ITEM ___

RECONSIDERATION OF PRIOR STATEMENT OF DECISION DRAFT STAFF ANALYSIS

Welfare and Institutions Code Sections 1801 and 1801.5

Statutes 1998, Chapter 267 (SB 2187)

Extended Commitment – Youth Authority (04-RL-9813-07)

Reconsideration Directed By Statutes 2004, Chapter 316, Section 3 (Assem. Bill No. 2851)

EXECUTIVE SUMMARY

Background

Extended Commitment – Youth Authority (98-TC-13), was a test claim heard and partially approved by the Commission. The claim, filed on May 10, 1999, by the County of Alameda, alleged a reimbursable state mandate for Welfare and Institutions Code sections 1800, 1801, and 1801.5, as amended by Statutes 1984, chapter 546, and Statutes 1998, chapter 267. The Legislature has required the Commission to reconsider the Statement of Decision in *Extended Commitment – Youth Authority*, originally adopted January 25, 2001. The original Statement of Decision found reimbursable state-mandated activities were imposed by the 1984 amendment to Welfare and Institutions Code section 1800, but no reimbursable activities were attributed to sections 1801 or 1801.5.

Although Statutes 1984, chapter 546, was part of the original mandate determination, it was not included in the express language of the reconsideration statute, which otherwise named with specificity the statute and chapter numbers the Commission was directed to reconsider. Therefore, the Commission cannot reconsider mandate claims on Statutes 1984, chapter 546, amending Welfare and Institutions Code sections 1800, 1801, and 1801.5, at this time. The reconsideration is limited to amendments by Statutes 1998, chapter 267; however, staff found no new activities specifically attributed to these amendments in the test claim allegations, and found no evidence that the amendments imposed a new program or higher level of service.

Conclusion

Staff concludes that Welfare and Institutions Code sections 1801 and 1801.5, as amended by Statutes 1998, chapter 267, do not impose a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution, and do not impose costs mandated by the state pursuant to Government Code section 17514.

In the case of reimbursable state-mandated activities from Statutes 1984, chapter 546, staff finds the Commission does not have statutory authority to rehear that portion of the original decision, and therefore those findings continue to stand, and no parameters and guidelines amendments are required.

Staff Recommendation

Staff recommends the Commission adopt this staff analysis to continue to deny the reconsidered portions of the original test claim decision.

STAFF ANALYSIS

Chronology

05/10/99	Claimant, County of Alameda, files test claim with Commission
01/25/01	Commission adopts the Statement of Decision in *Extended Commitment – Youth Authority* (98-TC-13)
05/24/01	Parameters and guidelines are adopted by the Commission
08/25/04	Statutes 2004, Chapter 316, Assembly Bill 2851 (AB 2851) becomes effective and requires the Commission to reconsider its decision in *Extended Commitment, Youth Authority*
02/02/05	Notice of reconsideration, briefing and hearing schedule issued by Commission staff, and administrative record for 98-TC-13 posted on the Commission's website
05/24/05	Draft staff analysis issued

Background

Original Decision: *Extended Commitment – Youth Authority*

Extended Commitment – Youth Authority (98-TC-13), was a test claim heard and partially approved by the Commission. The claim, filed on May 10, 1999, by the County of Alameda, alleged a reimbursable state mandate for Welfare and Institutions Code sections 1800, 1801, and 1801.5, as amended by Statutes 1984, chapter 546, and Statutes 1998, chapter 267.

Welfare and Institutions Code section 1800, was first added to the Welfare and Institutions Code by Statutes 1963, chapter 1693. The code section, as it read following amendment by Statutes 1984, chapter 546, follows (amendments indicated in underline and strikeout):

> Whenever the Youthful Offender Parole Board determines that the discharge of a person from the control of the Youth Authority at the time required by Section 1766, 1769, 1770, 1770.1, or 1771, as applicable, would be physically dangerous to the public because of the person's mental or physical deficiency, disorder, or abnormality, the board, through its chairman, shall request the prosecuting attorney to petition ~~make application to~~ the committing court for an order directing that the person remain subject to the control of the authority beyond that time. The petition ~~application~~ shall be filed at least 90 days before the time of discharge otherwise required. The petition ~~application~~ shall be accompanied by a written statement of the facts upon which the board bases its opinion that discharge from control of the Youth Authority at the time stated would be physically dangerous to the public, but no such petition ~~application~~ shall be dismissed nor shall an order be denied merely because of technical defects in the application.
>
> The prosecuting attorney shall promptly notify the Youthful Offender Parole Board of a decision not to file a petition.

