ITEM 6

TEST CLAIM
FINAL STAFF ANALYSIS

Welfare and Institutions Code
Sections 912, 912.1 & 912.5

Statutes 1996, Chapter 6 (SB 681)
Statutes 1998, Chapter 632 (SB 2055)

California Youth Authority: Sliding Scale for Charges

02-TC-01

County of San Bernardino, Claimant

EXECUTIVE SUMMARY

This test claim addresses increased fees paid by counties to the state for the least serious juvenile offenders (category 5 through 7) committed to the California Department of the Youth Authority ("CYA").

The Test Claim Statutes Do Not Mandate a "New Program or Higher Level of Service" Within the Meaning of Article XIII B, Section 6

No state law requires the counties or the juvenile courts to commit category 5 through 7 juvenile offenders to the CYA. The juvenile court's decision for such placements is based on recommendations from the county probation department which consider, among other things, available treatment options within that county. There is ample evidence in the record and in the law indicating that counties do in fact have discretion to effectuate placement options other than CYA for these juvenile offenders. Moreover, state funding is available for local juvenile treatment programs.

Because the additional sliding scale costs for CYA commitments of category 5 through 7 juvenile offenders *only* result from an underlying discretionary decision by the county to commit such juveniles to the CYA, staff finds the test claim statutes do not mandate a "new program or higher level of service" within the meaning of article XIII B, section 6.

Conclusion

Staff finds that additional sliding scale costs associated with commitment of category 5 through 7 juvenile offenders to the CYA were established by the test claim statutes. However, these costs result from an underlying *discretionary* decision by the local agency to place those juveniles with CYA. Therefore, the test claim statutes do not mandate a "new program or higher level of service" within the meaning of article XIII B, section 6 of the California Constitution.

Recommendation

Staff recommends the Commission adopt this analysis to deny the test claim.

STAFF ANALYSIS

Claimant

County of San Bernardino

Chronology

07/05/02	County of San Bernardino ("Claimant") filed test claim with the Commission on State Mandates ("Commission")
07/15/02	Commission determined that test claim filing was complete and issued notice that comments were due on August 15, 2002
08/16/02	The Department of Finance submitted comments on test claim with the Commission
08/16/02	The California Department of Justice ("DOJ"), representing the California Department of the Youth Authority ("CYA"), submitted comments on the test claim with the Commission
09/06/02	Claimant requested an extension of time to file rebuttal comments on the test claim
09/09/02	Commission granted extension to November 15, 2002
11/20/02	Claimant requested an additional extension of time to file rebuttal comments
11/22/02	Commission granted extension to December 17, 2000
01/22/03	Claimant submitted rebuttal comments to the state agency comments on the test claim with the Commission
02/13/07	Commission staff issued draft staff analysis
03/06/07	Claimant submitted comments on the draft staff analysis
03/08/07	The Department of Finance submitted comments on the draft staff analysis
04/10/07	Commission staff issued revised draft staff analysis
05/01/07	Claimant requested postponement of hearing pending adjudication of *County of San Bernardino v. Commission on State Mandates et.al.*, Case No. BS 106052, pending before the Los Angeles Superior Court.
05/02/07	Commission staff denied request for postponement
05/07/07	The Department of Finance submitted comments on the revised draft staff analysis
05/17/07	Commission staff issued final staff analysis

Background

This test claim addresses increased fees that counties are required to pay the state for each person committed by the juvenile court to the California Department of the Youth Authority ("CYA").[1]

CYA is the state agency responsible for protecting society from the criminal and delinquent behavior of juveniles.[2] The department operates training and treatment programs that seek to educate, correct, and rehabilitate youthful offenders rather than punish them.[3] It is charged with operating 11 institutions and supervising parolees through 16 offices located throughout the state.[4] Individuals can be committed to the CYA by the juvenile court or on remand by the criminal court,[5] or returned to CYA by the Youthful Offender Parole Board.[6] Those 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.[7]

The Juvenile Court Law[8] establishes the California juvenile court within the superior court in each county.[9] Its purpose is "to provide for the protection and safety of the public and each minor under the jurisdiction of the juvenile court and to preserve and strengthen the minor's family ties whenever possible, removing the minor from the custody of his or her parents only when necessary for his or her welfare or for the safety and protection of the public."[10]

The juvenile court's jurisdiction extends to persons under 18 when the person violates federal, state or local criminal law;[11] however, certain crimes by persons who are 14 or older can be

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[1] In a reorganization of California corrections programs in 2005, CYA became the Division of Juvenile Justice under the Department of Corrections and Rehabilitation. However, this analysis will reference "CYA" in accordance with the agency's title at the time the test claim statutes were enacted.

[2] 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.)

[3] Welfare and Institutions Code section 1700.

