

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Penal Code Sections 273a, 273d, and 273.1
as amended by Statutes of 1996,
Chapter 1090;

Filed on October 2, 1998

By the County of Los Angeles, Claimant.

No. 98-TC-06

*Child Abuse Treatment Services
Authorization and Case Management*

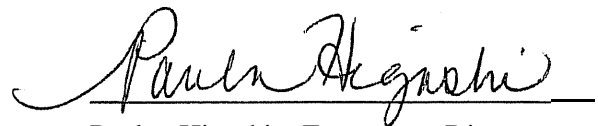
STATEMENT OF DECISION PURSUANT
TO GOVERNMENT CODE SECTION
17500 ET SEQ.; TITLE 2, CALIFORNIA
CODE OF REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Adopted on September 28, 2000)

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 September 29, 2000.



Paula Higashi, Executive Director

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STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim on August 24, 2000 during a regularly scheduled hearing. Leonard Kaye and Jim Wright appeared on behalf of the claimant and Jim Miller and Cheryl Stewart appeared on behalf of 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 6-1, approved this test claim.

BACKGROUND AND FINDINGS

The Commission recognized that the author of the test claim legislation, Assemblyman P. Hawkins stated:

“Child abuse is a serious problem in California. The majority of persons convicted of child abuse receive probation. Current law does not mandate any minimum conditions of probation for child abuse. However, California law does mandate specific conditions of probation for domestic violence. These crimes are closely related but focus on different victims.

“The conditions of probation for domestic violence require that the batterer be sentenced to a minimum of 36 months of probation and participate for no less than one year in a batterer's treatment program which meets specified criteria.

“These counseling programs focus on ending the cycle of violence in the household. There is a need to similarly end the violence in the home when the victim of abuse is a child. The child abuse statutes should be brought in line with the conditions of probation placed on domestic violence offenses. ”

The Commission noted that in order for a statute or executive order, which is the subject of a test claim, to impose a reimbursable state mandated program, the language: (1) must direct or obligate an activity or task upon local governmental entities; and (2) the required activity or task must be new, thus constituting a “new program,” or it must create an increased or “higher level of service” over the former required level of service. The court has defined a “new program” or “higher level of service” as a program that carries out the governmental function of providing services to the public, or a law, which to implement a state policy, imposes unique requirements on local agencies or school districts that do not apply generally to all residents and entities in the state. To determine if a required activity is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must be state mandated. ¹

The test claim legislation involves the imposition of mandatory **minimum** probation periods, development of child abuser’s treatment counseling program vendor approval programs, inspection of child abuser’s treatment counseling programs for approval, and providing treatment case management services. The Commission found that probation treatment programs in California are a peculiarly governmental function administered by local agencies 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 found that developing vendor approval programs, inspecting child abuser’s treatment counseling programs for approval, and providing treatment case management services constitutes a “program” within the meaning of section 6, article XIII B of the California Constitution. ²

However, the Commission noted that the inquiry must continue to determine if the activities are new or impose a higher level of service and if so, if there are costs mandated by the state.

Prior Law Regarding Child Abuse Treatment Services

Before the enactment of the Test Claim legislation, state law provided any person who willfully causes, permits, or inflicts physical pain or mental suffering upon a child is guilty of a crime under former Penal Code section 273a. Prior law also provided that any person who willfully inflicts upon a child any cruel or inhuman corporal punishment is guilty of a **crime** under Penal Code section 273d. Persons convicted of these crimes were eligible for probation. Defendants convicted under section 273d were required to attend supervised counseling if the court deemed participation appropriate for the defendant.

¹ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

² *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172.

The Test Claim Legislation: Current Requirements

The test claim legislation made several modifications to the Penal Code that relate to child abuse. The Penal Code now provides that if a person is convicted of child abuse and probation is granted, the court shall require specified minimum conditions of probation. These minimum conditions include: (1) mandatory minimum periods of probation; (2) criminal court protective orders for the victim(s); (3) successful completion of no less than one year of a child abuser's treatment counseling program approved by the probation department; and (4) abstinence from the use of drugs or alcohol and submission to random testing while on probation if the offense was committed while the defendant was under the influence of drugs or alcohol.³

The claimant contended that the test claim legislation's amendments to the Penal Code, specifically, the requirement that defendants successfully complete no less than one year of a child abuser's treatment counseling program, impose the following state-mandated activities upon county probation departments:

- z Development\implementation of child abuser's treatment counseling program vendor approval programs;
- z Inspection\approval of child abuser's treatment counseling programs; and
- z Provision of treatment case management services such as placement, referral, and progress assessments.

