

**AGENDA**  
**ASSEMBLY BUDGET SUBCOMMITTEE NO. 4**  
**ON STATE ADMINISTRATION**

**Assemblymember Rudy Bermudez, Chair**

**WEDNESDAY, MARCH 12, 2003**  
**STATE CAPITOL, ROOM 437**  
**1:30 P.M.**

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## CONSENT CALENDAR

California State Lottery and Native American Heritage Commission will be taken off today's agenda and heard March 19, 2003.

## ITEMS TO BE HEARD

### **ITEM # 0820      DEPARTMENT OF JUSTICE**

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The Department of Justice (DOJ) serves as the chief law enforcement officer of the state. As such he has the responsibility to ensure that the laws of California are uniformly and adequately enforced. In the Budget Year the Governor's Budget proposes expenditures of \$606.7 million of expenditures. This is a decrease of \$31.1 million from estimated expenditures in the current year.

#### **ISSUE 1:      FORENSIC CASE BACKLOG REDUCTION**

The Department requests a permanent \$1.5 million General Fund (GF) augmentation to support 13 criminalists to address the backlog in forensic cases.

This issue is related to the Department's proposal to seek \$3.5 million from these clients in reimbursement for these services. At this time the Department plans to present additional information regarding this issue by the end of the month. Therefore, this proposal will be discussed at that time.

#### **ISSUE 2      BUREAU OF MEDI-CAL FRAUD/ELDER ABUSE PROGRAMS**

The Department proposes the continuation of 20 limited term positions in the Bureau of Medi-Cal fraud to support ongoing investigation and prosecution of elder abuse and neglect cases at a cost of \$2,179,000 (\$545,000 GF and \$1,634,000 federal funds).

Based upon the estimated need to investigate and prosecute the proliferation of reported cases of abuse and neglect of our elderly, the 1999-00 Budget Act approved 20, two-year, limited term positions to the Bureau of Medi-Cal Fraud and Elder Abuse Program (BMFEA). At the end of the two years, the Legislature approved an extension of these resources for another two years. By 2001, the United States Department of Health and Human Services had determined that the Bureau of Medi-Cal Fraud and Elder Abuse had produced the highest conviction rate of any state Medicaid Fraud Control Unit in the nation.

The Bureau had successfully prosecuted a number of cases of elder abuse and neglect:

- August 2001 - the State's first successful civil prosecution of a nursing home chain for corporate neglect and failure to deliver adequate care to its elderly patients (Kensett Moyle III).

- August 2002 - the State's first criminal prosecution of the owner of a nursing home. (Orchard Gables Convalescent Corporation)
- October 2001 - criminal and civil prosecution of nursing home chain for felony elder abuse and corporate neglect.(Sun Healthcare)
- August 2002 - criminal and civil prosecution of nursing home chain for felony elder abuse and corporate neglect (Beverly Enterprise)

In three of the above cases, the Bureau was successful in obtaining a court ordered permanent injunction against the defendants. The major provisions of the injunction: 1) enjoined the defendants from violating state and federal statutes and regulations governing the operations of a California skilled nursing facility; 2) imposed training programs for new and current employees; 3) imposed nursing and care procedures to ensure that quality of care laws are complied with; and 4) imposed reporting requirements to the Bureau. The enforcement of the compliance with the provisions of the injunction lies with the BMFEA. Since these three injunctions cover 134 facilities, the enforcement requirement represents a substantial workload.

The Department has indicated those current efforts to enforce the injunctions are funded through existing program resources. As BMFEA is more successful with the prosecution of providers that abuse their elderly patients, the amount of resources required to enforce compliance with the subsequent injunctions will become greater thus diminishing the amount of resources available to investigate and prosecute other offenders. The sub-committee may want to ask the Department to consider asking the offending party to reimburse BMFEA for this workload. To the extent that injunction enforcement is paid by the defendant, state resources could be freed up to pursue the investigation and prosecution of other offenders to the State's elder abuse laws.

### **ISSUE 3: ENERGY LITIGATION**

This item will be held open until the Department can provide additional information regarding the status of the various lawsuits covered by this funding request.

**ISSUE 4 DRUG PRICING LITIGATION**

The Department requests additional funding of \$993,000 (\$248,000 False Claims Act Fund, \$745,000) to support the prosecution of national pharmaceutical manufacturers which have engaged in illegal drug pricing manipulation. It is estimated that these activities have caused the Medi-Cal program to be defrauded in excess of \$100.0 million.

