



**COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER**

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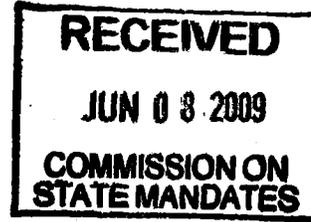
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June 1, 2009



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

Dear Ms. Higashi:

**REVIEW OF STATE AGENCY COMMENTS
COUNTY OF LOS ANGELES TEST CLAIM [CSM-08-TC-03]
STATE AUTHORIZED RISK ASSESSMENT TOOL
FOR SEX OFFENDERS (SARATSO):
SEX OFFENDER'S PUNISHMENT, CONTROL, AND CONTAINMENT ACT**

The County of Los Angeles respectfully submits its review of the State Agency comments to the SARATSO test claim. This review supports our contention that State mandated costs are reimbursable for training, investigation, assessment, reporting, supervision, treatment, and preparing the facts of offense sheet.

If you have any questions concerning this submission, please contact Hasmik Yaghobyan, at (213) 893-0792 or via e-mail at hyaghobyan@auditor.lacounty.gov.

Very truly yours,

Wendy L. Watanabe
Auditor-Controller

WLW:JN:CY:hy
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Enclosure

Review of State Agency Comments
State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

Statement of Facts

The County of Los Angeles ("County") filed the SARATSO¹ test claim with the Commission on State Mandates ("CSM"). CSM requested that State agencies comment on the County's test claim. On March 25, 2009, Ms. Diana L. Ducay, Program Budget Manager of the State Department of Finance ("DOF")² commented on the County's test claim by stating, in part, that the SARATSO activities claimed by the County could result in a reimbursable mandate; however, the reimbursement might be limited pursuant to Government Code Section 17556 (g)³; *County of Orange v. Board of Control*⁴ ("County of Orange") case; Penal Code Section 1203⁵; and *The People v. Milligan*⁶ ("Milligan") case.

County's Argument

I. Gov. Code Sec. 17556 (g) Does Not Apply to the Results of the SARATSO Activities Because the SARATSO Statute did not Create a New Crime or Infraction, and the County of Orange Case is Distinguishable From the SARATSO Activities

DOF bases its position on the case of *County of Orange*, where probation was found to be a penalty for conviction of a crime as it was imposed after conviction, and therefore,

¹ The SARATSO test claim, State Authorized Risk Assessment Tool for Sex Offenders, Chapter 337, Statutes of 2006, was filed on January 22, 2009.

² Department of Finance's letter in response to the CSM's request to review and comment on the subject test claim.

³ Gov. Code Sec. 17556(g), Legislative defining a new crime or changing an existing definition of a crime.

⁴ *County of Orange v. Board of Control*⁴, (1985) 167 Cal.App.3d 660, 663, probation was found to be a penalty for conviction of a crime because it is an "alternative sentencing device imposed after conviction".

⁵ Penal Code Section 1203 (C), "If a person was convicted of an offense that requires him or her to register as a sex offender.....the results of SARATSO, administered pursuant to section 290.04 to 290.06, inclusive, if applicable".

⁶ *The People v. Milligan* (2008), which is pending a rehearing in the Fourth District Appellate Court, Division 3, Case No. G039546, where the case is seeking clarification as to whether monitoring devices may be required for sex offenders who committed a sex offense before November 2006.

barred by the Government Code Section 17556(g), which bars legislation defining a new crime or changing an existing definition of a crime from reimbursement.

Relying on *County of Orange*, DOF erroneously believes that the registered sex offenders are on probation, and since probation was found to be a part of sentencing and punishment for a crime, therefore, SARATSO activities are not reimbursable.

We disagree. Chapter 337, Statutes of 2006, mandates SARATSO on every registered sex offender who is required to register as a sex offender. The registered sex offenders do not have to be on probation and SARATSO is not a part of the offender's sentencing. SARATSO is a device to eliminate future victimization.

California Attorney General's Office⁷, in Summary of California Law On Sex Offenders, Section III, Sex Offender Registration, Initial Registration, second paragraph states that:

"The registrant must appear in person..... The person has five working days to register after release from custody or on probation, or after coming into, or changing his or her residence within, any city or county."

Additionally, in the same section, under the heading of "Relief from the Lifetime Duty to Register"⁸, it states that:

"Persons whose registerable sex offenses are nondiscloseable to the public may obtain relief from the duty to register upon obtaining a certificate of rehabilitation.....All others must obtain a governor's pardon to obtain relief from the duty to register as a sex offender....."[Emphasis added.]

