ITEM 6

TEST CLAIM
FINAL STAFF ANALYSIS

Welfare and Institutions Code
Sections 912, 912.1 & 912.5

Statutes 1996, Chapter 6 (S.B. 681)
Statutes 1998, Chapter 632 (S.B. 2055)

California Youth Authority: Sliding Scale for Charges

02-TC-01

County of San Bernardino, Claimant

TABLE OF CONTENTS

ITEM 6

TEST CLAIM
FINAL STAFF ANALYSIS

Welfare and Institutions Code
Sections 912, 912.1 & 912.5

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

California Youth Authority: Sliding Scale for Charges

02-TC-01

County of San Bernardino, Claimant

EXECUTIVE SUMMARY

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

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

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

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

Conclusion

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

Recommendation

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

STAFF ANALYSIS

Claimant

County of San Bernardino

Chronology

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

Background

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

CYA is the state agency responsible for protecting society from the criminal and delinquent behavior of juveniles.[2] The department operates training and treatment programs that seek to educate, correct, and rehabilitate youthful offenders rather than punish them.[3] It is charged with operating 11 institutions and supervising parolees through 16 offices located throughout the state.[4] Individuals can be committed to the CYA by the juvenile court or on remand by the criminal court,[5] or returned to CYA by the Youthful Offender Parole Board.[6] Those juveniles committed to CYA are assigned a category number, ranging from 1 to 7, based on the seriousness of the offense committed; 1 being the most serious and 7 being the least serious.[7]

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

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

---

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

[2] Welfare and Institutions Code section 1700; according to the Legislative Analyst's Office, juveniles committed to CYA are generally between the ages of 12 and 24, and the average age is 19. (Legislative Analyst's Office, Analysis of the 1999-2000 Budget Bill, Criminal Justice Departmental Issues, page 4.)

[3] Welfare and Institutions Code section 1700.

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

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

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

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

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

[9] Welfare and Institutions Code section 245.

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

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

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

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

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

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

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

---

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

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

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

[15] Welfare and Institutions Code section 725.

[16] Welfare and Institutions Code section 725.5.

[17] Test Claim, page 3.

[18] Welfare and Institutions Code section 726.

[19] Welfare and Institutions Code section 727.

[20] Welfare and Institutions Code section 740.

[21] Welfare and Institutions Code section 730.

[22] Welfare and Institutions Code section 731.

[23] Welfare and Institutions Code section 734.

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

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

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

Test Claim Statutes

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

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

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

---

[26] Welfare and Institutions Code section 912.

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

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

[29] Welfare and Institutions Code section 912.1.

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

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

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

Claimant's Position

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

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

---

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

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

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

[34] 1996-97 Budget Act.

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

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

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

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

Position of Department of Finance

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

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

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

Position of California Youth Authority

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

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

Discussion

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

---

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

[38] Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation

purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[40, 41]

A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[42] In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[43]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[44] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.[45] A "higher level of service" occurs when there is "an increase in the actual level or quality of governmental services provided."[46]

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

---

defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

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

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

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

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

[43] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

[44] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (*County of Los Angeles*); *Lucia Mar, supra,* 44 Cal.3d 830, 835).

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

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

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

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

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[49] In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[50]

The analysis addresses the following issues:

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

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

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

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

---

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

[48] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

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

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

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

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

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

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

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

---

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

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

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

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

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

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

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

---

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

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

[55] Welfare and Institutions Code section 731.

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

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

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

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

Courts have recognized the purpose of article XIII B, section 6 is "to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill-equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[58] A test claim statute may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task,[59] and the required activity or task is new, constituting a "new program," or it creates a "higher level of service" over the previously required level of service.[60]

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

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

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

---

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

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

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

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

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

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

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

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

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

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

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

---

[64] Welfare and Institutions Code section 725.5.

[65] Test Claim, page 3.

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

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

[68] *Ibid.*

Claimant states the following:

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

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

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

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

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

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

---

[69] Test Claim, page 5.

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

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

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

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

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

---

[72] *Id.* at page 10.

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

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

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

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

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

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

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

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

---

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

[78] *Id.* at page 736.

[79] *Id.* at 731.

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

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

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

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

---

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

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

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

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

[85] *Id.* at page 888.

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

Conclusion

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

Recommendation

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

PAGES 20-100 LEFT BLANK INTENTIONALLY

EXHIBIT A

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 1 (2/91)

For Official Use Only

RECEIVED
JUL 0 5 2002
COMMISSION ON STATE MANDATES

Claim No. 02-TC-01

TEST CLAIM FORM

Local Agency or School District Submitting Claim

COUNTY OF SAN BERNARDINO

Contact Person	Telephone No.
BARBARA K REDDING	(909) 386-8850

Address

OFFICE OF THE AUDITOR/CONTROLLER-RECORDER
222 W. HOSPITALITY LANE, SAN BERNARDINO, CA 92415-0018

Representative Organization to be Notified

None

This test claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIIIB of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code section(s) within the chaptered bill, if applicable.

Ch. 6, Statutes of 1996 (Sections 4 & 5): Welfare and Institutions Code Sections 912 & 912.5
Ch. 632, Statutes of 1998 (Section 1): Welfare and Institutions Code Section 912.1

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING A TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative	Telephone No.
BARBARA K REDDING REIMBURSABLE PROJECTS MANAGER	(909) 386-8850

Signature of Authorized Representative	Date
Barbara K Redding	July 1, 2002

BEFORE THE
COMMISSION ON STATE MANDATES

Test Claim of
County of San Bernardino

CALIFORNIA YOUTH AUTHORITY: SLIDING SCALE for CHARGES

Chapter 6, Statutes of 1996
Chapter 632, Statutes of 1998

BEFORE THE
COMMISSION ON STATE MANDATES

Test Claim of
County of San Bernardino

CALIFORNIA YOUTH AUTHORITY: SLIDING SCALE for CHARGES

Chapter 6, Statutes of 1996
Chapter 632, Statutes of 1998

STATEMENT OF THE TEST CLAIM

A. MANDATE SUMMARY

Chapter 6, Statutes of 1996 (SB 681) added Section 912.5 to the Welfare and Institutions Code. Section 912.5 requires, as of January 1, 1997, that counties pay the state for each person committed by the juvenile court to the California Youth Authority (CYA) according to a sliding scale based upon the seriousness of the offense. Prior to this legislation, counties were charged a baseline fee of $25 per person per month for all commitments pursuant to Welfare and Institutions Code Section 912.

The monthly baseline fee in Section 912 is now $150 per youth[1] for the four most serious categories of crimes. However, the sliding scale mandated by Section 912.5 is imposed for youth with lesser crimes as follows:

Category	Offenses	Minimum Sentence	2001/02 Monthly Cost to Counties
1.	Murder, kidnapping	7 years	$ 150
2.	Sodomy, rape w/ kidnapping or carjacking	4 years	$ 150
3.	Rape or kidnapping, robbery w/ injury	3 years	$ 150
4.	Arson, vehicular manslaughter, shoot at dwelling	2 years	$ 150
5.	Robbery, assault w/ deadly weapon	18 months	$ 1,300
6.	Victimless or property crimes	12–18 months	$ 1,950
7.	All misdemeanor offenses	1 year or less	$ 2,600

The charge rates for Categories 5, 6, and 7 are calculated at 50%, 75%, or 100% (respectively) of the per capita institutional cost of the CYA. The per capita cost in 2001/02 is $ $2,600.

[1]Chapter 6, Statutes of 1996 also amended Section 912 to increase the baseline charge from $25 to $150 for each youth per month. The rate had been $25 since 1961. This amount was charged for every youth – regardless of the reason for commitment to CYA.

Chapter 632, Statutes of 1998 (SB 2055) added Section 912.1 to the Welfare and Institutions Code to provide that as of January 1, 1999, the rates to be used for these charges are the lesser of (1) the current per capita institutional cost of CYA or (2) the per capita institutional cost of CYA as of January 1, 1997. While this serves to provide a cap on the cost rates imposed on counties, there are still significant costs that must now be borne by counties.

The subject of this test claim is the additional sliding scale charge that exceeds the baseline fee of $150 per month.

Article XIII B, Section 6 of the California Constitution requires reimbursement for shifts in financial responsibility from the State to local governments enacted after 1975. The shift in responsibility from the State to the counties for the CYA commitment costs occurred when the State added the sliding scale cost rates in excess of the baseline rate designated in Section 912 of the Welfare and Institutions Code. Since the mandatory shift in responsibility for CYA costs was effective January 1, 1997, the reimbursement requirement of Article XIII B, Section 6 of the California Constitution applies.

In order for a shift of financial responsibility to be reimbursable, it must constitute a "new program or higher level of service", per Article XIII B, Section 6 of the California Constitution. The CYA sliding scale cost shift constitutes a higher level of service in that counties were not required to pay these fees before the statutes that are the subject of this test claim.

CYA costs were almost totally borne by the State, except for the token $25 per month that was in place during 1996. The sliding scale that was added for 1997 significantly increased the costs to the counties of the juvenile court commitments to CYA. At the same time costs were reduced for the State. This is what the authors of Article XIII B, Section 6 intended to prevent - the shift of financial responsibility from the State to local agencies without a corresponding shift in funding.

Attachment C is the Senate Rules Committee analysis for SB 2055 (Chapter 632) that provides historical background for both of these test claim chapters. The most significant point in this analysis is the statement that the author of Chapter 6 (Hurtt) intended that the purpose of the sliding scale added in 1996 was to provide a monetary disincentive for sending "low level" juvenile offenders to the CYA. By imposing this financial penalty on counties for sending certain offenders to CYA, the State has caused the counties to assume the financial responsibility of the California Youth Authority costs by either paying the higher rates for CYA commitments or keeping the youth in county facilities at county cost.

It is the juvenile courts that determine where a youthful offender is to be committed for housing and treatment. While the county probation officer can make the recommendation for commitment to CYA, the ultimate decision and order is made by the juvenile court. The judges in those counties that do not have an adequate and available placement within the county generally order CYA as the only appropriate and available option. This is especially critical when a county has limited funds and has not been able to construct or operate its own institution for these youth.

B. REIMBURSABLE COSTS MANDATED BY THE STATE

The costs incurred by the County of San Bernardino as the result of the statutes included in the test claim are all reimbursable costs as such costs are "costs mandated by the State" under Article XIII B, Section 6 of the California Constitution, and Section 17500 *et seq.* of the Government Code. Section 17514 of the Government Code defines "costs mandated by the State", and specifies the following three requirements:

1. There are "increased costs which a local agency is required to incur after July 1, 1980".

2. The costs are incurred "as a result of any statute enacted on or after January 1, 1975".

3. The costs are the result of "a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution".

All three of the above requirements for finding costs mandated by the State are met as described previously.

C. STATE FUNDING DISCLAIMERS ARE NOT APPLICABLE

There are seven disclaimers specified in Government Code Section 17556 which would prohibit a finding of costs mandated by the state. **None of the seven disclaimers apply to this test claim.** The following is the list of the disclaimers. The letter in parenthesis represents the pertinent subsection of 17556.

(a) San Bernardino County did not request the legislation imposing the mandate.

(b) The statutes do not affirm for the state that which had been declared existing law or regulation by action of the courts.

(c) The statutes do not implement a federal law or regulation.

(d) San Bernardino County does not have the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service.

(e) Neither Chapters 784/95 nor 156/96 provide for offsetting savings that result in no net costs to local agencies or school districts, nor do they include additional revenue specifically intended to sufficiently fund the costs of the state mandate.

(f) The statutes do not impose duties expressly included in a ballot measure approved by the voters in a statewide election.

g) The statutes did not create a new crime or infraction, did not eliminate a crime or infraction, nor did not change the penalty for a crime or infraction.

Therefore, the above seven disclaimers do not prohibit a finding for state reimbursement for the costs mandated by the state contained in Chapter 6, Statutes of 1996 and Chapter 632, Statutes of 1998.

D. MANDATE MEETS BOTH SUPREME COURT TESTS

The mandate created by these statutes clearly meets both tests that the Supreme Court created in the *County of Los Angeles v. State of California* (1987) for determining what constitutes a reimbursable state mandated local program. The two tests, which the Commission on State Mandates relies upon to determine if a reimbursable mandate exists, are the "unique to government" test and the "carry out a state policy" test. The tests' application to this test claim is discussed below.

Mandate is Unique to Local Government

The statutory scheme set forth above imposes a unique requirement on local government. Counties, rather than public/private entities, are responsible for paying for placement costs for youth committed to CYA. This mandate only applies to local government.

Mandate Carries Out a State Policy

From the legislation, it is clear that the State intended that counties accept significant financial responsibility for youth committed to CYA that was formerly funded, almost exclusively, by the State before the effective date of Chapter 6, Statutes of 1996.

Both of these tests are met.

E. ESTIMATED INCREASED COSTS

Fiscal Year 2000/01

Total paid to CYA for juvenile court commitments	$ 6,257,537
Amount payable pursuant to §912 ($150 per youth, per month)	1,079,850
Test claim - mandated costs at sliding scale of § 912.5	$ 5,177,687

Fiscal Year 2001/02

Total paid to CYA for juvenile court commitments (estimated)	$ 7,535,940
Amount payable pursuant to §912 ($150 per youth, per month)	1,066,350
Test claim - mandated costs at sliding scale of § 912.5	$ 6,469,590

F. CONCLUSION

The enactment of Chapter 6, Statutes of 1996 and Chapter 632, Statutes of 1998, imposed a new state mandated program and cost on the County of San Bernardino, by requiring it to pay a significant fee for those youth committed by juvenile court. That fee was fully intended to "penalize" those counties that do not have their own placement facilities for the youth with less serious offenses. This mandated program meets all of the criteria and tests for the Commission on State Mandates to find a reimbursable state mandated program. None of the disclaimers or other statutory or constitutional provisions that would relieve the State from its constitutional obligation to provide reimbursement has any application to this claim.

Government Code Section 17514 defines "costs mandated by the state" as:

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

The shift in financial responsibility required by Section 912.5 of the Welfare and Institutions Code results in a higher level of service which counties are required to incur after July 1, 1980, as a result of a statute enacted on or after January 1, 1975.

Therefore, based on the foregoing, the County of San Bernardino respectfully requests that the Commission on State Mandates determine that Chapter 6, Statutes of 1996 and Chapter 632, Statutes of 1998, impose reimbursable state-mandated costs pursuant to Section 6 of Article XIII B of the California Constitution for the financial responsibility of the CYA costs that has been shifted from the State to counties.

G. CLAIM CERTIFICATION

The foregoing facts are known to me personally and if so required, I could and would testify to the statements made herein. I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 1st day of July, 2002, at San Bernardino, California, by:

Barbara K. Redding
Reimbursable Projects Manager
Office of the Auditor/Controller-Recorder
222 W. Hospitality Lane, 4th Floor
San Bernardino, CA 92415-0018
Phone: (909) 386-8850
Fax: (909) 386-8830

A

BILL NUMBER: SB 681 CHAPTERED
BILL TEXT

CHAPTER 6
FILED WITH SECRETARY OF STATE FEBRUARY 2, 1996
APPROVED BY GOVERNOR FEBRUARY 1, 1996
PASSED THE SENATE JANUARY 30, 1996
PASSED THE ASSEMBLY JANUARY 29, 1996
AMENDED IN ASSEMBLY JANUARY 25, 1996
AMENDED IN ASSEMBLY SEPTEMBER 15, 1995
AMENDED IN ASSEMBLY SEPTEMBER 8, 1995
AMENDED IN ASSEMBLY JULY 5, 1995
AMENDED IN SENATE MAY 3, 1995

INTRODUCED BY Senator Hurtt

FEBRUARY 22, 1995

An act to amend Section 4497.38 of the Penal Code, to amend Section 2105 of, and to repeal Section 2105.1 of, the Streets and Highways Code, to amend Sections 912, 16990, 17000.5, 17000.6, 17001.5, and 17608.05 of, and to add Sections 912.5 and 17001.51 to, the Welfare and Institutions Code, relating to local government assistance, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 681, Hurtt. Local government assistance.

(1) Existing law provides for the award of moneys to the counties from the General Fund for juvenile facilities, as specified, only if county matching funds are provided, as specified.

This bill would specify exceptions to the requirement.

(2) Existing law requires each county to pay the state $25 per month for the time a person from that county is committed to the Department of the Youth Authority, as specified.

This bill would revise and recast this provision to require the county to pay the state $150 per month for the time a person from that county is committed to the Department of the Youth Authority, effective January 1, 1997.

The bill would also require each county to pay the state for each person committed to the Department of the Youth Authority pursuant to a scale with regard to the offense on which the commitment is based.

(3) Existing law continuously appropriates special fund moneys for apportionments to cities and counties of a portion of the revenues derived from a per gallon tax on motor vehicle fuels in accordance with prescribed formulas. A city's or county's entitlement to the apportioned funds from the tax imposed at a rate of more than 9 per gallon is conditional upon its expenditure from its general fund for street and highway purposes of an amount not less than the annual average of its expenditures during the 1987-88, 1988-89, and 1989-90 fiscal years. Under existing law, this condition is not applicable for the 1992-93, 1993-94, 1994-95, 1995-96, and 1996-97 fiscal years. t This bill would delete that condition. Thus, this bill would make funds available to cities and counties that would not be eligible otherwise, thereby making an appropriation.

(4) Existing law requires any county receiving certain state allocations to maintain specified levels of financial support of

county funds for health services.

This bill would revise county realignment financial responsibilities.

(5) Existing law authorizes the board of supervisors in any county to adopt a general assistance standard of aid, including the value of in-kind aid.

This bill would provide that the value of in-kind aid includes, but is not limited to, the value of specified amounts of medical aid and care.

(6) Existing law authorizes the board of supervisors of any county to adopt a standard of aid below a specified level if the Commission on State Mandates makes a finding that the prescribed level would result in significant financial distress to the county. The commission may make a finding of financial distress for a period of up to 12 months and is required to act on county applications within specified time periods.

This bill would authorize the commission to make a finding of financial distress for a period of up to 36 months and would extend the application periods.

(7) Existing law authorizes the board of supervisors of each county to adopt residency requirements for purposes of determining a person's eligibility for general assistance.

This bill would authorize counties to establish a standard of general assistance for applicants or recipients who share housing with unrelated persons who are not legally responsible for them, and would prohibit an employable individual from receiving aid for more than 3 months in any 12-month period whether or not the months are consecutive. The bill would also authorize a county to require adult applicants and recipients of benefits under the general assistance program to undergo screening for substance abuse.

(8) Existing law permits a reduction for the 1994-95 fiscal year of up to $15,000,000 in the amount a county or a city is required to deposit into the health account each month.

This bill would permit a reduction of up to $25,000,000 in that amount and would delete that fiscal year restriction.

(9) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Appropriation: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 4497.38 of the Penal Code is amended to read:

4497.38. (a) Awards shall be made only if county matching funds of 25 percent are provided except as specified in subdivision (b).

(b) (1) A county or a consortium of counties may request the Director of the Department of the Youth Authority for a deferral of payment of the required matching funds for the construction of a juvenile detention facility. This request shall be approved if the county or consortium of counties meet all of the following criteria:

(A) The county or consortium of counties has plans for the construction of the facility approved by the Department of the Youth Authority.

(B) The facility to be built is located in Humboldt County.

the Youth Authority, on parole or otherwise, and cared for and supported at the expense of the Department of the Youth Authority. This section applies to any person committed to the Department of the Youth Authority by a juvenile court, including persons committed to the Department of the Youth Authority prior to January 1, 1997, who on or after January 1, 1997, remain in or return to the facilities described in this section.

The Department of the Youth Authority shall present to the county, not more frequently than monthly, a claim for the amount due the state under this section, which the county shall process and pay pursuant to the provisions of Chapter 4 (commencing with Section 29700) of Division 3 of Title 3 of the Government Code.

SEC. 5. Section 912.5 is added to the Welfare and Institutions Code, to read:

912.5. (a) For each person committed to the Department of the Youth Authority by a juvenile court on or after January 1, 1997, the county from which he or she is committed shall pay the state the following rate:

(1) If the offense on which the commitment is based is listed in Section 4955 of Title 15 of the California Code of Regulations, the rate is 50 percent of the per capita institutional cost of the Department of the Youth Authority.

(2) If the offense on which the commitment is based is listed in Section 4956 of Title 15 of the California Code of Regulations, the rate is 75 percent of the per capita institutional cost of the Department of the Youth Authority.

(3) If the offense on which the commitment is based is listed in Section 4957 of Title 15 of the California Code of Regulations, the rate is 100 percent of the per capita institutional cost of the Department of the Youth Authority.

(b) For purposes of this section, "the offense on which the commitment is based" means any offense that has been sustained by the juvenile court and that is included in the determination of the maximum term of imprisonment by the juvenile court pursuant to Section 731.

(c) For purposes of this section, the charge against the county shall not apply to periods of confinement that are solely pursuant to a revocation of parole by the Youthful Offender Parole Board.

(d) The charge against the county prescribed by this section shall be in lieu of the charge prescribed by Section 912 and not in addition to that charge.

(e) The Department of the Youth Authority shall present to the county, not more frequently than monthly, a claim for the amount due the state under this section, which the county shall process and pay pursuant to the provisions of Chapter 4 (commencing with Section 29700) of Division 3 of Title 3 of the Government Code.

(f) The Department of the Youth Authority shall adopt emergency regulations for implementation of this section.

SEC. 6. Section 16990 of the Welfare and Institutions Code is amended to read:

16990. (a) (1) Any county receiving an allocation pursuant to this chapter and Chapter 4 (commencing with Section 16930) shall, at a minimum, maintain a level of financial support of county funds for health services at least equal to the total of the amounts specified in this subdivision. The amounts specified in paragraph (1) shall be adjusted on July 1 of each year equal to the growth in the sales tax and vehicle license fees allocated to the trust fund accounts and the county general fund pursuant to Chapter 6 (commencing with Section 17600) of Part 5.

Each of the following counties shall maintain a realignment

(C) The county or consortium of counties submits to and receives approval by the Department of the Youth Authority, a plan and schedule for payment of the required match.

(2) Contribution of the county or consortium of counties matching requirement shall commence no later than three years from the date of occupation of any facility financed under this chapter.

(3) Under no circumstances shall the county match for any county juvenile project be less than 25 percent.

SEC. 2. Section 2105 of the Streets and Highways Code is amended to read:

2105. In addition to the apportionments prescribed by Sections 2104, 2106, and 2107, from the revenues derived from a per gallon tax imposed pursuant to Section 7351 of the Revenue and Taxation Code, and a per gallon tax imposed pursuant to Section 8651 of that code, the following apportionments shall be made:

(a) A sum equal to the net revenue from a tax of 11.5 percent of any per gallon tax in excess of nine cents ($0.09) per gallon under Section 7351 of the Revenue and Taxation Code, and 11.5 percent of any per gallon tax in excess of nine cents ($0.09) per gallon under Section 8651 of that code, shall be apportioned among the counties, including a city and county.

The amount of apportionment to each county, including a city and county, during a fiscal year shall be calculated as follows:

(1) One million dollars ($1,000,000) for apportionment to all counties, including a city and county, in proportion to each county's receipts during the prior fiscal year under Sections 2104 and 2106.

(2) One million dollars ($1,000,000) for apportionment to all counties, including a city and county, as follows:

(A) Seventy-five percent in the proportion that the number of fee-paid and exempt vehicles which are registered in the county bears to the number of fee-paid and exempt vehicles registered in the state.

(B) Twenty-five percent in the proportion that the number of miles of maintained county roads in the county bears to the miles of maintained county roads in the state.

(3) For each county, determine its factor which is the higher amount calculated pursuant to paragraph (1) or (2) divided by the sum of the higher amounts for all of the counties.

(4) The amount to be apportioned to each county is equal to its factor multiplied by the amount available for apportionment.

(b) A sum equal to the net revenue from a tax of 11.5 percent of any per gallon tax in excess of nine cents ($0.09) per gallon under Section 7351 of the Revenue and Taxation Code, and 11.5 percent of any per gallon tax in excess of nine cents ($0.09) per gallon under Section 8651 of that code, shall be apportioned to cities, including a city and county, in the proportion that the total population of the city bears to the total population of all the cities in the state.

SEC. 3. Section 2105.1 of the Streets and Highways Code is repealed.

SEC. 4. Section 912 of the Welfare and Institutions Code is amended to read:

912. Effective January 1, 1997, for each person committed to the Department of the Youth Authority, the county from which he or she is committed shall pay the state one hundred fifty dollars ($150) per month for the time that person remains in any institution under the direct supervision of the Department of the Youth Authority, or in any institution, boarding home, foster home, or other private or public institution in which he or she is placed by the Department of

financial maintenance of effort according to the following schedule:

Jurisdiction	Amount
Alameda	$ 62,950,138
Alpine	150,781
Amador	1,702,152
Butte	8,378,036
Calaveras	1,286,374
Colusa	1,362,787
Contra Costa	31,188,063
Del Norte	1,305,412
El Dorado	5,626,036
Fresno	32,555,212
Glenn	1,368,045
Humboldt	8,995,114
Imperial	8,526,220
Inyo	2,320,718
Kern	23,025,845
Kings	4,310,952
Lake	1,767,837
Lassen	1,555,628
Los Angeles	510,082,064
Madera	3,523,697
Marin	11,349,537
Mariposa	766,751
Mendocino	2,782,024
Merced	4,711,969
Modoc	939,453
Mono	1,673,165
Monterey	11,816,218
Napa	4,751,422
Nevada	2,669,976
Orange	66,846,735
Placer	3,009,967
Plumas	1,143,704
Riverside	33,598,282
Sacramento	33,012,993
San Benito	1,601,614
San Bernardino	27,576,793
San Diego	49,373,333
San Francisco	106,622,954
San Joaquin	12,646,288
San Luis Obispo	5,888,487
San Mateo	21,788,027
Santa Barbara	12,659,559
Santa Clara	47,316,403
Santa Cruz	8,373,710
Shasta	6,521,122
Sierra	327,339
Siskiyou	2,401,825
Solano	8,942,768
Sonoma	16,146,306
Stanislaus	13,403,954
Sutter	4,872,252
Tehama	3,257,915
Trinity	1,599,409
Tulare	8,593,714
Tuolumne	2,525,076

Ventura	17,042,243
Yolo	4,396,875
Yuba	3,083,423
Total	$1,278,014,696

(2) A county may, upon notifying the department of the transfers authorized by this paragraph, reduce the level of financial maintenance of effort required of the county by paragraph (1) by the amount of the funds transferred from the Health Account pursuant to Section 17600.20.

(b) For purposes of this section, if a county desires to use any of its allocation pursuant to this chapter or Chapter 4 (commencing with Section 16930) for programs and costs not reported as part of the plan and budget required by Section 16800, the county, as a condition of using its allocation for these purposes, must maintain an amount of county funding for those programs and costs at least equal to the 1988-89 fiscal year levels.

(c) Moneys received by a county under this chapter shall be accounted for as revenue in the plan and budget which is required pursuant to Section 16800 and shall not be used as county matching funds for any other program requiring a county match.

(d) If a county fails to maintain financial maintenance of effort at least equal to the total of the amounts specified in paragraph (1) of subdivision (a), the department shall recover funds allocated to the county under this part sufficient to bring the county into compliance with the financial maintenance of effort provisions. Funds shall be recovered proportionately from the Hospital Services Account, the Physician Services Account, and the Unallocated Account.

(e) The participation fee specified in Section 16809.3 shall not be included in determining a county's compliance with the maintenance of effort provisions of this section.

(f) For the purposes of determining the level of financial support required for the 1991-92 fiscal year, the amounts specified in paragraph (1) of subdivision (a) shall be reduced to reflect shortfalls in revenue to local health and welfare trust fund health accounts due to shortfalls in receipts of sales tax revenue and county deposits required pursuant to subdivision (b) of Section 17608.10, compared to the amounts of these funds originally anticipated, as determined by the Director of Health Services.

(g) For the purposes of determining the level of financial support required in the 1992-93 fiscal year, the amounts specified in paragraph (1) of subdivision (a) shall be reduced by 7 percent.

(h) For the purposes of determining the level of financial support required in the 1993-94 fiscal year and subsequent fiscal years, the amounts specified in paragraph (1) of subdivision (a) shall be reduced to reflect shortfalls in revenue to local health and welfare trust fund health accounts due to shortfalls in receipts of sales tax revenue and county deposits required pursuant to subdivision (b) of Section 17608.10, compared to the amounts of these funds originally anticipated for the 1991-92 fiscal year, as determined by the Director of Health Services.

SEC. 7. Section 17000.5 of the Welfare and Institutions Code is amended to read:

17000.5. (a) The board of supervisors in any county may adopt a general assistance standard of aid, including the value of in-kind aid which includes, but is not limited to, the monthly actuarial value of up to forty dollars ($40) per month of medical care, that is 62 percent of a guideline that is equal to the 1991 federal official

poverty line and may annually adjust that guideline in an amount equal to any adjustment provided under Chapter 2 (commencing with Section 11200) of Part 3 for establishing a maximum aid level in the county. This subdivision is not intended to either limit or expand the extent of the duty of counties to provide health care.

(b) The adoption of a standard of aid pursuant to this section shall constitute a sufficient standard of aid.

(c) For purposes of this section, "federal official poverty line" means the same as it is defined in subsection (2) of Section 9902 of Title 42 of the United States Code.

(d) For purposes of this section, "any adjustment" includes, and, prior to the addition of this subdivision, included statutory increases, decreases, or reductions in the maximum aid level in the county under the Aid to Families with Dependent Children program contained in Chapter 2 (commencing with Section 11200) of Part 3.

(e) In the event that adjustments pursuant to Section 11450.02 are not made, the amounts established pursuant to subdivision (a) may be adjusted to reflect the relative cost of housing in various counties as follows:

(1) Reduced by 1.5 percent in the Counties of Alameda, Contra Costa, Los Angeles, San Diego, Santa Barbara, Sonoma, and Ventura.

(2) Reduced by 3 percent in the Counties of San Luis Obispo, Nevada, Sierra, Monterey, Napa, Solano, Riverside, San Bernardino, Alpine, Amador, Calaveras, Inyo, Kern, Mariposa, Mono, and Tuolumne.

(3) Reduced by 4.5 percent in the Counties of Stanislaus, Imperial, El Dorado, Placer, Sacramento, Yolo, Humboldt, San Benito, Del Norte, Fresno, Lake, Mendocino, Shasta, Trinity, Butte, Merced, Tulare, San Joaquin, Lassen, Modoc, Plumas, Siskiyou, Tehama, Kings, Madera, Colusa, Glenn, Sutter, and Yuba.

SEC. 8. Section 17000.6 of the Welfare and Institutions Code is amended to read:

17000.6. (a) The board of supervisors of any county may adopt a standard of aid below the level established in Section 17000.5 if the Commission on State Mandates makes a finding that meeting the standards in Section 17000.5 would result in a significant financial distress to the county. When the commission makes a finding of significant financial distress concerning a county, the board of supervisors may establish a level of aid which is not less than 40 percent of the 1991 federal official poverty level, which may be further reduced pursuant to Section 17001.5 for shared housing. The commission shall not make a finding of significant financial distress unless the county has made a compelling case that, absent the finding, basic county services, including public safety, cannot be maintained.

(b) Upon receipt of a written application from a county board of supervisors, the commission may make a finding of financial distress for a period of up to 36 months pursuant to regulations that the commission shall adopt, that are necessary to implement this section. The period of reduction may be renewed annually by the commission upon reapplication by the county. Any county that filed an application prior to July 1, 1995, that was approved by the commission on or before August 31, 1995, shall be deemed to have had that application approved for a period of 36 months.

(c) As part of the decisionmaking process, the commission shall notice and hold a public hearing on the county's application or reapplication in the county of application. The commission shall provide a 30-day notice of the hearing in the county of application or reapplication. The commission shall notify the applicant county of its preliminary decision within 60 days after receiving the

application and final decision within 90 days after receiving the application. If a county files an application while another county's application is pending, the commission may extend both the preliminary decision period up to 120 days and the final decision period up to 150 days from the date of the application.

(d) This section shall not be construed to eliminate the requirement that a county provide aid pursuant to Section 17000.

(e) Any standard of aid adopted pursuant to this section shall constitute a sufficient standard of aid.

(f) The commission may adopt emergency regulations for the implementation of this section.

SEC. 9. Section 17001.5 of the Welfare and Institutions Code is amended to read:

17001.5. (a) Notwithstanding any other provision of law, including, but not limited to, Section 17000.5, the board of supervisors of each county, or the agency authorized by the county charter, may do any of the following:

(1) (A) Adopt residency requirements for purposes of determining a persons' eligibility for general assistance. Any residence requirement under this paragraph shall not exceed 15 days.

(B) Nothing in this paragraph shall be construed to authorize the adoption of a requirement that an applicant or recipient have an address or to require a homeless person to acquire an address.

(2) (A) Establish a standard of general assistance for applicants and recipients who share housing with one or more unrelated persons or with one or more persons who are not legally responsible for the applicant or recipient. The standard of general assistance aid established pursuant to Section 17000.5 for a single adult applicant or recipient may be reduced pursuant to this paragraph by not more than the following percentages, as appropriate:

(i) Fifteen percent if the applicant or recipient shares housing with one other person described in this subparagraph.

(ii) Twenty percent if the applicant or recipient shares housing with two other persons described in this subparagraph.

(iii) Twenty-five percent if the applicant or recipient shares housing with three or more other persons described in this paragraph.

(B) Any standard of aid adopted pursuant to this paragraph shall constitute a sufficient standard of aid for any recipient who shares housing.

(C) Counties with shared housing reductions larger than the amounts specified in subparagraph (A) as of August 19, 1992, may continue to apply those adjustments.

(3) Discontinue aid under this part for a period of not more than 180 days with respect to any recipient who is employable and has received aid under this part for three months if the recipient engages in any of the following conduct:

(A) Fails, or refuses, without good cause, to participate in a qualified job training program, participation of which is a condition of receipt of assistance.

(B) After completion of a job training program, fails, or refuses, without good cause, to accept an offer of appropriate employment.

(C) Persistently fails, or refuses, without good cause, to cooperate with the county in its efforts to do any of the following:

(i) Enroll the recipient in a job training program.

(ii) After completion of a job training program, locate and secure appropriate employment for the recipient.

(D) For purposes of this paragraph, lack of good cause may be demonstrated by a showing of any of the following:

(i) The willful failure, or refusal, of the recipient to participate in a job training program, accept appropriate employment, or cooperate in enrolling in a training program or locating employment.

(ii) Not less than three separate acts of negligent failure of the recipient to engage in any of the activities described in clause (i).

(4) Prohibit an employable individual from receiving aid under this part for more than three months in any 12-month period, whether or not the months are consecutive. This paragraph shall apply to aid received on or after the effective date of this paragraph. This paragraph shall apply only to those individuals who have been offered an opportunity to attend job skills or job training sessions.

(5) Notwithstanding paragraph (3), discontinue aid to, or sanction, recipients for failure or refusal without good cause to follow program requirements. For purposes of this subdivision, lack of good cause may be demonstrated by a showing of either (A) willful failure or refusal of the recipient to follow program requirements, or (B) not less than three separate acts of negligent failure of the recipient to follow program requirements.

(b) (1) The Legislative Analyst shall conduct an evaluation of the impact of this section on general assistance recipients and applicants.

(2) The evaluation required by paragraph (1) shall include, but need not be limited to, all of the following:

(A) The impact on the extent of homelessness among applicants and recipients of general assistance.

(B) The rate at which recipients of general assistance are sanctioned by county welfare departments.

(C) The impact of the 15-day residency requirement on applicants or recipients of general assistance, including how often the requirement is invoked.

(3) The Legislative Analyst shall, in the conduct of the study required by this section, consult with the State Department of Social Services, the County Welfare Directors Association, and organizations that advocate on behalf of recipients of general assistance.

(c) A county may provide aid pursuant to Section 17000.5 either by cash assistance, in-kind aid, a two-party payment, voucher payment, or check drawn to the order of a third-party provider of services to the recipient. Nothing shall restrict a county from providing more than one method of aid to an individual recipient.

(d) Paragraphs (1), (3), and (5) of subdivision (a) and all of subdivision (b) of this section shall remain operative until January 1, 1997, and as of that date are inoperative, unless a later enacted statute, which is enacted on or before January 1, 1997, deletes or extends that date.

SEC. 10. Section 17001.51 is added to the Welfare and Institutions Code, to read:

17001.51. (a) A county may require adult applicants and recipients of benefits under the general assistance program to undergo screening for substance abuse when it is determined by the county that there is reasonable suspicion to believe that an individual is dependent upon illegal drugs or alcohol. The county shall maintain documentation of this finding.

(b) A county may require as a condition of aid reasonable participation in substance abuse or alcohol treatment programs for persons screened pursuant to subdivision (a) and professionally evaluated to be in need of treatment, if the services are actually available at no charge to the applicant or recipient.

SEC. 11. Section 17608.05 of the Welfare and Institutions Code is amended to read:

17608.05. (a) As a condition of deposit of funds from the Sales Tax Account of the Local Revenue Fund into a county's local health and welfare trust fund mental health account, the county or city shall deposit each month local matching funds in accordance with a schedule developed by the State Department of Mental Health based on county or city standard matching obligations for the 1990-91 fiscal year for mental health programs.

(b) A county, city, or city and county may limit its deposit of matching funds to the amount necessary to meet minimum federal maintenance of effort requirements, as calculated by the State Department of Mental Health, subject to the approval of the Department of Finance. However, the amount of the reduction permitted by the limitation provided for by this subdivision shall not exceed twenty-five million dollars ($25,000,000) per fiscal year on a statewide basis.

(c) Any county, city, or city and county that elects not to apply maintenance of effort funds for community mental health programs shall not use the loss of these expenditures from local mental health programs for realignment purposes, including any calculation for poverty-population shortfall for clause (iv) of subparagraph (B) of paragraph (2) of subdivision (c) of Section 17606.05.

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIIIB of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

B

BILL NUMBER: SB 2055 CHAPTERED
BILL TEXT

CHAPTER 632
FILED WITH SECRETARY OF STATE SEPTEMBER 21, 1998
APPROVED BY GOVERNOR SEPTEMBER 19, 1998
PASSED THE SENATE AUGUST 28, 1998
PASSED THE ASSEMBLY AUGUST 27, 1998
AMENDED IN ASSEMBLY AUGUST 25, 1998
AMENDED IN ASSEMBLY JULY 7, 1998
AMENDED IN ASSEMBLY JUNE 24, 1998
AMENDED IN SENATE MAY 26, 1998
AMENDED IN SENATE MAY 21, 1998
AMENDED IN SENATE APRIL 28, 1998
AMENDED IN SENATE MARCH 23, 1998

INTRODUCED BY Senator Costa
(Principal coauthor: Senator Rainey)

FEBRUARY 20, 1998

An act to add Section 912.1 to the Welfare and Institutions Code, relating to the Department of the Youth Authority.

LEGISLATIVE COUNSEL'S DIGEST

SB 2055, Costa. Department of the Youth Authority: county payment rates.

Existing law requires each county to pay the state either $150 per month or, in specified instances, an alternative rate for each person committed to the Department of the Youth Authority by a juvenile court in that county. Calculation of the alternative rates paid by the county is based upon specified percentages of the per capita institutional cost of the department.

This bill would define "per capita institutional cost," not to exceed a specified maximum, and require the Department of the Youth Authority to provide counties with monthly statements of the department's per capita institutional cost.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 912.1 is added to the Welfare and Institutions Code, to read:

912.1. (a) The Department of the Youth Authority shall present to each county, not more frequently than monthly, a statement of per capita institutional cost.

(b) As used in this section, "per capita institutional cost" means the lesser of (1) the current per capita institutional cost of the department or (2) the per capita institutional cost the department charged counties pursuant to Section 912.5 as of January 1, 1997.

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916) 327-4478

SB 2055

UNFINISHED BUSINESS

Bill No: SB 2055
Author: Costa (D), et al
Amended: 8/25/98
Vote: 27

SENATE PUBLIC SAFETY COMMITTEE : 7-0, 4/21/98
AYES: Vasconcellos, Rainey, Burton, Kopp, McPherson, Polanco, Schiff
NOT VOTING: Watson

SENATE APPROPRIATIONS COMMITTEE : 12-0, 5/26/98
AYES: Johnston, Alpert, Burton, Dills, Hughes, Johnson, Kelley, Leslie, McPherson, Mountjoy, O'Connell, Vasconcellos
NOT VOTING: Calderon

SENATE FLOOR : 37-0, 5/28/98
AYES: Alpert, Ayala, Brulte, Burton, Calderon, Costa, Dills, Greene, Hayden, Haynes, Hughes, Hurtt, Johannessen, Johnson, Johnston, Karnette, Kelley, Knight, Kopp, Leslie, Lockyer, Maddy, McPherson, Monteith, Mountjoy, O'Connell, Peace, Polanco, Rainey, Rosenthal, Schiff, Sher, Solis, Thompson, Vasconcellos, Watson, Wright
NOT VOTING: Craven, Lewis

ASSEMBLY FLOOR : 70-2, 8/28/98 - See last page for vote

SUBJECT : Youth Authority commitments: county payment costs

SOURCE : California State Association of Counties

costs of wards in category 7 (the least serious offense category), 75 percent of the costs for wards in category 6, and 50 percent of the costs for wards in category 5. Counties would pay the proposed $150 per month fee for all other commitments. Wards in categories 5, 6 and 7 generally spend less than 18 months in Youth Authority institutions. Similar types of offenders who are placed in county-run facilities often spend less than six months in the facilities.

In 1994, the Legislative Analyst's office reviewed CYA placements and discovered that 24 counties at that time sent primarily serious offenders to CYA. In contrast, LAO found that 20 counties' total commitments to the Youth Authority consist (at that time) of 50 percent or more of less serious offenders. The legislation imposing a sliding scale fee for CYA commitments was intended to address this situation.

In its analysis of the 1998-99 Budget, the Legislative Analyst's Office concluded that preliminary data indicates sliding scale has been successful for the state:

> Commitment data suggest that the new sliding fees have had the desired impacts. The 1997 commitments of wards who are in categories 5, 6, and 7 declined almost 40 percent when compared to 1996. Commitments of category 7 wards, for whom counties paid full cost, decreased by 52 percent. There were only 26 commitments in this category to the Youth Authority in 1997.
>
> We believe that as a result of the new sliding fee, counties will continue to have a fiscal incentive to use less costly local options rather than the Youth Authority, especially for the least serious offenders, where the county would pay most of the cost of commitment. Several counties have informed us that in response to the new fees they have developed local alternatives to Youth Authority placements. These new placement options include the creation of new ranch and camp beds and the use of other nonresidential options such as day treatment centers for less serious offenders. As we describe below, counties have received significant new federal funds for creating services for these types of offenders. The budget proposes to further increase these funds. (Legislative Analyst's Office, Analysis of the 1998-99 Budget Bill)

As explained by the author, counties argue sliding scale has greatly increased the fees they must pay for Youth Authority commitments. According to a January 1998 survey of 44 counties conducted by CSAC, their total Youth Authority fees increased 909 percent between 1995-96 and

DIGEST : This bill caps the fee currently paid by counties to the California Youth Authority (CYA) for committing a youth to the CYA. Specifically, this bill:

1. Provides that the Department of the Youth Authority must present to each county, not more frequently than monthly, a statement of per capita institutional cost.

2. Defines "per capita institutional cost" to mean the lesser of the current per capita institutional cost of the department, or the per capita institutional cost charged counties as of January 1, 1997.

Assembly Amendments delete Senate language modifying the current sliding scale provisions regarding county payments to Youth Authority and instead provide for a per capita institutional cost approach.

ANALYSIS : Under current law, effective January 1, 1997, counties must pay the state $150 (instead of the former $25) for each minor committed to the Department of the Youth Authority. (Welfare and Institutions Code ("WIC") sec. 912.) In addition, counties must contribute a "sliding scale" contribution for Youth Authority commitments based upon the category of the offender; the sliding scale ranges from 50% of the per capita institutional cost of the Youth Authority for category 5 offenses (category 1 being the most serious out of 7 categories), 75% for category 6 offenses, and 100% for category 7 offenses. (WIC sec. 912.5.)

Sliding Scale; History and Effect

In 1996, the Legislature enacted legislation increasing the fees that counties pay to the State for commitment of juvenile offenders to CYA. (SB 681(Hurtt) (Ch. 6/96).) These new fees went into effect in January of last year. Before SB 681, counties paid the State $25 -- an amount set in 1961-- each month for each offender sent to CYA. SB 681 increased this fee to $150 per offender per month, and also enacted a "sliding fee scale" for offenders sent by counties to CYA. As explained by the Legislative Analyst's office:

> When a ward is sent to the Youth Authority, the Youthful Offender Parole Board assigns the ward a category number -- from 1 to 7 -- based on the seriousness of the commitment offense. Generally, wards in categories 1 through 4 are considered the most serious offenders, while categories 5 through 7 are less serious. Under this legislation, counties (will) pay 100 percent of the

1997-98, at the same time, their low-level offender commitments decreased 51.3 percent.

This bill would change the formula upon which sliding scale fees to the State is based. Instead of basing fees on the per capita institutional costs for Youth Authority, this bill would base the fees on the marginal costs for Youth Authority. Currently, the per capita cost of Youth Authority is about $32,000; the marginal cost -- that is, the cost to add each additional ward to an institution -- is about $17,000. Counties argue the per capita formula unfairly penalizes counties: as the Youth Authority population decreases, the per capita costs increase, thereby increasing the sliding scale fees charged to counties which go directly to the State.

The proposed change to the formula would greatly reduce sliding scale fees paid to the state. However, under the bill, the counties would have to pay an additional amount to a newly-created local juvenile justice trust fund. In this way, although this bill would decrease sliding scale payments to the State, it would not decrease the overall amount counties would have to pay under the entire sliding scale scheme because of the county juvenile trust fund this bill would mandate.

Background: State Funds for Local Juvenile Programs

In its analysis of the 1998-99 Budget, the Legislative Analyst's Office stated:

> In response to federal welfare reform, the California Legislature established the California Work Opportunity and Responsibility to Kids (CalWORKs) program in 1997. The CalWORKS law specifically provided that TANF funds could be used to provide probation services to juvenile offenders. In the current year, counties received $141 million in TANF block grant funds for juvenile offenders under the care of probation departments. In addition, counties with ranches and camps received an additional $33 million in TANF funds for support of these juvenile facilities. Consequently, a total of $174 million in TANF was allocated to county probation departments.
>
> The budget also continues the $33 million from TANF for counties with juvenile ranches and camps. As a result, the budget proposes allocating $200 million from TANF to county probation departments, to provide services to juvenile offenders. As a result of the TANF funds, counties have a source of funds to either defray whatever costs they might incur as a consequence of the new Youth Authority fees or develop alternatives to Youth Authority placements. Furthermore, the significant

amount of funding available under the TANF probation grants should allow counties to continue to decrease their reliance on placements in the Youth Authority and accordingly, reduce future sliding scale fee costs. Notwithstanding the overall decrease in Youth Authority placements, the allocation of $200 million to counties for juvenile offenders is substantially more than the estimated $43 million that counties will reimburse the state for Youth Authority placements.

Prior legislation :

AB 2312 (Woods) passed the Senate 39-0 on 8/29/96 and was vetoed by the Governor.

Governor's Veto Message:

"By relieving counties of some of their responsibility to pay a portion of the cost for committing wards to the Youth Authority, this bill would increase General Fund expenditures by millions of dollars over the next six fiscal years. The state is already providing a considerable amount of funding to counties in support of local juvenile justice programs, including $33 million per year for county probation camps. In further support of county efforts, I recently signed SB 1760, which provides $50 million in grant funds to be awarded to county agencies for the prevention of juvenile crime and treatment of youthful offenders. These funds, not anticipated at the time this bill was introduced, would appear to provide more first year relief than AB 2312.

"I am also concerned with the provision that would allow a juvenile ordered into the custody of the county juvenile correctional administrator pursuant to a community-based punishment plan, to be placed in the Department of Youth Authority under terms and conditions determined by the county administrator rather than state authorities. This bill would appear to obscure the authority of (the Youth Authority and the Youthful Offender Parole Board) by allowing the county correctional administrator to determine the length of stay and the terms and conditions of the placement.

"I am not unalterably opposed to providing additional relief, of the magnitude sought here, to county juvenile authorities. I have directed my staff to work with the author to explore alternatives to disruption of the formula under which counties contribute to the costs of the Youth Authority."

FISCAL EFFECT : Appropriation: Yes Fiscal Com.: Yes Local: Yes

Fiscal Impact (in thousands)

Major Provisions	1998-99	1999-2000	2000-01	Fund
CYA sliding scale fee loss of revenues	$ 1,000	$ 22,000	$ 22,000	General
LJJPD revenues	$ 1,000	$ 22,000	$ 22,000	Local

SUPPORT : (Verified 5/22/98) (Unable to reverify at time of writing)

California State Association of Counties (source)
San Bernardino County Board of Supervisors
Urban Counties Caucus
Merced County
San Diego County
City and County of San Francisco

ARGUMENTS IN SUPPORT : The author states:

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

The related cost to counties for CYA has increased from just under $2 million in FY 1995-96 to a projected $20-30 million for FY 1997-98. While costs have increased 10-15 fold, low level commitments to the CYA decreased approximately 53.2 percent during that time. . . .

SB 2055 would redirect a portion of the fees currently sent to CYA and return the money to the county of commitment to be placed in a Local Juvenile Justice Program Development Fund. Moneys in the fund would be earmarked for juvenile probation programs and facilities -- such as probation

□

camps and ranches -- dedicated to the punishment, treatment and rehabilitation of juvenile offenders.

Given that the per capita cost CYA charges counties has continually increased, (as counties send fewer kids to CYA, their per kid cost increases) SB 2055 would also freeze the actual per capita costs CYA could charge counties at the January 1, 1997 level.

ASSEMBLY FLOOR :
AYES: Ackerman, Aguiar, Alby, Alquist, Aroner, Ashburn, Baca, Baldwin, Battin, Baugh, Bordonaro, Bowen, Bowler, Brewer, Bustamante, Campbell, Cardenas, Cardoza, Cedillo, Cunneen, Davis, Ducheny, Escutia, Figueroa, Firestone,

Frusetta, Gallegos, Goldsmith, Granlund, Havice,
Hertzberg, Honda, House, Kaloogian, Keeley, Knox, Kuehl,
Kuykendall, Leach, Lempert, Leonard, Margett, Mazzoni,
Migden, Miller, Morrissey, Morrow, Murray, Napolitano,
Olberg, Oller, Ortiz, Perata, Poochigian, Prenter,
Pringle, Runner, Scott, Shelley, Strom-Martin, Sweeney,
Thompson, Torlakson, Vincent, Washington, Wayne, Wildman,
Woods, Wright, Villaraigosa
NOES: Martinez, McClintock
NOT VOTING: Brown, Floyd, Machado, Pacheco, Papan,
Richter, Takasugi, Thomson

RJG:jk/sl 8/28/98 Senate Floor Analyses
SUPPORT/OPPOSITION: SEE ABOVE
**** END ****

912. Effective January 1, 1997, for each person committed to the Department of the Youth Authority, the county from which he or she is committed shall pay the state one hundred fifty dollars ($150) per month for the time that person remains in any institution under the direct supervision of the Department of the Youth Authority, or in any institution, boarding home, foster home, or other private or public institution in which he or she is placed by the Department of the Youth Authority, on parole or otherwise, and cared for and supported at the expense of the Department of the Youth Authority. This section applies to any person committed to the Department of the Youth Authority by a juvenile court, including persons committed to the Department of the Youth Authority prior to January 1, 1997, who on or after January 1, 1997, remain in or return to the facilities described in this section.