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

[5] Welfare and Institutions Code section 707.2, subdivision (a).

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

[7] California Code of Regulations, title 15, sections 4951-4957.

[8] Welfare and Institutions Code sections 200, et. seq.

[9] Welfare and Institutions Code section 245.

[10] Welfare and Institutions Code section 202, subdivision (a).

[11] Welfare and Institutions Code section 602, subdivision (a).

tried by the criminal courts.[12] With some exceptions, the juvenile court may retain jurisdiction over any person who is found to be a ward of that court until the ward attains the age of 21.[13]

If the juvenile court decides that it has jurisdiction of a juvenile who violated a criminal law, the judge – taking into account the recommendations of county probation department staff[14] – decides whether to make the offender a ward of the court[15] and ultimately determines the appropriate placement and treatment for the juvenile. Placement decisions are based on such factors as the age of the juvenile, circumstances and gravity of the offense committed, criminal sophistication, the juvenile's previous delinquent history,[16] and the county's capacity to provide treatment.[17]

The court may limit control by the parent or take the juvenile from physical custody of the parent under specified circumstances.[18] Treatment can take the form of probation without supervision of the probation officer, probation under the officer's supervision in the home of the parent or guardian or in a foster home,[19] placement in a community care facility,[20] confinement within juvenile hall, placement in a private or county camp, [21] or commitment to the CYA.[22] However, before committing a person to CYA, the court must be satisfied that the minor has the mental and physical capacity to benefit from such an experience.[23]

Counties are responsible for the expense of support and maintenance of a ward or dependent child of the juvenile court, generally when the parents or other person liable for the juvenile are unable to pay the county such costs of support or maintenance.[24] In 1947, section 869.5 was added to the Welfare and Institutions Code to require county payments to the state for wards committed by the juvenile court to the CYA. That section stated:

> For each person … committed to the Department of Institutions for placement in a correctional school and for each ward of the juvenile court committed to the Youth Authority[,] the county from which he is

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[12] Welfare and Institutions Code section 602, subdivision (b).

[13] Welfare and Institutions Code section 607, subdivision (a).

[14] Welfare and Institutions Code sections 702, 706 and 706.5; California Rules of Court, Rule 1492, subdivisions (a) and (b).

[15] Welfare and Institutions Code section 725.

[16] Welfare and Institutions Code section 725.5.

[17] Test Claim, page 3.

[18] Welfare and Institutions Code section 726.

[19] Welfare and Institutions Code section 727.

[20] Welfare and Institutions Code section 740.

[21] Welfare and Institutions Code section 730.

[22] Welfare and Institutions Code section 731.

[23] Welfare and Institutions Code section 734.

[24] Welfare and Institutions Code sections 900 and 903.

> committed shall pay the State at the rate of twenty-five dollars ($25) per month for the time such person so committed remains in such state school or in any camp or farm colony, custodial institution, or other institution under the direct supervision of the Youth Authority to which such person may be transferred, in the California Vocational Institution, or in any boarding home, foster home, or other private or public institution in which he is placed by the Youth Authority, on parole or otherwise, and cared for and supported at the expense of the Youth Authority. …[25]

Thus, for several decades, each county was responsible to pay the CYA $25 per month for each person committed to the CYA. Statutes 1961, chapter 1616, renumbered Welfare and Institutions Code section 869.5 to section 912; that section, as well as sections 912.1 (as added in 1998) and 912.5 (as added in 1996), are the subject of this test claim.

Test Claim Statutes

In 1996, the Legislature increased the fees CYA charges the counties by enacting Statutes 1996, chapter 6 (Sen. Bill No. (SB) 681). Chapter 6 increased the monthly fee from $25 to $150[26] for category 1 through 4 offenders, i.e., the most serious offenders, and established a "sliding scale" of fees for category 5 through 7 offenders,[27] based on specified percentages of the per capita institutional cost of CYA.[28] Statutes 1998, chapter 632 (SB 2055), capped the per capita institutional cost to the cost the CYA charged counties as of January 1, 1997.[29] The charge against the county is not applicable to periods of confinement that are solely pursuant to a revocation of parole by the Youthful Offender Parole Board.[30]

The Senate Floor analysis for SB 2055 (Stats. 1998, ch. 632) stated that, according to the author:

> SB 681 [Stats. 1996, ch. 6] imposed a fee schedule upon counties for "low level" offenders sent to the California Youth Authority (CYA). The intent of the legislation was to provide a monetary disincentive for sending "low

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[26] Welfare and Institutions Code section 912.

[27] Typical offenses: Category 5 – assault with deadly weapon, robbery, residential burglary, sexual battery, unless offense results in substantial injury which would make it a category 4 offense (baseline parole consideration date is 18 months); Category 6 – carrying a concealed firearm, commercial burglary, battery, all felonies not contained in categories 1 – 5 (baseline parole consideration date is one year); Category 7 – technical parole violations, all offenses not contained in categories 1 – 6 such as misdemeanors (baseline parole consideration date is one year or less).

