

Item 12

**PROPOSED STATEWIDE COST ESTIMATE**

**\$14,051,306**

**(Approximate Prospective Cost of \$7,026,000 Annually)**

Welfare and Institutions Code Section 6602

Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763 (AB 888);

Statutes 1996, Chapter 4 (AB 1496)

As Modified by:

Proposition 83, General Election, November 7, 2006

*Sexually Violent Predators*

CSM-4509

(amended by 05- PGA-43, 12-MR-01)

This amendment is effective beginning July 1, 2011

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**STAFF ANALYSIS**

**Background and Summary of the Mandate**

Summary of the Mandate

Statutes 1995, chapters 762 and 763, and Statutes 1996, chapter 4 require counties to provide indigents accused of being sexually violent predators the assistance of counsel and experts necessary to prepare the defense. On June 25, 1998, the Commission on State Mandates (Commission) adopted a statement of decision on the test claim, approving reimbursement for preparation and attendance by the county's designated counsel at the probable cause hearing, trial, and further hearings; and related activities, including housing and transportation of potential sexually violent predator while awaiting trial.<sup>1</sup>

On December 6, 2013, the Commission adopted a new test claim decision pursuant to Government Code section 17570, and found that several of the activities previously found to be state-mandated were now required by an intervening voter-enacted ballot measure, and therefore no longer reimbursable pursuant to Government Code section 17556(f). The parameters and guidelines were amended to conform to the new test claim decision.<sup>2</sup> The only remaining reimbursable activities are preparation and attendance by the county's designated counsel and the indigent defense counsel at the probable cause hearing (and specified related reasonably necessary activities) and transportation between the designated secure facility and the courthouse

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<sup>1</sup> Exhibit A. Test Claim Statement of Decision, adopted June 25, 1998, at p. 13.

<sup>2</sup> Exhibit B. Parameters and Guidelines Amendment, adopted May 30, 2014, Corrected February 27, 2015.

for purposes of the probable cause hearing, as described below under the *Reimbursable Activities* section.

#### Recent Program Appropriations

Because this is not a new program, appropriations have already been made to fund it. Appropriations for mandated programs are made two years in arrears. The 2013-2014 Budget appropriated \$ 21,792,000 for payment of 2011-2012 claims. The 2014-15 Budget appropriated \$7,000,000 for 2012-13 claims, a figure which anticipated reduced program costs as a result of the new test claim decision. The proposed 2015-16 Budget includes an appropriation of \$7,140,000 for this program.

#### **Eligible Claimants and Period of Reimbursement**

Any county or city and county which incurs increased costs as a result of this mandate is eligible to claim reimbursement.

Government Code section 17570(f) provides that a request for adoption of a new test claim decision (mandate redetermination) shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement or loss of reimbursement for that fiscal year. The request for mandate redetermination was filed on January 15, 2013, establishing eligibility for reimbursement or loss of reimbursement beginning July 1, 2011.

#### **Reimbursement Claim Deadline**

Because the parameters and guidelines were amended with an effective date of July 1, 2011 on May 30, 2014, after timely reimbursement claims were required to be submitted for fiscal years 2011-2012 and 2012-2013 and late claims were required to be submitted for 2011-2012, reimbursement claims were already submitted for those years and included costs that are no longer reimbursable beginning July 1, 2011. Late claims may still have been filed for 2012-2013 until February 17, 2015. The SCO has revised the claiming instructions and claimants may file amended claims for those two prior fiscal years without penalty. If a claimant does not file an amended claim, the SCO will reduce the claim by the amount of non-reimbursable activities.<sup>3</sup> Amended claims for fiscal years 2011-2012 and 2012-2013 must be filed with the SCO by December 31, 2014 and late amended claims can be filed until December 31, 2015. Claims for fiscal year 2013-2014 must be filed with the SCO by February 17, 2015.<sup>4</sup>

#### **Reimbursable Activities**

For each eligible claimant, the following activities only are eligible for reimbursement:

- A. Preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing. Preparation for the probable cause hearing includes the following:
  - 1. Secretarial, paralegal and investigator services;
  - 2. Copying and making long distance telephone calls; and
  - 3. Travel.

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<sup>3</sup> State Controller's Office State Mandated Costs Claiming Instructions No. 2014-10, Revised September 2, 2014.