In 1988 a private party filed suit against a number of pharmaceutical companies for violation of State False Claims Act provisions. The plaintiff accused the defendant of illegally inflating the costs of various drugs sold to the Medi-Cal program to the detriment of the State. Under the law, this complaint was forwarded to the Attorney General (Bureau of Medi-Cal Fraud and Elder Abuse in this case [BMFEA]) for review. As a result of the review the Department agreed with the claims of overpricing and has intervened as a plaintiff on behalf of the state. Further investigation has allowed the Department to conclude that at least 26 pharmaceutical companies have engaged in illegal pricing to the detriment of the State. To date the Department has filed a complaint against Abbot Laboratories and Wyeth Laboratories for violation of the state's false claims laws. The complaint alleges that these companies conspired to mislead the Medi-Cal program to make payments for pharmaceuticals of up to 1083% over the appropriate cost.

The Department proposes a modest litigation schedule of filing 4 to 6 new complaints every six months until all of the complaints are filed. This is expected to extend litigation through 2008. Under the state False Claims Act, a defendant is liable for up to treble damages for a violation of law. Using a conservative damage figure of \$100.0 million, the successful resolution of the complaint in favor of the state could result in recoveries to the state Medi-Cal program, False Claims Fund and GF of approximately \$240.0 million after distributions to other outside complainants.

The extended litigation schedule is due to the conservative nature of the funding request. According to the Department, the resources requested is the minimal level needed to provide an effective litigation strategy. Under current agreements with the federal government, BMFEA receives three dollars of federal funding for each dollar of state funding appropriated. Generally, the state match takes the form of resources from GF however since this action is being filed under the state's False Claim Act, funding from the False Claims Act Fund is appropriate. The subcommittee may want to consider augmenting this request from the False Claims Act Fund by \$500,000. This would allow BMFEA to receive an additional \$1.5 million in federal funds to pursue this action. In addition to sending a strong message to those parties that would contemplate price manipulation that the State would seek to recover overcharged amounts, it is believed that this higher level of funding would: 1) allow for filing of complaints over a shorter period of time; 2) reduce the total length of litigation; 3) allow BMFEA to pursue a more aggressive litigation strategy and schedule; 4) increase the value of a favorable outcome ; and show the commitment of the State to pursue overcharging to the Medi-Cal program. The department has indicated that: an augmentation of the original proposal by \$2.0 million 1) could be dedicated toward the action in the Budget Year; 2) would not be inconsistent with the current agreement with the federal government for funding; and 3) would allow the state to pursue a more aggressive litigation schedule, and thereby shorten the length of litigation and speed up the recoveries to the state.

**ISSUE 5 WILLIAMS V STATE OF CALIFORNIA**

The Department is requesting \$1.3 million to support the defense of various state agencies in the Williams v State of California lawsuit. This case seeks state remedy of deficiencies in California's K-12 grade schools. The liability to the State from this action could exceed \$500.0 million.

The Department is preparing additional information regarding this case and will present it at a later hearing.

**ISSUE 6 CYA CLASS ACTION LITIGATION**

The Department seeks \$10.726 million from the GF to defend a client agency against a class action lawsuit regarding the terms of confinement of wards in the Department of Youth Authority

This lawsuit is currently being pursued in both state and federal court. It is anticipated that by the May Revision the litigation schedule for this case will become more clear, therefore this proposal will be held open until that time.

**ISSUE 7, 8 AUTOMATED CHILD ABUSE SYSTEM, HANDGUN TESTING**

The department requests a permanent augmentation of \$282,000 in General Fund to support a database of licensed childcare providers and to support a program of subsequent notification of child abuse to the appropriate licensing agency. In addition, the department requests \$180,000 in special funds to perform a gun re-testing program as identified by Chapter 912, Statutes of 2002. This latter program is discretionary on the part of the Department. The department is currently preparing additional information that will be made available at a future date and therefore this item should be held open and addressed at a later hearing.

**ISSUE 9 STRINGFELLOW INSURANCE LITIGATION**

Hold item open to be addressed at a later hearing.

The Department is requesting \$5.274 million to seek reimbursement of \$480.0 million from an insurer resulting from the State's actions at the Stringfellow toxic dumpsite.

The Department is preparing additional information regarding this case and will present it at a later hearing.

**ISSUE 10 CAPITOL CRASH LITIGATION**

The Department seeks \$766,000 to seek recoveries from losses incurred due to the January 16, 2001 Capitol Crash. The State will pursue action against Dick Simon Trucking Company for the cost of repairing the State Capitol, which was damaged when Simon's employee intentionally rammed his truck into the southern entrance of the State Capitol on January 16, 2001. To date the employer's first and second level insurers have paid \$5.75 million in reimbursement. Now the State seeks the balance of the reimbursement from the third level or excess insurance carrier. Funds will be used to hire outside counsel with expertise in insurance litigation.