[28] Welfare and Institutions Code section 912.5, subdivision (a).

[29] Welfare and Institutions Code section 912.1.

[30] Welfare and Institutions Code section 912.5, subdivision (c).

> level" juvenile offenders to the CYA. Clearly, the Legislature wanted counties to treat, punish and house these offenders at the local level.[31]

With the enactment of Statutes 1996, chapter 6, the Legislature also provided $32.7 million in funding to assist the counties in the operation of local juvenile facilities,[32] established the Juvenile Challenge Grant program allocating $50 million to fund a five-year program cycle for 29 different community-based demonstration programs targeting juvenile offenders,[33] and initiated the Repeat Offender Prevention Project (ROPP) with another $3.3 million for seven counties to identify and intervene at an early stage with potential repeat offenders.[34] The Challenge Grant and ROPP programs have received additional funding to continue in subsequent years. In 1998, $100 million was appropriated by the state to support renovation, reconstruction, and deferred maintenance of county juvenile facilities.[35] Thus, the Legislature has provided and continues to provide significant funding for assistance to counties in providing such locally-based programs.[36]

Claimant's Position

The claimant states that the test claim statutes impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The basis for the claim is that the state has shifted financial responsibility to the counties in imposing the higher sliding scale fees for CYA commitments, which imposes a "new program or higher level of service" pursuant to article XIII B, section 6.

The claimant estimates the following costs, but limits the claim to *only the sliding scale fees*:

[31] SB 2055 Senate Bill Analysis, Senate Rules Committee, Office of Senate Floor Analyses, August 28, 1998, page 6.

[32] Statutes 1996, chapter 7 (AB 1483).

[33] Statutes 1996, chapter 133 (SB 1760), known as the Juvenile Crime Enforcement and Accountability Challenge Grant Program.

[34] 1996-97 Budget Act.

[35] Statutes 1998, chapter 499 (AB 2796), known as the County Juvenile Correctional Facilities Act.

[36] See Statutes 2006, chapter 47 (2006 Budget Bill), line items 5225-104-0890 and 5430-109-0890.

Fiscal Year 2000-2001	
Total amount payable to CYA for juvenile court commitments	$ 6,257,537
Amount payable for baseline fees of $150 per youth, per mo. (WIC § 912)	$ 1,079,850
Test claim - Amount payable for sliding scale fees (WIC § 912.5)	$ 5,177,687
Fiscal Year 2001-2002	
Total amount payable to CYA for juvenile court commitments	$ 7,535,940
Amount payable for baseline fees of $150 per youth, per mo. (WIC § 912)	$ 1,066,350
Test Claim - Amount payable for sliding scale fees (WIC § 912.5)	$ 6,469,590

The claimant filed a rebuttal to the CYA comments on this test claim as well as comments on the first draft staff analysis. These comments are addressed, as necessary, in the analysis.

Position of Department of Finance

The Department of Finance asserts that the test claim is without merit and should be denied for the following reasons:

- Payment of the additional sliding scale fee merely reimburses the state for a portion of the costs of housing youthful offenders who cannot be held at county facilities. Therefore, the test claim statutes do not result in a shift of financial responsibility from the state to local governments.
- Although the test claim statutes do set a higher fee related to the housing and treatment of youthful offenders by the state, the statutes do not require a "new program or higher level of service" to be implemented by the county, as the payment of the fee is related to a service that is being provided by the state and not by the county.
- The county could avoid payment of the fee by providing placement options for less serious youthful offenders within the county. Payment of any fee is predicated on the county not being able to house the youthful offender within its own facilities and hence the court committing the offender to confinement in a state facility.

The Department of Finance filed comments agreeing with the first draft staff analysis as well as the revised draft staff analysis, recommending denial of the test claim.

Position of California Youth Authority

The CYA asserts that the test claim statutes do not impose a "new program or higher level of service" within the meaning of article XIII B, section 6 of the California Constitution, nor do they impose "costs mandated by the state" within the meaning of Government Code section 17514 for the following reasons:

