

ITEM 6
PROPOSED DECISION
AND
PARAMETERS AND GUIDELINES

Welfare and Institutions Code Section 8103(f) and (g)

Statutes 1990, Chapters 9 and 177; Statutes 1991, Chapter 955; Statutes 1992, Chapter 1326;
Statutes 1993, Chapters 610 and 611; Statutes 1994, Chapter 224; Statutes 1996, Chapter 1075;
Statutes 1999, Chapter 578

Firearm Hearings for Discharged Inpatients

99-TC-11 (07-RRM-01)

County of Los Angeles, Claimant

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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM:

Welfare and Institutions Code Section 8103,
Subdivisions (f) and (g);

Statutes 1990, Chapters 9 & 177
Statutes 1991, Chapter 955
Statutes 1992, Chapter 1326
Statutes 1993, Chapters 610 & 611
Statutes 1994, Chapter 224
Statutes 1996, Chapter 1075
Statutes 1999, Chapter 578

Filed on June 22, 2000 by the County of Los
Angeles, Claimant.

Case No.: 99-TC-11

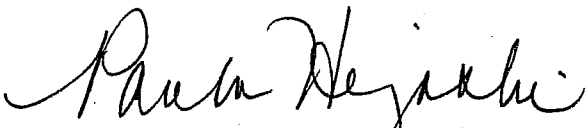
Firearm Hearings for Discharged Inpatients

STATEMENT OF DECISION PURSUANT
TO GOVERNMENT CODE SECTION 17500
ET SEQ.; CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

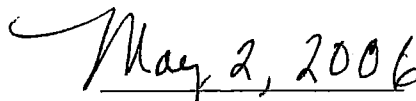
(Adopted on April 26, 2006)

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted
in the above-entitled matter.



PAULA HIGASHI, Executive Director



Date

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM:

Welfare and Institutions Code Section 8103,
Subdivisions (f) and (g);

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REGULATIONS, TITLE 2, DIVISION 2,
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(Adopted on April 26, 2006)

STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on April 26, 2006. Leonard Kaye appeared on behalf of claimant County of Los Angeles. Susan Geanacou appeared on behalf of the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the staff analysis at the hearing by a vote of 6-0.

Summary of Findings

As more fully described below, the Commission finds that the test claim legislation imposes a reimbursable state-mandated program on local agencies pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514 for the increased costs in providing district attorney services in representing the People of the State of California in civil hearings pursuant to Welfare and Institutions Code section 8103, subdivisions (f) and (g). The reimbursement period for this test claim begins on July 1, 1998; however, the reimbursement period for subdivision (f) hearings begins on September 29, 1999, the effective date of the 1999 test claim statute.

Background

This test claim addresses amendments to the Welfare and Institutions Code, which establish procedures by which certain individuals who are prohibited from possessing firearms, because they have been detained for treatment and evaluation as a result of a mental disorder, may challenge that prohibition.

The Lanterman-Petris-Short Act of 1969¹ was comprehensive legislation intended to deal with commitment of mentally disordered persons and persons impaired by chronic alcoholism, and provide for prompt evaluation and treatment of such persons. As part of that act, Welfare and Institutions Code section 8100 et seq. established weapons restrictions for certain individuals.

In 1990, as part of a broader firearms bill,² the weapons restriction was expanded to specified individuals who have been taken into custody and placed in a county-designated facility for evaluation and treatment.³ According to the Senate Third Reading Bill Analysis, “[t]he purpose of this measure is to impose greater control on the sale and transfer of all firearms, in order to ensure that they do not fall into the hands of offenders or the mentally incompetent.”⁴

The specified individuals are prohibited from owning, possessing, controlling, receiving, purchasing, or attempting to own, possess, control, receive or purchase any firearm for five years after release from the county-designated facility.⁵ Such facilities are required to report to the Department of Justice when the person is admitted to a facility.⁶ The Department of Justice, in issuing certificates of eligibility for persons to purchase or possess firearms, maintains a confidential data base with information regarding the specified individuals.⁷

Prior to or concurrent with the person’s discharge from the facility, the facility is required to notify the person of the firearm prohibition and the person’s ability to request a hearing to challenge the prohibition.⁸ A person who wishes to challenge the prohibition may request and shall be given a civil hearing in the superior court in the county of residence for an order that he or she may own or possess a firearm.⁹ The district attorney represents the People of the State of California in the proceeding.¹⁰

¹ Welfare and Institutions Code section 5000 et seq.

² Statutes 1989, chapter 9 (Assembly Bill 497), part of the test claim legislation.

³ Welfare and Institutions Code section 8103, subdivisions (f)(1) and (g)(1); Statutes 1989, chapter 9.

⁴ Senate Third Reading Bill Analysis, Assembly Bill 497, September 11, 1989, page 4.

⁵ Welfare and Institutions Code section 8103, subdivisions (f)(1) and (g)(1).

⁶ Welfare and Institutions Code section 8103, subdivisions (f)(2) and (g)(2).

⁷ Penal Code section 12071; Welfare and Institutions Code section 8105.

⁸ Welfare and Institutions Code section 8103, subdivisions (f)(3) and (g)(3).

⁹ Welfare and Institutions Code section 8103, subdivisions (f)(5) and (g)(4).

¹⁰ Welfare and Institutions Code section 8103, subdivisions (f)(5) and (g)(4).

If the court finds by a preponderance of the evidence that the person should not be subject to the prohibition, it issues such an order.¹¹ In that case, a copy of the order is submitted to the Department of Justice, and the Department deletes any reference to the prohibition in the statewide mental health firearms prohibition data base.¹²

Test Claim Legislation – Welfare and Institutions Code section 8103, subdivisions (f) & (g)

The test claim legislation consists of several statutes adding and amending Welfare and Institutions Code section 8103, subdivisions (f) and (g) — provisions that established the firearm prohibition for persons subject to particular detention scenarios, and the means to challenge the prohibition through civil hearings. These statutes established hearing procedures for the specified persons in 1990 and subsequently modified the provisions several times. Each modification was insignificant for purposes of this analysis, with the exception of the 1999 statute discussed below.

