

**ITEM 13**  
**FINAL STAFF ANALYSIS**  
**STATEWIDE COST ESTIMATE**

Penal Code Section 2966

Statutes 1985, Chapter 1419

Statutes 1986, Chapter 858

Statutes 1987, Chapter 687

Statutes 1988, Chapter 658

Statutes 1989, Chapter 228

Statutes 1994, Chapter 706

*Mentally Disordered Offenders:  
Treatment as a Condition of Parole*  
00-TC-28, 05-TC-06

County of San Bernardino, Claimant

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**EXECUTIVE SUMMARY**

The proposed statewide cost estimate includes nine fiscal years for a total of **\$4,872,312**. This averages to \$541,368 annually in costs for the state. Following is a breakdown of estimated total costs per fiscal year:

<b>Fiscal Year</b>	<b>Number of Claims Filed with SCO</b>	<b>Estimated Cost</b>
2000-2001	1	\$235,446
2001-2002	1	565,634
2002-2003	1	757,835
2003-2004	1	396,893
2004-2005	1	368,055
2005-2006	1	627,286
2006-2007	1	608,914
2007-2008	N/A	644,840
2008-2009	N/A	667,409
<b>TOTAL</b>	<b>7</b>	<b>4,872,312</b>

**Summary of the Mandate**

The test claim statutes set forth procedures for civil court hearings that are initiated by a prisoner or parolee who wishes to contest a finding, made at the time of parole that he or she meets the mentally disordered offender criteria, as defined in Penal Code section 2962. Once the petition for civil hearing is filed, the superior court shall conduct such a hearing; the district attorney is required to represent the people; and the public defender is required to represent the petitioner if he or she is indigent.

The Commission on State Mandates (Commission) adopted the Statement of Decision for the *Mentally Disordered Offenders: Treatment as a Condition of Parole* program, finding that Penal

Code section 2966 constitutes a new program or higher level of service and imposes a state-mandated program upon counties within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

### **Statewide Cost Estimate**

Staff reviewed the claims data submitted by one county and compiled by the SCO. The actual claims data showed that seven claims were filed between fiscal years 2000-2001 and 2006-2007 for a total of \$3,560,063. Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

#### Assumptions

1. *The actual amount claimed for reimbursement may increase if late or amended claims are filed.*
2. *An average of 565 prisoners or parolees will continue to request the County of San Bernardino to conduct the civil hearings each year.*
3. *The county that filed reimbursement claims will continue to incur costs over \$1,000 and will continue to file reimbursement claims.*
4. *The total amount of reimbursement for this program may be lower than the statewide cost estimate, because the SCO may reduce any reimbursement claim for this program.*

#### Methodology

##### *Fiscal Years 2000-2001 through 2006-2007*

The proposed statewide cost estimate for fiscal years 2001-2002 through 2006-2007 is completed by totaling the seven unaudited actual reimbursement claims filed with the SCO for these years.

##### *Fiscal Year 2007-2008*

Staff estimated fiscal year 2007-2008 costs by multiplying the 2006-2007 estimate by the implicit price deflator for 2007-2008 (5.9%), as forecast by Department of Finance.

##### *Fiscal Year 2008-2009*

Staff estimated fiscal year 2008-2009 costs by multiplying the 2007-2008 estimate by the implicit price deflator for 2008-2009 (3.5%), as forecast by Department of Finance.

### **Staff Recommendation**

Staff recommends that the Commission adopt the proposed statewide cost estimate of **\$4,872,312** (\$541,368 in annual costs) for costs incurred in complying with the *Mentally Disordered Offenders: Treatment as a Condition of Parole* program.

## STAFF ANALYSIS

### Summary of the Mandate

The test claim statutes set forth procedures for civil court hearings that are initiated by a prisoner or parolee who wishes to contest a finding, made at the time of parole that he or she meets the mentally disordered offender criteria, as defined in Penal Code section 2962. Once the petition for civil hearing is filed, the superior court shall conduct such a hearing; the district attorney is required to represent the people; and the public defender is required to represent the petitioner if he or she is indigent.

The Commission on State Mandates (Commission) adopted the Statement of Decision for the *Mentally Disordered Offenders: Treatment as a Condition of Parole* program, finding that Penal Code section 2966 constitutes a new program or higher level of service and imposes a state-mandated program upon counties within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

The claimant filed the test claim on July 5, 2001. The Commission adopted a Statement of Decision on July 28, 2006 and the parameters and guidelines on January 31, 2008. Eligible claimants were required to file initial reimbursement claims with the State Controller's Office (SCO) by August 4, 2008, and late claims by August 4, 2009.

