

ITEM ____
TEST CLAIM
DRAFT STAFF ANALYSIS

Welfare and Institutions Code Sections 779, 1731.8, 1719, 1720

Statutes 2003, Chapter 4

Juvenile Offender Treatment Program Court Proceedings
04-TC-02

County of Los Angeles, Claimant

EXECUTIVE SUMMARY

This test claim makes allegations regarding the duties of public defenders in the juvenile justice system as a result of a test claim statute that realigned the duties of the former Youthful Offender Parole Board (YOPB)¹ and the California Youth Authority (CYA).²

The purpose of the test claim legislation (Stats. 2003, ch. 4) was to “consolidate the operations of the Youthful Offender Parole Board under the Department of the Youth Authority and make related changes to the juvenile law.” The test claim statute abolished the YOPB and created the Youth Authority Board within the Department of the Youth Authority. The board’s duties were condensed to issues of discharge and parole of the juvenile, parole revocations, and disciplinary appeals. The remaining duties of the YOPB were shifted to the CYA.

Although the test claim statute (Stats. 2003, ch. 4) added, repealed or amended 48 statutes, only four were pled by the claimant: Welfare and Institutions Code sections 779, 1719, 1720 and 1731.8. As amended, these statutes: (1) clarified the authority of the juvenile court to change, modify, or set aside a prior order of commitment; (2) shifted the duty to set parole consideration dates from the YOPB to the CYA; (3) transferred the duties regarding the annual review of the ward from the YOPB to the CYA; and (4) specified that CYA shall provide copies of the reviews to the court and the county probation department.

The claimant argues that these changes have resulted in reimbursable increased costs to county public defenders.

Procedural History

Claimant Los Angeles County submitted the test claim on December 22, 2004. The Commission has not received comments from the state or other interested parties on the test claim.

¹ The Youthful Offender Parole Board (YOPB) became the Youth Authority Board under the 2003 test claim statute, and in 2005 became the Board of Parole Hearings (Welf. & Inst. Code, § 1716). Thus, references in this analysis to the Youth Authority Board also include the Board of Parole Hearings.

² The California Youth Authority (CYA) was renamed the Division of Juvenile Justice (DJJ) in a 2005 reorganization, so all references to the Youth Authority or CYA in this analysis now apply to the DJJ.

Positions of Parties and Interested Parties

The claimant alleges that the test claim statutes impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution and Government Code section 17514 for public defenders to perform the following duties that are “reasonably necessary in implementing” the test claim statutes:

1. Review case and court files, mental health, school, medical, psychological and psychiatric records and familiarize themselves with treatment and service needs of the youth;
2. Review court documents to assure court has followed the mandates of SB 459;
3. Prepare and argue motions in cases where the court has not followed the mandates of SB 459 in its dispositional orders;
4. Contact, visit and interview public defender clients sentenced to the California Youth Authority (CYA);
5. Monitor the setting of parole consideration dates to assure they comply with statutory mandates;
6. Assess CYA treatment plans to assure they comply with statutory mandates, needs of the client and orders of the court;
7. Review CYA files, including education, special education, mental health, behavioral, gang and any other specialized files (all kept in separate locations);
8. Monitor the provision of treatment and other services;
9. Advocate for the provision of needed treatment and services within the CYA system, including advocacy at individual education plan [IEP], treatment plan, and similar meetings;
10. File motions in the sentencing court pursuant to Welfare and Institutions Code section 779 where the client’s needs are not being adequately addressed by CYA.
11. Coordinate with the Youth Authority in order to assist our clients in preparing for parole hearings, and represent our clients at parole hearings in appropriate cases.

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local governments are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local governments to be eligible for reimbursement, one or more similarly situated local governments must file a test claim with the Commission. “Test claim” means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6. In

making its decisions, the Commission cannot apply article XIII B as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.

Claims

The following chart provides a brief summary of the claims, the issues raised by the claimant and staff’s recommendation.

Claim	Description	Recommendation
<p><u>Court Orders to Modify or Set Aside Order of Commitment</u> - Welfare and Institutions Code section 779</p>	<p>The amendment adds a sentence stating that the statute does not limit the authority of the court to change, modify or set aside an order of commitment after a noticed hearing and upon a showing of good cause that CYA is not providing treatment consistent with section 734.</p> <p>The claimant contends that the test claim statute, for the first time, allows the court to “substitute its judgment for the CYA” and change CYA treatment plans, thus requiring public defenders to file motions in the sentencing court pursuant to Welfare and Institutions Code section 779 where the client’s needs are not being adequately addressed by CYA.</p>	<p><i>Deny</i> – The amendment is merely a clarification of existing law. Under prior law, and under the test claim statute, the court may only change, modify, or set aside an order of commitment when CYA fails to comply with the law, or abuses its discretion in the treatment of the ward. The test claim statute does not change that standard, and does not mandate a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.</p>
<p><u>Parole Consideration Dates and Parole Procedures</u> – Welfare and Institutions Code sections 1719 & 1731.8.</p>	<p>These statutes address a juvenile’s parole consideration date (PCD), and transfer the duty to set or modify the PCD from the YOPB to CYA.</p> <p>The claimant argues that the amendments to sections 1731.8 and 1719 mandate a new program or higher level of service for public defenders to monitor the parole procedures described in these sections in order to further assist the ward in a possible section 779 motion asking the court to change, amend, or modify a commitment order granting parole for the ward.</p>	<p><i>Deny</i> - The amendments to sections 1731.8 and 1719 simply transfer the duties imposed on the YOPB to the CYA relating to the ward’s PCD, and direct the CYA to comply with the existing regulations when modifying or deviating from the parole consideration date. Nothing on the face of these statutes imposes a new duty on local government. Thus, the test claim statutes do not mandate a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.</p>