The Department of the Youth Authority shall present to the county, not more frequently than monthly, a claim for the amount due the state under this section, which the county shall process and pay pursuant to the provisions of Chapter 4 (commencing with Section 29700) of Division 3 of Title 3 of the Government Code.

912.1. (a) The Department of the Youth Authority shall present to each county, not more frequently than monthly, a statement of per capita institutional cost.

(b) As used in this section, "per capita institutional cost" means the lesser of (1) the current per capita institutional cost of the department or (2) the per capita institutional cost the department charged counties pursuant to Section 912.5 as of January 1, 1997.

912.5. (a) For each person committed to the Department of the Youth Authority by a juvenile court on or after January 1, 1997, the county from which he or she is committed shall pay the state the following rate:

(1) If the offense on which the commitment is based is listed in Section 4955 of Title 15 of the California Code of Regulations, the rate is 50 percent of the per capita institutional cost of the Department of the Youth Authority.

(2) If the offense on which the commitment is based is listed in Section 4956 of Title 15 of the California Code of Regulations, the rate is 75 percent of the per capita institutional cost of the Department of the Youth Authority.

(3) If the offense on which the commitment is based is listed in Section 4957 of Title 15 of the California Code of Regulations, the rate is 100 percent of the per capita institutional cost of the

Department of the Youth Authority.

(b) For purposes of this section, "the offense on which the commitment is based" means any offense that has been sustained by the juvenile court and that is included in the determination of the maximum term of imprisonment by the juvenile court pursuant to Section 731.

(c) For purposes of this section, the charge against the county shall not apply to periods of confinement that are solely pursuant to a revocation of parole by the Youthful Offender Parole Board.

(d) The charge against the county prescribed by this section shall be in lieu of the charge prescribed by Section 912 and not in addition to that charge.

(e) The Department of the Youth Authority shall present to the county, not more frequently than monthly, a claim for the amount due the state under this section, which the county shall process and pay pursuant to the provisions of Chapter 4 (commencing with Section 29700) of Division 3 of Title 3 of the Government Code.

(f) The Department of the Youth Authority shall adopt emergency regulations for implementation of this section.

EXHIBIT B

DEPARTMENT OF FINANCE
GRAY DAVIS, GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

August 14, 2002

RECEIVED
AUG 14 2002
COMMISSION ON STATE MANDATES

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of July 15, 2002, the Department of Finance has reviewed the test claim submitted by the San Bernardino County (claimant) asking the Commission to determine whether specified costs incurred under Chapter No. 6, Statutes of 1996 (SB 681, Hurtt) and Chapter No. 632, Statutes of 1998 (SB 2055, Costa) are reimbursable state mandated costs (Claim No. 02-TC-01 "California Youth Authority: Sliding Scale for Charges").

Chapter 6, Statutes of 1996 (SB 681, Hurtt) amended Welfare and Institutions Code Section 912 increasing the baseline charge to the counties from $25 to $150 for each youthful offender committed by the juvenile court to the California Youth Authority (YA). Section 912.5 was added to the Welfare and Institutions Code, requiring counties to pay a fee based on a sliding scale depending on the seriousness of the crime. Chapter 632, Statutes of 1998 (SB 2055, Costa) added Section 912.1 to the Welfare and Institutions Code, establishing the rate to be used for the above fee to be based on the lesser of the current per capita institutional cost of YA, or the per capita institutional cost as of January 1, 1997.

Commencing with Page 2 Paragraph 3 of the test claim, claimant states that when the sliding scale costs, in excess of the baseline rate of $150 designated in Section 912 of the Welfare and Institutions Code, were imposed on the counties for wards entering YA, a shift in responsibility from the State to the counties for commitment costs occurred. The claimant asserts that this sliding scale cost shift constitutes a higher level of service as counties were previously not required to pay these fees, and is therefore, a reimbursable State mandate.

As the result of our review, we have concluded that the claim is without merit and should be denied. The reasons for this conclusion are as follows:

- The additional sliding scale fee that exceeds the baseline fee of $150 per month does not constitute a new program or higher level of service per Article XIII B, Section 6 of the California Constitution, as payment of the fee merely reimburses the State for a portion of the costs of housing youthful offenders who cannot be held at county facilities. Therefore, the test claim legislation does not result in a shift of financial responsibility from the State to local governments, as asserted by the claimants.

- While the test claim legislation does impose a higher fee related to the housing and treatment of youthful offenders by the State, the legislation does not require a new program or higher level of service to be implemented by the county, as the payment of the fee is related to a service that is being provided by the State and not by the county.

- The county could avoid the payment of the fee by providing placement options for less serious youthful offenders within the county. As such, payment of any fee is predicated on the county not being able to house the youthful offender within their own facilities and the court committing the offender to confinement in a state facility.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your July 15, 2002 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Zlatko Theodorovic, Principal Program Budget Analyst or Keith Gmeinder, State Mandates Claims Coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

Calvin Smith

S. Calvin Smith
Program Budget Manager

Attachments

Attachment A

DECLARATION OF ZLATKO THEODOROVIC
DEPARTMENT OF FINANCE
CLAIM NO. 02-TC-01

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

2. We concur that the Chapter No. 6, Statutes of 1996, (SB 681, Hurtt) and Chapter No. 632, Statutes of 1998 (SB 2055, Costa) sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

August 14, 2002
at Sacramento, CA

Zlatko Theodorovic

PROOF OF SERVICE

Test Claim Name: California Youth Authority: Sliding Scale for Charges
Test Claim Number: 02-TC-01

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 8th Floor, Sacramento, CA 95814.

On August 14, 2002, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 8th Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento CA 95814
Facsimile No. 445-0278

B-29
Legislative Analyst's Office
Attention: Ms. Marianne O'Malley
925 L Street, Suite 1000
Sacramento CA 95814

County of Los Angeles
Department of Auditor-Controller
Kenneth Hahn Hall of Administration
Attention: Mr. Leonard Kaye
500 West Temple Street, Suite 603
Los Angeles, CA 90012

Mr. Jerry Harper
Department of the Youth Authority
4241 Williamsbourgh Drive
Sacramento, CA 95823

Ms. Susan Geanacou
Sr. Staff Attorney
Department of Finance
915 L Street, Suite 1190
Sacramento, CA 95814

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

Ms. Barbara Redding
County of San Bernardino
Office of Auditor / Controller / Recorder
222 West Hospitality Lane, Fourth Floor
San Bernardino CA 92415 - 0018

Ms. Annette Chinn
Cost Recovery Systems
705-2 East Bidwell Street #294
Folsom CA 95630

Mr. Paul Minney
Spector, Middleton, Young and Minney, LLP
7 Park Center Drive
Sacramento, CA 95825

Mr. Andy Nichols
Senior Manager
Centration, Inc.
12150 Tributory Point Drive, Suite 140
Gold River, CA 95670

B-8
State Controllers Office
Attention: Mr. Glenn Haas, Bureau Chief
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento CA 95816

Mr. Steve Smith , CEO
Mandated Cost Systems, Inc.
11130 Sun Center Drive, Suite 100
Rancho Cordova CA 95670

Mr. David Wellhouse
David Wellhouse & Associates, Inc.
9175 Kiefer Blvd, Suite 121
Sacramento CA 95826

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 August 14, 2002 at Sacramento, California.

Mary Latorre

Mary Latorre

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE

Exhibit C

1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: (916) 322-3360
Telephone: (916) 323-8549
Facsimile: (916) 324-8835
E-Mail: Meg.Halloran@doj.ca.gov

August 15, 2002

Shirley Opie, Assistant Executive Director
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, California 95814

RE: *California Youth Authority: Sliding Scale for Charges*, 02-TC-01
County of San Bernardino, Claimant
Statutes 1996, Chapter 6 (Welf. & Inst. Code §§ 912 and 912.5
Statutes 1998, Chapter 632 (Welf. & Inst. Code §912.1

Dear Ms. Opie:

The California Department of the Youth Authority (CYA) submits the following preliminary comments on the above-referenced test claim filed by the County of San Bernardino. The claim requests reimbursement for fees charged to counties on a sliding scale for placement of minors in CYA.

It is CYA's position that the test claim statutes do not, individually or together, impose a new program or higher level of service upon local governments within the meaning of section 6, article XIII B of the California Constitution, nor do they impose "costs mandated by the state" within the meaning of Government Code section 17514.

No New Program or Higher Level of Service

A. CYA Placements Were Not Funded Entirely by the State When Article XIII B, Section 6 Became Effective

Section 6 of article XIII B of the California Constitution, which became effective July 1, 1980, provides in relevant part:

> 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 such local government for the costs of such program or increased level of service....

In Lucia Mar Unified School District v. Honig (1988) 44 Cal.3d 830, the California Supreme Court found that an Education Code provision requiring school districts to contribute part of the cost of educating pupils from those districts at state schools for the severely handicapped was "new" as far as the claimant school districts were concerned, since before the enactment of the provision in question, the school districts were not required to contribute anything toward the education of their students at such schools:[1]

> Whether the shifting of costs is accomplished by compelling local governments to pay the cost of entirely new programs created by the state, or to accept financial responsibility in whole or in part for a program which was *funded entirely by the state before the advent of article XIII B*, seems equally violative of the fundamental purpose underlying section 6 of that article. *Lucia Mar, supra,* 44 Cal.3d 830, 836. (Emphasis added.)

The California Supreme Court refined this distinction in *County of San Diego v. State* (1997) 15 Cal.4th 68. In *County of San Diego*, as in *Lucia Mar*, the program at issue–health care for medically indigent persons (MIPs)–was entirely funded by the state without any contribution from the counties when section 6 of article XIII B became effective on July 1, 1980. In 1983, the state excluded MIPs from the state MediCal program. As a result, the entire financial burden of providing care for MIPs fell to the counties, prompting the Court to find that state subvention was required. By contrast, the Court noted that subvention would not be appropriate where financing for the program in question was borne jointly by state and local governments when section 6 became effective:

> We do not hold that "whenever there is a change in a state program that has the effect of increasing a county's financial burden ... there must be reimbursement by the state." [Citation omitted.] Rather, we hold that section 6 prohibits the state from shifting to counties the costs of state programs for which the *state assumed complete financial responsibility* before adoption of section 6. *County of San Diego v. State, supra*, 15 Cal.4th at 99, fn. 20. (Emphasis added.)[2]

---

[1] The Court did not reach the issue of whether the school districts' claim was reimbursable. Instead, the Court remanded the case to the Commission to determine whether the "new" program was "mandated" within the meaning of article XIII B, §6. *Lucia Mar, supra*, 44 Cal.3d at 837-838.

[2] This qualifier is codified at Government Code section 17514, which defines "costs mandated by the state" to mean "any increased costs which a local agency ... is required to incur *after July 1, 1980*, as a result of any statute ... which mandates a new program or higher level of service...."

The statutes at issue in this test claim have not caused a shift from a totally state-supported program to a forced sharing on the part of local government. The test claim legislation merely increases the charges to local governments for discretionary placements in CYA, which local entities have long had a share in supporting, as discussed below. Because funding of CYA placements was jointly shared by the state and counties before July 1, 1980, the test claim legislation does not impose a new program or higher level of service as defined by the Supreme Court in *Lucia Mar* and *County of San Diego*, and reimbursement should be denied.

B. The Statute Requiring Joint State/County Funding of CYA Placements Was Enacted Prior to January 1, 1975.

Even if the test claim legislation were deemed to impose a "higher level of service of an existing program," the original statutory mandate requiring that counties pay a fee for CYA placements was enacted before January 1, 1975, rendering state subvention permissive rather than mandatory under article XIII B, section 6 of the California Constitution. Section 6 provides in relevant part:

> [T]he Legislature may, *but need not*, provide ... subvention of funds for the following mandates: [¶]... [¶] (c) Legislative mandates enacted prior to January 1, 1975. (Emphasis added.)

Counties have long been obligated to share financial responsibility for discretionary CYA placements. Former Welfare and Institutions Code section 869.5 (Stats.1947, c.190, p. 752, §3) became effective on January 1, 1948.[3] That section provided:

> [F]or each ward of the juvenile court committed to the Youth Authority the county from which he is committed shall pay the State at the rate of twenty-five dollars ($25) per month for the time such person so committed remains in such state school or in any camp or farm colony, custodial institution, or other institution under the direct supervision of the Youth Authority....

The same requirement was reenacted at Welfare and Institutions Code section 912 in 1961.[4] Section 912 has been amended three times since then, the last revision being the test claim legislation (Stats.1996, c. 6 (SB 681) which increased the monthly fee for wards committed to CYA before 1997, and added section 912.5 to require fees based on a sliding scale for commitments made on or after January 1, 1997.

---

[3] See Exhibit 1.

[4] See Exhibit 2.

Clearly, the mandate in sections 912 and 912.5 requiring counties to pay a fee for each ward committed to CYA was enacted long before January 1, 1975, and has existed continuously since that time. These sections clearly fall within section 6(c)'s language of "legislative mandates enacted prior to January 1, 1975," rendering them exempt from the reimbursement under the provisions of section 6. As the Court of Appeal in *Long Beach Unified School District v. State* (1990) 225 Cal.App.3d 155 noted, "[a] mere increase in the cost of providing a service which is the result of a requirement mandated by the state is not tantamount to a higher level of service." *Ibid.* at 173.

No Reimbursement for Discretionary or Optional Costs

Government Code section 17514 defines "costs mandated by the state" to mean:

> any increased costs which a local agency ... *is required to incur* after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, ...which mandates a new program or higher level of service of an existing program within the meaning of [section 6 of article XIII B of the California Constitution]. (Emphasis added.)

The test claim statutes may in fact result in increased costs to counties whose juvenile court judges or referees choose to commit minors to CYA. (However,"additional costs" a state law may require do not necessarily equate to a reimbursable state mandate. *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 55; *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 277. Local entity costs resulting from actions undertaken at the option of the local entity are not reimbursable as "costs mandated by the state." *City of Merced v. State of California* (1984) 153 Cal.App.3d 777; *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62,

The test claim statutes do not eliminate a juvenile court's discretion to choose other dispositions for minors adjudicated to come within the terms of Welfare and Institutions Code section 602, nor do they *require* CYA commitments for minors under any circumstances. Welfare and Institutions Code section 731(a) makes it clear that a CYA commitment is only one of several dispositions available to a juvenile court as to minors who are found to have committed criminal offenses. (See Exhibit 5.) In certain cases, a juvenile court that removes a 602 from the care and custody of his or her parents may simply place the ward under the supervision of the probation officer, who in turn exercises his or her discretion in selecting the appropriate placement for the minor. (Welf. & Inst. Code §727.) It should be noted that a juvenile court also has the discretion to place wards eligible for probation into a neighborhood youth correctional center, an option clearly intended as a more positive placement alternative to CYA. (Welf. & Inst. §1851.) CYA shares in the cost of construction of such centers, and *reimburses* counties up to $200 per month per ward. (Welf. and Inst. Code §§1859, 1860.)

Conclusion

Increases in fees charged to counties for the care and custody of minors placed in CYA are not state-mandated costs subject to subvention. Counties have, since 1948--long before the effective date of article XIII B, section 6--shared financial responsibility for the care and custody of minors placed in CYA. Moreover, fees for CYA placements have been charged to counties since before January 1, 1975, making reimbursement of fee increases optional rather than mandatory under section 6(c). Finally, because no law compels a judge to place a minor ward at CYA, the fee increases in question are not "costs mandated by the state" as defined by Government Code section 17514: "any increased costs which a local agency ... *is required to incur*." For these reasons, the test claim legislation does not define a state mandate, and the claim for reimbursement should be denied.

Respectfully submitted,

MEG HALLORAN
Deputy Attorney General

For BILL LOCKYER
Attorney General

Attorneys for the California Department of the Youth Authority

I:\Gvt\Halloran\CYA-SB\Preliminary Comments.wpd

9. The conditions upon which certificates may be issued and withdrawn.

10. The manner in which the funds of the corporation shall be employed.

11. The conditions upon which loans may be made and repaid.

12. The maximum rate of interest that may be charged upon loans.

13. The method of receipting for money paid on accounts of shares, certificates or loans.

14. The manner in which the guaranty fund shall be accumulated.

15. The manner in which dividends may be determined and paid to members.

SEC. 2. Section 7 of said act is amended to read:

Guaranty fund

SEC. 7. A guaranty fund shall be created and regulated as follows:

1. All entrance fees and transfer fees remaining after the payment of organization expenses shall be set aside to such fund.

2. At the close of each fiscal year, 20 percentum of the net earnings of the corporation for the year shall be transferred to such fund; provided, that, upon the recommendation of the board of directors, the shareholders, at the annual meeting, may increase, or if such fund equals or exceeds 20 percentum of its capital or gross assets, whichever is greater, may decrease the proportion of net earnings to be thus set aside.

3. Any sums recovered on items previously charged to it shall be credited to such fund.

Losses incurred by a credit union may be charged to its guaranty fund.

SEC. 3. Section 23.4 of said act is amended to read:

Unsound operation:

SEC. 23.4. If the commissioner shall find, after a hearing as provided in Section 15.4, that a credit union has impaired capital or is operating in an unsafe or unsound manner, he may notify such credit union to restore its capital in full or take the necessary steps to reduce its stated capital or cease any unsafe or unsound practice. If such credit union does not comply with such order within 30 days after service thereof or present a satisfactory plan for future operation, the commissioner may notify such credit union to cease business and dissolve in the manner provided in Section 23.2. If, for a period of 30 days after said notice, the credit union does not proceed to put such plan into effect, or does not commence proceedings to wind up and dissolve, or if thereafter, it does not diligently proceed with said plan or the liquidation, the commissioner may take possession of the business and assets of said credit union and maintain such possession until such time as he shall permit it to continue business, or its affairs are finally liquidated.

Liquidation

On taking possession of the business and assets of any such credit union as provided in this section or in Section 23.[illegible] the commissioner may proceed to liquidate the same in the manner provided by the Bank Act or he may appoint a liquidating committee of three members of the credit union to liquidate the business and assets of said credit union in the manner provided in Section 23.2. In the event the commissioner is unable to secure three members of the credit union able and willing to serve on such liquidating committee he may appoint any member of a state credit union to such committee. The commissioner shall supervise the acts of the liquidating committee and may remove any member thereof in his discretion. The members of the liquidating committee shall file with the commissioner a faithful performance bond in an amount to be determined by the commissioner. The premium for such bond shall be paid out of the assets of the credit union.

Stats. 1909, p. [illegible]

In the event the commissioner retains possession of the assets of such credit union for the purpose of liquidation, he shall use the services of civil service employees of his office and the Department of Justice shall render all necessary legal services.

CHAPTER 190

An act to amend Section 869 and to repeal Section 1742 of the Welfare and Institutions Code and to add Section 869.5 thereto, relating to the support of persons committed to the Youth Authority or confined in institutions subject to its jurisdiction.

[Approved by Governor May 8, 1947. Filed with Secretary of State May 8, 1947.]

In effect September 19, 1947

The people of the State of California do enact as follows:

Repeal

SECTION 1. Section 1742 of the Welfare and Institutions Code is repealed.

SEC. 2. Section 869 of said code is amended to read:

County support: Period specified

869. No order for payment from the county treasury of the expense of support and maintenance of a ward of the juvenile court shall be effective for more than 12 months, and no order for payment from the county treasury of the expense of support and maintenance of a minor person concerning whom a verified petition has been filed in accordance with the provisions of Sections 721 and 722 of this code, other than a ward of the court, shall be effective for more than one month. Upon all hearings of the case of any ward of the juvenile court the case shall be continued on the calendar, but in no instance to exceed 12 months.

Reimbursement of homes

When any ward of the juvenile court is, with the consent of the juvenile court of the county committing him and the officer in charge of the state school to which he was committed or in which he is confined, placed in a boarding home, foster home or work home, but continues to be under the supervision of such state school, the county may reimburse the boarding home, foster home or work home in an amount adequate for the main-

tenance of the ward, but not to exceed twenty-five dollars ($25) per month.

SEC. 3. Section 869.5 is added to said code, to read:

County payments to State

869.5. For each person hitherto committed to the Department of Institutions for placement in a correctional school and for each ward of the juvenile court committed to the Youth Authority the county from which he is committed shall pay the State at the rate of twenty-five dollars ($25) per month for the time such person so committed remains in such state school or in any camp or farm colony, custodial institution, or other institution under the direct supervision of the Youth Authority to which such person may be transferred, in the California Vocational Institution, or in any boarding home, foster home, or other private or public institution in which he is placed by the Youth Authority, on parole or otherwise, and cared for and supported at the expense of the Youth Authority.

State settlement reports

Each county auditor shall include in his state settlement report rendered to the Controller in the months of January and June the amount due under this section, and the county treasurer, at the time of settlement with the State in such months, shall pay to the State Treasurer, upon the order of the Controller, the amounts found to be due by reason of such commitments.

142

CHAPTER 191

An act to amend Sections 830.1, 830.2, 830.4, and 830.5 of the Agricultural Code, relating to substandard fruits, nuts and vegetables.

In effect September 18, 1947

[Approved by Governor May 8, 1947. Filed with Secretary of State May 8, 1947.]

The people of the State of California do enact as follows:

SECTION 1. Section 830.1 of the Agricultural Code is amended to read:

Warning notice; Disposal order

830.1. The enforcing officer may, and when requested by an enforcing officer of the county of destination shall, affix a warning notice to any vehicle or other means of transportation, or to any load or lot, of fruits, nuts, or vegetables which do not conform to the standards established by this chapter, whether or not exempt from such standards, and serve a disposal order upon the owner or person having custody or possession of any such load or lot.

The warning notice, the disposal order directing the proper disposition of such products, and the disposal order receipt to be signed by an enforcing officer at destination confirming such disposition shall be in the form specified by and provided by

Employment, etc., of unlicensed driver

SEC. 31. Section 14606 of said code is amended to read:

14606. No person shall employ or hire nor shall knowingly permit or authorize the driving of a motor vehicle, owned by him or under his control, upon the highways by any person unless the person is then licensed under this code.

Allowing unlicensed child, etc., to drive

SEC. 32. Section 14607 of said code is amended to read:

14607. No person shall cause or knowingly permit his child, ward, or employee under the age of 21 years to drive a motor vehicle upon the highways unless such child, ward, or employee is then licensed under this code.

Renewal fee

SEC. 33. Section 14900 of said code is amended to read:

14900. (a) Upon application for an original driver's license or for the renewal of a driver's license there shall be paid the department a fee of three dollars ($3). The payment of the fee shall entitle the person paying same to make application for a driver's license and to three examinations within a period of six months.

The term "driver's license" as used in this section includes all licenses of every kind issued under Division 6 of this code.

(b) Any person who, by reason of physical disabilities, is unable to move about as a pedestrian shall be exempt from the fee provided in this section, but only in the event the license issued to such person restricts such person to the operation of a self-propelled wheelchair or invalid tricycle.

Persons employed to drive

SEC. 34. Section 16081 of said code is amended to read:

16081. The privilege of a person employed for the purpose of driving a motor vehicle for compensation whose occupation requires the use of a motor vehicle in the course of his employment to drive a motor vehicle not registered in his name and in the course of his employment shall not be suspended under this chapter even though his privilege to drive is otherwise suspended under this chapter.

Fire hydrants: Parking

SEC. 35. Section 22514 of said code is amended to read:

22514. No person shall stop, park, or leave standing any vehicle within 15 feet of a fire hydrant except when local authorities indicate a different distance by signs or markings, and except when such vehicle is attended by a licensed driver who is seated in the front seat and who can immediately move such vehicle in case of necessity. This section shall not apply in respect to any vehicle owned or operated by a fire department and clearly marked as a fire department vehicle.

Return of fees

SEC. 36. Section 42230 of said code is amended to read:

42230. Whenever any application made under this code is accompanied by any fee, except an application for a duplicate driver's license, as required by law, and the application is refused or rejected, the fees shall be returned to the applicant; except that whenever any application is made for the first set of special plates under subdivision (a) of Section 9262, and the application is refused or rejected, the sum of eight dollars ($8) shall be returned to the applicant, or wh[en] application made for the first set of special plates und[er] subdivision (1) of Section 9264 and the application is refused or rejected, the sum of five dollars ($5) shall be returned to the applicant.

CHAPTER 1616

An act to repeal Chapter 2 (commencing with Section 550) of Part 1 of Division 2 of, and to add Chapter 2 (commencing with Section 500) to Part 1 of Division 2 of, the Welfare and Institutions Code, and to add Section 272 to the Penal Code, and to add Chapter 4 (commencing with Section 232) to Title 2 of Part 3 of Division 1 of the Civil Code, and to amend Section 27706 of the Government Code, Section 1407 of the Probate Code, and Section 40502 of the Vehicle Code and to repeal Sections 131 and 131.1 of, and to amend Sections 131.2 and 131.5 of, the Code of Civil Procedure, relating to care and custody of minors.

[Approved by Governor July 14, 1961. Filed with Secretary of State July 14, 1961.]

In effect September 15, 1961

The people of the State of California do enact as follows:

Repeal: Effect, etc.

SECTION 1. Chapter 2 (commencing with Section 550) of Part 1 of Division 2 of the Welfare and Institutions Code is repealed.

The repeal of said chapter does not terminate or affect the jurisdiction of any court in any case pending on the effective date of this section, nor does it terminate or affect any right accrued before such date, but to the extent that any such case or the exercise of any such right is otherwise subject to the provisions of Chapter 2 (commencing with Section 500) of Part 1 of Division 2 of the Welfare and Institutions Code, as added by Section 2 of this act, proceedings in the case, on or after such effective date, shall conform to the requirements of that chapter.

In any case in which a statute refers by number to a section or sections or other portion of Chapter 2 (commencing with Section 550) of Part 1 of Division 2 of the Welfare and Institutions Code, repealed by this act, and the same or substantially the same provisions of such section or sections or other portion of the chapter are re-enacted by this act, such reference shall be construed as a reference to the section or sections containing such re-enacted provisions as enacted by this act and as subsequently amended.

SEC. 2. Chapter 2 (commencing with Section 500) is added to Part 1 of Division 2 of said code, to read:

CHAPTER 2. JUVENILE COURT LAW

Article 1. General Provisions

500. This chapter shall be known and may be cited as the "Juvenile Court Law."

143

not constitute a release of any person from liability for payment of any such amount which is due and owing to the county. The board may request a written opinion from the district attorney or county counsel as to whether any particular amount owed to the county is too small to justify the cost of collection or whether collection of any particular item is improbable.

Claim of county for property subsequently acquired

910. In any case where a county has expended money for the support and maintenance of any ward, dependent child or other minor person, or has furnished support and maintenance, and the court has not made an order of reimbursement to the county, in whole or in part, as provided in this article, or the court has made and subsequently revoked such an order if the ward, dependent child or other minor person or parent, guardian, or other person liable for the support of the ward, dependent child or other minor person acquires property, money, or estate subsequent to the date the juvenile court assumed jurisdiction over the ward, dependent child or minor person or subsequent to the date of the order of reimbursement was revoked, the county shall have a claim against the ward, dependent child or other minor person or parent, guardian, or other person liable for the support of the ward, dependent child or other minor person to the amount of a reasonable charge for money so expended, or other expense of support and maintenance. Such claim shall be enforced by action of the district attorney on request of the board of supervisors.

Term of effectiveness of order

911. No order for payment from the county treasury of the expense of support and maintenance of a ward or dependent child of the juvenile court shall be effective for more than 12 months, and no order for payment from the county treasury of the expense of support and maintenance of a minor person concerning whom a verified petition has been filed in accordance with the provision of this chapter, other than a ward or dependent child of the court, shall be effective for more than one month. Upon all hearings of the case of any ward or dependent child of the juvenile court, the case shall be continued on the calendar, but in no instance to exceed 12 months.

When any ward of the juvenile court is, with the consent of the juvenile court of the county committing him and the officer in charge of the state school to which he was committed or in which he is confined, placed in a boarding home, foster home, or work home, but continues to be under the supervision of such state school, the county may reimburse the boarding home, foster home, or work home in an amount adequate for the maintenance of the ward, but not to exceed twenty-five dollars ($25) per month.

Payment for Youth Authority commitment

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

Each county auditor shall include in his state settlement report rendered to the Controller in the months of January and June the amount due under this section, and the county treasurer, at the time of settlement with the State in such months, shall pay to the State Treasurer, upon the order of the Controller, the amounts found to be due by reason of such commitments.

Payment to private custodian

913. When any person has been adjudged to be a ward or dependent child of the juvenile court, and the court has made an order committing such person to the care of any association, society, or corporation, embracing within its objects the purpose of caring for or obtaining homes for such persons, the county in which such person has been committed may contract with such custodian, for the supervision, investigation, and rehabilitation of such person by such custodian, and may, pursuant to such contract, pay to it an amount determined by mutual agreement, not to exceed the cost to such custodian of such service.

"Expense for support and maintenance"

914. As used in this article, "expense for support and maintenance" includes the reasonable value of any medical services furnished to the ward or dependent child at the county hospital or at any other county institution, or at any private hospital or by any private physician with the approval of the juvenile court of the county concerned, and the reasonable value of the support of the ward or dependent child at any juvenile hall established pursuant to the provisions of Article 14 (commencing with Section 850) of this chapter or the reasonable value of the ward's support at any forestry camp, juvenile home, ranch, or camp established within or without the county pursuant to the provisions of Article 15 (commencing with Section 880) of this chapter.

SEC. 3. Section 272 is added to the Penal Code, to read:

Violations: Penalties

272. Every person who commits any act or omits the performance of any duty, which act or omission causes or tends to cause or encourage any person under the age of 21 years to come within the provisions of Sections 600, 601, or 602 of the Welfare and Institutions Code or which act or omission contributes thereto, or any person who, by any act or omission, or by threats, commands, or persuasion, induces or endeavors to induce any person under the age of 21 years or any ward or dependent child of the juvenile court to fail or refuse to conform to a lawful order of the juvenile court, or to do or to perform any act or to follow any course of conduct or to so live as would cause or manifestly tend to cause any such person to become or to remain a person within the provisions of Sections 600, 601, or 602 of the Welfare and Institutions Code, is guilty of a misdemeanor and upon conviction thereof shall

144

application to all laboratories approved to do tests called for in this article. Any laboratory doing tests called for in this article shall prepare the report in triplicate. The original of this report shall be transmitted by the laboratory doing such test together with the certificate form to the certifying physician. The duplicate reports of all specimens which show any degree of reactivity shall be forwarded at weekly intervals to the local public health department having jurisdiction over the area in which the certifying physician is located. The triplicate shall be retained by the laboratory on file according to serial number for two years and shall be open during that time for inspection by any authorized representative of the California State Department of Public Health. The laboratory also shall submit such other laboratory reports or records to the State Department of Public Health as are required by regulation of the State Board of Public Health. After two years, and with the consent of the governing body of the jurisdiction for which the health officer acts, the health officer may destroy any duplicate or triplicate report retained by him pursuant to this section.

CHAPTER 262

An act to amend Section 8276 of the Fish and Game Code, relating to crabs.

[Approved by Governor May 10, 1965. Filed with Secretary of State May 10, 1965.]

The people of the State of California do enact as follows:

SECTION 1. Section 8276 of the Fish and Game Code is amended to read:

8276. Notwithstanding any other provisions of this code or any regulations made pursuant to this code:

(a) Crabs may be taken in Districts 6, 7, 8, and 9 only between December 8th and July 15th.

(b) Crabs may be taken in all other districts only between the second Tuesday in November and June 30th.

(c) Crabs may not be taken for commercial purposes in any district or part of a district lying within the portions of Crescent City Harbor between the south sand barrier and the breakwater.

This section shall remain in effect until the 91st day after the final adjournment of the 1967 Regular Session of the Legislature.

CHAPTER 263

An act to amend Sections 19153, 19413, 19453, 19454, 19455, 19568, 19629, 19631, 19632, 25607 and 25856 of the Education Code, and to amend Sections 1203.03 and 1375 of the Penal Code, and to amend Sections 163, 703, 912, 1752.1, 5262.6, 5356.2, 6666, 7011 and 7109 of the Welfare and Institutions Code, relating to county settlement with state.

[Approved by Governor May 10, 1965. Filed with Secretary of State May 10, 1965.]

The people of the State of California do enact as follows:

SECTION 1. Section 19153 of the Education Code is amended to read:

19153. Whenever the State Controller determines that any money apportioned to a school district under this chapter (Sections 18901 to 19153, inclusive) has been expended by such district for purposes not authorized by this chapter (Sections 18901 to 19153, inclusive), or exceeds the final cost of the project which is authorized by this chapter (Sections 18901 to 19153, inclusive) to be paid therefrom, the State Controller shall furnish written notice to the board, the governing board of the school district, the county superintendent of schools, the county auditor, and the county treasurer of the county whose county superintendent of schools has jurisdiction over the school district, directing the school district and the county treasurer to pay into the State Treasury the amount of such unauthorized expenditures, or the amount of such excess apportionment, as the case may be. Upon receipt of such notice, such governing board shall order the county treasurer to pay to the State Treasurer, out of any moneys in the county treasury available to the school district for that purpose, the amount set forth in such notice. Such amount shall, upon order of the State Controller, be deposited in the State Treasury to the credit of the State School Construction Fund, to be reapportioned by the board.

It shall be the duty of such governing body and county treasurer to make the payments to the State Treasurer as provided in this section, and it shall be the duty of the State Controller to enforce such collection on behalf of the state.

SEC. 2. Section 19413 of said code is amended to read:

19413. Funds apportioned to a school district under this chapter (Sections 19401 to 19486, inclusive) for a project, remaining unencumbered or unexpended one year from the date the application of the district for such apportionment was approved, shall not be encumbered or expended except as provided in this section.

The governing board of the district shall notify the board of its desire to encumber or expend such funds. The board shall immediately request the Department of Education to, and that department shall review the project for which apportionment

146

SEC. 15. Section 703 of said code is amended to read:

703. If the court, after finding that the minor is a person described by Sections 600, 601, or 602, is in doubt concerning the state of mental health or the mental condition of the person, the court may continue the hearing and commit the person to the Department of Mental Hygiene for placement in a state hospital or state home for the mentally deficient for an indeterminate period of not more than 90 days, for observation of the mental health or the mental condition of the person and recommendations concerning his future care, supervision, and treatment. If the Department of Mental Hygiene has designated a particular state institution to receive minors so committed for observation, all commitments shall be made to the department for placement in the institution so designated. The superintendent of the institution to which the minor is so committed shall receive him, unless the institution is already full or the funds available for its support are exhausted, or if, in the opinion of the superintendent, the person is not a suitable subject for admission. Before such person is conveyed to the institution, it shall be ascertained from the superintendent thereof if the person may be accepted as herein set forth.

For each minor person so committed for observation, the county from which he is committed shall pay the state at the rate of forty dollars ($40) per month for the time the person so committed remains in the state institution for observation. Such expense shall be considered expense of support and maintenance within the meaning of Article 16, (commencing with Section 900) and the county shall be entitled to reimbursement therefor from the earnings, property, or estate of the minor, or from his parents, guardian, or other person liable for his support and maintenance, in accordance with the provisions of that article. The department shall present to the county, not more frequently than monthly, a claim for the amount due the state under this section which the county shall process and pay pursuant to the provisions of Chapter 4 (commencing with Section 29700) of Division 3 of Title 3 of the Government Code.

The medical superintendent or other person in charge of the state hospital or state home for the mentally deficient in which a minor person is placed for observation pursuant to this section shall, as soon as possible and within 90 days, examine the person to determine the state of his mental health or his mental condition, and submit to the juvenile court a report on the state of his mental health or mental condition which shall include

Hygiene for placement in any state institution under Division 6 (commencing with Section 5000) of this code, such superintendent or other person in charge of the state institution shall return the minor to the juvenile court within seven days after the date of the report and the court shall proceed with the case in accordance with the provisions of this chapter.

When the juvenile court directs the filing in any other court of a petition for the commitment of a minor to the Department of Mental Hygiene for placement in any state institution, the juvenile court shall transmit to the court in which the petition is filed a copy of the report of the medical superintendent or other person in charge of the state institution in which the minor was placed for observation. The court in which the petition for commitment is filed may accept the report of the medical superintendent or other person in charge of the state institution in lieu of the appointment, certificate, and testimony of medical examiners or other expert witnesses appointed by the court, if the laws applicable to such commitment proceedings provide for the appointment by court of medical examiners or other expert witnesses or may consider the report as evidence in addition to the certificates and testimony of medical examiners or other expert witnesses.

The jurisdiction of the juvenile court over the minor shall be suspended during such time as the minor is subject to the jurisdiction of the court in which the petition for commitment is filed or under commitment ordered by that court.

SEC. 16. Section 912 of said code is amended to read:

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

The Youth Authority shall present to the county, not more frequently than monthly, a claim for the amount due the state under this section which the county shall process and pay pursuant to the provisions of Chapter 4 (commencing with Section 29700) of Division 3 of Title 3 of the Government Code.

147

4. The public agency may charge such rates as it may determine for the service of water to any lands covered by the contract unless such rates are limited by agreement between the district and the public agency.

26672. The water made available by the district to the public agency may be used upon the lands covered by such contract for such irrigation, municipal, domestic or other uses as the district and the public agency may agree upon.

26673. Upon the execution of such contract and so long as the contract remains in force and effect, the district shall be relieved of any further obligation to furnish water for use on the lands covered by the contract.

26674. Nothing in this chapter authorizes the sale or transfer of any water right nor shall the agreement authorized in Section 26671 be construed or deemed to constitute the sale or transfer of a water right.

26675. No right in any water or water right owned by the district or the public agency shall be acquired or lost by the use permitted by this chapter.

26676. Except as otherwise provided herein the contract between the district and the public agency may include such terms and conditions as may be agreed upon between the district and the public agency.

26677. The provisions of this chapter shall supersede all provisions of this code inconsistent herewith.

CHAPTER 604

An act to amend Section 6.53 of the West Bay Rapid Transit Authority Act (Chapter 104 of the Statutes of the 1964 First Extraordinary Session), relating to the West Bay Rapid Transit Authority, declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 10, 1965. Filed with Secretary of State June 11, 1965.]

The people of the State of California do enact as follows:

SECTION 1. Section 6.53 of the West Bay Rapid Transit Authority Act (Chapter 104 of the Statutes of the 1964 First Extraordinary Session) is amended to read:

6.53. In addition to any taxes which the authority is authorized to levy pursuant to Section 6.52, at the time of the first county tax levy following the first meeting of the authority, the authority may levy and collect a tax at a rate of one cent ($0.01) on each one hundred dollars ($100) of assessed valuation upon all taxable property within each county in which the authority is authorized to operate to pay the preliminary expenses of the authority, including, but not

Chapter 5 (commencing with Section 5.1) of this act and the calling and conducting of the election thereon.

SEC. 2. This act is an urgency measure necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

Under the present law, the West Bay Rapid Transit Authority is required, at the time of the first county tax levy following the first meeting of the authority, to levy and collect a tax at a rate of one cent ($0.01) on each one hundred dollars ($100) of assessed valuation upon all taxable property within each county in which the authority is authorized to operate to pay the preliminary expenses of the authority.

It now appears that the levy of this tax may not be necessary. In order that this act, which would make the levy of the tax permissive rather then mandatory, may become effective before the tax would be required to be levied, it is imperative that this act take effect immediately.

CHAPTER 605

An act to amend Sections 912, 1201, and 1760.7 of the Welfare and Institutions Code, relating to the Youth Authority.

[Approved by Governor June 10, 1965. Filed with Secretary of State June 11, 1965.]

The people of the State of California do enact as follows:

SECTION 1. Section 912 of the Welfare and Institutions Code is amended to read:

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

The Youth Authority shall present to the county, not more frequently than monthly, a claim for the amount due the state under this section, which the county shall process and pay pursuant to the provisions of Chapter 4 (commencing with Section 29700) of Division 3 of Title 3 of the Government Code

CA WEL & INST § 731
West's Ann.Cal.Welf. & Inst.Code § 731

WEST'S ANNOTATED CALIFORNIA CODES
WELFARE AND INSTITUTIONS CODE
DIVISION 2. CHILDREN
PART 1. DELINQUENTS AND WARDS OF THE JUVENILE COURT
CHAPTER 2. JUVENILE COURT LAW
ARTICLE 18. WARDS--JUDGMENTS AND ORDERS

Current through ch. 190 of 2002 Reg.Sess. urgency legislation & ch. 3 of 3rd Ex.Sess. & March 5, 2002 election

§ 731. Person violating laws; ward of court; commitment to department of youth authority

When a minor is adjudged a ward of the court on the ground that he or she is a person described by Section 602, the court may order any of the types of treatment referred to in Sections 727 and 730 and, in addition, may order the ward to make restitution, to pay a fine up to the amount of two hundred fifty dollars ($250) for deposit in the county treasury if the court finds that the minor has the financial ability to pay the fine, or to participate in uncompensated work programs or the court may commit the ward to a sheltered- care facility or may order that the ward and his or her family or guardian participate in a program of professional counseling as arranged and directed by the probation officer as a condition of continued custody of such minor or may commit the minor to the Department of the Youth Authority.

A minor committed to the Department of the Youth Authority may not be held in physical confinement for a period of time in excess of the maximum period of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court. Nothing in this section limits the power of the Youthful Offender Parole Board to retain the minor on parole status for the period permitted by Section 1769.

CREDIT(S)

1998 Main Volume

(Added by Stats.1961, c. 1616, p. 3487, § 2. Amended by Stats.1976, c. 440, p. 1148, § 3; Stats.1976, c. 1068, p. 4791, § 60; Stats.1976, c. 1071, p. 4829, § 30; Stats.1977, c. 1238, p. 4159, § 2, eff. Oct. 1, 1977; Stats.1978, c. 380, p. 212, § 165; Stats.1979, c. 860, p. 2972, § 7; Stats.1980, c. 626, p. 1712, § 2.)

DECLARATION OF SERVICE
(AG Mailroom)

Case Name: **RE:** **California Youth Authority: Sliding Scale for Charges** No.: 02-TC-01
County of San Bernardino, Claimant
Welfare and Institutions Code Sections 912, 912.1, and 912.5
Statutes 1996, Chapter 6
Statutes 1998, Chapter 632

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On August 15, 2002, I served the attached **Letter dated August 15, 2002 to Shirley Opie, Assistant Executive Director** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 15, 2002, at Sacramento, California.

PETER E. DELGADO
Typed Name

Signature

SERVICE LIST

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

Ms. Annete Chinn
Cost Recovery Systems
705-2 East Bidwell Street #294
Folsom, CA 95823

Nanette F. Rufo, Senior Staff Counsel
California Youth Authority
4241 Williamsbourgh Drive
Sacramento, CA 95823

Ms. Susan Geanacou, Sr. Staff Attorney
Department of Finance
915 L Street, Suite 1190
Sacramento, CA 95814

Mr. Glenn Haas, Bureau Chief
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

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

Mr. Tom Lutzenberger, Principal Analyst
Department of Finance
915 L Street, 6th Floor
Sacramento, CA 95814

Mr. Paul Minney
Spector, Middleton, Young & Mimmey, LLP
7 Park Center Drive
Sacramento, CA 95825

Mr. Andy Nichols, Senior Manager
Centration, Inc.
12150 Tributary Point Drive, Suite 140
Gold River, CA 95670

Ms. Barbara K. Redding
County of San Bernardino
Office of the Auditor/Controller-Recorder
222 West Hospitality Lane
San Bernardino, CA 92415-0018

Mr. Steve Smith, CEO
Mandated Cost Systems, Inc.
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

Mr. David Wellhouse
David Wellhouse & Associates, Inc.
9175 Kiefer Blvd., Suite 121
Sacramento, CA 95826

AUDITOR/CONTROLLER-RECORDER
COUNTY CLERK

CO EXHIBIT D

TOR/CONTROLLER • 222 West Hospitality Lane, Fourth Floor
ernardino, CA 92415-0018 • (909) 387-8322 • Fax (909) 386-8830
RECORDER • **COUNTY CLERK** • 222 West Hospitality Lane, First Floor
San Bernardino, CA 92415-0022 • (909) 387-8306 • Fax (909) 386-8940

LARRY WALKER
Auditor/Controller-Recorder
County Clerk

ELIZABETH A. STARBUCK
Assistant Auditor/Controller-Recorder
Assistant County Clerk

January 22, 2003

Ms. Shirley Opie
Assistant Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

RE: **Rebuttal to State Agency Comments**
Test Claim 02-TC-01
California Youth Authority: Sliding Scale for Charges
County of San Bernardino, Claimant
Welfare and Institutions Code Sections 912, 912.1, and 912.5
Statutes 1996, Chapter 6; Statutes 1998, Chapter 632

Dear Ms. Opie:

The County of San Bernardino ("County") has reviewed the comments submitted by the Department of Justice ("DOJ") on behalf of the California Department of the Youth Authority ("CYA") regarding the test claim for the above referenced subject matter.

It is the County's position that the test claim statutes impose a new program or higher level of service. The CYA's response does not discuss that the sliding scale charge scheme that was enacted to shift the responsibility for "low level" offenders from the state to the counties by creating a new program consisting of severe financial disincentives. This resulted in the creation of new program or higher level of service or both to rehabilitate, punish, and house, these offenders at the county level. The Senate Rules Committee analysis for SB 2055 (Chapter 632), Attachment C in the County's test claim, clearly identifies the intent of the legislature was to shift these costs to local government.

ARGUMENTS IN SUPPORT: The author states:

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

CYA notes in its comments that under the previous statutes, the State of California ("State") charged a flat rate of twenty-five dollars ($25.00) per month for each person committed from January 1, 1948 through December 31, 1996. For a period of almost fifty years the State used a flat rate program for all categories of crimes. In 1997 the State created a progressively tiered rate structure that increased rates for Categories 5, 6, and 7 by 767%, 1,200%, and 1,633%, respectively, above and beyond the adjusted baseline fee of $150. Those three crime categories represent more than ninety-five percent of the criminal acts occurring in the State of California. This is not an increase in costs, but a coercive financial disincentive scheme to shift State costs to local governments.

The California Supreme Court in *Lucia Mar Unified School District v. Honig* (1988) 44 Cal. 3d 830 describes the conditions in which the intent of article XIII, section 6 of the California Constitution must be considered when determining that a new program or higher level of service exists.

> To hold, under the circumstances of this case, that a shift in funding of an existing program from the state to a local agency is not a new program as to the local agency would, we think, violate the intent underlying section 6 of article XIIIB. That article imposed spending limits on state and local governments, and it followed by one year the adoption by initiative of article XIIIA, which severely limited the taxing power of local governments. Section 6 was intended to preclude the state from shifting to local agencies the financial responsibility for providing public services.
>
> The intent of the section would be plainly violated if the state could, while retaining administrative control of programs it has supported with state tax money, simply shift the cost of the programs to local government on the theory that the shift does not violate section 6 of article XIIIB because the programs are not "new."

The County believes that whenever the State through legislative or regulatory action drastically changes the basis for "shared costs" that shifts those costs to local agencies, it has created a new program or higher level of service that requires reimbursement under section 6, article XIIIB of the California Constitution.

Juvenile courts are an independent branch of the state government and are not under the control of the County. Therefore, actions taken by the juvenile courts are not at the option of the County and are reimbursable costs.

Fees based on a sliding scale charged to counties for the care and custody of minors placed in CYA are reimbursable costs within the meaning of Article XIII B, Section 6 of the California Constitution. For almost fifty years, the shared financial responsibility for those minors placed in CYA was based on a flat fee that did not discriminate between the seriousness of the crime. In 1997, a new basis was established that shifted the financial responsibility for CYA commitments

for less serious crimes to counties. This was accomplished by increasing fees by more then 5,000 percent for the least serious crime categories, which comprised about ninety-five percent of the California Crime Index in 1997. This statutory scheme avoids and shifts costs through onerous financial disincentives. Unlike, the previous statutory scheme, it does not share the financial responsibility. Finally, since there are no laws that compel the juvenile courts to commit a person to the CYA, their actions as a branch of state government require counties to incur increased costs. Therefore, this claim for reimbursement should be approved.

As required by the Commission's regulations, we are including a "Proof of Service" that the interested parties have been provided with copies of this response via the United States Mail or by facsimile.

Sincerely,

Mark A Bauman (for Mark Cousineau)

Mark W. Cousineau
Supervising Accountant III
Reimbursable Projects Section

M:WC:mab

Commission on State Mandates

List Date: January 22, 2003 **Mailing Information** Other

Mailing List

Claim Number 00-TC-01 **Claimant** County of San Bernardino

Subject Welfare & Institutions Code Sections 912, 912.1, and 912.5 Statutes 1996, Chapter 6; Statutes 1998, Chapter 632

Issue California Youth Authority: Sliding Scale for Charges

Mr. Steve Smith, CEO
Mandated Cost Systems, Inc.

2275 Watt Avenue
Sacramento CA 95825
TEL: (916) 487-4435
FAX: (916) 487-9662
Interested Person

Mr. Allan Burdick
MAXIMUS

4320 Auburn Blvd, Suite 2000
Sacramento CA 95841
TEL: (916) 485-8102
FAX: (916) 485-0111
Interested Person

Ms. Annette Chinn
Cost Recovery Systems

705-2 East Bidwell St #294
Sacramento CA 95630
TEL: (916) 939-7901
FAX: (916) 939-7801
State Agency

Mr. Glenn Haas, Bureau Chief (B-8)
State Controller's Office
Division of Accounting & Reporting
3301 "C" Street, Suite 500
Sacramento CA 95816
TEL: (916) 445-8757
FAX: (916) 323-4807
State Agency

Ms. Barbara Redding
Auditor/Controller-Recorder
County of San Bernardino
222 West Hospitality Lane
San Bernardino CA 92415
TEL: (909) 386-8865
FAX: (909) 386-8830
Claimant

Mr. Paul Minney,
Spector, Middleton, Young & Minney, LLP

7 Park Center Drive
Sacramento CA 95825
TEL: (916) 646-1400
FAX: (916) 646-1300
Interested Person

PROOF OF SERVICE

I, the undersigned, declare as follows:

I am employed by the County of San Bernardino, State of California. My business address is 222 W. Hospitality Lane, San Bernardino, CA 92415. I am 18 years of age or older.

On January 23, 2003, I faxed the letter dated January 22, 200' to the Commission on State Mandates requesting an extensio. of time for submitting responses to state agency comments on Test Claim 02-TC-01. I faxed and/or mailed it also to the other parties listed on this mailing list.

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 January 23, 2003 at San Bernardino, California.

Deborah L. Pittenger

DEBORAH L. PITTENGER

Claim Number 00-TC-01 **Claimant** County of San Bernardino

Subject Welfare & Institutions Code Sections 912, 912.1, and 912.5 Statutes 1996, Chapter 6; Statutes 1998, Chapter 632

Issue California Youth Authority: Sliding Scale for Charges

Mr. David Wellhouse
David Wellhouse & Associates, Inc.