Therefore, SARATSO does not change the penalty for a crime since the registered sex offender could be released from probation. On the other hand, it provides safety for society, and therefore, SARATSO's mandated costs claimed are not barred by the Government Code Section 17566 (g), and are within the meaning of Section 6, Article XIII B of the California Constitution.

Further, *County of Orange* found that the diversion program was not an alternative sentencing device, and therefore, did not change the penalty for a crime and ruled that:

⁷ California Attorney General's Office, Summary of California Law On Sex Offenders, Section III, Sex Offender Registration, Initial Registration, second paragraph. Exhibit A, page 1

⁸ California Attorney General's Office, Summary of California Law On Sex Offenders, Section III, "Relief from the Lifetime Duty to Register". Exhibit A, page 3

“.....the domestic violence diversion legislation did not change the penalty for a crime, and the Board is thus required to hear the County’s claim for reimbursement.”

Therefore, SARATSO, like *County of Orange*⁹, did not change the penalty for a crime and mandated costs claimed are not barred by the Government Code Section 17566 (g), and are within the meaning of Section 6, Article XIII B of the California Constitution.

II. The Investigative Activities Mandated By SARATSO are New and Were not Required Under the Penal Code Section 1203

DOF finds that the investigative duties mandated by SARATSO are not new duties and were previously required under the Penal Code Section 1203 and states that:

“prior law required county probation offices to perform investigative duties to complete reporting requirements under Penal Code Section 1203. The alleged investigative duties are not new under SARATSO program.....”

We disagree. Penal Code Section 1203(C)¹⁰ was amended by Chapter 337, Statutes of 2006, mandating probation officers to include additional information in their reports. For example, the probation officers are now required to include the results of the SARATSO administered on the sex offenders in their reports.

III. The People v. Milligan¹¹ Has No Precedent Value on the SARATSO’s Mandated Activities

The DOF finds that the monitoring requirement claimed by the County could be affected by the outcome of *Milligan*, which is pending a rehearing. Insofar, as there is no final determination of the case, *Milligan* should not be relied as being conclusive and, therefore, the basis for a precedent.

If the findings in *Milligan* decision determine that the use of monitoring devices is not a penalty or punishment for a sexual offense under the Sexual Predator Punishment and Control Act, then the use of monitoring devices required under SARATSO would also

⁹ *Ibid*

¹⁰ Penal Code Section 1203(C), If the person was convicted of an offenses that requires him or her to register as a sex offender pursuant to Section 290, the probation officer’s report shall include the results of the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) administered pursuant to Section 290.04 to 290.06, inclusive, if applicable.

¹¹ *Ibid*

not be a penalty. As such, the costs claimed under electronic monitoring would not be subject to the penalty funding disclaimer in subdivision (g) of Government Code Section 17556.

Conclusion

We believe the forgoing analysis unequivocally supports our contention. We continue to maintain that the County's test claim submitted on January 22, 2009 supports our conclusion that reimbursement of costs for the following activities is required:

Training

County probation officers must be trained. Essentially anyone who will be administering the SARATSO on sex offenders in the County must be trained through the process per the statute.

Investigation

County probation officers are mandated to include additional information in their reports. For example, the probation officers are now required to include the results of the SARATSO administered on the sex offenders in their reports.

Assessment

For the County Probation Department, preparation of the assessment is rated at two hours per case for an Investigator. The assessment consists of a criminal record check and a rating based upon the history. The series of questions are scored and the form is attached to a brief court report which rates the cases as Low, Medium or High Risk.

Reporting

For the County Probation Department, when authorized persons request that probation officers provide criminal histories, sex offender registration records, police reports, probation and presentencing reports, judicial records and case files, juvenile records, psychological evaluations and psychiatric hospital reports, sexually violent predator treatment program reports in their custody, access must be granted. The probation officer's duty to provide such reports is mandated.

Supervision

Persons placed on probation by a court shall be under the supervision of the county probation officer who shall determine both the level and type of supervision consistent with the court-ordered conditions of probation.

Treatment

County probation officers are required to provide treatment for specified sex offenders.

Facts of Offense Sheet

County Probation officers have a duty to send to the Department of Corrections and Rehabilitation a report of the circumstances surrounding the offense and the prior record and history of the defendant, as may be required by the Secretary of the Department of Corrections and Rehabilitation.

MEGAN'S LAW

Summary of California Law On Sex Offenders

Megan's Law Home

Megan's Law

Summary of California
Law On Sex Offenders

Penalties for Misuse of
Sex Offender Registrant
Information

Prohibition on Sex
Offender Registrants
Working with Minors

Registrable Sexual
Offenses

Registrable Juvenile
Offenses

Sex Offender Registration
and Exclusion Information

Contact Us

I. Who Is Disclosed on the Internet Web Site

Effective September 24, 2004, Penal Code section 290.46 required the Department of Justice to create this Web site on or before July 1, 2005. There are four categories of registered sex offenders for purposes of disclosure on the Megan's Law Internet web site.