All of the reimbursable state-mandated activities found in the *Extended Commitment – Youth Authority* Statement of Decision were attributed to Welfare and Institutions Code section 1800, as amended by Statutes 1984, chapter 546, based on the change of wording to "request the prosecuting attorney to petition" from "make application to."

The following findings were made by the Commission in the *Extended Commitment – Youth Authority* Statement of Decision, adopted January 25, 2001:

> 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 [Youthful Offender Parole Board] written statement of facts upon which the YOPB bases its opinion that discharge from control of the CYA [California Youth Authority] 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.

The Commission adopted parameters and guidelines for this test claim at the May 24, 2001 hearing.

Statutes 2004, chapter 316, section 3 (AB 2851), directs the Commission to reconsider the prior final decision in *Extended Commitment - Youth Authority* by January 1, 2006.

School Districts' Positions

No comments were received on the reconsideration from the original claimants or other interested parties.

State Agency Positions

No comments were received on the reconsideration from Department of Finance or any other state agencies.

Legislative Analyst's Office Report

In December 2003, the Legislative Analyst's Office distributed a report entitled *New Mandates: Analysis of Measures Requiring Reimbursement*.[1] This report to the Legislature discusses recommendations related to the *Extended Commitment – Youth Authority* mandate claim at pages 11 - 12, as follows:

> The commission's decision does not identify any provision of Chapter 546 that increases a district attorney's obligation, responsibility, or authority regarding these extended commitments. Instead, the record and the decision indicate that prosecuting district attorneys have had the authority to petition the court in these civil cases since the process to extend the commitment of wards was instituted in 1963 (Welfare and Institutions Code Section 1800). Throughout this period, counties have used this authority to fulfill their duty to protect local public safety. The commission's decision does not identify any provision of Chapter 546 that changes county district attorney discretion or responsibility regarding these cases. Thus, the commission's decision fails in its responsibility to identify a mandate necessitating legislative appropriation.
>
> Accordingly, we recommend the Legislature request the commission to reconsider its Statement of Decision and make any changes necessary to clarify which, if any, activities impose a state-reimbursable mandate.

Following release of this report, AB 2851 ordered the Commission to reconsider the *Extended Commitment – Youth Authority* Statement of Decision.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[2] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[3] "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."[4] A test claim statute or executive order may impose a reimbursable state-mandated

---

[1] At <http://www.lao.ca.gov/2003/state_mandates/state_mandates_1203.pdf> [as of Apr. 18, 2005.]

[2] Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: "(a) 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."

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

program if it orders or commands a local agency or school district to engage in an activity or task.[5] 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.[6]

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.[7] 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.[8] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[9]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[10]

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.[11] 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."[12]

---

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

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

[6] *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*).

[7] *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.)

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

[9] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

[10] *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.

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

[12] *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.

Issue 1: What is the scope of the Commission's jurisdiction directed by AB 2851?

It is a well-settled issue of law that administrative agencies, such as the Commission, are entities of limited jurisdiction. Administrative agencies have only the powers that are conferred on them, expressly or by implication, by statute or constitution. An administrative agency may not substitute its judgment for that of the Legislature. When an administrative agency acts in excess of the powers conferred upon it by statute or constitution, its action is void.[13]

Since the Commission was created by the Legislature, its powers are limited to those authorized by statute.[14] Government Code section 17551 requires the Commission to hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to reimbursement pursuant to article XIII B, section 6 of the California Constitution. Government Code section 17521 defines the test claim as the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Thus, the Government Code gives the Commission jurisdiction only over those statutes or executive orders pled by the claimant in the test claim, and generally grants the Commission a single opportunity to make a final decision on the test claim. Government Code section 17559 grants the Commission statutory authority to reconsider prior final decisions, if a request to reconsider is made within 30 days after the Statement of Decision is issued.