<p>Ward Reviews - Welfare and Institutions Code section 1720.</p>	<p>This section was amended to change the process for reviewing the progress of the wards following their commitment to CYA. The wards' reviews were transferred from the YOPB to the CYA. The test claim statute also requires CYA to provide copies of the reviews prepared to the court and the probation department of the committing county.</p> <p>The claimant argues that the amendment to section 1720 (f), requiring that copies of the reviews be provided to the court and probation department of the committing county, requires the public defender to review, evaluate, monitor, and change treatment plans as necessary to assure compliance with the order of the court, the needs of the client, and the possible filing of a section 779 motion.</p>	<p><i>Deny</i>- The amendment to section 1720 (Stats. 2003, ch. 4) does not mandate a new program or higher level of service on county public defenders. Before the test claim statute was enacted, a ward had an existing due process right to receive copies of the reviews, have counsel review and evaluate the material in the review, and represent the ward as necessary.</p>
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Staff Analysis

Court Orders to Modify or Set Aside the Order of Commitment (§ 779): The Legislature amended section 779 regarding court orders to modify or set aside the order committing a ward to the CYA by adding: “This section does not limit the authority of the court to change, modify, or set aside an order of commitment after a noticed hearing and upon a showing of good cause that the Youth Authority is unable to, or failing to, provide treatment consistent with Section 734.”³ Claimant alleges that this provision requires its public defenders to provide several representational duties before CYA and the courts on behalf of minors or wards.

Staff finds that the amendment to section 779 does not impose any new state-mandated duties on county public defenders. The 2003 amendment was merely a clarification of existing law, as interpreted by the California Supreme Court.

Parole Consideration Date(s) (§ 1731.8) and Parole Procedures (§ 1719): Welfare and Institutions Code sections 1719 and 1731.8 address a juvenile’s parole consideration date (PCD), which “represents, from its date of establishment, an interval of time in which a ward may

³ Welfare and Institutions Code section 734 states: “No ward of the juvenile court shall be committed to the Youth Authority unless the judge of the court is fully satisfied that the mental and physical condition and qualifications of the ward are such as to render it probable that he will be benefited by the reformatory educational discipline or other treatment provided by the Youth Authority.”

reasonably and realistically be expected to achieve readiness for parole. It is not a fixed term or sentence, nor is it a fixed parole release date.” The test claim statute makes CYA rather than the YOPB responsible for setting PCDs.

The test claim statute also amends section 1719 to specify the duties for the Youth Authority Board (former YOPB) and CYA, and grants to CYA some of YOPB’s former duties, and adds language authorizing CYA to modify PCDs. Under preexisting regulations, parole consideration dates could be modified by the YOPB, so the test claim statute merely transferred this authority to CYA and codified criteria for modification.

The claimant alleges that the amendments to sections 1731.8 and 1719 mandate a new program or higher level of service for public defenders to monitor the parole procedures in order to further assist the ward in a possible section 779 motion asking the court to change, amend, or modify a commitment order granting parole for the ward.

Staff finds that neither section 1719 nor section 1731.8 mandate a new program or higher level of service subject to article XIII B, section 6. First, the court’s jurisdiction to change, modify or amend a commitment order has not changed. Second, the plain language of sections 1731.8 and 1719 does not impose any new duties on local government. The test claim amendments to sections 1731.8 and 1719 simply transferred the duties imposed on the YOPB to the CYA relating to the ward’s parole consideration date, and directed the CYA to comply with the existing regulations when modifying or deviating from the parole consideration date.

Ward Reviews (§ 1720(f)): Welfare and Institutions Code section 1720 was amended to change the process for reviewing the progress of the wards following their commitment to CYA.

The test claim statute transfers the wards’ reviews from the YOPB to the CYA, and each ward’s case is now reviewed within 45 days of arrival at CYA and annually thereafter. The test claim statute also adds the following: “The department shall provide copies of the reviews prepared pursuant to this section to the court and the probation department of the committing county.”

According to the claimant, the amendment to section 1720 (f), requiring that copies of the reviews be provided to the court and probation department of the committing county, requires the public defender to review, evaluate, monitor, and change treatment plans as necessary to assure compliance with the order of the court, the needs of the client and statutory provisions including section 779.

Staff finds that the amendment to section 1720 (Stats. 2003, ch. 4) does not mandate a new program or higher level of service subject to article XIII B, section 6. Under prior law, the ward had a constitutional due process right to have his or her attorney receive a copy of the review conducted by the YOPB, have counsel review and evaluate the material in the review, and to represent the ward as necessary. The amendments made to section 1720 did not change that right.

Conclusion and Recommendation

Staff finds that Welfare and Institutions Code sections 779, 1731.8, 1719, and 1720 (Stats. 2003, ch. 4) do not impose a reimbursable state mandate on counties within the meaning of article XIII B, section 6, of the California Constitution. Staff recommends that the Commission adopt this analysis to deny the test claim.

STAFF ANALYSIS

Claimants

County of Los Angeles

Chronology

12/22/04 Claimant Los Angeles County files test claim 04-TC-02

I. Background

This test claim seeks reimbursement for costs incurred by county public defenders as a result of the 2003 test claim statute that made some changes to the juvenile justice system. Before discussing the test claim statute, some background on the juvenile justice system is provided below.

The Juvenile Justice System

In the juvenile justice system, the emphasis is on offender treatment and rehabilitation rather than punishment.⁴ Juvenile court proceedings are not considered to be criminal proceedings, and orders making minors wards of the juvenile court are not deemed to be criminal convictions.⁵ Although since the 1960s, the courts have accorded juvenile offenders some of the constitutional protections afforded criminal defendants.⁶

The Office of the Legislative Analyst (LAO) described the process of juvenile justice as follows:

Following the arrest of a juvenile offender, a law enforcement officer has the discretion to release the juvenile to his or her parents, or take the offender to juvenile hall. The county probation department, the agency responsible for the juvenile hall, has the discretion to accept and "book" the offender or not, in which case, the disposition of the juvenile is left to the police. Because most of the state's juvenile halls are overcrowded, mainly with juveniles being held for

⁴ *In re Aline D.* (1975) 14 Cal.3d 557, 567.

⁵ Welfare and Institutions Code section 203. This civil/criminal distinction, however, is not always clear. The U.S. Supreme Court has said:

[I]t is clear under our cases that determining the relevance of constitutional policies, like determining the applicability of constitutional rights, in juvenile proceedings, requires that courts eschew 'the 'civil' label-of-convenience which has been attached to juvenile proceedings,' [Citation omitted.] and that 'the juvenile process . . . be candidly appraised.' (*Breed v. Jones* (1975) 421 U.S. 519, 529.) . . . [I]n terms of potential consequences, there is little to distinguish an adjudicatory hearing such as was held in this case from a traditional criminal prosecution. (*Id.* at p. 530.)

