STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

COMMISSION ON STATE MANDATES
980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov

March 3, 2006

Mr. Leonard Kaye
Los Angeles County
Auditor-Controller's Office
500 West Temple Street, Room 603
Los Angeles, CA 90012

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

RE: Draft Staff Analysis and Hearing Date
Firearm Hearings for Discharged Inpatients (99-TC-11)
County of Los Angeles, Claimant
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
Welfare and Institutions Code Section 8103, Subdivisions (f) and (g)

Dear Mr. Kaye:

The draft staff analysis of this test claim is enclosed for your review and comment.

Written Comments
Any party or interested person may file written comments on the draft staff analysis by Friday, **March 24, 2006**. 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. (Cal. Code Regs., tit. 2, § 1181.2.) If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

Hearing
This test claim is set for hearing on **Wednesday, April 26, 2006** at 10:00 a.m. We will notify you of the location of the hearing when a hearing room has been confirmed. The final staff analysis will be issued on or about April 12, 2006. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

Please contact Deborah Borzelleri at (916) 322-4230 with any questions regarding the above.

Sincerely,

PAULA HIGASHI
Executive Director

Enc. Draft Staff Analysis

ITEM ____

TEST CLAIM
DRAFT STAFF ANALYSIS

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

Firearm Hearings for Discharged Inpatients
(99-TC-11)

County of Los Angeles, Claimant

EXECUTIVE SUMMARY

STAFF WILL INSERT THE EXECUTIVE SUMMARY IN THE FINAL ANALYSIS.

STAFF ANALYSIS

Claimant

County of Los Angeles

Chronology

06/22/00	County of Los Angeles filed test claim with the Commission
08/10/00	The Department of Finance submitted comments on test claim with the Commission
02/15/02	County of Los Angeles filed reply to Department of Finance comments
03/03/06	Commission staff issued draft staff analysis

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 1969[1] 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

---

[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).

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]

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, the statute provided the same type of hearing procedure for each of the 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 law existed to prohibit detainees affected by subdivision (f) from possessing firearms; thus, no

---

[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).

[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.

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 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]

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.

---

[16] Welfare and Institutions Code section 5151.

[17] Ibid.

[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).

- 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.

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.

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."

---

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

[23] Ibid.

[24] Ibid.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[25] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[26] "Its 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]

---

[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."

[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.

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 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.

---

[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.

[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*).

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 article XIII B, section 6. Staff 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.[42] 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.[43] 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."[44] 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..."[45, 46]

---

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

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

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

[43] *Ibid.*

[44] *Ibid.*

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

[46] Staff 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, staff finds that the use of case law surrounding criminal prosecutions is analogous and appropriate in this situation.

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,*[47] 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"[48] 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."[49]

Citing *Carmel Valley Fire Protection District v. State of California,*[50] 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."[51] 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.[52] 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."[53]

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

---

[47] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 887-888.

[48] *Ibid.*

[49] *Ibid.*

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

[51] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 888.

[52] *Ibid.*

[53] Statutes 1999, Chapter 578, Section 3.

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. Commission staff 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 state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.[54]

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, staff 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.[55] To make this determination, the test claim legislation must be compared with the legal requirements in effect immediately prior to its enactment.[56]

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.

---

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

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

[56] *Ibid.*

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 when the test claim legislation was originally enacted contained weapons restrictions for certain classes of individuals — i.e., mentally disordered sex offenders,[57] persons found not guilty by reason of insanity for various crimes,[58] persons found by a court to be mentally incompetent to stand trial,[59] or persons placed under conservatorship by a court.[60] Although there were 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)

Until 1997, for all subdivision (f) and (g) civil hearings, the burden was 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.[61]

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.[62] The court relied on two California

[57] Welfare and Institutions Code section 8103, subdivision (a)(1).

[58] Welfare and Institutions Code section 8103, subdivisions (b)(1) and (c)(1).

[59] Welfare and Institutions Code section 8103, subdivision (d)(1).

[60] Welfare and Institutions Code section 8103, subdivision (e)(1).

[61] *Daycamos, supra,* Superior Court, County of Sacramento, 1997, Number 96CS01471, Order, Judgment and Writ of Mandate, page 2 .

[62] *Daycamos, supra,* Superior Court, County of Sacramento, 1997, Number 96CS01471, Reporter's Transcript of Proceedings, February 7, 1997, pages 2-3.