In the present case, the Commission's jurisdiction is based solely on AB 2851. Absent AB 2851, the Commission would have no jurisdiction to reconsider any part of the *Extended Commitment – Youth Authority* decision since the original decision was adopted and issued in 2001, well over 30 days ago.

Thus, the Commission must act within the jurisdiction granted by AB 2851, and may not substitute its judgment regarding the scope of its jurisdiction on reconsideration for that of the Legislature.[15] Since an action by the Commission is void if its action is in excess of the powers conferred by statute, the Commission must narrowly construe the provisions of AB 2851.

Statutes 2004, chapter 316, section 3 (AB 2851), directs the Commission to reconsider the prior final decision in *Extended Commitment* -- *Youth Authority*, as follows:

> Notwithstanding any other provision of law, by January 1, 2006, the Commission on State Mandates shall reconsider whether each of the following statutes constitutes a reimbursable mandate under Section 6 of Article XIII B of the California Constitution in light of federal statutes enacted and federal and state court decisions rendered since these statutes were enacted:
>
> …
>
> (b) *Extended Commitment, Youth Authority* (No. 98-TC-13; and Chapter 267 of the Statutes of 1998).

---

[13] *Cal. State Restaurant Assn. v. Whitlow* (1976) 58 Cal.App.3d 340, 346-347; citing *Ferdig v. State Personnel Board* (1969) 71 Cal.2d 96, 103-104.

[14] Government Code section 17500 et seq.

[15] *Cal. State Restaurant Assn. v. Whitlow, supra*, 58 Cal.App.3d at pages 346-347.

Statutes 1984, Chapter 546 (AB 2760).

AB 2851 requires the Commission to reconsider "whether each of the following *statutes* constitutes a reimbursable mandate." The subsequent language names Statutes 1998, chapter 267. However, Statutes 1984, chapter 546, although it was part of the original mandate determination, was not included in the express language of the reconsideration statute. AB 2851 otherwise named with specificity the statute and chapter numbers the Commission was directed to reconsider. "A recognized rule of statutory construction is that the expression of certain things in a statute necessarily involves exclusion of other things not expressed - *expressio unius est exclusio alterius*." (*Henderson v. Mann Theatres Corp.* (1976) 65 Cal.App.3d 397, 403.)

Another rule of statutory construction provides that when the statutory language is plain, the court is required to enforce the statute according to its terms. The California Supreme Court determined that:

> In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. We begin by examining the statutory language, giving the words their usual and ordinary meaning. If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citations omitted.][16]

Neither the court, nor the Commission, may disregard or enlarge the plain provisions of a statute or go beyond the meaning of the words used when the words are clear and unambiguous. Thus, the Commission, like the court, is prohibited from writing into a statute, by implication, express requirements that the Legislature itself has not seen fit to place in the statute.[17] To the extent there is any ambiguity in the language used in the statute, the legislative history of the statute may be reviewed to interpret the intent of the Legislature.[18]

As discussed above, the Commission, as an administrative agency, only has the powers conferred on it, expressly or by implication, by statute or constitution. Therefore, the Commission cannot reconsider mandate claims on Statutes 1984, chapter 546, amending Welfare and Institutions Code sections 1800, 1801, and 1801.5, at this time. The reconsideration is limited to the statutory amendments by Statutes 1998, chapter 267.

Reimbursement Period

AB 2851 was urgency legislation, operative August 25, 2004. The legislation does not specify a reimbursement period for any changes to the *Extended Commitment – Youth Authority* parameters and guidelines following the reconsideration of the underlying test claim decision. The courts have established a strong presumption against the retroactive application of statutes, repeatedly finding: "A basic canon of statutory interpretation is that statutes do not operate retrospectively unless the Legislature plainly intended them to do so."[19]

---

[16] *Estate of Griswald* (2001) 25 Cal.4th 904, 910-911.