HOME ADDRESS CATEGORY The conviction of certain sex offenses requires that the home address of the offender be posted, along with other information about the registrant. 290.46, subd. (b).

CONDITIONAL HOME ADDRESS CATEGORY The conviction of other designated sex offenses, along with the conviction of any other registrable sex offense, requires that the home address be posted, along with other information about the registrant. 290.46, subd. (c).

ZIP CODE CATEGORY Commission of certain other sex offenses requires that information about the offender, including his or her ZIP Code and other information, but not including the home address, be posted on the web site. 290.46, subd. (d).

UNDISCLOSED CATEGORY Finally, there is a category of registered sex offenders that may not be displayed on the Internet web site. These are registrants who have been convicted of sex offenses not listed in the above three categories. Offenders in the undisclosed category must still register as sex offenders with local law enforcement agencies, and are known to law enforcement.

II. Disclosure About Registrants by Local Law Enforcement Agencies

Local law enforcement agencies, under statutes defining the type and extent of notice allowed, may also notify their communities about the presence of designated registered sex offenders in their area. This is usually done only when an offender is suspected of posing a risk to the public. Penal Code section 290.45.

III. Sex Offender Registration

Initial Registration. Penal Code section 290 requires mandatory registration as a sex offender for persons convicted of the sex offenses listed in that section. section 290(a)(2)(A)-(E). Even if the offense is not listed in section 290, the person may be ordered by a court to register as a sex offender if the criminal offense committed was sexually motivated. Section 290 applies automatically to the enumerated offenses, and imposes on each person convicted a lifelong obligation to register.

The registrant must appear in person to register with the police department of the city in which he or she resides, or with the sheriff's department if he or she resides in an unincorporated area or city which has no police department. The person has five working days to register after release from custody or on probation, or after coming into, or changing his or her residence within, any city or county.

Transient Registration. If the person has no residence address (is homeless), he or she must register within five working days after release from custody or on probation and, beginning January 1, 2005, no less than every 30 days thereafter, as a transient. Registration is with the law enforcement agency in whose jurisdiction the transient is physically present. Penal Code section 290, subd. (a)(1)(C).

Campus Registration. A person who resides, or is living as a transient upon, or is enrolled at or employed by, a campus of the University of California, California State University, community college or other institution of higher learning must register with the campus police department, in addition to registering with the police or sheriff's department having jurisdiction over his or her

residence. Penal Code section 290, subd. (a)(1)(C).

Registration of Sex Offenders Who Come to School or Work in California. Students and employees who reside out of state but go to school or work in California must register as sex offenders here if they are required to register in their state of residence. Penal Code 290, subd. (a)(1)(G). An employee is defined as a person who is employed in California on a full or part-time basis, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year. A student is defined as a person who is registered in an educational institution, as defined in Education Code section 22129, on a full or part-time basis. The student/employee must register in the jurisdiction where he or she attends school or is employed.

Moves. Registrants with residence addresses must notify the last registering agency in writing within five working days of moving, and must re-register in person if the move is to a new jurisdiction. (Penal Code section 290, subds.(a), (f).) If a move makes a person homeless, he or she must register as a transient within 5 working days of leaving the residence address. Transients, who re-register no less than every 30 days, need not re-register upon changing their location unless to a destination outside the state, in which case the transient must give written notification of his move to the law enforcement agency in whose jurisdiction he or she was physically present before leaving the state, within five working days of leaving. Transients who move into a residence must register at that address within 5 working days of moving there. If the registrant does not know his or her new address out-of-state, the person must still give notice of the move within 5 working days of leaving, and must mail written notice later of the new address or location (if transient) within 5 working days of moving into the new residence. Penal Code section 290, subds. (a)(1)(C), (f).

Updates. All registrants must update their registration annually, within five working days of their birthday. Penal Code section 290, subd. (a)(1)(D). Transient registrants must also update their registration no less than every 30 days, and sexually violent predator registrants must update no less than every 90 days. Penal Code section 290 subds. (a)(1)(C), (E).

Out of State Sex Offenses. If a sex offender was convicted in another state, he or she is very likely to be required to register in California, and should register in accordance with the sex offender registration law. If the offender is not required to register in California, the Department of Justice will notify him or her of that assessment and terminate the registration.