9175 Kiefer Blvd Suite 121 TEL: (916) 368-9244
Sacramento CA 95826 FAX: (916) 368-5723
Interested Person

Mr. Andy Nichols, Senior Manager
Centration, Inc.

12150 Tributary Point Dr #140 TEL: (916) 351-1050
Gold River, CA 95670 FAX: (916) 351-1020
State Agency

Mr. Leonard Kaye, Esq.
County of Los Angeles
Auditor-Controller's Office
500 W. Temple St, Rm 603 TEL: (213) 974-8564
Los Angeles CA 90012 FAX: (213) 617-8106
Interested Person

Nanette F. Rufo, Senior Staff Counsel
California Youth Authority

4241 Williamsbourgh Drive TEL:
Sacramento CA 95823 FAX:
Interested Person

Ms. Susan Geanacou, Sr. Staff Attorney
Department of Finance

915 L Street, Suite 1190 TEL:
Sacramento Ca 95814 FAX:
State Agency

Mr. Tom Lutzenberger, Principal Analyst
Department of Finance

915 L Street, 6th Floor TEL:
Sacramento CA 95814 FAX:
State Agency

EXHIBIT E

STATE OF CALIFORNIA ARNOLD S

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

February 13, 2007

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

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

RE: Draft Staff Analysis and Hearing Date
California Youth Authority: Sliding Scale for Charges, 02-TC-01
Welfare and Institutions Code Sections 912, 912.1, and 912.5
Statutes 1996, Chapter 6; Statutes 1998, Chapter 632
County of San Bernardino, Claimant

Dear Ms. Ter Keurst:

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 Wednesday, **March 6, 2007**. 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 **Monday, April 16, 2007**, at 9:30 a.m., at the Department of Water Resources, 1416 Ninth Street, First Floor Auditorium, Sacramento, CA. The final staff analysis will be issued on or about April 2, 2007. 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

Enclosures

ITEM ____

TEST CLAIM
DRAFT STAFF ANALYSIS

Welfare and Institutions Code
Sections 912, 912.1 & 912.5

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

California Youth Authority: Sliding Scale for Charges

02-TC-01

County of San Bernardino, Claimant

EXECUTIVE SUMMARY

This test claim addresses increased fees paid by counties to the state for each juvenile committed to the California Department of the Youth Authority ("CYA").

The Test Claim Statutes Are Not Subject to Article XIII B, Section 6

The test claim statutes impose additional costs for commitments to the CYA, but such commitments are the result of a juvenile court order. Pursuant to article XIII B, section 9, subdivision (c), appropriations required to comply with mandates of the courts are not subject to the taxing and spending limits placed on local governments by articles XIII A and XIII B.

Therefore, the test claim statutes do not constitute a state-mandated program and are not subject to article XIII B, section 6.

Conclusion

Staff finds that any costs associated with commitment of a juvenile to the CYA result from a juvenile court mandate within the meaning of article XIII B, section 9, subdivision (b). Consequently, the article XIII A and article XIII B taxing and spending restrictions are not applicable to these costs, and no reimbursement under article XIII B, section 6 is required.

Recommendation

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

STAFF ANALYSIS

Claimant

County of San Bernardino

Chronology

07/05/02	County of San Bernardino filed test claim with the Commission on State Mandates ("Commission")
08/16/02	The Department of Finance submitted comments on test claim with the Commission
08/16/02	The California Department of Justice ("DOJ"), representing the California Department of the Youth Authority ("CYA"), submitted comments on the test claim with the Commission
01/22/03	County of San Bernardino submitted rebuttal comments to the state agency comments on the test claim with the Commission
02/13/07	Commission staff issued draft staff analysis

Background

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

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

---

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

[2] Welfare and Institutions Code section 1700; according to the Legislative Analyst's Office, juveniles committed to CYA are generally between the ages of 12 and 24, and the average age is19. (Legislative Analyst's Office, Analysis of the 1999-2000 Budget Bill, Criminal Justice Departmental Issues, page 4.)

[3] Welfare and Institutions Code section 1700.

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

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

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

committed to CYA are assigned a category number, ranging from 1 to 7, based on the seriousness of the offense committed; 1 being the most serious and 7 being the least serious.[7]

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

The juvenile court's jurisdiction extends to persons under 18 when the person violates federal, state or local criminal law;[11] however, certain crimes by persons who are 14 or older can be tried by the criminal courts.[12] With some exceptions, the juvenile court may retain jurisdiction over any person who is found to be a ward of that court until the ward attains the age of 21.[13]

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

The court may limit control by the parent or take the juvenile from physical custody of the parent under specified circumstances.[18] Treatment can take the form of probation without supervision of the probation officer, probation under the officer's supervision in the home of the parent or guardian or in a foster home,[19] placement in a community care facility,[20]

---

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

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

[9] Welfare and Institutions Code section 245.

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

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

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

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

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

[15] Welfare and Institutions Code section 725.

[16] Welfare and Institutions Code section 725.5.

[17] Test Claim, page 3.

[18] Welfare and Institutions Code section 726.

[19] Welfare and Institutions Code section 727.

[20] Welfare and Institutions Code section 740.

confinement within juvenile hall, placement in a private or county camp,[21] or commitment to the CYA.[22] However, before committing a person to CYA, the court must be satisfied that the minor has the mental and physical capacity to benefit from such an experience.[23]

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

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

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

Test Claim Statutes

In 1996, the Legislature increased the fees CYA charges the counties by enacting Statutes 1996, chapter 6 (Sen. Bill No. (SB) 681). Chapter 6 increased the monthly fee from $25 to $150[26] for category 1 through 4 offenders, i.e., the most serious offenders, and established a "sliding scale" of fees for category 5 through 7 offenders, based on a specified percentage of the per capita institutional cost of CYA.[27] Statutes 1998, chapter 632 (SB 2055), capped the per capita institutional cost to the cost the CYA charged counties as of January 1, 1997.[28] The

---

[21] Welfare and Institutions Code section 730.

[22] Welfare and Institutions Code section 731.

[23] Welfare and Institutions Code section 734.

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

[26] Welfare and Institutions Code section 912.

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

[28] Welfare and Institutions Code section 912.1.

charge against the county is not applicable to periods of confinement that are solely pursuant to a revocation of parole by the Youthful Offender Parole Board.[29]

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

> SB 681 [Stats. 1996, ch. 6] imposed a fee schedule upon counties for "low level" offenders sent to the California Youth Authority (CYA). The intent of the legislation was to provide a monetary disincentive for sending "low level" juvenile offenders to the CYA. Clearly, the Legislature wanted counties to treat, punish and house these offenders at the local level.[30]

With the enactment of Statutes 1996, chapter 6, the Legislature also provided $32.7 million in funding to assist the counties in the operation of local juvenile facilities,[31] established the Juvenile Challenge Grant program allocating $50 million to fund a five-year program cycle for 29 different community-based demonstration programs targeting juvenile offenders,[32] and initiated the Repeat Offender Prevention Project (ROPP) with another $3.3 million for seven counties to identify and intervene at an early stage with potential repeat offenders.[33] The Challenge Grant and ROPP programs have received additional funding to continue in subsequent years. In 1998, $100 million was appropriated by the state to support renovation, reconstruction, and deferred maintenance of county juvenile facilities.[34] Thus, the Legislature has provided and continues to provide significant funding for assistance to counties in providing such locally-based programs.[35]

Claimant's Position

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

---

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

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

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

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

[33] 1996-97 Budget Act.

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

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

The claimant estimates the following increased costs:

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

The claimant filed a rebuttal to the CYA comments on this test claim. The rebuttal comments are addressed, as necessary, later in this analysis.

Position of Department of Finance

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

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

Position of California Youth Authority (submitted by California Department of Justice)

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

- Pursuant to *County of San Diego v. State* (1997) 15 Cal.4th 68, article XIII B, section 6 prohibits the state from shifting to counties the costs of state programs for which the state assumed *complete* financial responsibility before adoption of section 6. The test claim statutes merely increase the charges to local agencies for discretionary

placements in CYA, which local agencies have long had a share in supporting. Therefore, no new program or higher level of service was created by the test claim statutes because CYA placements were not funded entirely by the state when article XIII B, section 6 became effective.

- The original statutory mandate requiring that counties pay a fee for CYA placements was enacted before January 1, 1975, rendering state subvention permissive rather than mandatory under article XIII B, section 6.
- Costs resulting from actions undertaken at the option of the local agency are not reimbursable. The test claim statutes do not eliminate a juvenile court's *discretion* to choose other dispositions for minors adjudicated to come within the terms of Welfare and Institutions Code section 602, nor do they *require* CYA commitments for minors under any circumstances. Welfare and Institutions Code section 731, subdivision (a), makes it clear that a CYA commitment is only one of several dispositions available to a juvenile court as to minors who are found to have committed criminal offenses.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[36] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[37] "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."[38, 39]

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.[40] In

---

[36] 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."

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

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

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

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

addition, the required activity or task must be new, constituting a "new program," and it must create a "higher level of service" over the previously required level of service.[41]

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.[42] 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.[43] A "higher level of service" occurs when there is "an increase in the actual level or quality of governmental services provided."[44]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[45]

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.[46] 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."[47]

The analysis addresses the following issue:

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

---

[41] *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*).

[42] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (*County of Los Angeles*); *Lucia Mar, supra,* 44 Cal.3d 830, 835).

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

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

[45] *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.

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

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

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

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

The question in the instant case is whether the costs for CYA commitments fall within the court-mandate exclusion to the article XIII B spending limit. For the reasons stated below, staff finds that these costs are excluded from the spending limit and, consequently, are not subject to article XIII B, section 6.

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

> Article XIII B was adopted less than 18 months after the addition of article XIII A to the state Constitution, and was billed as "the next logical step to Proposition 13" [article XIII A]. While article XIII A was generally aimed at controlling ad valorem property taxes and the imposition of new "special taxes" [citations], the thrust of article XIII B is toward placing certain limitations on the growth of appropriations at both the state and local government level; in particular, article XIII B places limits on the authorization to expend the "proceeds of taxes." (§ 8, subd. (c).)
>
> Article XIII B provides that beginning with the 1980-1981 fiscal year, "an appropriations limit" will be established for each "local government." ... (§ 8, subd. (h).) No "appropriations subject to limitation" may be made in excess of this appropriations limit, and revenues received in excess of authorized appropriations must be returned to the taxpayers within the following two fiscal years. (§ 2.)[48]

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

> Article XIII B – the so-called "Gann limit" — restricts the amounts state and local governments may appropriate and spend each year from the "proceeds of taxes." (§§ 1, 3, 8, subds. (a)-(c).) ... In language similar to that of earlier statutes, article XIII B also requires state reimbursement of resulting local costs whenever, after January 1, 1975, "the Legislature or any state agency mandates a new program or higher level of service on any local government, ..." (§ 6.) Such mandatory state subventions are excluded from the local agency's spending limit, but included within the state's. (§ 8, subds. (a), (b).)

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

> Finally, article XIII B excludes from either the state or local spending limit any "[a]ppropriations required for purposes of complying with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the providing of existing services more costly." (§ 9, subd. (b) ....)[49]

Thus, article XIII B, section 6 requires state reimbursement to local governments in light of taxing and spending limits, but section 9 provides exclusions to the spending limits. Although the courts have not dealt with the *court* mandate exclusion identified in section 9, subdivision (b), the *federal* mandate exclusion from section 9, subdivision (b), was addressed in *City of Sacramento*. There, the court found that a state statute extending mandatory unemployment insurance coverage to local government employees imposed "federally mandated" costs on local agencies and not state-mandated costs; hence, local agencies subject to the new statutory requirements may *tax and spend as necessary* subject to superseding constitutional ceilings on taxation by state and local governments to meet the expenses required to comply with the legislation.[50] Because the plain language of article XIII B, section 9, subdivision (b), also excludes court mandates from the spending limit, these principles must, by extension, apply to court mandates. As the courts have made clear, a local agency cannot accept the benefits of being exempt from appropriations limits while asserting an entitlement to reimbursement under article XIII B, section 6.[51]

The commitment to CYA is mandated by the juvenile court.[52] Although counties may recommend treatment or disposition other than a CYA commitment during the hearing, the juvenile court makes the ultimate decision to order commitment of a juvenile to the CYA. Thus, counties have no choice when so ordered by the juvenile court other than to commit the juvenile to CYA and incur the resulting monthly costs.

Claimant argues that whenever the state through legislative or regulatory action "drastically changes the basis for 'shared costs' that shifts those costs to local agencies, it has created a new program or higher level of service that requires reimbursement"[53] under article XIII B, section 6. Claimant cites the Supreme Court case of *Lucia Mar*, which holds that "[article XIII B,] [s]ection 6 was intended to preclude the state from shifting to local agencies the financial responsibility for providing public services in view of these restrictions on the taxing and spending power of the local entities."[54]

Nevertheless, staff does not reach the "new program or higher level of service" issues, such as the "cost shift" principles of *Lucia Mar*, because any costs for CYA commitments imposed by order of the juvenile courts are *not subject to* the taxing and spending restrictions on local

---

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

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

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

[52] Welfare and Institutions Code section 731.

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

[54] *Lucia Mar, supra,* 44 Cal.3d 830, 835-836.

agencies pursuant to article XIII B, section 9, and accordingly are *not subject to* article XIII B, section 6.

Conclusion

Staff finds that any costs associated with commitment of a juvenile to the CYA result from a juvenile court mandate within the meaning of article XIII B, section 9, subdivision (b). Consequently, the article XIII A and article XIII B taxing and spending restrictions are not applicable to these costs, and no reimbursement under article XIII B, section 6 is required.

Recommendation

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

Board of Corrections (5430)

The state's Board of Corrections oversees the operations of the state's 460 local jails. It does this by inspecting facilities biennially, establishing various standards, including staff training, and administering state and federal funds for jail and juvenile detention facility construction. In addition, the board maintains data on the state's jails and juvenile halls. The board also sets standards for, and inspects, local juvenile detention facilities, and is responsible for the administration of two juvenile justice grant programs.

The budget proposes expenditures of $144 million in 1999-00 ($71 million from the General Fund). This is about $74.8 million, or 108 percent, more than estimated current-year expenditures. The increase is due to (1) the implementing of several law enforcement and juvenile justice local assistance grant programs authorized by the Legislature last year and (2) providing state and federal prison construction funds to jails and local juvenile detention facilities

Board Responsibilities Have Increased Dramatically

T Board of Corrections has been assigned responsibility for distributing almost $200 million in local assistance funds in the current and budget years. These funds are for grants for juvenile crime programs, grants to counties to reduce the population of mentally ill offenders in the jails, and grants to counties for jail construction and juvenile facility construction and renovation. The board is requesting 10.1 positions in the current year and 13.1 positions in the budget year to administer these grants. The Governor's budget does not propose funds to expand the programs in the budget year, contrary to statements of legislative intent included in the measure that established and funded several of the programs.

T[illegible]posed 1999-00 budget for the board is more than double its expected expenditures for the current year, and [illegible]ent year expenditures are estimated to be 72 percent higher than in 1997-98. This dramatic rate of increase reflects the significant increases in responsibilities which the board has absorbed in recent years. The majority of these new funds have been appropriated to the board to distribute to counties for a variety of new grant programs related to juvenile justice and local correctional facility construction, renovation, and management.

Juvenile Justice Grant Programs. The board is currently administering two juvenile justice grant programs--the Repeat Offender Prevention Program (ROPP) and the Juvenile Crime Enforcement and Accountability Challenge Grant--which distribute state funds to county probation departments for juvenile justice-related demonstration programs.

The ROPP program was initiated in the *1996-97 Budget Act* with an appropriation of $3.3 million dollars for seven counties (Fresno, Humboldt, Los Angeles, Orange, San Diego, San Mateo, and Solano). The program is based on research conducted by the Orange County probation department indicating that a significant proportion of juvenile crime is committed by a chronic 8 percent of the offender population. Each of the projects funded by this program is aimed at identifying and intervening with this population at an early stage (at the beginning or before the onset of their offending). The 1997-98 and 1998-99 budgets provided additional funds to continue the program until 2001 ($3.4 million and $3.8 million, respectively), and the 1998-99 budget added the City and County of San Francisco as a grantee. The board is requesting a partial position in the current and budget years to handle the workload associated with the addition of San Francisco and the extension of the program

The Juvenile Challenge Grant program was established by Chapter 133, Statutes of 1996 (SB 1760, Lockyer) with an initial *1996-97 Budget Act* appropriation of $50 million to fund a five-year program cycle. This first round of funds was distributed to 14 counties to fund 29 different community-based demonstration programs targeting juvenile offenders. The programs were selected through a competitive process in which 52 counties applied. In 1998-99, the Challenge Grant program received an additional $60 million which will be distributed again on a competitive basis very similar to that employed for the first round. The board has requested position authority for three positions in the current year, and 3.9 positions in the budget year to administer this program. The positions would be supported by the funds [illegible]appropriated to the board for administration of the grants.

The *1999-00 Governor's Budget* includes no additional funds for the Challenge Grants. However, Chapter 325,

atutes of 1998 (AB 2261, Aguilar) expressed the Legislature's intent to appropriate at least an additional $25 million nually to the program through 2001-02. During the first round of Challenge Grant funding, the board received oposals requesting over $137 million for the available pool of $50 million. The board anticipates that the demand r Challenge Grant funds will again far outstrip the $60 million currently available. Awards for the second round of e Challenge Grants will be made in May 1999.

th of these programs require that the recipient counties undertake a rigorous quantitative evaluation designed to easure the outcomes of the various programs. The final report for the first round of the Challenge Grant program is e to the Legislature by March 1, 2001, and the final report on the ROPP is due on December 31, 2001. The findings these reports will be important as the Legislature considers the proper role for the state in funding juvenile justice ograms.

entally Ill Offender Crime Reduction Grant Program . The Mentally Ill Offender Crime Reduction Grant ogram is designed as a demonstration grant project to aid counties in finding new collaborative strategies for more ectively responding to the mentally ill offenders who cycle through already overcrowded county jails. Chapter 501, atutes of 1998 (SB 1485, Rosenthal) created the program, and requires the board to develop an evaluation design at will assess the effect of the program on crime reduction, overcrowding in jails, and local criminal justice costs.

apter 502, Statutes of 1998 (SB 2108, Vasconcellos) appropriated $27 million for the program, and Chapter 501 pressed the Legislature's intent to appropriate an additional $25 million for the program in the budget year. wever, the Governor's budget does not include any additional funds for this program.

e distribution of the grant funds will be on a competitive basis, and includes a planning grant process that allows unties to receive funds in order to assess their needs and develop programming proposals. Because 45 counties plied for and received initial small planning grants and at least two others appear likely to apply for demonstration ants, it is likely that the demand for the demonstration grant funds will outstrip the $23.7 million currently ailable. Grant awards for this program will be made in May 1999. The board is requesting one position in the rrent and budget years to administer this program.

olent Offender Incarceration/Truth-In-Sentencing Grant. The Violent Offender Incarceration/Truth-In-ntencing (VOI/TIS) Grant Program is a federally funded program that distributes money to states to construct or grade state and local correctional facilities. Under this program, states can spend up to 15 percent of their grant for al adult or juvenile facility construction. However, if the state declares that there are exigent circumstances, a state n use up to the entire amount for local juvenile facility construction.

1998, the Legislature enacted Chapter 339 (AB 2793, Migden) which declared exigent circumstances, awarded all the 1998-99 VOI/TIS funds to counties for adult jail and juvenile detention facility construction, and announced the gislature's intent to distribute the 1999-00 VOI/TIS funds in the same manner--15 percent for jail construction, and percent for juvenile facility construction. However, the Governor's budget does not include any proposal to expend e 1999-00 federal funds. The board estimates that by 2002, the counties will need to spend an additional 35 million for local adult and juvenile facilities. The board will award the 1998-99 funds in May 1999. The budget cludes three positions in the current year and 3.9 positions in the budget year to administer these funds.

uvenile Hall/Camp Restoration Program. Because the need to restore and maintain existing juvenile facilities is least as great as the need to expand existing bed capacity, the Legislature enacted Chapter 499, Statutes of 1998 B 2796, Wright). This measure appropriated $100 million in General Fund monies to support renovation, construction, and deferred maintenance for juvenile halls and camps. The board will distribute these funds on a mpetitive basis in conjunction with the federal VOI/TIS funds available for juvenile facilities. Funds for this program e also expected to be awarded in May 1999. The board is requesting three positions in the current year and 3.9 sitions in the budget year to administer these funds.

Board of Prison Terms (5440)

he Board of Prison Terms (BPT) is composed of nine members appointed by the Governor and confirmed by the enate for terms of four years. The BPT considers parole release for all persons sentenced to state prison under the ndeterminate sentencing laws. The BPT may also suspend or revoke the parole of any prisoner under its jurisdiction who has violated parole. In addition, the BPT advises the Governor on applications for clemency and helps screen rison inmates who are scheduled for parole to determine if they are sexually violent predators subject to potential ivil commitment.

he proposed *1999-00 Governor's Budget* for the support of the BPT is $15.5 million from the General Fund. This is n increase of $778,000, or 5.3 percent, above estimated expenditures for the current year. The proposed current- nd budget-year increases are primarily the result of the steadily increasing workload for hearing cases of parole iolators and indeterminately sentenced prison inmates. In addition, the budget requests additional staff and contract unding related to expansion of the state Mentally Disordered Offender (MDO) program. This program commits prison nmates who are seriously mentally ill to state mental hospitals (we discuss this proposal below).

Rate Increases for Evaluators Should Be Rejected

We recommend approval of the Board of Prison Terms (BPT) request for $520,000 for two new staff positions and additional contract funding related to expansion of a state program to commit mentally disordered offenders nearing the end of their prison terms to state mental hospitals. However, we recommend reducing by $100,000 the funding proposed for rate increases to private psychiatrists and psychologists paid to evaluate these offenders because BPT's concern that it is being outbid for these [illegible] by the Department of Mental Health (DMH) is better addressed by granting part of the BPT rate [illegible], but also lowering DMH's rates to equal the new BPT rates.

We further recommend that DMH report at budget hearings on where and how DMH will hold the additional mentally disordered offenders resulting from this expansion of the commitment process. Reduce Item 5440-001-0001 by $100,000 and reduce Item 4440-001-0001 by $137,000.)

he BPT Role In Commitment Process. The MDO program was established by Chapters 1418 and 1419, Statutes [illegible]985 (SB 1054, Lockyer and SB 1296, McCorquodale) to commit mentally ill prison inmates to state mental [illegible]tals. To be deemed an MDO, an inmate must have committed one of a number of specified violent crimes, be earing release on parole, have a severe mental disorder, and pose a substantial danger of causing physical harm to thers if released to the community. Also, in order to be committed as an MDO, the offender must have been ceiving mental health treatment in state prison for at least 90 days in the year prior to his or her anticipated release ate.

ate law provides that BPT must certify that an inmate being considered for an MDO commitment meets the cessary criteria. The BPT schedules and coordinates the evaluation of such offenders by psychiatrists or sychologists representing DMH and the California Department of Corrections (CDC). If the DMH and CDC evaluators sagree about whether an inmate is eligible for an MDO commitment, state law requires BPT to solicit the opinion of o other, independent evaluators to resolve the matter. Both must concur in an MDO commitment if it is to proceed; herwise, the offender would likely be released on parole.

DO Workload Increasing. The BPT has requested a General Fund augmentation of $620,000 to hire a staff sychiatrist and office technician and for additional contract funding to help address an increase in its projected MDO orkload. In response to recent court decisions, many more inmates are now receiving ongoing mental health [illegible]ment at CDC institutions, with the result that the number of offenders approaching their release dates and [illegible]y eligible for MDO commitments is growing significantly. Accordingly, CDC and DMH also propose to increase ei[illegible]orts to commit more such offenders to state mental hospitals as MDOs instead of permitting their release to e community on parole.

e BPT has requested the two new positions to coordinate this expansion of MDO-related activities. It has also quested the contract funding necessary for it to address the resulting increase in its evaluation and hearing seload.

oposed Rates Should Be Reduced. Our analysis of DMH data documenting recent MDO caseload trends monstrates that the $177,000 sought for the additional staffing and $125,000 sought for increases in its hearing d evaluation workload are justified. However, we have concluded that an additional $318,000 sought by BPT to rease the rate it pays psychiatrists and psychologists to conduct MDO evaluations is not justified and should be luced by $100,000.

e BPT based its request on the increasing difficulty it has experienced in finding clinical professionals to conduct its aluations. According to BPT, this difficulty stems from the fact that the psychiatrists and psychologists who have en performing this type of work have been offered higher rates for similar work by DMH. The BPT noted that, while as been paying a flat rate of $320 per MDO evaluation, DMH has been paying $614 for MDO evaluations and ving an average of $1,500 for evaluation of offenders being considered for commitments under the Sexually Violent dator program. The BPT has requested funding sufficient to raise its rates to $568 per evaluation to reduce the e disparity.

e BPT's concerns about the disparity in rates appears to be valid. However, we believe a better approach to ucing the gap would be to increase the rate BPT pays for MDO evaluations to $490 (an increase of more than percent), and to reduce DMH rates to $490. This change would restore BPT's basic rates to the $400 level they re at until a 1993 budget cut, and additionally provide the same $90 allowance for travel and court-appearance e received by DMH contractors. This approach would reduce the BPT budget request by $100,000 and permit a ther $137,000 reduction in the DMH budget. Our recommendation to reduce the DMH rates paid for MDO aluations is discussed in our analysis of the DMH budget in the Health and Social Services chapter of this *Analysis*.

Plan for Holding Additional MDOs. We are also concerned that, while both the BPT and DMH are requesting ditional funding to expand the MDO commitment process, the DMH budget does not provide additional funding to d and provide treatment for the additional MDOs that would result from this proposed expansion of commitment orts. We believe it would be unwise for the Legislature to provide additional funding for the processing of MDO es unless there is funding and an acceptable plan for holding and treating these offenders.

cordingly, in our analysis of DMH (please see the Health and Social Services chapter), we recommend that DMH ort at budget hearings on its caseload estimates for mentally disordered offenders, along with projected support d capital outlay costs associated with the growing number of MDO referrals.

alyst's Recommendation. For these reasons, we recommend approval of a $520,000 augmentation for BPT for O-related positions and contract evaluations, with a reduction of $100,000 from its original budget request. We o recommend that DMH report at budget hearings regarding the operating and any capital outlay costs relating to e proposed expansion of the MDOs in the state mental hospital system and its plan for holding and providing atment for these additional offenders.

Department of the Youth Authority (5460)

e Department of the Youth Authority is responsible for the protection of society from the criminal and delinquent havior of young people (generally ages 12 to 24, average age 19). The department operates training and treatment ograms that seek to educate, correct, and rehabilitate youthful offenders rather than punish them. The departmer erates 11 institutions, including two reception centers/clinics, and four conservation camps. In addition, the epartment supervises parolees through 16 offices located throughout the state.

The budget proposes total expenditures of $392 million for the Youth Authority in 1999-00. This is $3.1 million, or about 1 percent, more than current-year expenditures. General Fund expenditures are proposed to total $320 million budget year, an increase of $4.5 million, or 1.4 percent, above expenditures in 1998-99. The department's d General Fund expenditures include $36.6 million in Proposition 98 educational funds. The Youth Authority also estimates that it will receive about $68 million in reimbursements in 1999-00. These reimbursements primarily come from the fees that counties pay for the wards they send to the Youth Authority.

The primary reason for the slight increase in General Fund spending for the budget year is that $15 million of a $25 million appropriation provided to the department in Chapter 499, Statutes of 1998 (AB 2796, Wright) for allocation to nonprofit organizations for youth shelters is proposed to be expended in the budget year.

Approximately 72 percent of the total funds requested for the department is for operation of the department's institutions and camps and 16 percent is for parole and community services. The remaining 12 percent of total funds is for the Youth Authority's education program.

Ward Population

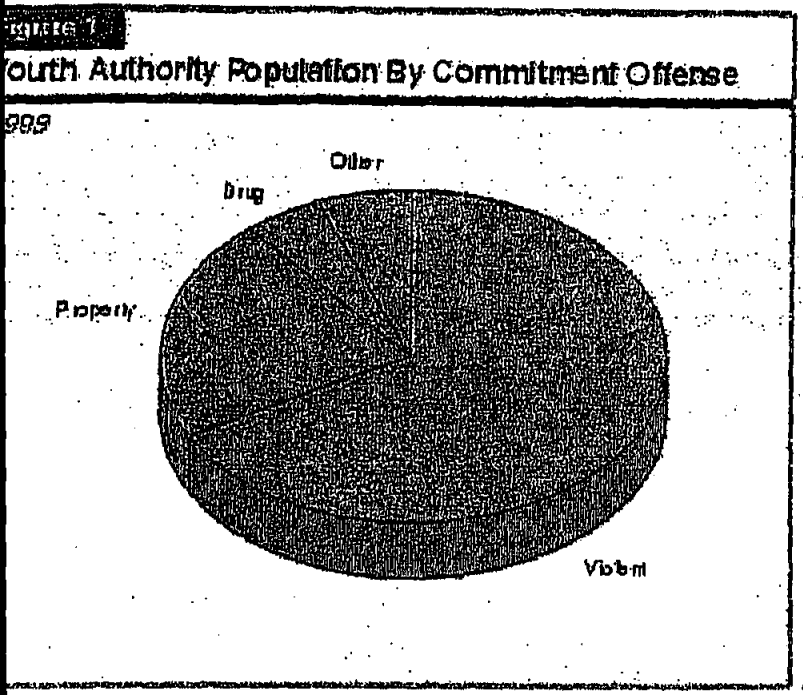
Who Is in the Youth Authority?

There are several ways that an individual can be committed to the Youth Authority's institution and camp population, including:

- ***Juvenile Court Admissions.*** The largest number of first-time admissions to the Youth Authority are made by juvenile courts. As of December 1998, 94 percent of the institutional population was committed by the juvenile courts. Juvenile court commitments include offenders who have committed both misdemeanors and felonies.
- ***Criminal Court Commitments.*** These courts send juveniles who were tried and convicted as adults to the outh Authority. On December 31, 1998, 5 percent of the institutional population were juveniles committed by iminal courts.
- ***Corrections Inmates.*** This segment of the Youth Authority population--2 percent of the population in December 1998--is comprised of inmates from the Department of Corrections (CDC). These inmates are referred to as "M cases" because the letter M is used as part of their Youth Authority identification number. These individuals were under the age of 18 when they were committed to the CDC after a felony conviction in criminal court. Prior to July 22, 1996, these inmates could have remained in the Youth Authority until they reached the age of 25. Chapter 195, Statutes of 1996 (AB 3369, Bordonaro) restricts future "M cases" to only those CDC inmates who are under the age of 18 at the time of sentencing. The new law requires that "M cases" be transferred to the CDC at age 18, unless their earliest possible release date comes before their 21st birthday.
- ***Parole Violators.*** These are parolees who violate a condition of parole and are returned to the Youth Authority. In addition, some parolees are recommitted to the Youth Authority if they commit a new offense while on parole.

Characteristics of the Youth Authority Wards. Wards in Youth Authority institutions are predominately male, 19 years old on average, and come primarily from southern California, with 34 percent coming from Los Angeles County. Hispanics make up the largest racial and ethnic group in Youth Authority institutions, accounting for 49 percent of the total population. African Americans make up 29 percent of the population, whites are 14 percent, and Asians and others are approximately 8 percent.

Most Wards Committed for Violent Offenses. Figure 1 shows the Youth Authority population by type of offense.



As of December 1998, 67 percent of the wards used in departmental institutions were committed for a violent offense, such as homicide, robbery, assault, and ious sex offenses.

contrast, only 42 percent of the CDC's population has been incarcerated for violent offenses. The number of wards arcerated for property offenses, such as burglary and auto theft, was 22 percent of the total population. The mber of wards incarcerated for drug offenses was 5 percent in 1998, and the remaining 6 percent was incarcerated various other offenses. We believe that the percentage of wards that are incarcerated for violent offenses will bably increase in future years. This is because the state has implemented a sliding fee schedule that provides the nties with an incentive to commit more serious offenders to the Youth Authority while retaining the less serious enders at the local level. Specifically, counties are charged higher fees for less serious offenders committed to the uth Authority and lower fees for more serious offenders (we describe this later in this analysis).

erage Period of Incarceration Is Increasing. Wards committed to the Youth Authority for violent offenses ve longer periods of incarceration than offenders committed for property or drug offenses. Because of an increase violent offender commitments, the average length of stay for a ward in an institution is increasing. For example, Youth Authority estimates that on average, wards who are first paroled in 1998-99 will have spent 31.3 months in outh Authority institution compared to 23.6 months for a ward paroled in 1993-94. This trend is expected to tinue; the Youth Authority projects that the length of stay for first parolees in 2002-03 will be 32.3 months, a ercent increase.

e longer lengths of stay are explained in part by the fact that wards committed by the juvenile court serve determinate" periods of incarceration, rather than a specified period of incarceration. Wards receive a parole nsideration date when they are first admitted to the Youth Authority, based on their commitment offense. Time can added or reduced by the Youthful Offender Parole Board (YOPB), based on the ward's behavior and whether the rd has completed rehabilitation programs. In contrast, juveniles and most adults sentenced in criminal court serve eterminate" sentences--generally a fixed number of years--that can be reduced by "work" credits and time served or to sentencing.

the Youth Authority population changes, so that the number of wards committed for violent offenses makes up a ger share of the total population, the length of stay will become a significant factor in calculating population owth. However, as we point out in our analysis of the YOPB, not all of the increase can be attributed to a change in e population mix, as less serious offenders are experiencing even sharper increases in their lengths of stay than ore serious offenders.

Ward Population Continues to Decline

I[illegible]outh Authority's institutional population continued to decrease in the current year and it is [illegible]ted to decline further over the next several years until June 2001, at which point it will start to increase. The Youth Authority's forecast is to have 7,510 wards at the end of the budget year and 7,880 wards in 2002-03.

Youth Authority parole populations are expected to decline in the budget year to about 5,060 parolees, and will continue to decrease to about 4,865 parolees by the end of 2002-03. The decline is due to fewer Youth Authority admissions and longer lengths of stay for those wards who are currently incarcerated.

The Youth Authority's September 1998 ward population projections (which form the basis for the *1999-00 Governor's Budget*) estimate that the number of wards and inmates housed in the Youth Authority will decrease by 397, or 5 percent, by the end of 1998-99, compared to 1997-98. A primary reason for this decline in population is the implementation of Chapter 195 which transferred CDC inmates housed at the Youth Authority back to the CDC. In addition, implementation of Chapter 6, Statutes of 1996 (SB 681, Hurtt) increased the fees that counties pay the state for placement of juvenile offenders in the Youth Authority. The new fees went into effect January 1, 1997, and have had an impact on Youth Authority commitments (we discuss the effect of this legislation in more detail below).

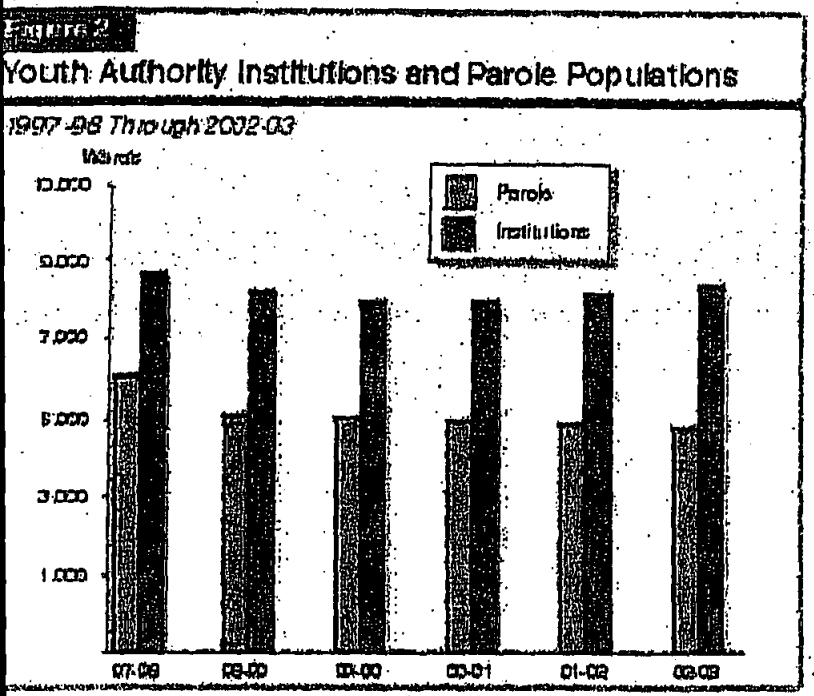
Fo[illegible]e budget year through 2002-03, the Youth Authority projects that its population will decline and then grow slightly, reaching just under 8,000 incarcerated wards on June 30, 2003. These estimates are significantly lower than the projections made by the Youth Authority in the spring of 1998 (which was the basis for the enacted 1998-99 budget) and appear to fully reflect the effects of the fee increase discussed below..

While the Youth Authority is experiencing a significant decline in the number of parolees it supervises in the current year, it does not expect a further significant decline in the budget year. Parole populations will decline by only 40 cases, or less than 1 percent, in the budget year. The number of parolees will continue to decline slowly through [illegible]. Figure 2 (see next page) shows the Youth Authority's institutional and parolee populations from 1997-98 th[illegible]2002-03.

Ward and Parolee Population Projections Will Be Updated in May

We withhold recommendation on a net $1.4 million decrease from the General Fund based on projected ward and parolee population changes, pending receipt of the revised budget proposal and population projections to be contained in the May Revision.

Ward and Parolee Population in the Budget Year. The Youth Authority population is projected to decrease by 215 wards, or 5 percent, from the end of the current year to the end of the budget year. The budget proposes a net decrease of $1.4 million from the General Fund reflecting this decrease in the Youth Authority population. The dollar decrease is relatively modest because the Youth Authority has decided not to close any housing units in response to the projected drop in population. In fact, the budget requests a small net increase in the number of security personnel staffing the institutions.



The department will submit a revised budget oposal as part of the May Revision that will reflect more current population projections. These revised projections uld affect the department's request for funding. To the extent that population decline is greater than currently sumed, it could necessitate closing a housing unit or one of the department's 16 parole offices, which would result substantially greater savings.

recent years, Youth Authority projections have tended to be somewhat higher than the actual population, leading downward revisions for the future projected population. For example, the projection of the June 30, 1999 stitutional population projection dropped from 8,315 in the fall 1997 projections to 7,830 in the spring 1998 ojections, and currently stands at 7,510.

ese decreases appear to be partly caused by the changes in Youth Authority fees. While these changes appear to ve stabilized, there is sufficient uncertainty to warrant withholding recommendation on the budget changes sociated with the population size pending receipt and analysis of the revised budget proposal.

outh Authority Fees Charged to Counties

gislation that took effect in 1997 to substantially increase the fees paid by counties for committing less rious offenders to the Youth Authority appears to be having its desired effects. Admissions in less rious offense categories are down significantly, and counties are moving to increase their menu of local ogramming options for these offenders. County efforts in this direction have been aided by the ailability of over $700 million in state and federal funds for juvenile probation programs. As a result of ese successes, we recommend that the state maintain the sliding scale structure.

this section, we review the 1997 legislation that increased fees paid by counties for commitments to the Youth thority. We begin by describing the fee changes and outline steps taken to provide additional funding to counties juvenile justice programs. We then discuss the effects of the fee changes on both the Youth Authority and the unties. This information is based on our review of data and discussions with Youth Authority staff and county obation departments. We follow this with our conclusion about the effects of the fee reforms and several commendations to the Legislature based on our findings.

egislation Increased Fees Counties Pay for the Youth Authority

fective January 1, 1997, counties are charged new and higher fees for their commitments of juvenile offenders to

the Youth Authority. These fees were enacted by Chapter 6.

P[redacted] the enactment of Chapter 6, counties paid a monthly fee of $25 for each offender sent to the Youth Authority. Ti[redacted] was set in 1961, and was increased to $150 by Chapter 6 in order to take account of inflationary cost increases to the Youth Authority. In addition, Chapter 6 established a new "sliding scale" fee structure which requires counties to pay a percentage of the per capita monthly cost of wards with less serious offenses who are committed to the Youth Authority.

Sliding Scale Fees Based on Type of Offender. The sliding scale fees are determined by the YOPB based on the category that a ward is assigned to at his initial parole board hearing. The board assigns each juvenile committed to the jurisdiction of the Youth Authority a category number--from I to VII--based on the seriousness of his commitment offense. Because most juveniles are committed on the basis of their entire records, this number would correspond to the most serious offense in their records, not necessarily their most recent offense. Generally, offenses in categories I through IV are considered the most serious, while categories V through VII are less serious. Figure 3 provides typical examples of the offenses in each category.

Figure 3

Youth Authority Wards--

C[redacted]egories and Typical Offenses

Ward Category	Typical Offenses	Baseline PCD[a]	Monthly Charge t County
I	Murder, torture, kidnapping resulting in death	7 years	
II	Voluntary manslaughter, child molestation, kidnapping[b]	4 years	
I[redacted]	Rape/sexual assault[b], carjacking	3 years	
IV	Armed robbery[b], arson[b], drug selling offenses	2 years	
V	Assault with a deadly weapon[b], robbery[b], residential burglary[b], sexual battery	18 months	
VI	Carrying a concealed firearm, commercial burglary, battery[b], all felonies not contained in categories I-V	1 year	
VII	Technical parole violations, all offenses not contained in categories I-VI (for example, misdemeanors)	1 year or less	

[a] Parole consideration date.

[b] If offense results in substantial injury then it would fall into the more serious adjacent category (for example, rape is generally a category III offense, but a rape with subst njury is a category II offense).

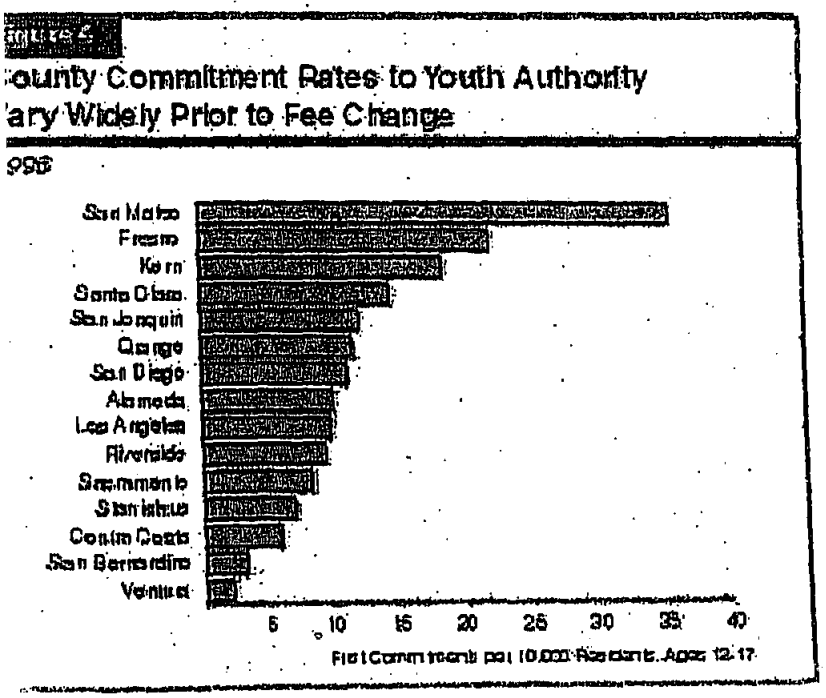
Commitments of wards in categories I through IV are billed the $150 monthly fee. Category V commitments are billed r[redacted]ounties at 50 percent of per capita cost ($1,300 per month), category VI at 75 percent ($1,950 per month), a[redacted]egory VII commitments are billed the full cost of the commitment ($2,600 per month).

egislation Enacted In 1998 Caps the Fees. This fee structure was modified somewhat by Chapter 632, Statutes 1998 (SB 2055, Costa) which froze the per capita costs on which the sliding scale fees are based at the levels in fect on January 1, 1997 ($31,200 per year). This legislation was enacted in response to county concerns about pidly increasing per capita costs as a consequence of recent declines in the Youth Authority population (the smalle e ward population, the greater the per capita costs of the Youth Authority). This legislation ensures that counties ll not pay higher fees simply because the population decline resulting from the implementation of the sliding scale nerates higher per capita costs. However, as a result of this legislation, the Youth Authority's reimbursements from e counties will be continually smaller than the state's actual costs, as both inflation and a declining population lead increases in per capita costs.

tent of Sliding Scale Legislation. The sliding scale legislation was intended to provide counties with a fiscal centive to utilize and develop more locally-based programs for less serious juvenile offenders, and to reduce their pendence on costly Youth Authority commitments. Prior to the passage of the legislation, counties had a strong cal incentive to send offenders to the Youth Authority because they only paid a nominal $25 monthly fee per ward. a result, Youth Authority commitments, while often more expensive than other sanction and treatment options, re far less expensive from the counties' perspective.

hile some counties developed their own locally based programs despite these incentives, other counties appeared to over-relying on Youth Authority commitments. This disparate usage of the Youth Authority was reflected in the dely ranging first admission rates across counties. Figure 4 (see next page) shows the 1996 first admission rates to e Youth Authority for the 15 counties with the largest populations aged 12 through 17 years (the population from ich first admissions generally are drawn). The figure shows the large disparities among counties in the use of the uth Authority that existed prior to the legislation.

e problems with the prior fee structure were threefold. First, a large body of research on juvenile justice programs ggests that most juvenile offenders can and should be handled in locally based programs. In part, this is because cally based programs can work more closely with the offender, his family, and the community. Second, these locally sed programs tend to be less expensive than a Youth Authority commitment, which meant that state funding was couraging counties to use a more expensive as well as less effective sanctioning option for many offenders. Finall kpayers in those counties with lower admissions rates for less serious offenders were paying not only for their own cally based options, but also for a share of the costs created by those other counties with higher Youth Authority missions rates. In response to these shortcomings, the Legislature acted to align the fiscal incentives faced by unties with more cost-effective policies, thereby encouraging counties to invest in preventive and early intervention ategies.



New State and Federal Funds Ease the

Transition Costs of the Fee Changes. Since the sliding-scale legislation took effect, the Legislature has appropriated over $700 million for various county-based juvenile justice initiatives. These new funds do not directly address the increased fees, but they do help mitigate the financial burden by supplementing existing resources for supporting local alternative programs to the Youth Authority. These include:

- ***Temporary Assistance for Needy Families (TANF).*** The Legislature has provided over $370 million in federal TANF funds for county probation departments, $65 million of which is earmarked for probation camps and ranches. The rest of the funds are available on a block grant basis to county probation departments to support a wide range of activities from basic prevention to various kinds of residential placement options. These funds represent an expansion of monies previously available to counties under the prior Aid to Families with Dependent Children (AFDC) program. (The AFDC program was subsequently replaced by the CalWORKS [California Work Opportunity and Responsibility to Kids] program.) Under the prior AFDC program, these funds were claimed by county probation departments under federal Title IV-A (emergency assistance program) from 1993 to September 1995. Subsequently, the federal government notified the counties that juvenile offenders would no longer be eligible for these funds. When the CalWORKS program was implemented, the state decided to reallocate funds from its federal block grant to the counties. This reallocation was at a higher level than under the Title IV-A program. The Governor's budget proposes $200 million for this purpose in 1999-00, the same level as in the current year.
- ***Juvenile Detention Facility Funds.*** The Legislature has provided $221 million in state and federal funds to the Board of Corrections for construction and renovation of county juvenile detention facilities. This amount is comprised of $121 million in federal Violent Offender/Truth-in Sentencing Grant money for county juvenile detention facilities and another $100 million from the General Fund for juvenile facility renovation, construction, and deferred maintenance. In addition, Chapter 339, Statutes of 1998 (AB 2793, Migden), expresses the Legislature's intent to provide 85 percent of federal fiscal year 1999 Violent Offender funds to the counties for juvenile facilities. While this allocation has not yet been made, it is expected to be about the same as the $80 million 1998-99 award. However, the proposed Governor's budget includes no appropriation of the 1999 federal funds.
- ***Challenge Grants.*** The Legislature has provided $110 million to the Board of Corrections for the Juvenile Crime Enforcement and Accountability Challenge Grant Program. The first $50 million of this money was appropriated in 1996 and awarded to 14 counties on a competitive basis to support innovative juvenile justice strategies. In 1998, another $60 million was appropriated to further expand this program. These grant funds will be awarded later this spring. Counties can apply for Challenge Grant funds for a wide array of programs, but first they must convene a juvenile justice coordinating council and undertake a local planning process in order to accurately identify the service gaps in their existing juvenile justice system. As a result, counties are able to receive funds for the programs that address their own identified greatest needs. Chapter 325, Statutes of 1998 (AB 2261, Aguiar) stated the Legislature's intent to appropriate at least $25 million annually through 2001-02 for the program. The Governor's budget, however, does not include any additional funds for this program in the budget year.
- ***Repeat Offender Prevention Program (ROPP).*** The Legislature provided $11 million dollars to the Board of Corrections for the ROPP. The purpose of this program is to support county efforts to identify and treat youth at risk of becoming chronic juvenile offenders before they become serious offenders. The ROPP is a pilot program that is being implemented in eight counties, and is scheduled to be completed in 2001.

Thus, while counties have been faced with new costs as a result of the sliding scale reform, these costs--estimated to have cost the counties less than $100 million dollars since the reform took effect--are far outweighed by the new state and federal funds that have been available to them.

Fees Have Changed Profile Of Youth Authority Wards

Admissions in the Least Serious Offender Categories Have Declined Significantly. In the two years since the sliding scale fee took effect, it has significantly reduced the numbers of first admissions to the Youth Authority. Overall, first admissions in 1997 were 30 percent lower than in 1996. Admissions data for 1998 continue the 1997 trends. These trends seem likely to continue into the future.

While overall admissions declined, but admissions for the least serious offenders have dropped significantly. As Figure 5 shows, first admissions for the more serious offenses declined by 15 percent, while admissions in the less serious offense categories declined by 41 percent. This change suggests that counties have responded to the sliding

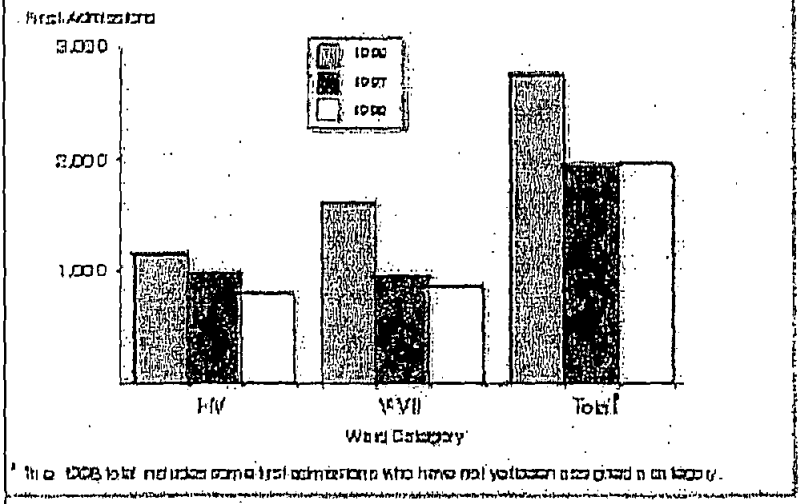
cale fees, but have not been deterred by the increase in the monthly fee from committing more serious offenders hen appropriate.

rior Disparities in Youth Authority Usage Have Diminished Significantly. The new fees have also resulted i ore even distribution among counties of first admission rates for less serious offenders (categories V through VII). n examination of the first admissions rate in Figure 6 illustrates these changes in the 15 counties with the largest venile populations. This change ensures that those counties that continue to rely heavily on the Youth Authority are aying a greater share of the costs incurred as a result of those commitments.