Appellate Court cases regarding seizure of property[63] 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 must deny the sale and/or transfer of a firearm on the basis of a Welfare and Institutions Code section 5150 commitment.[64] As a result, subdivision (f) provisions were no longer in effect.

On September 29, 1999 an urgency statute[65] 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 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."[66]

Because the court through declaratory judgment held the entire subdivision (f) unconstitutional, and the amended version of subdivision (f) was not enacted until September 29, 1999, no law existed to mandate these activities for approximately two years. Thus, the *original* subdivision (f) provisions cannot be considered a new program or higher level of service because 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.

Therefore, staff finds that the district attorney activity of representing the people[67] for both disputed and undisputed subdivision (f) hearings *as set forth in the 1999 test claim statute only* constitutes a new program or higher level of service within the meaning article XIII B, section

---

[63] *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.

[64] *Ibid.*

[65] 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."

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

[67] If this test claim is approved, 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).

6 of the California Constitution. The amendments provide 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. Staff therefore finds that the district attorney activity of representing the people[68] 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 section17514. 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:

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

[68] If this test claim is approved, 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).

	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. Government Code section 17556, subdivision (b) requires the commission to deny the claim where the test claim legislation "affirmed for the state a mandate that had been existing law or regulation by action of the courts."

As previously noted, in 1997, Welfare and Institutions Code section 8103, subdivision (f) was declared unconstitutional by the court in the *Daycamos* case.[70] Subdivision (f) applied to persons taken into custody for 72-hour treatment and evaluation.[71] Prior to *Daycamos*, subdivision (f) hearing procedures placed the burden on the *petitioner* to show by a preponderance of the evidence that he or she *would likely use* firearms in a safe and lawful manner.

The court in its declaratory judgment stated that "... Welfare and Institutions Code § 8103(f) is invalid because it violates the due process guarantees of the federal and California Constitutions together with the rights to acquire and possess property protected by California Constitution, Art I. § 1."[72] 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.[73] The court relied on two California Appellate Court cases regarding seizure of property[74] which found in both instances that the statutes allowing for the seizures were unconstitutional in that they violated procedural due process protections. [75]

---

[70] *Daycamos, supra,* Superior Court, County of Sacramento, 1997, Number 96CS01471.

[71] Welfare and Institutions Code section 5150.

[72] *Daycamos, supra,* Superior Court, County of Sacramento, 1997, Number 96CS01471, Order, Judgment and Writ of Mandate, page 2.

[73] *Daycamos, supra,* Superior Court, County of Sacramento, 1997, Number 96CS01471, Reporter's Transcript of Proceedings, February 7, 1997, pages 2-3.

[74] *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.

[75] Staff notes that the procedural due process protections which might stem from the *federal* Constitution are not applicable in the case of any of the section 8103 weapons restrictions, since the United States Court of Appeals, Ninth Circuit, has stated that the "Second

Section 8103, subdivision (f) was then amended in 1999.[76] That legislation established similar provisions, but placed the burden of proof on the *people,* to show by a preponderance of the evidence that the person *would not likely* use firearms in a safe and lawful manner.[77] In one Assembly Bill Analysis, the stated purpose for the legislation was: "to create a *meaningful* judicial hearing to determine whether a person formerly subject to a 72-hour '5150' hold under the [Lanterman-Petris-Short] law as a danger to self or others may be prohibited from possessing a firearm."[78] (Emphasis added.) The analysis further stated:

> This bill would address the constitutional infirmities cited by [the] court in Dayacamos (sic) with respect to Welfare and Institutions Code section 8103, subdivision (f). It would expressly provide persons discharged from a mental health facility following a 72 hour hold to be informed of their right to a judicial hearing concerning their firearms legal disability under section 8103, subdivision (f). The proposal would also place the burden of proof upon the People to show by preponderance of the evidence that the person will not be likely to use firearms in a safe and lawful manner.
>
> This bill would satisfy the constitutional requirement outline[d] by the Dayacamos (sic) court case while at the same time ensuring the safety of the public.[79]

Staff finds that the 1999 statute was enacted "to affirm for the state a mandate that had been existing law or regulation by action of the courts" with regard to Welfare and Institutions Code section 8103, subdivision (f), and therefore, Government Code section 17556, subdivision (b) is applicable to deny any provisions related to the subdivision (f) hearings.

Subdivision (g) hearings were not affected by the 1999 statute. Therefore, staff finds that the test claim legislation imposes "costs mandated by the state" within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, with respect to Welfare and Institutions Code section 8103, subdivision (g) only.