Prior to 1997, section 8103 provided the same type of hearing procedure for each of the subdivision (f) and (g) detention scenarios. In 1997, however, the Sacramento Superior Court in *P. J. Daycamos v. Department of Justice* (1997, No. 96CS01471) declared unconstitutional the hearing procedure for *subdivision (f) only*, via a declaratory judgment.¹³ The court further ordered the Department of Justice to cease causing subdivision (f) to be applied to prevent any person from purchasing a firearm.¹⁴

Subdivision (f) was subsequently amended in 1999 to cure the constitutional issues.¹⁵ Between the court's declaratory judgment in 1997 and the statutory amendment in 1999, no operable state law existed to prohibit detainees affected by subdivision (f) from possessing firearms; thus, no hearing procedures or district attorney services were required for that period of time for detainees affected by subdivision (f).

Subdivision (f) Detention and Hearing Procedures

Subdivision (f) established hearing procedures for a person who, as a result of a potential mental disorder, is a danger to others, or to himself or herself, or gravely disabled.¹⁶ A peace officer, member of attending staff or mobile crisis team, or other professional person may, upon probable cause and upon written application, have the person taken into custody and placed in a county-designated facility for 72-hour treatment and evaluation.¹⁷

¹¹ Welfare and Institutions Code section 8103, subdivisions (f)(7) and (g)(4).

¹² Welfare and Institutions Code section 8103, subdivisions (f)(7) and (g)(4).

¹³ *P. J. Daycamos v. Department of Justice*, Superior Court, County of Sacramento, 1997, Number 96CS01471 (*Daycamos*), Order, Judgment and Writ of Mandate, page 2.

¹⁴ *Daycamos, supra*, Order, Judgment and Writ of Mandate, pages 2-3.

¹⁵ Statutes 1999, chapter 578.

¹⁶ Welfare and Institutions Code section 5151.

¹⁷ *Ibid.*

Pre-Daycamos

Prior to the 1997 *Daycamos* case, subdivision (f) hearing procedures established by the test claim legislation required the district attorney to represent the People of the State of California, with the people considered the *respondent* in the proceeding. The burden was on the *individual* to show the court, by a preponderance of the evidence, that he or she *would be likely to use firearms in a safe and lawful manner*. If the court made such a finding, the court could then order that the person may own, control, receive, possess, or purchase firearms.

1999 Legislation

Subdivision (f) was amended in 1999 as a direct result of the *Daycamos* case. Under the 1999 legislation, subdivision (f) requires the district attorney to represent the People of the State of California, however, the people are now considered the *plaintiff* in the proceeding.¹⁸ The burden is now on the *people* to show, by a preponderance of the evidence, that the person *would not be likely* to use firearms in a safe and lawful manner.¹⁹ If the court finds that the people have not met their burden, or where the district attorney declines to go forward in the hearing, the court shall order that the person is not subject to the five-year firearm prohibition.²⁰

Subdivision (g) Detention and Hearing Procedures

Subdivision (g) established hearing procedures for a person who, as a result of a mental disorder or impairment by chronic alcoholism, has been certified for intensive treatment at a county-designated facility pursuant to either section 5250, 5260 or 5270.15 of the Welfare and Institutions Code,²¹ because he or she is unwilling or unable to accept treatment on a voluntary basis.

- Section 5250 allows a person to be certified for not more than 14 days of intensive treatment at a county-designated facility where he or she is evaluated to be a danger to others, or to himself or herself, or gravely disabled.
- Section 5260 allows a person to be confined for intensive treatment where he or she has threatened or attempted to take his or her own life, and the person continues to present an imminent threat of taking his or her own life.
- Section 5270.15 allows a person to be certified for an additional period of intensive treatment, not to exceed 30 days, after completion of the 14-day period of intensive treatment pursuant to section 5250, where the facility's professional staff has found the person remains gravely disabled as a result of a mental disorder or impairment by chronic alcoholism.

Subdivision (g) hearing procedures are also applicable to persons who are subject to section 5350 (placed under conservatorship by a court) or section 5150 (detained for 72 hours for treatment and evaluation), and who are subsequently released from intensive treatment.

¹⁸ Welfare and Institutions Code section 8103, subdivision (f)(5).

¹⁹ Welfare and Institutions Code section 8103, subdivision (f)(6).

²⁰ Welfare and Institutions Code section 8103, subdivisions (f)(7) and (f)(8).

²¹ Welfare and Institutions Code section 8103, subdivision (g)(1).

Like the original subdivision (f) procedures, subdivision (g) requires the district attorney to represent the People of the State of California, who shall be the *respondent* in the proceeding.²² The burden is on the *person* to show, by a preponderance of the evidence, that the person *would be likely to use firearms in a safe and lawful manner*.²³ If the court finds by a preponderance of the evidence that the person would be likely to use firearms in a safe and lawful manner, the court may order that the person may own, control, receive, possess, or purchase firearms.²⁴

Claimant's Position

The claimant contends that the test claim legislation constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

The County of Los Angeles, according to its test claim, is seeking reimbursement for the following activities:

- District attorney services for both disputed and undisputed hearings.
- Legal secretary services for both disputed and undisputed hearings.
- Expert witness services for disputed hearings.

The County of Los Angeles filed comments on the draft staff analysis, which are addressed in the analysis of this claim.

Department of Finance Position

Department of Finance submitted comments on the test claim stating that “the statute may have resulted in reimbursable costs for district attorneys to represent the People of the State of California in a Superior Court hearing related to whether certain discharged inpatients may own, possess, control, receive, or purchase firearms.”

Discussion

The courts have found that article XIII B, section 6 of the California Constitution²⁵ recognizes the state constitutional restrictions on the powers of local government to tax and spend.²⁶ “Its

²² Welfare and Institutions Code section 8103, subdivision (g)(4).

²³ Ibid.

²⁴ Ibid.

²⁵ Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: “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 that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.”

purpose 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."²⁷

A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.²⁸ In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.²⁹

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.³⁰ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.³¹ A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."³²

Finally, the newly required activity or increased level of service must impose costs mandated by the state.³³

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 6.³⁴ In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as

²⁶ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735 (*Department of Finance*).

²⁷ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

²⁸ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

²⁹ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

³⁰ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra*, 44 Cal.3d 830, 835.).

³¹ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

³² *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878.

³³ *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 (*County of Sonoma*); Government Code sections 17514 and 17556.

³⁴ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”³⁵

This test claim presents the following issues:

- Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?
- Does the test claim legislation impose a “new program” or “higher level of service” on local agencies within the meaning of article XIII B, section 6 of the California Constitution?
- Does the test claim legislation impose “costs mandated by the state” within the meaning of article XIII B, section 6 of the California Constitution?