- Pursuant to *County of San Diego v. State* (1997) 15 Cal.4th 68, article XIII B, section 6 prohibits the state from shifting to counties the costs of state programs for which the state assumed *complete* financial responsibility before adoption of section 6. The test claim statutes merely increase the charges to local agencies for discretionary placements in CYA, which local agencies have long had a share in supporting. Therefore, no new program or higher level of service was created by the test claim statutes because CYA placements were not funded entirely by the state when article XIII B, section 6 became effective.[37]
- The original statutory mandate requiring that counties pay a fee for CYA placements was enacted before January 1, 1975, rendering state subvention permissive rather than mandatory under article XIII B, section 6.
- Costs resulting from actions undertaken at the option of the local agency are not reimbursable. The test claim statutes do not eliminate a juvenile court's discretion to choose other dispositions for minors adjudicated to come within the terms of Welfare and Institutions Code section 602, nor do they *require* CYA commitments for minors under any circumstances. Welfare and Institutions Code section 731, subdivision (a), makes it clear that a CYA commitment is only one of several dispositions available to a juvenile court as to minors who are found to have committed criminal offenses.
- In certain cases, a juvenile court that removes a juvenile offender from the care and custody of his or her parents may simply place the ward under the supervision of the probation officer, who in turn exercises his or her discretion in selecting the appropriate placement for the minor. (Welf. & Inst. Code, § 727.)
- A juvenile court also has the discretion to place wards eligible for probation into a neighborhood youth correctional center, an option clearly intended as a more positive placement alternative to CYA. (Welf. & Inst. Code, § 1851.) CYA shares in the cost of construction of such centers, and *reimburses* counties up to $200 per month per ward. (Welf. & Inst. Code, §§ 1859, 1860.)

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[38] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[39] "Its

[37] These comments were filed prior to the adoption of Proposition 1A in November 2004, which added subdivision (c) of article XIII B, section 6 providing: "A mandated new program or higher level of service includes a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of *complete or partial* financial responsibility for a required program for which the State previously had *complete or partial* financial responsibility." (Emphasis added.)

[38] 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

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."[40, 41]

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.[42] 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.[43]

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.[44] 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.[45] A "higher level of service" occurs when there is "an increase in the actual level or quality of governmental services provided."[46]

In addition, effective November 2, 2004, article XIII B, section 6, subdivision (c), also specifically defines a "mandated new program or higher level of service" as including "a transfer by the Legislature from the State to cities, counties, cities and counties, or special

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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."

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

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

[41] Article XIII B, section 9 of the California Constitution states that the spending limits are *not* applicable to "[a]ppropriations required to comply with mandates of the courts … which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly." (Art. XIII B, §9, subd.(c).)

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

[43] *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*).

[44] *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 (*County of Los Angeles*); *Lucia Mar, supra,* 44 Cal.3d 830, 835).

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

[46] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 877.

districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility."[47]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[48]

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.[49] 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."[50]

The analysis addresses the following issues:

- Are the test claim statutes subject to article XIII B, section 6 of the California Constitution?
- Do the test claim statutes mandate a "new program or higher level of service" within the meaning of article XIII B, section 6 of the California Constitution?

Issue 1: Are the test claim statutes subject to article XIII B, section 6 of the California Constitution?

Article XIII B, section 6 was adopted in recognition of the state constitutional restrictions on the powers of local government to tax and spend, and requires a subvention of funds to reimburse local agencies when the state imposes a new program or higher level of service upon those agencies. However, article XIII B further provides that certain appropriations shall not be subject to the limitations otherwise imposed by articles XIII A and XIII B. One such exclusion to those limitations is set forth in article XIII B, section 9, subdivision (b): "Appropriations required to comply with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly."

The test claim statutes set new sliding scale fees that must be paid by the counties for specified juveniles committed to the CYA by the juvenile court. Because commitment to the CYA is ordered by the juvenile courts, the question here is whether the sliding scale fees for CYA commitments fall within the court-mandate exclusion to the article XIII B spending limit. For the reasons stated below, staff finds that the mandate requiring new sliding scale fees for juvenile commitments to CYA does *not* operate as a mandate of the courts within the meaning of article XIII B, section 9, subdivision (b), of the California Constitution.

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[47] Enacted by the voters as Proposition 1A, November 2, 2004.

[48] *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.

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

[50] *County of Sonoma, supra,* 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

The Third District Court of Appeal in *County of Placer v. Corin* (1980) 113 Cal.App.3d 443 (*County of Placer*) explained Article XIII B as follows:

> Article XIII B was adopted less than 18 months after the addition of article XIII A to the state Constitution, and was billed as "the next logical step to Proposition 13" [article XIII A]. While article XIII A was generally aimed at controlling ad valorem property taxes and the imposition of new "special taxes" [citations], the thrust of article XIII B is toward placing certain limitations on the growth of appropriations at both the state and local government level; in particular, article XIII B places limits on the authorization to expend the "proceeds of taxes." (§ 8, subd. (c).)
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> Article XIII B provides that beginning with the 1980-1981 fiscal year, "an appropriations limit" will be established for each "local government." … (§ 8, subd. (h).) No "appropriations subject to limitation" may be made in excess of this appropriations limit, and revenues received in excess of authorized appropriations must be returned to the taxpayers within the following two fiscal years. (§ 2.)[51]