### Reimbursable Activities

The Commission approved the following reimbursable activities:

#### One-time Activity

1. Initial training of employees on policies and procedures for mandated Penal Code section 2966 activities (one time per employee). Training for psychiatrists and psychologists is not reimbursable.

#### On-going Activities

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

2. Review relevant documentation, which includes: the petition appealing the Board of Prison Terms (BPT) decision; the decision of the BPT commissioner and the recording of the BPT hearing with supporting documentation; pertinent prison, parole and medical records; Conditional Release Program records; police and probation reports; criminal histories; the evaluations by CDC, DMH and BPT evaluators; and records of prior MDO proceedings.
3. Prepare and file motions with the Superior Court.
4. Retain necessary experts, investigators, and professionals to prepare for and testify at the civil trial conducted pursuant to Penal Code section 2966.
5. Travel to and from state hospitals, prisons and county jails where detailed medical records and case files are maintained.
6. Travel to and from state hospitals, prisons and county jails by the defense counsel in order to meet with the prisoner client.
7. Transport to and from the court facility, and care, and custody only during the civil hearing of each Penal Code section 2966 petitioner by the County Sheriff's Department. Reimbursement for this activity is limited to incarcerated prisoners that requested Penal Code section 2966 hearings.

8. Prepare and represent the people or the indigent prisoner or parolee in a trial to determine whether or not the petitioner meets the criteria to be committed under Penal Code section 2966.

**Statewide Cost Estimate**

Staff reviewed the claims data submitted by one county and compiled by the SCO. The actual claims data showed that seven claims were filed between fiscal years 2000-2001 and 2006-2007 for a total of \$3,560,063.<sup>1</sup> Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

Assumptions

1. *The actual amount claimed for reimbursement may increase if late or amended claims are filed.*

This program primarily affects only two counties because most mentally disordered offenders are placed in Patton State Hospital in San Bernardino County or Atascadero State Hospital in San Luis Obispo County.

Only San Bernardino County filed reimbursement claims for this program. Claimant representatives indicate that San Luis Obispo will file late claims for this program. Thus, if San Luis Obispo County files reimbursement claims, the amount of reimbursement claims may exceed the statewide cost estimate.

2. *An average of 565 prisoners or parolees will continue to request the County of San Bernardino to conduct the civil hearings each year.*

This program requires eligible counties to conduct civil court hearings at the request of prisoners and parolees. San Bernardino County has conducted 3,958 hearings during the initial reimbursement period as shown below:

**Table 1. Number of Hearings Conducted**

Fiscal Year	Number of Hearings
2000-2001	448
2001-2002	711
2002-2003	762
2003-2004	191
2004-2005	100
2005-2006	811
2006-2007	520
2007-2008	415
<b>Total</b>	<b>3,958</b>
<b>Average # of Hearings Per year</b>	<b>565</b>

<sup>1</sup> Claims data reported as of January 27, 2009.

3. The county that filed reimbursement claims will continue to incur costs over \$1,000 and will continue to file reimbursement claims.
4. The total amount of reimbursement for this program may be lower than the statewide cost estimate, because the SCO may reduce any reimbursement claim for this program.

If the SCO audits this program and deems any reimbursement claim to be excessive or unreasonable, it may be reduced.

Methodology

*Fiscal Years 2000-2001 through 2006-2007*

The proposed statewide cost estimate for fiscal years 2001-2002 through 2006-2007 is based on the seven unaudited actual reimbursement claims filed with the SCO for these years.

*Fiscal Year 2007-2008*

Staff estimated fiscal year 2007-2008 costs by multiplying the 2006-2007 estimate by the implicit price deflator for 2007-2008 (5.9%), as forecast by Department of Finance.

*Fiscal Year 2008-2009*

Staff estimated fiscal year 2008-2009 costs by multiplying the 2007-2008 estimate by the implicit price deflator for 2008-2009 (3.5%), as forecast by Department of Finance.