Figure 5

First Admissions Significantly Decline in Less Serious Offense Categories

1995 Through 1998

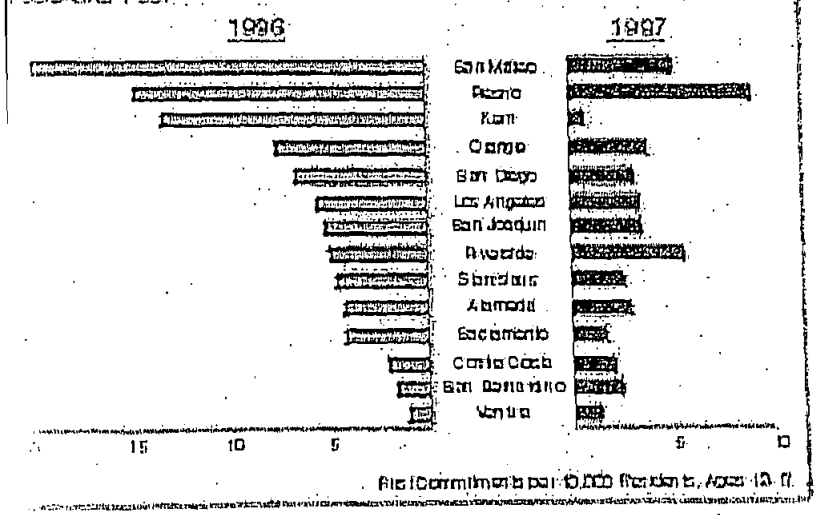


* The 1998 total includes some first admissions who have not yet been assigned to category.

Figure 6

First Commitment Rates in Most Counties Drop in Less Serious Offense Categories

1996 and 1997



First Commitments per 10,000 Residents Ages 10-17

Changing Admissions Patterns Have Resulted in ore Violent Youth Authority Population. These changes in the patterns of first admissions have also led to a nificant change in the mix of offenders going into the Youth Authority. In 1996, the most serious offenders tegories I through IV) made up 42 percent of the first admissions, while in 1997 they represented 51 percent of t admissions, despite the fact that their numbers dropped in absolute terms by 15 percent. Because offenders in

ese categories are likely to have much longer stays in the Youth Authority, their proportion of the overall population ends to be significantly greater than their proportion of first admissions. Thus, at the end of 1998, 63 percent of the [redacted] in institutions had committed more serious offenses (categories I through IV), and 37 percent had committed ous offenses (categories V through VII).

hanges in Population Characteristics Highlight Need for New and Expanded Programming. In the *upplemental Report of 1997-98 Budget Act,* the Legislature directed the Youth Authority to review its needs for eatment and programs for wards. In response to this requirement, the Youth Authority submitted to the Legislature report on its program and treatment needs in the face of "an increasingly violent youthful offender population." This eport described the changing character of the wards served and described the existing needs in this population that ere going unmet. This report focused on the new security and programming needs that have arisen as the Youth uthority population has become more violent and more emotionally disturbed.

n our view, however, the Youth Authority has not considered how it can change its programming for *less serious ffenders* in order to better serve the needs of counties as they face the new demands of the sliding scale legislation. hese new programming challenges are discussed in detail below.

ounties Have Responded to New Fees in Variety of Ways

[redacted]ficant Changes in Some Counties, But Not Others. Figure 6 shows that most counties have reduced their dmission rates in the less serious categories in response to the sliding scale reform, but only a few have done so ramatically. The effects on the counties range from fairly insignificant in counties such as Contra Costa, to more oderate reductions in Alameda, San Joaquin, Los Angeles, and Fresno, to truly dramatic reductions in counties such s Kern, Santa Clara, and San Mateo.

he main issue raised by these reductions is how these counties are dealing with the wards who are no longer being ent to the Youth Authority and whether the counties are providing appropriate alternative services to them. For the [redacted], we found that counties are adopting fairly similar strategies. These include expansion or creation of boot anch programs and implementation of programs inside juvenile halls for offenders already adjudicated by e juvenile court (traditionally juvenile halls are used solely for short-term detention of offenders awaiting djudication). There are a number of out-of-state placements that counties might have used in lieu of a Youth uthority commitment, but the recent controversies surrounding these placements, as well as the new licensing equirements imposed by Chapter 311, Statutes of 1998 (SB 933, Thompson), have made these options less viable.

ounties Frustrated by Certain Intractable, Less Serious Offenders. The programs implemented by the ntles are filling the gaps for a large share of chronic delinquents. However, counties find themselves frustrated by persistence of a small subset of less serious offenders who do not respond to county programs. Many counties are oting to send these "intractable" offenders through the same county program two or three times despite failure, ther than face the costs of a Youth Authority commitment. They have indicated particular concern about this proach because they fear it will lessen the effectiveness of the sanction for first-time participants.

me counties have opted to separate these program failures from the other offenders, while other counties have ifted them into juvenile hall- based programs in order to impress upon them the consequences of program failure. either case, it is clear that many counties are frustrated in their attempts to adequately sanction and treat these ronic and intractable delinquents.

unties Are Expanding Their Prevention and Early Intervention Activities. Despite these difficulties, most untles we spoke to understood the underlying policy rationale that motivated the change in the fees, and are in the ocess of implementing new prevention and early intervention strategies. In fact, the fees served as an incentive for e counties to increase their array of locally available programming, particularly at the front end of the system. The ate funds available from TANF, the Challenge Grants, and ROPP are aiding the counties in these prevention and ervention efforts. The benefits of these efforts are still a few years away, but counties are optimistic that they will them reduce their dependence on the Youth Authority as a sanctioning option.

onclusion: Sliding Scale Legislation Is Achieving Its Intended Objectives

e sliding scale legislation was intended to achieve two primary objectives: (1) reduce the over-reliance by counties the Youth Authority for less serious juvenile offenders and (2) encourage counties to create a fuller spectrum of cally available programming to meet the needs of juvenile offenders. Available data demonstrate that the first jective has been met. Counties are being significantly more judicious in their use of the Youth Authority as a acement option for wards of the juvenile court. Although it is premature to declare the second objective a success well, it is clear that many counties are responding to the change by creating new local program options.

the whole, we believe that these trends are positive, as local programming is likely to be more effective and less pensive than a Youth Authority commitment for less serious offenders. Moreover, because their offense histories do t involve serious violent crimes, these wards are not likely to pose a serious threat to public safety if kept within e community.

ven these positive developments, we do not recommend any fundamental changes to the structure of the sliding le legislation itself, as it appears to be a success. In the analysis below, however, we make several commendations that we believe would maximize the benefits that the sliding scale legislation was designed to duce.

rget Future State Juvenile Justice Funds

the extent that the Legislature chooses to continue to provide funding to counties for new or expanded venile justice programs, we recommend that the funds be awarded on a competitive basis and modeled er the Challenge Grant program.

we indicated earlier, the Legislature has provided a substantial amount of funding to counties for juvenile justice ograms since enactment of the sliding scale fees. To the extent that the Legislature continues to provide funding to unty probation departments or other juvenile justice agencies and service providers, we believe that it should use Challenge Grants as a model. This would include requiring that counties first undergo a planning process to reach onsensus on where the service gaps are, and include some kind of evaluation component to ensure accountability d cost-effectiveness.

nilarly, allocating funds on a competitive basis rewards counties for excellence in program design and insures a her level of commitment to the program from the participating agencies. For these reasons we recommend that ch of these elements--planning, evaluation, and competitive allocation--be included as requirements for any new venile justice funds provided by the state.

ounties Should Have Input Into Length of Stay Decisions

e recommend enactment of legislation to modify the process by which parole consideration dates are tablished for Youth Authority wards with less serious offenses (categories V though VII). Specifically, e process should be modified in order to permit counties to have a greater say in the length of stay of ards that they send to the Youth Authority.

der current law, once a young offender is accepted by the Youth Authority as a new admission, he becomes a ward the department, and all decisions regarding length of stay, parole, and parole revocation are within the sole risdiction of the YOPB (see our analysis of the YOPB later in this chapter for a more detailed discussion of this ocess).

is method of determining length of stay may be appropriate for wards where the state is bearing almost all of the sts. However, it is less appropriate for wards in categories V through VII where counties are paying 50 percent or ore of the cost to house the ward. This issue takes on particular importance given the large disparities that parently exist between what the counties and the YOPB view as appropriate periods of secure confinement for ese less serious offenders. For example, as discussed in our analysis of the YOPB, parole consideration dates (PCDs) r less serious offenders in the Youth Authority ranged from 19 months for Category V to 13 months for Category I. By contrast, most counties are implementing programs for these offenders that are generally six to nine months duration.

ounties Should Have Greater Say In Length of Stay. Because the counties are now paying a large share of the osts for these wards and given that the wards will likely return to the county from which they were committed when , we believe that the counties should have some role in determining the optimal length of stay for the wards.

or these reasons, we recommend the enactment of legislation to modify the process by which PCDs are established. here are a number of different alternatives that the Legislature could choose from, including:

- ***•Require That the Juvenile Court, Rather Than the YOPB, Set the Initial PCD.*** One option is for the juvenile court, instead of the YOPB, to decide the PCD. The juvenile court offers advantages over the YOPB in that it would already be familiar with the ward's file, and would likely be more responsive to the concerns of the county, while still exercising independent discretion. The main disadvantage with this approach is that the juvenile court would not have access to the lengthy assessment information that is compiled by the Youth Authority staff before each ward's initial hearing before the board.
- ***•Require a Juvenile Court or County Probation Department Recommendation.*** This alternative would have the YOPB continue in its current role, but would allow counties to have more input. For example, counties could recommend an initial PCD to the board and the board would have the discretion to deviate up or down by a fixed amount set in statute. The main advantage of this approach is that it would preserve the input of the Youth Authority, while still allowing counties some control. The primary weakness of this approach is that it would result in a duplication of effort by the board and the county.
- ***•Allow the Juvenile Court or the County Probation Department to Make a Recommendation to the YOPB.*** This alternative would allow, but not require, the court or county to make a nonbinding recommendation to the YOPB as to the appropriate PCD. Under this approach the status quo would be largely maintained except that counties would have the option of having their concerns heard by the board.

hese alternatives are intended to be suggestive, and only take into account the initial PCD decision. Subsequent ecisions that are currently made by the board could be left with it or county input could again be sought in a manner milar to those recommended above.

hould Be Regularly Adjusted To Account for Effects of Inflation

'e recommend the enactment of legislation to adjust the sliding scale fees periodically to account for the 'fects of inflation.

; discussed above, Chapter 632 capped the sliding scale fees charged to counties at the January 1, 1997 level. It akes sense to protect counties from facing higher sliding scale fees simply because the Youth Authority population is ~pling as the natural and intended consequence of the fee change. However, we believe that this 1997 base rate ..ld be periodically adjusted to account for the effects of inflation. Likewise, the $150 fee needs periodic ljustment so that the state is not in the position of making such a radical upward adjustment as was the case in 96 when the $25 fee set in 1961 was adjusted for inflation.

a result, we recommend the enactment of legislation to require the Youth Authority to make an inflationary justment of the 1997 per capita sliding scale fees, and the $150 monthly fee set by Chapter 6 periodically, at least ery three years, based on changes in the Consumer Price Index.

)uth Authority Needs to Develop Targeted Programming for Certain Less Serious ffenders

3 recommend that the Legislature adopt supplemental report language directing the Youth Authority to port on the feasibility of developing programming targeted to chronic and intractable offenders in the is serious categories.

'outh Authority Has a Role to Play With Some Less Serious Offenders. When the sliding scale reform was ted, the intent was not to eliminate all offenders in categories V to VII from the Youth Authority, but rather provide counties with more neutral cost incentives when choosing the proper treatment for these offenders. The ent significant declines in first admissions in these categories appear to be driven by two primary factors: the

eation at the local level of new program options for these offenders and a new reluctance to use the Youth Authority any of these offenders based on the high costs. Discussions with county probation departments make it clear that en with the creation of new programs, there are certain offenders in the less serious categories that they would ve sent to the Youth Authority but for the high cost burden. The offenses committed by these offenders are nerally property crimes or nonserious assaults, but they are persistent, and the juveniles appear to be responsive to the programming made available by the counties.

orter Institutional Stays Are Needed With More Services Delivered on Parole. In recent years, the Youth thority has focused significant attention on the growing proportion of its population who pose a greater threat to ff security and also demand more intensive treatment services. The risk to public safety posed by these wards is nificant, such that an extended stay at the Youth Authority which includes a wide array of programming is cessary to meet the demands of public safety as well as the rehabilitative needs of these wards.

the chronic and intractable delinquents discussed above, however, institutional confinement time is not required marily to protect the public, but rather to provide structure and accountability for the offender. As a result, titutional confinement time for these offenders should be limited to the time necessary to achieve this objective. At esent, the average PCD for these offenders is more than 17 months, while the programs that they are failing at the unty level are generally about six months in duration. This 11-month difference appears unnecessarily large, pecially given the fact that a Youth Authority commitment of any duration is a more severe and punitive sanction n spending time in a county ranch or camp.

e YOPB is currently responsible for making all decisions on length of stay. One way to encourage it to reduce the gth of commitments for these less serious, intractable offenders would be to provide shorter-term institutional ogramming directly addressed to their needs. Because the counties are opting to use six- to nine-month locally sed secure programs, we recommend that the Youth Authority examine the feasibility of providing institutional ogramming in a similar time frame. We recognize that a six- to nine-month period would not be sufficient to dress all of the needs of most of these wards, but many of the issues that require more time, such as substance use and academic and vocational skills, could be provided in a community setting under the supervision of Youth thority parole.

uth Authority Can Fill a "Market Niche." Clearly there will be wards for whom this intermediate approach is not fficient, but at present there is a gap in the continuum of graduated sanctions available to most counties that the uth Authority is in the position to bridge. The next few years present an opportunity for experimentation with such ograms because declining populations within Youth Authority institutions and more notably on parole, will create me slack in existing resources that can be used to get pilot programs off the ground. Moreover, if such programs ve effective, they will allow the Youth Authority to more efficiently meet the needs of the greater number of wards pected to enter the juvenile justice system early in the next century.

hat Are the Impacts on Counties? These programming changes would also help to ease the cost pressures on unties in a number of ways. Most directly, limiting the confinement time for many of the wards in the less serious tegories to six to nine months would reduce the sliding scale fee costs that counties are currently facing. In dition, providing a more cost-effective secure treatment option would relieve the current pressure on counties to cycle offenders through their existing programs despite repeated failure. Counties would prefer to avoid recycling fenders because it diminishes the effect of the local sanction for the offenders who fail as well as the other offenders no see that there is no enhanced penalty as a consequence of program failure. Finally, if the Youth Authority is a ore cost-effective treatment option, counties will have less incentive to invest their resources in construction and eration of locally based Youth Authority-style facilities and programs for this group of offenders.

nalyst's Recommendation. We recommend that the Legislature adopt supplemental report language directing the outh Authority to report on the feasibility of implementing a six- to nine-month institutional program for offenders in tegories V through VII, with an intensive parole aftercare component. The report should identify the likely bstantive content of such a program, as well as the changes in existing practice and procedures that would be quired for implementation to occur. If the Youth Authority concludes that such a program is not feasible, it should port on what steps can be taken to reduce the duration of institutionally based programming for these offenders. e recommend that the report be submitted by December 1, 1999 in order for its findings to be incorporated into t *000-01 Governor's Budget*. The following language is consistent with this recommendation.

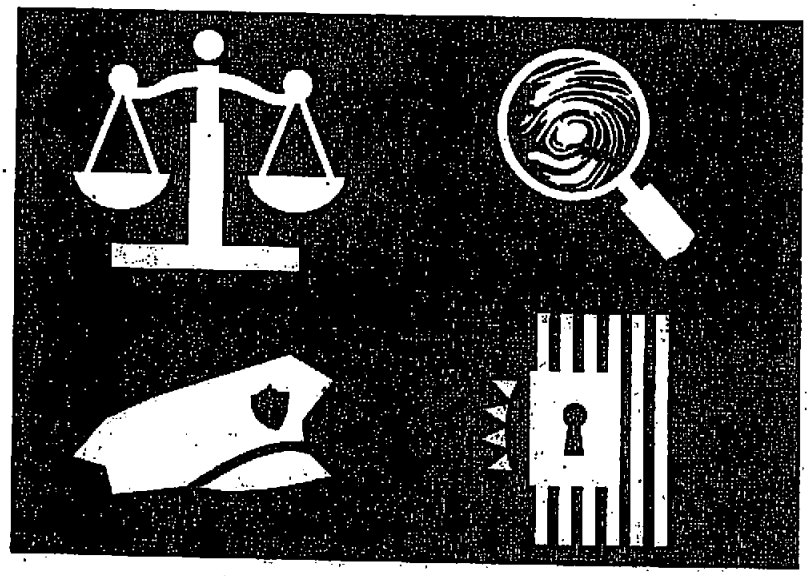
The Department of the Youth Authority shall report to the Legislature by December 1, 1999 on the feasibility of implementing a six- to nine-month institutional program for offenders in Youthful Offender Parole Board categories V through VII. The report shall include, but not be limited to: (1) an identification of the core institutional services and programming that less serious offenders require, as well as those that can be effectively delivered on parole; (2) one or more proposals to deliver those services in a sequence that minimizes required institutional time and maximizes the value of aftercare on parole; (3) an estimate of the costs per ward to deliver such programming and any changes in current procedures that would be necessary to implement the programming; and (4) an evaluation of the advantages and disadvantages of adopting the programming which includes discussions of the effects on the rehabilitation of the ward and public safety as well as the cost-effectiveness of the proposal relative to current practice.

Return to 1999-00 Budget Analysis Criminal Justice Table of Contents
Return to 1999-00 Budget Analysis Table of Contents
Return to LAO Home Page

January 2007

California's Criminal Justice System

A Primer



Elizabeth G. Hill Legislative Analyst's Office

Contents

Acknowledgments

This report was prepared by Brian Brown, Edgar Cabral, and Paul Steenhausen and reviewed by Dan Carson and Greg Jolivette. The Legislative Analyst's Office (LAO) is a nonpartisan office which provides fiscal and policy information and advice to the California Legislature.

To request publications call (916) 445-4656.

This report and others, as well as an E-mail subscription service, are available on the LAO's Internet site at www.lao.ca.gov. The LAO is located at 925 L Street, Suite 1000, Sacramento, CA 95814.

Chapter 1:

Introduction

In recent years, the Legislature and Governor have considered and enacted numerous laws to respond to the public's concerns with crime and the criminal justice system in California. The measures included stiffening penalties for existing criminal offenses, providing treatment for drug offenders, defining new criminal offenses, constructing new correctional facilities, providing financial assistance to law enforcement, and reorganizing the state corrections system.

In an effort to put the current discussion of crime in California in perspective, we have prepared this report to answer several key questions, including:

- How much crime is there in California? How has the level of crime changed over time? How does crime vary within California, and among the states?
- Who are the victims and perpetrators of crime?
- How does the California criminal justice system—local law enforcement, courts, and correctional agencies—deal with adult and juvenile offenders?
- What are the characteristics of adult and juveniles under the supervision of local and state correctional agencies?
- What are the costs of crime and the criminal justice system?
- What are the key criminal justice issues for policymakers today?

Although this report is not designed to present comprehensive answers to all of these questions, it does provide basic information on these issues. It does this through a "quick reference" document that relies heavily on charts to present the information. This report relies on the most recent data available from several federal and state agencies, including the U.S. Department of Justice (U.S. DOJ), the Federal Bureau of Investigation (FBI), the California Department of Corrections and Rehabilitation (CDCR), and the Criminal Justice Statistics Center in the California Department of Justice (state DOJ). Below we describe the main components of this report.

Overview of the Criminal Justice System. Chapter 2 provides a description of how the criminal justice system is structured in California, including the various roles of the federal, state, and local governments. In addition, we identify the major features of criminal sentencing law and the most significant criminal laws enacted in recent years.

The State of Crime in California. Chapter 3 provides a mixed picture of the current state of crime in California. The crime rate in California declined substantially throughout most of the 1990s, but has increased somewhat in more recent years. Violent crime in California, however, has continued to decline even in more recent years, but is still significantly higher than the national average.

Adult Criminal Justice System. Despite the decline in crime rates over recent decades, the state has experienced a significant increase in incarceration with approximately 250,000 adult inmates in jail and prison today, as well as another 450,000 adults supervised on probation or parole. Chapter 4 describes what happens to adult offenders in the criminal justice system, including a discussion of trends in criminal arrests, disposition of court cases, and incarceration.

We also discuss two important topics in today's adult justice system: (1) the discretion that police, prosecutors, and judges have in its operation, and (2) federal court involve-

ment in the provision of prison inmate health care. (See our November 2006 report, *California's Fiscal Outlook* [page 43], for our projections of the fiscal effect of three federal court cases concerning the state's inmate health care system. Future publications by our office will provide more detailed analysis of this important issue.)

Juvenile Justice System. In many ways, juvenile crime trends are similar to those for adults. For example, the majority of arrests for both groups are for misdemeanor offenses rather than felonies, and felony arrest rates for both adults and juveniles have declined in recent years. Chapter 5 describes the juvenile justice system, including arrest trends, disposition of court cases, and incarceration. We also discuss the rehabilitation mission of the juvenile justice system at both the local and state levels.

Costs of Crime and the Criminal Justice System. Chapter 6 documents how spending on the criminal justice system in California has grown steadily over the past decade, reaching $25 billion in 2003-04. Most of this spending is done by local governments, including $11 billion for police and sheriffs. The fastest-growing segment of the state's criminal justice system is state corrections, with these costs growing at an average annual rate of about 10 percent during the past ten years. These costs have been driven in large part by increases in employee salaries, court-ordered mandates (such as for the provision of health care services), as well as inmate population growth.

Conclusion. In Chapter 7, we identify two major state criminal justice system challenges facing policymakers. The first challenge is managing prison capacity in light of projected growth in the state's prison population. The amount of growth projected suggests that California's incarceration capacity, which is already strained, may be unable to adequately meet the future demand, and policymakers will have to carefully weigh options to balance population demands and the available capacity to meet those demands.

The second challenge regards correctional rehabilitation programs. While the Legislature and Governor have increased funding for programs such as education and substance abuse treatment for state inmates and parolees, this funding still only represents a very small share of the prison system budget, resulting in low participation rates for these programs. Given the number of inmates who are paroled to the community and then subsequently return to prison, it is important for policymakers to further consider the role that rehabilitation programs can play in reducing the state's high recidivism rates.

Chapter 2:

An Overview of California's Criminal Justice System

The criminal justice system operates at multiple levels of government: the local, state, and federal levels. Because the vast majority of criminal activity is handled by state and local authorities, we focus in this report on the role of the state and local governments in California's criminal justice system. The primary goal of the system is to provide public safety by deterring and preventing crime, incarcerating individuals who commit crime, and reintegrating criminals back into the community.

Criminal Sentencing Law

The criminal justice system is based on criminal sentencing law, the body of laws that define crimes and specify the punishments for such crimes. The majority of sentencing law is set at the state level.

Types of Crimes. Crimes are classified by the seriousness of the offenses as follows:

- A **felony** is the most serious type of crime, for which an offender may be sentenced to state prison for a minimum of one year. California Penal Code also classifies certain felonies as "violent" or "serious." Violent felonies include murder, robbery, and rape. Serious felonies include all violent felonies, as well as other crimes such as burglary of a residence and assault with intent to commit robbery.

- A **misdemeanor** is a less serious offense, for which the offender may be sentenced to probation, county jail, a fine, or some combination of the three. Misdemeanors include crimes such as assault, petty theft, and public drunkenness. Misdemeanors represent the majority of offenses in California's criminal justice system.

- An **infraction** is the least serious offense and is generally punishable by a fine. Many motor vehicle violations are considered infractions.

California law also gives law enforcement and prosecutors the discretion to charge certain crimes as either a felony or a misdemeanor. These crimes are known as "wobblers."

Determinate Sentencing. Prior to 1977, convicted felons received indeterminate sentences in which the term of imprisonment included a minimum with no prescribed maximum. For example, an individual might receive a "five-years-to-life" sentence. After serving five years in prison, the individual would remain incarcerated until the state parole board determined that the individual was ready to return to the community and was a low risk to commit crimes in the future.

In 1976, the Legislature and the Governor enacted a new sentencing structure for felonies, called determinate sentencing, which took effect the following year. Under this structure, most felony punishments have a defined release date based on the "triad" sentencing structure. The triad sentencing structure provides the court with three sentencing options for each crime. For example, a first-degree burglary offense is punishable by a term in prison of two, four, or six years. The middle term is the presumptive term to be given to an offender found guilty of the crime. The upper and lower terms provided in statute can be given if circumstances concerning the crime or offender warrant more or less time in state prison. We would note that, in January 2007, the U.S. Supreme Court *(Cunningham v. California)* restricted a judges

ability to assign the upper term. In some cases, offenders are still punished by indeterminate sentences today. Specifically, indeterminate sentences are provided for some of the most serious crimes, such as first-degree murder, as well as for some repeat offenders. In fact, about 19 percent of state prison inmates are currently serving indeterminate life sentences.

Components of the Criminal Justice System

The criminal justice system can be thought of as having three components: law enforcement, courts, and corrections. Figure 1 (see next page) shows the different actors in California's criminal justice system, including information on their level of government and responsibilities. We discuss these components in more detail below.

Law Enforcement. State sentencing laws are primarily enforced at the local level by the sheriff and police officers who investigate crimes and apprehend offenders. Law enforcement is a local responsibility in California, with funding typically provided by cities and counties. At the state level, the Attorney General provides some assistance and expertise to local law enforcement in the investigation of crimes that are multi-jurisdictional (occur in multiple counties) such as organized crime. The state also provides grants to local law enforcement for various crime-fighting activities.

Courts. Once an individual is arrested and charged with committing a crime, he or she must go through California's trial court system. Local district attorneys, employed by the county, charge them with a specific crime and prosecute them. If the individual cannot afford an attorney, he or she is represented by a public defender, also provided by the county. Superior Court judges preside over cases that come through the system. Judge salaries, as well as all other funding for the operation of the state's trial courts, are a responsibility of the state. The system is designed in a way that it provides flexibility for district attorneys and judges to decide

Figure 1

Roles Within California's Criminal Justice System

These Criminal Justice Officials...	Who Are Subject to the Control of...	Must Often Decide... Whether or Not or How to...
Police/Sheriffs	Cities/Counties	• Enforce laws • Investigate crimes • Search people, premises • Arrest or detain people • Supervise offenders in local correctional facilities (primarily county sheriffs)
District Attorneys (prosecutors)	Counties	• File charges • Prosecute the accused • Reduce, modify, or drop charges
Judges	State	• Set bail or conditions for release • Accept pleas • Determine delinquency for juveniles • Dismiss charges • Impose sentences • Revoke probation
Probation Officials	Counties or Judges	• Recommend sentences to judges • Supervise offenders released on probation • Supervise offenders (especially juveniles) in probation camps and ranches • Recommend probation revocation to judges
Correctional Officials	State	• Assign offenders to type of correctional facility • Supervise prisoners • Award privileges, punish for disciplinary infractions
Parole Officials	State	• Determine conditions of parole • Supervise parolees released to the community • Revoke parole and return offenders to prison

how to prosecute specific cases and manage overall caseload. (See page 45 for a more detailed discussion of this topic.)

Corrections. The component of the system that supervises offenders is commonly referred to as "corrections" or the "correctional system." In California, individuals convicted of, or adjudicated for crimes are placed under supervision either at the local level (jail and probation) or the state level (prison and parole) depending on the seriousness of the crime and the length of incarceration. Generally speaking, low-level offenders are supervised at the local level, while more serious offenders who are sentenced to more than a year of incarceration are supervised at the state level. By law, individuals who serve prison sentences are required to be on parole, typically for a minimum of three years. Although those who serve jail sentences are not required by law to be on probation, the vast majority are in fact placed on probation after their release from jail.

What Is the Difference Between the State and Federal Criminal Justice Systems?

The state criminal justice system (including both state and local agencies) and the federal criminal justice system have much in common. For example, both systems have statutory criminal law, law enforcement agents, courts, and prisons. Procedurally, the systems are also similar, for example, offering the same protections to criminal defendants, such as the right to jury trial.

The key difference between the two systems relates to the criminal law statutes. Federal criminal law is limited to the powers of the federal government enumerated in the United States Constitution. Therefore, most federal criminal laws relate to the national government's role in the regulation of interstate commerce, immigration, and the protection of federal facilities and personnel. Consequently, federal law enforcement tends to focus on nonviolent crimes such as drug trafficking, immigration violations, fraud, bribery, and extortion.

By comparison, state criminal law is based on the general police powers of the state and is therefore broader in scope. For example, as shown in Figure 2, more than one-half of the federal prison population is made up of drug offenders, while only 21 percent of state prison inmates were imprisoned for a drug offense. However, there is some crossover, such that some crimes—for example, weapons offenses and robbery—that are prosecutable under state law may also be prosecuted under federal law. Nevertheless, most crimes are prosecuted under state law.

Figure 2
Federal and State Inmate Population
2005

	Prison Inmates	
	California	Federal
Totals	**168,055**	**187,241**
Offense Type		
Violent	50%	10%
Property	22	8
Drug	21	53
Immigration	—	11
Other	8	17

Details may not total due to rounding.

What Are Some Significant Changes in Criminal Law?

The underlying structure of California sentencing law has remained unchanged since the transition to determinate sentencing in 1976. However, concern about certain types of crimes, offenders, and law enforcement capabilities has led the Legislature and voters to make some significant changes to specific areas of law. We highlight below those changes to criminal law (since 1990) that have affected large numbers of offenders.

Proposition 115: Speedy Trial Initiative. Approved by the voters in 1990, this measure made significant changes to criminal law and judicial procedures in criminal cases. The measure provided the accused with the right to due process of law and a speedy public trial and required felony trials to be set within 60 days of a defendant's arraignment. Other provisions expanded the definition of first-degree murder and the list of "special circumstances" that could lead to a longer sentence; changed the way juries are selected for criminal trials; changed the rules under which prosecutors and defense attorneys had to reveal information to each other; and, under certain circumstances, allowed the use of hearsay evidence at preliminary hearings, which are conducted to determine if the evidence against a person charged with a crime is sufficient to bind them over for trial.

"Three Strikes and You're Out." In 1994, the Legislature and voters approved the Three Strikes and You're Out law (the legislative version is Chapter 12, Statutes of 1994 [AB 971, Bill Jones]). The most significant aspect of the new law was to require longer prison sentences for certain repeat offenders. Individuals who have *one previous* serious or violent felony conviction and are convicted of *any new* felony (it need not be serious or violent) generally receive a prison sentence that is twice the term otherwise required for the new conviction. These individuals are referred to as "second strikers." Individuals who have *two previous* serious or violent felony convictions and are convicted of *any new* felony are generally sentenced to life imprisonment with a minimum term of 25 years ("third strikers"). In addition, the law also restricted the opportunity to earn credits that reduce time in prison and eliminated alternatives to prison incarceration for those who have committed serious or violent felonies.

Proposition 21: Juvenile Crime. Proposition 21, approved by the voters in 2000, expanded the types of cases for which juveniles can be tried in adult court. The measure also increased penalties for gang-related crimes and required convicted gang members to register with local law enforcement.

Proposition 36: Drug Prevention and Treatment. Also approved by the voters in 2000, Proposition 36 provided for the sentencing of individuals convicted of a nonviolent drug possession offense to probation rather than prison or jail. As a condition of probation, the offender is required to complete a drug treatment program. The measure excluded certain offenders from these provisions, including those who refuse drug treatment or are also convicted at the same time for a felony or misdemeanor crime unrelated to drug use.

Megan's Law Database. As a result of legislation enacted in the 1950s, the state requires sex offenders to register with local law enforcement agencies at least once annually, and additionally within 14 days of moving to a new address. Various pieces of legislation enacted in the 1990s required law enforcement to provide public access to the state DOJ database, commonly referred to as the Megan's Law database, containing information on the residences of sex offenders. Initially, this information was available via a state-operated "900" telephone line and a CD-ROM disc available at local law enforcement agencies. In 2004, the Legislature enacted Chapter 745, Statutes of 2004 (AB 488, Parra), which made the Megan's Law database available electronically via the Internet.

Proposition 69: DNA Samples. Enacted in 2004, this measure required state and local law enforcement agencies to collect samples of deoxyribonucleic acid, commonly known as DNA, from all convicted felons, some nonfelons, and certain arrestees for inclusion in the state's DNA data bank. Samples from the data bank are compared to DNA evidence from unsolved crimes to look for potential matches. Although the state collected DNA samples from certain felons prior to passage of this measure, this measure greatly expanded the number of individuals from whom the state was required to collect DNA.

Senate Bill 1128 (Alquist) and Proposition 83: Jessica's Law. In 2006, the Legislature enacted Chapter 337, Statutes of 2006 (SB 1128, E. Alquist), and voters approved Proposi-

tion 83, commonly referred to as Jessica's Law. These new laws made a number of changes regarding the sentencing of sex offenses. Among other changes, they increased penalties for certain sex offenses, required global positioning system monitoring of felony sex offenders for life, restricted where sex offenders can live, and expanded the definition of who qualifies as a sexually violent predator who can be committed to a state mental hospital by the courts for mental health treatment.

Chapter 3:

The State of Crime in California

Measuring Crime in California

Crime is primarily measured in two different ways. One approach is based on official reports from law enforcement agencies, which are compiled and published by the FBI. California data is published by the Criminal Justice Statistics Center in the state DOJ. These are the statistics often cited in reports and newspaper articles. The other method is through national victimization surveys in which researchers ask a sample of individuals if they have been victims of crime, regardless of whether the crime was reported to the police.

Crimes Reported to Law Enforcement. Since 1930, the FBI has been charged with collecting and publishing reliable crime statistics for the nation, which it currently produces through the Uniform Crime Reporting (UCR) program. Local law enforcement agencies in California and other states submit crime information, which is forwarded to the FBI. In order to eliminate differences among various states' statutory definitions of crime, UCR reports data only on *selected* general crime categories, which are separated into violent and property crimes. The violent crimes measured under UCR include murder, forcible rape, robbery, and aggravated assault. Property crimes include burglary, larceny-theft, and motor vehicle theft. All crime rate data provided in this chapter are based on crimes reported by local law enforcement.

The UCR crime information is typically presented in terms of rates. A rate is defined as the number of occurrences of a criminal event within a population. Crime rates are typically presented as a rate per 100,000 people. For example,

California's 2005 murder rate was 6.9, which means that there were 6.9 murders per 100,000 Californians in 2005. Presenting information in terms of rates makes it easier to compare criminal activity in regions with differing population sizes.

Crime Estimates Through Victimization Surveys. Crime statistics from law enforcement do not tell the entire story of crime. There is a significant amount of crime committed each year that goes unreported to law enforcement authorities and therefore is not counted in official statistics.

In order to provide a more complete picture of the amount of crime committed, the U.S. DOJ, through its National Crime Victimization Survey (NCVS), surveys households and asks whether they have been victims of crime. The NCVS is conducted annually at the national level, not on a state-by-state basis. It provides useful nationwide information on such issues as the number of violent and property crimes in the nation, the likelihood of victimization for various demographic groups, the percentage of crimes reported to the police, the characteristics of offenders, and the location of crimes. The NCVS uses "victimization rates" to compare the frequency of victimization among various demographic groups. The victimization rate for a particular group is presented as a rate per 1,000 people and excludes individuals under the age of 12.

What Is the State of Crime in California?

Statewide. Providing an assessment of criminal activity in California depends on the time horizon one uses. From a longer-term perspective, the state has seen substantial decreases in crime over time. Crime rates have decreased 51 percent since reaching their peak in 1980. However, shorter-term trends are not as positive. Although violent crimes have continued to decline, property crimes have increased 7 percent since 2000. Comparing California to the rest of the U.S. also results in mixed conclusions. Although California's overall crime rate was significantly higher than the national crime rate throughout the 1980s and early 1990s, the state's

crime rate is now slightly lower than the national rate. California's violent crime rate, however, remains higher than the U.S. rate.

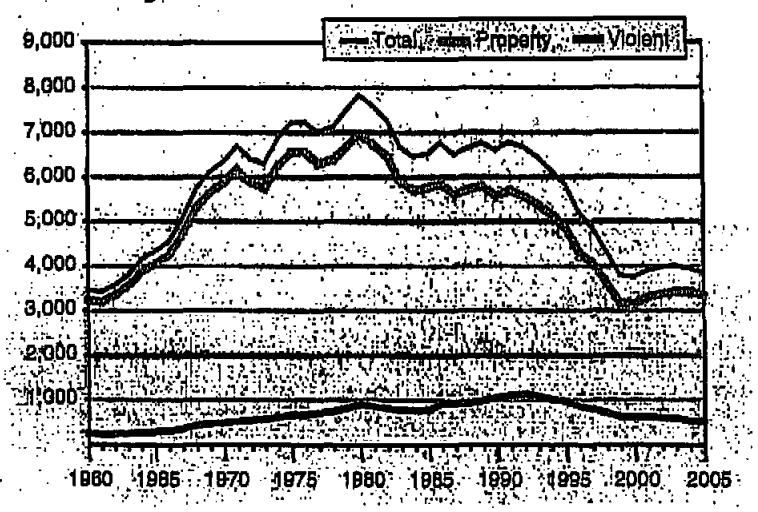
Regional Variation. It is important to note that there is also significant variation in crime rates among the regions of California. Generally, the Central Valley has the highest crime rates of any region in California. Among the most populous California counties, three of the four counties with the highest crime rates (San Joaquin, Sacramento, and Fresno) are located in the Central Valley. The counties with the lowest crime rates are in Southern California and the Bay Area—specifically, Ventura, Orange, and Santa Clara Counties, as shown on page 22.

This chapter provides information on crime rates in California. This includes data on the prevalence of crime in California—including comparisons of California's crime rates to those of other states and comparisons among California counties—as well as data on the offenders and victims of crime. The chapter also discusses two other crime-related topics: (1) the major factors that have caused a decline in crime rates, and (2) the prevalence of drug crimes, which are not included in traditional crime rate data.

How Prevalent Is Crime in California?

Rise and Fall of California's Crime Rates

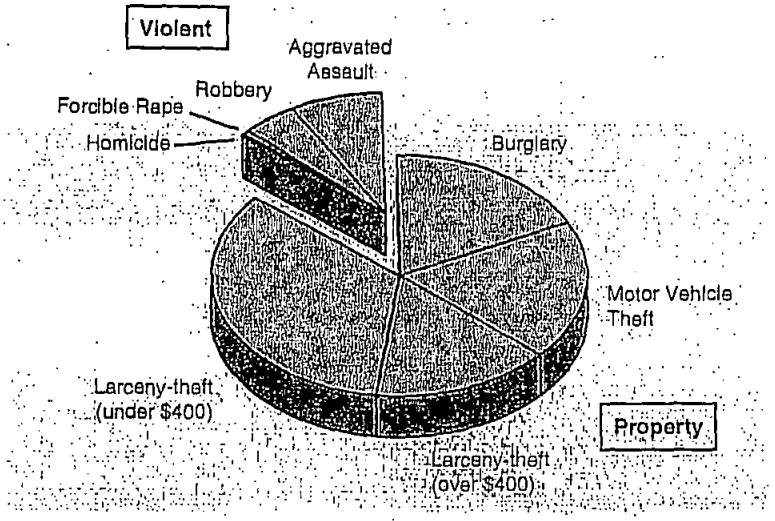
Rate Per 100,000 Population
1960 Through 2005



- California experienced a decline in crime rates for nine consecutive years, from 1992 to 2000. During this period, the overall crime rate decreased by 56 percent. This trend is similar to declines in crime patterns in the rest of the U.S.
- Since 2000, however, overall crime in California has increased 3 percent. The increase is driven by increases in property crime, which has increased 7 percent. The violent crime rate has continued to decline, dropping 15 percent since 2000.

Most Crime Is Property Crime

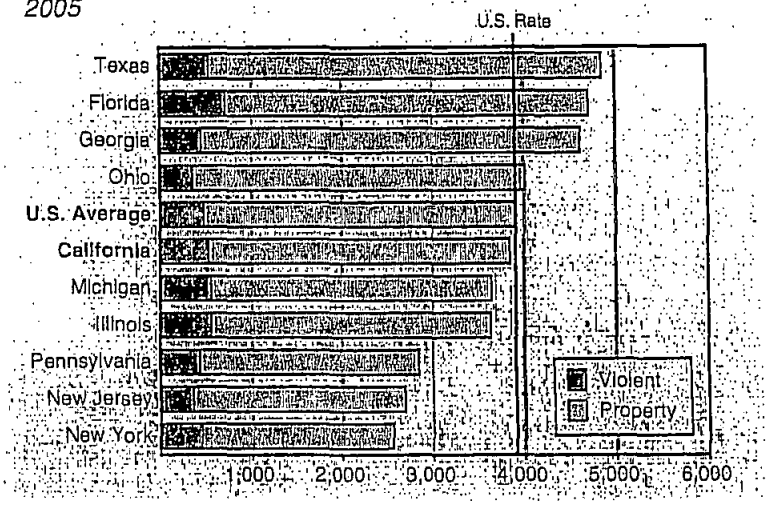
2005



- Overall, California reported 3,849 crimes per 100,000 people in 2005.
- Property crime accounted for about 86 percent of reported crimes in California in 2005, and violent crime accounted for 14 percent.
- Although the proportion of crime changes slightly every year, property crimes consistently represent approximately 85 percent of all reported crimes.

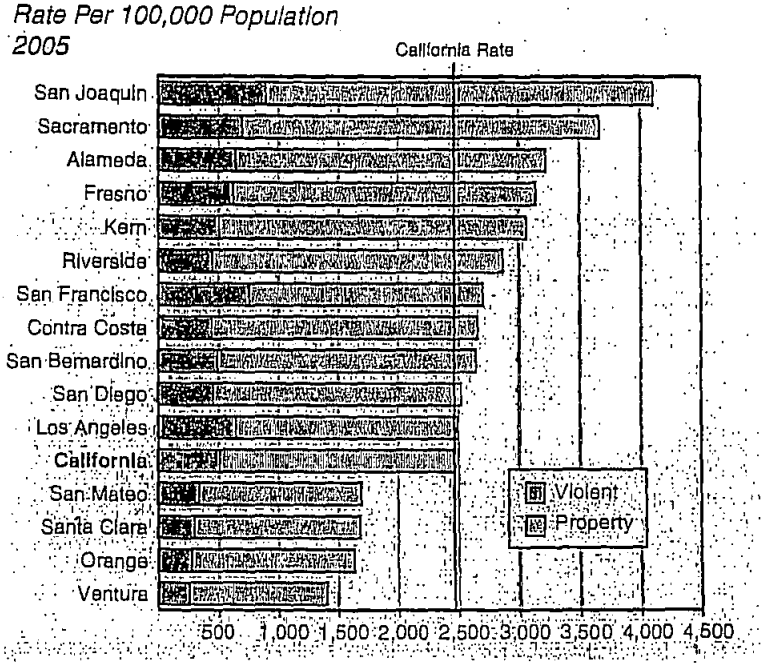
California's Crime Rate Is Close to National Average

Rate Per 100,000 Population
2005



- California's crime rate was slightly lower than the U.S. crime rate in 2005, and was fifth highest among the ten largest states.
- California also has the fifth highest violent crime rate among the ten largest states, 11 percent higher than the U.S. rate. California's property crime rate ranks fifth among the largest states, 3 percent below the national rate.
- California's property crime rate has increased 7 percent since 2000, the only large state to have experienced a property crime increase. Much like the rest of the nation, however, California has continued to experience decreases in violent crime.

Crime Rates Vary Among Counties



- Among the 15 largest counties in California, San Joaquin had the highest violent crime and property crime rates. Ventura had the lowest violent and property crime rates.
- Since 2000, property crime rates have increased in 12 of the 15 large counties. Violent crime has increased in 5 of the 15 large counties.
- Kern had the largest increase in property crime since 2000, at 34 percent, while Fresno had the largest decrease, with a 9 percent decline.
- Between 2000 and 2005, San Mateo had the highest increase in violent crime, at 22 percent, while Los Angeles had a 30 percent decrease, the largest decrease of all the large counties.

Who Is Involved in Crime?

Who Commits Crime?

The NCVS, conducted annually by the U.S. DOJ, provides useful information about criminal offenders in the U.S. The 2005 NCVS shows that:

- About 79 percent of violent crimes involving one offender were committed by a male.
- In 52 percent of assaults, the offender was someone known to the victim. However, the offender was someone known to the victim in only 20 percent of robberies. In rapes and sexual assaults, offenders were known by 65 percent of their victims. For all violent crimes, females were more likely than males to be victimized by someone they know.
- About 45 percent of violent crimes were committed by individuals ages 15 through 29, despite representing only 21 percent of the overall population.
- About 28 percent of violent crimes involved an offender who was perceived to be under the influence of drugs or alcohol.

Who Are the Victims of Crime?

The 2005 NCVS also provides information on the characteristics of victims of crime. Of particular interest are the following:

- *Age.* Individuals age 12 to 24—those most likely to commit violent crimes—were also most likely to be the victims of violent crime. The chances of becoming a victim of violent crime were significantly lower for all other age groups.
- *Sex.* The likelihood of being a victim of violent crime was 45 percent higher for males than for females.
- *Ethnicity.* Violent victimization rates for blacks were 37 percent higher than those for whites. Hispanics had violent victimization rates 24 percent higher than whites. Black households were victims of property crimes at a rate 7 percent lower than whites, and Hispanic household victimization rates were 35 percent higher than whites. These rates, however, can vary significantly from year to year.
- *Economic Status.* Poorer households were much more likely to experience an unlawful entry into their homes (burglary) than wealthier households. However, while wealthier households do not experience burglary as often, they were more likely to be victims of theft, which includes the taking of household items, motor vehicle accessories, or other objects without entry into the home.

Key Topics in California Crime Trends

What Major Factors Have Caused Declining Crime Rates?

During the 1990s, the U.S. experienced an unprecedented decrease in crime rates at a time when many experts were predicting that crime would reach all-time highs. This decrease was consistent throughout the nation, from large urban cities to small rural areas. Numerous studies have been conducted to examine the causes of this drop in crime levels. Although there is no consensus on all causes of the decreases in the crime rate, the following factors are widely considered to be among the most significant factors in the crime drop:

- *Increased Prison Population.* Higher rates of incarceration reduce crime for two reasons. First, keeping a higher proportion of criminals in prison keeps them from committing new crimes. Second, high incarceration rates are believed to serve as a deterrent, discouraging others from committing future crimes. In California, the boom in the prison population was due to factors such as increases in the number of individuals sentenced to prison by the courts, higher rates of parole violators returning to prison, and the use of sentence enhancements.

- *More Police.* Studies have also shown that a nationwide increase in police officers per capita has been a factor in reducing crime rates. There has been little conclusive research, however, focusing on whether certain types of police strategies, such as so-called community policing, have been effective strategies for reducing crime.

- *Demographic Factors.* Changes in the state's crime rate follow changes in the portion of the population aged 18 through 24, the age group most likely to be involved in

criminal activity. In California, the share of the population in the 18 to 24 age group increased throughout the 1970s until reaching its peak in 1978, when 18 to 24 year-olds represented 14 percent of the population. The share of 18 to 24 year-olds decreased consistently throughout the 1980s and 1990s, until 1997, when the share had dropped to 10 percent. This pattern follows the peaks and valleys of the state's crime rates; California reached its peak crime rate in 1980 and its lowest crime rate in 2000, consistent with increases and decreases in the share of 18 to 24 year-olds in the population. During the next 15 years, the share of 18 to 24 year-olds in the state's population is projected to remain stable at approximately 10 percent of the population.

- *Economic Factors.* Changes in unemployment, poverty, and mean household income also affect crime rates. In the U.S., the economic boom of the late 1990s likely played a role in the reduction of crime rates. Although economic factors are often considered a central component to variations in crime, research shows that factors such as police officers per capita and prison population may have a greater impact on the crime rate.

Drug Crimes

A Significant Share of Felony Arrests and Incarceration. The FBI Crime Index focuses solely on crimes that involve violence against persons or the loss of personal property. These statistics do not include crimes related to the possession, sale, or manufacture of illegal drugs. However, drug crimes do represent a significant portion of all crimes committed in the U.S. and within California. In 2005, felony drug arrests represented 30 percent of all felony arrests in California. As a result, approximately 21 percent of inmates in California's prisons were incarcerated for a drug-related crime. This is a significant increase as compared to 20 years ago when only

11 percent of state inmates were incarcerated for drug offenses. This increase is likely due to changes in drug laws—particularly in the 1980s—that increased penalties for the possession and sale of illegal drugs.

Although there has not been a recent change in arrest or incarceration rates for drug crimes, there has been a change in the type of drugs most commonly used. California has experienced growth in the use of methamphetamines, which has become an increasingly popular drug in the western U.S. In addition, California is the primary source of methamphetamine sold in the U.S.

Drug Courts. Because a significant number of individuals are frequently imprisoned solely for drug-related crimes, several California counties began using drug courts for managing individuals with substance abuse problems. The first drug court was established in Alameda County in 1993. Rather than seeking imprisonment, drug courts use judicially supervised treatment, mandatory drug testing, and a system of sanctions and rewards to help individuals become sober and successfully return to their communities.

This focus on treatment rather than incarceration became a statewide priority after the enactment of Proposition 36 in 2000, which provided the option of treatment for drug offenders who had been convicted of only drug-related crimes. In 2006, the Legislature increased the state's annual funding for Proposition 36 programs, providing counties with a total General Fund appropriation of $145 million for this purpose in 2006-07. This action was intended to allow counties to maintain the level of support for these programs in 2005-06 using funding carried over from prior years. The Governor's 2007-08 budget plan proposes a net reduction of $25 million in support for Proposition 36 programs.

Chapter 4:

Adult Criminal Justice System

As indicated in the prior chapter, victimization studies show that a substantial amount of crime goes unreported to law enforcement. According to NCVS studies, about 60 percent of all crimes are not discovered or reported to law enforcement authorities. In addition, of the crimes reported to law enforcement officials, only about one-fifth are solved. In 2005, for example, only about 17 percent of all reported crimes were solved or "cleared" (that is, a person was charged with a crime). This figure has remained relatively stable for a number of years.

Following an arrest, a law enforcement agency may file a complaint against the individual and he or she may be prosecuted. Prosecution may result in the person being convicted. Persons who are convicted are given a fine and/or are sentenced to county probation, county jail, county probation with a jail term, or state prison. The vast majority of convicted offenders end up on county probation and/or in county jail (as shown on page 33).