⁶ For example, the right to counsel in juvenile judicial proceedings (*Application of Gault* (1967) 387 U.S. 1) and the protection against double jeopardy (*Breed v. Jones* (1975) 421 U.S. 519).

violent offenses, juvenile halls may accept only the most violent arrestees, turning away most other arrestees.

If the offender is placed in juvenile hall, the probation department and/or the district attorney can choose to file a "petition" with the juvenile court, which is similar to filing charges in adult court. Or, the district attorney may request that the juvenile be "remanded" to adult court because the juvenile is "unfit" to be adjudicated as a juvenile due to the nature of his or her offense. For a juvenile who is adjudicated and whose petition is sustained (tried and convicted) in juvenile court, the offender can be placed on probation in the community, placed in a foster care or group home, incarcerated in the county's juvenile ranch or camp, or sent to the Youth Authority⁷ as a ward of the state. For a juvenile tried and convicted in adult court, the offender can be sentenced to the Department of Corrections, but can be placed in the Youth Authority through age 24.⁸

Juvenile court proceedings to declare a minor a ward of the court are commenced after the district attorney or probation officer files a petition,⁹ which is tantamount to filing charges. The petition triggers a detention hearing,¹⁰ after which the juvenile may be detained under specified circumstances.¹¹ The court may appoint counsel for the minor and his or her parents if they desire it at this hearing, and is required to appoint counsel for certain minors who are habitual or serious offenders unless the minor makes an "intelligent waiver" of the right to counsel.¹² Whether indigent or not, since 1961 the court has been required, at a detention hearing, to notify the juvenile and his or her parents of the right to counsel "at every stage of the proceedings."¹³

Depending on the minor's age and seriousness of the crime, the court may hold a fitness hearing after the detention hearing if the district attorney decides that the minor should be tried as an adult.¹⁴

After the detention hearing, a jurisdictional hearing is held to decide whether the minor is detained or released to home supervision.¹⁵ During the jurisdictional hearing, the judge decides the merits of the petition. If the judge finds that the allegations in the petition are true, then a

⁷ The California Youth Authority (CYA) was renamed the Division of Juvenile Justice (DJJ) in a 2005 reorganization, so all references to the Youth Authority or CYA in this analysis now apply to the DJJ.

⁸ Office of the Legislative Analyst, "Juvenile Crime – Outlook for California." May 1995, p. 1.

⁹ Welfare and Institutions Code section 650.

¹⁰ Welfare and Institutions Code sections 632-633.

¹¹ Welfare and Institutions Code section 636.

¹² Welfare and Institutions Code section 634.

¹³ Welfare and Institutions Code section 633.

¹⁴ Welfare and Institutions Code section 707.

¹⁵ Welfare and Institutions Code section 700.

dispositional or sentencing hearing is held¹⁶ to determine the minor's care, treatment and guidance, including punishment. Before the hearing, the probation officer writes a "social study" of the minor for the Court to help determine what should happen to the minor.

The judge in the disposition hearing may set aside the findings in the jurisdictional hearing, or may put the minor on informal probation. Otherwise, the judge may make the minor a ward of the court, meaning the court makes the decisions instead of the minor's parents. Wardship may mean the minor is put on probation, placed in foster care, a group home or private institution,¹⁷ placed in local juvenile detention,¹⁸ or placed in the California Youth Authority,¹⁹ in addition to other conditions the judge may impose, such as fines, restitution, work programs, etc..

If the judge sentences the minor to the youth authority, it means that the judge believes that it would be best for the minor to learn from the discipline or programs at CYA.²⁰

Less than two percent of juvenile offenders are committed to the CYA and become a state responsibility.²¹ County probation departments supervise the remaining 98 percent.

For a graphic depiction of the juvenile justice process, see Appendix 1 attached.

California Youth Authority

CYA is the state agency responsible for protecting society from the criminal and delinquent behavior of juveniles.²² The youth authority operates training and treatment programs that seek to educate, correct, and rehabilitate youthful offenders rather than punish them.²³ It is charged with operating 11 institutions and supervising parolees through 16 offices located throughout the state.²⁴ Individuals can be committed to the CYA by the juvenile court or on remand by the criminal court,²⁵ or returned to CYA by the former Youthful Offender Parole Board (YOPB),²⁶

¹⁶ Welfare and Institutions Code section 706.

¹⁷ Welfare and Institutions Code section 727.

¹⁸ Welfare and Institutions Code section 730.

¹⁹ Welfare and Institutions Code section 731.

²⁰ Welfare and Institutions Code section 734.

²¹ Office of the Legislative Analyst. "California's Criminal Justice System: A Primer." January 2007, page 50. The Legislative Analyst's 1995 report stated that three percent were state wards, as did the (2003) legislative history of the test claim statute.

²² Welfare and Institutions Code section 1700; according to the Legislative Analyst's Office, juveniles committed to CYA are generally between the ages of 12 and 24, and the average age is 19. Legislative Analyst's Office, Analysis of the 1999-2000 Budget Bill, Criminal Justice Departmental Issues, page 4.

²³ Welfare and Institutions Code section 1700.

²⁴ Legislative Analyst's Office, Analysis of the 1999-2000 Budget Bill, Criminal Justice Departmental Issues, page 4.

²⁵ Welfare and Institutions Code section 707.2, subdivision (a).

which became the Youth Authority Board under the 2003 test claim statute, and is now the Board of Parole Hearings.²⁷

Juveniles committed to CYA are assigned a category number, ranging from 1 to 7, based on the seriousness of the offense committed; 1 being the most serious and 7 being the least serious.²⁸ Counties pay the state a monthly fee for persons who have been committed to CYA.²⁹ In 1996, a new fee structure was imposed to provide incentives for counties to treat less serious offenders at the county level. Counties are required to pay 100 percent of the average cost for "category 7" wards committed to CYA, 75 percent for "category 6" wards and 50 percent for "category 5" wards. At the time of the test claim statute (2003) counties paid over \$50 million annually for their commitments to CYA.