In *City of Sacramento v. State of California* (1990) 50 Cal.3d 51 (*City of Sacramento*), the California Supreme Court further explained article XIII B:

> Article XIII B – the so-called "Gann limit" — restricts the amounts state and local governments may appropriate and spend each year from the "proceeds of taxes." (§§ 1, 3, 8, subds. (a)-(c).) … In language similar to that of earlier statutes, article XIII B also requires state reimbursement of resulting local costs whenever, after January 1, 1975, "the Legislature or any state agency mandates a new program or higher level of service on any local government, …" (§ 6.) Such mandatory state subventions are excluded from the local agency's spending limit, but included within the state's. (§ 8, subds. (a), (b).) Finally, article XIII B excludes from either the state or local spending limit any "[a]ppropriations required for purposes of complying with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the providing of existing services more costly." (§ 9, subd. (b) ….)[52]

Thus, article XIII B, section 6 requires state reimbursement to local governments in view of taxing and spending limits, but section 9 provides exclusions to the spending limits. Although the courts have not dealt with the *court* mandate exclusion identified in section 9, subdivision (b), the *federal* mandate exclusion from that subdivision was addressed in *City of Sacramento.* In that case, the court found that a state statute extending mandatory unemployment insurance coverage to local government employees imposed "federally mandated" costs on local agencies and not state-mandated costs; hence, local agencies subject to the new statutory requirements may tax and spend as necessary subject to superseding constitutional ceilings on taxation by state and local governments to meet the expenses

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[51] *County of Placer, supra,* 113 Cal.App.3d 443, 446.

[52] *City of Sacramento, supra,* 50 Cal.3d 51, 58-59.

required to comply with the legislation.[53] Because the plain language of article XIII B, section 9, subdivision (b), also excludes court mandates from the spending limit, these principles must, by extension, apply to court mandates. And, as the courts have made clear, a local agency cannot accept the benefits of being exempt from appropriations limits while asserting an entitlement to reimbursement under article XIII B, section 6.[54]

Since the sliding scale fees are triggered by a commitment to CYA, and that commitment is mandated by the juvenile court,[55] the court's action might be viewed as the actual cause for the increased costs. Claimant asserts, however, that the mandated costs cited in the test claim did not arise from a mandate of the courts, but rather the Legislature, when it enacted the sliding scale fees. Noting that Welfare and Institutions Code section 869.5 established the longstanding requirement for the county to pay the state for each person committed to CYA, claimant argues that "[t]he sliding scale costs were not the result of a required expenditure for additional services, nor were they established because the provisions of the mandates of the courts made the existing services more costly."[56]

Upon further consideration, staff agrees. The plain language of section 9 references court and federal mandates that impose additional expenditures on a local agency, without discretion. The Supreme Court in *City of Sacramento* addressed the issue of "discretion" in the context of such a federal mandate. There, the court noted it was ambiguous whether the *state* had discretion, in light of the federal law, to require local agencies to provide unemployment insurance to their employees. After making a full analysis of the federal program, the court found that "certain regulatory standards imposed by the federal government under 'cooperative federalism' schemes are coercive on the states and localities in every practical sense,"[57] and concluded that the unemployment insurance requirements were indeed a federal mandate within the section 9, subdivision (b), exclusion.

Thus, in applying the federal mandate exclusions from section 9, the court in *City of Sacramento* focused on which entity was exercising discretion *to cause the increased cost*. Here, the test claim statutes have increased the costs the counties must pay the state for housing juvenile offenders who happen to be committed to CYA. The juvenile court is exercising its discretion to make the commitment, but has no discretion with regard to how much such a commitment costs the counties. Consequently, it is the state, rather than the juvenile courts, that has exercised its discretion in increasing the costs for juveniles committed to CYA.

Thus, although juvenile courts do make the order for a CYA commitment, it is the test claim statutes which established the additional sliding scale costs for counties. Staff therefore finds that the test claim statutes *do not fall within* the article XIII B, section 9, subdivision (b), exclusion to the appropriations limit, and the statutes *are subject to* article XIII B, section 6, if

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[53] *City of Sacramento, supra,* 50 Cal.3d 51, 76.

[54] *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282.

[55] Welfare and Institutions Code section 731.

[56] Letter from Bonnie Ter Keurst, Office of the Auditor/Controller-Recorder, County of San Bernardino, page 2, submitted March 6, 2007.

[57] *City of Sacramento, supra,* 50 Cal.3d 51, 73-74.

the Commission also finds that the text claim statutes mandate a "new program or higher level of service."

Issue 2: Do the test claim statutes mandate a "new program or higher level of service" within the meaning of article XIII B, section 6 of the California Constitution?