[17] *Whitcomb v. California Employment Commission* (1944) 24 Cal.2d 753, 757.

[18] *Estate of Griswald, supra*, 25 Cal.4th at page 911.

[19] *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

There is nothing in the plain language of AB 2851 or its legislative history to suggest that the Legislature intended to apply the Commission's decision on reconsideration retroactively. In the absence of clear legislative intent to the contrary, staff finds that AB 2851 is not to be applied retroactively, and the period of reimbursement for the Commission's decision on reconsideration begins July 1, 2005. Thus, if the Commission substantively modifies its prior decision in *Extended Commitment – Youth Authority*, any subsequent changes to the parameters and guidelines will be effective for reimbursement claims filed for the 2005-2006 fiscal year.

Issue 2: Is Statutes 1998, chapter 267 subject to article XIII B, section 6 of the California Constitution?

In order for the remaining test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program." In *County of Los Angeles v. State of California*, the California Supreme Court defined the word "program" within the meaning of article XIII B, section 6 as one 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.[20] The court has held that only one of these findings is necessary.[21]

Staff finds that holding extended commitment proceedings for youthful offenders imposes a program within the meaning of article XIII B, section 6 of the California Constitution because it carries out the governmental function of providing a service to the public by providing a legal mechanism to hold a youthful offender beyond his or her release date if the person is determined to continue to be a physical danger to the public.

However, much of the statutory scheme on extended commitments for youthful offenders was in place prior to 1975, so the analysis must continue to determine if the statute alleged imposes a new program or higher level of service upon eligible claimants within the meaning of the California Constitution, article XIII B, section 6.

Issue 3: Do statutory amendments by Statutes 1998, chapter 267 impose a new program or higher level of service within an existing program within the meaning of the California Constitution, article XIII B, section 6, and impose costs mandated by the state pursuant to Government Code section 17514?

Welfare and Institutions Code Sections 1801 and 1801.5:

Welfare and Institutions Code section 1801,[22] was added by Statutes 1963, chapter 693. The code section, as amended by Statutes 1998, chapter 267, follows:

> (a) If a petition is filed with the court for an order as provided in Section 1800, and, upon review, the court determines that the petition, on its face, supports a finding of probable cause, the court shall order that a hearing be held pursuant to subdivision (b). The court shall notify the person whose liberty is involved, and, if the person is a minor, his or her parent or guardian (if that person can be

---

[20] *County of Los Angeles, supra*, 43 Cal.3d at page 56.

[21] *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

[22] Unless otherwise noted, all references are to the Welfare and Institutions Code.

reached, and, if not, the court shall appoint a person to act in the place of the parent or guardian) of the hearing, and shall afford the person an opportunity to appear at the hearing with the aid of counsel and the right to cross examine experts or other witnesses upon whose information, opinion or testimony the petition is based. The court shall inform the person named in the petition of his or her right of process to compel attendance or [sic] relevant witnesses and the production of relevant evidence.[23] When the person is unable to provide his or her own counsel, the court shall appoint counsel to represent him or her.

The probable cause hearing shall be held within 10 calendar days after the date the order is issued pursuant to this subdivision unless the person named in the petition waives this time.

(b) At the probable cause hearing, the court shall receive evidence and determine whether there is probable cause to believe that discharge of the person would be physically dangerous to the public because of his or her mental or physical deficiency, disorder, or abnormality. If the court determines there is not probable cause, the court shall dismiss the petition and the person shall be discharged from the control of the authority at the time required by Section 1766, 1769, 1770, 1770.1, or 1771, as applicable. If the court determines that there is probable cause, the court shall order that a trial be conducted to determine whether the person is physically dangerous to the public because of his or her mental or physical deficiency, disorder, or abnormality.[24]

---

[23] Typographical error corrected by Statutes 1999, chapter 83, code maintenance statute.