Although the Legislature and Governor enact laws that define crimes and set penalties, criminal justice officials exercise a great deal of discretion in enforcing these laws. The greatest discretion is at the local level, when police decide whether to arrest someone for a crime, prosecutors decide whether or how to charge a person with a crime, and courts adjudicate suspected offenders (as discussed on page 45).

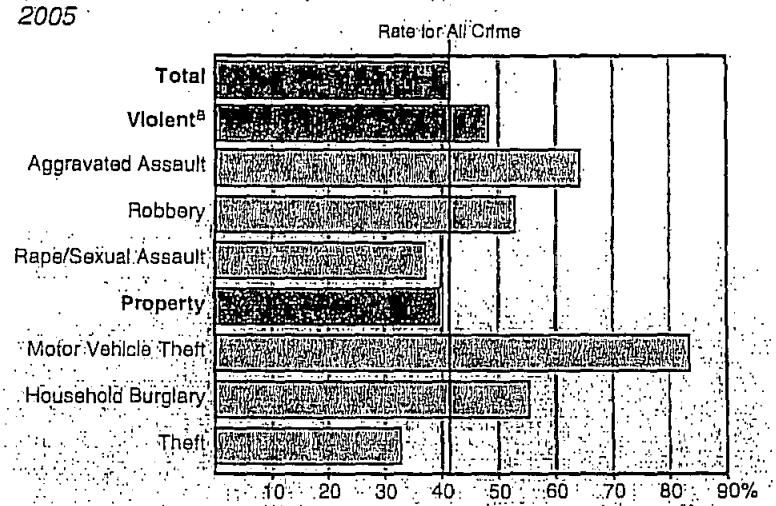
This chapter provides information on the adult criminal justice system. This includes data on what happens to adult offenders from arrest through incarceration. The chapter also provides information on the characteristics of those in the

criminal justice system, such as demographics and criminal history. In addition, this chapter discusses two topics affecting the adult criminal justice system: (1) the discretion of police officers, prosecutors, and judges affecting outcomes for adult offenders, and (2) federal court intervention in the prison health care system.

What Happens to Adult Offenders?

Most Crimes Are Not Reported to Authorities

Percentage of Crimes Reported
2005

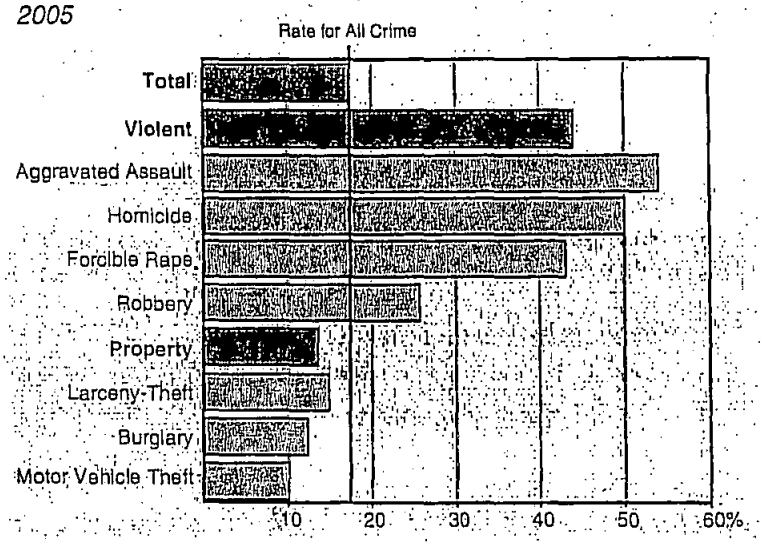


[a]Does not include homicide.

- According to NCVS studies, 41 percent of the crimes committed were reported to authorities in 2005. About 47 percent of all violent crimes were reported, while only 40 percent of property crimes were reported. (This report generally uses the term "violent" crimes to signify a category of offenses committed against persons—such as homicides and assaults—and is broader than the list of felonies defined as violent under the Three Strikes law.)
- About 83 percent of motor vehicle thefts were reported to the police, the highest rate of the major crime categories. This is likely due to the fact that individuals must file police reports in order to file auto insurance claims.
- Only 38 percent of rapes and sexual assaults were reported to the police, lowest among violent crimes.

Most Reported Crimes Are Not Solved

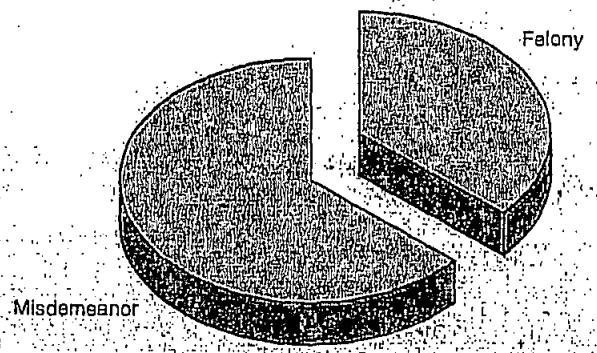
Percentage of Crimes Solved
2005



- In 2005, 44 percent of violent crimes in California were solved, while 13 percent of property crimes were solved.
- A crime is typically considered solved, or cleared, when someone has been arrested, charged for the crime, and turned over for prosecution.
- Generally, those crimes in which the offender is more likely to be a relative or acquaintance of the victim, such as homicide and aggravated assault, have a higher likelihood of being solved.

Most Arrests Are for Misdemeanors

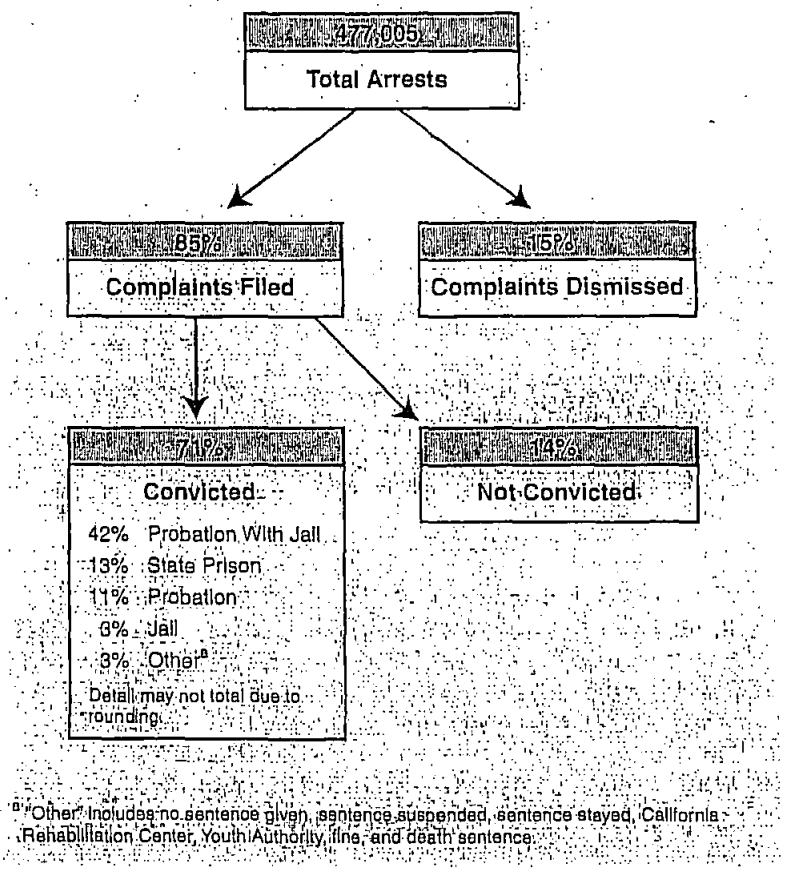
2005



- There were almost 1.5 million arrests of adults and juveniles for felonies and misdemeanors in California in 2005.
- About 64 percent of the arrests were for misdemeanors, while 36 percent were for felonies.
- The share of arrests that are misdemeanors and felonies has remained constant over the past ten years.

Outcomes of Adult Felony Arrests in California

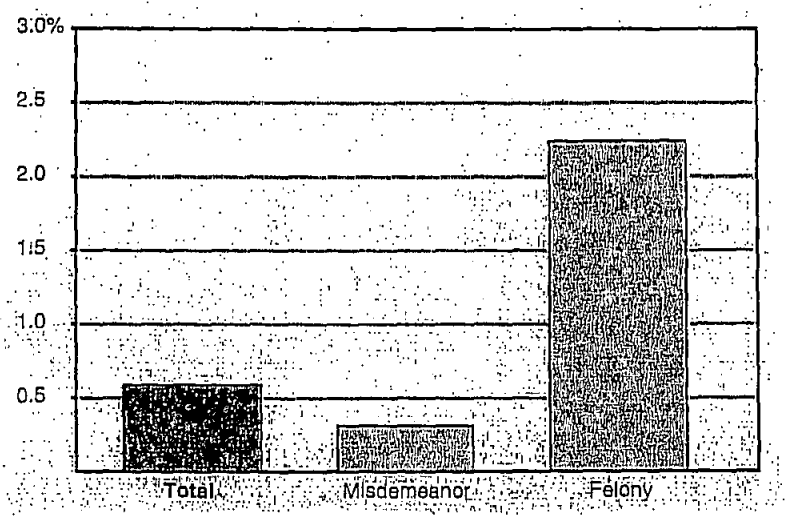
2005



[a] "Other" includes no sentence given, sentence suspended, sentence stayed, California Rehabilitation Center, Youth Authority, fine, and death sentence.

Very Few Criminal Cases Go to Jury Trial

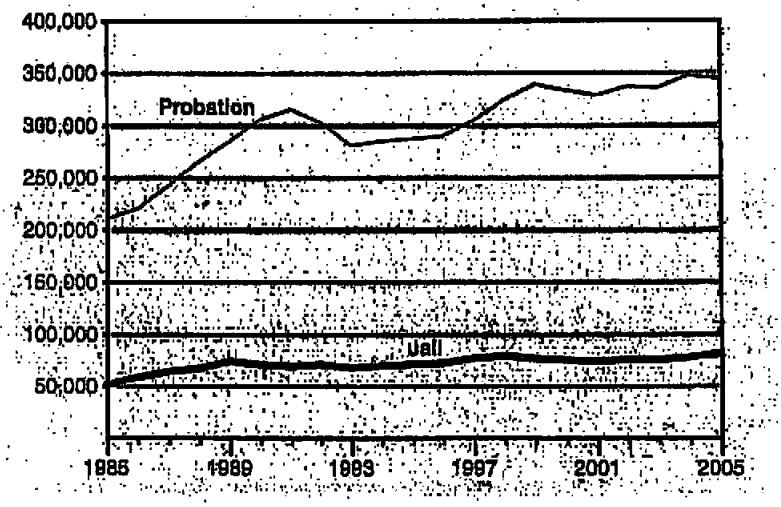
Cases Ending in Jury Trial
2004-05



- In 2004-05, there were 1.2 million felony and misdemeanor dispositions in California's Superior Courts. Only 8,000 of those cases, or 0.6 percent of all dispositions, reach a jury trial.
- Only 0.3 percent of misdemeanor cases reach a jury trial.
- About 2.2 percent of felony cases go to a jury trial, a significantly higher proportion than for misdemeanor cases, but still a very small portion of the total.
- Of felony cases that do not go to jury trial, 80 percent are plea-bargained and 20 percent result in acquittals, dismissals, or transfers. For misdemeanor cases, approximately 70 percent of cases that do not go to trial lead to a guilty plea by the defendant.

Growth in Adult Jail and Probation Populations

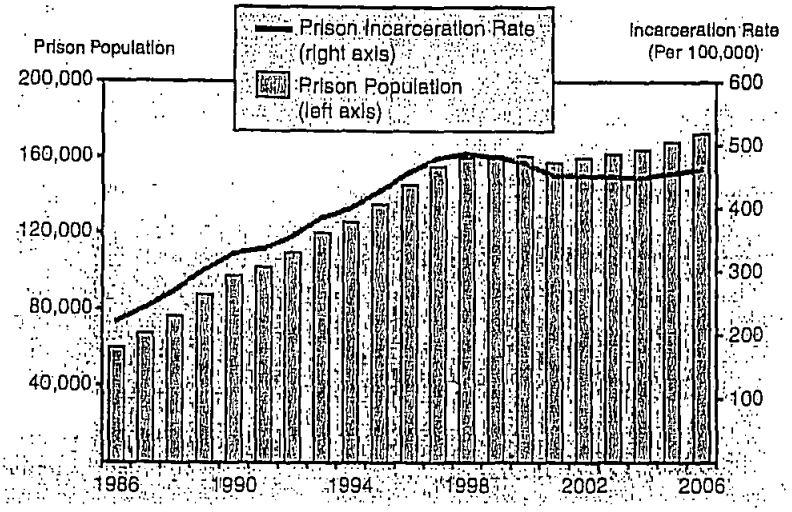
Average Daily Population
1985 Through 2005



- Between 1985 and 2005, the jail population grew from 51,000 inmates to 81,000 inmates (about 2 percent annually). Most of this growth occurred during the 1980s.
- The relative stability in the jail population since 1989 is in part due to federally-imposed caps on jail population. By 2005, 20 counties had jails placed under such caps.
- Many more offenders are on probation than in jail. The number of adults on probation in California grew by less than 3 percent annually between 1985 and 2005, going from 210,000 to approximately 344,000 probationers.
- Of the 344,000 adults on probation in 2005, 77 percent were on probation for a felony, with the remainder misdemeanors. In some counties all probationers are convicted of a felony. In other counties, less than 50 percent of probationers are convicted of a felony.

State Prison Population and Incarceration Rate Slowed in Recent Years

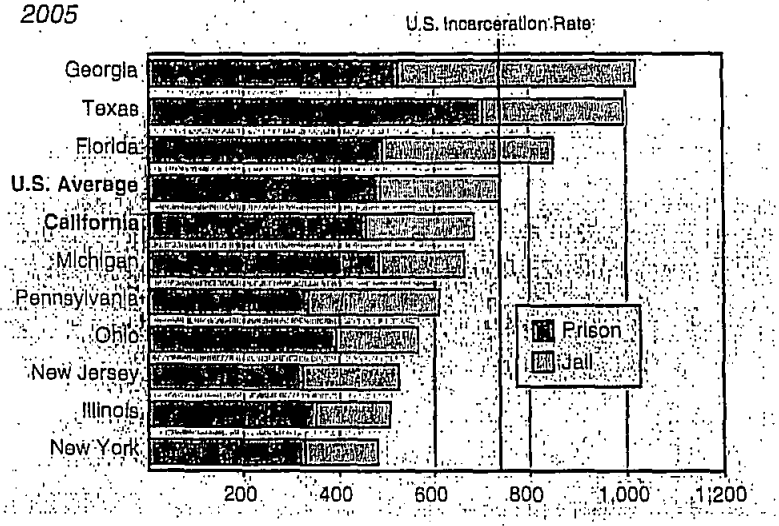
1986 Through 2006



- The prison population grew from about 59,000 inmates in 1986 to 173,000 inmates in 2006 (5 percent average annual growth). Similarly, the prison incarceration rate grew from 220 to 460 inmates per 100,000 Californians over the same period (4 percent average annual growth).
- Most of this growth occurred between 1986 and 1998. This period was one of declining crime rates but also included the implementation of tougher sentencing laws and a prison construction boom that activated 20 state prisons.
- The prison population is projected to grow by more than 17,000 inmates over the next six years. This level of growth would significantly exceed the total bed capacity of the prison system in the near term, including housing in non-traditional beds in gyms and dayrooms.

Total California Incarceration Rate Similar to U.S. Average

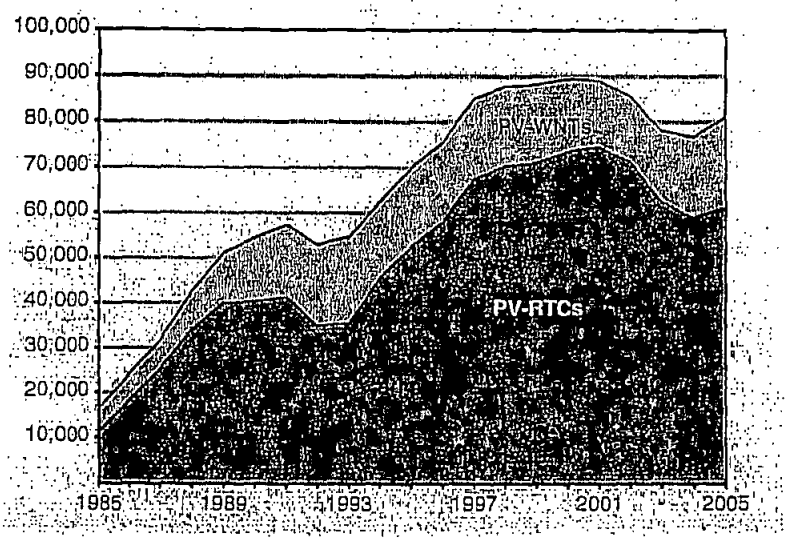
Total Incarceration Rate Per 100,000 Population
2005



- California's total incarceration rate, including both inmates in local jails and prisons is 683 (per 100,000 population). This is relatively close to the national average of 740.
- As with most states, roughly two-thirds of California's incarcerated population is housed in state prisons.
- Of the ten largest states, Georgia has the highest incarceration rate (1,022), more than twice the rate of New York (480).

Growth in Number of Parole Returns to Prison

1985 Through 2005

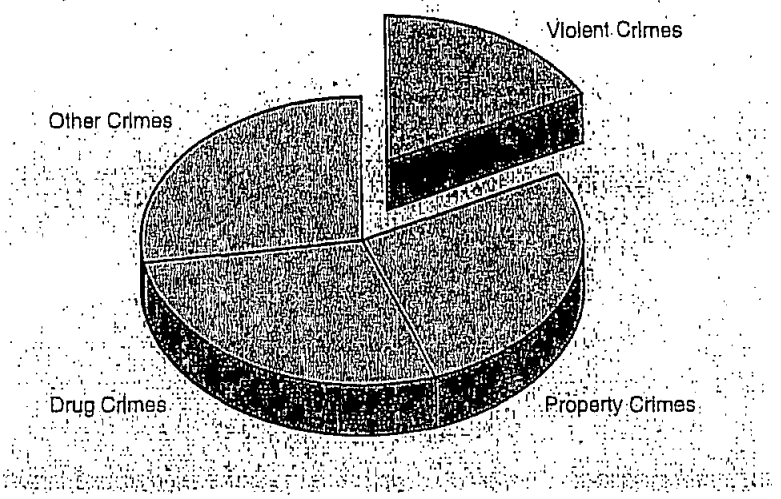


- Most parole violators (PVs) are returned to custody (PV-RTC) for violations of the conditions of their parole, while others are convicted in courts for new crimes with new terms (PV-WNT).
- The total number of parole violations that resulted in an offender being returned to prison has increased five-fold over the past 20 years from about 16,000 PVs in 1985 to 81,000 in 2005. There were about 115,000 individuals under state parole supervision at the end of 2005.
- The larger number of parole returns mostly reflects increases in the total prison and parole populations, which have grown by almost four-fold since 1985. This increase also reflects a rise in the rate at which parolees are returned to prison as PV-RTCs. The PV-RTC rate has increased by about 15 percent during the past 20 years due in part to changes in parole revocation regulations.

Who Is in Corrections?

Relatively Few Jail Inmates and Probationers Convicted for Violent Crimes

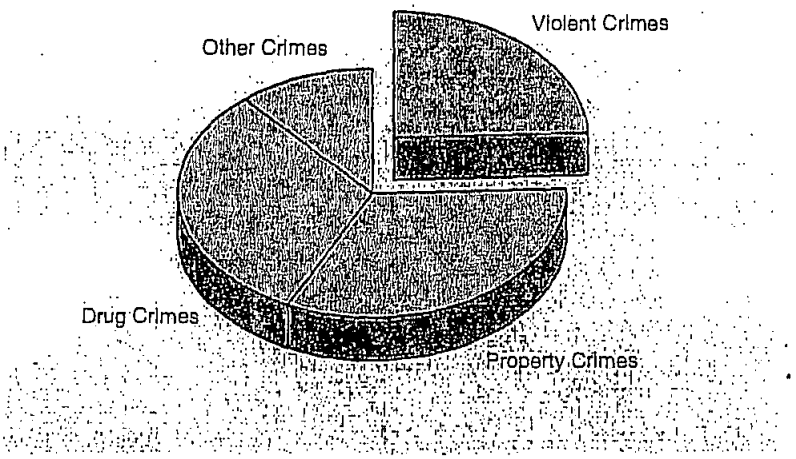
2005



- About 176,000 individuals were sentenced to local corrections—jail, probation, or both—in 2005. About 76 percent of the total were sentenced to both jail and probation.
- Of this total, about 18 percent were convicted for violent crimes, while 55 percent were convicted for property or drug offenses. About 27 percent were convicted for other crimes, including driving under the influence or possession of a weapon.
- The fact that individuals committing violent crimes make up a relatively small share of the total sentenced to local corrections largely reflects the fact that violent crimes represent less than 19 percent of all felony convictions.

Most Inmates Sent to Prison For Property and Drug Crimes

2005



- Almost two-thirds of court admissions to state prison are for property and drug offenses, including drug possession (15 percent), drug sales (15 percent), burglary (9 percent), and auto theft (7 percent).
- About one-quarter of admissions to prison from the courts are for violent crimes. Of these, the most common offenses are assault (13 percent) and robbery (5 percent).
- The "other crimes" category include weapons possession (5 percent) and driving under the influence (2 percent).

Demographics of the Prison Population

2006

	Prison Population	California Adult Population
Total Population	**172,508**	**27,648,604**
Gender		
Male	93%	50%
Female	7	50
Ethnicity		
Black	29%	6%
Hispanic	38	29
White	28	51
Other	6	14
Age		
18-19	1%	4%
20-29	31	19
30-39	31	20
40-49	26	21
50-59	9	16
60 and older	2	20

Details may not total due to rounding.

- The prison population is predominantly comprised of male blacks and Hispanics age 20 through 39.
- By comparison, the California population has significantly higher percentages of women, whites, and older individuals than are in prison.
- During the past 20 years, the percentage of inmates who are Hispanic has increased by about 10 percent, while the percentage that is white or black has decreased. Over this period, the percentage of inmates age 50 or older, more than doubled. The gender distribution of the prison population has remained stable.

Striker Population by Most Recent Offense

2006

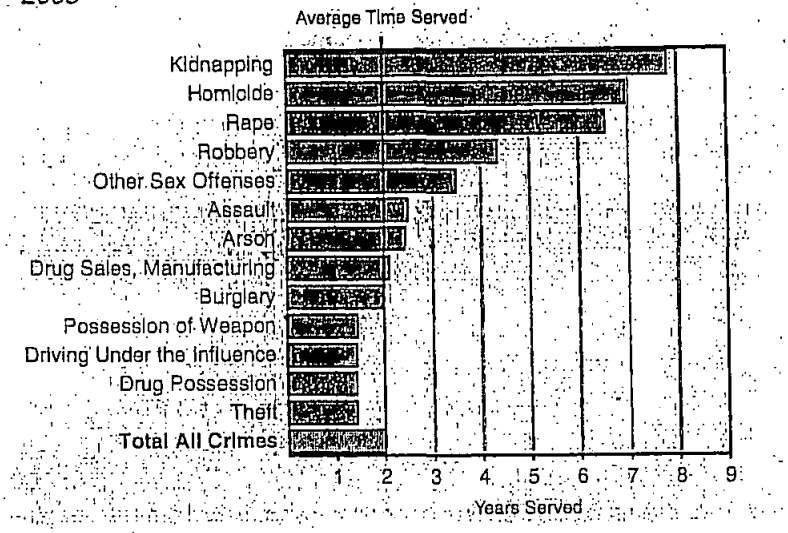
Current Offense	Third Strikers	Second Strikers	Total Number	Total Percent
Violent Crimes	**3,514**	**12,935**	**16,449**	**40%**
Robbery	1,821	4,884	6,705	16
Assault With a Deadly Weapon	458	2,645	3,103	8
Assault/Battery	426	2,432	2,858	7
Property Crimes	**2,414**	**9,147**	**11,561**	**28%**
1st Degree Burglary	931	2,502	3,433	8
2nd Degree Burglary	479	1,701	2,180	5
Petty Theft With a Prior	359	1,400	1,759	4
Drug Crimes	**1,295**	**7,880**	**9,175**	**22%**
Possession of a Controlled Substance	681	3,782	4,463	11
Possession of a Controlled Substance for Sale	313	2,369	2,682	7
Sale of a Controlled Substance	198	1,091	1,289	3
Other Crimes[a]	**722**	**3,313**	**4,035**	**10%**
Possession of a Weapon	432	1,825	2,257	5
Totals	**7,945**	**33,275**	**41,220**	**100%**

[a] For example, arson and driving under the influence.

- About 40 percent of all strikers committed a violent crime as their current offense, while 50 percent committed a property or drug offense.
- Third strikers are more likely than second strikers to have a current offense that is a violent crime. About 44 percent of third strikers (3,514) and 39 percent of second strikers (12,935) are currently incarcerated for a violent crime.
- In 2006, strikers made up about 24 percent of the total prison population.

Violent Offenders Serve Longer Sentences Than Others

2005



- In 2005, there were more than 64,000 inmates released from prison after completing their prison sentence. On average, these inmates were incarcerated for two years.
- About 78 percent of inmates released served time for a property, drug, or other nonviolent offense. These offenders were incarcerated for an average of less than two years. On average, inmates who committed violent crimes—such as kidnapping, sex offenses, or homicide (including murder and manslaughter)—were incarcerated for an average of more than three years.
- Data on the average time served in prison shown above is for offenders released from prison. But some offenders are never released. As of December 31, 2005, about 31,700 inmates (19 percent of the inmate population) were serving life terms in prison and over 600 inmates were on death row awaiting execution.

Three-Fourths of Parole Population Resides in Ten Counties

2006

County	Parolees	Percent
Los Angeles	35,376	30%
San Bernardino	8,815	8
San Diego	7,626	7
Orange	7,229	6
Riverside	7,193	6
Santa Clara	5,344	5
Fresno	4,743	4
Kern	4,106	4
Sacramento	3,603	3
Alameda	3,309	3
All other counties	29,453	25
Total California	**116,797**	**100%**

Detail may not total due to rounding.

- Under state law, all inmates released from prison must serve a term on parole. In the 2007-08 budget, the Governor proposed modification of this policy, which would provide an exception for certain low-level offenders.
- Generally, inmates leaving prison are required by law to parole to the county in which they were prosecuted. About 75 percent of the 117,000 parolees statewide are concentrated in ten counties. These counties represent 72 percent of the total California population.
- Los Angeles County has more than 35,000 (30 percent) of the total parole population. In total, 28 percent of Californians reside in Los Angeles County.

Key Topics in Adult Criminal Justice

Discretion Among Police Officers, Judges, and District Attorneys

Although it is sometimes overlooked, police (including county sheriffs), judges and district attorneys (DAs) have a great deal of discretion in carrying out their responsibilities that can significantly affect trends in punishment and incarceration within county jails and the state prison system.

Police. The actions of law enforcement agencies primarily affect the nature of the criminal cases that will be reviewed by DAs and judges. Law enforcement agencies decide how to distribute officers throughout their jurisdiction and prioritize the use of their resources in enforcing criminal laws. When they encounter different types of crime, police officers decide which investigations to conduct and which individuals to arrest. Once an arrest has been made, police officers also can decide to release an arrestee without filing criminal charges.

District Attorneys. The DAs have a significant amount of authority that affects the outcome of many criminal cases. The DAs review information for various cases and decide which cases to prosecute and which to dismiss, based on available evidence and the county's priorities. Once they decide to prosecute a case, they also decide whether to plea bargain with a defendant, thereby foregoing a jury trial in exchange for a guilty plea to a lesser offense. Since a very small percentage of cases end up in a jury trial (as shown on page 34), the bargaining decisions of DAs ultimately determine the punishment for virtually all criminal cases. In addition, DAs can have a significant impact on the cases that do end up in a jury trial. For example, the DA decides whether to pursue the death penalty for an individual who has been charged with murder. Also, DAs can decide whether to seek a sentencing enhancement that would ensure a longer prison sentence upon conviction, such as under the Three Strikes law.

Judges. Once an individual has been convicted of a crime, judges have final discretion in determining prison or jail sentences. Under California sentencing law, a range of punishments is provided for many types of crimes. For example, first-degree burglary is punishable by imprisonment for either two, four, or six years; the particular sentence that a convicted burglar receives depends on the decision of the judge. However, we would note that a ruling made by the U.S. Supreme Court in January 2007 (*Cunningham v. California*), restricts a judge's ability to assign sentences that are higher than the presumptive term. In addition, judges have the discretion to sentence a convicted felon to probation in lieu of a prison term, and dismiss prior strikes so that a felon is not required to serve additional prison time as otherwise required by the Three Strikes and You're Out law.

Overall. A number of factors play a role in the decisions made by police, DAs, and judges. Some relate to the specifics of each case, such as the severity of the crime and the criminal history of the defendant. Other, broader considerations can also come into play. For example, a judge might be less likely to require jail time for a defendant if county jails are over capacity. Similarly, a DA might be more likely to plea bargain if the court is facing an overwhelming number of cases. On the other hand, a growing problem in the community, such as drugs or gangs, might lead to stronger action by law enforcement, judges, and DAs, leading to higher arrest rates, less plea bargaining, and longer sentences. County sheriffs, county DAs, and superior court judges are publicly elected in each county. This explains in part why certain counties tend to hand down harsher sentences to criminal offenders than others. For example, after adjusting for population and arrest rates, Kern County is much more likely to impose longer prison sentences under the state's Three Strikes law than San Francisco County.

The discretion that police, judges, and DAs have in these matters can have significant effects on the state criminal

justice system. Together they affect rates of arrest, lengths of imprisonment, the number of individuals incarcerated in county jails and state prison, the length of parole and probation, and, ultimately, the overall costs of the state criminal justice system and the share of these costs borne by the state and local governments.

Correctional Health Care: Federal Court Supervision

Court Findings. The CDCR operates three main types of health care programs: medical, mental health, and dental care. Each program is currently under varying levels of federal court supervision based on court rulings that the state has failed to provide inmates with adequate care as required under the Eighth Amendment to the U.S. Constitution. The courts found key deficiencies in the state's correctional programs, including: (1) an inadequate number of staff to deliver health care services, (2) an inadequate amount of clinical space within prisons, (3) failures to follow nationally recognized health care guidelines for treating inmate-patients, and (4) poor coordination between health care staff and custody staff.

The health care case with the greatest level of court involvement relates to CDCR's medical program. Since April 2006, medical services have been administered by a federal receiver, whose mandate is to bring the department into compliance with constitutional standards. To that end, the receiver's powers include hiring and firing medical staff, entering into contracts with community providers, and acquiring and disposing of property, including new information technology systems.

Potential Costs. Compliance with court requirements in the three health care programs is expected to result in significant additional costs to the department over the next several years, including costs to attract high-quality health care professionals and expand clinical space to accommodate added staff. We have estimated that these costs could even-

tually exceed $1.2 billion annually by 2010-11, particularly if the federal courts order the state to construct new health care facilities. The Legislature will play a key role as it (1) reviews support and capital outlay proposals intended to improve the delivery of health care services to inmates and (2) monitors the steps taken to improve inmate patient care with the goal of eventually having the court shift jurisdiction over these matters back to the state.

Chapter 5:

Juvenile Justice System

Unlike the adult criminal justice system, the stated purpose of the juvenile justice system is to focus *primarily* on rehabilitation rather than punishment. To this end, counties and state juvenile facilities provide significantly more education, treatment, and counseling programs to juvenile offenders as compared to adult offenders. Consequently, correctional programs for juveniles tend to be more expensive to operate than for adults.

Generally, the juvenile justice system is a local responsibility. Following the arrest of a juvenile, the law enforcement officer has the discretion to release the juvenile to his or her parents, or to take the suspect to juvenile hall and refer the case to the county probation department. Probation officials decide how to process the cases referred to them. For example, they can choose to close the case at intake or, with the permission of the juvenile's parents, place a juvenile offender on informal probation. About one-half of the cases referred to probation result in the filing of a petition with the juvenile court for a hearing. In 2005 approximately 99,000 petitions were filed in juvenile court (as shown on page 57).

Taking into account the recommendations of probation department staff, juvenile court judges decide whether to make the offender a ward of the court and, ultimately, determine the appropriate placement and treatment for the juvenile. Placement decisions are based on such factors as the juvenile's offense, prior record, criminal sophistication, and the county's capacity to provide treatment. Judges declare the juvenile a ward of the court almost two-thirds of the time.

Most wards are placed under the supervision of the county probation department. These youth are typically placed in a county facility for treatment (such as juvenile hall or camp) or supervised at home. Other wards are placed in foster care or a group home.

A small number of wards (under 2 percent annually), generally constituting the state's most serious and chronic juvenile offenders, are committed by the juvenile court to the CDCR's Division of Juvenile Justice (DJJ) (previously known as the Department of the Youth Authority) and become a state responsibility (as shown on page 57). In addition, juveniles tried in adult criminal court for particularly serious or violent crimes are placed in a DJJ facility until their 18th birthday, at which time they are transferred to state prison for the remainder of their sentence.

This chapter provides information on the juvenile justice system. This includes data on juvenile arrest rates, the characteristics of juvenile offenders, and the outcomes for juvenile arrestees. The chapter also discusses two topics affecting the juvenile justice system: (1) reforming DJJ juvenile facilities, and (2) the changing roles of the state and local governments in the juvenile justice system.

Who Are Juvenile Offenders?

Legal Categories of Juvenile Offenders

Informal Probationers *Welfare and Institutions Code Section 654* Known as "654s"	• Juveniles who have committed a minor offense. • Probation officers have a great deal of flexibility and can place a juvenile on informal probation if the officer decides the juvenile is under the jurisdiction of the juvenile court or *is likely* to be under its jurisdiction in the future. • These juveniles are often diverted into substance abuse, mental health, crisis shelters, or other services.
Status Offenders *Welfare and Institutions Code Section 601* Known as "601s"	• Juveniles who have committed offenses unique to a juvenile, such as truancy, a curfew violation, and incorrigibility. • They can be placed on formal probation but cannot be detained or incarcerated with criminal offenders.
Criminal Offenders *Welfare and Institutions Code Section 602* Known as "602s"	• Offenders under the age of 18 years who commit a misdemeanor or felony. • Subject to the jurisdiction of a juvenile court. • Can be placed on formal probation, detained before adjudication in a juvenile hall, and/or incarcerated after adjudication in a county or state facility. • They are treated differently from adults; they are not "tried", but "adjudicated"; they are not "convicted," but rather, their "petition is sustained."
Juveniles Remanded to Superior Court *Welfare and Institutions Code Section 707* Known as "707Bs" or remands	• Any juvenile age 14 or older, who commits specified felonies and is determined not fit for adjudication in juvenile court. • Tried in superior court as an adult. • If convicted, is sentenced to state prison and held in a DJJ facility for all or part of sentence. • If convicted, is sentenced to state prison and held in a DJJ facility for all or part of sentence.

Juvenile Arrests by Gender, Race, and Age

2005

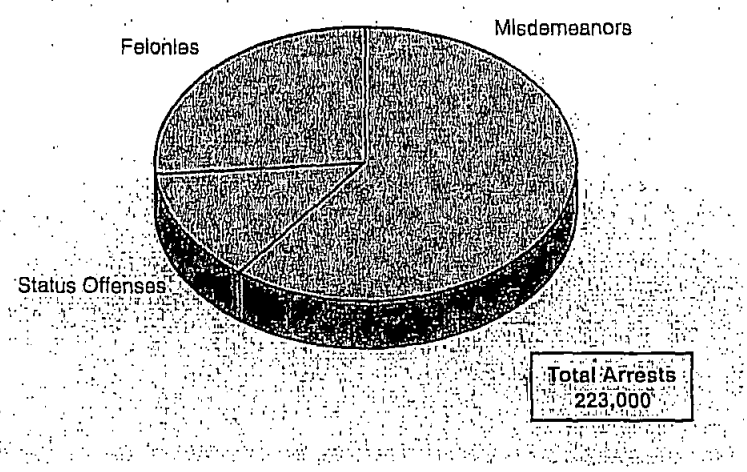
	Juvenile Arrests	California Youth Population
Totals	**222,512**	**4,493,439**
Male	74%	51%
Female	26	49
Black	17%	8%
Hispanic	48	46
White	28	33
Other	7	14
Ages 10-11	2%	24%
Ages 12-14	27	38
Ages 15-17	71	38

- In 2005, males accounted for about 74 percent of all juvenile arrests in California. Males accounted for more than 80 percent of all juvenile *felony* arrests.
- Most juveniles arrested in 2005 were age 15 through 17. Only 2 percent of juvenile arrests were in the 10 and 11 age group.
- Black and Hispanic juveniles represented about one-half of California's juvenile population age 10 through 17 in 2005, but they accounted for almost two-thirds of juvenile arrests.

How Prevalent Is Juvenile Crime in California?

Most Juvenile Arrests Are For Misdemeanor Crimes

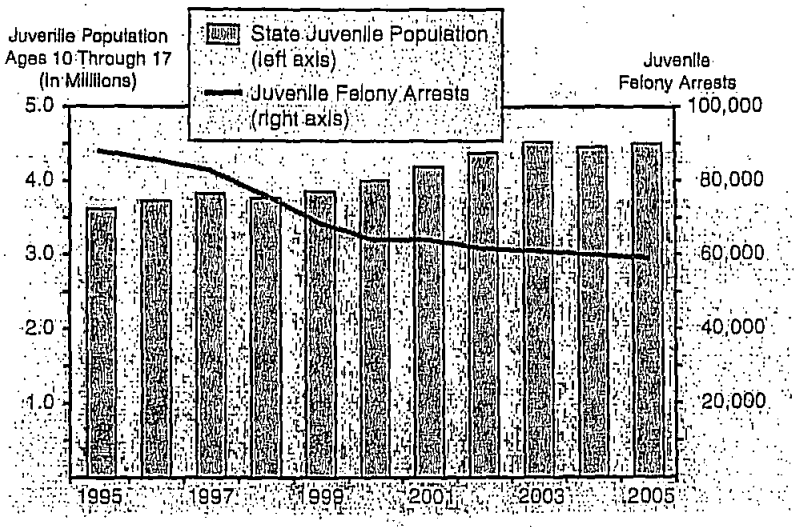
2005



- There were almost 223,000 juvenile arrests in California in 2005.
- Misdemeanor crimes—including crimes such as petty theft and assault and battery—accounted for 60 percent of all juvenile arrests.
- Felony arrests, such as burglary, accounted for 27 percent of all juvenile arrests.
- So-called status offenses, which include truancy and curfew violations, accounted for 13 percent of juvenile arrests in 2005.

California's Juvenile Population Is Up, But Juvenile Felony Arrests Are Down

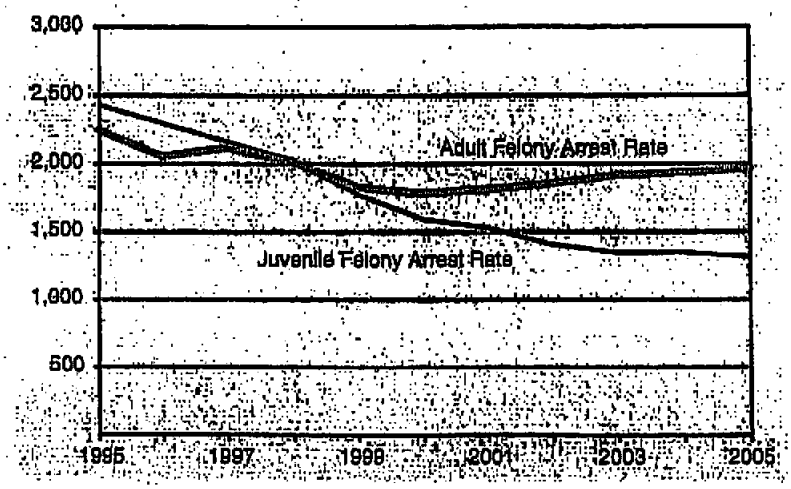
1995 Through 2005



- Although the population of juveniles in California has increased by about 24 percent since 1995, the number of juvenile felony arrests has *decreased* by 33 percent.
- Juvenile *misdemeanor* arrests declined by about 6 percent between 1995 and 2005, from about 142,000 arrests in 1995 to less than 134,000 arrests a decade later.
- There is no consensus among researchers as to the cause of the declining juvenile arrest rates. One possible explanation is the implementation of more effective prevention and intervention programs. In addition, some of the same factors that have led to declining crime rates nationwide—such as increased law enforcement personnel and economic factors—may be contributing to declining juvenile crime.

Felony Arrest Rates for Adults Overtook Those for Juveniles in the Late 1990s

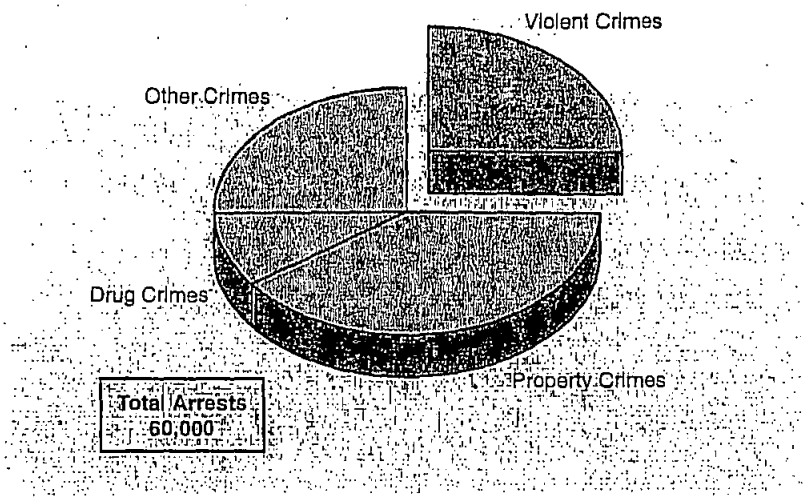
Arrests Per 100,000 Population
1995 Through 2005



- The juvenile felony arrest rate in California decreased by 46 percent between 1995 and 2005. Specifically, the number of juvenile felony arrests per 100,000 juveniles fell from more than 2,400 in 1995 to about 1,300 in 2005.
- The adult felony arrest rate also decreased during this period but has increased in more recent years. The number of adult felony arrests per 100,000 adults was almost 2,000 in 2005.
- The adult felony arrest rate surpassed the juvenile felony arrest rate in 1999 and the "gap" between the two rates has widened every year since that time.

Three-Quarters of Juvenile Felony Arrests Area For Nonviolent Crimes

2005

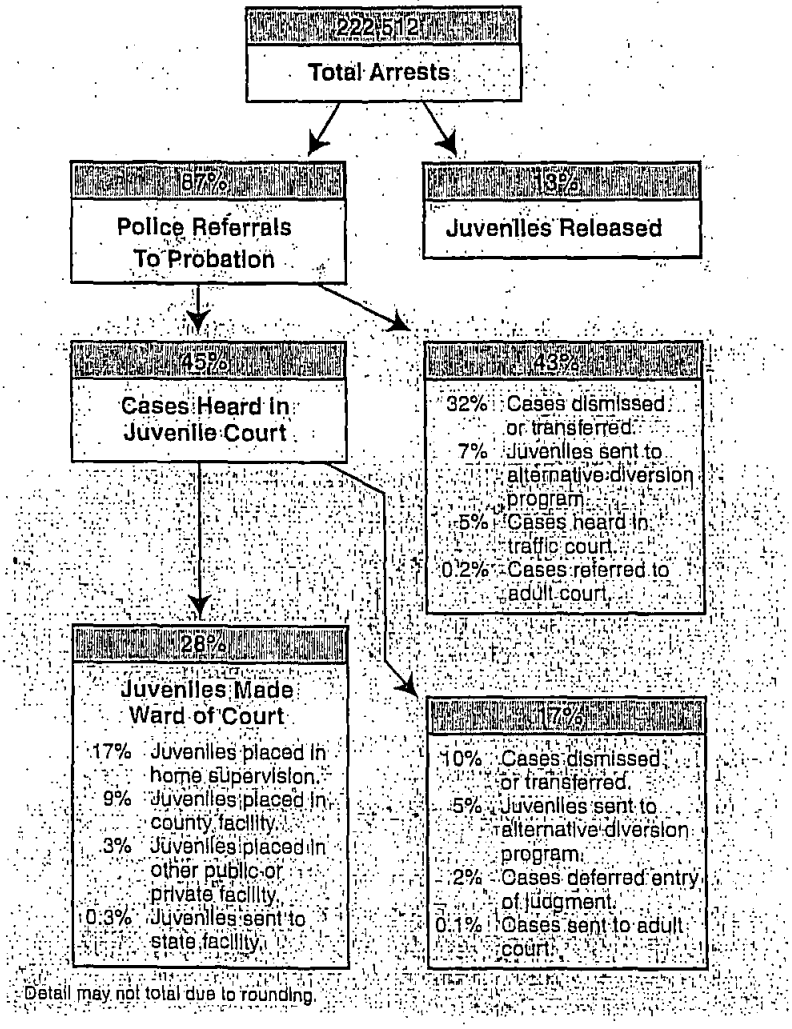


- There were about 60,000 juvenile felony arrests in 2005.
- Property crimes—such as burglary and theft—accounted for about 40 percent of all juvenile felony arrests.
- Drug offenses accounted for 10 percent of juvenile felony arrests in 2005. The "other crimes" category, which includes such felonies as illegal possession of a firearm, accounted for 25 percent of arrests.
- Violent crimes, including homicide, rape, and robbery, accounted for 25 percent of all juvenile felony arrests. There were a total of 171 juvenile arrests for homicide in 2005, less than one-half of 1 percent of all juvenile felony arrests.

What Happens to Juvenile Offenders?

Outcomes of Juvenile Arrests In California

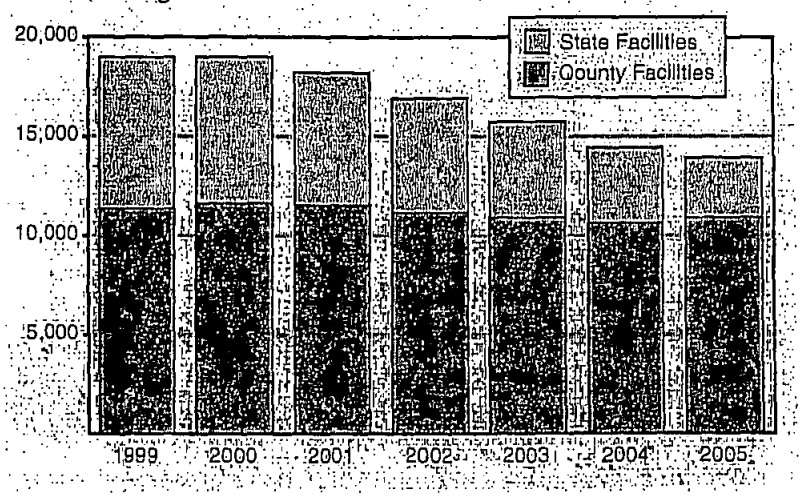
2005



Detail may not total due to rounding.

Number of Offenders in Youth Correctional Facilities Is Decreasing

Average Daily Population
1999 Through 2005



- The population of juveniles incarcerated in state or county facilities has decreased every year since 2000 from about 19,000 in 2000 to 14,000 in 2005, a 27 percent decrease.
- Since 1999, the number of juveniles incarcerated in county facilities has declined by about 4 percent, from about 11,400 to 10,900.
- The number of juveniles incarcerated in state facilities declined by about 60 percent between 1999 and 2005, from almost 7,600 in 1999 to about 3,000 in 2005.
- The decline in juvenile incarceration is due largely to the decline in juvenile arrest rates and the implementation by counties of more alternatives to incarceration, such as placements in home supervision and group homes.

Key Topics in Juvenile Justice

Reforming the Division of Juvenile Justice

Farrell *Lawsuit.* In January 2003, a lawsuit, *Farrell v. Allen,* was filed against the Department of Youth Authority (as noted above, later renamed DJJ), contending that it failed to provide adequate care and effective treatment programs to youthful offenders (known as "wards") incarcerated in state facilities. In November 2004, the administration agreed to plaintiffs' demand that the state develop and implement remedial plans that addressed operational and programmatic deficiencies identified by court experts in six areas: education, sex behavior treatment, disabilities, health care, mental health, and ward safety and welfare. The overarching goal of these reforms is to transform the state's youth correctional system into a "rehabilitative model" of care and treatment for youthful offenders.

Remedial Plans. During the next several years, DJJ is required to implement reforms consistent with the remedial plans. The first priority is to reduce the level of ward-on-ward and ward-on-staff violence in the correctional facilities in order to create a suitable environment for treatment and rehabilitation. To do this, the remedial plan requires the division to hire various additional staff, particularly security officers, and place them in living units that will be limited to no more than 38 wards. Another priority is to train staff on treatment practices that have been successfully implemented in other states such as Texas and Washington. These "best practices" are intended to improve treatment for substance abuse, mental illness, and sex-offender behavior.

Fiscal Impact. Implementing these reforms will be a long-term project. States such as Colorado report that it can take ten years or more to transform an underachieving youth correctional system into a successful rehabilitative model. Current estimates are that the implementation of these

reforms will cost the state more than $100 million annually once fully implemented. This amounts to approximately a 25 percent increase in state spending on juvenile corrections.

Defining State and Local Responsibilities for Juvenile Offenders

Current Local Role. As noted earlier, the juvenile justice system is primarily a local responsibility. Counties currently are responsible for more than 98 percent of all juvenile offender cases, typically through their probation departments, which provide incarceration, rehabilitation services, and community supervision. The state, through DJJ, provides these services for the relatively small number of remaining juvenile offenders who generally have committed crimes that are more serious in nature or have repeatedly failed to respond to local juvenile justice programs.

Current State Role. The state's role in the juvenile justice system has been changing in recent years. The number of offenders held in the state facilities operated by DJJ has dropped dramatically, as shown on page 58, from about 7,600 wards in 1999 to about 3,000 in 2005. (The number of wards in state facilities is even lower now and still dropping.) Meanwhile, the state has invested significant additional funding in recent years to improve its institutional programs (largely in response to litigation over conditions in DJJ facilities), as well as to expand grants to counties for community services to prevent at-risk youth from being involved in criminal activities.

Future Roles. What roles the state and the counties should play in the juvenile justice system in the future—both in terms of funding and in setting overall policy governing the state's approach to dealing with juvenile offenders—is the subject of continuing policy debate and discussion among criminal justice experts and governmental officials. One perspective is that, since criminal justice policies are often established by actions at the state level (such as by voter ap-

proval of Proposition 21 in 2000, which expanded the types of cases for which juveniles can be tried in adult court), the state is obligated to retain a significant role in funding and operating youth institutions as well as parole supervision of wards who have been released into the community. In our past analyses of these issues, however, we have noted that, upon their release from state facilities, most juvenile offenders return to their home communities and that these local communities thus have a significant interest in their future behavior. Counties also already administer many of the programs these individuals need to reduce their likelihood of recidivism, such as drug and alcohol treatment programs and mental health treatment.