Issue 1: Is the test claim legislation subject to article XIII B, Section 6 of the California Constitution?

Mandatory or Discretionary Activities?

In order for the test claim legislation to impose a reimbursable state-mandated program under article XIII B, section 6, the statutory language must mandate an activity or task upon local governmental agencies. If the statutory language does not mandate or require local agencies to perform a task, then article XIII B, section 6 is not triggered. In such a case, compliance with the test claim statute is within the discretion of the local agency.³⁶

The test claim legislation allows specified individuals to challenge the five-year prohibition against firearms via a civil hearing in the superior court, and any person requesting such hearing shall be granted one. The district attorney is required to represent the People of the State of California in any such hearing. The plain meaning of these provisions mandates that the district attorney represent the people at any time the person requests or petitions the court for a hearing.

The district attorney receives notice of the hearing and other information regarding the case from the court and the county mental health director, if so requested.³⁷ Activities in which the district attorney engages to represent the people in a case will depend on the particular facts. In some instances, the district attorney may elect not to dispute the petition. This situation is contemplated in the subdivision (f) hearings statute, which reads: “[w]here the district attorney declines or fails to go forward in the hearing, the court shall order that the person shall not be subject to the five-year prohibition ...”³⁸ Claimant alleges, however, that the district attorney must spend time reviewing each case, whether or not the petition is disputed.

Thus the question is whether the district attorney’s prerogative to dispute the petition makes the activities associated with disputing the petition at a hearing discretionary and not subject to

³⁵ *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.

³⁶ *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783 (*City of Merced*).

³⁷ Welfare and Institutions Code section 8103, subdivisions (f)(4) and (g)(4).

³⁸ Welfare and Institutions Code section 8103, subdivision (f)(8).

article XIII B, section 6. The Commission finds the activities are not discretionary for purposes of article XIII B, section 6 for the following reasons.

Government Code section 26500 provides that the district attorney is the public prosecutor, and “within his or her discretion shall initiate and conduct on behalf of the people all prosecutions for public offenses.” The California Supreme Court has held that the prosecuting district attorney has the exclusive authority to prosecute individuals on behalf of the public.³⁹ This does not mean that the prosecuting district attorney is required to prosecute all individuals committing public offenses; in fact, the decision whether or not to prosecute is left to the discretion of the prosecuting district attorney.⁴⁰ This discretion is not unlimited, however. The *Eubanks* court stated that “the district attorney is expected to exercise his or her discretionary functions in the interests of the People at large ...” and this includes “the vast majority of citizens who know nothing about a particular case, but who give over to the prosecutor the authority to seek a just result in their name.”⁴¹ Furthermore, the Fourth District Court of Appeal has stated that if a district attorney elected not to appear at a serious felony trial, he or she “would be in gross dereliction of his [or her] duty to the people of the state under Government Code section 26500...”^{42, 43}

The issue of discretionary local activities in the context of state mandates was discussed in the recent California Supreme Court case of *San Diego Unified School District v. Commission on State Mandates*,⁴⁴ which involved legislation requiring a due process hearing prior to student expulsion. There, the court stated its reluctance to preclude reimbursement “whenever an entity makes an initial discretionary decision that in turn triggers mandated costs”⁴⁵ because, under such a strict application of the rule, “public entities would be denied reimbursement for state-mandated costs in apparent contravention of the intent underlying article XIII B, section 6 of the state Constitution and Government Code section 17514 and contrary to past decisions in which it has been established that reimbursement was in fact proper.”⁴⁶

³⁹ *People v. Eubanks* (1996) 14 Cal.4th 580, 588-590 (*Eubanks*).

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *People ex rel. Kottmeier v. Municipal Court* (1990) 220 Cal.App.3d 602, 609 (*Kottmeier*).

⁴³ The Commission notes that the court’s statements in *Eubanks* and *Kottmeier* are in the context of criminal prosecutions. However, the firearm hearing process requires the prosecuting district attorney to civilly uphold the prohibition against potentially dangerous, mentally- or alcoholism-impaired persons owning or possessing firearms, which is similar to criminal prosecutions in that the prosecuting district attorney is carrying out his or her role of protecting the public from dangerous, armed individuals. Therefore, the Commission finds that the use of case law surrounding criminal prosecutions is analogous and appropriate in this situation.

⁴⁴ *San Diego Unified School Dist v. Commission on State Mandates.*, *supra*, 33 Cal.4th 859, 887-888.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

Citing *Carmel Valley Fire Protection District v. State of California*,⁴⁷ where an executive order requiring that local firefighters be provided with protective clothing and safety equipment was found to create a reimbursable state mandate, the court pointed out that reimbursement was not foreclosed “merely because a local agency possessed discretion concerning how many firefighters it would employ – and hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected.”⁴⁸ The court expressed doubt that the voters who enacted article XIII B, section 6, or the Legislature that adopted Government Code section 17514, intended such a result.⁴⁹ The Supreme Court did not resolve the mandate issue, however, since it decided the case on other grounds.

The prosecuting district attorney’s decision to dispute a petition in this case must be driven by the serious public interest in regulating possession of firearms to protect the health, safety and welfare of the citizens of the state, and such prosecutorial discretion should not preclude reimbursement under a strict reading of the *City of Merced* mandatory vs. discretionary rule. As noted above, the Legislature stated the purpose of the instant measure is “to impose greater control on the sale and transfer of all firearms, in order to ensure that they do not fall into the hands of ... the mentally incompetent.” Further, when the Legislature re-enacted provisions of Welfare and Institutions Code section 8103, subdivision (f) in response to a court case that challenged the provisions’ constitutionality, it was an urgency statute supported by the following statement: “In order to protect the public safety by ensuring that firearms are kept out of the hands of mentally and emotionally disturbed persons, it is necessary that this act take effect immediately.”⁵⁰

Thus a critical need was identified to protect the public from possession of firearms by potentially mentally disordered persons who may pose a danger to society. Based on the foregoing case law and other legislative statements, the prosecuting district attorney has a duty to the people of the state to dispute the petition when appropriate. Therefore, the district attorney’s activities in representing the people at the subject hearings, whether or not the petition is disputed, are mandatory within the meaning of article XIII B, section 6.

Does the Test Claim Legislation Constitute a “Program?”

The test claim legislation must also constitute a “program” in order to be subject to article XIII B, section 6 of the California Constitution. The Commission finds the subject hearings do constitute a program for the reasons stated below.