[24] As last amended by Statutes 1984, chapter 546, the section read:

> If a petition is filed with the court for an order as provided in Section 1800, the court shall notify the person whose liberty is involved, and, if the person is a minor, his or her parent or guardian (if that person can be reached, and, if not, the court shall appoint a person to act in the place of the parent or guardian) of the application, and shall afford the person an opportunity to appear in court with the aid of counsel and of process to compel attendance of witnesses and production of evidence. When the person is unable to provide his or her own counsel, the court shall appoint counsel to represent him or her.
>
> If after a full hearing the court is of the opinion that discharge of the person would be physically dangerous to the public because of his or her mental or physical deficiency, disorder, or abnormality, the court shall order the Youth Authority to continue the treatment of the person. If the court is of the opinion that discharge of the person from continued control of the authority would not be physically dangerous to the public, the court shall order the person to be discharged from control of the authority.

For background, Statutes 1984, chapter 546 substituted the words “a petition is filed with” for “the board applies to” in the first sentence, and substituted gender-neutral language throughout. Prior to 1984, the section was not amended since it was enacted in 1963.

Prior law required the court to hold a full evidentiary hearing to determine whether the youthful offender continued to be dangerous to the public. If the determination was that the person remained a danger, then the court continued to the provisions of section 1801.5, which provided for a full jury trial upon request of the person, or by their parent or guardian. The 1998 amendment to section 1801 reworded the statute, but the substantive change was to specify the standard of proof required for the hearing.

In the prior version of section 1801, the standard of proof required at the initial hearing was not explicit. The 1998 amendment now provides for a preliminary *probable cause* hearing on the issue of dangerousness. According to bill analyses for Senate Bill No. 2187 (Stats. 1998, ch. 267), the standard of proof used varied by court, with some requiring a higher, *reasonable doubt*, standard at the section 1801 hearing stage. The Senate Rules Committee analysis from May 19, 1998, provides the following history:

> The sponsor of the bill submits that "a disjointed series of amendments and judicial interpretations" has caused these provisions to "evolve in such a way as to require an unparalleled redundancy by which a 'defendant' is now, arguably, entitled to two consecutive trials at which the people must twice establish the same elements beyond a reasonable doubt."

In addition, the Appropriations Committee Fiscal Summary from May 18, 1998, stated:

> This bill makes consistent the standards to be used in these procedures since it currently varies by court. By requiring only a preponderance of evidence in the initial hearing, there may actually be some minor cost savings to the courts since some courts are now requiring proof beyond a reasonable doubt.

Next, staff reviews the 1998 amendment to Welfare and Institutions Code section 1801.5, which was originally added to the code by Statutes 1971, chapter 1337. Section 1801.5, as amended by Statutes 1998, chapter 267, follows:

> If a trial is ordered pursuant to Section 1801, the trial shall be by jury unless the right to a jury trial is personally waived by the person, after he or she has been fully advised of the constitutional rights being waived, and by the prosecuting attorney, in which case trial shall be by the court. If the jury is not waived, the court shall cause a jury to be summoned and to be in attendance at a date stated, not less than four days nor more than 30 days from the date of the order for trial, unless the person named in the petition waives time. The court shall submit to the jury, or, at a court trial, the court shall answer, the question: Is the person physically dangerous to the public because of his or her mental or physical deficiency, disorder, or abnormality? The court's previous order entered pursuant to Section 1801 shall not be read to the jury, nor alluded to in the trial. The person shall be entitled to all rights guaranteed under the federal and state constitutions in criminal proceedings. A unanimous jury verdict shall be required

> in any jury trial. As to either a court or a jury trial, the standard of proof shall be that of proof beyond a reasonable doubt.[25]

The substantive amendments to section 1801.5 are to the first sentence. Prior law required the court to hold an initial hearing under section 1801. If the court held that the person should be returned to the California Youth Authority, the person, or their parent or guardian, was permitted to file a written demand for a jury trial under section 1801.5. The 1998 amendment requires a jury trial be held following the preliminary hearing finding probable cause, unless the person affirmatively waives the trial. The remainder of the statute, regarding the conduct of the jury trial and standard of proof, is substantively identical to prior law.