Accordingly, one option is for part or all of the operation of existing DJJ institutions as well as parole supervision responsibilities to be shifted to counties, along with the resources to continue these programs. The Governor's 2007-08 budget plan proposes to shift part of the DJJ institutional population—primarily lower-level juvenile offenders—to counties along with block grant funding to offset the additional cost of this shift.

Chapter 6:

The Costs of Crime And the Criminal Justice System

A number of studies have attempted to estimate the total direct and indirect costs of crime to government and society. The estimates resulting from these studies have varied, but generally conclude that nationwide costs of crime range from the tens to hundreds of billions annually.

Some components of the cost of crime can be readily estimated. For example, in 2003-04, California spent more than $25 billion to fight crime, which included costs for police, prosecution, courts, probation, and incarceration (as shown on page 63). This amount was primarily funded by the state and local governments.

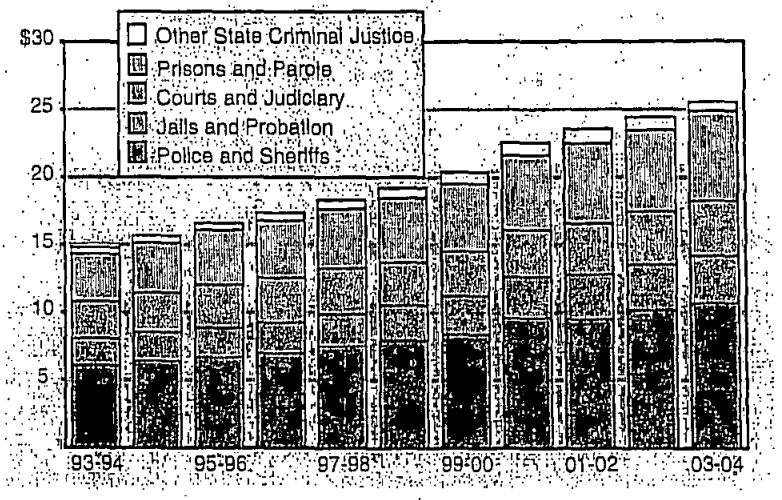
Other costs cannot be easily measured. For example, many crimes—such as fraud, embezzlement, or arson—often go undetected or unreported and thus their costs to society are not fully captured in some estimates. Also, some costs are difficult to estimate because the costs are "transferred" from one party to another. For example, the costs of crime in terms of the loss of goods and services may be transferred from manufacturers and retailers to consumers as the price of their products are adjusted to reflect the costs for crime prevention activities or losses from crime.

This chapter provides information on the costs of the criminal justice system. This includes data on the costs to state and local governments over time, criminal justice personnel compared to other states, and state expenditures on youth and adult corrections. The chapter also discusses two topics related to the costs of crime: (1) the cost of crime to society and (2) cost-effective crime prevention strategies.

What Does It Cost to Operate the California Criminal Justice System?

California Spends More than $25 Billion Annually to Fight Crime

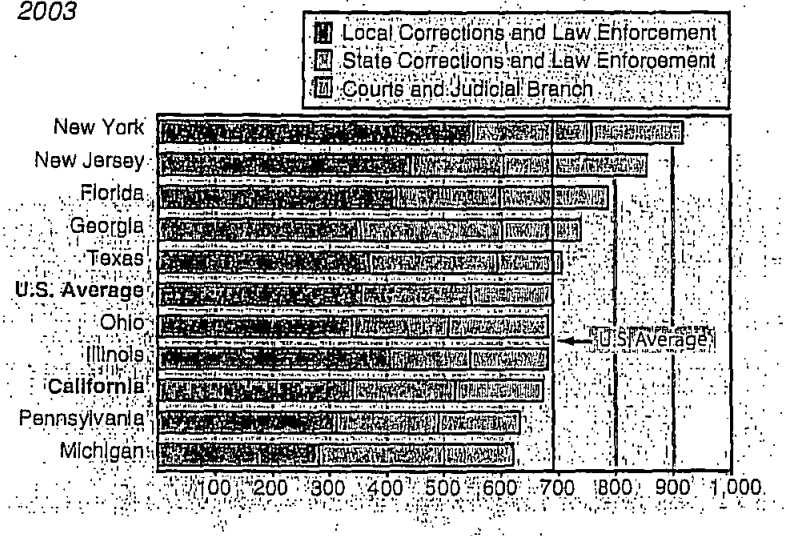
1993-04 Through 2003-04
(In Billions)



- Total state spending on criminal justice grew from about $15 billion in 1993-94 to more than $25 billion in 2003-04 (the most recent complete data available).
- Criminal justice spending grew by about 6 percent annually during this period. Spending on prisons and parole grew slightly faster than other criminal justice programs, at a rate of 7 percent annually.
- Local governments support about 62 percent of total annual criminal justice costs, including approximately $11 billion for police and sheriffs.

California Has Comparatively Fewer Criminal Justice Personnel Than Most Other Large States

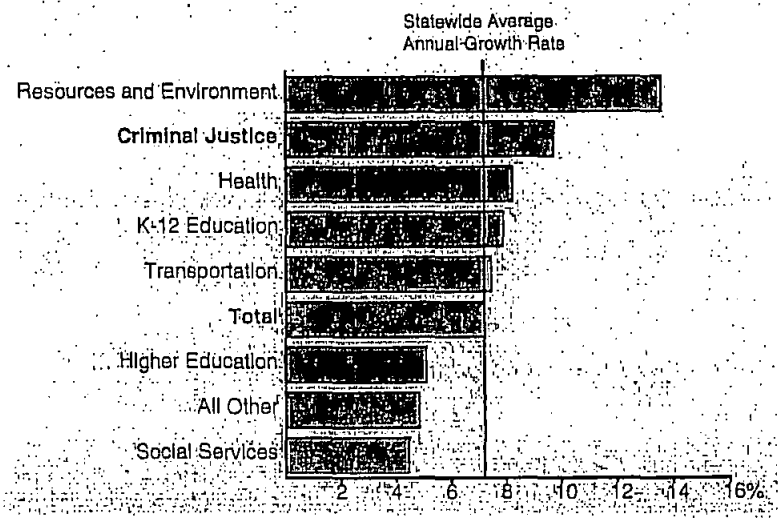
Criminal Justice Staffing Rate (Per 100,000 Population) 2003



- In 2003, California had about 240,000 personnel (as measured by the number of full-time equivalent staff) working in the state and local criminal justice system, the highest total of any state.
- However, California ranked eighth among the ten largest states in terms of the number of criminal justice personnel per population. Specifically, California had less than 700 criminal justice staff per 100,000 people, slightly less than the U.S. average. Of these ten states, New York had the most criminal justice personnel per capita, with 900 per 100,000 population.
- One-half of California criminal justice personnel worked in local corrections and law enforcement, 27 percent worked in state corrections and law enforcement, and 23 percent worked in the court system.

California Criminal Justice Spending Grew Faster Than Total State Spending

1996-97 Through 2006-07



- State spending for criminal justice reached $14 billion in 2006-07, an average annual increase of about 10 percent since 1996-97. This growth rate outpaced that for total state spending and was only eclipsed by the growth in funding for resources/environmental programs.
- Most of the increase in spending in criminal justice programs is due to increases in salary costs, as well as court-ordered mandates to improve parts of the prison system, such as medical care. The prison inmate population grew at an average annual rate of 2 percent over this period.
- Spending on criminal justice programs takes up a greater share of total state expenditures today than a decade ago, increasing from about 6 percent of total expenditures in 1996-97, to about 7 percent in 2006-07. Spending for corrections makes up two-thirds of total state criminal justice expenditures in the current year.

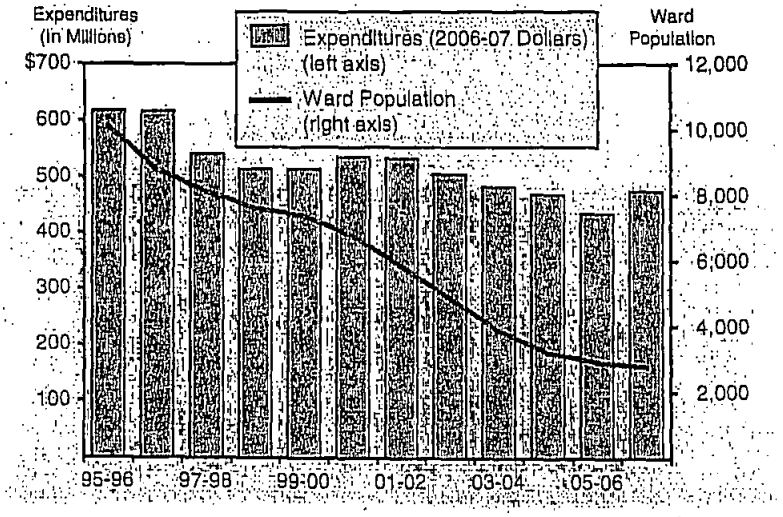
California Annual Costs to Incarcerate an Inmate in Prison

2006-07

Type of Expenditure	Per Inmate Costs
Security	**$19,561**
Inmate Health Care	**$9,330**
Medical care	$6,186
Psychiatric services	1,751
Pharmaceuticals	977
Dental care	416
Operations	**$6,216**
Facility operations (maintenance, utilities, etc.)	$4,377
Classification and inmate services	1,582
Reception, testing, assignment	240
Transportation	17
Administration	**$3,351**
Inmate Support	**$2,527**
Food	$1,437
Inmate activities and canteen	485
Clothing	309
Inmate employment	296
Employment Training	**$2,053**
Academic education	$949
Substance abuse programs	823
Vocational training	281
Miscellaneous	**$246**
Total	**$43,287**

Spending for State Juvenile Corrections Declined More Slowly Than Ward Population

1995-96 Through 2006-07



- Adjusting for inflation, state expenditures for juvenile corrections declined by about $137 million or 22 percent since 1995-96.
- The ward population declined much more quickly over that period, falling from about 10,000 wards in 1995-96 to fewer than 3,000 projected in 2006-07, a decrease of more than 70 percent. This decrease is due primarily to the decline in juvenile arrest rates and the implementation by counties of more alternatives to incarceration, such as placements in home supervision and group homes.
- The annual cost of housing a ward in a state facility is estimated to be approximately $180,000 in 2006-07. These costs are substantially higher than the state costs to house adult offenders, primarily because juvenile facilities have higher staffing ratios and provide more education and rehabilitation programs than adult facilities.

Key Topics in Criminal Justice System Spending

The Cost of Crime to Society

While the state's criminal justice system requires substantial investment of government personnel and public resources, it is also important to note that crime has other significant effects on victims, families, businesses, and governments. Some of these impacts on society include:

- ***Medical costs*** paid by victims, families, and businesses and government because of injuries suffered due to crime.
- ***Stolen and damaged property*** resulting from crime. In the NCVS, victims reported that their property was either stolen or damaged in 95 percent of property crimes and 18 percent of violent crimes, resulting in an average loss of almost $700 per incident.
- ***Loss of productivity to society*** because of death or medical and mental disabilities resulting from crime.
- ***Loss of work time*** by victims of crime and their families. According to NCVS data, about 6 percent of victims missed time from work due to crime.
- ***Loss of property values*** in neighborhoods with high rates of crime.
- ***Pain and suffering of crime victims,*** their families and friends, as well as communities plagued by crime.
- ***Foster care and other social services costs*** to provide homes and other services for children of offenders.

It is difficult to identify the magnitude of these costs because they vary so much from case to case depending in large part on the nature of the crime and the severity of the damage inflicted by criminals. In addition, some costs, such

as pain and suffering and loss of productivity, are not easily quantifiable. Experts on crime have found it difficult to translate these very real costs into definitive dollar amounts.

Cost-Effective Crime Prevention Strategies

The rising costs of crime and the criminal justice system have prompted policymakers to consider redirecting resources to crime prevention programs. Crime prevention generally refers to a broad array of strategies and programs that prevent crime by addressing the root causes of or risk-factors associated with criminal behavior. These strategies range from early childhood development programs to mentoring and education to behavioral intervention programs targeting at-risk juveniles and their families. The policy appeal of crime prevention programs is that such approaches would result in fewer victims of crime and reduce future taxpayer costs. Moreover, effective prevention strategies have the potential to reduce crime at a much lower cost than incarceration.

Research Findings. While crime prevention programs have long offered such benefits in concept, historically there has been only limited research available on the variety of different approaches to demonstrate which of these strategies work best and which are most cost-effective. Fortunately, today there is more research available, particularly research evaluating the effectiveness of juvenile delinquency prevention and early intervention strategies. These studies have found that certain strategies are more effective than others. Some of the most effective programs at reducing juvenile crime and other delinquent behavior include parenting training for parents of at-risk children, early education programs, and behavior modification training and therapy for juvenile offenders and their families.

Importantly, new research has found that some of these crime prevention programs and strategies, particularly those that target delinquency prevention, can be cost-effective when well designed and implemented. That is, these pro-

grams can provide greater savings to taxpayers, victims, offenders, and families than the costs to operate the programs. Research by the Washington State Institute for Public Policy shows that investment in certain prevention programs can yield significant net savings. For example, effective intervention programs for juvenile offenders yield net benefits between $1,900 to $31,000 per youth participant. Some programs that involve professionals, such as nurses or social workers, visiting the homes of high-risk mothers and children are also cost-effective, yielding between $6,000 and $17,000 per youth. In addition, there are a number of other programs that generate net savings. Even some that yield comparatively small net savings, such as certain substance abuse prevention programs, are cost-effective and are relatively inexpensive to operate. In California, a wide array of state and local agencies offer prevention and intervention programs. The degree to which these programs are evaluated for their cost-effectiveness varies considerably.

Fiscal Outcomes. It is important to note, however, that not all prevention and early intervention programs produce net savings, either because they are ineffective strategies or because they are too expensive. Program effectiveness also depends on which individuals are selected for participation. Some individuals may be more likely than others—based on their criminal history, age, or other risk factors—to be successful in a program or otherwise amenable to treatment. Therefore, it is important that state and local government agencies that implement prevention and intervention programs target them to those individuals shown to most likely benefit from the services.

Chapter 7:

Conclusion

The criminal justice system affects all Californians, either directly or indirectly. Moreover, it costs taxpayers tens of billions of dollars annually to operate the agencies that make up the criminal justice system, including police, courts, jails, probation, prisons, and parole.

Because the criminal justice system plays an important role in the lives of Californians and is a significant share of state and local government budgets, it is important for policymakers to consider the major challenges facing the future of criminal justice in California. We discuss two of the most important challenges facing the Legislature below.

Inmate Population Management

During the past 20 years, jail and prison populations have increased significantly. County jail populations have increased by about 66 percent over that period, an amount that has been limited by court-ordered population caps. The prison population has grown even more dramatically during that period, tripling since the mid-1980s.

Projected Growth. Of particular concern is the projected growth in the state prison population. As shown in Figure 3 (see next page), the inmate population is projected by CDCR to increase from its current level of about 173,000 to about 190,000 inmates during the next five years. This growth, should it materialize, would put significant pressures on an already overcrowded prison system. More than 15,000 inmates—approximately 10 percent of the total prison population—are housed in gyms, dayrooms, holding cells, and even hallways, and it would be very difficult for the current facilities to safely accommodate the additional 17,000 prisoners that have been projected. Moreover, corrections officials state

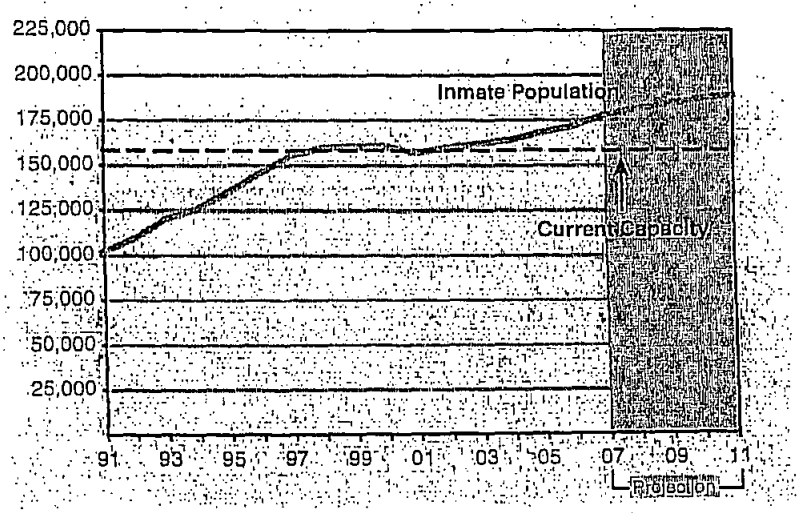
that the existing overcrowding has serious consequences for prison operations. These include added difficulty in providing supervision and security, increased inmate violence, more limited availability of inmate rehabilitation programs (see the rehabilitation discussion below), and increased operational costs. In October 2006, the Governor declared a state of emergency to allow him to transfer inmates to prisons in other states in order to help relieve some of the overcrowding. He also proposed a number of changes to address overcrowding as part of the 2007-08 budget, including building new prison and jail beds.

Strategies to Address Growth. Given the above concerns, the state faces serious questions about how to address the challenges resulting from the growing inmate population. In general, the state has available two main strategies to respond

Figure 3

Prison Population Projected to Further Exceed Capacity

1991 Through 2011



separately or in combination to this situation: expand system capacity and reduce population.

- *Expand Capacity.* The prison system can be expanded in a number of ways. New prison construction is the most expensive option—especially given that the most recently constructed state prison cost about $400 million. Individual housing units could also be constructed at a number of existing prison sites. Finally, CDCR could expand its use of contracts with public and private community correctional facilities (CCFs) to house additional inmates. Currently, the state has 14 such contracts for about 6,000 inmate beds for low-level offenders. Historically, the state cost on a per-inmate basis is similar for housing low-security offenders in either a state-operated prison or a CCF when taking into account the type of inmates placed in CCFs as well as medical costs. Expansion of CCF contracts could allow the state to add new facilities for offenders without having to directly pay for construction costs.

- *Reduce Inmate Population.* There are also a number of ways to reduce the inmate population, or at least slow its rate of growth. Expansion of the state's inmate rehabilitation programs and the broader use of alternative sanctions for parole violators could reduce the number of offenders who return to prison. Shorter sentences could be provided for some inmates through (1) early release of selected groups of inmates—such as the elderly or very sick—or (2) changes in state sentencing laws. In late 2006, the Governor proposed changes in sentencing laws to house certain nonviolent felons in local jails instead of state prisons as required under current law. It is also worth noting that the administration could use its existing authority regarding parole returns, parole discharges, and release of certain inmates with life sentences to reduce population without

a change to current law or additional resources. The options provided above would reduce the prison population, but would also entail some level of risk to the public, in that they permit some offenders to remain in the community who would otherwise be in prison under existing law and correctional practices.

Both of these general strategies have advantages and disadvantages. One approach would be to combine both strategies by targeting different strategies towards different types of offenders. For example, early-release options could be implemented for nonviolent and low-risk offenders. Alternative parole sanctions could be used primarily for offenders who would also benefit from available treatment services. New construction could be targeted at housing higher-security inmates who may not be suitable candidates for the other strategies.

Interconnectivity. Finally, it is worth noting that while local governments are responsible for funding and operating local jails, actions taken at one level of the criminal justice system can often affect other levels. For example, an expansion of state prison capacity could result in more inmates being sentenced to state prison by the courts due to local constraints on jail populations. Alternatively, changes in sentencing law or parole practices that resulted in some offenders spending less time in state prison could increase the likelihood that they end up in the local corrections system. These examples suggest that any changes made by the Legislature to affect prison population or capacity should also consider the possible impacts to, and responses by, the criminal justice system at the local level.

Prison and Parole Rehabilitation Programs and Public Safety

A second challenge facing the Legislature is the lack of rehabilitation programs for state prison inmates and parol-

ees and the resulting public safety consequences. More than 80 percent of all inmates currently in prison will eventually be paroled to local communities, most within a couple of years of being sent to prison. More than 122,000 inmates were released in 2005 including 64,000 offenders released after serving their court-imposed sentence, as well as 58,000 offenders released afer being returned for a parole violation. Unfortunately, California has one of the highest recidivism rates in the nation, with almost 60 percent of released offenders returning to prison within three years, often because of new criminal activity. With so many offenders returned to the community, and with such high recidivism rates among parolees, state officials have emphasized the need to design and implement effective strategies to reduce recidivism.

Benefits from Rehabilitation Programs. Various studies have demonstrated that well-designed rehabilitation programs such as drug treatment, academic and vocational education, and cognitive behavioral therapy can reduce recidivism when targeted to the right offenders by addressing issues that contribute to their criminal behavior. Such programs can benefit public safety by reducing criminal behavior, as well as reducing the prison population and ameliorating overcrowding conditions. Some corrections officials also argue that prison rehabilitation programs benefit prison operations and staff safety by engaging inmates in meaningful work and preventing idleness.

Availability of Programs. Despite these apparent benefits, the availability of rehabilitation programs is limited in California. For example, currently about 5 percent of spending on prison operations is for rehabilitation programs such as academic and vocational education (as shown on page 66). Studies suggest that most inmates have significant substance abuse problems and only about one-third can read at a high school level. Nevertheless, at any given time the state has only enough drug treatment slots for about 6 percent of all inmates and classroom academic and vocational education

programs are only available to about 12 percent of the total inmate population. In part, this reflects the state's historical emphasis on punishment over rehabilitation, as well as ongoing funding constraints due to state budget problems. The 2007-08 state budget does include about $51 million in additional funds for inmate and parolee rehabilitation programs. Most of this funding is part of the administration's "Recidivism Reduction Strategies" proposal, and amounts to about a 12 percent increase in funding for these programs.

Barriers to Programs. Should the state wish to make rehabilitation programs a higher priority, it will need to invest additional funds, as well as address other barriers to the implementation of effective programs for inmates and parolees. Most notably, those inmates who are assigned to rehabilitative programs are often not able to attend them because of high teacher vacancies and frequent prison lockdowns. In addition, program expansion is difficult in existing prisons because the physical space within prison walls that could be used for prison programs is now often filled with bunks of inmates due to prison overcrowding.

Ultimately, an approach that addresses inmate population management as well as increased rehabilitation programs would likely reduce prison overcrowding, inmate recidivism and, therefore, criminal justice system costs.

C

Placer County v. CorinCal.App.3.Dist.COUNTY OF PLACER, Petitioner,
v.
F. EARL CORIN, as Treasurer, etc., Respondent.
Civ. No. 19620.

Court of Appeal, Third District, California.
Dec 17, 1980.

SUMMARY

A county petitioned in the Court of Appeal for a writ of mandate to compel the county treasurer to serve notice of assessment on and to collect such assessments from real property owners in a sewer assessment district of the county for the purpose of financing the cost of acquisitions and construction of improvements in the district. The county's board of supervisors had adopted a resolution providing for the acquisition and construction of improvements, and the county had accepted a federal grant representing one-half the cost of the acquisitions and construction of improvements. The county treasurer contended that funds to be derived from the special assessments and from the federal grant proceeds were encompassed with "proceeds of taxes", and thus were required to be included in the county's "appropriations subject to limitation" (Cal. Const., art. XIII B, § 8, subd. (b)).

The Court of Appeal granted the petition. It held that the governmental spending restrictions imposed under Cal. Const., art XIII B, do not limit the ability to expend governmental funds collected from all sources. It further held that as to a local government, limits are placed only on the authorization to expend the proceeds of taxes levied by that entity and the proceeds of specified state subventions (Cal. Const., art. XIII B, § 8, subd. (c)), and no limitation is placed on the expenditure of those revenues that do not constitute "proceeds of taxes." It additionally held that Cal. Const., art. XIII B, does no more than place a ceiling on the expenditure of general state and local tax revenues and does not encompass special assessments and federal grants for the financing of the cost of acquisitions and construction of improvements in a sewer assessment district of a county. (Opinion by Carr, J., with Regan, Acting P. J., and Evans, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b) Municipalities § 36--Fiscal Affairs--Constitutional Limitation on Expenditures--Appropriations Subject to Limitation--Proceeds From Special Assessments and Federal Grants.
The governmental spending restrictions imposed under Cal. Const., art. XIII B, do not limit the ability to expend governmental funds collected from all sources. Rather, the appropriations limit is based on "appropriations subject to limitation" consisting primarily of the authorization to expend during a fiscal year the "proceeds of taxes" (Cal. Const., art. XIII B, § 8, subd. (a)). As to a local government, limits are placed only on the authorization to expend the proceeds of taxes levied by that entity and the proceeds of specified state subventions (Cal. Const., art. XIII B, § 8, subd. (c)), and no limitation is placed on the expendure of those revenues that do not constitute "proceeds of taxes." Cal. Const., art. XIII B, does no more than place a ceiling on the expenditure of general state and local tax revenues and does not encompass special assessments and federal grants for the financing of the cost of acquisitions and construction of improvements in a sewer assessment district of a county.
[See Cal.Jur.3d, Municipalities, § 361; Am.Jur.2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 582.]
(2) Counties § 15--Fiscal Matters--Constitutional Limitation on Expenditures--Appropriations Subject to Limitation--Proceeds From Special Assessments and Federal Grants.
A county was entitled to a writ of mandate against its treasurer who had refused to serve notice of assessment on and to collect assessments from real property owners in a sewer assessment district of the county for the purpose of securing funds for the payment of acquisitions and construction of improvements in the district, the county's petition for a writ of mandate requiring him to do so, where the county board of supervisors had adopted a resolution providing for such acquisitions and construction of improvements and the county had accepted a federal grant of proceeds for one-half the cost of the

acquisitions and construction of improvements. It was not the intent of Cal. Const., art. XIII B, that proceeds from special assessments or a federal grant should be considered as "proceeds of taxes" or *445 within a county's appropriations subject to limitation under Cal. Const., art. XIII B, § 8, subd. (b).

COUNSEL

L. J. Dewald, County Counsel, Jones, Hall, Hill & White and Robert G. Aurbrey for Petitioner.

Orrick, Herrington, Rowley & Sutcliffe, John R. Myers and Carlo S. Fowler for Respondent.

CARR, J.

In this mandate proceeding, the issue is whether "proceeds of taxes" as used in article XIII B of the California Constitution includes (1) special assessments of an assessment district and/or (2) federal grants made directly to a local entity for improvements within the assessment district. Petitioner, the County of Placer, seeks to compel respondent, who is the Placer County Treasurer, to serve notice of assessment on and to collect such assessments from property owners in the Tierra Heights Sewer Assessment District A-79.

In April 1979 petitioner's board of supervisors, pursuant to provisions of the Municipal Improvement Act of 1913 and the Improvement Bond Act of 1915, adopted a resolution entitled: A RESOLUTION OF INTENTION TO MAKE ACQUISITIONS AND IMPROVEMENTS-TIERRA HEIGHTS SEWER ASSESSMENT DISTRICT A-79. Petitioner had previously accepted a federal grant in the sum of $55,000 representing one-half the costs of making the required acquisitions and constructing improvements. On March 4, 1980, petitioner directed respondent to mail and serve appropriate notices to pay assessments to owners of real property within the sewer assessment district. Respondent has refused to serve and collect said assessments, asserting the proceeds thereof must be included within the appropriations limits set forth in article XIII B, section 1. We issued an alternative writ pursuant to our original authority, finding this question to be one of both first impression and substantial importance. (See *California Housing Finance Agency v. Elliott* (1976) 17 Cal.3d 575, 580 [131 Cal.Rptr. 361, 551 P.2d 1193]; *446 *California Educational Facilities Authority v. Priest* (1974) 12 Cal.3d 593, 598 [116 Cal.Rptr. 361, 526 P.2d 513]; Cal. Civil Writs (Cont.Ed.Bar. 1970) § 85, p. 154.) Respondent by way of return has generally demurred to the petition contending a writ of mandate will not lie to compel performance of an illegal or unconstitutional act.

In November 1979 article XIII B was added to the California Constitution through the adoption of Proposition 4, commonly referred to as the "Gann Initiative." Ballot arguments in support of Proposition 4 referred to it as providing "permanent protection for taxpayers from excessive taxation" and "a reasonable way to provide discipline in tax spending at state and local levels."

Article XIII B was adopted less than 18 months after the addition of article XIII A to the state Constitution, and was billed as "the next logical step to Proposition 13" [article XIII A]. While article XIII A was generally aimed at controlling ad valorem property taxes and the imposition of new "special taxes" (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 231-232 [149 Cal.Rptr. 239, 583 P.2d 1281]; *County of Fresno v. Malmstrom* (1979) 94 Cal.App.3d 974, 980 [156 Cal.Rptr. 777], see article XIII A, § § (1), (4)), the thrust of article XIII B is toward placing certain limitations on the growth of appropriations at both the state and local government level; in particular, article XIII B places limits on the authorization to expend the "proceeds of taxes." (§ 8, subd. (c).)

Article XIII B provides that beginning with the 1980-1981 fiscal year, "an appropriations limit" will be established for each "local government." [FN1] (§ 8, subd. (h).) No "appropriations subject to limitation" may be made in excess of this appropriations limit, and revenues received in excess of authorized appropriations must be returned to the taxpayers within the following two fiscal years. (§ 2.)

FN1 Article XIII B is applicable to both the State of California nd local governments. (See § § 1, 8, subd. (a).) Since this action involves only a local government, i.e., the County of Placer, the operation of article XIII B as it relates to the state is not discussed.

The appropriations limit for the 1980-1981 fiscal year is equal to the total "appropriations subject to limitations" for that entity in the 1978-1979 fiscal year, with certain adjustments for changes in the cost of living, population and financial responsibility for providing services. *447 (§ § 3, 8, subd. (h); see Ops.Cal.Legis. Counsel, No. 15349 (Aug. 24, 1979) Gann Initiative, p. 4.) In succeeding years, the appropriations limit will be equal to the prior year's appropriations limit, subject to the specified

adjustments. Appropriations limits may be changed by the voters, but not to exceed a period longer than four years.

(1a)Billed as a flexible way to provide discipline in government spending, article XIII B does not limit the ability to expend government funds collected from all sources. Rather, the appropriations limit is based on "appropriations subject to limitation," which consists primarily of the authorization to expend during a fiscal year the "proceeds of taxes." (§ 8, subd. (a).) As to local governments, limits are placed only on the authorization to expend the proceeds of taxes levied by that entity, in addition to proceeds of state subventions (§ 8, subd. (c)); no limitation is placed on the expenditure of those revenues that do not constitute "proceeds of taxes." The intended scope of "proceeds of taxes," the source of a local government's "appropriations subject to limitations," is the pivotal issue herein.

(2)Respondent contends the funds derived from the exercise of the power of assessment and from federal grant proceeds used to pay the costs and expenses of acquisitions and improvements, are encompassed within "proceeds of taxes" and must be included in the county's appropriations subject to limitation; that exclusion thereof and the making of other appropriations to the extent of petitioner's appropriations limit without regard to the existence of the authorization to expend these proceeds threatens to impair the validity and enforceability of said assessments and assessment bonds. Petitioner contends the proceeds of the special assessments and the federal grant do not constitute "proceeds of taxes," and will not be included within its budgeted "appropriations subject to limitation" for fiscal year 1980-1981.

This issue is one of substantial importance, involving the continued viability of provisions for initiating and completing special improvements. (See Sts. & Hy. Code, § 5000 et seq., 10000 et seq.) "For over 60 years these laws have provided the most widely used procedure in California for the construction of a variety of public improvements including streets, sewers, sidewalks, water systems, lighting and public utility lines; property owners benefited by the improvements pay for these improvements either in cash or, at their option, by installments over a period of time." (*County of Fresno v. Malmstrom, supra*, 94 Cal.App.3d at p. 978.) If local entities are required to include special *448 assessment and federal grant proceeds within their "appropriations subject to limitation," such entities will have to decide whether to limit or even discontinue the acquisition and improvement of local improvements or to finance such improvements from general tax revenues, i.e., at the expense of all taxpayers. In light of the enormous demands on reduced general tax revenues following adoption of article XIII A, the latter option appears fiscally unfeasible.

Section 8, subdivision (c) defines "'proceeds of taxes'" as follows: "'Proceeds of taxes' shall include, but not be restricted to, all tax revenues and the proceeds to an entity of government, from (i) regulatory licenses, user charges, and user fees to the extent that such proceeds exceed the costs reasonably borne by such entity in providing the regulation, product, or service, and (ii) the investment of tax revenues. With respect to any local government, 'proceeds of taxes' shall include subventions received from the state, other than pursuant to Section 6 of this Article and, with respect to the state, proceeds of taxes shall exclude such subventions."

In summary, for local entities, "proceeds of taxes" includes, but is not restricted to: (1) all tax revenues; (2) excessive regulatory license fees and excessive user charges and fees; (3) the investment of tax revenues; and (4) subventions from the state.

Respondent asserts that special assessment and federal grants proceeds, though not included within any of the expressly enumerated categories in section 8, are similar in origin and character to user charges and user fees and are of the same general class; that federal grant proceeds are akin to state subventions: and under the doctrine of *ejusdem generis*, [FN2] must be considered "proceeds of taxes," as the latter includes but is not restricted to tax revenues, certain regulatory and user fees and charges, and state subventions. *449

FN2 In its practical application, this rule simply means that "'general and specific words which are capable of an analogous meaning, being associated together, take color from each other, so that the general words are restricted to a sense analogous to the less general.' (3 Words and Phrases Judicially Defined, p. 2328.) ... [Thus,] 'where a statute or other document enumerates several classes of persons or things, and immediately following and classed with such enumeration the clause embraces "other " persons or things, the word "other" will generally be read as

"other such like," so that persons or things therein comprised may be read as *ejusdem generis* with, and not of a quality superior to or different from, those specifically enumerated.'" (*People v. Strickler* (1914) 25 Cal.App. 60, 64, 65 [142 P. 1121].) *Ejusdem generis* is a rule of construction used to carry out, not to defeat, the legislative intent.

Further, respondent notes that article XIII B was intended both to carry out the intent and to extend the scope of article XIII A. While article XIII A was aimed at controlling ad valorem property taxes and imposition of new special taxes (see *County of Fresno v. Malmstrom, supra.*, 94 Cal.App.3d at pp. 980-984.), article XIII B is directed at controlling government spending. (See § § 1, 8, subd. (a), (b) (c).) The source of revenue to be spent is not limited to property taxes; "all tax revenues" are subject to the limitations of article XIII B, in addition to certain user and regulatory charges, state subventions, and the investment of tax revenues. (§ 8, subd. (c).) Respondent urges it is our duty to give article XIII B a broad, liberal interpretation in accordance with the will of the people (see *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization, supra.*, 22 Cal.3d at pp. 245). [FN3] and this mandates a finding that special assessment and federal grant proceeds were intended to be included within the "not restricted to" provision of "proceeds of taxes."

FN3 "The generally accepted rules for construing constitutional provisions may be summarized as follows: (1) a liberal, practical and common-sense approach should be taken, (2) the natural and ordinary meaning of the words used should be followed, (3) the apparent intent of the framers should be fulfilled and absurd results avoided, and (4) interpretations by the Legislature and administrative agencies and the ballot summary, arguments and analysis should be considered in determining the probable meaning of uncertain language. [Citation.]" (62 Ops.Cal.Atty.Gen. 254, 256 (1979); see *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization, supra.*, 22 Cal.3d at pp. 245-246.)

Our analysis of article XIII B, section 8, subdivision (c), compels the conclusion that the framers of the initiative did not intend to include the proceeds derived from special assessments to be included within the "not restricted to" language of "proceeds of taxes." While respondent correctly asserts that assessments are a function of the general power of taxation (*City of Baldwin Park v. Stoskus* (1972) 8 Cal.3d 563, 568 [105 Cal.Rptr. 325, 503 P.2d 1333]; see *Dawson v. Town of Los Altos Hills* (1976) 16 Cal.3d 676, 683 [129 Cal.Rptr. 97, 547 P.2d 1377]; *Los Angeles Co. F.C. Dist. v. Hamilton* (1917) 177 Cal. 119, 130 [169 P. 1028]) "there is a broad and well-recognized distinction between a tax levied for the general public good and without special regard to the benefit conferred upon the individual or property subject to the tax, and a special assessment levied to force the payment of a benefit, ..." (*City Street Imp. Co. v. Regents Etc.* (1908) 153 Cal. 776, 778 [96 P. 801]; see *Inglewood v. County of Los Angeles* (1929) 207 Cal. 697, 702 [280 P. 360].) *450

Taxes are levied by the Legislature, or by counties and municipalities under their delegated power, for the support of the state, county, or municipal government (*Taylor v. Palmer* (1866) 31 Cal. 240, 251-252; 51 Cal.Jur.3d, Public Improvements, § 2, p. 563; 70 Am.Jur.2d, Special or Local Assessments, § 1, pp. 842-843.) Special or local assessments, on the other hand, are imposed on property within a limited area for payment of a local improvement allegedly enhancing the value of the property taxed (*Northwestern Etc. Co. v. St Bd. Equal.* (1946) 73 Cal.App.2d 548, 552 [166 P.2d 917]; see *City of Los Angeles v. Offner* (1961) 55 Cal.2d 103, 108 [10 Cal.Rptr. 470, 358 P.2d 926].) Special assessments can be levied only on the specific property benefited and not on all the property in the district. (*Anaheim Sugar Co. v. County of Orange* (1919) 181 Cal. 212, 216 [183 P. 809]; see *City of Baldwin Park v. Stoskus, supra.*, 8 Cal.3d at p. 568.) [FN4]

FN4 Significant differences between a special assessment and a tax include the following: (1) a special assessment can be levied only on land; (2) a special assessment cannot ordinarily be made a personal liability of the person assessed; (3) a special assessment is ordinarily based wholly on benefits; and (4) a special assessment is exceptional both as to time and locality. (*Northwestern Etc. Co. v. St. Bd. of Equal., supra.*, 73 Cal.App.2d at pp. 551-552.)

In *County of Fresno v. Malmstrom, supra.*, 94 Cal.App.3d 974, the question presented was whether special assessments were "special taxes" within the provisions of article XIII A. While noting that the

terms "tax," "special tax," and "special assessment" have at times become hopelessly entangled in judicial opinions, legislative and legal treatises, the *Malmstrom* court recognized and followed the long standing precedent that strictly speaking, special assessments are not taxes at all. (*Id.* at pp. 982-983; see also *Cedars of Lebanon Hosp. v. County of L.A.* (1950) 35 Cal.2d 729, 747 [221 P.2d 31, 15 A.L.R.2d 1045]; *Los Angeles Co. F.C. Dist. v. Hamilton*, *supra*, 177 Cal. at p. 129; *County of Santa Barbara v. City of Santa Barbara* (1976) 59 Cal.App.3d 364, 379-380 [130 Cal.Rptr. 615]; *County of San Bernardino v. Flournoy* (1975) 45 Cal.App.3d 48, 51-52 [117 Cal.Rptr. 732].) [FN5]

FN5 The *Malmstrom* court analogized assessments as being "more in the nature of loans to property owners for improvements benefiting their property, with bonds representing that loan and secured by the property itself." (94 Cal.App.3d at p. 980, fn. 2.)

In *Solvang Mun. Improvement Dist. v. Board of Supervisors* (1980) 112 Cal.App.3d 545 [169 Cal.Rptr. 391], the court adopted the reasoning *451 of the *Malmstrom* court in determining special assessments levied to benefit specific properties within a specified district were not includable in the 1 percent of assessed value limitation imposed on ad valorem taxes by article XIII A, section 1 of the California Constitution. The problem in *Solvang*, *supra.*, resulted from an incongruity in the language of subdivisions (a) and (b) of section 1. Subdivision (a) imposed the 1 percent limitation on ad valorem taxes. Subdivision (b) exempted from the 1 percent limitation ad valorem taxes or special assessments to pay interest and redemption charges on indebtedness approved by the voters prior to the effective date of article XIII A. At issue were nonvoted special assessments for a public parking district created pursuant to general and special statutory authority. Bonds were issued and special assessments to pay the principal and interest were levied annually by the board of supervisors against the benefited properties. The board interpreted article XIII A, section 1 to prohibit such assessment. The court first determined such an application of article XIII A would retroactively deprive the bondholders of their contractual right to repayment and such impairment of contract was constitutionally impermissible. Next, the court decided that special assessments designed to directly benefit the property assessed and make it more valuable were not within the 1 percent limitation and the reference to "special assessments" in section 1, subdivision (b) was mere surplusage.

Under article XIII B, with the exception of state subventions, the items that make up the scope of "'proceeds of taxes'" concern charges levied to raise *general revenues* for the local entity. "'Proceeds of taxes,'" in addition to "all tax revenues" includes "proceeds ... from ... regulatory licenses, user charges, and user fees [*only*] *to the extent that such proceeds exceed the costs reasonably borne by such entity in providing the regulation, product or service....*" (§ 8, subd. (c)) (Italics added.) Such "excess" regulatory or user fees are but *taxes* for the raising of general revenue for the entity. (*City of Madera v. Black* (1919) 181 Cal. 306, 313-314 [184 P. 397]; see *Mills v. County of Trinity* (1980) 108 Cal.App.3d 656, 661-663 [166 Cal.Rptr. 674]; *United Business Com. v. City of San Diego* (1979) 91 Cal.App.3d 156, 165 [154 Cal.Rptr. 263].) Moreover, to the extent that an assessment results in revenue above the cost of the improvement or is of general public benefit, it is no longer a special assessment but a tax. (*City of Los Angeles v. Offner*, *supra*, 55 Cal.2d at pp. 108-109.) We conclude "proceeds of taxes" generally contemplates only those impositions which raise general tax revenues for the entity. *452

We find support for this position in the ballot arguments in favor of the initiative, [FN6] which assert that: Proposition 4 will provide "permanent constitutional protection for *taxpayers* from excessive *taxation*;" "will refund or credit excess *taxes* received by the state to the taxpayer;" "will curb *excessive* user fees [which are akin to taxes] imposed by local government;" "will eliminate waste by forcing politicians to rethink priorities while spending our *tax* money." (Italics added.) Finally, the argument states "Your 'yes' vote will guarantee that excess state *tax* surpluses will be returned to the taxpayer...." and "[T]his amendment is a reasonable and flexible way to provide discipline in *tax* spending at the state and local levels...." (Italics added.) In both its supportive and interpretative language, the thrust of article XIII B is directed at limiting *tax* revenues and appropriations.

FN6 Ballot arguments and analyses presented to the electorate may be considered in determining the probable meaning of an initiative's uncertain language. (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, *supra*, 22 Cal.3d at pp. 245-246.)

Respondent's analysis of the similarities between taxes, user charges, and special assessments is not persuasive that special assessment proceeds were intended to be included within the "not restricted to" clause of "proceeds of taxes." Special assessments are *not* taxes, and are *not* levied for general revenue purposes. We are unable to find anything in article XIII B to indicate that "proceeds of taxes" were intended to include special assessment proceeds. The doctrine of *ejusdem generis* cannot be used to include within the category of "proceeds of taxes" something that is not a tax and which was clearly not intended to be included. [FN7] *453

FN7 Respondent's position appears to be that: (1) although *Malmstrom* found that the provisions of article XIII A were not applicable to special assessments, (2) since article XIII B was designed to carry at and broaden the scope of article XIII A, that (3) special assessment proceeds must have been intended to be included within the parameters of article XIII B.

It is true that article XIII B is broader and more encompassing that its precedessor. Unlike article XIII A, article XIII B is not limited to ad valorem taxes and the imposition of new special taxes; rather, article XIII B is addressed to "all tax revenues," including those derived from the imposition of "excess" regulatory and user charges. (Cf. art. XIII A, § § 1, 4, with art. XIII B, § 8, subd. (c).) Article XIII A did not address the issue of either state subventions or proceeds derived from the investment of tax revenues. Nor did article XIII A place a ceiling on the expenditures of these tax proceeds or require that excess tax revenues be returned to the electorate. But the fact that article XIII B is a more encompassing plan to limit government spending does not compel the conclusion that "proceeds of taxes" was meant to include special assessment proceeds. Article XIII B is directed at limiting the appropriation of tax revenues; special assessments are not taxes, are not raised for the general public welfare, and do not provide general revenues for local entities.

In finding that proceeds derived from the power of assessment were not intended to be included within the provisions of article XIII A, the *Malmstrom* court made the following observation: "Respondent's construction would place local government entities in a rather precarious situation by forcing them into a Hobson's choice of spending general tax funds either for expenditures to benefit the public at large or for projects to benefit certain individual property owners by funding improvements such as the construction of streets, sidewalks, gutters and sewers. *Inherent in the concept of special assessments is the fact that certain property owners receive special benefits.* [Citations.] *It would not be just to the general taxpayers of the political entity to use general funds to pay for such special benefits to a few property owners.* [Citation.]" (*County of Fresno v. Malmstrom, supra*, 94 Cal.App.3d at p. 981; italics added.)

This analysis is consistent with our interpretation of the intended scope of article XIII B. With only a limited fund from which to spend for general public services *and* special benefit improvements, local entities would be forced into a "Hobson's choice" of limiting or discontinuing general improvements and services for the benefit of the many in order to provide a local area with special benefit improvements for the few. The alternative would be for local areas to do without essential services, such as sewers, water, etc., so that the local government could be assured of remaining within its appropriations limit.

Reference to the ballot arguments in favor of article XIII B demonstrates that no such "Hobson's choice" was intended. Said arguments assert "[t]his measure...Will Not prevent state and local governments from providing essential services....[¶] Will Not favor one group of taxpayers over another." (Emphasis in original.) Each of these arguments is valid only if we conclude that special assessment proceeds were not intended to and do not come within the parameters of "proceeds of taxes; otherwise, for practical purposes, local governments would be deprived of the ability to fund the construction of major improvements for a particular area within their jurisdiction. (*County of Fresno v. Malstrom, supra.*, 94 Cal.App.3d at p. 981.) [FN8] *454

FN8 Moreover, "[w]here the Legislature has enacted a law in light of a particular constitutional provision, a settled rule of construction is that the Legislature's interpretation of uncertain constitutional terms is entitled to great deference by the courts." (*Mills v. County of Trinity* (1980) 108 Cal.App.3d 656, 662 [166 Cal.Rptr. 674].) Following the adoption of article XIII B, the Legislature enacted Senate Bill No. 1389, signed into law on July 16, 1980, as an urgency measure effective immediately.

(Gov. Code, § 53715, added by Stat. 1980, ch. 516, § 1.) Government Code section 53715, added by Senate Bill No. 1389, provides in part: "As used in Article XIII B of the California Constitution, the term 'proceeds of taxes' *does not include* the proceeds from the sale of bonds, notes, warrants or other obligations required for the purpose of financing or refinancing the acquisition, construction, or completion of public improvements or projects or any rents, charges, assessments, or levies, other than tax levies, made pursuant to law, the proceeds of which are required for the payment of principal and interest, or to otherwise secure such obligations, and to pay the costs and expenses associated therewith." (Italics added.)

Respondent's assertion that article XIII B was designed to close the loopholes created by article XIII A is without merit.

The use of the special assessment process to construct and improve needed services can hardly be considered a loophole to the provisions of article XIII A. (See 62 Ops.Cal.Atty.Gen. 663, 669 (1979).) Special assessments are one of the oldest used methods for the longterm financing of public improvements. (See *County of Fresno v. Malmstrom, supra.*, 94 Cal.App.3d at p. 978; Hamilton, Guide To California Special Assessment Acts (1966), p. 1; Nichols, *Comment: How Not to Contest Special Assessments in California* (1965) 17 Stan.L.Rev. 247, 247-248.) Special assessments, being levied only for improvements that benefit particular parcels of land, and not to raise general revenues, are simply not the type of exaction that can be used as a mechanism for circumventing these tax relief provisions. (See 62 Ops.Cal.Atty.Gen. 663, 669 (1979).) [FN9]

FN9 Neither is the addition of Articles XIII A and XIII B likely to cause a sudden shift to the use of special assessments *unless said improvements are both needed and desired by those property owners who will pay for such improvements.* Unlike other governmentally imposed burdens, taxes in particular, the various special assessment acts have traditionally and continue to require that one or more hearings by the legislative body be held prior to confirmation and levy of the assessment. (See e.g., Sts. & Hy. Code, § § 5130-5227, 5360-5375, 10300-10350.) Thus, special assessments are not the type of exaction that can be imposed without giving the affected property owners both notice and opportunity to be heard. In addition, most special assessment acts contain provisions for a "majority protest." (See e.g., Sts. & Hy. Code, 5220-5222, 10310-10312.) A majority protest exists if written protests are made by owners of more than one-half of the area of the property to be assessed. (See Sts. & Hy. Code, § 2930.) Such a protest compels abandonment of the proceedings and precludes similar proceedings for one year. (Sts. & Hy. Code, § 2930; but see Sts. & Hy. Code, § 2932.) While majority protests may be overruled in certain instances (e.g., Sts. & Hy. Code, § § 2932, 5222, 10311), it is unlikely that local governments will continue with assessment proceedings once a majority of property owners in the proposed district have voiced their disapproval.

Petitioner accepted a $55,000 federal grant representing one-half of the cost of making acquisitions and constructing improvements in the *455 Tierra Heights Sewer Assessment District. Respondent argues since "proceeds of taxes " includes state subventions, and as federal grants are similar in nature to such subventions, the doctrine of *ejusdem generis* requires that federal grant proceeds be considered "proceeds of taxes." We disagree.

"Subventions" as used in article XIII B is defined as a "subsidy" or "assistance or support" from the state to local government. (Ops.Cal. Legis. Counsel, No. 14076 (July 20, 1979) Gann Initiative, p. 2.) The federal grant at issue was made directly from the federal government to the County of Placer; we do not have state action or subvention in its usual form.

Nor can we conclude that federal grants proceeds were intended to be encompassed within "proceeds of taxes." Federal grants are not mentioned in either article XIII B or in the ballot arguments in support thereof.

Of greater significance, however, is that construing federal grants to be within the scope of "proceeds of taxes" would in no way further the spending and taxing limit objectives of article XIII B. Unlike state subventions, which if not taken and spent will result in a refund of taxes and thus an indirect tax reduction under article XIII B, federal grants not taken and

spent will not give rise to any tax refund; in fact, the opposite will occur. Federal grants return tax monies to California when such grants are accepted. It is unlikely that local governments would be able to accomodate both special assessment proceeds and matching federal funds within the entity's budgeted "appropriations subject to limitation," thereby forcing such entities to reject offers of federal funds. In turn, to refuse to accept such grants would require that area improvements be financed exclusively by local governments and would tend to increase taxes in the long range. This result is in no way consistent with the objectives of article XIII B.

(1b)We determine that article XIII B does no more than place a ceiling on the expenditure of general state and local tax revenues and does not encompass special assessments and federal grants of the kind before us in the case at bench.

Let a peremptory writ of mandate issue commanding respondent to mail appropriate notices of assessment on and collect such assessments *456 from the owners of real property in the Tierra Heights Sewer Assessment District A-79 as provided by law.

Regan, Acting P. J., and Evans, J., concurred.
Cal.App.3.Dist.
County of Placer v. Corin
113 Cal.App.3d 443, 170 Cal.Rptr. 232

END OF DOCUMENT

Original List Date: 7/16/2002
Last Updated: 7/7/2006
List Print Date: 02/13/2007
Claim Number: 02-TC-01
Issue: California Youth Authority: Sliding Scale for Charges

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.)