Courts have recognized 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."[58] A test claim statute 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,[59] and the required activity or task is new, constituting a "new program," or it creates a "higher level of service" over the previously required level of service.[60]

However, in light of the intent of article XIII B, section 6, a reimbursable state-mandated program has been found to exist in some instances when the state shifts fiscal responsibility for a mandated program to local agencies but no actual activities have been imposed by the test claim statute or executive order.[61] Moreover, as of November 3, 2004, article XIII B, section 6, subdivision (c), of the California Constitution defines a "mandated new program or higher level of service" as including "a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a *required program* for which the State previously had complete or partial financial responsibility."[62] (Emphasis added.)

Here, the test claim statutes do not require local agencies to engage in any activity or task. The statutes do, however, increase costs to the counties for category 5 through 7 juvenile offenders that are committed to the CYA. However, based on the following analysis, staff finds that since the increased costs flow from an *initial discretionary decision* by counties to commit their category 5 through 7 juveniles to the CYA, the test claim statutes do not constitute a "required program" within the meaning of article XIII B, section 6, subdivision (c).

Although the decision to commit a juvenile offender to the CYA is ultimately made by the juvenile court, that decision is based on a variety of factors including information and recommendations of the county probation department.[63] Placement decisions are based on such factors as the age of the juvenile, circumstances and gravity of the offense committed,

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[58] *County of San Diego, supra,* 15 Cal. 4th 68, 81 (citing *Lucia Mar, supra,* 44 Cal.3d 830).

[59] *Long Beach, supra,* 225 Cal.App.3d 155, 174.

[60] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835-836.

[61] *Lucia Mar, supra,* 44 Cal.3d 830, 836.

[62] Enacted by the voters as Proposition 1A, November 2, 2004.

[63] Welfare and Institutions Code sections 702, 706 and 706.5; California Rules of Court, Rule 1492, subdivisions (a) and (b).

criminal sophistication, the juvenile's previous delinquent history,[64] and the county's capacity to provide treatment.[65]

California Rules of Court, rule 1495, provides that "[p]rior to every disposition hearing, the probation officer shall prepare a social study concerning the child, which shall contain those matters relevant to disposition and a recommendation for disposition." In *In re L. S.* the court stated:

> The information contained in a properly prepared social study report is central to the juvenile court's dispositional decision. … The social study should also include 'an exploration of and recommendation to wide range of alternative facilities potentially available to rehabilitate the minor." [citations omitted.] Implicit in this requirement appears to be some insight into the minor's problems in order for the probation officer to make a recommendation with rehabilitation in mind.
>
> In arriving at its dispositional decision, the juvenile court must also have in mind the provisions of [Welf. & Inst. Code] section 734 and section 202, subdivision (b) as well as the command of *In re Aline D.* (1975) 14 Cal.3d 557 [ ], which requires proper consideration be given to less restrictive programs before a commitment to CYA is made.[66]

The Department of Finance noted in its comments that the county could avoid payment of the sliding scale fees by providing placement options for less serious youthful offenders within the county, and that payment of any fee is predicated on the county not being able to house the youthful offender within its own facilities and hence the court committing the offender to confinement in a state facility.

Furthermore, the CYA stated in its comments that the test claim statutes do not eliminate a juvenile court's discretion to choose dispositions other than CYA for minors adjudicated to come within the terms of Welfare and Institutions Code section 602, nor do they *require* CYA commitments for minors under any circumstances. CYA further notes that "Welfare and Institutions Code section 731(a) makes it clear that a CYA commitment is only one of several dispositions available to a juvenile court as to minors who are found to have committed criminal offenses."[67] The CYA cites additional options available to the court, including placing the ward under the supervision of the probation officer who exercises discretion in selecting the appropriate placement of the minor, and placing wards eligible for probation into a neighborhood youth correction center in which the CYA provides monetary assistance.[68]

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[64] Welfare and Institutions Code section 725.5.

[65] Test Claim, page 3.

[66] *In re L. S.* (1990) 220 Cal.App.3d 1100, 1104-1105 (disapproved on another ground in *People v. Bullock* (1994) 26 Cal.App.4th 985).

[67] Letter from Meg Halloran, Deputy Attorney General, on behalf of CYA, August 16, 2002, page 4.

[68] *Ibid.*

Claimant states the following:

> The judges in those counties that do not have an adequate and available placement within the county generally order CYA as the only appropriate and available option. This is especially critical when a county has limited funds and has not been able to construct or operate its own institution for these youth.[69]

However, given the above-referenced availability of state funding for establishing and maintaining juvenile treatment facilities, the claimant has provided no evidence to show why it may or may not have availed itself of such funding.

