

June 24, 2009

Analysis of Newly Identified Mandates

LEGISLATIVE ANALYST'S OFFICE



ANALYSIS OF NEWLY IDENTIFIED MANDATES

Chapter 1124, Statutes of 2002 (AB 3000, Committee on Budget), requires the Legislative Analyst's Office to review each mandate included in the commission's semiannual report of newly identified mandates. The commission's June 10, 2009 semiannual report identifies six new mandates:

- Fire Safety Inspections of Care Facilities.
- Mentally Disordered Offenders: Treatment as a Condition of Parole.
- Racial Profiling: Law Enforcement Training.
- Domestic Violence Arrests and Victim Assistance.
- National Norm-Referenced Achievement Test.
- Pupil Expulsions from School: Additional Hearing Costs for Mandated Recommendations of Expulsion for Specified Offenses.

This report includes the analyses required pursuant to Chapter 1124 for the first four mandates shown above (relating to fire safety and criminal justice). Our office expedited the review of these mandates because Proposition 1A of 2006 requires the Legislature to take action in the *2009-10 Budget Act* to fund, suspend, or repeal these mandates.

Proposition 1A does not place a comparable deadline on legislative action regarding new education mandates. Accordingly, we will include our analysis of the two new education mandates in our *Analysis of the 2010-11 Budget Bill*.

Fire Safety Inspections of Care Facilities

Background. Chapter 993, Statutes of 1989 (SB 1098, Rosenthal), requires local fire departments to perform fire safety inspections at all community care facilities, residential care facilities for the elderly, and child day care facilities. The Community Care Licensing Division of the Department of Social Services licenses these facilities separately to operate as community care facilities. Chapter 993 authorized the local fire department to assess a fee of not more than \$50 for medium-sized facilities, and not more than \$100 for large facilities, for these fire safety inspections and related work. In March, the commission adopted a statewide cost estimate of approximately \$630,000 to reimburse 15 cities and fire agencies for the costs of this program not covered by fees over the past eight years.

Recommendation. We recommend the Legislature eliminate future state costs for this mandate by amending the law to allow local governments and fire agencies to increase their fees to fully offset program costs. In addition, given the state's fiscal condition, we recommend that the Legislature adopt the Governor's May Revision proposal to defer payment of the prior-year cost for this mandate to a future date. We note that the Budget Conference Committee has taken actions already that are consistent with this approach.

Mentally Disordered Offenders: Treatment as a Condition of Parole

Background. Under state law, inmates who have certain mental health diagnoses and who committed certain crimes can receive a commitment as a mentally disordered offender, upon their release from prison, to a state mental hospital or to an outpatient treatment program. Chapter 1419, Statutes of 1985 (SB 1296, McCorquodale), and subsequent related statutory changes, makes it possible for an inmate to appeal the state's determination that he/she is a mentally disordered offender to the state Board of Parole Hearings (BPH). If an inmate disagrees with BPH's ruling on such an appeal, Chapter 1419 allows the inmate to file a petition for a hearing on the matter in a trial court. The hearing is conducted in the county in which he or she is incarcerated in prison or, if they have already been released from prison, in the county of the state mental hospital or outpatient program in which they are being treated. The court is required to conduct a hearing on such a petition, with the district attorney required to represent the people and the public defender required to represent the petitioner if he or she is indigent.

The Commission on State Mandates recently found that the requirements in Chapter 1419 that counties conduct the hearings constitute a state-reimbursable mandate. The costs eligible for state reimbursement include activities conducted by attorneys, investigators, paralegals, and secretarial staff related to the hearings (such as reviewing relevant documents, filing motions with the court, and traveling to and from state hospitals and prisons in order to meet with inmate petitioners). In March, the commission adopted a statewide cost estimate of approximately \$4.9 million. This includes \$4.2 million for prior fiscal years 2000-01 through 2007-08 and \$700,000 for 2008-09, based on claims filed by San Bernardino County. (The identified mandate primarily affects San Bernardino and San Luis Obispo Counties, because they are the two counties with a state mental hospital that houses mentally disordered offenders.) The Governor's 2009-10 May Revision proposes to suspend this mandate for one year and defer payment for the costs incurred through 2007-08 to the future.

