

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Welfare and Institutions Code sections 1800,  
1801 and 1801.5, as amended by Statutes of  
1984, Chapter 546 and Statutes of 1998,  
Chapter 267;

Filed on May 10, 1999

By the County of Alameda, Claimant.

No. CSM 98-TC-13

*Extended Commitment-Youth Authority*

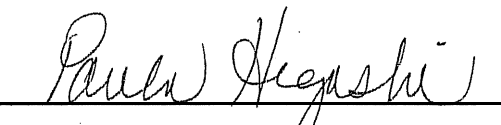
STATEMENT OF DECISION PURSUANT  
TO GOVERNMENT CODE SECTION  
17500 ET SEQ.; TITLE 2, CALIFORNIA  
CODE OF REGULATIONS, DIVISION 2,  
CHAPTER 2.5, ARTICLE 7

*(Adopted on January 25, 2001)*

**STATEMENT OF DECISION**

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

This Decision shall become effective on January 29, 2001.

  
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Paula Higashi, Executive Director

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*(Adopted on January 25, 2001)*

**STATEMENT OF DECISION**

The Commission on State Mandates (Commission) heard and decided this test claim on November 30, 2000 during a regularly scheduled hearing. Ms. Pamela Stone and Ms. Karen Meredith, appeared for the County of Alameda. Mr. Leonard Kaye, appeared for the County of Los Angeles. Mr. James Apps, appeared for the Department of Finance.

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

The Commission, by a vote of 7 to 0, partially approved this test claim.

**BACKGROUND AND FINDINGS**

The test claim legislation makes technical changes to procedures for the extended commitment of dangerous juvenile offenders subject to the jurisdiction of the California Youth Authority (CYA), and requires the Youthful Offender Parole Board (YOPB) to request representation from the prosecuting attorney. Under California law, the CYA may not retain a ward in custody beyond the age of 25.

In 1963, the Legislature established the extended commitment procedure for dangerous juvenile offenders under Welfare and Institutions Code section 1800 et seq.<sup>1</sup> The procedures authorized the former Youth Authority Board to determine that the discharge of a ward would be physically dangerous to the public due to the individual's mental or physical deficiency, disorder or abnormality, and to initiate a civil process to extend the ward's commitment for an

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<sup>1</sup> All cites will be to the Welfare and Institutions Code unless otherwise noted.

additional two years .<sup>2</sup> The due process procedures provided for the action to be filed in the committing court, for parental notification for minors, court appointment of counsel for indigent wards, examination of witnesses and evidence and a full hearing. In 1971, the Legislature amended the original statutory scheme by adding a procedure for persons ordered returned to the CYA to file a written demand that the question of whether he or she is physically dangerous to the public be tried by a jury in the superior court of the committing county. The extended commitment of dangerous CYA wards is not considered penal in nature, but civil. The CYA is under an affirmative duty to provide treatment. If the ward is not dangerous due to a physical or mental condition, or the condition is not treatable, the ward cannot be held beyond his or her release date .<sup>3</sup>

Prior to the 1984 test claim legislation, state law did not specify who should represent the Youth Authority Board and YOPB in extended commitment proceedings. The legislative history indicates that the Attorney General declined to represent the YOPB, maintaining that it was a local responsibility. As a result, the prosecuting district attorney petitioned the committing court on behalf of the CYA,

The test claim legislation amended section 1800 to provide that, if the YOPB determines the discharge of a CYA ward would be physically dangerous to the public due to the individual's mental or physical deficiency, disorder or abnormality, the YOPB shall request the prosecuting district attorney to petition the committing court for an order directing the ward to remain in the Custody of the YOPB.<sup>4</sup>

The YOPB's request to the prosecuting district attorney initiates the extended commitment process.

#### 1. Petitioning the Court

The prosecuting district attorney petitions the court to extend the commitment of dangerous CYA wards by submitting a written statement of facts. The written statement supports the YOPB's opinion that the CYA ward poses a danger to the public. If on its face the petition supports a finding of probable cause, then the court is required to order a preliminary hearing.