The test claim statutes were intended to divert low-level offenders from the CYA. The Senate Floor analysis for SB 2055 (Stats. 1998, ch. 632) stated that, according to the author:

> SB 681 [Stats. 1996, ch. 6] imposed a fee schedule upon counties for "low level" offenders sent to the California Youth Authority (CYA). The intent of the legislation was to provide a monetary disincentive for sending "low level" juvenile offenders to the CYA. Clearly, the Legislature wanted counties to treat, punish and house these offenders at the local level.[70]

The Legislative Analyst's Office provided the following pertinent information regarding the test claim statutes, indicating that their intent is being realized:

> Legislation that took effect in 1997 to substantially increase the fees paid by counties for committing less serious offenders to the [CYA] appears to be having its desired effects. Admissions in less serious offense categories are down significantly, and counties are moving to increase their menu of local programming options for these offenders. County efforts in this direction have been aided by the availability of over $700 million in state and federal funds for juvenile probation programs. As a result of these successes, we recommend that the state maintain the sliding scale structure. [71]
>
> … Prior to the passage of the legislation, counties had a strong fiscal incentive to send offenders to the CYA because they only paid a nominal $25 monthly fee per ward. As a result, [CYA] commitments, while often more expensive than other sanction and treatment options, were far less expensive from the counties' perspective.
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> While some counties developed their own locally based programs despite these incentives, other counties appeared to be over-relying on [CYA] commitments. This disparate usage of the [CYA] was reflected in the widely ranging first admission rates across counties. …

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[69] Test Claim, page 5.

[70] SB 2055 Senate Bill Analysis, Senate Rules Committee, Office of Senate Floor Analyses, August 28, 1998, page 6.

[71] Legislative Analyst's Office, Analysis of the 1999-2000 Budget Bill, Criminal Justice Departmental Issues, page 8.

> The problems with the prior fee structure were threefold. First, a large body of research on juvenile justice programs suggests that most juvenile offenders can and should be handled in locally based programs. In part, this is because locally based programs can work more closely with the offender, his family, and the community. Second, these locally based programs tend to be less expensive than a [CYA] commitment, which meant that state funding was encouraging counties to use a more expensive as well as less effective sanctioning option for many offenders. Finally, taxpayers in those counties with lower admissions rates for less serious offenders were paying not only for their own locally based options, but also for a share of the costs created by those other counties with higher [CYA] admissions rates. In response to these shortcomings, the Legislature acted to align the fiscal incentives faced by counties with more cost-effective policies, thereby encouraging counties to invest in preventive and early intervention strategies.[72]
>
> … In the two years since the sliding scale fee took effect, it has significantly reduced the numbers of first admissions to the [CYA]. Overall, first admissions in 1997 were 30 percent lower than in 1996. Admissions data for 1998 continue the 1997 trends. …
>
> Not only have overall admissions [to the CYA] declined, but admissions for the least serious offenders have dropped significantly. … [F]irst admissions for the more serious offenses declined by 15 percent, while admissions in the less serious offense categories declined by 41 percent. This change suggests that counties have responded to the sliding scale fees, but have not been deterred by the increase in the monthly fee from committing more serious offenders when appropriate.[73, 74]

In the case of *Lucia Mar*, the Supreme Court recognized that a "new program or higher level of service" within the meaning of article XIII B, section 6 could include a shift in costs from the state to school districts for the purpose of funding state schools for the handicapped,[75] and remanded the case to the Commission for further findings regarding whether the school districts were "mandated" by the statute in question to make the contributions.[76] Article XIII B, Section 6, subdivision (c), also requires reimbursement for shift of cost cases if the program is "required."

The question of whether a statute imposes a state mandate was addressed in *Kern High School Dist.* There, reaffirming the rule of *City of Merced v. State of California* (1984) 153

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[72] *Id.* at page 10.

[73] *Id.* at pages 11-12.

[74] Reports of the Legislative Analyst are cognizable legislative history for purposes of statutory construction. *Aguimatang v. California State Lottery* (1991) 234 Cal.App.3d 769, 788.

[75] *Lucia Mar, supra,* 44 Cal.3d 830, 836.

[76] *Id.* at pages 836-837.

Cal.App.3d 777, the Supreme Court held that the requirements imposed by a test claim statute are not state-mandated if the claimant's participation in the underlying program is voluntary.[77] Here, as noted above, there is no legal compulsion for counties to bear the additional costs because: a) no state law requires the counties or the juvenile courts to commit category 5 through 7 juvenile offenders to the CYA; and b) the juvenile court's decision is based on recommendations from the county probation department which consider, among other things, available treatment options within that county. Instead, there is ample evidence in the record and in the law indicating that counties do in fact have discretion to effectuate placement options other than CYA for these juvenile offenders. Moreover, the claimant has provided no evidence to show why it cannot avail itself of state funding to establish and maintain local juvenile treatment programs for these low-level offenders.