Youthful Offender Parole Board/Youth Authority Board/Board of Parole Hearings

Before the test claim legislation, the YOPB was the paroling authority for young persons committed to the CYA. Although wards are committed to CYA by local courts, decisions relating to length of stay and parole were made by YOPB, which performed the following duties:

- Return persons to the court of commitment for redispotion by the court;
- Discharge of commitment;
- Orders to parole and conditions thereof;
- Revocation or suspension of parole;
- Recommendation for treatment program;
- Determination of the date of next appearance;
- Return nonresident persons to the jurisdiction of the state of legal residence.³⁰

The history and duties of the YOPB were provided in the test claim statute's legislative history as follows.

YOPB was established originally in 1941 by the Legislature as the "Youth Authority Board." When the Department of the Youth Authority was created in 1942, the Director also served as the Chairman of the Board. The Board separated from CYA in 1980 and was renamed the Youthful Offender Parole Board.

YOPB members and hearing officers conduct about 20,000 hearings a year at the 11 CYA institutions, 4 camps, and regional parole offices for the approximately 6,400 wards at CYA and 4,000 on parole. Hearing officers include YOPB staff or

²⁶ Legislative Analyst's Office, Analysis of the 1999-2000 Budget Bill, Criminal Justice Departmental Issues, page 5.

²⁷ Welfare and Institutions Code section 1716.

²⁸ California Code of Regulations, title 15, sections 4951-4957.

²⁹ Welfare and Institutions Code sections 912 and 912.5.

³⁰ Former Welfare and Institutions Code section 1719.

retired annuitants who are authorized to conduct hearings. YOPB hearings fall into the following general categories:

Within approximately 45-60 days, YOPB used to conduct an Initial Hearing where the initial parole consideration date (PCD) is set and treatment is ordered; however, the Legislature has been advised by the administration that since November of 2002, this function has been shifted to the CYA, with CYA staff recommendations subject to YOPB approval.

Once a year YOPB conducts an Annual Review to assess the progress of the ward and if they deem appropriate, modify the parole consideration date (PCD). YOPB can also hold Progress Reviews more frequently to review progress or modify the PCD.

At the request of CYA, YOPB holds disciplinary hearings to determine whether a time-add should be given (extending the parole consideration date) as a disciplinary action.

At the ward's parole consideration hearing, YOPB determines whether to grant parole or extend the institution stay. If parole is granted, YOPB sets conditions of parole.

YOPB also conducts Parole Revocation Hearings for parole violators to determine whether parole should be revoked and the ward returned to the institution.³¹

The former YOPB had authority over wards committed to the Youth Authority, such as permitting the ward "his liberty under supervision and upon such conditions as it believes best designed for the protection of the public" or ordering confinement "as it believes best designed for protection of the public" with specified limitations. The former YOPB could also order reconfinement or renewed release under supervision "as often as conditions indicate to be desirable" or revoke or modify any order "except an order of discharge" or modify an order of discharge, or discharge him or her from its control "when it is satisfied that such discharge is consistent with the protection of the public."³²

The Test Claim Legislation

The purpose of the test claim legislation (Stats. 2003, ch. 4) was to "consolidate the operations of the Youthful Offender Parole Board under the Department of the Youth Authority and make related changes to the juvenile law."³³ The test claim statute abolished the YOPB and created the Youth Authority Board³⁴ within the Department of the Youth Authority. The board's duties

³¹ Senate Committee on Public Safety, Analysis of SB 459 (2003-2004 Reg. Sess.) as amended March 12, 2003, pages G-H.

³² Former Welfare and Institutions Code section 1766.

³³ Senate Committee on Public Safety, Analysis of SB 459 (2003-2004 Reg. Sess.) as amended March 12, 2003, page B.

³⁴ The board was renamed the Board of Parole Hearings in 2005 (Stats. 2005, ch. 10) and the Juvenile Parole Board in 2010 (Stats. 2010, ch. 729).

were condensed to releases (discharge and parole), parole revocations, and disciplinary appeals and the board's remaining duties were shifted to the CYA.³⁵

The powers and duties shifted to CYA include: returning persons to the court of commitment for redispotion by the court, determining the offense category, setting parole consideration dates using existing guidelines, conducting annual reviews, treatment program orders, making institutional placements, making furlough placements, returning nonresident persons to the jurisdiction of the state of legal residence, disciplinary decision making (with appeals to the board), and referring dangerous persons to prosecutors for extended detention.³⁶

Additionally, the CYA is now required to provide county probation departments and juvenile courts with specified information concerning ward treatment and progress, and must compile specified data concerning CYA's population and effectiveness of treatment.

Although the test claim legislation (by Stats. 2003, ch. 4) added, repealed or amended 48 statutes, only four were pled by the claimant: Welfare and Institutions Code sections 779, 1719, 1720 and 1731.8. As amended, these statutes clarified the authority of the juvenile court to change, modify, or set aside a prior order of commitment; shifted to the duty from the YOPB to the CYA to set parole consideration dates; and transferred the duties regarding the annual review of the CYA ward from the YOPB to the CYA and specified that CYA shall provide copies of the reviews to the court and the county probation department.

The claimant argues that these changes have resulted in reimbursable increased costs to county public defender's offices.

Prior Commission Decisions

On January 25, 2001, the Commission adopted the *Extended Commitment – Youth Authority* statement of decision, finding that that section 1800 of the Welfare and Institutions Code (Stats. 1984, ch. 546) is a reimbursable state mandate for prosecuting attorneys to do the following:

- Review the Youthful Offender Parole Board's (YOPB's) written statement of facts upon which the YOPB bases its opinion that discharge from control of the California Youth Authority (CYA) at the time stated would be physically dangerous to the public;
- Prepare and file petitions with the superior court for the extended commitment of dangerous CYA wards;
- Represent the state in preliminary hearings and civil trials on petitions for the extended commitment of dangerous CYA wards;
- Retain necessary experts, investigators, and professionals to prepare for preliminary hearings and civil trials on petitions for the extended commitment of dangerous CYA wards.

