- public defender services to represent indigent prisoners or parolees.

Discussion

Commission staff prepared and issued the draft parameters and guidelines on August 7, 2006.[3] The proposed reimbursable activities were limited to those approved in the Statement of Decision.

On August 22, 2006, the claimant submitted comments on the draft.[4] In their comments they proposed a detailed listing of the reimbursable activity components, stating that these components serve to break down the reimbursable activities approved in the Statement of Decision to measurable pieces and represent reasonable methods of complying with the mandate. On October 27, 2006, the Department of Finance submitted comments on the claimant's proposal.[5] Staff modified the draft parameters and guidelines to include the components proposed by the claimant and to address Finance's comments as follows:

I. Summary of the Mandate

Staff added a paragraph to summarize the mandated program, upon request of the claimant.

II. Eligible Claimants

Staff deleted cities as eligible claimants because they do not implement this program.

IV. Reimbursable Activities

A. One-Time Activities

Claimant proposed adding the following one-time activities:

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[2] Exhibit A.

[3] Exhibit A.

[4] Exhibit B.

[5] Exhibit C.

1. Developing policies and procedures to implement Penal Code section 2966.

Department of Finance commented that district attorneys and public defenders have existing policies and procedures regarding involuntary committal of potential parolees under Penal Code section 2972. Therefore, this activity should be limited to updating the existing policies and procedures to add the new procedure for civil court filings under Penal Code section 2966. Staff finds that this activity is necessary to carry out the mandated program,[6] but agrees that it should be limited to updating existing policies and procedures to include implementation of Penal Code section 2966. Staff limited this activity.

2. Developing or procuring computer software to track Penal Code 2966 petitioner status.

Finance recommended that this activity be deleted because all California sheriffs' facilities have existing computer software systems to track their own inmates as well as inmates in transit to other jurisdictions. Counties are already being reimbursed under a similar program (*Mentally Disordered Offenders' (MDO) Extended Commitment Proceedings,* 98-TC-09) to develop or procure computer software to track the status of committed persons. There is no evidence in the record that a new system is necessary to track persons for the program here, or that counties could not use the existing computer software. Therefore, staff did not include this activity in the proposed parameters and guidelines.

3. Initial training of staff on the mandated Penal Code Section 2966 activities.

Department of Finance recommended that training be deleted. Counties are already implementing a similar MDO program, and therefore training on the program here is not necessary.

Staff makes the following findings regarding one-time employee training:

- *Psychiatrists and Psychologists*. Participating psychiatrists and psychologists attend continuing education each year to retain their licenses, and therefore, staff finds that training of psychiatrists and psychologists is not necessary to carry out the mandated program.
- *District attorneys and Public Defenders*. Rule 3-110 of the California Rules of Professional Conduct, enacted in 1975[7], requires all attorneys to be competent in the area of practice and obligates attorneys to acquire sufficient learning and skill before performance is required.[8] Therefore, sufficient training for attorneys on the handling of Penal Code section 2966 hearings is not an activity imposed by the test claim statute, but a *pre-existing* obligation imposed by the California Rules of Professional Conduct. Accordingly, staff finds that attorney training regarding the Penal Code section 2966 hearings is not required, nor reimbursable.

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[6] Section 1183.1, subdivision (a)(4), of the Commission's regulations authorizes the Commission to include the "most reasonable methods of complying with the mandate" in the parameters and guidelines. The "most reasonable methods of complying with the mandate" are "those methods not specified in statute or executive order that are necessary to carry out the mandated program."

[7] This rule was originally numbered Rule 6-101, and later renumbered as 3-110.

[8] Exhibit D.

However, staff finds that *one-time* training regarding a county's internal policies and procedures on Penal Code section 2966 hearings for each employee, including district attorneys, public defenders, investigators, and all administrative staff, such as secretaries and paralegals, who work on this program is necessary to carry out the mandated program and is reimbursable.

Staff limited training to initial training of district attorneys, public defenders, and administrative staff including paralegal and secretarial staff on mandated activities, and further limited the training to one time per employee.

B. Ongoing Activities

Claimant proposed the following ongoing activities that were included by staff without substantive change. Claimants declared under penalty of perjury in their test claim that the above ongoing activities are necessary to conduct and participate in the hearings required by the test claim statutes. In addition, these activities are similar to the activities approved in the other MDO mandated program (*Mentally Disordered Offenders' Extended Commitment Proceedings*, 98-TC-09). Therefore, staff finds that the following ongoing activities are necessary to carry out the mandate, and included them in the proposed parameters and guidelines.

1. *Review relevant documentation, including pertinent Board of Prison Terms hearing and appeal documents; pertinent medical records; Conditional Release Program records, police and probation reports; criminal histories, pertinent evaluations of petitioner and records of prior MDO proceedings.*
2. *Review and file motions with superior court.*
3. *Travel to and from state hospitals, prisons and county jails where detailed medical records and case files are maintained.*
4. *Travel to and from state hospitals, prisons and county jails by the defense counsel in order to meet with the prisoner client.*
5. *Prepare and represent the state and the indigent prisoner or parolee in a bench or jury trial to decide whether or not the petitioner meets the criteria to be committed under Penal Code Section 2966.*
6. *Copying charges and long distance telephone charges related to the above activities.*

Claimants also proposed the following activities. Staff did make substantive changes to these activities:

1. *Prepare and represent the state and indigent prisoner or parolee in civil hearings on the petition regarding the appeal of the petitioner's MDO status under Penal Code section 2962.*

Staff did not include this activity because counties are already reimbursed for this activity under the other MDO program: *Mentally Disordered Offenders' Extended Commitment Proceedings*, 98-TC-09. In addition, this activity goes beyond the scope of the Commission's findings in the Statement of Decision.

2. *Retain necessary experts, investigators and professionals to prepare for and testify at any civil trial and any subsequent petition hearings.*

Staff revised this activity to remove the language "and any subsequent petition hearings" because it exceeds the scope of the Commission's findings in the Statement of Decision. The reference to "*any* civil trial" was changed to "*the* civil trial conducted pursuant to Penal Code section 2966 hearings" in order to limit reimbursable activities to the hearings at issue.

3. *Travel to and from court.*

Staff did not include this activity. The activity below provides reimbursement for transportation of petitioners, and travel for county employees would be claimed under indirect costs. Therefore, the activity is not necessary to carry out the mandated program.

4. *Provide transportation, care and custody of Penal Code Section 2966 petitioners before, during and after the civil hearings by the County Sheriff's Department.*

Finance recommends that this activity be limited to transportation of Penal Code 2966 petitioners, because care and custody of said petitioners is not found in the Statement of Decision.

The Statement of Decision indicates that although sheriffs' department transportation and custodial services may in fact be reasonably necessary to comply with the mandate, the plain meaning of the test claim statute is limited to district attorney and public defender services. The statute does not include sheriff's department services, and therefore, these activities can only be considered for reimbursement, when claimant proposes them, at the parameters and guidelines phase. Claimant did propose them at the parameters and guidelines phase. Staff finds that the activities of transporting and custodial service of Penal Code section 2966 petitioners is necessary to carry out the mandated program. The law authorizes incarcerated prisoners to request the hearings, and since they are incarcerated, the county is responsible for transporting and caring for them while they are at the court facility for the hearing, and then returning them to the prison facility. In addition, this activity was approved for the other MDO program: *Mentally Disordered Offenders' Extended Commitment Proceedings,* 98-TC-09.

5. *Attendance and participation in continuing training necessary to retain professional competence in MDO cases, civil trial skills, and associated mental health issues.*

Finance recommends this activity be deleted because psychiatrists and psychologists are required to attend a specific number of continuing education hours per year to retain their licenses. And, county district attorneys and public defenders participate in civil forfeiture, probate, and conservatorship cases, thus making ongoing training a current expectation for the general duties of their employment. Staff agrees and deleted ongoing training for any employee. As stated previously, staff also clarified that *no* training for psychiatrists or psychologists is reimbursable.

VII. Offsetting Revenue and Reimbursements

On page 15 of the Statement of Decision, the Commission made a specific finding that there were no offsetting reimbursements for this program:

> Neither [Welfare and Institutions Code] section 4117, nor any other statutory or Budget Act provisions, provide for reimbursement for costs incurred by counties for hearings conducted pursuant to Penal Code

section 2966. Therefore, Government Code section 17556, subdivision (e), is inapplicable to deny the test claim.

However, after the Statement of Decision was adopted, Statutes 2006, chapter 812 amended Welfare and Institutions Code section 4117 as follows to provide some state reimbursement for Penal Code section 2966 hearings:

> (a) Whenever a trial is had of any person charged with escape or attempt to escape from a state hospital, whenever a hearing is had on the return of a writ of habeas corpus prosecuted by or on behalf of any person confined in a state hospital except in a proceeding to which Section 5110 applies, whenever a hearing is had on a petition under Section 1026.2, subdivision (b) of Section 1026.5, Section 2972, or Section 2966 of the Penal Code, Section 7361 of this code, or former Section 6316.2 of this code for the release of a person confined in a state hospital, and whenever a person confined in a state hospital is tried for any crime committed therein, the appropriate financial officer or other designated official of the county in which the trial or hearing is had shall make out a statement of all mental health treatment costs and shall make out a separate statement of all nontreatment costs incurred by the county for investigation and other preparation for the trial or hearing, and the actual trial or hearing, all costs of maintaining custody of the patient and transporting him or her to and from the hospital, and costs of appeal, which statements shall be properly certified by a judge of the superior court of that county and the statement of mental health treatment costs shall be sent to the State Department of Mental Health and the statement of all nontreatment costs shall be sent to the Controller for approval. After approval, the department shall cause the amount of mental health treatment costs incurred on or after July 1, 1987 to be paid to the county of mental health director or his or her designee where the trial or hearing was held out of the money appropriated for this purpose by the Legislature. In addition, the Controller shall cause the amount of all nontreatment costs incurred on and after July 1, 1987, to be paid out of the money appropriated by the Legislature, to the county treasurer of the county where the trial or hearing was had.
>
> (b) Whenever a hearing is held pursuant to Section 1604, 1608, ~~or~~ 1609, or 2966 of the Penal Code, all transportation costs to and from a state hospital or a facility designated by the community program director during the hearing shall be paid by the Controller as provided in this subdivision. The appropriate financial officer or other designated official of the county in which a hearing is held shall make out a statement of all transportation costs incurred by the county, which statement shall be properly certified by a judge of the superior court of that county and sent to the Controller for approval. The Controller shall cause the amount of transportation costs incurred on and after July 1, 1987, to be paid to the county treasurer of the county where the hearing was had out of the money appropriated by the Legislature.
>
> As used in this subdivision the community program director is the person designated pursuant to Section 1605 of the Penal Code.

Welfare and Institutions Code section 4117 was added in 1967[9] and amended in 1986[10] to add, among other things, state reimbursement for Penal Code section 2970 hearings on and after July 1, 1987. Although the plain language of the statute as it reads with the 2006 amendment – adding reimbursement for Penal Code section 2966 hearings – indicates the Controller should reimburse for costs incurred on and after July 1, 1987, the rules of statutory construction call for a presumption against the retroactive application of the statute as it applies to Penal Code section 2966 unless the intention to make it retroactive clearly appears from the act itself or by unavoidable implication.[11] Here, there is no indication from the 2006 statutory language or the legislative history that the Legislature intended to make reimbursement for Penal Code section 2966 hearings retroactive. Moreover, Penal Code section 2966 was in effect in 1986 when reimbursement for section 2970 hearings was first provided; the Legislature could have included reimbursement for section 2966 hearings at that time but did not.

Therefore, staff finds that any reimbursement allowed for Penal Code section 2966 hearings under Welfare and Institutions Code section 4117, as enacted by Statutes 2006, chapter 812, is effective on January 1, 2007.