**ISSUE 11 CAL FED REPRESENTATION**

The Department seeks \$315,00 in reimbursement authority to provide representation for the CAL-FED program. This program was created in 1995 to address the problems facing the Sacramento-San Joaquin-San Francisco Bay Delta. As a result 24 state and federal agencies are working together to provide for ecosystem restoration, to improve water quality and increase surface storage of water. According to the department, the need for this representation appears to be long term.

**ISSUE 12 CRIMINAL INTELLIGENCE BUREAU**

The Department seeks to transfer \$9.1 million and 85 positions from various bureaus to create a new Criminal Intelligence Bureau. This would increase the total size of the bureau to 124 positions.

This item will be held over as the Department is developing additional information that will be provided in a later hearing.

**ISSUE 13, 14 ,15,16 NCHIP YEAR 8 GRANT/ WSIN/HIDTA/JABG**

The Department seeks additional spending authority for programs funded directly or indirectly from federal funds to enhance the State's anti-drug interdiction and juvenile offender database programs. No concerns have been received regarding these proposals.

**ISSUE 17 DEPARTMENT OF CONSERVATION - RECYCLING**

The Department requests \$974,000 in additional reimbursement authority to enhance enforcement of the state's beverage container recycling laws. These resources would allow the state to prevent the illegal redemption of out of state beverage cans and thereby maintaining the solvency of the recycling fund and allow the state's recycling fund to continue operations. No concerns have been received regarding this proposal.

**ISSUE 18 PROVISIONAL LANGUAGE- GAMING BACKGROUND**

The Department requests an exemption to Control Section 28.50. This would authorize the Gaming Division to increase its appropriation authority by up \$2.5 million to fund criminal background investigations of entities and individuals that supply tribal casinos with gaming related goods and services. Under existing Control Section 28.50 a Department has the authority to expend all money received as reimbursement not previously considered by the Budget Act, upon approval by the Department of Finance, subject to a 30-day notice to the Legislature. The idea of this Control Section is to allow Departments to take advantage of additional reimbursements made available during the current budget year.

The proposed language attached to this issue does not restrict the augmentation to gaming suppliers and is not consistent with the narrative of the Budget Change Proposal. It is not clear how the proposed language would provide substantial benefit to the department and therefore it is not clear that the exemption to Section 28.50 should be granted. Since the department treats funds received to perform background investigations related to tribal casino operations as reimbursements rather than revenues, it is believed that the provisions of Section 28.50 would apply to this circumstance. To the extent that the Department fails to identify the need to perform the background investigations in a timely manner; it could seek, on a case-by-case basis, a waiver of the 30-day notice requirement for cause.

**ISSUE 19 INVESTIGATIVE SERVICES UNIT**

The Department proposes the centralization of investigative resources within the Division of Law Enforcement. No concerns have been received on this issue.

**ISSUE 20 TRANSFER OF THE CALIFORNIA PARENT LOCATOR TO THE DEPARTMENT OF CHILD SUPPORT SERVICES**

The Department proposes the transfer of \$2.2 million in reimbursement and \$1.273 million in GF associated with the California Parent Locator Service and California Central Registry to the Department of Child Support Services pursuant to Chapter 759, Statutes of 2002 (AB 3033).

This realignment is consistent with the provisions of Federal Code of Regulations Section 302.85(a) Requires a single automated child support system to be in place. No concerns were received on this issue.

**ISSUE 21 EMERGENCY PLACEMENT BACKGROUND CHECKS**

The Department proposes an augmentation of \$1.455 million from the Fingerprint Fee Account to pay federal charges related to background checks for the emergency placement of children to custodial adult relatives. The Department is developing additional information on this issue that is expected to be available shortly. Therefore this issue should be held over to a future hearing.

**ISSUE 22 REDUCTION PACKAGE**

The Department proposes the reduction of \$23.0 million in the budget year in State Operations and Local Assistance. The Department is preparing additional information on the impact of this reduction upon its operations for presentation at a later date. Therefore this item should be held open to be heard at the next hearing.

**ISSUE 23 FORENSIC FEES**

The Department proposes the substitution of \$3.5 million from GF authority to reimbursements support for its forensic services to client counties. This proposal is part of the department's reduction package. The Department is currently preparing additional detail regarding this issue in response to comments by the Legislative Analyst's Office. As a result this issue should be held open to be heard at the next hearing.