Ms. Bonnie Ter Keurst County of San Bernardino Office of the Auditor/Controller-Recorder 222 West Hospitality Lane San Bernardino, CA 92415-0018	Claimant Tel: (909) 386-8850 Fax: (909) 386-8830
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. David Wellhouse David Wellhouse & Associates, Inc. 9175 Kiefer Blvd, Suite 121 Sacramento, CA 95826	Tel: (916) 368-9244 Fax: (916) 368-5723
Ms. Meg Halloran Office of the Attorney General (D-08) 1300 I Street, 17th Floor P.O. Box 944255 Sacramento, CA 95814	Tel: (916) 323-8549 Fax: (916) 322-2368
Mr. Walter Allen, III California Youth Authority 4241 Williamsbourgh Drive Sacramento, CA 95823	Tel: (916) 262-1480 Fax: (916) 262-1483
Mr. Leonard Kaye, Esq. County of Los Angeles Auditor-Controller's Office 500 W. Temple Street, Room 603 Los Angeles, CA 90012	Tel: (213) 974-8564 Fax: (213) 617-8106

Mr. Allan Burdick
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841
Tel: (916) 485-8102
Fax: (916) 485-0111

Mr. Jim Spano
State Controller's Office (B-08)
Division of Audits
300 Capitol Mall, Suite 518
Sacramento, CA 95814
Tel: (916) 323-5849
Fax: (916) 327-0832

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. Carla Castaneda
Department of Finance (A-15)
915 L Street, 11th Floor
Sacramento, CA 95814
Tel: (916) 445-3274
Fax: (916) 323-9584

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

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

Ms. Beth Hunter
Centration, Inc.
8570 Utica Avenue, Suite 100
Rancho Cucamonga, CA 91730
Tel: (866) 481-2621
Fax: (866) 481-2682

Ms. Marianne O'Malley
Legislative Analyst's Office (B-29)
925 L Street, Suite 1000
Sacramento, CA 95814
Tel: (916) 319-8315
Fax: (916) 324-4281

Ms. Donna Ferebee
Department of Finance (A-15)
915 L Street, 11th Floor
Sacramento, CA 95814
Tel: (916) 445-3274
Fax: (916) 323-9584

Mr. Steve Keil
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814-3941

Tel: (916) 327-7523
Fax: (916) 441-5507

AUDITOR/CONTROLLER-RECORDER
COUNTY CLERK

EXHIBIT F

AUDITOR/CONTROLLER • 222 West Hospitality Lane, Fourth Floor
San Bernardino, CA 92415-0018 • (909) 387-8322 • Fax (909) 386-8830
RECORDER • **COUNTY CLERK** • 222 West Hospitality Lane, First Floor
San Bernardino, CA 92415-0022 • (909) 387-8306 • Fax (909) 386-8940

LARRY WALKER
Auditor/Controller-Recorder
County Clerk

ELIZABETH A. STARBUCK
Assistant Auditor/Controller-Recorder
Assistant County Clerk

March 6, 2007

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

RE: **Draft Staff Analysis**
California Youth Authority, Sliding Scale for Charges 02-TC-01
Welfare and Institutions Code Sections 912, 912.1 and 912.5
Statutes 1996, Chapter 6; Statutes 1998, Chapter 632
County of San Bernardino, Claimant

Dear Ms. Higashi:

This letter is submitted in response to the draft staff analysis dated February 13, 2007 for the above named test claim.

The position of the Commission staff as stated in the conclusion:

> Staff finds that any costs associated with commitment of a juvenile to the CYA result from a juvenile court mandate within the meaning of Article XIII B, Section 9, subdivision (b). Consequently, the Article XIII A and Article XIII B taxing and spending restrictions are not applicable to these costs, and no reimbursement under Article XIII B, Section 6 is required.

The County of San Bernardino (County) disagrees with this interpretation, citing the following:

The mandated costs as submitted in this test claim did not arise from the mandate of the courts as proposed by the Commission staff. The process by which juvenile courts make determinations for CYA commitments is longstanding. As stated in the analysis (page 4):

> Section 869.5 was added to the Welfare and Institutions Code in 1947. That section stated:
> For each person...committed to the Department of Institutions for placement in a correctional school and for each ward of the juvenile court committed to the Youth Authority[,] the county from which he is committed shall pay the State at the rate of twenty-five dollars ($25) per month for the time such person so committed remains in such state school or in any camp or farm colony, custodial institution, or other institution

> under the direct supervision of the Youth Authority to which such person may be transferred, in the California Vocational Institution, or in any boarding home, foster home, or other private or public institution in which he is placed by the Youth Authority, on parole or otherwise, and cared for and supported at the expense of the Youth Authority...
>
> "Thus, for several decades, each county was responsible to pay the CYA $25 per month for each person committed to the CYA. Statutes 1961, chapter 1616, renumbered Welfare and Institutions Code section 869.5 to section 912."

In 1996, the Legislature chose to increase the fees CYA charged the County by enacting Statutes 1996, Chapter 6. Chapter 6 increased the monthly fee from $25 to $150 for category 1 through 4 offenders. The Legislature, not the courts, enacted a sliding scale of fees for category 5 through 7 offenders based on a per capita institutional cost of CYA. Statute 1998, chapter 632 capped the per capita institutional cost to the cost the CYA charged counties as of January 1, 1997.

The County recognizes the baseline fee. In fact, on page 2 of the test claim, it is clearly stated that the subject of the test claim is the additional sliding scale charge that exceeds the baseline fee of $150 per month. The sliding scale costs were not the result of a required expenditure for additional services, nor were they established because the provisions of the mandates of the courts made the existing services more costly.

The intent for implementing this legislation as stated by the bill's author, Hurtt (reference Attachment C of the original test claim) was to "provide a monetary disincentive for sending "low level" juvenile offenders to the CYA. Clearly, the Legislature wanted counties to treat, punish and house these offenders at the local level." The desired result was that the services and the costs were to be borne by the local government.

The LAO in its Analysis of the 1999-00 Budget Bill (reference Attachment provided with Staff Analysis) recognized legislative intent on page 10: "The sliding scale legislation was intended to provide counties with a fiscal incentive to utilize and develop more locally-based programs for less serious juvenile offenders, and to reduce their dependence on costly Youth Authority commitments."

In establishing costs based on the per capita CYA institutional cost, this legislation falls squarely under article XIII B, section 6 which was intended to preclude the state from shifting to local agencies the financial responsibility for providing public services. The Article XIII A and Article XIII B taxing and spending restrictions are applicable to these costs.

We respectfully request the Commission reconsider its recommendation for denial of this test claim. We would also note two technical corrections: (1) The Executive Summary, page 1 references article XIIIB, section 9, subdivision (c) rather that (b); and (2) Page 8 the first line should read a "new program," *or* it must....

Thank you.

CLAIM CERTIFICATION

The foregoing facts are know to me personally and if so required, I could and would testify to the statements made herein. I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 6th day of March, 2007, at San Bernardino, California, by:

Bonnie Ter Keurst
Manager, Reimbursable Projects
Office of the Auditor/Controller-Recorder
222 W. Hospitality Lane, 4th Floor
San Bernardino, CA 92415-0018
Phone: (909) 386-8850

BT:wds

Attachments

ITEM ____

TEST CLAIM
DRAFT STAFF ANALYSIS

Welfare and Institutions Code
Sections 912, 912.1 & 912.5

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

California Youth Authority: Sliding Scale for Charges

02-TC-01

County of San Bernardino, Claimant

EXECUTIVE SUMMARY

This test claim addresses increased fees paid by counties to the state for each juvenile committed to the California Department of the Youth Authority ("CYA").

The Test Claim Statutes Are Not Subject to Article XIII B, Section 6

The test claim statutes impose additional costs for commitments to the CYA, but such commitments are the result of a juvenile court order. Pursuant to article XIII B, section 9, subdivision (c), appropriations required to comply with mandates of the courts are not subject to the taxing and spending limits placed on local governments by articles XIII A and XIII B. Therefore, the test claim statutes do not constitute a state-mandated program and are not subject to article XIII B, section 6.

Conclusion

Staff finds that any costs associated with commitment of a juvenile to the CYA result from a juvenile court mandate within the meaning of article XIII B, section 9, subdivision (b). Consequently, the article XIII A and article XIII B taxing and spending restrictions are not applicable to these costs, and no reimbursement under article XIII B, section 6 is required.

Recommendation

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

STAFF ANALYSIS

Claimant

County of San Bernardino

Chronology

07/05/02	County of San Bernardino filed test claim with the Commission on State Mandates ("Commission")
08/16/02	The Department of Finance submitted comments on test claim with the Commission
08/16/02	The California Department of Justice ("DOJ"), representing the California Department of the Youth Authority ("CYA"), submitted comments on the test claim with the Commission
01/22/03	County of San Bernardino submitted rebuttal comments to the state agency comments on the test claim with the Commission
02/13/07	Commission staff issued draft staff analysis

Background

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

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

---

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

[2] Welfare and Institutions Code section 1700; according to the Legislative Analyst's Office, juveniles committed to CYA are generally between the ages of 12 and 24, and the average age is19. (Legislative Analyst's Office, Analysis of the 1999-2000 Budget Bill, Criminal Justice Departmental Issues, page 4.)

[3] Welfare and Institutions Code section 1700.

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

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

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

committed to CYA are assigned a category number, ranging from 1 to 7, based on the seriousness of the offense committed; 1 being the most serious and 7 being the least serious.[7]

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

The juvenile court's jurisdiction extends to persons under 18 when the person violates federal, state or local criminal law;[11] however, certain crimes by persons who are 14 or older can be tried by the criminal courts.[12] With some exceptions, the juvenile court may retain jurisdiction over any person who is found to be a ward of that court until the ward attains the age of 21.[13]

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

The court may limit control by the parent or take the juvenile from physical custody of the parent under specified circumstances.[18] Treatment can take the form of probation without supervision of the probation officer, probation under the officer's supervision in the home of the parent or guardian or in a foster home,[19] placement in a community care facility,[20]

---

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

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

[9] Welfare and Institutions Code section 245.

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

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

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

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

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

[15] Welfare and Institutions Code section 725.

[16] Welfare and Institutions Code section 725.5.

[17] Test Claim, page 3.

[18] Welfare and Institutions Code section 726.

[19] Welfare and Institutions Code section 727.

[20] Welfare and Institutions Code section 740.

confinement within juvenile hall, placement in a private or county camp,[21] or commitment to the CYA.[22] However, before committing a person to CYA, the court must be satisfied that the minor has the mental and physical capacity to benefit from such an experience.[23]

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

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

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

Test Claim Statutes

In 1996, the Legislature increased the fees CYA charges the counties by enacting Statutes 1996, chapter 6 (Sen. Bill No. (SB) 681). Chapter 6 increased the monthly fee from $25 to $150[26] for category 1 through 4 offenders, i.e., the most serious offenders, and established a "sliding scale" of fees for category 5 through 7 offenders, based on a specified percentage of the per capita institutional cost of CYA.[27] Statutes 1998, chapter 632 (SB 2055), capped the per capita institutional cost to the cost the CYA charged counties as of January 1, 1997.[28] The

---

[21] Welfare and Institutions Code section 730.

[22] Welfare and Institutions Code section 731.

[23] Welfare and Institutions Code section 734.

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

[26] Welfare and Institutions Code section 912.

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

[28] Welfare and Institutions Code section 912.1.

charge against the county is not applicable to periods of confinement that are solely pursuant to a revocation of parole by the Youthful Offender Parole Board.[29]

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

> SB 681 [Stats. 1996, ch. 6] imposed a fee schedule upon counties for "low level" offenders sent to the California Youth Authority (CYA). The intent of the legislation was to provide a monetary disincentive for sending "low level" juvenile offenders to the CYA. Clearly, the Legislature wanted counties to treat, punish and house these offenders at the local level.[30]

With the enactment of Statutes 1996, chapter 6, the Legislature also provided $32.7 million in funding to assist the counties in the operation of local juvenile facilities,[31] established the Juvenile Challenge Grant program allocating $50 million to fund a five-year program cycle for 29 different community-based demonstration programs targeting juvenile offenders,[32] and initiated the Repeat Offender Prevention Project (ROPP) with another $3.3 million for seven counties to identify and intervene at an early stage with potential repeat offenders.[33] The Challenge Grant and ROPP programs have received additional funding to continue in subsequent years. In 1998, $100 million was appropriated by the state to support renovation, reconstruction, and deferred maintenance of county juvenile facilities.[34] Thus, the Legislature has provided and continues to provide significant funding for assistance to counties in providing such locally-based programs.[35]

Claimant's Position

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

---

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

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

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

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

[33] 1996-97 Budget Act.

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

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

The claimant estimates the following increased costs:

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

The claimant filed a rebuttal to the CYA comments on this test claim. The rebuttal comments are addressed, as necessary, later in this analysis.

Position of Department of Finance

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

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

Position of California Youth Authority (submitted by California Department of Justice)

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

- Pursuant to *County of San Diego v. State* (1997) 15 Cal.4th 68, article XIII B, section 6 prohibits the state from shifting to counties the costs of state programs for which the state assumed *complete* financial responsibility before adoption of section 6. The test claim statutes merely increase the charges to local agencies for discretionary

placements in CYA, which local agencies have long had a share in supporting. Therefore, no new program or higher level of service was created by the test claim statutes because CYA placements were not funded entirely by the state when article XIII B, section 6 became effective.

- The original statutory mandate requiring that counties pay a fee for CYA placements was enacted before January 1, 1975, rendering state subvention permissive rather than mandatory under article XIII B, section 6.

- Costs resulting from actions undertaken at the option of the local agency are not reimbursable. The test claim statutes do not eliminate a juvenile court's *discretion* to choose other dispositions for minors adjudicated to come within the terms of Welfare and Institutions Code section 602, nor do they *require* CYA commitments for minors under any circumstances. Welfare and Institutions Code section 731, subdivision (a), makes it clear that a CYA commitment is only one of several dispositions available to a juvenile court as to minors who are found to have committed criminal offenses.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[36] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[37] "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."[38, 39]

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.[40] In

---

[36] 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."

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

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

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

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

addition, the required activity or task must be new, constituting a "new program," and it must create a "higher level of service" over the previously required level of service.[41]

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.[42] 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.[43] A "higher level of service" occurs when there is "an increase in the actual level or quality of governmental services provided."[44]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[45]

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.[46] 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."[47]

The analysis addresses the following issue:

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

---

[41] *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*).

[42] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (*County of Los Angeles*); *Lucia Mar, supra,* 44 Cal.3d 830, 835).

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

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

[45] *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.

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

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

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

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

The question in the instant case is whether the costs for CYA commitments fall within the court-mandate exclusion to the article XIII B spending limit. For the reasons stated below, staff finds that these costs are excluded from the spending limit and, consequently, are not subject to article XIII B, section 6.

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

> Article XIII B was adopted less than 18 months after the addition of article XIII A to the state Constitution, and was billed as "the next logical step to Proposition 13" [article XIII A]. While article XIII A was generally aimed at controlling ad valorem property taxes and the imposition of new "special taxes" [citations], the thrust of article XIII B is toward placing certain limitations on the growth of appropriations at both the state and local government level; in particular, article XIII B places limits on the authorization to expend the "proceeds of taxes." (§ 8, subd. (c).)
>
> Article XIII B provides that beginning with the 1980-1981 fiscal year, "an appropriations limit" will be established for each "local government," ... (§ 8, subd. (h).) No "appropriations subject to limitation" may be made in excess of this appropriations limit, and revenues received in excess of authorized appropriations must be returned to the taxpayers within the following two fiscal years. (§ 2.)[48]

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

> Article XIII B – the so-called "Gann limit" — restricts the amounts state and local governments may appropriate and spend each year from the "proceeds of taxes." (§§ 1, 3, 8, subds. (a)-(c).) ... In language similar to that of earlier statutes, article XIII B also requires state reimbursement of resulting local costs whenever, after January 1, 1975, "the Legislature or any state agency mandates a new program or higher level of service on any local government, ..." (§ 6.) Such mandatory state subventions are excluded from the local agency's spending limit, but included within the state's. (§ 8, subds. (a), (b).)

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

> Finally, article XIII B excludes from either the state or local spending limit any "[a]ppropriations required for purposes of complying with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the providing of existing services more costly." (§ 9, subd. (b) . . .)[49]

Thus, article XIII B, section 6 requires state reimbursement to local governments in light of taxing and spending limits, but section 9 provides exclusions to the spending limits. Although the courts have not dealt with the *court* mandate exclusion identified in section 9, subdivision (b), the *federal* mandate exclusion from section 9, subdivision (b), was addressed in *City of Sacramento*. There, the court found that a state statute extending mandatory unemployment insurance coverage to local government employees imposed "federally mandated" costs on local agencies and not state-mandated costs; hence, local agencies subject to the new statutory requirements may *tax and spend as necessary* subject to superseding constitutional ceilings on taxation by state and local governments to meet the expenses required to comply with the legislation.[50] Because the plain language of article XIII B, section 9, subdivision (b), also excludes court mandates from the spending limit, these principles must, by extension, apply to court mandates. As the courts have made clear, a local agency cannot accept the benefits of being exempt from appropriations limits while asserting an entitlement to reimbursement under article XIII B, section 6.[51]

The commitment to CYA is mandated by the juvenile court.[52] Although counties may recommend treatment or disposition other than a CYA commitment during the hearing, the juvenile court makes the ultimate decision to order commitment of a juvenile to the CYA. Thus, counties have no choice when so ordered by the juvenile court other than to commit the juvenile to CYA and incur the resulting monthly costs.

Claimant argues that whenever the state through legislative or regulatory action "drastically changes the basis for 'shared costs' that shifts those costs to local agencies, it has created a new program or higher level of service that requires reimbursement"[53] under article XIII B, section 6. Claimant cites the Supreme Court case of *Lucia Mar*, which holds that "[article XIII B,] [s]ection 6 was intended to preclude the state from shifting to local agencies the financial responsibility for providing public services in view of these restrictions on the taxing and spending power of the local entities."[54]

Nevertheless, staff does not reach the "new program or higher level of service" issues, such as the "cost shift" principles of *Lucia Mar*, because any costs for CYA commitments imposed by order of the juvenile courts are *not subject to* the taxing and spending restrictions on local

---

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

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

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

[52] Welfare and Institutions Code section 731.

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

[54] *Lucia Mar, supra*, 44 Cal.3d 830, 835-836.

agencies pursuant to article XIII B, section 9, and accordingly are *not subject to* article XIII B, section 6.

Conclusion

Staff finds that any costs associated with commitment of a juvenile to the CYA result from a juvenile court mandate within the meaning of article XIII B, section 9, subdivision (b). Consequently, the article XIII A and article XIII B taxing and spending restrictions are not applicable to these costs, and no reimbursement under article XIII B, section 6 is required.

Recommendation

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

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 1 (2/91)

For Official Use Only
Claim No.

TEST CLAIM FORM

Local Agency or School District Submitting Claim

COUNTY OF SAN BERNARDINO

Contact Person — Telephone No.

BARBARA K REDDING — (909) 386-8850

Address

OFFICE OF THE AUDITOR/CONTROLLER-RECORDER
222 W. HOSPITALITY LANE, SAN BERNARDINO, CA 92415-0018

Representative Organization to be Notified

None

This test claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIIIB of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code section(s) within the chaptered bill, if applicable.

Ch. 6, Statutes of 1996 (Sections 4 & 5): Welfare and Institutions Code Sections 912 & 912.5
Ch. 632, Statutes of 1998 (Section 1): Welfare and Institutions Code Section 912.1

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING A TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative — Telephone No.

BARBARA K REDDING
REIMBURSABLE PROJECTS MANAGER — (909) 386-8850

Signature of Authorized Representative — Date

Barbara K Redding — July 1, 2002

BEFORE THE
COMMISSION ON STATE MANDATES

Test Claim of
County of San Bernardino

CALIFORNIA YOUTH AUTHORITY: SLIDING SCALE for CHARGES

Chapter 6, Statutes of 1996
Chapter 632, Statutes of 1998

BEFORE THE
COMMISSION ON STATE MANDATES

Test Claim of
County of San Bernardino

CALIFORNIA YOUTH AUTHORITY: SLIDING SCALE for CHARGES

Chapter 6, Statutes of 1996
Chapter 632, Statutes of 1998

STATEMENT OF THE TEST CLAIM

A. MANDATE SUMMARY

Chapter 6, Statutes of 1996 (SB 681) added Section 912.5 to the Welfare and Institutions Code. Section 912.5 requires, as of January 1, 1997, that counties pay the state for each person committed by the juvenile court to the California Youth Authority (CYA) according to a sliding scale based upon the seriousness of the offense. Prior to this legislation, counties were charged a baseline fee of $25 per person per month for all commitments pursuant to Welfare and Institutions Code Section 912.

The monthly baseline fee in Section 912 is now $150 per youth[1] for the four most serious categories of crimes. However, the sliding scale mandated by Section 912.5 is imposed for youth with lesser crimes as follows:

Category	Offenses	Minimum Sentence	2001/02 Monthly Cost to Counties
1.	Murder, kidnapping	7 years	$ 150
2.	Sodomy, rape w/ kidnapping or carjacking	4 years	$ 150
3.	Rape or kidnapping, robbery w/ injury	3 years	$ 150
4.	Arson, vehicular manslaughter, shoot at dwelling	2 years	$ 150
5.	Robbery, assault w/ deadly weapon	18 months	$ 1,300
6.	Victimless or property crimes	12–18 months	$ 1,950
7.	All misdemeanor offenses	1 year or less	$ 2,600

The charge rates for Categories 5, 6, and 7 are calculated at 50%, 75%, or 100% (respectively) of the per capita institutional cost of the CYA. The per capita cost in 2001/02 is $ $2,600.

[1]Chapter 6, Statutes of 1996 also amended Section 912 to increase the baseline charge from $25 to $150 for each youth per month. The rate had been $25 since 1961. This amount was charged for every youth – regardless of the reason for commitment to CYA.

Chapter 632, Statutes of 1998 (SB 2055) added Section 912.1 to the Welfare and Institutions Code to provide that as of January 1, 1999, the rates to be used for these charges are the lesser of (1) the current per capita institutional cost of CYA or (2) the per capita institutional cost of CYA as of January 1, 1997. While this serves to provide a cap on the cost rates imposed on counties, there are still significant costs that must now be borne by counties.

The subject of this test claim is the additional sliding scale charge that exceeds the baseline fee of $150 per month.

Article XIII B, Section 6 of the California Constitution requires reimbursement for shifts in financial responsibility from the State to local governments enacted after 1975. The shift in responsibility from the State to the counties for the CYA commitment costs occurred when the State added the sliding scale cost rates in excess of the baseline rate designated in Section 912 of the Welfare and Institutions Code. Since the mandatory shift in responsibility for CYA costs was effective January 1, 1997, the reimbursement requirement of Article XIII B, Section 6 of the California Constitution applies.

In order for a shift of financial responsibility to be reimbursable, it must constitute a "new program or higher level of service", per Article XIII B, Section 6 of the California Constitution. The CYA sliding scale cost shift constitutes a higher level of service in that counties were not required to pay these fees before the statutes that are the subject of this test claim.

CYA costs were almost totally borne by the State, except for the token $25 per month that was in place during 1996. The sliding scale that was added for 1997 significantly increased the costs to the counties of the juvenile court commitments to CYA. At the same time costs were reduced for the State. This is what the authors of Article XIII B, Section 6 intended to prevent - the shift of financial responsibility from the State to local agencies without a corresponding shift in funding.

Attachment C is the Senate Rules Committee analysis for SB 2055 (Chapter 632) that provides historical background for both of these test claim chapters. The most significant point in this analysis is the statement that the author of Chapter 6 (Hurtt) intended that the purpose of the sliding scale added in 1996 was to provide a monetary disincentive for sending "low level" juvenile offenders to the CYA. By imposing this financial penalty on counties for sending certain offenders to CYA, the State has caused the counties to assume the financial responsibility of the California Youth Authority costs by either paying the higher rates for CYA commitments or keeping the youth in county facilities at county cost.

It is the juvenile courts that determine where a youthful offender is to be committed for housing and treatment. While the county probation officer can make the recommendation for commitment to CYA, the ultimate decision and order is made by the juvenile court. The judges in those counties that do not have an adequate and available placement within the county generally order CYA as the only appropriate and available option. This is especially critical when a county has limited funds and has not been able to construct or operate its own institution for these youth.

B. REIMBURSABLE COSTS MANDATED BY THE STATE

The costs incurred by the County of San Bernardino as the result of the statutes included in the test claim are all reimbursable costs as such costs are "costs mandated by the State" under Article XIII B, Section 6 of the California Constitution, and Section 17500 *et seq.* of the Government Code. Section 17514 of the Government Code defines "costs mandated by the State", and specifies the following three requirements:

1. There are "increased costs which a local agency is required to incur after July 1, 1980".

2. The costs are incurred "as a result of any statute enacted on or after January 1, 1975".

3. The costs are the result of "a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution".

All three of the above requirements for finding costs mandated by the State are met as described previously.

C. STATE FUNDING DISCLAIMERS ARE NOT APPLICABLE

There are seven disclaimers specified in Government Code Section 17556 which would prohibit a finding of costs mandated by the state. **None of the seven disclaimers apply to this test claim.** The following is the list of the disclaimers. The letter in parenthesis represents the pertinent subsection of 17556.

(a) San Bernardino County did not request the legislation imposing the mandate.

(b) The statutes do not affirm for the state that which had been declared existing law or regulation by action of the courts.

(c) The statutes do not implement a federal law or regulation.

(d) San Bernardino County does not have the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service.

(e) Neither Chapters 784/95 nor 156/96 provide for offsetting savings that result in no net costs to local agencies or school districts, nor do they include additional revenue specifically intended to sufficiently fund the costs of the state mandate.

(f) The statutes do not impose duties expressly included in a ballot measure approved by the voters in a statewide election.

g) The statutes did not create a new crime or infraction, did not eliminate a crime or infraction, nor did not change the penalty for a crime or infraction.

Therefore, the above seven disclaimers do not prohibit a finding for state reimbursement for the costs mandated by the state contained in Chapter 6, Statutes of 1996 and Chapter 632, Statutes of 1998.

D. MANDATE MEETS BOTH SUPREME COURT TESTS

The mandate created by these statutes clearly meets both tests that the Supreme Court created in the *County of Los Angeles v. State of California* (1987) for determining what constitutes a reimbursable state mandated local program. The two tests, which the Commission on State Mandates relies upon to determine if a reimbursable mandate exists, are the "unique to government" test and the "carry out a state policy" test. The tests' application to this test claim is discussed below.

Mandate is Unique to Local Government

The statutory scheme set forth above imposes a unique requirement on local government. Counties, rather than public/private entities, are responsible for paying for placement costs for youth committed to CYA. This mandate only applies to local government.

Mandate Carries Out a State Policy

From the legislation, it is clear that the State intended that counties accept significant financial responsibility for youth committed to CYA that was formerly funded, almost exclusively, by the State before the effective date of Chapter 6, Statutes of 1996.

Both of these tests are met.

E. ESTIMATED INCREASED COSTS

Fiscal Year 2000/01

Total paid to CYA for juvenile court commitments	$ 6,257,537
Amount payable pursuant to §912 ($150 per youth, per month)	1,079,850
Test claim - mandated costs at sliding scale of § 912.5	$ 5,177,687

Fiscal Year 2001/02

Total paid to CYA for juvenile court commitments (estimated)	$ 7,535,940
Amount payable pursuant to §912 ($150 per youth, per month)	1,066,350
Test claim - mandated costs at sliding scale of § 912.5	$ 6,469,590

F. CONCLUSION

The enactment of Chapter 6, Statutes of 1996 and Chapter 632, Statutes of 1998, imposed a new state mandated program and cost on the County of San Bernardino, by requiring it to pay a significant fee for those youth committed by juvenile court. That fee was fully intended to "penalize" those counties that do not have their own placement facilities for the youth with less serious offenses. This mandated program meets all of the criteria and tests for the Commission on State Mandates to find a reimbursable state mandated program. None of the disclaimers or other statutory or constitutional provisions that would relieve the State from its constitutional obligation to provide reimbursement has any application to this claim.

Government Code Section 17514 defines "costs mandated by the state" as:

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

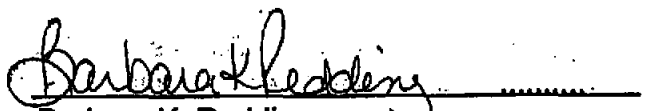
The shift in financial responsibility required by Section 912.5 of the Welfare and Institutions Code results in a higher level of service which counties are required to incur after July 1, 1980, as a result of a statute enacted on or after January 1, 1975.

Therefore, based on the foregoing, the County of San Bernardino respectfully requests that the Commission on State Mandates determine that Chapter 6, Statutes of 1996 and Chapter 632, Statutes of 1998, impose reimbursable state-mandated costs pursuant to Section 6 of Article XIII B of the California Constitution for the financial responsibility of the CYA costs that has been shifted from the State to counties.

G. CLAIM CERTIFICATION

The foregoing facts are known to me personally and if so required, I could and would testify to the statements made herein. I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 1st day of July, 2002, at San Bernardino, California, by:



Barbara K. Redding
Reimbursable Projects Manager
Office of the Auditor/Controller-Recorder
222 W. Hospitality Lane, 4th Floor
San Bernardino, CA 92415-0018
Phone: (909) 386-8850
Fax: (909) 386-8830

SENATE RULES COMMITTEE SB 2055
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916) 327-4478

UNFINISHED BUSINESS

Bill No: SB 2055
Author: Costa (D), et al
Amended: 8/25/98
Vote: 27

SENATE PUBLIC SAFETY COMMITTEE : 7-0, 4/21/98
AYES: Vasconcellos, Rainey, Burton, Kopp, McPherson, Polanco, Schiff
NOT VOTING: Watson

SENATE APPROPRIATIONS COMMITTEE : 12-0, 5/26/98
AYES: Johnston, Alpert, Burton, Dills, Hughes, Johnson, Kelley, Leslie, McPherson, Mountjoy, O'Connell, Vasconcellos
NOT VOTING: Calderon

SENATE FLOOR : 37-0, 5/28/98
AYES: Alpert, Ayala, Brulte, Burton, Calderon, Costa, Dills, Greene, Hayden, Haynes, Hughes, Hurtt, Johannessen, Johnson, Johnston, Karnette, Kelley, Knight, Kopp, Leslie, Lockyer, Maddy, McPherson, Monteith, Mountjoy, O'Connell, Peace, Polanco, Rainey, Rosenthal, Schiff, Sher, Solis, Thompson, Vasconcellos, Watson, Wright
NOT VOTING: Craven, Lewis

ASSEMBLY FLOOR : 70-2, 8/28/98 - See last page for vote

SUBJECT : Youth Authority commitments: county payment costs

SOURCE : California State Association of Counties

DIGEST : This bill caps the fee currently paid by counties to the California Youth Authority (CYA) for committing a youth to the CYA. Specifically, this bill:

1. Provides that the Department of the Youth Authority must present to each county, not more frequently than monthly, a statement of per capita institutional cost.

2. Defines "per capita institutional cost" to mean the lesser of the current per capita institutional cost of the department, or the per capita institutional cost charged counties as of January 1, 1997.

Assembly Amendments delete Senate language modifying the current sliding scale provisions regarding county payments to Youth Authority and instead provide for a per capita institutional cost approach.

ANALYSIS : Under current law, effective January 1, 1997, counties must pay the state $150 (instead of the former $25) for each minor committed to the Department of the Youth Authority. (Welfare and Institutions Code ("WIC") sec. 912.) In addition, counties must contribute a "sliding scale" contribution for Youth Authority commitments based upon the category of the offender; the sliding scale ranges from 50% of the per capita institutional cost of the Youth Authority for category 5 offenses (category 1 being the most serious out of 7 categories), 75% for category 6 offenses, and 100% for category 7 offenses. (WIC sec. 912.5.)

Sliding Scale; History and Effect

In 1996, the Legislature enacted legislation increasing the fees that counties pay to the State for commitment of juvenile offenders to CYA. (SB 681(Hurtt) (Ch. 6/96).) These new fees went into effect in January of last year. Before SB 681, counties paid the State $25 -- an amount set in 1961-- each month for each offender sent to CYA. SB 681 increased this fee to $150 per offender per month, and also enacted a "sliding fee scale" for offenders sent by counties to CYA. As explained by the Legislative Analyst's office:

> When a ward is sent to the Youth Authority, the Youthful Offender Parole Board assigns the ward a category number -- from 1 to 7 -- based on the seriousness of the commitment offense. Generally, wards in categories 1 through 4 are considered the most serious offenders,

□

> while categories 5 through 7 are less serious. Under this legislation, counties (will) pay 100 percent of the

costs of wards in category 7 (the least serious offense category), 75 percent of the costs for wards in category 6, and 50 percent of the costs for wards in category 5. Counties would pay the proposed $150 per month fee for all other commitments. Wards in categories 5, 6 and 7 generally spend less than 18 months in Youth Authority institutions. Similar types of offenders who are placed in county-run facilities often spend less than six months in the facilities.

In 1994, the Legislative Analyst's office reviewed CYA placements and discovered that 24 counties at that time sent primarily serious offenders to CYA; in contrast, LAO found that "20 counties' total commitments to the Youth Authority consist (at that time) of 50 percent or more of less serious offenders." The legislation imposing a sliding scale fee for CYA commitments was intended to address this situation.

In its analysis of the 1998-99 Budget, the Legislative Analyst's Office concluded that preliminary data indicates sliding scale has been successful for the state:

> Commitment data suggest that the new sliding fees have had the desired impacts. The 1997 commitments of wards who are in categories 5, 6, and 7 declined almost 40 percent when compared to 1996. Commitments of category 7 wards, for whom counties paid full cost, decreased by 52 percent. There were only 26 commitments in this category to the Youth Authority in 1997.
>
> We believe that as a result of the new sliding fee, counties will continue to have a fiscal incentive to use less costly local options rather than the Youth Authority, especially for the least serious offenders, where the county would pay most of the cost of commitment. Several counties have informed us that in response to the new fees they have developed local alternatives to Youth Authority placements. These new placement options include the creation of new ranch and camp beds and the use of other nonresidential options, such as day-treatment centers, for less serious offenders. As we describe below, counties have received significant new federal funds for creating services for these types of offenders. The budget proposes to further increase these funds. (Legislative Analyst's Office, Analysis of the 1998-99 Budget Bill)

□

As explained by the author, counties argue sliding scale has greatly increased the fees they must pay for Youth Authority commitments. According to a January 1998 survey of 44 counties conducted by CSAC, their total Youth Authority fees increased 909 percent between 1995-96 and

1997-98; at the same time, their low-level offender commitments decreased 51.3 percent.

This bill would change the formula upon which sliding scale fees to the State is based. Instead of basing fees on the per capita institutional costs for Youth Authority, this bill would base the fees on the marginal costs for Youth Authority. Currently, the per capita cost of Youth Authority is about $32,000; the marginal cost -- that is, the cost to add each additional ward to an institution -- is about $17,000. Counties argue the per capita formula unfairly penalizes counties: as the Youth Authority population decreases, the per capita costs increase, thereby increasing the sliding scale fees charged to counties which go directly to the State.

The proposed change to the formula would greatly reduce sliding scale fees paid to the state. However, under the bill, the counties would have to pay an additional amount to a newly-created local juvenile justice trust fund. In this way, although this bill would decrease sliding scale payments to the State, it would not decrease the overall amount counties would have to pay under the entire sliding scale scheme because of the county juvenile trust fund this bill would mandate.

Background: State Funds for Local Juvenile Programs

In its analysis of the 1998-99 Budget, the Legislative Analyst's Office stated:

> In response to federal welfare reform, the California Legislature established the California Work Opportunity and Responsibility to Kids (CalWORKs) program in 1997. The CalWORKS law specifically provided that TANF funds could be used to provide probation services to juvenile offenders. In the current year, counties received $141 million in TANF block grant funds for juvenile offenders under the care of probation departments. In addition, counties with ranches and camps received an additional $33 million in TANF funds for support of these juvenile facilities. Consequently, a total of $174 million in TANF was allocated to county probation departments.
>
> The budget also continues the $33 million from TANF for counties with juvenile ranches and camps. As a result, the budget proposes allocating $200 million from TANF to county probation departments to provide services to juvenile offenders. As a result of the TANF funds, counties have a source of funds to either defray whatever costs they might incur as a consequence of the new Youth Authority fees or develop alternatives to Youth Authority placements. Furthermore, the significant

amount of funding available under the TANF probation grants should allow counties to continue to decrease their reliance on placements in the Youth Authority and accordingly, reduce future sliding scale fee costs. Notwithstanding the overall decrease in Youth Authority placements, the allocation of $200 million to counties for juvenile offenders is substantially more than the estimated $43 million that counties will reimburse the state for Youth Authority placements.

Prior legislation :

AB 2312 (Woods) passed the Senate 39-0 on 8/29/96 and was vetoed by the Governor.

Governor's Veto Message:

"By relieving counties of some of their responsibility to pay a portion of the cost for committing wards to the Youth Authority, this bill would increase General Fund expenditures by millions of dollars over the next six fiscal years. The State is already providing a considerable amount of funding to counties in support of local juvenile justice programs, including $33 million per year for county probation camps. In further support of county efforts, I recently signed SB 1760, which provides $50 million in grant funds to be awarded to county agencies for the prevention of juvenile crime and treatment of youthful offenders. These funds, not anticipated at the time this bill was introduced, would appear to provide more first year relief than AB 2312.

"I am also concerned with the provision that would allow a juvenile ordered into the custody of the county juvenile correctional administrator pursuant to a community-based punishment plan, to be placed in the Department of Youth Authority under terms and conditions determined by the county administrator rather than state authorities. This bill would appear to obscure the authority of (the Youth Authority and the Youthful Offender Parole Board) by allowing the county correctional administrator to determine the length of

stay and the terms and conditions of the placement.

"I am not unalterably opposed to providing additional relief, of the magnitude sought here, to county juvenile authorities. I have directed my staff to work with the author to explore alternatives to disruption of the formula under which counties contribute to the costs of the Youth Authority."

FISCAL EFFECT : Appropriation: Yes Fiscal Com.: Yes Local: Yes

Fiscal Impact (in thousands)

Major Provisions	1998-99	1999-2000	2000-01	Fund
CYA sliding scale fee loss of revenues	$ 1,000	$ 22,000	$ 22,000	General
LJJPD revenues	$ 1,000	$ 22,000	$ 22,000	Local

SUPPORT : (Verified 5/22/98) (Unable to reverify at time of writing)

California State Association of Counties (source)
San Bernardino County Board of Supervisors
Urban Counties Caucus
Merced County
San Diego County
City and County of San Francisco

912 Cost

ARGUMENTS IN SUPPORT : The author states:

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

The related cost to counties for CYA has increased from just under $2 million in FY 1995-96 to a projected $20-30 million for FY 1997-98. While costs have increased 10-15 fold, low level commitments to the CYA decreased approximately 53.2 percent during that time. . . .

SB 2055 would redirect a portion of the fees currently sent to CYA and return the money to the county of commitment to be placed in a Local Juvenile Justice Program Development Fund. Moneys in the fund would be earmarked for juvenile probation programs and facilities -- such as probation

□

camps and ranches -- dedicated to the punishment, treatment and rehabilitation of juvenile offenders.

Given that the per capita cost CYA charges counties has continually increased, (as counties send fewer kids to CYA, their per kid cost increases) SB 2055 would also freeze the actual per capita costs CYA could charge counties at the January 1, 1997 level.

ASSEMBLY FLOOR :
AYES: Ackerman, Aguiar, Alby, Alquist, Aroner, Ashburn, Baca, Baldwin, Battin, Baugh, Bordonaro, Bowen, Bowler, Brewer, Bustamante, Campbell, Cardenas, Cardoza, Cedillo, Cunneen, Davis, Ducheny, Escutia, Figueroa, Firestone,

Frusetta, Gallegos, Goldsmith, Granlund, Havice, Hertzberg, Honda, House, Kaloogian, Keeley, Knox, Kuehl, Kuykendall, Leach, Lempert, Leonard, Margett, Mazzoni, Migden, Miller, Morrissey, Morrow, Murray, Napolitano, Olberg, Oller, Ortiz, Perata, Poochigian, Prenter, Pringle, Runner, Scott, Shelley, Strom-Martin, Sweeney, Thompson, Torlakson, Vincent, Washington, Wayne, Wildman, Woods, Wright, Villaraigosa

NOES: Martinez, McClintock

NOT VOTING: Brown, Floyd, Machado, Pacheco, Papan, Richter, Takasugi, Thomson

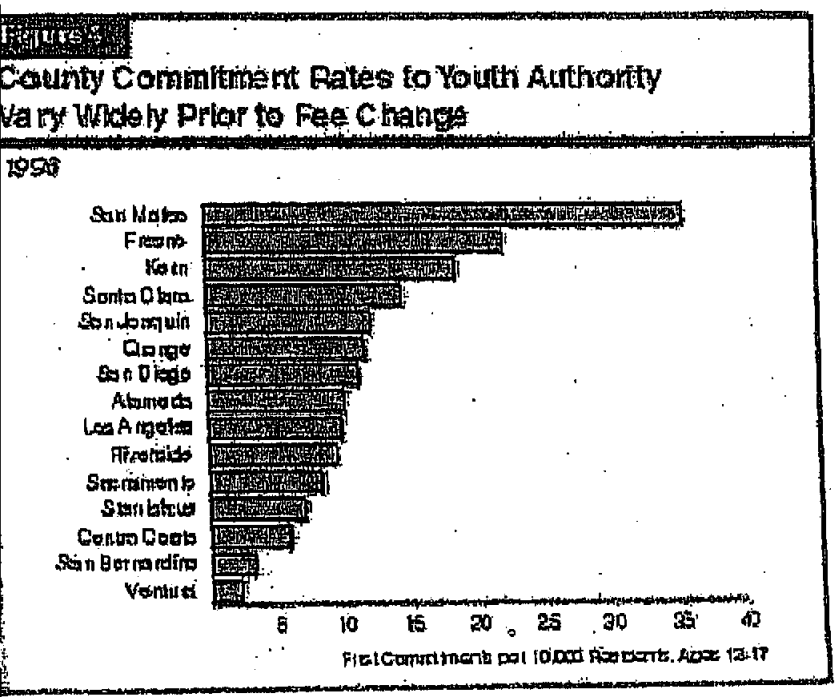
RJG:jk/sl 8/28/98 -Senate Floor Analyses
SUPPORT/OPPOSITION: SEE ABOVE
**** END ****

egislation Enacted In 1998 Caps the Fees. This fee structure was modified somewhat by Chapter 632, Statutes f 1998 (SB 2055, Costa) which froze the per capita costs on which the sliding scale fees are based at the levels in ffect on January 1, 1997 ($31,200 per year). This legislation was enacted in response to county concerns about apidly increasing per capita costs as a consequence of recent declines in the Youth Authority population (the smalle he ward population, the greater the per capita costs of the Youth Authority). This legislation ensures that counties vill not pay higher fees simply because the population decline resulting from the implementation of the sliding scale enerates higher per capita costs. However, as a result of this legislation, the Youth Authority's reimbursements from he counties will be continually smaller than the state's actual costs, as both inflation and a declining population lead o increases in per capita costs.

ntent of Sliding Scale Legislation. The sliding scale legislation was intended to provide counties with a fiscal ncentive to utilize and develop more locally-based programs for less serious juvenile offenders, and to reduce their ependence on costly Youth Authority commitments. Prior to the passage of the legislation, counties had a strong scal incentive to send offenders to the Youth Authority because they only paid a nominal $25 monthly fee per ward. s a result, Youth Authority commitments, while often more expensive than other sanction and treatment options, ere far less expensive from the counties' perspective.

Vhile some counties developed their own locally based programs despite these incentives, other counties appeared to e over-relying on Youth Authority commitments. This disparate usage of the Youth Authority was reflected in the idely ranging first admission rates across counties. Figure 4 (see next page) shows the 1996 first admission rates to he Youth Authority for the 15 counties with the largest populations aged 12 through 17 years (the population from hich first admissions generally are drawn). The figure shows the large disparities among counties in the use of the outh Authority that existed prior to the legislation.

he problems with the prior fee structure were threefold. First, a large body of research on juvenile justice programs uggests that most juvenile offenders can and should be handled in locally based programs. In part, this is because ocally based programs can work more closely with the offender, his family, and the community. Second, these locally ased programs tend to be less expensive than a Youth Authority commitment, which meant that state funding was ncouraging counties to use a more expensive as well as less effective sanctioning option for many offenders. Finall axpayers in those counties with lower admissions rates for less serious offenders were paying not only for their own ocally based options, but also for a share of the costs created by those other counties with higher Youth Authority dmissions rates. In response to these shortcomings, the Legislature acted to align the fiscal incentives faced by ounties with more cost-effective policies, thereby encouraging counties to invest in preventive and early intervention trategies.



New State and Federal Funds Ease the

CALIFORNIA CONSTITUTION
ARTICLE 13B GOVERNMENT SPENDING LIMITATION

SEC. 1. The total annual appropriations subject to limitation of the State and of each local government shall not exceed the appropriations limit of the entity of government for the prior year adjusted for the change in the cost of living and the change in population, except as otherwise provided in this article.

CALIFORNIA CONSTITUTION
ARTICLE 13B GOVERNMENT SPENDING LIMITATION

SEC. 1.5. The annual calculation of the appropriations limit under this article for each entity of local government shall be reviewed as part of an annual financial audit.

CALIFORNIA CONSTITUTION
ARTICLE 13B GOVERNMENT SPENDING LIMITATION

SEC. 2. (a) (1) Fifty percent of all revenues received by the State in a fiscal year and in the fiscal year immediately following it in excess of the amount which may be appropriated by the State in compliance with this article during that fiscal year and the fiscal year immediately following it shall be transferred and allocated, to a fund established for that purpose, pursuant to Section 8.5 of Article XVI.

(2) Fifty percent of all revenues received by the State in a fiscal year and in the fiscal year immediately following it in excess of the amount which may be appropriated by the State in compliance with this article during that fiscal year and the fiscal year immediately following it shall be returned by a revision of tax rates or fee schedules within the next two subsequent fiscal years.

(b) All revenues received by an entity of government, other than the State, in a fiscal year and in the fiscal year immediately following it in excess of the amount which may be appropriated by the entity in compliance with this article during that fiscal year and the fiscal year immediately following it shall be returned by a revision of tax rates or fee schedules within the next two subsequent fiscal years.

CALIFORNIA CONSTITUTION
ARTICLE 13B GOVERNMENT SPENDING LIMITATION

SEC. 3. The appropriations limit for any fiscal year pursuant to Sec. 1 shall be adjusted as follows:

(a) In the event that the financial responsibility of providing services is transferred, in whole or in part, whether by annexation, incorporation or otherwise, from one entity of government to another, then for the year in which such transfer becomes effective the appropriations limit of the transferee entity shall be increased by such reasonable amount as the said entities shall mutually agree and the appropriations limit of the transferor entity shall be decreased by the same amount.

(b) In the event that the financial responsibility of providing

services is transferred, in whole or in part, from an entity of government to a private entity, or the financial source for the provision of services is transferred, in whole or in part, from other revenues of an entity of government, to regulatory licenses, user charges or user fees, then for the year of such transfer the appropriations limit of such entity of government shall be decreased accordingly.

(c) (1) In the event an emergency is declared by the legislative body of an entity of government, the appropriations limit of the affected entity of government may be exceeded provided that the appropriations limits in the following three years are reduced accordingly to prevent an aggregate increase in appropriations resulting from the emergency.

(2) In the event an emergency is declared by the Governor, appropriations approved by a two-thirds vote of the legislative body of an affected entity of government to an emergency account for expenditures relating to that emergency shall not constitute appropriations subject to limitation. As used in this paragraph, "emergency" means the existence, as declared by the Governor, of conditions of disaster or of extreme peril to the safety of persons and property within the State, or parts thereof, caused by such conditions as attack or probable or imminent attack by an enemy of the United States, fire, flood, drought, storm, civil disorder, earthquake, or volcanic eruption.

CALIFORNIA CONSTITUTION
ARTICLE 13B GOVERNMENT SPENDING LIMITATION

SEC. 4. The appropriations limit imposed on any new or existing entity of government by this Article may be established or changed by the electors of such entity, subject to and in conformity with constitutional and statutory voting requirements. The duration of any such change shall be as determined by said electors, but shall in no event exceed four years from the most recent vote of said electors creating or continuing such change.

CALIFORNIA CONSTITUTION
ARTICLE 13B GOVERNMENT SPENDING LIMITATION

SEC. 5. Each entity of government may establish such contingency, emergency, unemployment, reserve, retirement, sinking fund, trust, or similar funds as it shall deem reasonable and proper. Contributions to any such fund, to the extent that such contributions are derived from the proceeds of taxes, shall for purposes of this Article constitute appropriations subject to limitation in the year of contribution. Neither withdrawals from any such fund, nor expenditures of (or authorizations to expend) such withdrawals, nor transfers between or among such funds, shall for purposes of this Article constitute appropriations subject to limitation.

CALIFORNIA CONSTITUTION
ARTICLE 13B GOVERNMENT SPENDING LIMITATION

SECTION 5.5. Prudent State Reserve. The Legislature shall establish a prudent state reserve fund in such amount as it shall

deem reasonable and necessary. Contributions to, and withdrawals from, the fund shall be subject to the provisions of Section 5 of this Article.

CALIFORNIA CONSTITUTION
ARTICLE 13B GOVERNMENT SPENDING LIMITATION

SEC. 6. (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.

(b) (1) Except as provided in paragraph (2), for the 2005-06 fiscal year and every subsequent fiscal year, for a mandate for which the costs of a local government claimant have been determined in a preceding fiscal year to be payable by the State pursuant to law, the Legislature shall either appropriate, in the annual Budget Act, the full payable amount that has not been previously paid, or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable in a manner prescribed by law.

(2) Payable claims for costs incurred prior to the 2004-05 fiscal [redacted] that have not been paid prior to the 2005-06 fiscal year may be p[redacted] over a term of years, as prescribed by law.

(3) Ad valorem property tax revenues shall not be used to reimburse a local government for the costs of a new program or higher level of service.

(4) This subdivision applies to a mandate only as it affects a city, county, city and county, or special district.

(5) This subdivision shall not apply to a requirement to provide or recognize any procedural or substantive protection, right, benefit, or employment status of any local government employee or retiree, or of any local government employee organization, that arises from, affects, or directly relates to future, current, or past local government employment and that constitutes a mandate subject to this section.

(c) A mandated new program or higher level of service includes a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility.

CALIFORNIA CONSTITUTION
ARTICLE 13B GOVERNMENT SPENDING LIMITATION

SEC. 7. Nothing in this Article shall be construed to impair the [redacted]ty of the State or of any local government to meet its c[redacted]gations with respect to existing or future bonded indebtedness.