#### 2. Preliminary Hearing

At the preliminary hearing, the court must find probable cause that, if released, the CYA ward poses a danger to the public. Prior to the 1998 amendment to section 1801, the standard of proof at the preliminary hearing was beyond a reasonable doubt. <sup>5</sup> The test claim legislation lowered the burden to probable cause.

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<sup>2</sup> The YOPB may seek the extended commitment of dangerous CYA wards in two-year increments. See section 1802.

<sup>3</sup> *People v. Gary* (1971) 5 Cal.3d 296, 302.

<sup>4</sup> The determination of physically dangerous and mental or physical deficiency, disorder or abnormality is subject to a reasonable interpretation. (*People v. Cavanaugh* (1965) 234 Cal.App.2d 316, 323.)

<sup>5</sup> The test claim legislation included only minor and technical changes to section 1801.

At this hearing, evidence may be presented and witnesses called. If the court makes a finding of probable cause that the CYA ward's release poses a danger to the public, the court is required to order the extended commitment of the ward. If the court makes such an order, by right, the case will then proceed to stage three, a jury trial.

### 3. Trial

Prior to the 1984 amendment to section 1801 .5, it was uncertain whether jury unanimity and proof beyond a reasonable doubt was required to extend the commitment of a dangerous CYA ward.' The 1984 amendment reflects the court's holding in *People v. Vernal D.* (1983) 142 Cal.App.3d 29, which held jury unanimity and proof beyond a reasonable doubt are constitutionally required.

If the court orders the extended commitment of a dangerous CYA ward after a preliminary hearing, the ward has a right to a jury trial unless waived. At the trial the jury affirms or denies the court's extended commitment order by answering the following question: ""Is the person physically dangerous to the public because of his or her mental or physical deficiency, disorder or abnormality? ""<sup>7</sup> To affirm the court's order the jury must unanimously decide beyond a reasonable doubt that the CYA ward poses a danger to the public if released.

#### **Claimant's Contentions**

Claimant contends that the test claim legislation constitutes a reimbursable state mandated program by shifting the responsibility for petitioning the committing court to the prosecuting attorney, or in practice, the prosecuting district attorney.

Claimant further concurs with County of Los Angeles' position that indigent defense, transportation and custody costs incurred solely to implement this test claim legislation should be found to be reimbursable activities.

#### **Interested Party's Contentions**

The County of Los Angeles also submits that in addition to state reimbursement for the prosecuting district attorney's costs, the public defender's costs should be reimbursed by the state. The County of Los Angeles also asserts that counties should be reimbursed for transportation and custody costs of the CYA ward.

#### **Department of Finance's Contentions**

The Department of Finance (DOF) agrees with claimant, and finds that the test claim legislation imposes a reimbursable state mandated program.

### **COMMISSION FINDINGS**

In order for a statute to impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution, the statutory language must first direct or obligate an activity or task upon local governmental agencies. If the statutory language does

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<sup>6</sup> The test claim legislation included only minor and technical changes to section 1801.

<sup>7</sup> Government Code section 1801.5.

not mandate or require local agencies to perform a task, then compliance with the test claim statute is within the discretion of the local agency and a reimbursable state mandated program does not exist. ,

In addition, the required activity or task must constitute a new program or create an increased or higher level of service over the former required level of service. The California Supreme Court has defined the word “program” subject to article XIII B, section 6, of the California Constitution as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.

Finally, the new program or increased level of service must impose “costs mandated by the state” pursuant to Government Code section 17514.<sup>8</sup>

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 constitute: a new program or higher level of service and impose costs mandated by the state?
- Are costs for indigent defense, custody, and transportation subject to reimbursement under article XIII B, section 6 of the California Constitution?

These issues are addressed below.

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

Article XIII B, section 6 of the California Constitution states that “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.” (Emphasis added.)

