

**COMMISSION ON STATE MANDATES**

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March 27, 2009

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

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

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

**RE: Adopted Statewide Cost Estimate**

*Mentally Disordered Offenders: Treatment as a Condition of Parole*

00-TC-28, 05-TC-06

Penal Code section 2966

Statutes 1985, Chapter 1419; Statutes 1986, Chapter 858;

Statutes 1987, Chapter 687; Statutes 1988, Chapter 658; Statutes 1989,

Chapter 228; Statutes 1994, Chapter 706

County of San Bernardino, Claimant

Dear Ms. Ter Keurst:

On March 27, 2009, the Commission on State Mandates adopted the statewide cost estimate of \$4,872,312 for the above-named program. This amount will be included in our next Report to the Legislature.

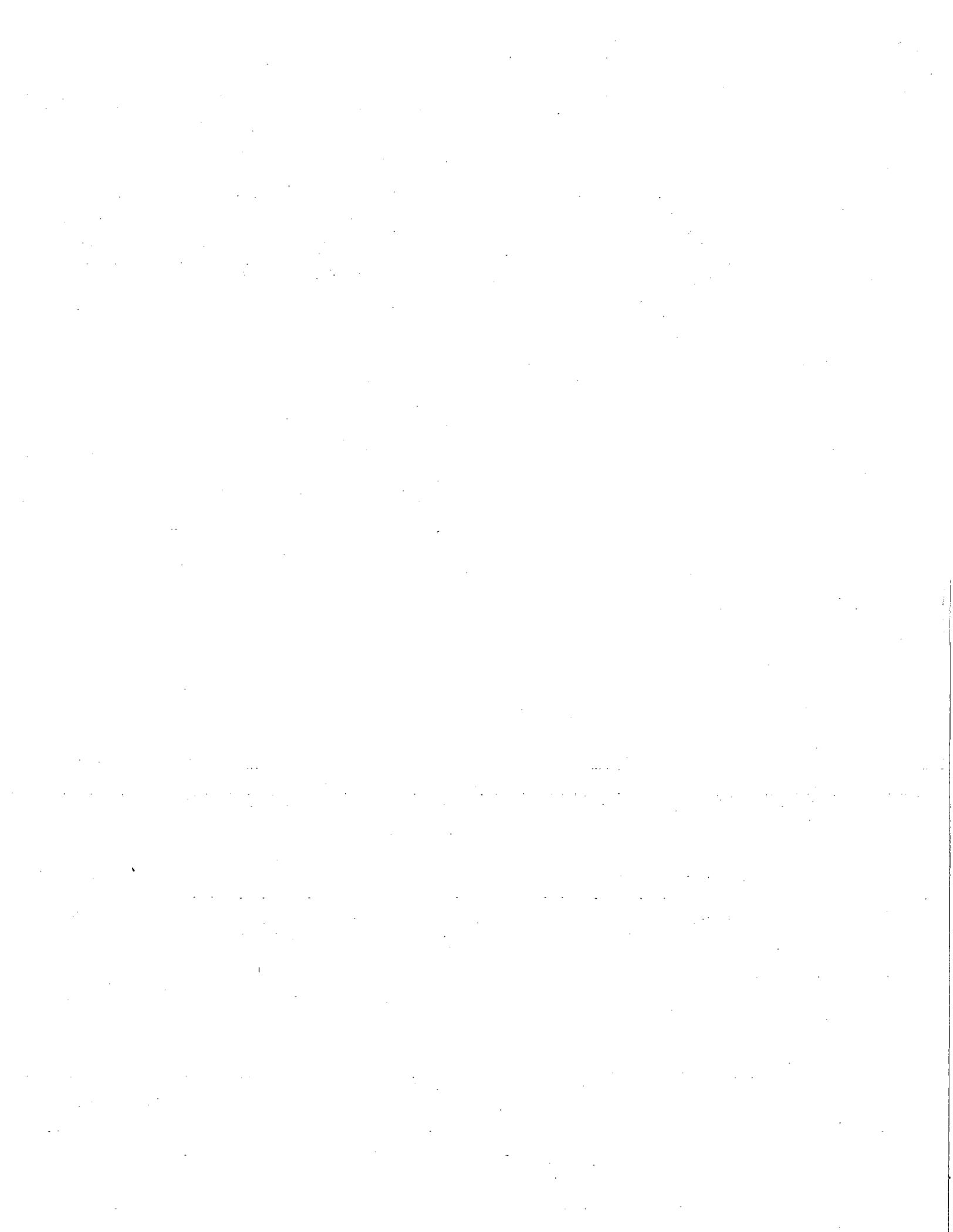
Please contact Nancy Patton at (916) 323-8217 if you have questions.

Sincerely,

  
PAULA HIGASHI  
Executive Director

Enclosure

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



Adopted: March 27, 2009

## 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

Test Claims Filed: July 5, 2001 and March 2, 2006

Reimbursement Period for this Estimate: July 1, 2000 through June 30, 2009

Eligible Claimants: Cities and Counties

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

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

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.

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

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**

<b>Fiscal Year</b>	<b>Number of Hearings</b>
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>

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 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 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:

**Conclusion**

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

## Commission on State Mandates

Original List Date: 7/10/2001  
Last Updated: 7/19/2006  
List Print Date: 03/27/2009  
Claim Number: 00-TC-28  
Issue: Mentally Disordered Offenders: Treatment as a Condition of Parole

Mailing Information: Notice of Adopted SCE

### 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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