The relevant tests regarding whether test claim legislation constitutes a “program” within the meaning of article XIII B, section 6 are set forth in case law. The California Supreme Court, in the case of *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, defined the word “program” within the meaning of article XIII B, section 6 as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a

⁴⁷ *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521 (*Carmel Valley*).

⁴⁸ *San Diego Unified School Dist v. Commission on State Mandates, supra*, 33 Cal.4th 859, 888.

⁴⁹ *Ibid.*

⁵⁰ Statutes 1999, Chapter 578, Section 3.

state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.⁵¹

Here, the district attorney represents the People of the State of California at the subject hearings. Such representation is a peculiarly governmental function administered by a local agency – the county district attorney’s office – as a service to the public. Moreover, the test claim legislation imposes unique requirements upon counties that do not apply generally to all residents and entities in the state.

Accordingly, the Commission finds that the test claim legislation mandates an activity or task upon local government and constitutes a “program.” Therefore, the test claim legislation is subject to article XIII B, section 6 of the California Constitution.

Issue 2: Does the test claim legislation impose a “new program” or “higher level of service” on local agencies within the meaning of article XIII B, section 6 of the California Constitution?

The courts have held that legislation imposes a “new program” or “higher level of service” when: a) the requirements are new in comparison with the preexisting scheme; and b) the requirements were intended to provide an enhanced service to the public.⁵² To make this determination, the test claim legislation must be compared with the legal requirements in effect immediately prior to its enactment.⁵³

Claimant is seeking reimbursement for:

1. district attorney services for both disputed and undisputed hearings;
2. legal secretary services for both disputed and undisputed hearings; and
3. expert witness services for disputed hearings only.

Based on the June 22, 2000 test claim filing date, the earliest date that reimbursement for any activities could commence is July 1, 1998, pursuant to Government Code section 17557, subdivision (e).

The law in effect just prior to test claim legislation contained weapons restrictions for certain classes of individuals — i.e., mentally disordered sex offenders,⁵⁴ persons found not guilty by reason of insanity for various crimes,⁵⁵ persons found by a court to be mentally incompetent to stand trial,⁵⁶ or persons placed under conservatorship by a court.⁵⁷ Although there were

⁵¹ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (*County of Los Angeles*).

⁵² *San Diego Unified School Dist. v. Commission on State Mandates, supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

⁵³ *Ibid.*

⁵⁴ Welfare and Institutions Code section 8103, subdivision (a)(1).

⁵⁵ Welfare and Institutions Code section 8103, subdivisions (b)(1) and (c)(1).

⁵⁶ Welfare and Institutions Code section 8103, subdivision (d)(1).

⁵⁷ Welfare and Institutions Code section 8103, subdivision (e)(1).

general provisions for these individuals to contest the weapons restrictions, no detailed hearing procedures existed in law at that time for any of those individuals.

The first test claim statute (Stats. 1989, ch. 9) expanded the applicability of weapons restrictions to additional classes of individuals — i.e., potentially mentally- or alcoholism-impaired persons who have been involuntarily taken into custody and placed in a county-designated facility for evaluation and treatment pursuant to Welfare and Institutions Code sections 5150, 5250, 5260, 5270.15 or 5350. Additionally, the test claim legislation newly established, and later modified, detailed civil hearing procedures for these classes of individuals to challenge the weapons restrictions, requiring that the district attorney represent the People of the State of California at the hearing.

The test claim legislation which first required district attorney services with regard to hearings for the specified individuals was new in comparison to the immediately prior law. The original provisions of subdivision (f), however, were later declared invalid by the courts and therefore separate analyses of subdivisions (f) and (g) are necessary.

Welfare and Institutions Code Section 8103, Subdivision (f)

In 1990, the original test claim legislation created a new program or higher level of service with regard to subdivision (f) by establishing hearing procedures that were not in effect prior to the legislation. Until 1997, all subdivision (f) and (g) civil hearings placed the burden of proof on the *individual* to show by a preponderance of the evidence that he or she *would be likely* to use firearms in a safe and lawful manner. On May 29, 1997, however, the Sacramento County Superior Court rendered a declaratory judgment that section 8103, subdivision (f), was unconstitutional because it violated due process guarantees of the federal and California Constitutions, as well as the rights to acquire and possess property protected by California Constitution.⁵⁸

The court's concern regarding section 8103, subdivision (f), was that it permitted serious consequences to flow merely from a section 5150 72-hour hold, whereas the other provisions of section 8103 imposed weapons restrictions only *after* adjudication or evaluation and certification that the section 5150 hold should continue.⁵⁹ The court relied on two California Appellate Court cases regarding seizure of property⁶⁰ which found in both instances that the statutes allowing for the seizures were unconstitutional in that they violated procedural due process protections.

In the writ of mandate, the court ordered the Department of Justice to notify all district attorneys within 30 days that the judgment had been issued, and further restrained the Department of Justice from causing section 8103, subdivision (f), to be applied to prevent any person from purchasing a firearm and from notifying firearms dealers or other parties that they

⁵⁸ *P. J. Daycamos v. Department of Justice, supra*, Number 96CS01471, Superior Court, County of Sacramento, 1997, Order, Judgment and Writ of Mandate, page 2.

⁵⁹ *P. J. Daycamos v. Department of Justice, supra*, Number 96CS01471, Superior Court, County of Sacramento, 1997, Reporter's Transcript of Proceedings, February 7, 1997, pages 2-3.

⁶⁰ *Menefee & Son v. Department of Food and Agriculture* (1988) 199 Cal.App.3d 774; *Kathleen T. Bryte v. City of La Mesa* (1989) 207 Cal.App.3d 687.

must deny the sale and/or transfer of a firearm on the basis of a Welfare and Institutions Code section 5150 commitment.⁶¹ As a result, subdivision (f) provisions were deemed unenforceable and no mandate was subsequently in effect.

On September 29, 1999 an urgency statute⁶² amended section 8103, subdivision (f), provisions specifically to cure the constitutional issues. That legislation shifted the burden of proof to the *people* to show by a preponderance of the evidence that the person who is subject to a Welfare and Institutions Code section 5150 72-hour commitment *would not likely* use firearms in a safe and lawful manner. The legislation relied on the fact that the "court did not attempt to limit section 8103, subdivision (f), to constitutionally acceptable applications, but found the entire subdivision to be void."⁶³

Because the court through declaratory judgment held subdivision (f) unconstitutional in 1997, and the curative provisions were not enacted until September 29, 1999, no mandate existed for these activities for approximately two years. Thus, district attorneys had no mandated activities regarding any subdivision (f) hearings as of July 1, 1998, the earliest date for which any costs could be reimbursed. The 1999 statute, by correcting the constitutional infirmity in subdivision (f) hearings, reestablished the mandate for district attorney services to represent the people at those hearings.