Registration At More Than One Residence. Registrants who regularly reside at more than one residence address must register at each address, regardless of the number of days or nights spent there. If the addresses are in different jurisdictions, the registrant must go to the law enforcement agency having jurisdiction over each address. Penal Code section 290, subd. (a)(1)(B).

Juvenile Sex Offender Registration. Juveniles convicted of certain offenses are required to register as sex offenders upon release from the California Youth Authority. Penal Code section 290, subd. (d)(1)-(3). However, registrants whose offenses were adjudicated in juvenile court cannot be publicly disclosed on the Internet web site. Local law enforcement agencies may, in their discretion, notify the public about juvenile registrants who are posing a risk to the public. Penal Code section 290.45.

Name Changes. A registrant must inform the law enforcement agency with which he or she is currently registered of a name change within 5 working days. Penal Code section 290, subd. (f)(3).

Penalties for Violation of Registration Law. There are various criminal penalties that apply to persons who fail to comply with the sex offender registration requirements. In general, a person convicted of a registrable felony sex offense who willfully violates the registration law is guilty of a felony. A person convicted of a registrable misdemeanor sex offense who violates the registration law is guilty of a misdemeanor on the first violation, and subsequent convictions for violating the registration law are felonies. Penal Code section 290, subd. (g):

Dismissal of Offense after Completion of Probation. Sex offenders who successfully complete probation may apply to have the offense dismissed under Penal Code section 1203.4, but

dismissal does not relieve the person from the duty to register as a sex offender. Penal Code section 290(a)(2)(F).

Relief from the Lifetime Duty to Register. Persons whose registrable sex offenses are nondisclosable to the public may obtain relief from the duty to register upon obtaining a certificate of rehabilitation. Penal Code section 290.5. All others must obtain a governor's pardon to obtain relief from the duty to register as a sex offender. A person is eligible to apply for a certificate of rehabilitation seven to ten years (depending on the registrable sex offense) after release from custody or on parole or probation, whichever is sooner. Certain registrable sex offenders are not eligible to obtain a certificate of rehabilitation. Penal Code sections 4852.01 & 4852.03.



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JUDI E. THOMAS

June 2, 2009

**County of Los Angeles Test Claim
State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act**

Declaration of Hasmik Yaghobyan

Hasmik Yaghobyan makes the following declaration and statement under oath:

I, Hasmik Yaghobyan, SB90 Administrator, in and for the County of Los Angeles, am responsible for filing test claims, reviews of State agency comments, Commission staff analysis, and for proposing parameters and guidelines (P's& G's) and amendments thereto, all for the complete and timely recovery of costs mandated by the State. Specifically, I have prepared the subject test claim.

Specifically, I declare that I have examined the County's State mandated duties and resulting costs, in implementing the subject law, and find that such costs as set forth in the subject test claim, are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

" ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts 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 foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

6/2/09 Los Angeles, CA
Date and Place


Signature

State Authorized Risk Assessment Tool For Sex Offenders (SARATSO)

Claim Number: CSM-08-TC-03

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Chief Probation Officers of California
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Ms. Paula Higashi *original in the mail*
Executive Director
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State Authorized Risk Assessment Tool For Sex Offenders (SARATSO)

Claim Number: CSM-08-TC-03

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Declaration of Lorraine Hadden

STATE OF CALIFORNIA, County of Los Angeles:

Lorraine Hadden states: I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that my business address is 603 Kenneth Hahn Hall of Administration, City of Los Angeles, County of Los Angeles, State of California;

That on the 2nd day of June, 2009, I served the attached:

Documents: Los Angeles County, Review of State Agency Comments, SARATSO [CSM-08-TC-03], including a 1 page letter of Wendy L. Watanabe dated 6/1/09, a five page narrative, Exhibit A, and a 1 page declaration of Hasmik Yaghobyan, now pending before the Commission on State Mandates.

upon all Interested Parties listed on the attachment hereto and by

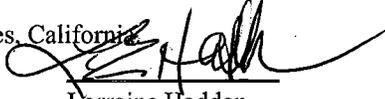
- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date. Commission on State Mandates FAX as well as mail of originals.
- by placing true copies original thereof enclosed in a sealed envelope addressed as stated on the attached mailing list.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.
- by personally delivering the document(s) listed above to the person(s) as set forth below at the indicated address.

PLEASE SEE ATTACHED MAILING LIST

That I am readily familiar with the business practice of the Los Angeles County for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence would be deposited within the United States Postal Service that same day in the ordinary course of business. Said service was made at a place where there is delivery service by the United States mail and that there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 2nd day of June, 2009, at Los Angeles, California


Lorraine Hadden