<sup>4</sup> *Ibid.*

4. Retention of necessary experts, investigators, and professionals for preparation for the probable cause hearing ONLY.

*This activity does not include retention of experts, investigators, and professionals for preparation for trial on the issue of whether an individual is a sexually violent predator.*

- B. Transportation for each potential sexually violent predator between the designated secured housing facility and the court only for purposes of a probable cause hearing. Counties shall be entitled to reimbursement for such transportation costs, regardless of whether the secured facility is a state facility or county facility, except in those circumstances when the State has directly borne the costs of transportation, in which case no reimbursement of such costs shall be permitted.

*This activity does not include transportation for purposes other than the probable cause hearing or for potential sexually violent predators awaiting trial.*

- C. Housing for each potential sexually violent predator from the time of the court's order that the person be detained in a secure facility pending a probable cause hearing pursuant to Section 6602, until the probable cause hearing is complete.

*Housing costs are not reimbursable after the completion of the probable cause hearing, including the costs incurred pending trial on the issue of whether an individual is a sexually violent predator. Housing costs are not reimbursable if the secured facility is a state facility, except in those circumstances when the state has charged the county for the state facility housing costs. Housing costs for those potential sexually violent predators currently serving a criminal sentence are not reimbursable pursuant to Government Code 17556(g).*

## **Offsetting Revenues and Reimbursements**

The parameters and guidelines<sup>5</sup> provide:

Any offsetting revenue 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.

To the extent that the claimant has used fees or any funds provided by the state or federal government, as opposed to proceeds of local taxes, to pay for the cost of the program, those costs are not reimbursable.

## **Statewide Cost Estimate**

34 counties submitted reimbursement claims for fiscal year 2011-2012, prior to the mandate redetermination and amendment of the parameters and guidelines, and five counties submitted amended claims for that year based on the amended parameters and guidelines and revised claiming instructions. For fiscal year 2012-2013, 30 counties submitted claims prior to the amendment of the parameters and guidelines and five counties submitted amended claims based on the amended parameters and guidelines and revised claiming instructions. Since the

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<sup>5</sup> Exhibit B. Parameters and Guidelines Amendment, adopted May 30, 2014, Corrected February 27, 2015.

reimbursement claims which have not been amended were filed under the previous parameters and guidelines, they include activities that are no longer reimbursable.

"If a claimant does not file an amended claim, the SCO will reduce the claim by the amount of non-reimbursable activities. Claimants will receive an adjustment letter stating the amount reduced."<sup>6</sup> Specifically, the SCO is reducing the claims which were not amended by denying costs for all activities except for the two line items: "Preparation/Attendance at Probable Cause Hearing" and "Transportation and Housing Costs for Potential Sexually Violent Predators." The SCO has compiled the claims data for the 2011-2012 and 2012-2013 fiscal years, capturing the costs for these two activities for reimbursement purposes.<sup>7</sup> Staff has reviewed a sampling of the reimbursement claims and the data compiled by the SCO.<sup>8</sup> Based on this information, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

#### Assumptions

- *The actual amount deemed eligible for reimbursement may increase and exceed the statewide cost estimate.*

The three activities that are reimbursable under the amended parameters and guidelines are not defined in exactly the same way as any of the eight activities which were reimbursable under the prior parameters and guidelines. As a result, for claimants who did not submit revised reimbursement claims, the two activity line items allowed by the SCO may not contain all of the currently reimbursable activities for which claimant incurred and claimed costs in its reimbursement claims. For example, under the former claiming instructions, claimants could claim for "Retention of Court-Approved Experts/Investigators/Professionals" without regard to where they were at in the proceedings and there was a separate line for "Preparation/Attendance at Probable Cause Hearing." Therefore, while it is possible that some claimants may have included all of their 2011-2012 and 2012-2013 costs for preparation and attendance at probable cause hearings under "Preparation/Attendance at Probable Cause Hearing," it is likely that at least some claimants included their costs for "Secretarial, paralegal and investigator services" and "Retention of necessary experts, investigators, and professionals for preparation for the probable cause hearing," which are now included as reasonably necessary activities for preparation and attendance at the probable cause hearing in the newly amended parameters and guidelines, under "Retention of Court-Approved Experts/Investigators/Professionals" when they submitted their reimbursement claims under the old parameters and guidelines. As a result, some claimants may dispute and provide evidence that they are entitled some of those reduced costs, which the SCO might then reinstate.

- *The actual amount deemed eligible for reimbursement may decrease and result in lower costs than the statewide cost estimate.*

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<sup>6</sup> State Controller's Office State Mandated Costs Claiming Instructions No. 2014-10, Revised September 2, 2014.