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 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. Staff therefore finds the hearings under section 8103 do not impose a requirement that is mandated by a federal law under Government Code section 17556, subdivision (c).

[76] Statutes 1999, chapter 578, Assembly Bill 1587.

[77] Welfare and Institutions Code section 8103, subdivision (f)(6).

[78] A.B. 1587, Assembly Bill Analysis, Senate Committee on Public Safety, July 13, 1999 hearing, page 2.

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

Conclusion

Staff finds 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 for district attorney activities in representing the People of the State of California in Welfare and Institutions Code section 8103, subdivision (g) civil hearings.

Staff finds that the test claim legislation does not impose a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution for district attorney activities in representing the People of the State of California in Welfare and Institutions Code section 8103, subdivision (f) civil hearings.

Recommendation

Staff recommends that the Commission adopt this analysis, which finds:

- District attorney activities needed to represent the People of the State of California at Welfare and Institutions Code section 8103, subdivision (g) hearings are reimbursable.
- District attorney activities related to section 8103, subdivision (f) hearings are not reimbursable.

Commission on State Mandates

Original List Date: 7/3/2000
Last Updated: 6/23/2004
List Print Date: 03/03/2006
Claim Number: 99-TC-11
Issue: Firearm Hearings for Discharged Inpatients

Mailing Information: Draft Staff Analysis

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

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, § 1181.2.)

Mr. Leonard Kaye, Esq.
County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012

Claimant

Tel: (213) 974-8564
Fax: (213) 617-8106

Mr. Mark Sigman
Riverside County Sheriff's Office
4095 Lemon Street
P O Box 512
Riverside, CA 92502

Tel: (951) 955-2700
Fax: (951) 955-2720

Mr. Randy Rossi
Department of Justice (F-03)
Firearms Division
1435 Riverpark Drive, Suite 308
Sacramento, CA 95815

Tel: (916) 263-6275
Fax: (916) 263-0676

Ms. Bonnie Ter Keurst
County of San Bernardino
Office of the Auditor/Controller-Recorder
222 West Hospitality Lane
San Bernardino, CA 92415-0018

Tel: (909) 386-8850
Fax: (909) 386-8830

Ms. Jesse McGuinn
Department of Finance (A-15)
915 L Street, 8th Floor
Sacramento, CA 95814

Tel: (916) 445-8913
Fax: (916) 327-0225

Mr. Allan Burdick
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Tel: (916) 485-8102
Fax: (916) 485-0111

Ms. Harmeet Barkschat Mandate Resource Services 5325 Elkhorn Blvd. #307 Sacramento, CA 95842	Tel: (916) 727-1350 Fax: (916) 727-1734
Mr. David Wellhouse David Wellhouse & Associates, Inc. 9175 Kiefer Blvd, Suite 121 Sacramento, CA 95826	Tel: (916) 368-9244 Fax: (916) 368-5723
Mr. Steve Smith Steve Smith Enterprises, Inc. 4633 Whitney Avenue, Suite A Sacramento, CA 95821	Tel: (916) 483-4231 Fax: (916) 483-1403
Mr. William McCamy Office of the District Attorney County of Sacramento 901 G Street Sacramento, CA 95814	Tel: (916) 000-0000 Fax: (916) 000-0000
Ms. Susan Geanacou Department of Finance (A-15) 915 L Street, Suite 1190 Sacramento, CA 95814	Tel: (916) 445-3274 Fax: (916) 324-4888
Mr. Jim Jaggers P.O. Box 1993 Carmichael, CA 95609	Tel: (916) 848-8407 Fax: (916) 848-8407
Ms. Annette Chinn Cost Recovery Systems, Inc. 705-2 East Bidwell Street, #294 Folsom, CA 95630	Tel: (916) 939-7901 Fax: (916) 939-7801
Mr. Glen Everroad City of Newport Beach 3300 Newport Blvd. P. O. Box 1768 Newport Beach, CA 92659-1768	Tel: (949) 644-3127 Fax: (949) 644-3339
Mr. J. Bradley Burgess Public Resource Management Group 1380 Lead Hill Boulevard, Suite #106 Roseville, CA 95661	Tel: (916) 677-4233 Fax: (916) 677-2283

Ms. Ginny Brummels
State Controller's Office (B-08)
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Tel: (916) 324-0256

Fax: (916) 323-6527