DOF agreed with the claimant that the development\implementation of vendor approval programs and inspection\approval of treatment programs constitute new programs imposed upon counties by the test claim legislation. However, DOF found that providing treatment case management services, such as placements, referrals, and progress assessments, are duties imposed on the treatment counseling programs, not on counties.

The Commission Recognized the Following Activities Agreed to by the Claimant and DOF

Development\Implementation of Vendor Approval Programs and Inspection\Approval of Child Abuser's Treatment Counseling Programs

Both Penal Code sections 273a and 273d at subdivision (c)(3) impose the following condition on probation:

“Successful completion of no less than one year of a child abuser's treatment counseling program approved by the probation department. The defendant shall be ordered to begin participation in the program immediately upon the grant of probation. *The counseling program shall meet the criteria in [Penal Code] Section 273. I.* The defendant shall produce documentation of program enrollment to the court within 30 days of enrollment, along with quarterly progress reports. ” (Emphasis added.)

The Commission found that subdivision (c)(3) imposes the requirement to approve child abuser's treatment counseling programs upon county probation departments. To grant such

³ Penal Code sections 273a and 273d.

approval, probation departments will need to ensure that each treatment program meets the criteria in Penal Code section 273.1. To ensure each treatment program meets the criteria in section 273.1, probation departments will need to develop and implement some type of vendor approval program. Prior law did not require persons granted probation for child abuse to enter into a child abuser's treatment counseling program. Before the enactment of the test claim legislation, county probation departments were not engaging in the development and implementation of an approval program for treatment programs nor were they inspecting and approving such programs. Therefore, the Commission found that these activities represent new programs imposed upon counties by the test claim legislation.

The Commission Recognized the Following Activities Contested by DOF:

Case Management Services – Placement

As detailed above, subdivision (3), of Penal Code sections 273a and 273d require defendants convicted of child abuse to complete “no less than one year of a child abuser’s treatment counseling program approved by the probation department. ” This subdivision also provides that the defendant be ordered to participate in the program “*immediately* upon the grant of probation. ” Although subdivision (3) is silent concerning who shall place the defendant in an appropriate treatment program, the Commission noted that James Wright, Supervising Deputy Probation Officer for the Los Angeles Probation Department, provided in his declaration that “probation staff must place child abusers in specific treatment programs, review their treatment progress, and modify their course of treatment. ” (Emphasis in original.) Moreover, the Commission found that county probation departments must involve themselves in the placement of defendants in appropriate programs since county probation departments have the responsibility to approve the program and would best understand the needs of the defendant and the programs available. Prior law did not require child abuser’s treatment counseling programs to be approved by county probation departments. Prior law, under section 273d, only required to the court, not county probation departments, to determine if supervised counseling was appropriate for the defendant. Therefore, the Commission found that the activities associated with placement of defendants in approved child abuser’s treatment counseling programs represent a new program imposed upon counties by the test claim legislation.

Case Management Services – Referral

Section 273.1, subdivision (b), imposes the requirement upon county probation departments to refer defendants to an alternative child abuser’s treatment counseling program under certain circumstances. Subdivision (b) provides:

“(b) If the program finds that the defendant is unsuitable, the program shall *immediately* contact the probation department or the court. The probation department or court shall either recalendar the case for hearing or refer the defendant to an appropriate alternative child abuser’s treatment counseling program. ”

As the Commission noted above, prior law did not require persons granted probation for child abuse to enter into a child abuser’s treatment counseling program; The test claim legislation

authorizes the program to reject a defendant and contact the court or probation department regarding the defendant's status. Therefore, there are two circumstances where the probation department would be required to refer a defendant to another program: (1) whenever the program contacts the probation department for a referral; or (2) whenever the case is recalendered and the court finds that referral of the defendant to another program is appropriate. Under both of these circumstances, the Commission found that the activities associated with referral represent a new program imposed upon county probation departments.