In the original test claim filing, the claimant pled Statutes 1998, chapter 267 as it amended Welfare and Institutions Code sections 1801 and 1801.5. However, there are no new activities specifically attributed to these amendments in the test claim allegations.

The courts have long required that the extended commitment scheme provide both due process and equal protection of the law. Under article XIII B, section 6 of the California Constitution, and Government Code section 17556, subdivision (b), the Commission cannot make a finding of a reimbursable state-mandated program if: "The statute or executive order affirmed for the state a mandate that had been declared existing law or regulation by action of the courts." The California Supreme Court decision, *In re Gary W.* (1971) 5 Cal.3d 296, first affirmed the right to a jury trial under Welfare and Institutions Code sections 1800 – 1803. Later, in *People v. Superior Court (Vernal D.)* (1983) 142 Cal.App.3d 29, 35-37, the appellate court found:

> Unquestionably, equal protection compels a unanimous verdict for the involuntary commitment of youthful offenders as well. No distinctions are evident which would justify disparate treatment of youthful offenders, committed to the

---

[25] As last amended by Statutes 1984, chapter 546, the section read:

> If the person is ordered returned to the Youth Authority following a hearing by the court, the person, or his or her parent or guardian on the person's behalf, may, within 10 days after the making of such order, 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 county in which he or she was committed. Thereupon, the court shall cause a jury to be summoned and to be in attendance at a date stated, not less than four days nor more than 30 days from the date of the demand for a jury trial. The court shall submit to the jury the question: Is the person physically dangerous to the public because of his mental or physical deficiency, disorder, or abnormality? The court's previous order entered pursuant to Section 1801 shall not be read to the jury, nor alluded to in such trial. The person shall be entitled to all rights guaranteed under the federal and state constitutions in criminal proceedings. The trial shall require a unanimous jury verdict, employing the standard of proof beyond a reasonable doubt.

For background, Statutes 1984, chapter 546 substituted the final two sentences for the former concluding sentence: "The trial shall be had as provided by law for the trial of civil cases and shall require a verdict by at least three-fourths of the jury," and used gender-neutral language throughout. Prior to 1984, the section was not amended since it was enacted in 1971.

> California Youth Authority, who are denied release based on a finding that they are dangerous to themselves or others. Both equal protection and due process obviously compel the requirement of a unanimous jury verdict. The courts have soundly rejected arguments that these proceedings are civil in nature and therefore entitled to different treatment. The consequence of the proceeding, involuntary incarceration, triggers the full panoply of due process protections. [FN3]
>
> > FN3. Although Vernal D. does not discuss the standard of proof which should be applied in these proceedings, for the guidance of the trial court we explain that in order to comply with the requirements of the due process clauses of the California and federal Constitutions, extended detention under section 1800 must be justified by proof beyond a reasonable doubt. Section 1801.5 implies, in providing that "[t]he trial shall be had as provided by law for the trial of civil cases," that proof by a preponderance of the evidence is satisfactory. It is now well established in California that so drastic an impairment of liberty as is suffered by involuntary commitment may not be supported on any lesser standard than proof beyond a reasonable doubt. (*People v. Feagley, supra*, 14 Cal.3d 338, 345, 121 Cal.Rptr. 509, 535 P.2d 373; *People v. Burnick* (1975) 14 Cal.3d 306, 310, 121 Cal.Rptr. 488, 535 P.2d 352.)
>
> Since the decision in *Gary W.*, the [California] Supreme Court has held that both mentally disordered sex offenders (*People v. Feagley, supra*, 14 Cal.3d 338, 121 Cal.Rptr. 509, 535 P.2d 373), and narcotics addicts (*People v. Thomas, supra*, 19 Cal.3d 630, 139 Cal.Rptr. 594, 566 P.2d 228), are entitled to a unanimous verdict prior to involuntary commitment. Similarly, if for no other reason than that the Supreme Court has previously determined that no constitutional distinction exists among those committees, dangerous youthful offenders are entitled to the same constitutional protections.
>
> Let a peremptory writ of mandate issue directing the trial court to conduct a hearing on petitioner's application to extend Youth Authority control over Vernal D.; *unless waived, Vernal D. is entitled to a trial by jury on the issue of dangerousness; his dangerousness must be established by proof beyond a reasonable doubt; and he may not be involuntarily committed on anything less than a unanimous verdict of that jury*. [Emphasis added.]