³⁵ Senate Committee on Public Safety, Analysis of SB 459 (2003-2004 Reg. Sess.) as amended March 12, 2003, page I.

³⁶ Welfare and Institutions Code section 1719 (c).

The Commission also found that costs incurred by counties for indigent representation by public defenders, custody, and transportation were ineligible for reimbursement because these costs resulted from statutes enacted before 1975.

In May 2007, the Commission determined that the 1996 statute raising CYA fees for counties was not a reimbursable mandate in the *California Youth Authority: Sliding Scale for Charges* (02-TC-01) test claim.

II. Positions of the Parties and Interested Parties

A. Claimant Position

The claimant alleges that the test claim statute imposes a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution and Government Code section 17514 for public defenders to perform the following duties that are “reasonably necessary in implementing” the test claim statutes:

1. Review case and court files, mental health, school, medical, psychological and psychiatric records and familiarize themselves with treatment and service needs of the youth;
2. Review court documents to assure court has followed the mandates of SB 459;
3. Prepare and argue motions in cases where the court has not followed the mandates of SB 459 in its dispositional orders;
4. Contact, visit and interview public defender clients sentenced to the California Youth Authority (CYA);
5. Monitor the setting of parole consideration dates to assure they comply with statutory mandates;
6. Assess CYA treatment plans to assure they comply with statutory mandates, needs of the client and orders of the court;
7. Review CYA files, including education, special education, mental health, behavioral, gang and any other specialized files (all kept in separate locations);
8. Monitor the provision of treatment and other services;
9. Advocate for the provision of needed treatment and services within the CYA system, including advocacy at individual education plan [IEP], treatment plan, and similar meetings;
10. File motions in the sentencing court pursuant to Welfare and Institutions Code section 779 where the client’s needs are not being adequately addressed by CYA.
11. Coordinate with the Youth Authority in order to assist our clients in preparing for parole hearings, and represent our clients at parole hearings in appropriate cases.

B. State Agencies and Interested Parties

No state agencies or interested parties have filed comments on the test claim.

III. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service.

The purpose of article XIII B, section 6 is to “preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”³⁷ Thus, the subvention requirement of section 6 is “directed to state mandated increases in the services provided by [local government] ...”³⁸

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.³⁹
2. The mandated activity either:
 - a. Carries out the governmental function of providing a service to the public; or
 - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.⁴⁰
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.⁴¹
4. The mandated activity results in the local agency or school district incurring increased costs. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.⁴²

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.⁴³ The determination

³⁷ *County of San Diego, supra*, 15 Cal.4th 68, 81.

³⁸ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

³⁹ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

⁴⁰ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

⁴¹ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

⁴² *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.⁴⁴ In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”⁴⁵

A. Do the test claim statutes mandate a new program or higher level of service subject to article XIII B, section 6 of the California Constitution?

1. Court Orders to Modify or Set Aside the Order of Commitment (§ 779)

The Legislature amended section 779 regarding court orders to modify or set aside the order committing a ward to the CYA. The 2003 amendment to the test claim statute added the underlined and deleted the strikeout portions as follows:

The court committing a ward to the Youth Authority may thereafter change, modify, or set aside the order of commitment. Ten days' notice of the hearing of the application therefor shall be served by United States mail upon the Director of the Youth Authority. In changing, modifying, or setting aside the order of commitment, the court shall give due consideration to the effect thereof upon the discipline and parole system of the Youth Authority or of the correctional school in which the ward may have been placed by the Youth Authority. Except as in this section provided, nothing in this chapter shall be deemed to interfere with the system of parole and discharge now or hereafter established by law, or by rule of the Youth Authority, for the parole and discharge of wards of the juvenile court committed to the Youth Authority, or with the management of any school, institution, or facility under the jurisdiction of the Youth Authority. Except as provided in this section ~~provided, nothing in this chapter shall be deemed to~~ does not interfere with the system of transfer between institutions and facilities under the jurisdiction of the Youth Authority. This section does not limit the authority of the court to change, modify, or set aside an order of commitment after a noticed hearing and upon a showing of good cause that the Youth Authority is unable to, or failing to, provide treatment consistent with Section 734.

Section 734, referenced in the underlined language above, has provided since 1961 that: “No ward of the juvenile court shall be committed to the Youth Authority unless the judge of the court is fully satisfied that the mental and physical condition and qualifications of the ward are such as to render it probable that he will be benefited by the reformatory educational discipline or other treatment provided by the Youth Authority.”⁴⁶

⁴³ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

⁴⁴ *County of San Diego, supra*, 15 Cal.4th 68, 109.

⁴⁵ *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

⁴⁶ Statutes 1961, chapter 1616.

The test claim (on p. 4) alleges that the 2003 amendment to section 779 results in a reimbursable new program as follows:

Under prior law, the court had no authority to change, modify, or set aside an order of commitment after a noticed hearing and upon a showing of good cause that the Youth Authority was unable to, or failed to, provide treatment consistent with Section 734. Further, under prior law, including the holding in Owen E. (1979) 23 Cal.3d 398, Section 779 does not constitute authority for a juvenile court to set aside an order committing a ward to the California Youth Authority merely because the court's view of rehabilitative progress and continuing treatment needs of the ward differ from CYA determination of such matters. [Emphasis in original.]

Thus, the test claimant argues that the test claim amendment, for the first time, requires public defenders to:

- File motions in the sentencing court pursuant to Welfare and Institutions Code section 779 where the client's needs are not being adequately addressed by CYA.
- Prepare and argue motions in cases where the court has not followed the mandates of SB 459 in its dispositional orders.
- Assess CYA treatment plans to assure they comply with statutory mandates, needs of the client and orders of the court.
- Review CYA files, including education, special education, mental health, behavioral, gang and other specialized files (all kept in separate locations).
- Monitor the provision of treatment and other services;
- Advocate for the provision of needed treatment and services within the CYA system, including advocacy at individual education plan (IEP), treatment plan, and similar meetings.

Staff finds that the amendment to section 779 does not impose any new state-mandated duties on county public defenders. Contrary to claimant's assertion, the 2003 amendment to section 779 simply clarifies the existing jurisdiction of the juvenile court to change, modify, or set aside an order of commitment to the CYA, and does not mandate any new duties on local government.