⁶¹ *Ibid.*

⁶² Statutes 1999, chapter 578; although the statute was filed with the Secretary of State on September 29, 1999, Section 2 stated: "The provisions of this bill shall not go into effect until 30 days after the Department of Justice provides to the designated facilities, forms prescribed in paragraphs (2) and (3) of subdivision (f) of Section 8103 of the Welfare and Institutions Code."

⁶³ A.B. 1587, Assembly Bill Analysis, Senate Committee on Public Safety, July 13, 1999 hearing, pages 4-5.

Therefore, the Commission finds that the district attorney activity of representing the people⁶⁴ for both disputed and undisputed subdivision (f) hearings, *effective on and after the 1999 test claim statute was enacted*,⁶⁵ constitutes a new program or higher level of service within the meaning article XIII B, section 6 of the California Constitution. The legislation provides an enhanced service to the public by ensuring that firearms do not fall into the hands of potentially mentally- or alcoholism-impaired persons while protecting the person's right to due process.

Welfare and Institutions Code Section 8103, Subdivision (g)

Subdivision (g) hearings were not affected by the *Daycamos* case or the 1999 statute. The Commission therefore finds that the district attorney activity of representing the people⁶⁶ for both disputed and undisputed subdivision (g) hearings *as set forth in the first test claim statute* constitutes a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution. The statute provides an enhanced service to the public by ensuring that firearms do not fall into the hands of potentially mentally- or alcoholism-impaired persons while protecting the person's right to due process.

Issue 3: Does the test claim legislation impose "costs mandated by the state" within the meaning of article XIII B, section 6 of the California Constitution?

For the mandated activities to impose a reimbursable, state-mandated program under article XIII B, section 6, two additional elements must be satisfied. First, the activities must impose costs mandated by the state pursuant to Government Code section 17514. Second, the statutory exceptions to reimbursement listed in Government Code section 17556 cannot apply.

Government Code section 17514 defines "costs mandated by the state" as any increased cost a local agency is required to incur as a result of a statute that mandates a new program or higher level of service.

The test claim provided a worksheet that estimated costs for conducting firearm hearings for the period January 1, 2000 through June 30, 2000 as follows:

⁶⁴ The Commission can consider claimant's request for reimbursement for legal secretary and expert witness services at the Parameters and Guidelines stage to determine whether these services are needed as a reasonable method of complying with the mandate pursuant to California Code of Regulations, title 2, section 1183.1, subdivision (a)(4).

⁶⁵ See footnote number 62.

⁶⁶ The Commission can consider claimant's request for reimbursement for legal secretary and expert witness services at the Parameters and Guidelines stage to determine whether these services are needed as a reasonable method of complying with the mandate pursuant to California Code of Regulations, title 2, section 1183.1, subdivision (a)(4).

I. 104 Undisputed Hearings

A. Attorney Costs

104 hearings X .75 hour X \$91.01 per hour = \$ 7,099

B. Legal Secretary Costs

104 hearings X .75 hour X \$32.91 per hour = \$ 2,567

II. 4 Disputed Hearings

C. Attorney Costs

4 hearings X 1.25 hour X \$91.01 per hour = \$ 455

D. Legal Secretary Costs

4 hearings X .9167 hour X \$32.91 per hour = \$ 121

E. Expert Witness Costs

4 hearings X .25 hour X \$200 per hour = \$ 200

Total \$10,442

Thus, there is evidence in the record, signed under penalty of perjury, that there are increased costs as a result of the test claim legislation.

Government Code section 17556 lists several exceptions which preclude the Commission from finding costs mandated by the state. The Commission finds that none of the exceptions apply to this test claim.

The draft staff analysis stated that Government Code section 17556, subdivision (b), which requires the Commission to deny the claim where the test claim legislation "affirmed for the state a mandate that had been declared existing law or regulation by action of the courts," was applicable to deny the portion of the test claim related to hearings required under Welfare and Institutions Code section 8103, subdivision (f). The Sacramento Superior Court, in the *Daycamos* case,⁶⁷ declared section 8103, subdivision (f), unconstitutional, and a 1999 statute (ch. 578) amended the subdivision (f) provisions to cure the constitutional infirmities.

Claimant argued that because the judge in *Daycamos* "explicitly indicated that no court-mandated revision of [Welfare and Institutions Code] section 8103(f) hearings was being ordered," Government Code section 17556, subdivision (b), does not operate to deny reimbursement for section 8103, subdivision (f), hearings. The Commission disagrees that the court must direct revision of a statute for Government Code section 17556, subdivision (b), to be triggered because the plain meaning of section 17556, subdivision (b), provides that the court's triggering action is to "declare existing law." A declaration of existing law can be accomplished without ordering a change in the statute. In this case it was accomplished when the court stated the specific infirmity with Welfare and

⁶⁷ *P. J. Daycamos v. Department of Justice, supra*, Number 96CS01471, Superior Court, County of Sacramento, 1997.

Institutions Code section 8103, subdivision (f), i.e., that the burden of proof cannot be on the person but must be on the people.

Nevertheless, after further consideration the Commission finds that although the mandate was not in effect from the time of the *Daycamos* case until the curative statute was enacted, the *original* test claim statute created the mandate for the district attorney to represent the people in subdivision (f) hearings and that mandate was revived (but not created) upon the 1999 statute's enactment. For that reason, Government Code section 17556, subdivision (b), is inapplicable to deny the claim.

The Commission further finds that, although the *Daycamos* case declared Welfare and Institutions Code section 8103, subdivision (f), hearings unconstitutional as violating procedural due process protections under the state and federal Constitutions, Government Code Section 17556, subdivision (c) — which requires the Commission to deny the claim where the statute imposes a federal mandate — is inapplicable in this case. Any procedural due process guarantees which might stem from the *federal* Constitution are not applicable to the weapons restrictions of section 8103, subdivisions (f) and (g), since the United States Court of Appeals, Ninth Circuit, has stated that the “Second Amendment right to ‘bear arms’ guarantees the right of the people to maintain effective state militias, but does not provide any type of individual right to own or possess weapons ...” (*Silveira v. Lockyer* (2003) 312 F.3d 1052, 1060). The seizure cases referenced in the *Daycamos* case relied on the *property* interests at stake, i.e., current ownership and possession of property, which invoked the due process guarantees of the federal Constitution's 14th Amendment. The Commission therefore finds the hearings under section 8103 do not impose a requirement that is mandated by federal law under Government Code section 17556, subdivision (c).