Staff Recommendation

Staff recommends that the Commission adopt the proposed parameters and guidelines, as modified by staff, beginning on page 9.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

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[9] Statutes 1967, chapter 1667.

[10] Statutes 1986, chapter 1020.

[11] *In re Marriage of McClellan* (2005) 130 Cal.App.4th 247, 254.

DRAFT PARAMETERS AND GUIDELINES, AS MODIFED BY STAFF

Penal Code Section 2966

Statutes 1985, Chapter 1419[1]
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

I. SUMMARY OF THE MANDATE

Penal Code section 2966 sets 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.

On July 28, 2006, the Commission on State Mandates (Commission) adopted a Statement of Decision finding that the test claim legislation imposes a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 to perform the following activities resulting from Penal Code section 2966 hearings:

- district attorney services to represent the people; and
- public defender services to represent indigent prisoners or parolees.

II. ELIGIBLE CLAIMANTS

Any ~~city,~~ county, and city and county that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557, subdivision (c), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The County of San Bernardino filed the test claim on July 5, 2001, establishing eligibility for fiscal

[1] The test claim was amended on March 2, 2006 to add this statute. The amendment was accepted based on provisions of Government Code section 17557, subdivision (c), that were in effect on the date of the filing of the original test claim.

year 2000-2001. Therefore, costs incurred pursuant to Penal Code section 2966 hearings are reimbursable on or after July 1, 2000.

Actual costs for one fiscal year shall be included in each claim. Estimated costs of the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.

If the total costs for a given fiscal year do not exceed $1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities performed by local agency staff to represent the people and indigent prisoners/parolees pursuant to Penal Code section 2966 hearings are reimbursable:

- ~~District attorney services to represent the people.~~
- ~~Public defender services to represent indigent prisoners or parolees.~~

A. One-Time Activities

1. Updating existing policies and procedures to include the procedures for hearings conducted pursuant to Penal Code section 2966.
2. 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.

B. On-going Activities

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

1. 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.
2. Prepare and file motions with the Superior Court.
3. Retain necessary experts, investigators, and professionals to prepare for and testify at the civil trial conducted pursuant to Penal Code section 2966.
4. Travel to and from state hospitals, prisons and county jails where detailed medical records and case files are maintained.
5. Travel to and from state hospitals, prisons and county jails by the defense counsel in order to meet with the prisoner client.
6. Provide transportation, care, and custody of each Penal Code section 2966 petitioner before, during and after the civil hearings by the County Sheriff's Department.
7. 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.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of

using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter[2] is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

[2] This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

VII. OFFSETTING REVENUES ~~SAVINGS~~ AND OTHER REIMBURSEMENTS

Any offsetting revenues ~~savings~~ the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, state funds provided pursuant to Welfare and Institutions Code section 4117 on and after January 1, 2007, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

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STATE OF CALIFORNIA

COMMISSION ON STATE MANDATES
980 NINTH STREET, SUITE 300
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ARNOLEXHIBIT A

August 7, 2006

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

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

RE: Adopted Statement of Decision and Draft Parameters and Guidelines
Mentally Disordered Offenders: Treatment as a Condition of Parole –
00-TC-28, 05-TC-06
County of San Bernardino, Claimant
Statutes of 1994, Chapter 706
Statutes of 1989, Chapter 228
Statues of 1988, Chapter 658
Statutes of 1987, Chapter 687
Statutes of 1986; Chapter 858
Penal Code Section 2966

Dear Ms. Ter Keurst:

The Commission on State Mandates adopted the attached Statement of Decision on July 28, 2006. State law provides that reimbursement, if any, is subject to Commission approval of parameters and guidelines for reimbursement of the mandated program, approval of a statewide cost estimate, a specific legislative appropriation for such purpose, a timely-filed claim for reimbursement, and subsequent review of the claim by the State Controller's Office.

Following is a description of the responsibilities of all parties and of the Commission during the parameters and guidelines phase.

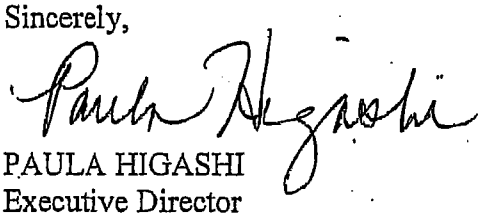
- **Draft Parameters and Guidelines.** Pursuant to California Code of Regulations, title 2, section 1183.12 (operative September 6, 2005), the Commission staff is expediting the parameters and guidelines process by enclosing draft parameters and guidelines to assist the claimant. The proposed reimbursable activities are limited to those approved in the Statement of Decision by the Commission.
- **Claimant's Review of Draft Parameters and Guidelines.** Pursuant to California Code of Regulations, title 2, section 1183.12, subdivisions (b) and (c), the successful test claimant may file modifications and/or comments on the proposal with Commission staff by **August 22, 2006.** The claimant may also propose a reasonable reimbursement methodology pursuant to Government Code section 17518.5 and California Code of Regulations, title 2, section 1183.13. The claimant is required to submit an original and

two (2) copies of written responses to the Commission and to simultaneously serve copies on the state agencies and interested parties on the mailing list.

- **State Agencies and Interested Parties Comments.** State agencies and interested parties may submit recommendations and comments on staff's draft proposal and the claimant's modifications and/or comments within 15 days of service. State agencies and interested parties are required to submit an original and two (2) copies of written responses or rebuttals to the Commission and to simultaneously serve copies on the test claimant, state agencies, and interested parties on the mailing list. The claimant and other interested parties may submit written rebuttals. (See Cal. Code Regs., tit. 2, § 1183.11.)
- **Adoption of Parameters and Guidelines.** After review of the draft parameters and guidelines and all comments, Commission staff will recommend the adoption of an amended, modified, or supplemented version of staff's draft parameters and guidelines. (See Cal. Code Regs., tit. 2, § 1183.14.)

Please contact Nancy Patton at (916) 323-3562 if you have any questions.

Sincerely,



PAULA HIGASHI
Executive Director

Enclosures: Adopted Statement of Decision, Draft Parameters and Guidelines

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM: Penal Code Section 2966; Statutes 1985, Chapter 1419[1] Statutes 1986, Chapter 858 Statutes 1987, Chapter 687 Statutes 1988, Chapter 658 Statutes 1989, Chapter 228 Statutes 1994, Chapter 706 Filed on July 5, 2001 by the County of San Bernardino, Claimant.	No. 00-TC-28, 05-TC-06 *Mentally Disordered Offenders: Treatment as a Condition of Parole* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on July 28, 2006)*

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

Paula Higashi
PAULA HIGASHI, Executive Director

August 7, 2006
Date

[1] The test claim was amended on March 2, 2006 to add this statute. The amendment was accepted based on provisions of Government Code section 17557, subdivision (c), that were in effect on the date of the filing of the original test claim.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM: Penal Code Section 2966; Statutes 1985, Chapter 1419[1] Statutes 1986, Chapter 858 Statutes 1987, Chapter 687 Statutes 1988, Chapter 658 Statutes 1989, Chapter 228 Statutes 1994, Chapter 706 Filed on July 5, 2001 by the County of San Bernardino, Claimant.	*Case No.: 00-TC-28, 05-TC-06* ***Mentally Disordered Offenders: Treatment as a Condition of Parole*** STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on July 28, 2006)*

STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on July 28, 2006. Bonnie Ter Keurst appeared on behalf of claimant County of San Bernardino. Susan Geanacou appeared on behalf of the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the staff analysis at the hearing by a vote of 7-0 to approve this test claim.

SUMMARY OF FINDINGS

This test claim addresses the Mentally Disordered Offender law, codified in Penal Code sections 2960 et seq., which establishes continued mental health treatment and civil commitment procedures for persons with severe mental disorders, following termination of their sentence or parole.

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[1] The test claim was amended on March 2, 2006 to add this statute. The amendment was accepted based on provisions of Government Code section 17557, subdivision (c), that were in effect on the date of the filing of the original test claim.

Penal Code section 2966 sets 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 or upon termination of parole, that he or she meets the mentally disordered offender criteria, as defined. If the person requests it, the court shall conduct such a hearing; the district attorney is required to represent the people and the public defender is required to represent the person if he or she is indigent.

The test claim presents the following issues:

- Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?
- Does the test claim legislation impose a "new program or higher level of service" on local agencies within the meaning of article XIII B, section 6 of the California Constitution?
- Does the test claim legislation impose "costs mandated by the state" within the meaning of article XIII B, section 6 and Government Code section 17514?

The Commission finds that the test claim legislation mandates an activity on local agencies because it requires the district attorney to represent the people and the public defender to represent the prisoner or parolee, when he or she is indigent, at the subject court hearings. The Commission also finds that the test claim legislation constitutes a "program" since such representation is a peculiarly governmental function administered by a local agency – the county district attorney's office and the county public defender's office – as a service to the public, and imposes unique requirements upon counties that do not apply generally to all residents and entities in the state.

The Commission further finds that the test claim legislation imposes a "new program or higher level of service" because the requirements are new in comparison to the preexisting scheme and they provide an enhanced service to the public by protecting the public from severely mentally disordered persons while ensuring a fair hearing for the prisoner or parolee. Finally, the test claim legislation imposes "costs mandated by the state" and none of the statutory exemptions set forth in Government Code section 17556 are applicable to deny the claim.

Therefore, the Commission finds that the test claim legislation imposes a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities resulting from Penal Code section 2966 hearings:

- district attorney services to represent the people; and
- public defender services to represent indigent prisoners or parolees.

BACKGROUND

This test claim addresses the Mentally Disordered Offender law, codified in Penal Code sections 2960 et seq., which establishes continued mental health treatment and civil commitment procedures for persons with severe mental disorders, following termination of their sentence or parole.

Overview of Mentally Disordered Offender Program

Since 1969, the Mentally Disordered Offender law has required certain offenders who have been convicted of specified violent crimes to receive treatment by the Department of Mental Health as a condition of parole.[2] Penal Code section 2960 establishes the Legislature's intent to protect the public by requiring those prisoners who received a determinate sentence and who have a treatable, severe mental disorder at the time of their parole, or upon termination of parole, to receive mental health treatment until the disorder is in remission and can be kept in remission. Section 2960 further states that "the Department of Corrections should evaluate each prisoner for severe mental disorders during the first year of the prisoner's sentence, and that severely mentally disordered prisoners should be provided with an appropriate level of mental health treatment while in prison and when returned to the community."

To impose mental health treatment as a condition of parole, the prospective parolee must have: 1) a severe mental disorder that is not in remission or cannot be kept in remission without treatment, and the disorder was one of the causes of or was an aggravating factor in the commission of the crime for which the prisoner was sentenced to prison; 2) been in treatment for 90 days or more within the year prior to his or her parole or release; and 3) been certified by designated mental health professionals as meeting conditions 1 and 2 above, in addition to representing a substantial danger of physical harm to others by reason of the severe mental disorder.[3]

Prior to release on parole or prior to termination of parole, such a person must be evaluated and certified by mental health professionals as to whether he or she meets the mentally disordered offender criteria set forth in Penal Code section 2962.[4] The person has the right to a hearing before the Board of Prison Terms to contest such a finding that he or she meets the mentally disordered offender criteria.[5] If the person is dissatisfied with the results of the Board of Prison Terms hearing, the person may petition the superior court for a civil hearing to determine whether he or she meets the mentally disordered offender criteria.[6]

The evaluation must also be submitted to the district attorney of the county in which the person is being treated, incarcerated or committed not later than 180 days prior to

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[2] Penal Code section 2962, subdivisions (a) through (f).

[3] Penal Code section 2962, subdivisions (a) through (d).

[4] Penal Code section 2962, subdivision (d).

[5] Penal Code section 2966, subdivision (a).