Generally, the juvenile court has continuing jurisdiction over a ward, even after the commitment order to the CYA.⁴⁷ After the commitment order, the ward's care and rehabilitation rest in the hands of the CYA.⁴⁸ CYA has wide latitude and broad discretionary powers in the treatment and discharge of persons committed to the CYA.⁴⁹ However, since 1961, section 779 has

⁴⁷ *In re Robert W.* (1991) 228 Cal.App.3d 32, 34. This court cited section 779 for the holding that juvenile courts can "modify the conditions of wardship" following commitment to CYA.

⁴⁸ *In re Allen* (2000) 84 Cal.App.4th 513, 515.

⁴⁹ *In re Michael I.* (1998) 63 Cal.App.4th 462, 467.

authorized the juvenile court to change, modify, or set aside a prior order of commitment under limited circumstances.

In 1979, the California Supreme Court in *In re Owen E.*, interpreted the meaning of section 779, as the statute was originally enacted.⁵⁰ Under the facts of the case, the ward applied for parole two years after commitment and was denied parole. The ward's mother petitioned the juvenile court to vacate the commitment. The juvenile court agreed with the mother and concluded that the ward's rehabilitative needs would best be satisfied if he were released from custody. The juvenile court set aside its original commitment order and placed the minor on probation.⁵¹ On appeal by the Director of the CYA, the California Supreme Court reversed the order of the juvenile court, finding that the juvenile court's statutory authority to change, modify, or set aside an order of commitment does not apply when the court simply disagrees with the rehabilitation plan because the CYA has the exclusive jurisdiction to determine questions of rehabilitation. The court held that the authority to change, modify, or set aside a prior order of commitment was limited to situations where it is shown that the "CYA has failed to comply with law or has abused its discretion in dealing with a ward in its custody."⁵² If the CYA acts within the discretion conferred upon it, there is no basis for judicial intervention.⁵³

As originally enacted, the first sentence of section 779 gives the court the authority to "change, modify, or set aside the order of commitment" and in the third sentence, requires the court to "give due consideration to the effect thereof upon the discipline and parole system of the Youth Authority or of the correctional school in which the ward may have been placed by the Youth Authority" The holding in *In re Owens E.* authorizes courts to ensure CYA's compliance with the law, including the provision of the treatment described section 734.

The 2003 amendment adding a sentence that "section [779] does not limit the authority of the court to change, modify, or set aside an order of commitment after a noticed hearing and upon a showing of good cause that the Youth Authority is unable to, or failing to, provide treatment consistent with Section 734" is a clarification of the existing statute as interpreted by the California Supreme Court in *Owen*. The legislative history of this amendment refers to it as a clarification.⁵⁴ There is no evidence in the legislative history of any intent to nullify the decision in *Owen*, or to change the law, or to increase the duties already provided by county public defenders. For these reasons, staff finds that the amendment to section 779 (Stats. 2003, ch. 4) does not mandate a new program or higher level of service subject to article XIII B, section 6.

⁵⁰ *In re Owen E.* (1979) 23 Cal.3d 398

⁵¹ *In re Owen E.*, *supra*, 23 Cal.3d 398, 400-401.

⁵² *In re Owen E.*, *supra*, 23 Cal.3d 398, 406.

⁵³ *In re Owen E.*, *supra*, 23 Cal.3d 398, 405; *In re Allen*, *supra*, 84 Cal.App.4th at p. 515.

⁵⁴ Senate Committee on Public Safety, Analysis of SB 459 (2003-2004 Reg. Sess.) as amended March 12, 2003, page E. See also, the unpublished decision in *In re Michael M.* 2007 WL 4555337 (Cal.App.5 Dist.).

2. Parole Consideration Date(s) (§ 1731.8) and Parole Procedures (§ 1719)

Welfare and Institutions Code sections 1719 and 1731.8 address a juvenile's parole consideration date. The regulation that defines a parole consideration date states that: "A parole consideration date represents, from its date of establishment, an interval of time in which a ward may reasonably and realistically be expected to achieve readiness for parole. It is not a fixed term or sentence, nor is it a fixed parole release date."⁵⁵ One court described the parole consideration date as follows:

The parole consideration date is neither a parole release date, a term, or a sentence. It is a date for further review, subject to change by the Youth Authority depending upon the rehabilitation process of the ward. Moreover, pursuant to Welfare and Institutions Code section 1762, wards must be considered for parole at least annually. The parole consideration date is merely an additional review of parole readiness based upon the ward's projected rehabilitation progress. It is not an inflexible time but may, within the principles of the rehabilitation program of the Youth Authority, be modified to reflect the needs of the ward.⁵⁶

Under preexisting law, a parole consideration date (PCD) is required to be established for each ward at an initial YOBP hearing.⁵⁷ The initial PCD is established "from the date of acceptance by the Youth Authority of a ward committed by a court of competent jurisdiction or from the date of the disposition hearing in which parole is revoked."⁵⁸

The test claim statute made CYA responsible for setting PCDs⁵⁹ and added the following:

Notwithstanding any other provision of law, within 60 days of the commitment of a ward to the Department of the Youth Authority, the department shall set an initial parole consideration date for the ward and shall notify the probation department and the committing juvenile court of that date. The department shall use the category offense guidelines contained in Sections 4951 to 4957, inclusive, of, and the deviation guidelines contained in subdivision (i) of Section 4945 of, title 15 of the California Code of Regulations, that were in effect on January 1, 2003, in setting an initial parole consideration date.⁶⁰

The test claim statute also amended section 1719 to specify the duties for the Youth Authority Board (former YOPB) and CYA, and granted to CYA some of YOPB's former duties, and added the following language authorizing a modification of PCDs:

⁵⁵ California Code of Regulations, title 15, section 4945 (a).

⁵⁶ *In Re. Davis* (1978) 87 Cal.App.3d 919, 923-924.

⁵⁷ California Code of Regulations, title 15, section 4945 (b).

⁵⁸ California Code of Regulations, title 15, section 4945 (c).