Conclusion

The Commission concludes that the test claim legislation imposes a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, for district attorney activities in representing the People of the State of California in civil hearings pursuant to Welfare and Institutions Code section 8103, subdivisions (f) and (g).

The reimbursement period for this test claim begins on July 1, 1998; however, the reimbursement period for subdivision (f) hearings begins on September 29, 1999, the effective date of the 1999 test claim statute.

Any statutory provisions that were pled in this test claim that are not identified above do not constitute a reimbursable state-mandated program.

**Reasonable Reimbursement Methodology
Jointly Requested by the County of Los Angeles and the Department of Finance**

**Firearm Hearings for Discharged Inpatients (99-TC-11)
Welfare and Institutions Code Section 8103, Subdivisions (f) and (g)
Statutes 1999, Chapter 578**

**Initial Period of Reimbursement: July 1, 1998 through June 30, 2007
Budget Year: 2009-2010**

**Eligible Claimants: Counties and City and County
Approved: June 26, 2008**

I. Summary of the Mandate

On April 26, 2006, the Commission on State Mandates (Commission) adopted its Statement of Decision finding that subdivisions (f) and (g) of section 8103 of the Welfare and Institutions Code (test claim statute) impose a reimbursable state-mandated program on county or city and county district attorneys' offices within the meaning of section 6 of article XIII B of the California Constitution and section 17514 of the Government Code for the district attorneys' activities in representing the People of the State of California in civil hearings.

Statutes 1999, chapter 578 established hearing procedures for persons detained for mental health treatment and evaluation, and eventually discharged, to challenge the firearm prohibition law through a civil hearing in superior court. Under the firearm prohibition law, the detained patient shall not own, possess, control, receive, or purchase a firearm for five years except as permitted pursuant to subdivisions (f) and (g) (subject hearings) of the test claim statute.

Reimbursable Activities

Any county or city and county that has a district attorney's office that incurs increased costs may claim reimbursement for the activities identified below at the rates established by the reasonable reimbursement methodology:

1. District attorney services required to process a case related to the subject hearings. Activities include, but are not limited to, performing necessary legal tasks to prepare and plead case at the hearing.
2. Legal secretary/paralegal services required to process a case related to the subject hearings. Activities include, but are not limited to, performing administrative functions necessary to process documents for the hearing.
3. Expert witness services required to provide consultation on a case related to the subject hearings. Activities include consulting services provided at the hearing.

These activities are reasonable methods of complying with a mandate pursuant to paragraph (4) of subdivision (a) of section 1183.1, Title 2, of the California Code of Regulations.

Reimbursement Period

The reimbursement period for the mandate begins September 29, 1999 for subdivision (f) of section 8103 of the Welfare and Institutions Code and begins July 1, 1998 for subdivision (g) of section 8103 of the Welfare and Institutions Code.

II. Reasonable Reimbursement Methodology

A reasonable reimbursement methodology means a formula for reimbursing local agencies for costs mandated by the state, as defined in section 17514 of the Government Code. A reasonable reimbursement methodology shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies, or other projections of local costs. A reasonable reimbursement methodology shall consider the variation in costs among local agencies to implement the mandate in a cost-efficient manner. Whenever possible, a reasonable reimbursement methodology shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs. (Gov. Code, § 17518.5.)

The Department of Finance and the County of Los Angeles (test claimant) collaboratively developed the following reasonable reimbursement methodology (RRM) rates to reimburse eligible claimants for all direct and indirect costs for the reimbursable activities specified in Section I above, pursuant to Government Code sections 17557.1-17557.2.

RRM Rates
For Fiscal Years 1998-99 to 2007-08

Fiscal Year	RRM Rate /Petitioned Case
1998-1999	\$36
1999-2000	\$41
2000-2001	\$46
2001-2002	\$51
2002-2003	\$56
2003-2004	\$61
2004-2005	\$66
2005-2006	\$71
2006-2007	\$76
2007-2008	\$81

The RRM allows each eligible claimant to be reimbursed based on the rates per petitioned case. The rate for subsequent years will be adjusted by the implicit price deflator.

State reimbursement shall be calculated by multiplying the RRM rate by the number of subject hearings pursuant to the test claim statutes for the specified year. The number of subject hearings shall be supported by document(s) showing the names of the petitioners and their hearing dates.

An eligible claimant may file a reimbursement claim pursuant to the State Controller's (Controller) claiming instructions. Pursuant to section 17561 of the Government Code, reimbursement for state-mandated costs may be claimed as follows:

1. For initial reimbursement claims for fiscal years 1998-1999 through 2006-2007, eligible claimants shall submit claims based on the RRM to the Controller within 120 days of the date the claiming instructions are issued.
2. An eligible claimant may, by February 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim based on the RRM for costs incurred for that fiscal year.
3. In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 of the Government Code between November 15 and February 15, an eligible claimant filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

If total costs for a given year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by section 17564 of the Government Code.

There also shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

III. Terms of Agreement

The terms of the reasonable reimbursement methodology agreement shall be in effect for two years and expire on June 30, 2010, unless the Department of Finance and the test claimant submit a joint request for early termination of the RRM pursuant to subdivision (a) of section 17557.2 of the Government Code or the test claim statutes are repealed.

The terms of subdivision (b) of section 6 of article XIII B of the California Constitution also shall apply to this agreement, and require that beginning in fiscal year 2009-2010, the Legislature shall suspend the mandate for that fiscal year, or provide reimbursement in the annual Budget Act.