[6] Penal Code section 2966, subdivision (b).

termination of parole or release from parole.[7] The district attorney may then file a petition in superior court for continued involuntary treatment for one year and the court shall conduct a civil hearing on the matter.[8]

If the person's severe mental disorder is put into remission during the parole period, and can be kept in remission during the parole period, the Department of Mental Health must discontinue treatment.[9]

Major legislation affecting the mentally disordered offender program came forward in 1985. That year, the Legislature enacted Statutes 1985, chapter 1418 (Senate Bill No. (SB) 1054) and Statutes 1985, chapter 1419 (SB 1296), which were double-joined. Chapter 1418 added Penal Code section 2970, to set forth procedures for the *local district attorney* to petition the court for a hearing when a mentally disordered offender is scheduled to be released from prison or parole. Penal Code section 2970 hearings were addressed in a prior test claim (98-TC-09).

Chapter 1419 amended Penal Code section 2960, adding subdivision (d) text to set forth procedures for allowing a *prisoner or parolee* to petition the court for a hearing to contest a Board of Prison Terms determination that he or she meets the mentally disordered offender criteria. Although chapter 1419 was not pled in the original test claim, the test claim was amended on March 2, 2006 to add it.

The two types of hearing and the statutes affecting them are further described below.

Prior Test Claim -- District Attorney-Initiated Court Hearings (Pen. Code, §§ 2970, 2972 and 2972.1)

District Attorney-initiated court hearings under the Mentally Disordered Offender law, established by Statutes 1985, chapter 1418, were the subject of a prior test claim[10] in which the Commission on State Mandates found a reimbursable state-mandated program was imposed on local agencies. That prior test claim addressed Penal Code sections 2970, 2972 and 2972.1, which established court procedures initiated by the local district attorney to extend for one year the involuntary treatment of a mentally disordered offender. The district attorney may extend involuntary treatment if the offender's severe mental disorder is not in remission or cannot be kept in remission without treatment.

Not later than 180 days prior to the termination of parole, the professionals treating the prisoner or parolee are required to submit a written evaluation to the district attorney in the county of treatment or commitment. The district attorney reviews the evaluation and files a Penal Code section 2970 petition in the superior court for continued involuntary treatment for one year and the court conducts a civil hearing on the matter.

For that test claim, the following activities were determined to be reimbursable:

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[7] Penal Code section 2970.

[8] Penal Code sections 2970 and 2972, subdivision (a).

[9] Penal Code section 2968.

[10] *Mentally Disordered Offenders' Extended Commitment Proceedings*, Test Claim number 98-TC-09.

1. review the state's written evaluation and supporting affidavits indicating that the offender's severe mental disorder is not in remission or cannot be kept in remission without continued treatment (Pen. Code, § 2970);
2. prepare and file petitions with the superior court for the continued involuntary treatment of the offender (Pen. Code, § 2970);
3. represent the state and the indigent offender in civil hearings on the petition and any subsequent petitions or hearings regarding recommitment (Pen. Code, §§ 2972, 2972.1);
4. retain necessary experts, investigators, and professionals to prepare for the civil trial and any subsequent petitions for recommitment;
5. travel to and from state hospitals where detailed medical records and case files are maintained; and
6. provide transportation and custody of each potential mentally disordered offender before, during, and after the civil proceedings by the County Sheriff's Department.

Prisoner- or Parolee-Initiated Court Hearings [Pen. Code, § 2960, subdivision (d), & Pen. Code § 2966]

Prisoner- or parolee-initiated court hearings under the Mentally Disordered Offender law, established by Statutes 1985, chapter 1419, are the subject of this test claim. Codified originally in Penal Code section 2960, subdivision (d), the provisions for these court hearings are currently set forth in Penal Code section 2966. Such hearings are initiated by a prisoner or parolee who wishes to contest a finding, made at the time of parole or upon termination of parole, that he or she meets the mentally disordered offender criteria. Section 2960, subdivision (d), as it was originally enacted, provided that:

- A prisoner or parolee may request a hearing before the Board of Prison Terms, and the Board shall conduct a hearing if so requested, for the purpose of the prisoner proving that he or she does not meet the mentally disordered offender criteria.
- At the hearing the burden of proof shall be on the person or agency who certified the prisoner or parolee as meeting the mentally disordered offender criteria.
- If the prisoner or parolee, or any person appearing on his or her behalf at the hearing requests it, the Board of Prison Terms shall appoint two independent professionals for further evaluation.
- The prisoner or parolee shall be informed at the Board of Prison Terms hearing of his or her right to file a petition in the superior court for a trial on whether he or she meets the mentally disordered offender criteria. The Board of Prison Terms shall provide a prisoner or parolee who requests a trial a petition form and instructions for filing the petition.
- A prisoner or parolee who disagrees with the determination of the Board of Prison Terms that he or she meets the mentally disordered offender criteria may file a

petition for a hearing in the superior court of the county in which he or she is incarcerated or is being treated.

- The court shall conduct a hearing on the petition within sixty calendar days after the petition is filed, unless either: 1) time is waived by the petitioner or his counsel; or 2) good cause is shown to delay the hearing.
- The order of the Board of Prison Terms shall be in effect until the completion of the court proceedings.
- The court shall advise the petitioner of his or her right to be represented by an attorney and of the right to a jury trial.
- The attorney for the petitioner shall be given a copy of the petition, and any supporting documents.
- The hearing shall be a civil hearing; however, in order to reduce costs, the rules of criminal discovery, as well as civil discovery, shall be applicable.
- The standard of proof shall be beyond a reasonable doubt, and if the trial is by jury, the jury shall be unanimous in its verdict. The trial shall be by jury unless waived by both the petitioner and the district attorney.
- The hearing procedures are applicable to a continuation of a parole pursuant to Penal Code section 3001, which provides for discharge from parole unless the Department of Corrections recommends to the Board of Prison Terms that the person be retained on parole, and the Board, for good cause, determines that the person will be retained.

These basic provisions were subsequently modified as follows:

1. Statutes 1986, Chapter 858, Section 4 (SB 1845) – This statute renumbered the existing provisions of section 2960, and in so doing created section 2966.

2. Statutes 1987, Chapter 687, Section 8 (SB 425) – This statute modified the provisions to specify the time frame for examining the person's mental state.

3. Statutes 1988, Chapter 658, Section 1 (SB 538) – This statute clarified the scope of the Penal Code section 2966 hearing.

4. Statutes 1989, Chapter 228, Section 2 (SB 1625) – This statute enacted an additional requirement for finding a severe mental disorder, i.e., that the prisoner or parolee represents a substantial danger of physical harm to others, as a result of *People v. Gibson* (1988) 204 Cal.App.3d 1425. The *Gibson* court found that the mentally disordered offender legislation violated the equal protection clause of the United States and California Constitutions by not requiring current proof of dangerousness as required of other adult persons involuntarily committed for mental health treatment.

5. Statutes 1994, Chapter 706, Section 1 (SB 1918) – This statute modified Penal Code section 2966 regarding admissible evidence, and to provide that, if the court reverses the Board's decision, the court shall stay execution of decision for five working days to allow for orderly release of the prisoner.

Claimant's Position

The County of San Bernardino contends that the test claim statutes constitute a reimbursable state-mandated local program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

The County is seeking reimbursement for the following activities:

- District Attorney services to represent the people, and Public Defender services to represent indigent petitioners, both of which are specialized to deal with complex psychiatric issues, including travel time for these personnel.
- Forensic expert witness and investigator services.
- Sheriff's department services for transporting inmates between prison or the state hospital and court house, care and custody associated with confinement awaiting, during and after the court proceeding.

Claimant filed comments in response to Department of Finance, rejecting the Department's assertions that costs to implement the test claim legislation are related to enforcement of a changed penalty for a crime, and therefore must be denied under Government Code section 17556, subdivision (g). This is addressed in Issue 3 of the following analysis.

Claimant filed an amendment to the test claim to include the original legislation (Stats. 1985, ch. 1419) which established the provisions allowing the prisoner or parolee to initiate a hearing contesting a finding that he or she meets the mentally disordered offender criteria.

In response to the subsequent draft staff analysis that was issued, claimant commented that the analysis "did not acknowledge in the conclusion, nor discuss within the document body, the fact that both [district attorney and public defender] services are specialized to deal with complex psychiatric issues." Claimant further asserted:

> MDO commitment trials pursuant to Penal Code §2966, address the diagnosis of a mental disorder, its remission status, and an assessment of risk stemming from the diagnosed mental disorder. These are precisely the issues addressed in MDO commitment trials pursuant to Penal Code §2970 and 2972, for which the above referenced 'activities' have been found to be reimbursable. MDO adjudications, whether pursuant to 2966 or 2970/2972, are by definition, expert driven. Representation without the assistance of expert witnesses would constitute ineffective assistance of counsel.

Claimant then asserted that the term 'activities' as referenced regarding district attorney and public defender services "is a broader term and encompasses more than the District Attorney 'services' and Public Defender 'services' as listed in the conclusion of the draft staff analysis." As a result, claimant stated it is "interpreting the 'Activities' as referenced above to include expert witnesses, investigators, and sheriff's department and custodial services, based on Footnote 25" of the draft staff analysis. These comments are addressed in Issue 1 of the following analysis.

Position of Department of Corrections

The Department of Corrections filed comments on August 3, 2001, citing additional workload and subpoenas for mental health professionals at the Department resulting from mentally disordered offender evaluations. Hearings are particularly increasing in San Bernardino County as a result of mentally disordered offenders being placed in Patton State Hospital, which is located within that county. The Department stated that it had received approximately 20 such subpoenas in the last year, and "[i]t is evident that county resources are impacted by the necessity of conducting these hearings as well." The comments further noted that "[t]he Department of Mental Health has indicated that increasing numbers of [mentally disordered offender] cases will be placed at [Patton State Hospital], at least over the next year or so."

The Department stated that it "appears the County's claim for reimbursement does have merit."

Position of Department of Finance

The Department of Finance filed comments on August 9, 2001, stating that the test claim legislation should not be considered a reimbursable mandate because "the costs claimed for reimbursement are related to enforcement of a changed penalty for a crime or infraction, as specified in Government Code section 17556(g)."

The basis for the Department's argument is that when a petitioner is requesting a hearing to contest a condition of parole, in effect he or she is petitioning to change the penalty for a crime. The county is responsible to provide a sentencing hearing, which determines the penalty for a crime. In this case, the hearing requested by the inmate is a "continuation of the pre-incarceration hearing that is the responsibility of the county." Therefore the costs should not be reimbursable under article XIII B, section 6 of the California Constitution.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution[11] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[12] "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that

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[11] Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected/ (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

[12] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

articles XIII A and XIII B impose."[13] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[14] In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[15]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state."[16] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.[17] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[18]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[19]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[20] In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[21]

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[13] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

[14] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[15] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); Lucia Mar Unified School District v. Honig (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

[16] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra,* 44 Cal.3d 830, 835.).

[17] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[18] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

[19] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

[20] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[21] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

This test claim presents the following issues:

- Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?
- Does the test claim legislation impose a "new program" or "higher level of service" on local agencies within the meaning of article XIII B, section 6 of the California Constitution?
- Does the test claim legislation impose "costs mandated by the state" within the meaning of article XIII B, section 6 and Government Code section 17514?

Issue 1: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

In order for a test claim statute to impose a reimbursable state mandated program under article XIII B, section 6, the statutory language must mandate an activity or task upon local governmental agencies. If the statutory language does not mandate or require local agencies to perform a task, then article XIII B, section 6, is not triggered.