Case Management Services – Progress Assessments

The Commission found that the activity of providing progress assessments to the court are not imposed upon county probation departments by the test claim legislation. As noted above, subdivision (c)(3) of sections 273a and 273d require the *defendant*, not the county probation department, to provide progress reports to the court. Moreover, Penal Code section 273.1, subdivision (d), provides :

“(d) *The child abuser’s treatment counseling program shall provide the probation department and the court with periodic progress reports at least every three months that include attendance, fee payment history, and program compliance. The program shall submit a final evaluation that includes the program’s evaluation of the defendant’s progress, and recommendation for either successful or unsuccessful termination of the program.*” (Emphasis added.)

Therefore, the Commission found that the activity of providing progress reports to the court is imposed upon *both* the defendant and the child abuser’s treatment counseling program, *not* county departments of probation. However, the Commission found that the test claim legislation imposed a new program upon county probation departments for the activities associated with the receipt, care, and review of defendants’ progress reports.

Based on the foregoing, the Commission found that the test claim legislation imposes a new program upon county probation departments for the development\implementation of child abuser’s treatment counseling program vendor approval programs, the inspection\approval of child abuser’s treatment counseling programs, and the provision of certain placement\referral case management services. However, the Commission noted that the issue remains whether the test claim legislation imposes costs mandated by the state.

The Commission Pfound that the Test Claim Legislation Imposed Costs Mandated by the State Upon County Probation Departments

The Commission noted that in order for the test claim legislation to impose a reimbursable program under article XIII B, section 6 of the California Constitution, the newly required activities must be state mandated.⁴ As the Commission found above, the test claim legislation imposes new programs upon county probation departments by requiring development\implementation of child abuser’s treatment counseling program vendor approval programs, inspection\approval of child abuser’s treatment counseling programs, and the

⁴ *Lucia Mar Unified School Dist.*, *supra* 44 Cal.3d 830, 835.

activities associated with case management for defendant placement and certain referrals of a defendant from one child abuser's treatment counseling program to another. However, the issue of whether the test claim legislation imposed costs mandated by the state upon county probation departments' centers on whether Government Code section 17556, subdivision (g), applies.

Government Code section 17556, subdivision (g), provides:

“The commission shall not find costs mandated by the state . . . in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

“(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction. ”

The claimant contended that Government Code section 17556, subdivision (g), does not apply to this test claim. The claimant cited Penal Code section 15 for the proposition that probation is not defined as a crime.’ The claimant contended that a person convicted and granted probation under the test claim legislation is considered a diverted defendant, not convicted of a crime, and consequently not receiving any punishment. The claimant submitted that program approvals, monitoring, and related case management duties for this test claim are alternatives to punishment. The claimant went on to state “treatment case management services mandated by the test claim legislation require . . . that the probation staff help, not punish, defendants. . . .” Therefore, the claimant concluded that Government Code section 17556, subdivision (g), does not apply to this test claim.

The Commission recognized that the issue of whether subdivision (g) applies to this test claim centers on the applicability of the phrase “changed the penalty for a crime or infraction, but only for that portion of the statute relating *directly to the enforcement of the crime or infraction.* ”

The Plain and Ordinary Meaning of Government Code Section 17556, Subdivision (g)

The Commission noted that the first step in statutory interpretation is to look at the statute's words and give them their plain and ordinary meaning. Generally, statutes must be given a reasonable and common sense construction designed to avoid absurd results. Where the words of the statute are unambiguous, they must be applied as written. Where the words are ambiguous, the statute's legislative history may be used to guide statutory interpretation.⁶

⁵ Penal Code section 15 provides: “A crime or public offense is an act committed or omitted in violation of the law forbidding or commanding it, and to which is annexed, upon conviction, either the following punishments: (1) Death; (2) Imprisonment; (3) Fine; (4) Removal from office; or (5) Disqualification to hold and enjoy office of honor, trust or profit in this state.”