IV. Amendment of Agreement

- A. At the conclusion of the term of this agreement established in Section III above, the Department of Finance and the test claimant agree to consider jointly whether amendments to the reasonable reimbursement methodology are necessary.
- B. The Department of Finance and the test claimant may do one of the following:
 - 1. Jointly propose amendments to the reasonable reimbursement methodology by submitting the information described in paragraphs (1), (3), and (4) of subdivision (b) of Government Code section 17557.2, and providing an estimate of the mandate's annual cost for the subsequent budget year.
 - 2. Jointly propose that the reasonable reimbursement methodology remain in effect.
 - 3. Allow the reasonable reimbursement methodology to expire and notify the Commission that the test claimant will submit proposed parameters and guidelines to the Commission pursuant to subdivision (a) of section 17557 of the Government Code.
- C. The Commission shall either approve the continuation of the reasonable reimbursement methodology or approve the jointly proposed amendments to the reasonable reimbursement methodology if the information submitted demonstrates that the proposed amendments were developed in accordance with section 17557.1 and meet the requirements of subdivision (a) of section 17557.2.

V. Record Retention

The document(s) used to support the application of a reasonable reimbursement methodology is subject to an audit by the Controller. The number of subject hearings claimed for reimbursement is subject to verification with records on file with the Department of Justice. The Controller may initiate an audit within three years of the date that the actual reimbursement claim is filed or last amended, whichever is later. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

COMMISSION ON STATE MANDATES

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July 1, 2014

Ms. Hasmik Yaghobyan
 Los Angeles County Auditor-Controller's Office
 500 West Temple Street, Room 603
 Los Angeles, CA 90012

Mr. Tom Dyer
 Department of Finance
 915 L Street
 Sacramento, CA 95814

And Parties, Interested Parties, and Interested Persons (See Mailing List)

RE: **Notice of End of Term for Joint Reasonable Reimbursement Methodology**
Firearm Hearings for Discharged Inpatients 07-RRM-01 (99-TC-11)
 Welfare and Institutions Code Section 8103, Subdivisions (f) and (g)
 Statutes 1999, Chapter 578
 County of Los Angeles, Test Claimant and Department of Finance

Dear Ms. Yaghobyan and Mr. Dyer:

On June 26, 2008, the Commission on State Mandates (Commission) approved the first jointly developed Reasonable Reimbursement Methodology (RRM) and adopted the Statewide Estimate of Costs for the *Firearms Hearings for Discharged Inpatients* program. The Commission most recently amended the joint RRM on May 24, 2013, to extend the terms of agreement to expire on June 30, 2015.

Commission staff is requesting the claimant county and the Department of Finance to do one of the following pursuant to Government Code section 17557.2(f) and Commission regulations, section 1183.16(a):

- Jointly propose amendments to the RRM;
- Jointly propose to extend the RRM terms of agreement; or
- Jointly propose the Commission hear and decide on parameters and guidelines to replace the expired RRM.

Submission of Proposal

Please submit, on or before **September 1, 2014**, a joint request to propose amendments to the RRM, a joint request to extend the RRM, or a joint request for the Commission to hear and decide on parameters and guidelines to replace the expired RRM. If by September 1, 2014, the parties do not agree on a proposal or do not respond to this notice, then pursuant to section 1183.16(i) of Commission regulations, staff shall prepare proposed expedited parameters and guidelines for hearing and adoption by the Commission.

Ms. Yaghobyan and Mr. Dyer

July 1, 2014

Page 2

You are advised that responses filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.3.)

Please contact Jason Hone at (916) 323-3562 if you have questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey", written in a cursive style.

Heather Halsey
Executive Director

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Yolo and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On July 1, 2014 I served the:

Notice of End of Term for Joint Reasonable Reimbursement Methodology
Firearm Hearings for Discharged Inpatients, 07-RRM-01 (99-TC-11)
Welfare and Institutions Code Section 8103, Subdivisions (f) and (g)
Statutes 1999, Chapter 578
County of Los Angeles, Test Claimant and Department of Finance

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 1, 2014 at Sacramento, California.



Jason Hone
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 7/1/14

Claim Number: 07-RRM-01 (99-TC-11)

Matter: Firearm Hearings for Discharged Inpatients - Joint RRM

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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November 3, 2014

Ms. Hasmik Yaghobyan
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And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **Draft Expedited Parameters and Guidelines and Notice of Hearing**
Firearm Hearings for Discharged Inpatients, 99-TC-11 (07-RRM-01)
Welfare and Institutions Code Sections 8103(f) and 8103(g)
Statutes 1999, Chapter 578
County of Los Angeles, Claimant

Dear Ms. Yaghobyan:

On April 26, 2006, the Commission on State Mandates (Commission) adopted the test claim decision approving the above-entitled matter.

On June 26, 2008, the Commission approved a Reasonable Reimbursement Methodology (RRM) which was jointly developed and proposed by claimant and the Department of Finance (Finance) and effective for a five-year period, and adopted the Statewide Estimate of Costs for the *Firearms Hearings for Discharged Inpatients* program. The Commission on May 24, 2013, approved a jointly proposed extension of the RRM to June 30, 2015.

On July 1, 2014, Commission staff issued a "Notice of End of Term" for the joint RRM and requested that the claimant and Finance do one of the following by September 1, 2014, pursuant to Government Code section 17557.2(f) and Commission regulations (Cal. Code Regs., tit. 2), section 1183.16(a): 1) Jointly propose amendments to the RRM; 2) Jointly propose to extend the RRM terms of agreement; or 3) Jointly propose the Commission hear and decide on parameters and guidelines to replace the expired RRM.

The parties did not agree on a proposal and did not respond to the notice. Therefore, pursuant to section 1183.16(i) of Commission regulations, staff has prepared expedited parameters and guidelines for hearing and adoption by the Commission.

Review of Draft Expedited Parameters and Guidelines. All parties, interested parties, and interested persons may comment on staff's draft proposal by **November 24, 2014**. (Cal. Code Regs., tit. 2, § 1183.9(c).)

Rebuttals. Written rebuttals may be submitted by all parties, interested parties, and interested persons within 15 days of service of comments. (Cal. Code Regs., tit. 2, § 1183.8(f).)

You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.3.) If you would like to request

Ms. Hasmik Yaghobyan

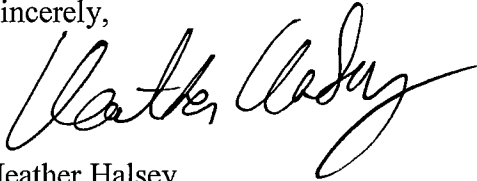
November 3, 2014

Page 2

an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

The parameters and guidelines are set for hearing on **January 23, 2015**.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey". The signature is fluid and cursive, with the first name being more prominent.