The proposed statewide cost estimate includes nine fiscal years for a total of \$4,872,312. This averages to \$541,368 annually in costs for the state. Following is a breakdown of estimated total costs per fiscal year:

**TABLE 2. BREAKDOWN OF ESTIMATED TOTAL COSTS PER FISCAL YEAR**

Fiscal Year	Number of Claims Filed with SCO	Estimated Cost
2000-2001	1	\$235,446
2001-2002	1	565,634
2002-2003	1	757,835
2003-2004	1	396,893
2004-2005	1	368,055
2005-2006	1	627,286
2006-2007	1	608,914
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2008-2009	N/A	667,409
<b>TOTAL</b>	<b>7</b>	<b>4,872,312</b>

Comments on the Draft Staff Analysis

Department of Finance submitted comments on February 19, 2009, concurring with the draft staff analysis.<sup>2</sup>

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<sup>2</sup> Exhibit A.

**Staff Recommendation**

Staff recommends that the Commission adopt the proposed statewide cost estimate of \$4,872,312 (\$541,368 in annual costs) for costs incurred in complying with the *Mentally Disordered Offenders: Treatment as a Condition of Parole* program.

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DEPARTMENT OF  
**FINANCE**  
OFFICE OF THE DIRECTOR

ARNOLD SCHWARZENEGGER, GOVERNOR

STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

February 19, 2009

**RECEIVED**

FEB 19 2009

**COMMISSION ON  
STATE MANDATE**

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 January 29, 2009, the Department of Finance (Finance) has reviewed the proposed statewide cost estimate for the Mentally Disordered Offenders Treatment as a Condition of Parole (CSM-00-TC-28/05-TC-06) test claim submitted by San Bernardino County (claimant).

As a result of our review, Finance concurs with the Commission on State Mandates (Commission) estimate of \$4,872,312 for the fiscal years 2000-2001 through 2008-2009, even though the claiming behavior is unpredictable for subsequent fiscal years. Finance is aware of only one eligible claimant at this time. We agree that the total costs for this period may be higher or lower based on the actual number of eligible claimants, amended or late claims, and audit findings. The total costs also may be reduced due to offsetting revenues pursuant to Section 4117 of the Welfare and Institutions Codes as noted in the parameters and guidelines adopted January 31, 2008.

As required by the Commission's regulations, a "Proof of Service" has been enclosed indicating that the parties included on the mailing list which accompanied your January 29, 2009 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,

Diana L. Duca  
Program Budget Manager

Enclosure



Attachment A

DECLARATION OF CARLA SHELTON  
DEPARTMENT OF FINANCE  
CLAIM NO. CSM—00-TC-28/05-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.

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.

Sacramento, CA  
at Sacramento, CA

Carla Shelton  
Carla Shelton

PROOF OF SERVICE

Test Claim Name: Mentally Disordered Offenders: Treatment as a Condition of Parole  
Test Claim Number: CSM-- 00-TC-28/05-TC-06

I, 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 Feb. 18, 2009, 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  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
Facsimile No. 445-0278

Mr. David Wellhouse

David Wellhouse & Associates, Inc.  
9175 Kiefer Boulevard, Suite 121  
Sacramento, CA 95826

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

Ms. Susan Geanacou  
Department of Finance  
915 L Street, Suite 1280  
Sacramento, CA 95814

Ms. Jean Kinney Hurst  
California Association of Counties  
1100 K Street, Suite 101  
Sacramento, CA 95814-3941

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

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

A-31  
Ms. Cynthia Rodriguez  
Department of Mental Health  
1600 9<sup>th</sup> Street, Room 153  
Sacramento, CA 95814

Ms. Diana Fuentes Michel  
California Student Aid Commission  
P.O. Box 419026  
Rancho Cordova, CA 95741-9026

B-08  
Ms. Ginny Brummels  
Division of Accounting and Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95816

A-15

Ms. Carla Castaneda  
Department of Finance  
915 L Street, 12th Floor  
Sacramento, CA 95814

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

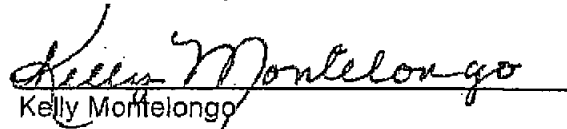
Mr. Leonard Kaye  
County of Los Angeles  
Auditor - Controller's Office  
500 W. Temple Street, Room 603  
Los Angeles, CA 90012

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

Ms. Juliana Gmur  
MAXIMUS  
2380 Houston Avenue  
Clovis, CA 93611

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 Feb 18, 2009 at Sacramento, California.

  
Kelly Montelongo

ICC: DUCAY, LYNN, CASTANEDA, SHELTON, ROMERO, FEREBEE, GEANACOU, FILE

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