⁶ *Burden v. Snowden* (1992) 2 Cal.4th 556, 562; *People v. King* (1993) 5 Cal.4th 59, 69.

Therefore, the Commission found it is necessary to determine if probation and mandatory participation of a defendant in a child abuser's treatment counseling program is considered *enforcement* of the crime.

"The Enforcement of the Crime or Infraction"

The Commission recognized Webster's definition of "enforce" as "to compel observance of (a law, etc.)."⁷ Black's Law Dictionary defines "enforcement" as "[t]he act of putting something such as a law into effect; the execution of a law."⁸ Black's defines "execution," in turn, as "[c]arrying out some act or course of conduct to its completion."⁹ As stated in Penal Code section 15, crimes include punishments. The term "punishment," in turn, includes "[a]ny fine, penalty, or confinement inflicted upon a person by the authority of the law and the judgment and sentence of a court, for some crime committed by him. . . ."¹⁰ Finally, a "sentence" is defined as "[t]he judgment formally pronounced by the court or judge upon the defendant after his conviction in a criminal prosecution, imposing the punishment to be inflicted, usually in the form of a fine, incarceration, or *probation*."¹¹ (Emphasis added.)

Based on the foregoing, the Commission found that the phrase "enforcement of the crime or infraction" means to carry out to completion the "penalty" or "punishment" associated with the crime. The completion of the enforcement process is the ultimate "sentencing" imposed upon the defendant, which includes probation. The Commission found that subdivision (g), therefore, encompassed those activities that *directly penalize the defendant* for the crime from the point of arrest through conviction and sentencing, including probation, and in this case, participation in a child abuser's treatment counseling program.

It was claimant's position that probation should not be considered as part of the enforcement of a crime. The Commission acknowledged that under California law "probation" is defined as "the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer."¹² However, the Commission further noted that Penal Code section 1202.7 includes punishment as one of the primary considerations in granting probation. Section 1202.7 provides:

"The Legislature finds and, declares that the provision of probation service as an essential element in administration of criminal justice. The safety of the public, which shall be a primary goal through enforcement of court-ordered conditions of probation; the nature of the offense, the interests of justice, *including punishment*, reintegration of the offender into the community, and enforcement of conditions of probation; the loss

⁷ Webster's New World Diet. (3rd college ed. 1988) 450, col. 1.

⁸ Black's Law Dictionary (6th ed. 1990) 528, col.2.

⁹ Id. at 568, col. 1.

¹⁰ Black's Law Dictionary (6th ed. 1990) 1234, col. 1.

¹¹ Id. at 1362, col. 2.

¹² Penal Code section 1203, subdivision (a),

to the victim; and the needs of the defendant shall be the primary considerations in the granting of probation. ” (Emphasis added.)

In addition, the Commission found that the successful completion of probation is required before the unconditional release of the defendant can take place. If the convicted defendant does not successfully complete probation, the defendant is subject to further sentencing and incarceration.¹³

The Commission found that the stated purpose of the test claim legislation is to “end the violence in the home when the victim of abuse is a child. ” Accordingly, the Legislature imposed minimum probation requirements upon persons convicted of child abuse. Defendants are now subject to 48 months of probation for violating Penal Code section 273a and 36 months for violation of Penal Code section 273d. If probation is granted as part of the sentence, the defendant is also required to successfully complete a child abuser’s treatment counseling program as a condition of probation. If the defendant violates the terms of probation or does not satisfactorily complete the child abuser’s treatment counseling program, Penal Code section 1203.2 *expressly* provides that the defendant is subject to further sentencing and incarceration. Based on the foregoing, the Commission found that probation is part of the enforcement of a crime or infraction.

The claimant further asserted that the Commission, in CSM-4447, *Domestic Violence Treatment Program Approvals*, found case management activities reimbursable. The Commission found that the *Domestic Violence Treatment Program Approvals* test claim was distinguishable from the present test claim. The Commission noted that the *Domestic Violence Treatment Program Approvals* test claim analysis did not address or discuss the exception to reimbursement found in Government Code section 17556, subdivision (g).