Here, claimant is seeking reimbursement for services of the district attorney to represent the people, services of the public defender to represent indigent prisoners or parolees, forensic expert witness and investigative services, and sheriff's department services for transportation and custodial matters. The Penal Code provides that, when a prisoner or parolee initiates a court hearing under the mentally disordered offender program, the "court shall conduct a hearing on the petition...,"[22] the "court shall advise the petitioner of his or her right to be represented by an attorney and of the right to a jury trial"[23] and "the trial shall be by jury unless waived by both the person and the district attorney."[24]

Thus, once the prisoner or parolee petitions the court for a Penal Code section 2966 hearing, the court shall conduct it. The test claim legislation requires the district attorney to represent the people in any such hearing. Because the statute also gives the prisoner or parolee "the right to be represented by an attorney," the public defender is required to represent the prisoner or parolee when he or she is indigent. Therefore, the Commission finds that activities of the district attorney, representing the people, and public defender, representing indigent offenders, are mandated by the test claim legislation.

Claimant asserts that, based on the statements in footnote number 25 of the draft staff analysis, it is more broadly interpreting the 'activities' of the district attorney and public defender to include expert witnesses, investigators, and sheriff's department transportation and custodial services. In the draft staff analysis, the text of footnote number 25 read:

> The Commission can consider claimant's request for reimbursement for expert witnesses, investigators, and sheriff's department transportation and custodial services at the parameters and guidelines stage to determine

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[22] Penal Code section 2966, subdivision (b).

[23] *Ibid.*

[24] *Ibid.*

whether these services are needed as a reasonable method of complying with the mandate pursuant to California Code of Regulations, title 2, section 1183.1, subdivision (a)(4).

California Code of Regulations, title 2, section 1183.1 states that parameters and guidelines shall describe the claimable reimbursable costs and include a "description of the specific costs and types of costs that are reimbursable, ... and a description of the most reasonable methods of complying with the mandate." Section 1183.1, subdivision (a)(4), defines "the most reasonable methods of complying with the mandate" as "those methods not specified in statute or executive order that are necessary to carry out the mandated program." Government Code section 17557 requires successful test claimants to submit proposed parameters and guidelines within 30 days of adoption of a statement of decision on a test claim.

Although the expert witness, investigator, and sheriff's department transportation and custodial services may in fact be reasonably necessary to comply with the mandate, the plain meaning of the test claim statute is limited to the district attorney and public defender services. The statute *does not* include expert witnesses, investigators, or sheriff's department services. Therefore, these activities can *only* be considered for reimbursement, when claimant proposes them, at the parameters and guidelines stage.

The test claim legislation must also constitute a "program" in order to be subject to article XIII B, section 6 of the California Constitution. The Commission finds representation by the district attorney and public defender at the subject hearings does constitute a program for the reasons stated below.

The relevant tests regarding whether test claim legislation constitutes a "program" within the meaning of article XIII B, section 6 are set forth in case law. The California Supreme Court, in the case of *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, defined the word "program" within the meaning of article XIII B, section 6 as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.[25]

Here, the district attorney represents the people at the subject hearings, and the public defender represents the prisoner or parolee. Such representation is a peculiarly governmental function administered by a local agency – the county district attorney's office and the county public defender's office – as a service to the public. Moreover, the test claim legislation imposes unique requirements upon counties that do not apply generally to all residents and entities in the state.

Accordingly, the Commission finds that the test claim legislation mandates an activity or task upon local agencies and constitutes a "program." Therefore, the test claim legislation is subject to article XIII B, section 6 of the California Constitution.

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[25] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (*County of Los Angeles*).

Issue 2: Does the test claim legislation impose a "new program or higher level of service" on local agencies within the meaning of article XIII B, section 6 of the California Constitution?

The courts have held that legislation imposes a "new program" or "higher level of service" when: a) the requirements are new in comparison with the preexisting scheme; and b) the requirements were intended to provide an enhanced service to the public.[26] To make this determination, the test claim legislation must initially be compared with the legal requirements in effect immediately prior to its enactment.[27]

The test claim statutes require counties to provide district attorney and public defender services — for indigent persons — when a prisoner or parolee requests a court hearing to contest a finding that he or she meets the mentally disordered offender criteria. The law in effect immediately prior to the test claim statutes allowed for commitment of inmates or parolees to a state hospital under the Welfare and Institutions Code, but did not require any of the activities or procedures set forth in the test claim legislation. Therefore, the Commission finds that the requirements of the test claim legislation are new in comparison with the preexisting scheme.

The Commission further finds that the requirements in the test claim legislation were intended to provide an enhanced service to the public by protecting the public from severely mentally disordered persons while ensuring a fair hearing for the prisoner or parolee.

Issue 3: Does the test claim legislation impose "costs mandated by the state" within the meaning of article XIII B, section 6 and Government Code section 17514?

For the mandated activities to impose a reimbursable, state-mandated program under article XIII B, section 6, two additional elements must be satisfied. First, the activities must impose costs mandated by the state pursuant to Government Code section 17514. Second, the statutory exceptions to reimbursement listed in Government Code section 17556 cannot apply.

Government Code section 17514 defines "costs mandated by the state" as any increased cost a local agency is required to incur as a result of a statute that mandates a new program or higher level of service. The test claim alleged costs of $110,000 for a district attorney, $130,000 for a public defender, and $50,000 for sheriff's office services for a complete fiscal year of 2000/2001. Thus, there is evidence in the record, signed under penalty of perjury, that there are increased costs as a result of the test claim legislation.

Government Code section 17556 lists several exceptions which preclude the Commission from finding costs mandated by the state. For the reasons stated below, the Commission finds that none of the exceptions apply to deny this test claim.

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[26] *San Diego Unified School Dist. v. Commission on State Mandates, supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

[27] *Ibid.*

Government Code section 17556, subdivision (b), requires the Commission to deny the test claim where the test claim statute "affirmed for the state a mandate that had been declared existing law or regulation by action of the courts." In *People v. Gibson* (1988) 204 Cal.App.3d 1425, the court found that the test claim legislation violated the equal protection clause of the United States and California Constitutions by not requiring current proof of dangerousness as required of other adult persons involuntarily committed for mental health treatment.[28] In response to *Gibson,* Penal Code section 2966, subdivision (c), was modified to add another condition that must be met in order to continue involuntary mental health treatment.[29] The condition is whether, by reason of his or her severe mental disorder, the prisoner or parolee represents a substantial danger of physical harm to others.

Although this new provision expands the scope of the Penal Code section 2966 hearing by requiring proof of an additional element, i.e., current proof of dangerousness, the Commission finds that the first test claim statute actually created the mandate for district attorney and public defender services. This additional element cannot feasibly be considered a separate, mandated activity, but instead is "part and parcel" to the original mandated hearing activities.[30] Therefore, Government Code section 17556, subdivision (b), is inapplicable to deny the test claim.

Government Code section 17556, subdivision (c), requires the Commission to deny the test claim where the test claim statute "imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute ... mandates costs that exceed the mandate in that federal law or regulation."

Here, the hearing can result in involuntary commitment and treatment of the prisoner or parolee beyond the parole termination date. Although the Mentally Disordered Offender legislation is located in the Penal Code, the California Appellate Court has held that the statutory scheme is civil rather than penal.[31] The U.S. Supreme Court has repeatedly found that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection,[32] and some courts have determined that the assistance of counsel under those circumstances is required to meet federal due process standards.[33] Moreover, California courts recognize that legal services for indigent

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[28] *Gibson, supra,* 204 Cal.App.3d 1425, 1437.

[29] Statutes 1989, chapter 228; Senate Bill 1625 (as amended April 27, 1989), Senate Committee on Judiciary Analysis (1989-90 Regular Session), May 2, 1989, pages 1-2.

[30] Cf. *San Diego Unified School Dist. v. Commission on State Mandates, supra,* 33 Cal.4th 859, 881-882.

[31] *People v. Robinson* (1998) 63 Cal.App.4th 348, 352 *(Robinson)*; *People v. Superior Court (Myers)* (1996) 50 Cal.App.4th 826 *(Myers)*.

[32] *Addington v. Texas* (1979) 441 U.S. 418.

[33] *Heryford v. Parker* (10th Cir. 1968) 396 F.2d 393, where the court held that a civil proceeding resulting in involuntary treatment commands observance of the constitutional safeguards of due process, including the right to counsel.

persons at public expense are mandated in civil proceedings relating to mental health matters where restraint of liberty is possible.[34]

Thus, the question is whether public defender services for indigent prisoners or parolees results in costs mandated by the federal government — in the form of constitutional rights to counsel under the Sixth Amendment and rights to due process under the Fourteenth Amendment. The Commission finds the public defender services do not result in costs mandated by the federal government for the reasons stated below.

The California Supreme Court in *San Diego Unified School Dist.*[35] addressed the issue of costs mandated by the federal government in the context of school expulsion due process hearings. There, the relevant test claim statute compelled suspension and mandated a recommendation of expulsion for certain offenses, which then triggered a mandatory expulsion hearing.[36] It was not disputed that the resulting expulsion hearing was required to "comply with basic federal due process requirements, such as notice of charges, a right to representation by counsel, an explanation of the evidence supporting the charges, and an opportunity to call and cross-examine witnesses and to present evidence."[37]

The court stated that in the absence of the mandatory provision, a school district would not automatically incur the due process hearing costs that are mandated under federal law.[38] Further, the mandatory expulsion provision did not implement a federal law or regulation, since the federal law did not at the time mandate an expulsion recommendation or expulsion for the cited offenses.[39] Even the provisions setting forth expulsion hearing *procedures* did not in themselves require the school district to incur any costs, since neither those provisions nor federal law required that any such expulsion recommendation be made in the first place.[40] The court concluded:

> Because it is state law [the mandatory expulsion provision], and not federal due process law, that requires the District to take steps that in turn require it to incur hearing costs, it follows ... that we cannot characterize *any* of the hearing costs incurred by the District, triggered by the mandatory [state] provision ..., as constituting a federal mandate (and hence being nonreimbursable). We conclude that under the statutes existing at the time of the test claim in this case ..., *all* such hearing costs—those designed to satisfy the minimum requirements of federal due process, and those that may exceed those requirements—are, with respect to the mandatory

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[34] *Phillips v. Seely* (1974) 43 Cal.App.3d 104, 113; *Waltz v. Zumwalt* (1985) 167 Cal.App.3d 835, 838.

[35] *San Diego Unified School Dist., supra,* 33 Cal.4th 859.

[36] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 879.

[37] *Ibid.*

[38] *Id.* at 880.

[39] *Id.* at 881.

[40] *Ibid.*

expulsion provision ..., state mandated costs, fully reimbursable by the state. (Emphasis in original.)[41]

Like the test claim legislation in the *San Diego Unified School Dist.* case, there is no pre-existing federal statutory scheme requiring the states to implement civil commitment proceedings for mentally disordered offenders. Rather, the civil proceedings set forth in the test claim statute constitute a new state program, and counties would not otherwise be compelled to provide defense services to indigent persons wishing to contest involuntary treatment or commitment if the new program had not first been created by the state. Therefore, Government Code section 17556, subdivision (c), is inapplicable to deny the test claim.

Government Code section 17556, subdivision (e), requires the Commission to deny the test claim if the "statute ... or an appropriation in the Budget Act or other bill provides for offsetting savings to local agencies ... that result in no net costs to the local agencies ..., or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate." Welfare and Institutions Code section 4117 allows reimbursement to local agencies for certain mental health trials or hearings involving inmates of state mental hospitals. Section 4117 specifically allows for reimbursement of costs incurred by counties for hearings conducted as a result of district attorney-initiated petitions to continue involuntary treatment as a continuation of parole, pursuant to Penal Code section 2972.

Neither section 4117, nor any other statutory or Budget Act provisions, provide for reimbursement for costs incurred by counties for hearings conducted pursuant to Penal Code section 2966. Therefore, Government Code section 17556, subdivision (e), is inapplicable to deny the test claim.

Government Code section 17556, subdivision (g), requires the Commission to deny the test claim if the "statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction." The Department of Finance, in its comments of August 9, 2001, asserted that the test claim legislation should not be considered a reimbursable mandate because "the costs claimed for reimbursement are related to enforcement of a changed penalty for a crime or infraction, as specified in Government Code section 17556 (g)."