⁵⁹ Welfare and Institutions Code section 1719 (c).

⁶⁰ Welfare and Institutions Code section 1731.8.

The department [CYA] may extend a ward's parole consideration date, subject to appeal pursuant to subdivision (b) [authorizing a ward's appeal of adjustment to the parole consideration date to "at least two board members"] from one to not more than 12 months, inclusive, for a sustained serious misconduct violation if all other sanctioning options have been considered and determined to be unsuitable in light of the ward's previous case history and the circumstances of the misconduct. In any case in which a parole consideration date has been extended, the disposition report shall clearly state the reasons for the extension. The length of any parole consideration date extension shall be based on the seriousness of the misconduct, the ward's prior disciplinary history, the ward's progress toward treatment objectives, the ward's earned program credits, and any extenuating or mitigating circumstances. ... The department may also promulgate regulations to establish a process for granting wards who have successfully responded to disciplinary sanctions a reduction of up to 50 percent of any time acquired for disciplinary matters. (§ 1719 (d).)

The claimant argues that the amendments to sections 1731.8 and 1719 mandate a new program or higher level of service for public defenders to monitor the parole procedures described in these sections in order to further assist the ward in a possible section 779 motion asking the court to change, amend, or modify a commitment order granting parole for the ward. The claimant continues its argument from the last section of this analysis; that pursuant to the 2003 test claim statute, the court may now substitute its judgment on rehabilitation for that of the CYA. The claimant argues as follows:

Since the Youth Authority's Administrative Committee, (YAAC), order the youth's treatment and programming, it is inextricably bound with his or her success or failure at CYA. Since failure would be addressed by a § 779 motion, public defenders are under an obligation to coordinate with the YAAC and participate in their meetings to the extent allowed. Under the law prior to [the test claim statute], the court was powerless to challenge CYA's parole denials and the court was precluded from "substituting its judgment for that of CYA." (See In re Owen E., supra, 23 Cal.3d 398 at 405 ...)

Accordingly, [the test claim statute] now mandates a statutory scheme in which the court does substitute its judgment for that of the CYA, tantamount to the granting of parole; thus, the Public Defender has a new duty to monitor parole procedures and assist its clients in their attempts to gain parole.⁶¹

The claimant is wrong. First, as described above, the court's jurisdiction to change, modify, or amend a commitment order has not changed. The court does not have jurisdiction when a section 779 motion is filed to "substitute its judgment for that of the CYA," as suggested by the claimant.

Second, the plain language of sections 1731.8 and 1719 does not impose any new duties on local government. In fact, under prior law, parole consideration dates could be modified by the

⁶¹ Test claim, page 6. Emphasis in original.

YOPB. For category 1 through 3 offenses, a board panel or referee could “approve a deviation or modification of six months earlier or later than the prescribed or previously established parole consideration date, except that a referee may modify a parole consideration date up to 12 months for DDMS [Disciplinary Decision Making System] behavior.”⁶² Any deviation in excess of this modification must be submitted to the full Board panel for decision.⁶³

For category 4 (serious) offenses, a referee could approve a six-month deviation from the prescribed parole consideration date and may recommend further deviation by submitting the matter to a full Board panel for decision.⁶⁴ For category 5 offenses, a board panel or referee could in any annual review year modify an established parole consideration date by six months with certain exceptions.⁶⁵ For category 6 offenses, a referee can in any annual review year modify an established parole consideration date by six months with certain exceptions.⁶⁶ For category 7 offenses, a parole consideration date of one year or less is established subject to a six-month modification by a referee in any annual review year, with certain exceptions.⁶⁷

Preexisting regulations also contain 20 factors to consider when modifying a parole consideration date, including:

1. Extent of involvement in commitment of offense(s);
2. Prior history of delinquency or criminal behavior including sustained petitions and/or convictions;
3. Involvement with dangerous or deadly weapons, their possession or use;
4. Violence, actual or potential. Injury to victims;
5. Behavior or adjustment while in custody prior to acceptance of commitment;
6. Attitude toward commitment offense(s) and victims of offense(s)
7. Alcohol/drug abuse;
8. Facts in mitigation or aggravation as established by court findings;
9. Psychiatric/psychological needs;
10. Staff evaluation;
11. Available confinement time;
12. Maturity and level of sophistication;
13. Motivation of the ward and prognosis for success or failure;
14. Multiplicity of counts of the same, related, or different offense;
15. Factors evaluated in the Community Assessment Report;

⁶² California Code of Regulations, title 15, sections 4951(b)(2), 4952 (b)(2), 4953 (b)(2). DDMS is a process to ensure a ward the right to due process in disciplinary matters. California Code of Regulations, title 15, sections 4630.

⁶³ California Code of Regulations, title 15, sections 4951(b)(3), 4952 (b)(3), 4953 (b)(3).

⁶⁴ California Code of Regulations, title 15, section 4954(b)(2).

⁶⁵ California Code of Regulations, title 15, section 4955(b)(2).

⁶⁶ California Code of Regulations, title 15, section 4956(b)(2).

⁶⁷ California Code of Regulations, title 15, section 4957(b)(2).

16. Availability of community-based programs and the ability to function in the same under parole supervision without danger to the public;
17. Mental or emotional injury to victim;
18. Vulnerable victim: aged or handicapped;
19. Presence of victim during commission of burglary, first degree;
20. Extent the committing offense was youth gang related.⁶⁸

The regulations also include deviation guidelines for modifying an established parole consideration date to assist in determining readiness for parole.⁶⁹

The amendments that were made by the test claim statute to sections 1731.8 and 1719 simply transferred the duties imposed on the YOPB to the CYA relating to the ward's parole consideration date, and directed the CYA to comply with the existing regulations that are described above when modifying or deviating from the parole consideration date. The statutes do not require local government do perform any new duties.

Accordingly, sections 1731.8 and 1719, as amended by the 2003 test claim statute, do not mandate a new program or higher level of service on local government subject to article XIII B, section 6 of the California Constitution.

3. Ward Reviews (§ 1720(f))

Welfare and Institutions Code section 1720 was amended by the test claim statute with respect to the process for reviewing the progress of the wards following their commitment to CYA.