Thus, in order for a test claim statute to impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution, the statutory language must first direct or obligate 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:

Section 1800 of the test claim legislation requires the YOPB chairman to request that the prosecuting district attorney petition the committing court to extend the commitment of dangerous CYA wards. However, the test claim legislation does not require the prosecuting district attorney to petition the committing court on the behalf of the YOPB. In fact, the test

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<sup>8</sup> Article XIII B, section 6 of the California Constitution; *County of Los Angeles v. State of California*, *supra*, 43 Cal.3d at 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *City of Sacramento v. State of California* (1990) 50 Cal.3d 5 1, 66; *Lucia Mar Unijied School Dist. v. Honig* (1988) 44 Cal.3d 830, 835; Government Code section 17514.

claim legislation states, “[t]he prosecuting attorney shall promptly notify the [YOPB] of a decision not to file a petition.” Furthermore, the legislative history provides that the prosecuting district attorney’s prompt notification would allow the YOPB time to contact the Attorney General’s Office, so it could timely file the petition on YOPB’s behalf.<sup>9</sup> Thus, the prosecuting district attorney’s responsibility to petition the committing court on behalf of the YOPB can be interpreted as optional. If, this were the case, the test claim legislation would not be subject to reimbursement under article XIII B.

However, the legislative history also indicates that the Attorney General’s Office has continually declined to file petitions to extend the commitment of dangerous CYA wards on YOPB’s behalf.<sup>10</sup> The Attorney General’s Office maintains that it is a local responsibility.<sup>11</sup> As a result, the prosecuting district attorney has always petitioned the committing court on behalf of the YOPB. Thus, the 1984 amendment to section 1800 did nothing more than codify this existing practice.<sup>12, 13</sup>

Furthermore, the California Supreme Court has held that the prosecuting district attorney has the exclusive authority to prosecute individuals on behalf of the public.<sup>14</sup> This does not mean that the prosecuting district attorney is required to prosecute all individuals committing public offenses. The decision whether or not to prosecute is left to the discretion of the prosecuting district attorney.<sup>15</sup> However, the court in *Kottmeirer v. Municipal Court*, stated that representation by the district attorney, is for the benefit of the people, and if a prosecuting district attorney does not prosecute a case involving serious issues of public concern, the prosecuting district attorney would be in gross dereliction of his duty to the people of the state.<sup>16, 17</sup>

In the present case, the Commission finds that the prosecuting district attorney is faced with two choices: (1) petition the court to extend the commitment of dangerous CYA wards on

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<sup>9</sup> Assembly Criminal Law and Public Safety Committee Bill Analysis, dated April 4, 1984.

<sup>10</sup> California Youth Authority Bill Analysis, dated March 2, 1984.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> Government Code section 17565 states, “If a local agency or school district, at its option, has been incurring cost which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate. ”

<sup>14</sup> *People v. Eubanks (1996)* 14 Cal.4<sup>th</sup> 580, 588-590.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Kottmeirer v. Municipal Court (1990)* 220 Cal.App.3d 602, 609.

<sup>17</sup> The Commission notes that the Court’s statements in *Eubanks* and *Kottmeirer* are in the context of criminal prosecutions. However, the extended commitment process requires the prosecuting district attorney to civilly prosecute dangerous CYA wards, which is similar to criminal prosecutions. Both can result in confinement of the individual. Moreover, the test claim legislation provides the CYA wards facing extended commitment are entitled to all the rights guaranteed under the federal and state constitutions in criminal proceedings. Therefore, the Commission finds that the use of case law surrounding criminal prosecutions is appropriate.

behalf of YOPB; or (2) decline to petition the court on behalf of YOPB, and allow dangerous CYA wards to be released in the community. If the prosecuting district attorney declines to represent the YOPB, the people of that county, and the people of the state, will not have the benefit of representation before the court on an issue of serious concern-whether to release a, dangerous CYA ward into the community. The courts have held that this lack of representation by the district attorney is a gross dereliction of duty to the people of the state. Therefore, the Commission finds that the test claim legislation requires the prosecuting district attorney to petition the committing court for the extended commitment of dangerous CYA wards on behalf of the YOPB.

Accordingly, the Commission concludes that the test claim legislation is subject to article XIII B, section 6 of the California Constitution.