However, as noted above, the test claim statute itself identifies the subject hearings as "civil hearings,"[42] and California courts have reaffirmed that the Mentally Disordered Offender legislation is civil rather than penal.[43] In the *Robinson* case, the Second District Court of Appeal overruled its previous determination that the Mentally Disordered Offender law was penal in nature. Citing an earlier case, it stated that the Mentally Disordered Offender scheme is "concerned with two objectives, neither of which is

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[41] *Id.* at 881-882.

[42] Penal Code section 2966, subdivision (b).

[43] *People v. Robinson, supra,* 63 Cal.App.4th 348; *People v. Superior Court (Myers)* (1996) 50 Cal.App.4th 826.

penal: protection of the public, and providing mental heath treatment for certain offenders who are dangerous and suffering from severe mental illnesses."[44] Based on the case law interpreting the Mentally Disordered Offender law, Government Code section 17556, subdivision (g), is inapplicable to deny the test claim.

CONCLUSION

Based on the foregoing, the Commission finds that Penal Code section 2966 imposes a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities resulting from such hearings:

- district attorney services to represent the people; and
- public defender services to represent indigent prisoners or parolees.

[44] *People v. Robinson, supra,* 63 Cal.App.4th 348, 352.

DRAFT PARAMETERS AND GUIDELINES

Penal Code Section 2966

Statutes 1985, Chapter 1419[1]
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

I. SUMMARY OF THE MANDATE

On July 28, 2006, the Commission on State Mandates (Commission) adopted a Statement of Decision finding that the test claim legislation imposes a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 to perform the following activities resulting from Penal Code section 2966 hearings:

- district attorney services to represent the people; and
- public defender services to represent indigent prisoners or parolees.

II. ELIGIBLE CLAIMANTS

Any city, county, and city and county that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557, subdivision (c), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The County of San Bernardino filed the test claim on July 5, 2001, establishing eligibility for fiscal year 2000-2001. Therefore, costs incurred pursuant to Penal Code section 2966 hearings are reimbursable on or after July 1, 2000.

Actual costs for one fiscal year shall be included in each claim. Estimated costs of the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.

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[1] The test claim was amended on March 2, 2006 to add this statute. The amendment was accepted based on provisions of Government Code section 17557, subdivision (c), that were in effect on the date of the filing of the original test claim.

If the total costs for a given fiscal year do not exceed $1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities resulting from Penal Code section 2966 hearings are reimbursable:

- District attorney services to represent the people.
- Public defender services to represent indigent prisoners or parolees.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

   Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87

Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter[2] is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING SAVINGS AND REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

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[2] This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

Original List Date: 7/10/2001
Last Updated: 7/19/2006
List Print Date: 08/07/2006
Claim Number: 00-TC-28
Issue: Mentally Disordered Offenders: Treatment as a Condition of Parole

Mailing Information: Notice of adopted SOD

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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EXHIBIT B

LARRY WALKER
Auditor/Controller-Recorder
County Clerk

ELIZABETH A. STARBUCK
Assistant Auditor/Controller-Recorder
Assistant County Clerk

August 22, 2006

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

And Interested Parties (See Enclosed Mailing List)

RE: Draft Parameters and Guidelines
Mentally Disordered Offenders: Treatment as a Condition of Parole (00-TC-28, 05-TC-06)
Penal Code section 2966
County of San Bernardino, Claimant
Statutes 1985, chapter 1419; Statutes 1986, chapter 858; Statutes 1987, chapter 687; Statutes 1988, chapter 658; Statutes 1989, chapter 228, Statutes 1994, chapter 706

Dear Ms. Higashi:

The County of San Bernardino (County) has reviewed the draft parameters and guidelines for the above named claim as proposed by the Commission staff. Pursuant to California Code of Regulations, title 2, section 1183.12, subdivisions (b) and (c), we are submitting modifications as notated (italicized) in the attached copy.

On July 28, 2006, the Commission on State Mandates (Commission) found the Test Claim to be a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 to perform the following activities resulting from Penal Code section 2966 hearings:

- District attorney services to represent the people; and
- Public defender services to represent indigent prisoners or parolees.

Representatives of the County Public Defender's Office and the District Attorney's Office have provided a detailed listing of "Reimbursable Activity" components. These components serve to break down the above listed mandated activities into measurable pieces and represent reasonable methods of complying with Penal Code section 2966 hearings. We would note that as part of the proceedings, the Sheriff's Department services are required for transportation, care and custody of the petitioner.

We would also note that MDO commitment trials pursuant to Penal Code §2966, address the diagnosis of a mental disorder, its remission status, and an assessment of risk stemming from the diagnosed mental disorder. These are precisely the issues addressed in MDO commitment trials pursuant to Penal Code §2970 and 2972, for which the above referenced 'activities' have been found to be reimbursable. MDO adjudications, whether pursuant to 2966 or 2970/2972, are by definition, expert driven. Representation without appropriate investigation and the assistance of expert witnesses would constitute ineffective assistance of counsel.

As a representative for the claimant, I would request that the Commission staff incorporate the modifications as presented into the Parameters and Guidelines for this reimbursable state-mandated program.

DECLARATION of CLAIMANT:

The foregoing facts are known to me personally and if so required, I could and would testify to the statements made herein. I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Bonnie Ter Keurst
Manager, Reimbursable Projects

BT:wds

Enclosures

DRAFT PARAMETERS AND GUIDELINES

Penal Code Section 2966

Statutes of 1985, Chapter 1419[1]
Statutes of 1986, Chapter 858
Statutes of 1987, Chapter 687
Statutes of 1988, Chapter 658
Statutes of 1989, Chapter 228
Statutes of 1994, Chapter 706

Mentally Disordered Offenders:
Treatment as a Condition of Parole (00-TC-28, 05-TC-06)
County of San Bernardino, Claimant

I. SUMMARY OF THE MANDATE

Penal Code section 2966 sets 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.

On July 28, 2006, the Commission on State Mandates (Commission) adopted a Statement of Decision finding that the test claim legislation imposes a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 to perform the following activities resulting from Penal Code section 2966 hearings:

- District attorney services to represent the people; and
- Public defender services to represent indigent prisoners or parolees.

II. ELIGIBLE CLAIMANTS

Any city, county, and city and county that incur increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557, subdivision (c), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The County of San Bernardino filed the test claim on July 5, 2001, establishing eligibility for

[1] **The test claim was amended on March 2, 2006 to add this statute. The amendment was accepted based on provisions of Government Code section 17557, subdivision (c), that were in effect on the date of the filing of the original test claim.**

fiscal year 2000-2001. Therefore, costs incurred pursuant to Penal Code section 2966 hearings are reimbursable on or after July 1, 2000.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.

If the total costs for a given year do not exceed $1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, *training packets*, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities *performed by local agency staff to represent the people and indigent prisoners/parolees pursuant to* ~~resulting from~~ Penal Code section 2966 hearings are reimbursable:

- ~~District attorney services to represent the people.~~
- ~~Public defender services to represent indigent prisoners or parolees.~~

A. One-Time Activities

1. *Developing policies and procedures to implement Penal Code section 2966.*
2. *Developing or procuring computer software to track PC 2966 petitioner status.*

3. *Initial training of staff on the mandated PC 2966 activities.*

B. *Continuing Activities*

1. *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. This activity includes the following:*
    a) *Attorney, secretarial, and paralegal, services;*
    b) *Copying charges; and*
    c) *Long distance telephone charges.*

2. *Prepare and file motions with the Superior Court. This activity includes the following:*
    a) *Attorney, secretarial, paralegal, and investigator services;*
    b) *Copying charges; and*
    c) *Long distance telephone charges.*

3. *Prepare and represent the State and the indigent prisoner or parolee in a civil hearings on the petition regarding the appeal of the petitioner's MDO status under Penal Code section 2962. This activity includes the following:*
    a) *Attorney, secretarial, paralegal, and investigator services;*
    b) *Copying charges; and*
    c) *Long distance telephone charges.*

4. *Retain necessary experts, investigators, and professionals to prepare for and testify at any civil trial, and any subsequent petition hearings.*

5. *Travel to and from state hospitals, prisons and county jails where detailed medical records and case files are maintained. This activity includes: Attorney, secretarial, paralegal, and investigator services.*

6. *Travel to and from state hospitals, prisons and county jails by the defense counsel in order to meet with the prisoner client. This activity includes: Attorney, secretarial, paralegal, and investigator services.*

7. *Travel to and from court. This activity includes: Attorney, secretarial, paralegal, and investigator services.*

8. *Provide transportation, care, and custody of each PC 2966 petitioner before, during, and after the civil hearings by the County's Sheriff Department.*

9. *Prepare and represent the State and the indigent prisoner or parolee in a bench or jury trial to decide whether or not the petitioner meets the criteria to be*

committed under the MDO Act (Penal Code §§ 2962, 2966). This activity includes the following:

a) Attorney, secretarial, paralegal, and investigator services;
b) Copying charges; and
c) Long distance telephone charges.

10. Attendance and participation in continuing training necessary to retain professional competence in MDO cases, civil trial skills, and associated mental health issues.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement:

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract

consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV. of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), date attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies as stated in this section. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the Claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate, which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage, which the total amount allowable indirect costs bear to the base selected; or

2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bear to the base selected.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter[2] is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later.

However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed no later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller

[2] This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING SAVINGS AND REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines adopted by the Commission, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (a), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

AUDITOR/CONTROLLER-RECORDER
COUNTY CLERK

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RECORDER • COUNTY CLERK • 222 West Hospitality Lane, First Floor
San Bernardino, CA 92415-0022 • (909) 387-8306 • Fax (909) 386-8940

COUNTY OF SAN BERNARDINO

LARRY WALKER
Auditor/Controller-Recorder
County Clerk

ELIZABETH A. STARBUCK
Assistant Auditor/Controller-Recorder
Assistant County Clerk

PROOF OF SERVICE

I, the undersigned, declare as follows:

I am employed by the County of San Bernardino, State of California. My business address is 222 W. Hospitality Lane, San Bernardino, CA 92415. I am 18 years of age or older.

On August 22, 2006, I faxed and mailed the letter dated August 22, 2006 to the Commission on State Mandates in response to the Draft Parameters and Guidelines Mentally Disordered Offenders: Treatment as a Condition of Parole (00-TC-28, 05-TC-06), Penal Code section 2966, County of San Bernardino Claimant, Statutes 1985, chapter 1419; Statutes 1986, chapter 858; Statutes 1987, chapter 687; Statutes 1988, chapter 658; Statutes 1989, chapter 228, Statutes 1994, chapter 706 and faxed and/or mailed it also to the other parties listed on this mailing list.

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 August 22, 2006 at San Bernardino, California.

WENDY SULZMANN

Original List Date: 7/10/2001
Last Updated: 5/19/2006
List Print Date: 05/26/2006
Claim Number: 00-TC-28
Issue: Mentally Disordered Offenders: Treatment as a Condition of Parole

Mailing Information: Other

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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DEPARTMENT OF FINANCE
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915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

October 27, 2006

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of September 5, 2006, the Department of Finance has reviewed the proposed parameters and guidelines submitted by the County of San Bernardino, (Claimant), regarding Claims Nos. CSM 00-TC-28 and 05-TC-06 "Mentally Disordered Offenders: Treatment as a Condition of Parole." Finance concurs with portions of the proposed parameters and guidelines but recommends changes as detailed below.