However, the Commission noted that Government Code section, subdivision (g) was discussed in 96-281-01, *Domestic Violence Treatment Services – Authorization and Case Management*. In this test claim, the Commission found that the activities of referral, monitoring, and assessment of defendants placed in batterer’s programs were not reimbursable under Government Code section 17556, subdivision (g). The Commission, in *Domestic Violence Treatment Services*, further found that probation and the conditions of probation assessed against a defendant constitute a penalty for the conviction of a crime and therefore are *not*

¹³ Penal Code section 1203.2 provides authority to revoke probation and impose further sentencing, including incarceration, if the defendant violates *any* term of probation. Section 1203.2 provides: “(a) At any time during the probationary period of a person released on probation under the care of a probation officer pursuant to this chapter, or of a person released on conditional sentence or summary probation not under the care of a probation officer, if any probation officer or peace officer has probable cause to believe that the probationer is violating any term or condition of his or her probation or conditional sentence, the officer may, without warrant or other process and at any time until the final disposition of the case, rearrest the person and bring him or her before the court or the court may, in its discretion, issue a warrant for his or her rearrest. Upon such rearrest, or upon the issuance of a warrant for rearrest the court may revoke and terminate such probation if the interests of justice so require and the court, in its judgment, has reason to believe from the report of the probation officer or otherwise that the person has violated any of the conditions of his or her probation (c) Upon any revocation and termination of probation the court may, if the sentence has been suspended, pronounce judgment for any time within the longest period for which the person might have been sentenced. ”

reimbursable under section 17556, subdivision (g) as activities directly associated with the enforcement of the crime.

The Commission found that subdivision (g) applies to activities relating to the capture, detention, prosecution, sentencing (including probation and parole) of a defendant. Based on the foregoing, the Commission found that a defendant's probation and the completion of a child abuser's treatment counseling program, as a condition of probation, is a penalty assessed against the defendant for the conviction of child abuse and is subject to Government Code section 17556, subdivision (g). However, the Commission found that only those activities *directly related* to this penalty are subject to the exclusion in Government Code section 17556, subdivision (g).

CONCLUSION

The Commission found that the following activities *are directly related* to the penalty assessed against a defendant under the test claim legislation and therefore, the Commission concluded that the exclusion provided for in Government Code section 17556, subdivision (g), applies.

- ⌘ Provision of placement\referral\assessment case management services.

However, the Commission found that the following activities *are not directly related* to the penalty assessed against a defendant under the test claim legislation and therefore, the Commission concluded that the exclusion provided for in Government Code section 17556, subdivision (g), does not apply.

- ⌘ Development\implementation of child abuser's treatment counseling program vendor approval programs;
- Inspection\approval of child abuser's treatment counseling programs; and
- ⌘ Receipt, care, and review of defendants' progress reports.

Based on the foregoing, the Commission concluded that the test claim legislation imposes reimbursable state-mandated programs upon county probation departments within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 175 14 for the following activities :

- ⌘ Development\implementation of child abuser's treatment counseling program vendor approval programs;
- ⌘ Inspection\approval of child abuser's treatment counseling programs; and
- ⌘ Receipt, care, and review of defendants ' progress reports.

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 350, Sacramento, California 958 14.

September 29, 2000, I served the:

Adopted Statement of Decision

98-TC-06; *Child Abuse Treatment Services Authorization*

Los Angeles County, Claimant

Penal Code Sections 273.1, 273a, and 273d

Statutes of 1996, Chapter 1090

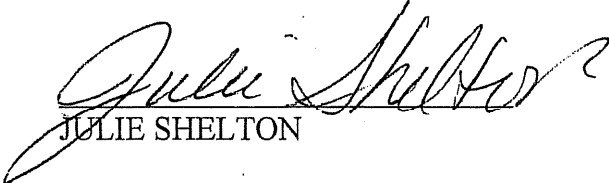
by placing a true copy thereof in an envelope addressed to:

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

State Agencies and Interested Parties (See attached mailing list);

and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully paid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 29, 2000, at Sacramento, California.


JULIE SHELTON