**Issue 2: Does the test claim legislation constitute a new program or higher level of service and impose costs mandated by the state?**

Section 1800 of the test claim statute requires the prosecuting district attorney to represent the YOPB in extended commitment proceedings for dangerous CYA wards. In this regard, the prosecuting district attorney is required to perform the following activities:

- Review the YOPB's written statement of facts upon which the YOPB bases its opinion that discharge from control of the CYA at the time. stated would be physically dangerous to the public;
- Prepare and file petitions with the superior court;
- Represent the YOPB in the preliminary hearing and civil trial;
- Retain necessary experts, investigators, and professionals for the preliminary hearing and civil trial; and
- Interview potential witnesses for the preliminary hearing and civil trial.

Representing the state in an extended commitment proceeding for a dangerous CYA ward in California is a peculiarly governmental function administered by a local agency 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 of the state. Therefore, the Commission finds that county representation of the YOPB in extended commitment proceedings constitutes a "program" within the meaning of section 6, article XIII B of the California Constitution. <sup>18</sup>

Under prior law, the YOPB, like any state agency, was required to request representation from the Attorney General to petition the committing court to extend the commitment of a dangerous CYA ward. However, according to the legislative history, the Attorney General's Office continually declined to file petitions to extend the commitment of dangerous CYA wards and maintained that it is a local responsibility.

The test claim statute now requires the YOPB to request representation from the prosecuting district attorney. Although district attorneys may have represented the YOPB under prior law,

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<sup>18</sup> *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172.

such representation was voluntary. Government Code section 17565 states, "If a local agency or school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate. " Accordingly, the Commission finds that voluntary representation of the YOPB under prior law does not bar reimbursement for costs incurred by prosecuting district attorneys after the operative date of the mandate.

Therefore, the Commission concludes that the section 1800 of the test claim legislation imposes a new program or higher level of service upon prosecuting district attorneys, within the meaning of article XIII B, section 6 of the California Constitution and costs mandated by the state under Government Code section 17514 for the new activities described above.

**Issue 3: Are costs for indigent defense, custody, and transportation subject to reimbursement under article XIII B, section 6, of the California Constitution?**

The Claimant and the County of Los Angeles now assert that costs for the public defender representing indigent CYA wards at extended commitment proceedings, and the CYA ward's custody and transportation costs during the extended commitment proceedings should be reimbursed under this test claim. However, the County overlooks the fact that the test claim statutes did not create the extended commitment proceeding. Statutes of 1963, Chapter 1693 established the extended commitment proceeding.

Article XIII B, section 6 of the California Constitution reads in pertinent part:

"Whenever the Legislature... mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the cost of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for.. legislative mandates enacted prior to January 1, 1975...."

Government Code section 17514, further specifies in pertinent part:

"Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975 . . . which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution. "

Under the original enactment, if the CYA ward was unable to provide his or her own counsel, state law required the court to appoint counsel to represent him.<sup>19</sup> This requirement remains unaffected by the test claim legislation and is not subject to reimbursement under article XIII B, section 6 and Government Code section 175 14 because it was enacted prior to 1975. Likewise, the Commission finds that custody and transportation costs are not reimbursable because counties would have incurred these costs prior to 1975.

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<sup>19</sup> Section 1801 as added by Statutes of 1963, Chapter 1693.



Although the County cites other test claims to support its contention that public defender, custody and transportation costs should be reimbursed, these claims are distinguishable from the *Extended Commitment - Youth Authority Test Claim*. Each of the test claims cited, *Mentally Disordered Sexual Offenders, Not Guilty by Reason of Insanity, and Sexually Violent Predators*, is based on statutes which were enacted after 1975.

Therefore, the Commission finds that the Claimant and the County of Los Angeles' request for reimbursement of public defender, custody and transportation costs should be denied because these costs are ineligible for reimbursement under article XIII B, section 6 and Government Code section 17514.

### **Conclusion**

Based on the foregoing, the Commission concludes that section 1800 of the test claim legislation imposes a reimbursable state-mandated program upon counties within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 for the following activities performed by the prosecuting attorney:

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

The Commission further concludes that costs incurred by counties for indigent representation by public defenders, custody, and transportation are ineligible for reimbursement under section 6, article XIII B of the California Constitution and Government Code section 17514 because these costs resulted from statutes enacted prior to January 1, 1975.