The cases have further found that, in the absence of strict legal compulsion, a local agency might be "practically" compelled to take an action thus triggering costs that would be reimbursable. In *Kern High School Dist.*, the court concluded that "even if there are some circumstances in which a state mandate may be found in the absence of legal compulsion, the circumstances presented in this case do not constitute such a mandate."[78] The court did provide language addressing what might constitute *practical* compulsion, for instance if the state were to impose a substantial penalty for nonparticipation in a program, as follows:

> Finally, we reject claimants' alternative contention that even if they have not been *legally* compelled to participate in the underlying funded programs, as a *practical* matter they have been compelled to do so and hence to incur notice- and agenda-related costs. Although we do not foreclose the possibility that a reimbursable state mandate might be found in circumstances short of legal compulsion — for example, if the state were to impose a substantial penalty (independent of the program funds at issue) upon any local entity that declined to participate in a given program — claimants here faced no such practical compulsion. Instead, although claimants argue that they have had "no true option or choice" other than to participate in the underlying funded educational programs, the asserted compulsion in this case stems only from the circumstance that claimants have found the benefits of various funded programs "too good to refuse" — even though, as a condition of program participation, they have been forced to incur some costs. On the facts presented, the cost of compliance with conditions of participation in these funded programs does not amount to a reimbursable state mandate. (Emphasis in original.)[79]

The court further concluded that, unlike the circumstances in a previous case which found a state mandate existed,[80] the *Kern* claimants "have not faced 'certain and severe … penalties' such as 'double … taxation' and other 'draconian' consequences."[81]

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[77] *Kern High School Dist., supra*, 30 Cal.4th 727, 731.

[78] *Id.* at page 736.

[79] *Id.* at 731.

[80] *City of Sacramento v. State of California* (1990) 50 Cal.3d 51.

The 2004 *San Diego Unified School Dist.* case further clarified the Supreme Court's views on the practical compulsion issue. In that case, the test claim statutes required K-12 school districts to afford to a student specified hearing procedures whenever an expulsion recommendation was made and before a student could be expelled.[82] The Supreme Court held that hearing costs incurred as a result of statutorily required expulsion recommendations, e.g., where the student allegedly possessed a firearm, constituted a reimbursable state-mandated program.[83] Regarding expulsion recommendations that were discretionary on the part of the district, the court acknowledged the school district's arguments, stating that in the absence of legal compulsion, compulsion *might* nevertheless be found when a school district exercised its discretion in deciding to expel a student for a serious offense to other students or property, in light of the state constitutional requirement for K-12 school districts to provide safe schools.[84] Ultimately, however, the Supreme Court denied reimbursement for the hearing procedures regarding discretionary expulsions on alternative grounds.[85]

In summary, where no "legal" compulsion is set forth in the plain language of a test claim statute or regulation, the courts have ruled that at times, based on the particular circumstances, "practical" compulsion might be found. Here, as noted above, a commitment to the CYA is not legally required. Nor does staff find any support for the notion that claimants are "practically" compelled to make the underlying CYA commitment on a theory that there is a strong safety reason to do so. In fact, the circumstances here are substantially similar to those in the *Kern High School Dist.* case, where the district was denied reimbursement because its participation in the underlying program was voluntary, i.e., no "certain and severe" or "substantial" penalty would result if counties use placement options other than CYA for their low-level juvenile offenders, particularly since state funding for such local juvenile treatment programs is available.

Citing *Lucia Mar*, claimant argues that whenever the state through legislative or regulatory action "drastically changes the basis for 'shared costs' that shifts those costs to local agencies, it has created a new program or higher level of service that requires reimbursement"[86] under article XIII B, section 6. However, as noted in that case and in section 6, subdivision (c), the program in question must be *state mandated*. Because the additional sliding scale costs for CYA commitments of category 5 through 7 juvenile offenders *only* result from an underlying discretionary decision by the county to commit such juveniles to the CYA, staff finds the test claim statutes do not mandate a "new program or higher level of service" within the meaning of article XIII B, section 6.

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[81] *Kern High School Dist., supra,* 30 Cal.4th 727, 751.

[82] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 866.

[83] *Id.* at pages 881-882.

[84] *Id.* at page 887, footnote 22.

[85] *Id.* at page 888.

[86] Letter from Mark W. Cousineau, Supervising Accountant III, Auditor/Controller-Recorder's Office for County of San Bernardino, January 22, 2003, page 2.

Conclusion

Staff finds that additional sliding scale costs associated with commitment of category 5 through 7 juvenile offenders to the CYA were established by the test claim statutes. However, these costs result from an underlying discretionary decision by the local agency to place those juveniles with CYA. Therefore, the test claim statutes do not mandate a "new program or higher level of service" within the meaning of article XIII B, section 6 of the California Constitution.

Recommendation

Staff recommends the Commission adopt this analysis to deny the test claim.