<sup>7</sup> State Controller's Office, Division of Accounting and Reporting Bureau of Payments - Local Reimbursements Section, Sexually Violent Predators Program, Schedule of Reduced Reimbursement Claims.

<sup>8</sup> Claims data reported as of February 12, 2015.

As mentioned above, the three reimbursable activities under the current parameters and guidelines are not exactly the same as any of the prior reimbursable activities. “Transportation and Housing Costs for Potential Sexually Violent Predators” was reimbursable under the prior parameters and guidelines. However, that is significantly broader than what is now reimbursable:

Transportation for each potential sexually violent predator between the designated secured housing facility and the court only for purposes of a probable cause hearing. Counties shall be entitled to reimbursement for such transportation costs, regardless of whether the secured facility is a state facility or county facility, except in those circumstances when the State has directly borne the costs of transportation, in which case no reimbursement of such costs shall be permitted.

And;

Housing for each potential sexually violent predator from the time of the court’s order that the person be detained in a secure facility pending a probable cause hearing pursuant to Section 6602, until the probable cause hearing is complete.<sup>9</sup>

To the extent costs claimed for transportation and housing under the former parameters and guidelines for 2011-2012 and 2012-2013 exceed what is reimbursable under the current parameters and guidelines, those claimed cost may be reduced by the SCO.

- *The actual amount claimed for reimbursement in future years may increase and exceed the statewide cost estimate for prospective annual costs.*

There are currently 58 counties in California. Of those, roughly two-thirds filed claims for fiscal years 2011-2012 and 2012-2013. If more counties file claims in the future, costs may exceed the estimate of prospective annual costs.

- *The total amount of reimbursement for this program may be lower than the statewide cost estimate.*

The SCO may conduct audits and reduce any claims it deems to be excessive or unreasonable or that do not comply with the parameters and guidelines. Furthermore, amended claims may reflect an amount owed *to* the state by the claimant because payments made on the original claim were in excess of the amended claim.

### Methodology

Fiscal years 2011-2012 and 2012-2013.

As described earlier in this statewide cost estimate, the SCO is reducing the reimbursement claims which were not amended by denying costs for all activities except for “Preparation/Attendance at Probable Cause Hearing” and “Transportation and Housing Costs for Potential Sexually Violent Predators”. The table below shows the full claimed amount from these original claims as well as the amount identified for reduction in those claims by the SCO. The statewide cost estimate for fiscal years 2011-2012 and 2012-2013 was developed by adding the SCO’s net estimated claimed amount for the 64 original claims that were not amended and the 10 amended claims for a total of \$14,051,306. The estimate of prospective future costs was

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<sup>9</sup> Exhibit B. Parameters and Guidelines Amendment, adopted May 30, 2014, Corrected February 27, 2015, page 4.

developed by averaging the costs for the two years of data and rounding up to the nearest thousand.

Following is a breakdown of the claimed costs per fiscal year:

<b>Fiscal Year 2011- 2012</b>	<b>Number of Claims</b>	<b>Original Claimed Amount</b>	<b>Original Reduced Amount</b>	<b>Net Estimated Claimed Amount</b>	<b>Amended Claimed Amount</b>	<b>Total Amount Claimed</b>
Original Claims	34	\$7,854,747	(\$5,572,715)	\$2,282,032		
Amended Claims	5				\$4,894,756	
Total	39					\$7,176,788
<b>Fiscal Year 2012- 2013</b>	<b>Number of Claims</b>	<b>Original Claimed Amount</b>	<b>Original Reduced Amount</b>	<b>Net Estimated Claimed Amount</b>	<b>Amended Claimed Amount</b>	<b>Total Amount Claimed</b>
Original Claims	30	\$6,759,133	(\$4,258,674)	\$2,500,459		
Amended Claims	5				\$4,374,059	
Total	35					\$6,874,518
<b>Grand Total</b>	<b>74</b>					<b>\$14,051,306</b>

### **Draft Proposed Statewide Cost Estimate**

On February 27, 2015, Commission staff issued the draft proposed statewide cost estimate.<sup>10</sup> No comments were filed.

### **Staff Recommendation**

Staff recommends the Commission adopt the proposed statewide cost estimate of **\$14,051,306** (approximate prospective cost of \$7,026,000 annually) for costs incurred in complying with the *Sexually Violent Predators* program.

<sup>10</sup> Exhibit C. Draft Proposed Statewide Cost Estimate, issued February 27, 2015.