Recommendation. Given the state's fiscal condition, we recommend that the Legislature approve the Governor's May Revision proposal to suspend the above mandate. Under such a suspension, counties would not be required to conduct hearings in 2009-10 on petitions filed by inmates challenging BPH's ruling that they have a mental disorder. However, these offenders would still be able to appeal their commitment as a mentally disordered offender to BPH. The Budget Conference Committee has already taken the action we propose.

Racial Profiling: Law Enforcement Training

Background. Chapter 684, Statutes of 2000 (SB 1102, Murray), prohibits law enforcement officers from engaging in racial profiling and expands the mandatory training of officers to include coursework on racial profiling. Specifically, the statute required the Commission on Peace Officer Standards and Training (POST)—which is responsible for developing and certifying a variety of courses for officers—to develop a curriculum on racial profiling that would be used by local agencies. In addition, the law required local governments to provide racial profiling training to incumbent officers. In March 2009,

the Commission on State Mandates found that these training requirements constituted a state-reimbursable mandate for those officers who completed basic training on or before January 1, 2004. The commission also estimated that the mandate would cost about \$9.2 million through 2004-05. (Instruction on racial profiling was included as part of the basic training provided to officers trained after January 1, 2004. Because there are no reimbursement claims for any fiscal years after 2004-05, the commission indicates that it is unlikely that further claims will be filed by local agencies.) The Governor's 2009-10 May Revision includes about \$9.5 million for local costs related to this mandate, based on updated cost estimates.

Recommendation. The Budget Conference Committee has taken action to suspend this mandate and reject the Governor's May Revision proposal to fund it in 2009-10. However, rather than suspend the mandate, we recommend that the Legislature repeal the mandate. Because racial profiling training has become part of the ongoing basic instruction for law enforcement officers—as certified by POST—such training for new officers is likely to continue even in the absence of the mandate.

Domestic Violence Arrests and Victim Assistance

Background. Penal Code Sections 13702 and 264.2 require law enforcement officers to provide victims of specified sex crimes with a card that includes information on domestic violence assistance. In 1993, the Commission on State Mandates found that the cost of this requirement constituted a state-reimbursable mandate. The Legislature has since enacted two statutory changes to broaden the preexisting requirement. First, Chapter 698, Statutes of 1998 (AB 1201, Murray), expands the group of crime victims who must receive such cards to include victims of alleged battery or corporal injury. In addition, Chapter 702, Statutes of 1998 (AB 2177, Kuehl), adds the requirement that the card include phone numbers for local battered-women shelters and a statement that, even in cases where the victim knows the defendant, domestic violence or assault is a crime. In March 2009, the commission found that the costs incurred by local governments to carry out the two additional requirements also constitute newly identified state-reimbursable mandates, estimated to cost \$11.1 million through 2008-09. The Governor's 2009-10 May Revision includes about \$370,000 for local costs related to the original requirement and \$2.4 million for additional requirements in Chapters 698 and 702.

Recommendation. We recommend that, for purposes of the 2009-10 budget, the Legislature fund this mandate at the amount proposed in the May Revision. However, we also recommend that the Legislature direct the Department of Justice (DOJ), in consultation with the Department of Finance, to report to the Legislature by January 10, 2010 on the feasibility of consolidating the above card with the so-called "Marsy's rights" card that must be provided to all victims of crime under a ballot measure approved by the voters in November 2008.

Proposition 9, also known as "Marsy's Law," requires prosecutorial and law enforcement agencies to provide all crime victims with a card—designed by DOJ—that includes a list of victims' rights, information on accessing a "Marsy's Page" Web site, and a toll-free number to access local victim assistance offices. Because the Marsy's Law require-

ments were imposed by a voter-approved initiative, the costs to local law enforcement agencies of implementing these provisions do not constitute a reimbursable state mandate. If DOJ concludes that the card for victims of domestic violence can be consolidated with the Marsy's card, the Legislature could repeal the various statutes (Penal Code Sections 13702 and 264.2) relating to the victims of domestic violence card, while still accomplishing its intent that information be provided to domestic violence victims. The Budget Conference Committee has already taken this action.



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