Under prior law, the YOPB was required to hear the case of each ward "immediately after the case study of the ward has been completed and at such other times as is necessary to exercise the powers and duties of the board."⁷⁰ The YOPB was also required to "periodically review the case of each ward for the purpose of determining whether existing orders and dispositions in individual cases should be modified or continued in force."⁷¹ The reviews were required annually, and if the review was delayed beyond the year, the ward was entitled to notice that contained the reason for the delay and the date the review hearing was to be held.⁷²

Preexisting regulations require an annual review of each ward by CYA's treatment team, consisting of "a comprehensive progress report reviewing the ward's adjustment for the entire year." The report's contents are specified, which include a recommendation to the YOPB.⁷³

⁶⁸ California Code of Regulations, title 15, section 4945(i).

⁶⁹ California Code of Regulations, title 15, section 4945(j).

⁷⁰ Former Welfare and Institutions Code section 1720 (a). Section 1720 was initially enacted in 1979 (Stats. 1979, ch. 860) and last amended in 1984 (Stats. 1984, ch. 680).

⁷¹ Former Welfare and Institutions Code section 1720 (b).

⁷² Former Welfare and Institutions Code section 1720 (b) and (c).

⁷³ California Code of Regulations, title 15, section 4622 (b).

The test claim statute transferred the YOPB review duties to the CYA, and each ward's case is now reviewed within 45 days of arrival at CYA⁷⁴ and annually thereafter.⁷⁵ The contents of CYA reviews are specified in statute and must include information about the ward's treatment program.⁷⁶ The test claim statute also added the following: "The department shall provide copies of the reviews prepared pursuant to this section to the court and the probation department of the committing county."⁷⁷

According to the claimant, the amendment to section 1720 (f), requiring that copies of the reviews be provided to the court and probation department of the committing county, requires the public defender to review, evaluate, monitor, and change treatment plans as necessary to assure compliance with the order of the court, the needs of the client, and the possible filing of a section 779 motion. As indicated above, the 779 motion is used to request the court to change, modify, or set aside an order of commitment to CYA when CYA has failed to comply with law or has allegedly abused its discretion in dealing with a ward in its custody.

Staff finds that the amendment to section 1720 (f) does not mandate a new program or higher level of service subject to article XIII B, section 6. Under prior law, the ward had a constitutional due process right to have his or her attorney receive a copy of the review conducted by the YOPB, to review and evaluate the information, and to represent the ward as necessary. The amendments made to section 1720 did not change that right.

In 1998, before section 1720 was amended by the test claim statute, the court in *In re Michael I.*, interpreted the requirements of section 1720 with respect to the ward's right to have his or her attorney review the ward's file and consult with the ward before an annual review.⁷⁸ Under the facts of the case, CYA did not permit the ward's counsel to meet with the ward until the afternoon before the review hearing and did not make the ward's file available until a month after the hearing. The court determined that CYA violated the ward's constitutional due process rights.⁷⁹

The *Michael* court explained that a decision to deny parole is not part of the criminal prosecution and, thus, there is no absolute constitutional right to the presence of counsel at a parole revocation hearing. However, the loss of liberty entailed is a serious deprivation requiring that the ward be accorded due process. In this respect, the state's decision regarding the ward's need for counsel at the review hearing must be made on a case-by-case basis. If the ward denies that he committed any violations outlined in the reviews of the ward, or when the ward asserts

⁷⁴ Welfare and Institutions Code section 1720 (a).

⁷⁵ Welfare and Institutions Code section 1720 (c).

⁷⁶ Welfare and Institutions Code section 1720 (e).

⁷⁷ Former Welfare and Institutions Code section 1720 (f). A "review" under section 1720 as amended appears to be the same as a "case study" under the prior version of section 1720, although the contents of it are specified in the amended version.

⁷⁸ *In re Michael I.*, *supra*, 63 Cal.App.4th 462.

⁷⁹ *Id* at p. 469.

complex matters in mitigation, the ward has a right to the presence of counsel. The right to the presence of counsel should also be seriously considered when an admission is coerced.⁸⁰

Under the facts in *Michael*, however, the ward was not requesting that his counsel be present at the review hearing, or that the state provide him with appointed counsel from the public defender's office. Rather, the ward asserted he had a due process right to meet with counsel before the review hearing and to have the state provide his counsel with access to the ward's review file before the hearing. The court agreed, and stated the following:

However, if due process is to mean anything, CYA cannot deliberately structure procedures which prevent counsel retained at the ward's expense from reviewing the ward's file and consulting with the ward before such a hearing. Here, CYA frustrated all of McDonald's [the attorney's] reasonable and timely attempts to review Michael's file and arrange for a prehearing meeting so he and Michael could review its contents, discuss challenges thereto, if any explore possible mitigating evidence, and arrange to present such challenges and evidence to the board. A "brief meeting less than 24 hours before the hearing, without access to the file that outlined the recommendation and its factual support, renders Michael's retention of counsel worthless. . . . Moreover, one of the factors discussed above in determining whether counsel should be permitted to be present at the review is whether Michael planned to contest the allegations, present complex mitigating evidence, or claim any admissions were coerced. Without the ability to review his file and discuss its contents and any response with his lawyer, Michael and CYA could not know whether he would be entitled to McDonald's presence.⁸¹

Thus, claimant's assertion that the test claim statute, for the first time, requires the public defender's office to review and evaluate the information in the wards' reviews, is wrong. This right and duty existed in prior law under the ward's constitutional due process rights.

Accordingly, staff finds that section 1720 as amended by the 2003 test claim statute does not mandate a new program or higher level of service on county public defenders.

IV. Conclusion and Recommendation

Staff finds that the test claim statutes pled by the claimant (Welf. & Inst. Code, §§ 779, 1731.8, 1719 & 1720, Stats. 2003, ch. 4) do not constitute a reimbursable state-mandated program subject to article XIII B, section 6 of the California Constitution. Thus, staff recommends that the Commission adopt this analysis to deny the test claim.

⁸⁰ *In re Michael I., supra*, 63 Cal.App.4th at pp. 467-468.

⁸¹ *In re Michael I., supra*, 63 Cal.App.4th at p. 468.