The California Supreme Court discussed the jury trial and unanimous verdict standard, and the Legislature's subsequent response to the *Vernal D.* holding, as part of the recent decision, *In re Howard N.* (2005) 35 Cal.4th 117, 134:

> The Legislature promptly responded by amending the extended detention scheme to provide for proof beyond a reasonable doubt and a unanimous verdict. (Assem. Com. on Crim. Law and Public Safety, analysis of Assem. Bill No. 2760 (1983-1984 Reg. Sess.) as introduced Feb. 7, 1984, p. 1 ["The purpose of the bill is to codify judicially mandated due process safeguards in the statute to insure that extension proceedings are conducted properly. (See *People v. Superior Court* (*Vernal D.*) 142 Cal.App.3d 29, [190 Cal.Rptr. 721].) ... This is a rather rare proceeding and it can't be assumed most prosecutors are familiar with it.

> Therefore, it is important to correct the statutes which currently inaccurately reflect what procedural safeguards are necessary"]; Sen. Com. on Judiciary, analysis of Assem. Bill No. 2760 (1983-1984 Reg. Sess.) as introduced Feb. 7, 1984, pp. 1-2 ["The statute now requires that three-fourths of the members of the jury agree by a preponderance of evidence that the ward is dangerous. An appellate court decision, however, has held that due process and equal protection require a unanimous jury verdict beyond a reasonable doubt. [¶] This bill would codify these procedural requirements.... [¶] The purpose of this bill is to conform statutory and case law"]; see also Assemblyman Rusty Areias, letter to Governor Deukmejian re Assem. Bill No. 2760, July 9, 1984, p. 1 ["AB 2760 incorporates safeguards necessary to meet constitutional requirements, thereby preserving a procedure that is vital to protect the public from dangerous, mentally-unbalanced youthful offenders"].)

Regarding the 1998 amendments to section 1801, clarifying that the standard of proof for the preliminary hearing is probable cause, and not reasonable doubt, does not impose a higher level of service on counties. As discussed in the bill history for Statutes 1998, chapter 267, if anything the change served to reduce the workload for prosecuting attorneys. As for the amendments to section 1801.5, staff finds that there is no meaningful difference in a statutory scheme that provides a jury trial upon request, following a preliminary hearing finding for continued detention, or one that provides a jury trial automatically, unless waived. In addition, the revised wording more closely complies with the spirit of court rulings granting detainees full due process protections of a trial by jury before the State can hold the individual beyond the normal statutory time limits for youth offenders.

Therefore staff finds that Welfare and Institutions Code sections 1801 and 1801.5, as amended by Statutes 1998, chapter 267, do not impose a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution, and do not impose costs mandated by the state pursuant to Government Code section 17514.

CONCLUSION

Staff concludes that Welfare and Institutions Code sections 1801 and 1801.5, as amended by Statutes 1998, chapter 267, do not impose a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution, and do not impose costs mandated by the state pursuant to Government Code section 17514.

In the case of reimbursable state-mandated activities from Statutes 1984, chapter 546, staff finds the Commission does not have statutory authority to rehear that portion of the original decision; therefore those findings continue to stand, and no parameters and guidelines amendments are required.[26]

Staff Recommendation

Staff recommends the Commission adopt this staff analysis to continue to deny the reconsidered portions of the original test claim decision.

---

[26] The original Statement of Decision found that Welfare and Institutions Code section 1800, as amended by Statutes 1984, chapter 546 (AB 2760):

> 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.