Limit the Following One-Time Activity

"Developing policies and procedures to implement Penal Code section 2966."
The district attorney and public defender have existing policies and procedures relative to involuntary committal of a potential parolee to a mental hospital. Penal Code section 2972 states: "The people shall be represented by the district attorney. If the person is indigent the county public defender shall be appointed." The procedures for these activities currently exist and are reimbursed through the "Mentally Disordered Offenders; Extended Criminal Proceedings: 98-TC-09." This activity should be limited to the new procedure for civil court filings by the public defender on behalf of the petitioning parolee.

Delete the Following One-Time Activities

"Developing or procuring computer software to track Penal Code section 2966 petitioner status."
All of California's sheriff's facilities have computer software systems to track their own inmates, as well as inmates in transit to other jurisdictions. The integrated system code that indicates in the legal status field: "MDO inmate/parolee commitment to State Hospital" currently exists. Therefore, reimbursement for this activity is not appropriate.

"Initial training of staff on the mandated Penal Code 2966 activities."
The activities required under Penal Code section 2966 are substantially similar to the previous requirements imposed by Penal Code section 2970, applicable when a prisoner refuses to agree to continued treatment. Under section 2970, the district attorney may file a petition with the superior court for continued involuntary treatment for a year. Because activities required by section 2966 are substantially similar to other activities performed by district attorney and public defender staff, no additional reimbursable training is required.

Delete the Following Ongoing Activities

"Attendance and participation in continuing training necessary to retain professional competence in Mentally Disordered cases, civil trial skills and associated mental health issues." Psychiatrists and psychologists are required to attend a specific number of continuing education hours per year to retain their respective licenses. Therefore, the MDO continuous training could be integrated with current competency requirements. Additionally, county district attorneys prosecute civil forfeiture cases and the public defenders handle civil probate and conservatorship cases, thus making ongoing civil trial skill training a current expectation, and not a reimbursable activity. Finance notes training is not expressly required in the statute.

"Provide care and custody of each Penal Code 2966 petitioner before, during and after the civil hearings by the County's Sheriff Department."
The Statement of Decision issued by the Commission does not identify these activities as reimbursable, nor do they relate to Public Defender or District Attorney reimbursable costs as recognized in the Statement of Decision. Finance considers this inconsistent with the Commission's findings.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your September 5, 2006 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Carla Castañeda, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,

Thomas E. Dithridge
Program Budget Manager

Attachments

Attachment A

DECLARATION OF CARLA CASTANEDA
DEPARTMENT OF FINANCE
CLAIM NOs. CSM-00-TC-28, CSM-05-TC-06

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

2. We concur that the sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

Oct 2006
at Sacramento, CA

Carla Castañeda
Carla Castañeda

PROOF OF SERVICE

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

I, Yazmin Meza the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 12th Floor, Sacramento, CA 95814.

On October 30, 2006, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 12th Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
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A-15
Ms. Carla Castaneda
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Sacramento, CA 95814

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 October 30, 2006, at Sacramento, California.

Yazmin Meza

Rules of Professional Conduct

Rule 3-110. Failing to Act Competently.

(A) A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence.

(B) For purposes of this rule, "competence" in any legal service shall mean to apply the 1) diligence, 2) learning and skill, and 3) mental, emotional, and physical ability reasonably necessary for the performance of such service.

(C) If a member does not have sufficient learning and skill when the legal service is undertaken, the member may nonetheless perform such services competently by 1) associating with or, where appropriate, professionally consulting another lawyer reasonably believed to be competent, or 2) by acquiring sufficient learning and skill before performance is required.

Discussion:

The duties set forth in rule 3-110 include the duty to supervise the work of subordinate attorney and non-attorney employees or agents. (See, e.g., Waysman v. State Bar (1986) 41 Cal.3d 452; Trousil v. State Bar (1985) 38 Cal.3d 337, 342 [211 Cal.Rptr. 525]; Palomo v. State Bar (1984) 36 Cal.3d 785 [205 Cal.Rptr. 834]; Crane v. State Bar (1981) 30 Cal.3d 117, 122; Black v. State Bar (1972) 7 Cal.3d 676, 692 [103 Cal.Rptr. 288; 499 P.2d 968]; Vaughn v. State Bar (1972) 6 Cal.3d 847, 857-858 [100 Cal.Rptr. 713; 494 P.2d 1257]; Moore v. State Bar (1964) 62 Cal.2d 74, 81 [41 Cal.Rptr. 161; 396 P.2d 577].)

In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances. (Amended by order of Supreme Court, operative September 14, 1992.)

130 Cal.App.4th 247
130 Cal.App.4th 247, 30 Cal.Rptr.3d 5, 05 Cal. Daily Op. Serv. 5171, 2005 Daily Journal D.A.R. 7035
(Cite as: 130 Cal.App.4th 247)

C In re Marriage of McClellan
Cal.App. 4 Dist.,2005.

Court of Appeal, Fourth District, Division 1, California.
In re the MARRIAGE OF Debbie and Ronald McCLELLAN.
Ronald McClellan, Appellant;
v.
County of San Diego Department of Child Support Services, Respondent.
No. D044442.

May 25, 2005.

Background: The Superior Court of San Diego County, No. D230750, Jeannie Lowe, Commissioner, denied father's application for an order directing county to omit certain accrued interest from its calculation of his unpaid child support arrearages. Father appealed.

Holding: The Court of Appeal, Irion, J., held that child support arrearages accrue interest until paid.

Affirmed.

West Headnotes

[1] Child Support 76E 453

76E Child Support
76EIX Enforcement
76Ek447 Arrearages; Retroactive Modification
76Ek453 k. Interest. Most Cited Cases

Statutory interest on unpaid child support payments accrues as a matter of law as to each installment when each installment becomes due, and accrued arrearages are treated like a money judgment for purposes of assessing statutory interest; unless otherwise specified in the judgment, interest accrues as to each installment when each installment becomes due and continues to accrue for so long as the arrearage remains unpaid. West's Ann.Cal.Fam.Code § 155.

[2] Child Support 76E 449

76E Child Support
76EIX Enforcement
76Ek447 Arrearages; Retroactive Modification
76Ek449 k. Vesting of Right to Unpaid Support. Most Cited Cases

Child Support 76E 450

76E Child Support
76EIX Enforcement
76Ek447 Arrearages; Retroactive Modification
76Ek450 k. Amount Owed. Most Cited Cases

Because accrued child support arrearages are treated like money judgments, courts cannot retroactively modify or terminate the arrearages. West's Ann.Cal.Fam. Code § 155.

[3] Statutes 361 278.7

361 Statutes
361VI Construction and Operation
361VI(D) Retroactivity
361k278.7 k. Express Retroactive Provisions. Most Cited Cases
(Formerly 361k263, 361k262)

Generally, courts may retroactively apply a new statute only if it contains express language of retroactivity or if other sources provide a clear and unavoidable implication that the Legislature intended retroactive application.

[4] Constitutional Law 92 3907

92 Constitutional Law
92XXVII Due Process
92XXVII(B) Protections Provided and Deprivations Prohibited in General
92k3907 k. Retrospective Laws and Decisions; Change in Law. Most Cited Cases
(Formerly 92k253(4))

The retrospective application of a statute may be unconstitutional if it deprives a person of a vested right without due process of law. U.S.C.A.Const.Amend. 14.

[5] Statutes 361 278.16

361 Statutes
361VI Construction and Operation
361VI(D) Retroactivity
361k278.16 k. Declaratory, Clarifying, and Interpretative Acts. Most Cited Cases
(Formerly 92k188)
A statute that merely clarifies, rather than changes, existing law does not operate retrospectively even if applied to transactions predating its enactment, because the true meaning of the statute remains the same.

[6] Statutes 361 220

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k220 k. Legislative Construction. Most Cited Cases
In deciding whether statutory amendment clarified existing law, courts may give due consideration to the Legislature's views, but a legislative declaration of an existing statute's meaning is neither binding nor conclusive in construing the statute.

[7] Statutes 361 220

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k220 k. Legislative Construction. Most Cited Cases
A declaration that a statutory amendment merely clarified the law cannot be given an obviously absurd effect, and the court cannot accept the legislative statement that an unmistakable change in the statute is nothing more than a clarification and restatement of its original terms.

[8] Statutes 361 220

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k220 k. Legislative Construction. Most Cited Cases
The Legislature indicates an intent to merely clarify existing law where it promptly reacts to the emergence of a novel question of statutory interpretation caused, for instance, by the disruptive effect of a Court of Appeal's decision, or where it amends a statute to resolve ambiguity in the existing law.

[9] Child Support 76E 449

76E Child Support
76EIX Enforcement
76Ek447 Arrearages; Retroactive Modification
76Ek449 k. Vesting of Right to Unpaid Support. Most Cited Cases
An enforceable money judgment comes into existence at the time a child support payment is missed.

[10] Child Support 76E 6

76E Child Support
76EI In General
76Ek2 Constitutional and Statutory Provisions
76Ek6 k. Retroactive Effect. Most Cited Cases

Child Support 76E 453

76E Child Support
76EIX Enforcement
76Ek447 Arrearages; Retroactive Modification
76Ek453 k. Interest. Most Cited Cases
Amendment of Family Code provision to state that accrued child support arrearages are treated like a money judgment for purposes of assessing statutory interest merely clarified existing law that was already plainly set forth in Code of Civil Procedure provision that a money judgment continues to accrue interest until it is satisfied; amendment therefore applied to arrearages accrued before its enactment. West's Ann.Cal.Fam. Code § 155; West's Ann.Cal.C.C.P. § 685.010.
See 10 Witkin, Summary of Cal. Law (9th ed. 1990) Parent and Child, § 2D; Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2003) ¶ 6:507 (CAFAMILY Ch. 6-A).

**7Judith E. Klein, La Mesa, CA, for Appellant.
Bill Lockyer, Attorney General, Thomas R. Yanger, Assistant Attorney General, Margarita Altamirano

and Mary Dahlberg, Deputy Attorneys General, for Respondent.

IRION, J.

***250** Ronald McClellan (Ronald) appeals the superior court's denial of his application for an order directing the County of San Diego Department of Child Support Services (County) to omit certain accrued interest from its calculation of his unpaid child support arrearages. Ronald disputes the legal effect of a December 1994 order that determined child support arrearages as of that date and established periodic payments to liquidate the arrearages. Ronald contends that no further interest should have accrued on the arrearages that were the subject of the December 1994 order. The superior court denied the relief sought by Ronald. We affirm.

I. STATUTORY FRAMEWORK

Code of Civil Procedure section 685.020 contains the basic rule for calculating postjudgment interest:

"(a) Except as provided in subdivision (b), interest commences to accrue on a money judgment on the date of entry of the judgment.

"(b) Unless the judgment otherwise provides, if a money judgment is payable in installments, interest commences to accrue as to each installment on the date the installment becomes due."

Further, Code of Civil Procedure section 685.010, subdivision (a) establishes that "[i]nterest accrues at the rate of 10 percent per annum on the principal amount of a money judgment *remaining unsatisfied.*" (Italics added.)

[1][2]***251** Delinquent child support payments accrue postjudgment interest under the rules applicable to installment judgments. "Statutory interest on unpaid child support payments accrues as a matter of law as to each installment when each installment becomes due.... [¶] Accrued arrearages are treated like a money judgment for purposes of assessing statutory interest. Unless otherwise specified in the judgment, interest accrues as to each installment when each installment becomes due and continues to accrue for so long as the arrearage remains unpaid." (*In re Marriage of Hubner* (2004) 124 Cal.App.4th 1082, 1089, 22 Cal.Rptr.3d 549, fn. omitted.) Because accrued arrearages are treated like money judgments, "courts cannot retroactively modify or terminate the arrearages." (*Ibid.*)"Interest accrues as a matter of law [on unpaid child support], and parents are charged with knowledge of the law." (*In re Marriage of Thompson* (1996) 41 Cal.App.4th 1049, 1057, 48 Cal.Rptr.2d 882.)