Heather Halsey
Executive Director

DRAFT EXPEDITED PARAMETERS AND GUIDELINES

Welfare and Institutions Code Section 8103(f) and (g)

Statutes 1990, Chapters 9 and 177; Statutes 1991, Chapter 955; Statutes 1992, Chapter 1326;
Statutes 1993, Chapters 610 and 611; Statutes 1994, Chapter 224; Statutes 1996, Chapter 1075;
Statutes 1999, Chapter 578

Firearm Hearings for Discharged Inpatients

99-TC-11 (07-RRM-01)

These parameters and guidelines are effective beginning July 1, 2015.

I. SUMMARY OF THE MANDATE

These parameters and guidelines address amendments to the Welfare and Institutions Code, which establish procedures by which certain individuals who are prohibited from possessing firearms, because they have been detained for treatment and evaluation as a result of a mental disorder, may challenge that prohibition.

On April 26, 2006, the Commission on State Mandates (Commission) adopted a statement of decision finding that the test claim statutes impose a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for district attorney activities in representing the People of the State of California in civil hearings pursuant to Welfare and Institutions Code section 8103(f) and (g).

II. ELIGIBLE CLAIMANTS

Any county, or city and county that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

These parameters and guidelines are effective beginning July 1, 2015 for any reimbursable costs incurred on or after that date.

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The claimant filed the test claim on June 22, 2000, establishing eligibility beginning July 1, 1998, for civil hearings pursuant to Welfare and Institutions Code section 8103(g). However, reimbursement for civil hearings pursuant to Welfare and Institutions Code section 8103(f), begins on September 29, 1999, the effective date of the 1999 test claim statute.

Reimbursement for state-mandated costs through fiscal year 2014-2015 may be claimed under the jointly proposed reasonable reimbursement methodology (joint RRM) for this program, 07-

RRM-01. The joint RRM expires on June 30, 2015. On July 1, 2014 Commission staff notified the parties of the pending expiration of the RRM and invited them to jointly continue or modify the RRM or allow the RRM to expire pursuant to Government Code section 17557.2(f) and section 1183.16(a) of the Commission's regulations by September 1, 2014. Neither of the parties responded to the notice, thus triggering the preparation of draft expedited parameters and guidelines pursuant to section 1183.16(a) of the Commission's regulations.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller (Controller) within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code §17560(b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant that incurs increased costs, the following activities are reimbursable:

A. Ongoing Activities

1. For the district attorney to represent the People of the State of California in civil hearings pursuant to Welfare and Institutions Code section 8103(f) and (g), including only the following activities as related to those hearings, and as performed by the district attorney and/or district attorney support staff:
 - a. review case/investigate/conduct interviews
 - b. find, retain, and consult with expert witness
 - c. conduct discovery
 - d. conduct depositions
 - e. legal research
 - f. prepare/file written documents for court
 - g. prepare oral arguments and evidence for court
 - h. appear in court
 - i. case file management
2. To assist the district attorney in civil hearings pursuant to Welfare and Institutions Code section 8103(f) and (g), including only the following activities as related to those hearings, and as performed by an expert witness:
 - a. oral consultation services
 - b. prepare written documents for file/court
 - c. prepare oral testimony and evidence for court
 - d. appear in court

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1., Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both: (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in 2 Code of Federal Regulations (CFR) part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using 10 percent of direct labor, excluding fringe

benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10 percent.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR part 225, appendices A and B (OMB Circular A-87 attachments A & B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR part 225, appendices A and B (OMB Circular A-87 attachments A & B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be: (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.); (2) direct salaries and wages; or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 attachments A & B) shall be accomplished by: (1) classifying a department's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage that the total amount of allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 attachments A & B) shall be accomplished by: (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter¹ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

¹ This refers to title 2, division 4, part 7, chapter 4 of the Government Code.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from these parameters and guidelines and the statements of decision on the test claim and parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.17.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The decisions adopted for the test claim and parameters and guidelines are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

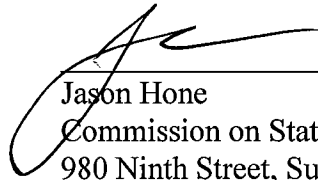
I am a resident of the County of Yolo and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On November 3, 2014, I served the:

Draft Expedited Parameters and Guidelines and Notice of Hearing
Firearm Hearings for Discharged Inpatients, 99-TC-11 (07-RRM-01)
Welfare and Institutions Code Sections 8103(f) and 8103(g)
Statutes 1999, Chapter 578
County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 3, 2014 at Sacramento, California.



Jason Hone
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 11/3/14

Claim Number: 99-TC-11 (07-RRM-01)

Matter: Firearm Hearings for Discharged Inpatients

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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Hasmik Yaghobyan, *County of Los Angeles*
Claimant Representative
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Phone: (213) 974-9653
hyaghobyan@auditor.lacounty.gov



RECEIVED
November 24, 2014
Commission on
State Mandates

JOHN CHIANG
California State Controller
Division of Accounting and Reporting

November 24, 2014

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Draft Expedited Parameters and Guidelines and Notice of Hearing
Firearm Hearings for Discharged Inpatients, 99-TC-11 (07-RRM-01)
Welfare and Institutions Code Sections 8103(f) and 8103(g)
Statutes 1999, Chapter 578
County of Los Angeles, Claimant

Dear Ms. Halsey:

The State Controller's Office has reviewed the draft expedited Parameters and Guidelines for the Firearm Hearings for Discharged Inpatients program and recommends no changes.

Should you have any questions regarding the above, please contact Lacey Baysinger at (916) 324-7876 or email LBaysinger@sco.ca.gov.

Sincerely,

JAY LAL, Manager
Local Reimbursements Section

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

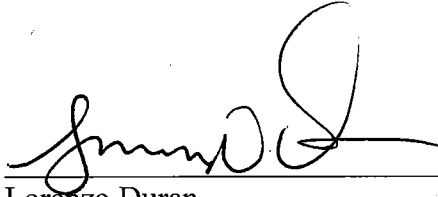
On November 24, 2014, I served the:

SCO Comments

Firearm Hearings for Discharged Inpatients, 07-RRM-01 (99-TC-11)
Welfare and Institutions Code Section 8103, Subdivisions (f) and (g)
Statutes 1999, Chapter 578
County of Los Angeles, Test Claimant and Department of Finance

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 24, 2014 at Sacramento, California.



Lorenzo Duran
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 11/24/14

Claim Number: 99-TC-11 (07-RRM-01)

Matter: Firearm Hearings for Discharged Inpatients

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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