Dupont v. Dupont (2001) 88 Cal.App.4th 192, 194, 105 Cal.Rptr.2d 607, held that an arrearages order establishing a periodic payment toward accumulated child support arrearages is a new "installment judgment" that *stops* the further accrual of interest on those accumulated arrearages.[FN1]***8***Dupont* based its holding on the view that a court has "equitable jurisdiction to determine the manner in which an order or judgment for child support will be paid" and "the extent to which a defaulting parent has satisfied or otherwise discharged the [support] obligation." (*Dupont*, at pp. 199-200, 105 Cal.Rptr.2d 607.) According to *Dupont*, a court could exercise that discretion by issuing a new installment judgment in the form of an arrearages order, with the implicit legal effect of stopping interest from continuing to accrue on support owed for prior periods. (*Ibid.*) Although *Dupont* did not frame the issue as such, its effect was to give courts discretion to override the basic principle in Code of Civil Procedure section 685.010 that interest continues to accrue on "the principal amount of a money judgment remaining unsatisfied." (*Id.*, subd. (a).)

> FN1. Throughout our discussion we use the term "arrearages order" to refer to an order (whether identified as an "order," "judgment" or other type of notice) which, in the language used by Family Code section 155, "sets forth the amount of support owed for prior periods of time or establishes a periodic payment to liquidate the support owed for prior periods." Unless otherwise apparent from the context of our discussion, we use the term "arrearages" to refer to the amount of support owed for prior periods of time that is set forth in an arrearages order.

The Legislature quickly reacted to *Dupont's* holding that courts have the discretion to cut off the further accrual of interest on child support arrearages set forth in an arrearages order. With the express intent to abrogate *Dupont*, the Legislature amended Family Code section 155, effective January 1, 2003. (Stats.2002, ch. 539, § 2.) The amendment to Family Code section 155 clarifies that the only "installment judgment" in the support context is the initial support order. (*Ibid.*) The amendment thus undercuts the foundational ***252** assumption of *Dupont's* analysis: that an arrearages order is a new installment

judgment. Specifically, the amendment to Family Code section 155 states:
"For the purposes of Section 685.020 of the Code of Civil Procedure, only the initial support order, whether temporary or final, whether or not the order is contained in a judgment, shall be considered an installment judgment. No support order or other order or notice issued, which sets forth the amount of support owed for prior periods of time or establishes a periodic payment to liquidate the support owed for prior periods, shall be considered a money judgment for purposes of subdivision (b) of Section 685.020 of the Code of Civil Procedure." [FN2] (Stats.2002, ch. 539, § 2, p. 2526.)

> FN2. Prior to this amendment Family Code section 155 contained only what is now its first sentence: " 'Support order' means a judgment or order of support in favor of an obligee, whether temporary or final, or subject to modification, termination, or remission, regardless of the kind of action or proceeding in which it is entered." (See Stats. 1992, ch. 162, § 10, p. 468.)

The legislative history makes clear that the Legislature specifically intended to abrogate *Dupont* to alleviate the confusion and uncertainty that it had caused.
"(1) The California Court of Appeal held in *Dupont v. Dupont* [, *supra*,] 88 Cal.App.4th 192, 105 Cal.Rptr.2d 607, that a child support order which calculates the amount of past due support owed under a prior order and sets a monthly amount to reduce past due support constitutes a new installment judgment.
"(2) The decision in *Dupont* has resulted in disparate application of the rules regarding accrual of interest from order to order, court to court, and county to county for the purpose of calculating interest under Section 685.020 of the Code of Civil Procedure.
**9 "(3) It is therefore the intent of the Legislature to abrogate the holding of the California Court of Appeal in *Dupont v. Dupont*, to reaffirm that the legislative intent is that no support order or notice issued, which sets forth the amount of support owed for prior periods of time or establishes a periodic payment to liquidate the support owed for prior periods, be considered a money judgment for the purposes of subdivision (b) of Section 685.020 of the Code of Civil Procedure...." (Stats.2002, ch. 539, § 1(a), p. 2526.)

The question before us is whether the amendment to Family Code section 155 applies to the accrual of interest on child support arrearages that were the subject of arrearages orders entered before the amendment took effect on January 1, 2003.

II. FACTUAL AND PROCEDURAL BACKGROUND

Ronald and Debbie McClellan (Debbie) separated in 1986 and divorced in 1987. Ronald was ordered to pay support for their two children. Ronald failed to make many of the required support payments. In a December 20, 1994 order (the December 1994 order),[FN3] the superior court determined that Ronald owed $16,491.78 in child support arrearages to the County (as Debbie had been receiving public assistance),[FN4] $21,618.24 in child support arrearages to Debbie plus $9,254.43 in interest accrued as of that date. The December 1994 order directed Ronald to make monthly payments of $250 toward the arrearages, which would increase to monthly payments of $400 six months later.

> FN3. The December 1994 order was designated both as a "judgment" and an "order after hearing" by the boxes checked on the form and was entered as a judgment. We are nevertheless mindful that Family Code section 155 does *not* preclude such an order from being treated as a money judgment for purposes *other* than the application of postjudgment interest under Code of Civil Procedure section 685.020, subdivision (b). Our reference to the December 1994 order as an "order" rather than a "judgment" is not meant to imply any view on whether an arrearages order may be properly treated as a judgment for any purpose other than the application of Code of Civil Procedure section 685.020, subdivision (b).

> FN4. Under the statutory framework that existed during the relevant timeframe, "[f]ederal statutes and regulations require[d] that parent recipients of AFDC [Aid to Families with Dependent Children] assign to the state as a condition of receiving benefits any right to support which their children may have, including the right to support arrearages," and "Welfare and Institutions Code section 11350, subdivision (a)(1),

> [provided that] in any case of separation of a parent from children which results in AFDC benefits being granted to that family, the noncustodial parent shall be obligated to the county for an amount equal to the amount specified in an existing court order." (*In re Marriage of Thompson, supra,* 41 Cal.App.4th 1049, 1056, 48 Cal.Rptr.2d 882.)

The December 1994 order did not expressly address whether interest would continue to accrue on the arrearages.[FN5] During the hearing, counsel for the County stated, "... I'm also asking that the court finds [*sic*] that interest continues to accrue on the entire unpaid balance, as provided for by law." The court did not explicitly rule on this request but impliedly assumed the continued accrual of interest on arrearages when it remarked that an initial $250 per month payment toward the **10 arrearages "doesn't even begin to pay the interest," and that when the payments rose to $400 per month, Ronald would be "just about breaking even."

> FN5. The December 1994 order stated, "Interest is without prejudice." Based on our review of the record, we do not interpret the statement to relate to whether interest would continue to accrue on the arrearages. It appears from the record that interest was ordered "without prejudice" because there was some confusion at the hearing as to whether the parties had done their math correctly in determining that exactly $9,254.43 in interest had accrued to date.

Although the December 1994 order did not expressly address whether interest continued to accrue on amounts subject to that order, the County sent *254 Ronald a notice in November 1996 alerting him that $4,293.16 in interest had accumulated on his arrearages obligation to the County, including the arrearages set forth in the December 1994 order and other support payments that Ronald had missed since that time. The County gave him notice that "[t]o avoid additional interest charges, you must pay, within fifteen (15) days from the date of this letter, the amount of $27[,]492.53, which is the total amount due on your account, including the above-stated interest and arrears," and explained that any payments would be applied to any current obligation first, then to interest, then to arrears.

In March 2003 Ronald filed a pleading with the superior court requesting an order directing the County to perform an audit of his child support obligations. The County performed an audit in July 2003, showing (1) that Ronald owed $80,739.88 (including $27,631 in interest) for the pre-December 1994 arrearages and for additional missed support payments through May 1995 when Debbie went off public assistance; and (2) that Ronald owed Debbie $17,075.97, including $1,072 in interest for support payments missed since June 1995. Ronald challenged the County's calculation of interest. He argued that the December 1994 order had the legal effect of stopping the future accrual of interest on all pre-December 1994 arrearages, and he requested that the court order a new audit without the inclusion of the disputed interest.

After considering the parties' briefing on whether the 2003 amendment to Family Code section 155 could be retroactively applied to the December 1994 order, the court rejected Ronald's challenge. The court concluded that interest continued to accrue on the arrearages because the amendment to Family Code section 155 controlled the legal effect of the December 1994 order. Ronald appeals, arguing that "there is no legislative statement of intent that Family Code section 155 be retroactive," and that "to apply Family Code section 155 retroactively violates due process of law." (Capitalization omitted.)

III. STANDARD OF REVIEW

We apply a de novo standard of review to the superior court's analysis of the legal effect of the amendment to Family Code section 155. (See *Re-Open Rambla, Inc. v. Board of Supervisors* (1995) 39 Cal.App.4th 1499, 1505, 46 Cal.Rptr.2d 822 [applying de novo standard of review in analyzing the effect of amended statute]; *Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach* (2001) 86 Cal.App.4th 534, 548, 103 Cal.Rptr.2d 447 [retroactivity of new law reviewed de novo].)

[3][4] Generally, we may retroactively apply a new statute "only if it contains express language of retroactivity *or* if other sources provide a clear and unavoidable implication that the Legislature intended retroactive application." (*Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 844, 123 Cal.Rptr.2d 40, 50 P.3d 751.) Even then, "the retrospective application of a statute may be unconstitutional ... if it deprives a person of a vested

right without due process of law." (*In re Marriage of Buol* (1985) 39 Cal.3d 751, 756, 218 Cal.Rptr. 31, 705 P.2d 354.)

**11 As a threshold issue, however, we must determine whether the amendment to Family Code section 155 was indeed a new law to which these retroactivity standards apply or, instead, merely a clarification of existing law. If we decide that the amendment to Family Code section 155 only clarified existing law, then the application of the amendment to Ronald's case need not be analyzed as a retroactivity issue. (See *Bowen v. Board of Retirement* (1986) 42 Cal.3d 572, 575, fn. 3, 229 Cal.Rptr. 814, 724 P.2d 500 [because the court concluded that the statutory amendment clarified rather than changed existing law, there was "no need to reach [appellant's] arguments regarding the amendment's retroactive application"].)

[5] " '[A] statute that merely *clarifies*, rather than changes, existing law does not operate retrospectively even if applied to transactions predating its enactment' 'because the true meaning of the statute remains the same.'" (*McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 471, 20 Cal.Rptr.3d 428, 99 P.3d 1015, quoting *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243, 62 Cal.Rptr.2d 243, 933 P.2d 507; see also *GTE Sprint Communications Corp. v. State Bd. of Equalization* (1991) 1 Cal.App.4th 827, 833, 2 Cal.Rptr.2d 441 ["Where a statute or amendment clarifies existing law, such action is not considered a change because it merely restates the law as it was at the time, and retroactivity is not involved"].) Thus, "a clarification of existing law ... may be applied to transactions predating its enactment without being considered retroactive. [Citation.] The clarified law is merely a statement of what the law has always been." (*Riley v. Hilton Hotels Corp.* (2002) 100 Cal.App.4th 599, 603, 123 Cal.Rptr.2d 157.)

[6][7] To decide whether the amendment to Family Code section 155 merely clarified existing law, we may give "due consideration" to the Legislature's views, but "a legislative declaration of an existing statute's meaning is neither binding nor conclusive in construing the statute." (*Western Security Bank v. Superior Court, supra*, 15 Cal.4th 232, 244, 62 Cal.Rptr.2d 243, 933 P.2d 507; see also *McClung v. Employment Development Dept., supra*, 34 Cal.4th 467, 473, 20 Cal.Rptr.3d 428, 99 P.3d 1015.) "A declaration that a **256** statutory amendment merely clarified the law 'cannot be given an obviously absurd effect, and the court cannot accept the legislative statement that an unmistakable change in the statute is nothing more than a clarification and restatement of its original terms.'" (*McClung*, at p. 473, 20 Cal.Rptr.3d 428, 99 P.3d 1015.) Thus, although we may review the legislative history to enlighten our inquiry, the decision as to whether the amendment to Family Code section 155 changed or merely clarified existing law must, in the end, turn on our own analysis.

Applying this approach, we first review the legislative history to determine whether in amending Family Code section 155 the Legislature believed it was merely clarifying existing law. Here, the Legislature stated that the amendment was intended to "abrogate" the holding of *Dupont*, address the "disparate application of the rules regarding accrual of interest" caused by *Dupont*, and "reaffirm" the legislative intent that arrearages orders should not be treated as money judgments for the purpose of calculating postjudgment interest. (Stats.2002, ch. 539, § 1(a), p. 2526.) Further, an Assembly committee report explained that "application of the *Dupont* decision is far from consistent" because *Dupont* "based its decision on the equitable power of the court to enforce child support orders," so that "whether a support recipient will be ordered**12 to receive all interest owed on a support order will depend on the vagaries of which judge his or her case is before." [FN6] (Assem. Com. on Judiciary, Analysis of Sen. Bill No. 97 (2001-2002 Reg. Sess.) as amended Aug. 16, 2002, p. 5.) [FN7] According to the Assembly committee report, the amendment "returns California support law to the intended rule of law prior *257 to the *Dupont* holding" and "clarifies that the Legislature did not intend to halt the accrual of interest on unpaid child support arrearages where the court issues an order which simply calculates the amount of past due support owed under a prior order and sets a monthly amount to reduce those arrearages." (Assem. Com. on Judiciary, Analysis of Sen. Bill No. 97, *supra*, pp. 1-2.) [FN8]

> FN6. The Assembly committee report elaborated: "Some courts follow *Dupont* to provide equitable relief from the enforcement of a support order 'at the back end.' Others require *Dupont* language in all orders, to be applied prospectively-that is, for all orders, interest does not accrue on the principal balance, just on the missed

installments. In some courts, this is only true if the parties stipulate to an order in court-for out of court stipulations, the pre-*Dupont* rule can apply. Some courts are making prospective *Dupont* orders, but including 'acceleration clauses' making the full principal balance subject to interest if a specified number of installment payments are missed-but the number of payments varies from court to court, and whether the application of interest to the principal balance goes back to the date of the order or starts as of the date of missed installments is also not standard. What is fascinating, and indeed alarming, is that this inconsistent approach is not only evident from county to county, but can be found from courtroom to courtroom in some counties." (Assem. Com. on Judiciary, Analysis of Sen. Bill No. 97 (2001-2002 Reg. Sess.) as amended Aug. 16, 2002, p. 6.)

FN7. "Committee reports are often useful in determining the Legislature's intent," although we should "hesitate to accord much weight to an anonymous staff report that was merely summarizing the effect of a proposed bill." (*California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.* (1997) 14 Cal.4th 627, 646, 648, 59 Cal.Rptr.2d 671, 927 P.2d 1175 [despite this admonition, considering committee report and concluding that it was "fully consistent" with the court's conclusion on legislative intent]; see also *People v. Cruz* (1996) 13 Cal.4th 764, 773-774, fn. 5, 55 Cal.Rptr.2d 117, 919 P.2d 731 ["it is well established that reports of legislative committees and commissions are part of a statute's legislative history and may be considered when the meaning of a statute is uncertain"].) We examine the statements in the Assembly committee report with these standards in mind.

FN8.*Dupont* was preceded by *County of Alameda v. Weatherford* (1995) 36 Cal.App.4th 666, 42 Cal.Rptr.2d 386. Following reasoning similar to *Dupont*, *Weatherford* held that because an arrearages order requiring payments to the county did not clearly and definitely provide for accrual of interest on the arrearages, the court could exercise equitable discretion to order that no interest accrued on the arrearages. (*Weatherford*, at pp. 670-671, 42 Cal.Rptr.2d 386.) The legislative history to the amendment to Family Code section 155 indicated an intent to abrogate *Weatherford* as well. (Assem. Com. on Judiciary, Analysis of Sen. Bill No. 97 (2001-2002 Reg. Sess.) as amended Aug. 16, 2002, p. 7.) We note that neither *Weatherford*, which was decided in 1995, nor *Dupont*, which was decided in 2001, had been decided when the December 1994 order issued in Ronald's case.

[8] We conclude that the Legislature viewed the amendment to Family Code section 155 as a mere clarification of the law. The Legislature indicates an intent to merely clarify existing law where, as here, it "promptly reacts to the emergence of a novel question of statutory interpretation" caused, for instance, by "the disruptive effect of [a] Court of Appeal's decision"(*Western Security Bank v. Superior Court*, *supra*, 15 Cal.4th 232, 243, 245, 62 Cal.Rptr.2d 243, 933 P.2d 507) or where, as here, it amends a statute to resolve ambiguity in the existing law. (See **13*Kern v. County of Imperial* (1990) 226 Cal.App.3d 391, 401, 276 Cal.Rptr. 524 [amendment clarified the law when it was clear that "the intent of the sponsor of the bill was to *clarify* existing law and remove any ambiguity to specific fact situations"]; *Tyler v. State of California* (1982) 134 Cal.App.3d 973, 977, 185 Cal.Rptr. 49 [statutory amendment merely clarified existing law when it was enacted in response to "confusion" created by a court decision].)

We next turn to our own evaluation of whether the amendment to Family Code section 155 changed or merely clarified existing law. In undertaking this analysis, we necessarily evaluate whether *Dupont*, which the Legislature expressly intended to abrogate by amending Family Code section 155, departed from existing law. Having examined *Dupont* and the surrounding legal context at the time it was decided, we conclude *Dupont* departed from existing law. The amendment to Family Code section 155 merely clarified the law as it existed prior to *Dupont* by removing one of the assumptions on which *Dupont* was based, namely, that an arrearages order is a new money judgment payable in installments.

[9] It has long been the law that an enforceable money judgment comes into existence at the time that

a child support payment is missed. (See *In re Marriage of Hubner, supra,* 124 Cal.App.4th 1082, 1089, 22 Cal.Rptr.3d 549;***258***In re Marriage of Perez* (1995) 35 Cal.App.4th 77, 80, 41 Cal.Rptr.2d 377;*Jackson v. Jackson* (1975) 51 Cal.App.3d 363, 366, 124 Cal.Rptr. 101.)*Dupont* departed from existing law by determining that a previous judgment is "satisfied or otherwise discharged" by the creation of a new installment judgment and payment plan. (*Dupont v. Dupont, supra,* 88 Cal.App.4th 192, 199-200, 105 Cal.Rptr.2d 607.) We have found nothing in the law at the time *Dupont* was decided that compelled this conclusion.

Dupont cited *Keith G. v. Suzanne H.* (1998) 62 Cal.App.4th 853, 858-859, 72 Cal.Rptr.2d 525;*Jackson v. Jackson, supra,* 51 Cal.App.3d 363, 366-367, 124 Cal.Rptr. 101; and *In re Marriage of Trainotti* (1989) 212 Cal.App.3d 1072, 1075, 261 Cal.Rptr. 36, for the principle that "[a] trial court maintains continuing equitable jurisdiction to determine the manner in which an order or judgment for child support will be paid" and to consider "the extent to which a defaulting parent has satisfied or otherwise discharged" a support obligation. (*Dupont v. Dupont, supra,* 88 Cal.App.4th 192, 199-200, 105 Cal.Rptr.2d 607.) However, those cases all limit their discussion to the court's equitable power to modify the *manner* in which support payments are made or deemed satisfied (such as reducing the payments or giving credit toward satisfaction of the support obligation when the child goes to live with the paying parent). They do not establish any ability by the court either to deem a judgment "satisfied or *otherwise* discharged" when no payment or offset exists, or to stop interest from accruing on delinquent support payments.

With its unprecedented holding that an arrearages order is a new installment judgment that supersedes and "satisfie[s] or otherwise discharge[s]" a preexisting child support judgment, thereby stopping the further accrual of interest on the arrearages, *Dupont* displaced the existing rule that "[i]nterest accrues ... on the principal amount of a money judgment *remaining unsatisfied.*" (Code Civ. Proc., § 685.010, subd. (a), italics added.) *Dupont* also displaced Code of Civil Procedure section 685.030, which sets forth the circumstances in which interest ceases to accrue on a judgment, all of which require *satisfaction* of the judgment, as well as ****14**Family Code section 4502, which states that "[n]otwithstanding any other provision of law, a judgment for child, family, or spousal support ...*including all lawful interest* and penalties computed thereon, is enforceable *until paid in full.* ..." (Italics added).

By clarifying through the amendment to Family Code section 155 that an arrearages order was not a new installment judgment for the purpose of calculating postjudgment interest, the Legislature removed one of the analytical foundations on which *Dupont* based its holding: that an arrearages order is a new money judgment payable in installments. The amendment to Family Code section 155 simply allowed the basic postjudgment interest rules in the ***259** Code of Civil Procedure to *continue* to control the accrual of interest on delinquent child support payments without the confusion created by *Dupont.*

[10] Based on this backdrop of the law existing at the time that Family Code section 155 was amended, we conclude that the amendment merely clarified existing law that was already plainly set forth in Code of Civil Procedure section 685.010: A money judgment continues to accrue interest *until it is satisfied.* (See *Western Security Bank v. Superior Court, supra,* 15 Cal.4th 232, 243, 252, 62 Cal.Rptr.2d 243, 933 P.2d 507 [amendment was merely a clarification of the law when the court decision that it abrogated had "produced an unprecedented rule without solid legal underpinnings or any real connection to the actual language of the statutes involved"]; *Re-Open Rambla, Inc. v. Board of Supervisors, supra,* 39 Cal.App.4th 1499, 1510, 46 Cal.Rptr.2d 822 [Legislature's abrogation of Court of Appeal decision that misconstrued current law by incorrectly giving precedence to one statutory provision and ignoring another was a clarification of existing law].)

Having concluded that the amendment to Family Code section 155 merely clarified existing law, we need not address whether the Legislature intended retroactive application of the amendment, or Ronald's argument that his due process rights were violated by retroactive application of a new law. However, we nevertheless point out that were we to reach Ronald's due process argument, we would find no basis to disturb the superior court's finding that there was "no evidence that [Ronald] took any actions whatsoever in reliance on the law as it existed before the amendment." Moreover, even if Ronald had presented such evidence, his reliance would not have been justified. The court indicated at the December

1994 hearing that interest *would* continue to accrue, and the County sent Ronald a notice in 1996 informing him that interest *was* accruing on the arrearages that were the subject of the December 1994 order. (See *In re Marriage of Bouguet* (1976) 16 Cal.3d 583, 592, 128 Cal.Rptr. 427, 546 P.2d 1371 [factors that court considers in determining whether a retroactive law contravenes the due process clause include "the extent of reliance upon the former law, the legitimacy of that reliance, the extent of actions taken on the basis of that reliance, and the extent to which the retroactive application of the new law would disrupt those actions"].)

Ronald also argues that even if we determine that the amendment to Family Code section 155 may be retroactively applied to him, we should nevertheless exercise equitable discretion to order that he does not have to pay interest. We reject this argument. Ronald cites no authority indicating that either we or the trial court has such discretion. Further, the accrual of interest is not a discretionary matter **15 but is instead controlled by statute and continues until a judgment is satisfied. (Code Civ. Proc., § 685.010.)

The order is affirmed.

WE CONCUR: O'ROURKE, Acting P.J., and AARON, J.
Cal.App. 4 Dist.,2005.
In re Marriage of McClellan
130 Cal.App.4th 247, 30 Cal.Rptr.3d 5, 05 Cal. Daily Op. Serv. 5171, 2005 Daily Journal D.A.R. 7035

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Commission on State Mandates

Original List Date: 7/10/2001
Last Updated: 7/19/2006
List Print Date: 11/13/2007
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.)

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