ARTICLE 13B GOVERNMENT SPENDING LIMITATION

SEC. 8. As used in this article and except as otherwise expressly provided herein:

(a) "Appropriations subject to limitation" of the State means any authorization to expend during a fiscal year the proceeds of taxes levied by or for the State, exclusive of state subventions for the use and operation of local government (other than subventions made pursuant to Section 6), and further exclusive of refunds of taxes, benefit payments from retirement, unemployment insurance, and disability insurance funds.

(b) "Appropriations subject to limitation" of an entity of local government means any authorization to expend during a fiscal year the proceeds of taxes levied by or for that entity and the proceeds of state subventions to that entity (other than subventions made pursuant to Section 6) exclusive of refunds of taxes.

(c) "Proceeds of taxes" shall include, but not be restricted to, all tax revenues and the proceeds to an entity of government, from (1) regulatory licenses, user charges, and user fees to the extent that those proceeds exceed the costs reasonably borne by that entity in providing the regulation, product, or service, and (2) the investment of tax revenues. With respect to any local government, "proceeds of taxes" shall include subventions received from the State, other than pursuant to Section 6, and, with respect to the State, proceeds of taxes shall exclude such subventions.

(d) "Local government" means any city, county, city and county, school district, special district, authority, or other political subdivision of or within the State.

(e) (1) "Change in the cost of living" for the State, a school district, or a community college district means the percentage change in California per capita personal income from the preceding year.

(2) "Change in the cost of living" for an entity of local government, other than a school district or a community college district, shall be either (A) the percentage change in California per capita personal income from the preceding year, or (B) the percentage change in the local assessment roll from the preceding year for the jurisdiction due to the addition of local nonresidential new construction. Each entity of local government shall select its change in the cost of living pursuant to this paragraph annually by a recorded vote of the entity's governing body.

(f) "Change in population" of any entity of government, other than the State, a school district, or a community college district, shall be determined by a method prescribed by the Legislature.

"Change in population" of a school district or a community college district shall be the percentage change in the average daily attendance of the school district or community college district from the preceding fiscal year, as determined by a method prescribed by the Legislature.

"Change in population" of the State shall be determined by adding (1) the percentage change in the State's population multiplied by the percentage of the State's budget in the prior fiscal year that is expended for other than educational purposes for kindergarten and grades one to 12, inclusive, and the community colleges, and (2) the percentage change in the total statewide average daily attendance in kindergarten and grades one to 12, inclusive, and the community colleges, multiplied by the percentage of the State's budget in the prior fiscal year that is expended for educational purposes for kindergarten and grades one to 12, inclusive, and the community colleges.

Any determination of population pursuant to this subdivision, other than that measured by average daily attendance, shall be revised, as necessary, to reflect the periodic census conducted by the United States Department of Commerce, or successor department.

(g) "Debt service" means appropriations required to pay the cost of interest and redemption charges, including the funding of any reserve or sinking fund required in connection therewith, on indebtedness existing or legally authorized as of January 1, 1979, or on bonded indebtedness thereafter approved according to law by a vote of the electors of the issuing entity voting in an election for that purpose.

(h) The "appropriations limit" of each entity of government for each fiscal year is that amount which total annual appropriations subject to limitation may not exceed under Sections 1 and 3. However, the "appropriations limit" of each entity of government for fiscal year 1978-79 is the total of the appropriations subject to limitation of the entity for that fiscal year. For fiscal year 1978-79, state subventions to local governments, exclusive of federal grants, are deemed to have been derived from the proceeds of state taxes.

(i) Except as otherwise provided in Section 5, "appropriations subject to limitation" do not include local agency loan funds or indebtedness funds, investment (or authorizations to invest) funds of the State, or of an entity of local government in accounts at banks or savings and loan associations or in liquid securities.

CALIFORNIA CONSTITUTION
ARTICLE 13B GOVERNMENT SPENDING LIMITATION

SEC. 9. "Appropriations subject to limitation" for each entity of government do not include:

(a) Appropriations for debt service.

(b) Appropriations required to comply with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly.

(c) Appropriations of any special district which existed on January 1, 1978, and which did not as of the 1977-78 fiscal year levy an ad valorem tax on property in excess of 12 1/2 cents per $100 of assessed value; or the appropriations of any special district then existing or thereafter created by a vote of the people, which is totally funded by other than the proceeds of taxes.

(d) Appropriations for all qualified capital outlay projects, as defined by the Legislature.

(e) Appropriations of revenue which are derived from any of the following:

(1) That portion of the taxes imposed on motor vehicle fuels for use in motor vehicles upon public streets and highways at a rate of more than nine cents ($0.09) per gallon.

(2) Sales and use taxes collected on that increment of the tax specified in paragraph (1).

(3) That portion of the weight fee imposed on commercial vehicles which exceeds the weight fee imposed on those vehicles on January 1, 1990.

CALIFORNIA CONSTITUTION
ARTICLE 13B GOVERNMENT SPENDING LIMITATION

SEC. 10. This Article shall be effective commencing with the first day of the fiscal year following its adoption.

CALIFORNIA CONSTITUTION
ARTICLE 13B GOVERNMENT SPENDING LIMITATION

SEC. 10.5. For fiscal years beginning on or after July 1, 1990, the appropriations limit of each entity of government shall be the appropriations limit for the 1986-87 fiscal year adjusted for the changes made from that fiscal year pursuant to this article, as amended by the measure adding this section, adjusted for the changes required by Section 3.

CALIFORNIA CONSTITUTION
ARTICLE 13B GOVERNMENT SPENDING LIMITATION

SEC. 11. If any appropriation category shall be added to or removed from appropriations subject to limitation, pursuant to final judgment of any court of competent jurisdiction and any appeal therefrom, the appropriations limit shall be adjusted accordingly. If any section, part, clause of phrase in this Article is for any reason held invalid or unconstitutional, the remaining portions of this Article shall not be affected but shall remain in full force and effect.

CALIFORNIA CONSTITUTION
ARTICLE 13B GOVERNMENT SPENDING LIMITATION

SEC. 12. "Appropriations subject to limitation" of each entity of government shall not include appropriations of revenue from the Cigarette and Tobacco Products Surtax Fund created by the Tobacco Tax and Health Protection Act of 1988. No adjustment in the appropriations limit of any entity of government shall be required pursuant to Section 3 as a result of revenue being deposited in or appropriated from the Cigarette and Tobacco Products Surtax Fund created by the Tobacco Tax and Health Protection Act of 1988.

CALIFORNIA CONSTITUTION
ARTICLE 13B GOVERNMENT SPENDING LIMITATION

SEC. 13. "Appropriations subject to limitation" of each entity of government shall not include appropriations of revenue from the California Children and Families First Trust Fund created by the California Children and Families First Act of 1998. No adjustment in the appropriations limit of any entity of government shall be required pursuant to Section 3 as a result of revenue being deposited in or appropriated from the California Children and Families First Trust Fund. The surtax created by the California Children and Families First Act of 1998 shall not be considered General Fund revenues for the purposes of Section 8 of Article XVI.

CALIFORNIA CONSTITUTION
ARTICLE 13A [TAX LIMITATION]

SECTION 1. (a) The maximum amount of any ad valorem tax on real property shall not exceed One percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties.

(b) The limitation provided for in subdivision (a) shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on any of the following:

(1) Indebtedness approved by the voters prior to July 1, 1978.

(2) Bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition.

(3) Bonded indebtedness incurred by a school district, community college district, or county office of education for the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities, approved by 55 percent of the voters of the district or county, as appropriate, voting on the proposition on or after the effective date of the measure adding this paragraph. This paragraph shall apply only if the proposition approved by the voters and resulting in the bonded indebtedness includes all of the following accountability requirements:

(A) A requirement that the proceeds from the sale of the bonds be used only for the purposes specified in Article XIIIA, Section 1(b)(3), and not for any other purpose, including teacher and administrator salaries and other school operating expenses.

(B) A list of the specific school facilities projects to be funded and certification that the school district board, community college board, or county office of education has evaluated safety, class size reduction, and information technology needs in developing that list.

(C) A requirement that the school district board, community college board, or county office of education conduct an annual, independent performance audit to ensure that the funds have been expended only on the specific projects listed.

(D) A requirement that the school district board, community college board, or county office of education conduct an annual, independent financial audit of the proceeds from the sale of the bonds until all of those proceeds have been expended for the school facilities projects.

(c) Notwithstanding any other provisions of law or of this Constitution, school districts, community college districts, and county offices of education may levy a 55 percent vote ad valorem tax pursuant to subdivision (b).

CALIFORNIA CONSTITUTION
ARTICLE 13A [TAX LIMITATION]

SEC. 2. (a) The "full cash value" means the county assessor's valuation of real property as shown on the 1975-76 tax bill under "full cash value" or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975-76 full cash value may be reassessed to reflect that valuation. For purposes of this section, "newly constructed" does not include real property that is reconstructed

after a disaster, as declared by the Governor, where the fair market value of the real property, as reconstructed, is comparable to its fair market value prior to the disaster. Also, the term "newly constructed" does not include the portion of reconstruction or improvement to a structure, constructed of unreinforced masonry bearing wall construction, necessary to comply with any local ordinance relating to seismic safety during the first 15 years following that reconstruction or improvement.

However, the Legislature may provide that, under appropriate circumstances and pursuant to definitions and procedures established by the Legislature, any person over the age of 55 years who resides in property that is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII and any implementing legislation may transfer the base year value of the property entitled to exemption, with the adjustments authorized by subdivision (b), to any replacement dwelling of equal or lesser value located within the same county and purchased or newly constructed by that person as his or her principal residence within two years of the sale of the original property. For purposes of this section, "any person over the age of 55 years" includes a married couple one member of which is over the age of 55 years. For purposes of this section, "replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, and any land on which it may be situated. For purposes of this section, a two-dwelling unit shall be considered as two separate single-family dwellings. This paragraph shall apply to any replacement dwelling that was purchased or newly constructed on or after November 5, 1986.

In addition, the Legislature may authorize each county board of supervisors, after consultation with the local affected agencies within the county's boundaries, to adopt an ordinance making the provisions of this subdivision relating to transfer of base year value also applicable to situations in which the replacement dwellings are located in that county and the original properties are located in another county within this State. For purposes of this paragraph, "local affected agency" means any city, special district, school district, or community college district that receives an annual property tax revenue allocation. This paragraph shall apply to any replacement dwelling that was purchased or newly constructed on or after the date the county adopted the provisions of this subdivision relating to transfer of base year value, but shall not apply to any replacement dwelling that was purchased or newly constructed before November 9, 1988.

The Legislature may extend the provisions of this subdivision relating to the transfer of base year values from original properties to replacement dwellings of homeowners over the age of 55 years to severely disabled homeowners, but only with respect to those replacement dwellings purchased or newly constructed on or after the effective date of this paragraph.

(b) The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced to reflect substantial damage, destruction, or other factors causing a decline in value.

(c) For purposes of subdivision (a), the Legislature may provide that the term "newly constructed" does not include any of the following:

(1) The construction or addition of any active solar energy system.

(2) The construction or installation of any fire sprinkler system, other fire extinguishing system, fire detection system, or fire-related egress improvement, as defined by the Legislature, that is constructed or installed after the effective date of this

paragraph.

(3) The construction, installation, or modification on or after the effective date of this paragraph of any portion or structural component of a single- or multiple-family dwelling that is eligible for the homeowner's exemption if the construction, installation, or modification is for the purpose of making the dwelling more accessible to a severely disabled person.

(4) The construction or installation of seismic retrofitting improvements or improvements utilizing earthquake hazard mitigation technologies, that are constructed or installed in existing buildings after the effective date of this paragraph. The Legislature shall define eligible improvements. This exclusion does not apply to seismic safety reconstruction or improvements that qualify for exclusion pursuant to the last sentence of the first paragraph of subdivision (a).

(5) The construction, installation, removal, or modification on or after the effective date of this paragraph of any portion or structural component of an existing building or structure if the construction, installation, removal, or modification is for the purpose of making the building more accessible to, or more usable by, a disabled person.

(d) For purposes of this section, the term "change in ownership" does not include the acquisition of real property as a replacement for comparable property if the person acquiring the real property has been displaced from the property replaced by eminent domain proceedings, by acquisition by a public entity, or governmental action that has resulted in a judgment of inverse condemnation. The real property acquired shall be deemed comparable to the property replaced if it is similar in size, utility, and function, or if it conforms to state regulations defined by the Legislature governing the relocation of persons displaced by governmental actions. The provisions of this subdivision shall be applied to any property acquired after March 1, 1975, but shall affect only those assessments of that property that occur after the provisions of this subdivision take effect.

(e) (1) Notwithstanding any other provision of this section, the Legislature shall provide that the base year value of property that is substantially damaged or destroyed by a disaster, as declared by the Governor, may be transferred to comparable property within the same county that is acquired or newly constructed as a replacement for the substantially damaged or destroyed property.

(2) Except as provided in paragraph (3), this subdivision shall apply to any comparable replacement property acquired or newly constructed on or after July 1, 1985, and to the determination of base year values for the 1985-86 fiscal year and fiscal years thereafter.

(3) In addition to the transfer of base year value of property within the same county that is permitted by paragraph (1), the Legislature may authorize each county board of supervisors to adopt, after consultation with affected local agencies within the county, an ordinance allowing the transfer of the base year value of property that is located within another county in the State and is substantially damaged or destroyed by a disaster, as declared by the Governor, to comparable replacement property of equal or lesser value that is located within the adopting county and is acquired or newly constructed within three years of the substantial damage or destruction of the original property as a replacement for that property. The scope and amount of the benefit provided to a property owner by the transfer of base year value of property pursuant to this paragraph shall not exceed the scope and amount of the benefit provided to a property owner by the transfer of base year value of property pursuant to subdivision (a). For purposes of this paragraph, "affected local agency" means any city, special district, school district, or community college district that receives an

annual allocation of ad valorem property tax revenues. This paragraph shall apply to any comparable replacement property that is acquired or newly constructed as a replacement for property substantially damaged or destroyed by a disaster, as declared by the Governor, occurring on or after October 20, 1991, and to the determination of base year values for the 1991-92 fiscal year and fiscal years thereafter.

(f) For the purposes of subdivision (e):

(1) Property is substantially damaged or destroyed if it sustains physical damage amounting to more than 50 percent of its value immediately before the disaster. Damage includes a diminution in the value of property as a result of restricted access caused by the disaster.

(2) Replacement property is comparable to the property substantially damaged or destroyed if it is similar in size, utility, and function to the property that it replaces, and if the fair market value of the acquired property is comparable to the fair market value of the replaced property prior to the disaster.

(g) For purposes of subdivision (a), the terms "purchased" and change in ownership" do not include the purchase or transfer of real property between spouses since March 1, 1975, including, but not limited to, all of the following:

(1) Transfers to a trustee for the beneficial use of a spouse, or the surviving spouse of a deceased transferor, or by a trustee of such a trust to the spouse of the trustor.

(2) Transfers to a spouse that take effect upon the death of a spouse.

(3) Transfers to a spouse or former spouse in connection with a property settlement agreement or decree of dissolution of a marriage or legal separation.

(4) The creation, transfer, or termination, solely between spouses, of any coowner's interest.

(5) The distribution of a legal entity's property to a spouse or former spouse in exchange for the interest of the spouse in the legal entity in connection with a property settlement agreement or a decree of dissolution of a marriage or legal separation.

(h) (1) For purposes of subdivision (a), the terms "purchased" and "change in ownership" do not include the purchase or transfer of the principal residence of the transferor in the case of a purchase or transfer between parents and their children, as defined by the Legislature, and the purchase or transfer of the first one million dollars ($1,000,000) of the full cash value of all other real property between parents and their children, as defined by the Legislature. This subdivision shall apply to both voluntary transfers and transfers resulting from a court order or judicial decree.

(2) (A) Subject to subparagraph (B), commencing with purchases or transfers that occur on or after the date upon which the measure adding this paragraph becomes effective, the exclusion established by paragraph (1) also applies to a purchase or transfer of real property between grandparents and their grandchild or grandchildren, as defined by the Legislature, that otherwise qualifies under paragraph (1), if all of the parents of that grandchild or those grandchildren, who qualify as the children of the grandparents, are deceased as of the date of the purchase or transfer.

(B) A purchase or transfer of a principal residence shall not be excluded pursuant to subparagraph (A) if the transferee grandchild or grandchildren also received a principal residence, or interest therein, through another purchase or transfer that was excludable pursuant to paragraph (1). The full cash value of any real property, other than a principal residence, that was transferred to the grandchild or grandchildren pursuant to a purchase or transfer that was excludable pursuant to paragraph (1), and the full cash value of a principal residence that fails to qualify for exclusion as a result

of the preceding sentence, shall be included in applying, for purposes of subparagraph (A), the one million dollar ($1,000,000) full cash value limit specified in paragraph (1).

(i) (1) Notwithstanding any other provision of this section, the Legislature shall provide with respect to a qualified contaminated property, as defined in paragraph (2), that either, but not both, of the following shall apply:

(A) (i) Subject to the limitation of clause (ii), the base year value of the qualified contaminated property, as adjusted as authorized by subdivision (b), may be transferred to a replacement property that is acquired or newly constructed as a replacement for the qualified contaminated property, if the replacement real property has a fair market value that is equal to or less than the fair market value of the qualified contaminated property if that property were not contaminated and, except as otherwise provided by this clause, is located within the same county. The base year value of the qualified contaminated property may be transferred to a replacement real property located within another county if the board of supervisors of that other county has, after consultation with the affected local agencies within that county, adopted a resolution authorizing an intercounty transfer of base year value as so described.

(ii) This subparagraph applies only to replacement property that is acquired or newly constructed within five years after ownership in the qualified contaminated property is sold or otherwise transferred.

(B) In the case in which the remediation of the environmental problems on the qualified contaminated property requires the destruction of, or results in substantial damage to, a structure located on that property, the term "new construction" does not include the repair of a substantially damaged structure, or the construction of a structure replacing a destroyed structure on the qualified contaminated property, performed after the remediation of the environmental problems on that property, provided that the repaired or replacement structure is similar in size, utility, and function to the original structure.

(2) For purposes of this subdivision, "qualified contaminated property" means residential or nonresidential real property that is all of the following:

(A) In the case of residential real property, rendered uninhabitable, and in the case of nonresidential real property, rendered unusable, as the result of either environmental problems, in the nature of and including, but not limited to, the presence of toxic or hazardous materials, or the remediation of those environmental problems, except where the existence of the environmental problems was known to the owner, or to a related individual or entity as described in paragraph (3), at the time the real property was acquired or constructed. For purposes of this subparagraph, residential real property is "uninhabitable" if that property, as a result of health hazards caused by or associated with the environmental problems, is unfit for human habitation, and nonresidential real property is "unusable" if that property, as a result of health hazards caused by or associated with the environmental problems, is unhealthy and unsuitable for occupancy.

(B) Located on a site that has been designated as a toxic or environmental hazard or as an environmental cleanup site by an agency of the State of California or the federal government.

(C) Real property that contains a structure or structures thereon prior to the completion of environmental cleanup activities, and that structure or structures are substantially damaged or destroyed as a result of those environmental cleanup activities.

(D) Stipulated by the lead governmental agency, with respect to the environmental problems or environmental cleanup of the real property, not to have been rendered uninhabitable or unusable, as

applicable, as described in subparagraph (A), by any act or omission in which an owner of that real property participated or acquiesced.

(3) It shall be rebuttably presumed that an owner of the real property participated or acquiesced in any act or omission that rendered the real property uninhabitable or unusable, as applicable, if that owner is related to any individual or entity that committed that act or omission in any of the following ways:

(A) Is a spouse, parent, child, grandparent, grandchild, or sibling of that individual.

(B) Is a corporate parent, subsidiary, or affiliate of that entity.

(C) Is an owner of, or has control of, that entity.

(D) Is owned or controlled by that entity.

If this presumption is not overcome, the owner shall not receive the relief provided for in subparagraph (A) or (B) of paragraph (1). The presumption may be overcome by presentation of satisfactory evidence to the assessor, who shall not be bound by the findings of the lead governmental agency in determining whether the presumption has been overcome.

(4) This subdivision applies only to replacement property that is acquired or constructed on or after January 1, 1995, and to property repairs performed on or after that date.

(j) Unless specifically provided otherwise, amendments to this section adopted prior to November 1, 1988, shall be effective for changes in ownership that occur, and new construction that is completed, after the effective date of the amendment. Unless specifically provided otherwise, amendments to this section adopted after November 1, 1988, shall be effective for changes in ownership that occur, and new construction that is completed, on or after the effective date of the amendment.

CALIFORNIA CONSTITUTION
ARTICLE 13A [TAX LIMITATION]

Section 3. From and after the effective date of this article, any changes in state taxes enacted for the purpose of increasing revenues collected pursuant thereto whether by increased rates or changes in methods of computation must be imposed by an Act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property may be imposed.

CALIFORNIA CONSTITUTION
ARTICLE 13A [TAX LIMITATION]

Section 4. Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district.

CALIFORNIA CONSTITUTION
ARTICLE 13A [TAX LIMITATION]

Section 5. This article shall take effect for the tax year beginning on July 1 following the passage of this Amendment, except Section 3 which shall become effective upon the passage of this article.

CALIFORNIA CONSTITUTION
ARTICLE 13A [TAX LIMITATION]

Section 6. If any section, part, clause, or phrase hereof is for any reason held to be invalid or unconstitutional, the remaining sections shall not be affected but will remain in full force and effect.

CALIFORNIA CONSTITUTION
ARTICLE 13A [TAX LIMITATION]

SEC. 7. Section 3 of this article does not apply to the California Children and Families First Act of 1998.

CURRENT BILL STATUS

MEASURE : S.B. No. 681
AUTHOR(S) : Hurtt.
TOPIC : Local government assistance.
-LAST AMENDED DATE : 01/25/96

TYPE OF BILL :
Inactive
Non-Urgency
Appropriations
Majority Vote Required
State-Mandated Local Program
Fiscal
Non-Tax Levy

AST HIST. ACT. DATE: 02/02/96
AST HIST. ACTION : Chaptered by Secretary of State. Chapter 6, Statutes of 1996.
1 DAYS IN PRINT : 03/25/95

ITLE : An act to amend Section 4497.38 of the Penal Code, to amend Section 2105 of, and to repeal Section 2105.1 of, the Streets and Highways Code, to amend Sections 912, 16990, 17000.5, 17000.6, 17001.5, and 17608.05 of, and to add Sections 912.5 and 17001.51 to, the Welfare and Institutions Code, relating to local government assistance, and making an appropriation therefor.

COMPLETE BILL HISTORY

BILL NUMBER : S.B. No. 681
AUTHOR : Hurtt
[redacted] : Local government assistance.

TYPE OF BILL :
Inactive
Non-Urgency
Appropriations
Majority Vote Required
State-Mandated Local Program
Fiscal
Non-Tax Levy

BILL HISTORY
1996
Feb. 2 Chaptered by Secretary of State. Chapter 6, Statutes of 1996.
Feb. 1 Approved by Governor.
Jan. 30 Enrolled. To Governor at 4:45 p.m.
Jan. 30 In Senate. To unfinished business. Action deferred pursuant to Senate Rule 29.10. From committee: That the Assembly amendments be taken up for consideration. (Ayes 4. Noes 0.) Senate concurs in Assembly amendments. (Ayes 21. Noes 16. Page 3252.) To enrollment.
Jan. 29 Read third time. Passed. (Ayes 42. Noes 27. Page 4575.) To Senate.
Jan. 25 Read third time. Amended. To third reading.
1995
Sept. 15 Read third time. Amendments by Assembly Member Takasugi adopted. (Ayes 40. Noes 34. Page 3989.) To third reading.
[redacted] 14 Read third time. Motion by Assembly Member Hauser to table amendments by Assembly Member Takasugi refused adoption. (Ayes 38. Noes 39. Page 3896.)
Sept. 8 Read second time. To third reading. Read third time. Amended. To third reading.
Sept. 7 From committee: Do pass. (Ayes 10. Noes 9.)
Sept. 5 Joint Rule 61 suspended.
July 26 Placed on APPR. suspense file.
July 12 From committee: Do pass, but first be re-referred to Com. on APPR. (Ayes 9. Noes 0.) Re-referred to Com. on APPR.
July 5 From committee with author's amendments. Read second time. Amended. Re-referred to committee.
May 11 To Com. on REV. & TAX.
May 4 In Assembly. Read first time. Held at Desk.
May 4 Read third time. Passed. (Ayes 27. Noes 4. Page 1042.) To Assembly.
May 3 Read second time. Amended. To third reading.
May 2 From committee: Do pass as amended. (Ayes 10. Noes 1. Page 990.)
Apr. 20 Set, first hearing. Hearing canceled at the request of author. Set for hearing May 1.
Apr. 12 Set for hearing April 24.
Apr. 6 From committee: Do pass, but first be re-referred to Com. on APPR. (Ayes 6. Noes 1. Page 661.) Re-referred to Com. on APPR.
Mar. 9 Set for hearing April 5.
Mar. 8 To Com. on REV. & TAX.
[redacted] 23 From print. May be acted upon on or after March 25.
[redacted] 22 Introduced. Read first time. To Com. on RLS. for assignment. To print.

BILL NUMBER: SB 681 CHAPTERED
BILL TEXT

CHAPTER 6
FILED WITH SECRETARY OF STATE FEBRUARY 2, 1996
APPROVED BY GOVERNOR FEBRUARY 1, 1996
PASSED THE SENATE JANUARY 30, 1996
PASSED THE ASSEMBLY JANUARY 29, 1996
AMENDED IN ASSEMBLY JANUARY 25, 1996
AMENDED IN ASSEMBLY SEPTEMBER 15, 1995
AMENDED IN ASSEMBLY SEPTEMBER 8, 1995
AMENDED IN ASSEMBLY JULY 5, 1995
AMENDED IN SENATE MAY 3, 1995

INTRODUCED BY Senator Hurtt

FEBRUARY 22, 1995

An act to amend Section 4497.38 of the Penal Code, to amend Section 2105 of, and to repeal Section 2105.1 of, the Streets and Highways Code, to amend Sections 912, 16990, 17000.5, 17000.6, 17001.5, and 17608.05 of, and to add Sections 912.5 and 17001.51 to, the Welfare and Institutions Code, relating to local government assistance, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 681, Hurtt. Local government assistance.

(1) Existing law provides for the award of moneys to the counties from the General Fund for juvenile facilities, as specified, only if county matching funds are provided, as specified.

This bill would specify exceptions to the requirement.

(2) Existing law requires each county to pay the state $25 per month for the time a person from that county is committed to the Department of the Youth Authority, as specified.

This bill would revise and recast this provision to require the county to pay the state $150 per month for the time a person from that county is committed to the Department of the Youth Authority, effective January 1, 1997.

The bill would also require each county to pay the state for each person committed to the Department of the Youth Authority pursuant to a scale with regard to the offense on which the commitment is based.

(3) Existing law continuously appropriates special fund moneys for apportionments to cities and counties of a portion of the revenues derived from a per gallon tax on motor vehicle fuels in accordance with prescribed formulas. A city's or county's entitlement to the apportioned funds from the tax imposed at a rate of more than 9 per gallon is conditional upon its expenditure from its general fund for street and highway purposes of an amount not less than the annual average of its expenditures during the 1987-88, 1988-89, and 1989-90 fiscal years. Under existing law, this condition is not applicable for the 1992-93, 1993-94, 1994-95, 1995-96, and 1996-97 fiscal years. t This bill would delete that condition. Thus, this bill would make funds available to cities and counties that would not be eligible otherwise, thereby making an appropriation.

(4) Existing law requires any county receiving certain state allocations to maintain specified levels of financial support of county funds for health services.

This bill would revise county realignment financial responsibilities.

(5) Existing law authorizes the board of supervisors in any county

to adopt a general assistance standard of aid, including the value of in-kind aid.

This bill would provide that the value of in-kind aid includes, but is not limited to, the value of specified amounts of medical aid and healthcare.

(6) Existing law authorizes the board of supervisors of any county to adopt a standard of aid below a specified level if the Commission on State Mandates makes a finding that the prescribed level would result in significant financial distress to the county. The commission may make a finding of financial distress for a period of up to 12 months and is required to act on county applications within specified time periods.

This bill would authorize the commission to make a finding of financial distress for a period of up to 36 months and would extend the application periods.

(7) Existing law authorizes the board of supervisors of each county to adopt residency requirements for purposes of determining a person's eligibility for general assistance.

This bill would authorize counties to establish a standard of general assistance for applicants or recipients who share housing with unrelated persons who are not legally responsible for them, and would prohibit an employable individual from receiving aid for more than 3 months in any 12-month period whether or not the months are consecutive. The bill would also authorize a county to require adult applicants and recipients of benefits under the general assistance program to undergo screening for substance abuse.

(8) Existing law permits a reduction for the 1994-95 fiscal year of up to $15,000,000 in the amount a county or a city is required to deposit into the health account each month.

This bill would permit a reduction of up to $25,000,000 in that amount and would delete that fiscal year restriction.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Appropriation: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 4497.38 of the Penal Code is amended to read:

4497.38. (a) Awards shall be made only if county matching funds of 25 percent are provided except as specified in subdivision (b).

(b) (1) A county or a consortium of counties may request the Director of the Department of the Youth Authority for a deferral of payment of the required matching funds for the construction of a juvenile detention facility. This request shall be approved if the county or consortium of counties meet all of the following criteria:

(A) The county or consortium of counties has plans for the construction of the facility approved by the Department of the Youth Authority.

(B) The facility to be built is located in Humboldt County.

(C) The county or consortium of counties submits to and receives approval by the Department of the Youth Authority, a plan and schedule for payment of the required match.

(2) Contribution of the county or consortium of counties matching requirement shall commence no later than three years from the date of occupation of any facility financed under this chapter.

(3) Under no circumstances shall the county match for any county juvenile project be less than 25 percent.

SEC. 2. Section 2105 of the Streets and Highways Code is amended to read:

2105. In addition to the apportionments prescribed by Sections 2104, 2106, and 2107, from the revenues derived from a per gallon tax imposed pursuant to Section 7351 of the Revenue and Taxation Code, and a per gallon tax imposed pursuant to Section 8651 of that code, the following apportionments shall be made:

(a) A sum equal to the net revenue from a tax of 11.5 percent of any per gallon tax in excess of nine cents ($0.09) per gallon under Section 7351 of the Revenue and Taxation Code, and 11.5 percent of any per gallon tax in excess of nine cents ($0.09) per gallon under Section 8651 of that code, shall be apportioned among the counties, including a city and county.

The amount of apportionment to each county, including a city and county, during a fiscal year shall be calculated as follows:

(1) One million dollars ($1,000,000) for apportionment to all counties, including a city and county, in proportion to each county's receipts during the prior fiscal year under Sections 2104 and 2106.

(2) One million dollars ($1,000,000) for apportionment to all counties, including a city and county, as follows:

(A) Seventy-five percent in the proportion that the number of fee-paid and exempt vehicles which are registered in the county bears to the number of fee-paid and exempt vehicles registered in the state.

(B) Twenty-five percent in the proportion that the number of miles of maintained county roads in the county bears to the miles of maintained county roads in the state.

(3) For each county, determine its factor which is the higher amount calculated pursuant to paragraph (1) or (2) divided by the sum of the higher amounts for all of the counties.

(4) The amount to be apportioned to each county is equal to its factor multiplied by the amount available for apportionment.

(b) A sum equal to the net revenue from a tax of 11.5 percent of any per gallon tax in excess of nine cents ($0.09) per gallon under Section 7351 of the Revenue and Taxation Code, and 11.5 percent of any per gallon tax in excess of nine cents ($0.09) per gallon under Section 8651 of that code, shall be apportioned to cities, including a city and county, in the proportion that the total population of the city bears to the total population of all the cities in the state.

SEC. 3. Section 2105.1 of the Streets and Highways Code is repealed.

SEC. 4. Section 912 of the Welfare and Institutions Code is amended to read:

912. Effective January 1, 1997, for each person committed to the Department of the Youth Authority, the county from which he or she is committed shall pay the state one hundred fifty dollars ($150) per month for the time that person remains in any institution under the direct supervision of the Department of the Youth Authority, or in any institution, boarding home, foster home, or other private or public institution in which he or she is placed by the Department of the Youth Authority, on parole or otherwise, and cared for and supported at the expense of the Department of the Youth Authority. This section applies to any person committed to the Department of the Youth Authority by a juvenile court, including persons committed to the Department of the Youth Authority prior to January 1, 1997, who on or after January 1, 1997, remain in or return to the facilities described in this section.

The Department of the Youth Authority shall present to the county, not more frequently than monthly, a claim for the amount due the state under this section, which the county shall process and pay pursuant to the provisions of Chapter 4 (commencing with Section 29700) of Division 3 of Title 3 of the Government Code.

SEC. 5. Section 912.5 is added to the Welfare and Institutions Code, to read:

912.5. (a) For each person committed to the Department of the Youth Authority by a juvenile court on or after January 1, 1997, the county from which he or she is committed shall pay the state the following rate:

(1) If the offense on which the commitment is based is listed in Section 4955 of Title 15 of the California Code of Regulations, the rate is 50 percent of the per capita institutional cost of the Department of the Youth Authority.

(2) If the offense on which the commitment is based is listed in Section 4956 of Title 15 of the California Code of Regulations, the rate is 75 percent of the per capita institutional cost of the Department of the Youth Authority.

(3) If the offense on which the commitment is based is listed in Section 4957 of Title 15 of the California Code of Regulations, the rate is 100 percent of the per capita institutional cost of the Department of the Youth Authority.

(b) For purposes of this section, "the offense on which the commitment is based" means any offense that has been sustained by the juvenile court and that is included in the determination of the maximum term of imprisonment by the juvenile court pursuant to Section 731.

(c) For purposes of this section, the charge against the county shall not apply to periods of confinement that are solely pursuant to a revocation of parole by the Youthful Offender Parole Board.

(d) The charge against the county prescribed by this section shall be in lieu of the charge prescribed by Section 912 and not in addition to that charge.

(e) The Department of the Youth Authority shall present to the county, not more frequently than monthly, a claim for the amount due the state under this section, which the county shall process and pay pursuant to the provisions of Chapter 4 (commencing with Section 29700) of Division 3 of Title 3 of the Government Code.

(f) The Department of the Youth Authority shall adopt emergency regulations for implementation of this section.

SEC. 6. Section 16990 of the Welfare and Institutions Code is amended to read:

16990. (a) (1) Any county receiving an allocation pursuant to this chapter and Chapter 4 (commencing with Section 16930) shall, at a minimum, maintain a level of financial support of county funds for health services at least equal to the total of the amounts specified in this subdivision. The amounts specified in paragraph (1) shall be adjusted on July 1 of each year equal to the growth in the sales tax and vehicle license fees allocated to the trust fund accounts and the county general fund pursuant to Chapter 6 (commencing with Section 17600) of Part 5.

Each of the following counties shall maintain a realignment financial maintenance of effort according to the following schedule:

Jurisdiction	Amount
Alameda	$ 62,950,138
Alpine	150,781
Amador	1,702,152
Butte	8,378,036
Calaveras	1,286,374
[illegible]a	1,362,787
[illegible]a Costa	31,188,063
Del Norte	1,305,412
El Dorado	5,626,036
Fresno	32,555,212
Glenn	1,368,045

Humboldt	8,995,114
Imperial	8,526,220
Inyo	2,320,718
Kern	23,025,845
Kings	4,310,952
Lake	1,767,837
Lassen	1,555,628
Los Angeles	510,082,064
Madera	3,523,697
Marin	11,349,537
Mariposa	766,751
Mendocino	2,782,024
Merced	4,711,969
Modoc	939,453
Mono	1,673,165
Monterey	11,816,218
Napa	4,751,422
Nevada	2,669,976
Orange	66,846,735
Placer	3,009,967
Plumas	1,143,704
Riverside	33,598,282
Sacramento	33,012,993
San Benito	1,601,614
San Bernardino	27,576,793
San Diego	49,373,333
San Francisco	106,622,954
San Joaquin	12,646,288
San Luis Obispo	5,888,487
San Mateo	21,788,027
Santa Barbara	12,659,559
Santa Clara	47,316,403
Santa Cruz	8,373,710
Shasta	6,521,122
Sierra	327,339
Siskiyou	2,401,825
Solano	8,942,768
Sonoma	16,146,306
Stanislaus	13,403,954
Sutter	4,872,252
Tehama	3,257,915
Trinity	1,599,409
Tulare	8,593,714
Tuolumne	2,525,076
Ventura	17,042,243
Yolo	4,396,875
Yuba	3,083,423
Total	$1,278,014,696

(2) A county may, upon notifying the department of the transfers authorized by this paragraph, reduce the level of financial maintenance of effort required of the county by paragraph (1) by the amount of the funds transferred from the Health Account pursuant to Section 17600.20.

(b) For purposes of this section, if a county desires to use any of its allocation pursuant to this chapter or Chapter 4 (commencing with Section 16930) for programs and costs not reported as part of the plan and budget required by Section 16800, the county, as a condition of using its allocation for these purposes, must maintain an amount of county funding for those programs and costs at least equal to the 1988-89 fiscal year levels.

(c) Moneys received by a county under this chapter shall be accounted for as revenue in the plan and budget which is required

pursuant to Section 16800 and shall not be used as county matching funds for any other program requiring a county match.

(d) If a county fails to maintain financial maintenance of effort at least equal to the total of the amounts specified in paragraph (1) of subdivision (a), the department shall recover funds allocated to the county under this part sufficient to bring the county into compliance with the financial maintenance of effort provisions. Funds shall be recovered proportionately from the Hospital Services Account, the Physician Services Account, and the Unallocated Account.

(e) The participation fee specified in Section 16809.3 shall not be included in determining a county's compliance with the maintenance of effort provisions of this section.

(f) For the purposes of determining the level of financial support required for the 1991-92 fiscal year, the amounts specified in paragraph (1) of subdivision (a) shall be reduced to reflect shortfalls in revenue to local health and welfare trust fund health accounts due to shortfalls in receipts of sales tax revenue and county deposits required pursuant to subdivision (b) of Section 17608.10, compared to the amounts of these funds originally anticipated, as determined by the Director of Health Services.

(g) For the purposes of determining the level of financial support required in the 1992-93 fiscal year, the amounts specified in paragraph (1) of subdivision (a) shall be reduced by 7 percent.

(h) For the purposes of determining the level of financial support required in the 1993-94 fiscal year and subsequent fiscal years, the amounts specified in paragraph (1) of subdivision (a) shall be reduced to reflect shortfalls in revenue to local health and welfare trust fund health accounts due to shortfalls in receipts of sales tax revenue and county deposits required pursuant to subdivision (b) of Section 17608.10, compared to the amounts of these funds originally anticipated for the 1991-92 fiscal year, as determined by the Director of Health Services.

SEC. 7. Section 17000.5 of the Welfare and Institutions Code is amended to read:

17000.5. (a) The board of supervisors in any county may adopt a general assistance standard of aid, including the value of in-kind aid which includes, but is not limited to, the monthly actuarial value of up to forty dollars ($40) per month of medical care, that is 62 percent of a guideline that is equal to the 1991 federal official poverty line and may annually adjust that guideline in an amount equal to any adjustment provided under Chapter 2 (commencing with Section 11200) of Part 3 for establishing a maximum aid level in the county. This subdivision is not intended to either limit or expand the extent of the duty of counties to provide health care.

(b) The adoption of a standard of aid pursuant to this section shall constitute a sufficient standard of aid.

(c) For purposes of this section, "federal official poverty line" means the same as it is defined in subsection (2) of Section 9902 of Title 42 of the United States Code.

(d) For purposes of this section, "any adjustment" includes, and, prior to the addition of this subdivision, included statutory increases, decreases, or reductions in the maximum aid level in the county under the Aid to Families with Dependent Children program contained in Chapter 2 (commencing with Section 11200) of Part 3.

(e) In the event that adjustments pursuant to Section 11450.02 are not made, the amounts established pursuant to subdivision (a) may be adjusted to reflect the relative cost of housing in various counties as follows:

(1) Reduced by 1.5 percent in the Counties of Alameda, Contra Costa, Los Angeles, San Diego, Santa Barbara, Sonoma, and Ventura.

(2) Reduced by 3 percent in the Counties of San Luis Obispo, Nevada, Sierra, Monterey, Napa, Solano, Riverside, San Bernardino, Alpine, Amador, Calaveras, Inyo, Kern, Mariposa, Mono, and Tuolumne.

(3) Reduced by 4.5 percent in the Counties of Stanislaus, Imperial, El Dorado, Placer, Sacramento, Yolo, Humboldt, San Benito, Del Norte, Fresno, Lake, Mendocino, Shasta, Trinity, Butte, Merced, Tulare, San Joaquin, Lassen, Modoc, Plumas, Siskiyou, Tehama, Kings, Madera, Colusa, Glenn, Sutter, and Yuba.

SEC. 8. Section 17000.6 of the Welfare and Institutions Code is amended to read:

17000.6. (a) The board of supervisors of any county may adopt a standard of aid below the level established in Section 17000.5 if the Commission on State Mandates makes a finding that meeting the standards in Section 17000.5 would result in a significant financial distress to the county. When the commission makes a finding of significant financial distress concerning a county, the board of supervisors may establish a level of aid which is not less than 40 percent of the 1991 federal official poverty level, which may be further reduced pursuant to Section 17001.5 for shared housing. The commission shall not make a finding of significant financial distress unless the county has made a compelling case that, absent the finding, basic county services, including public safety, cannot be maintained.

(b) Upon receipt of a written application from a county board of supervisors, the commission may make a finding of financial distress for a period of up to 36 months pursuant to regulations that the commission shall adopt, that are necessary to implement this section. The period of reduction may be renewed annually by the commission upon reapplication by the county. Any county that filed an application prior to July 1, 1995, that was approved by the commission on or before August 31, 1995, shall be deemed to have had that application approved for a period of 36 months.

(c) As part of the decisionmaking process, the commission shall notice and hold a public hearing on the county's application or reapplication in the county of application. The commission shall provide a 30-day notice of the hearing in the county of application or reapplication. The commission shall notify the applicant county of its preliminary decision within 60 days after receiving the application and final decision within 90 days after receiving the application. If a county files an application while another county's application is pending, the commission may extend both the preliminary decision period up to 120 days and the final decision period up to 150 days from the date of the application.

(d) This section shall not be construed to eliminate the requirement that a county provide aid pursuant to Section 17000.

(e) Any standard of aid adopted pursuant to this section shall constitute a sufficient standard of aid.

(f) The commission may adopt emergency regulations for the implementation of this section.

SEC. 9. Section 17001.5 of the Welfare and Institutions Code is amended to read:

17001.5. (a) Notwithstanding any other provision of law, including, but not limited to, Section 17000.5, the board of supervisors of each county, or the agency authorized by the county charter, may do any of the following:

(1) (A) Adopt residency requirements for purposes of determining a persons' eligibility for general assistance. Any residence requirement under this paragraph shall not exceed 15 days.

(B) Nothing in this paragraph shall be construed to authorize the adoption of a requirement that an applicant or recipient have an address or to require a homeless person to acquire an address.

(2) (A) Establish a standard of general assistance for applicants and recipients who share housing with one or more unrelated persons or with one or more persons who are not legally responsible for the applicant or recipient. The standard of general assistance aid established pursuant to Section 17000.5 for a single adult applicant

or recipient may be reduced pursuant to this paragraph by not more than the following percentages, as appropriate:

(i) Fifteen percent if the applicant or recipient shares housing with one other person described in this subparagraph.

(ii) Twenty percent if the applicant or recipient shares housing with two other persons described in this subparagraph.

(iii) Twenty-five percent if the applicant or recipient shares housing with three or more other persons described in this paragraph.

(B) Any standard of aid adopted pursuant to this paragraph shall constitute a sufficient standard of aid for any recipient who shares housing.

(C) Counties with shared housing reductions larger than the amounts specified in subparagraph (A) as of August 19, 1992, may continue to apply those adjustments.

(3) Discontinue aid under this part for a period of not more than 180 days with respect to any recipient who is employable and has received aid under this part for three months if the recipient engages in any of the following conduct:

(A) Fails, or refuses, without good cause, to participate in a qualified job training program, participation of which is a condition of receipt of assistance.

(B) After completion of a job training program, fails, or refuses, without good cause, to accept an offer of appropriate employment.

(C) Persistently fails, or refuses, without good cause, to cooperate with the county in its efforts to do any of the following:

(i) Enroll the recipient in a job training program.

(ii) After completion of a job training program, locate and secure appropriate employment for the recipient.

(D) For purposes of this paragraph, lack of good cause may be demonstrated by a showing of any of the following:

(i) The willful failure, or refusal, of the recipient to participate in a job training program, accept appropriate employment, or cooperate in enrolling in a training program or locating employment.

(ii) Not less than three separate acts of negligent failure of the recipient to engage in any of the activities described in clause (i).

(4) Prohibit an employable individual from receiving aid under this part for more than three months in any 12-month period, whether or not the months are consecutive. This paragraph shall apply to aid received on or after the effective date of this paragraph. This paragraph shall apply only to those individuals who have been offered an opportunity to attend job skills or job training sessions.

(5) Notwithstanding paragraph (3), discontinue aid to, or sanction, recipients for failure or refusal without good cause to follow program requirements. For purposes of this subdivision, lack of good cause may be demonstrated by a showing of either (A) willful failure or refusal of the recipient to follow program requirements, or (B) not less than three separate acts of negligent failure of the recipient to follow program requirements.

(b) (1) The Legislative Analyst shall conduct an evaluation of the impact of this section on general assistance recipients and applicants.

(2) The evaluation required by paragraph (1) shall include, but need not be limited to, all of the following:

(A) The impact on the extent of homelessness among applicants and recipients of general assistance.

(B) The rate at which recipients of general assistance are sanctioned by county welfare departments.

(C) The impact of the 15-day residency requirement on applicants or recipients of general assistance, including how often the requirement is invoked.

(3) The Legislative Analyst shall, in the conduct of the study required by this section, consult with the State Department of Social Services, the County Welfare Directors Association, and organizations that advocate on behalf of recipients of general assistance.

(c) A county may provide aid pursuant to Section 17000.5 either by cash assistance, in-kind aid, a two-party payment, voucher payment, or check drawn to the order of a third-party provider of services to the recipient. Nothing shall restrict a county from providing more than one method of aid to an individual recipient.

(d) Paragraphs (1), (3), and (5) of subdivision (a) and all of subdivision (b) of this section shall remain operative until January 1, 1997, and as of that date are inoperative, unless a later enacted statute, which is enacted on or before January 1, 1997, deletes or extends that date.

SEC. 10. Section 17001.51 is added to the Welfare and Institutions Code, to read:

17001.51. (a) A county may require adult applicants and recipients of benefits under the general assistance program to undergo screening for substance abuse when it is determined by the county that there is reasonable suspicion to believe that an individual is dependent upon illegal drugs or alcohol. The county shall maintain documentation of this finding.

(b) A county may require as a condition of aid reasonable participation in substance abuse or alcohol treatment programs for persons screened pursuant to subdivision (a) and professionally evaluated to be in need of treatment, if the services are actually available at no charge to the applicant or recipient.

SEC. 11. Section 17608.05 of the Welfare and Institutions Code is amended to read:

17608.05. (a) As a condition of deposit of funds from the Sales Tax Account of the Local Revenue Fund into a county's local health and welfare trust fund mental health account, the county or city shall deposit each month local matching funds in accordance with a schedule developed by the State Department of Mental Health based on county or city standard matching obligations for the 1990-91 fiscal year for mental health programs.

(b) A county, city, or city and county may limit its deposit of matching funds to the amount necessary to meet minimum federal maintenance of effort requirements, as calculated by the State Department of Mental Health, subject to the approval of the Department of Finance. However, the amount of the reduction permitted by the limitation provided for by this subdivision shall not exceed twenty-five million dollars ($25,000,000) per fiscal year on a statewide basis.

(c) Any county, city, or city and county that elects not to apply maintenance of effort funds for community mental health programs shall not use the loss of these expenditures from local mental health programs for realignment purposes, including any calculation for poverty-population shortfall for clause (iv) of subparagraph (B) of paragraph (2) of subdivision (c) of Section 17606.05.

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIIIB of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CURRENT BILL STATUS

MEASURE : S.B. No. 2055
AUTHOR(S) : Costa (Principal coauthor: Senator Rainey).
TOPIC : Department of the Youth Authority: county payment rates.
+LAST AMENDED DATE : 08/25/1998

TYPE OF BILL :
Inactive
Non-Urgency
Non-Appropriations
Majority Vote Required
Non-State-Mandated Local Program
Fiscal
Non-Tax Levy

LAST HIST. ACT. DATE: 09/21/1998
LAST HIST. ACTION : Chaptered by Secretary of State. Chapter 632, Statutes of 1998.

TITLE : An act to add Section 912.1 to the Welfare and Institutions Code, relating to the Department of the Youth Authority.

COMPLETE BILL HISTORY

BILL NUMBER : S.B. No. 2055
AUTHOR : Costa
TOPIC : Department of the Youth Authority: county payment rates.

TYPE OF BILL :
Inactive
Non-Urgency
Non-Appropriations
Majority Vote Required
Non-State-Mandated Local Program
Fiscal
Non-Tax Levy

BILL HISTORY
1998
Sept. 21 Chaptered by Secretary of State. Chapter 632, Statutes of 1998.
Sept. 19 Approved by Governor.
Sept. 9 Enrolled. To Governor at 1 p.m.
Aug. 28 Senate concurs in Assembly amendments. (Ayes 34. Noes 0. Page 6451.) To enrollment.
Aug. 27 In Senate. To unfinished business.
Aug. 27 Read third time. Passed. (Ayes 70. Noes 2. Page 9182.) To Senate.
Aug. 26 Read second time. To third reading.
Aug. 25 Read second time. Amended. To second reading.
Aug. 24 From committee: Do pass as amended. (Ayes 21. Noes 0.)
Aug. 13 Joint Rule 61(b) (12), (13), & (14) suspended.
July 29 Placed on APPR. suspense file.
July 7 Read second time. Amended. Re-referred to Com. on APPR.
July 6 From committee: Do pass as amended, but first amend, and re-refer to Com. on APPR. (Ayes 8. Noes 0.)
June 24 From committee with author's amendments. Read second time. Amended. Re-referred to committee.
June 11 To Com. on PUB. S.
May 28 In Assembly. Read first time. Held at Desk.
May 28 Read third time. Passed. (Ayes 37. Noes 0. Page 4897.) To Assembly.
May 27 To Special Consent Calendar.
May 26 From committee: Do pass as amended. (Ayes 12. Noes 0. Page 4843.) Read second time. Amended. To third reading.
May 21 From committee with author's amendments. Read second time. Amended. Re-referred to committee.
May 20 Set for hearing May 26.
May 20 Joint Rule 61(b) (8) & (9) suspended.
May 19 Set for hearing May 27.
May 18 Placed on APPR. suspense file.
May 7 Set for hearing May 18.
Apr. 28 Read second time. Amended. Re-referred to Com. on APPR.
Apr. 27 From committee: Do pass as amended, but first amend, and re-refer to Com. on APPR. (Ayes 7. Noes 0. Page 4264.)
Apr. 20 Set for hearing April 21.
Mar. 24 Re-referred to Com. on PUB. S.
Mar. 23 From committee with author's amendments. Read second time. Amended. Re-referred to committee.
Mar. 2 To Com. on RLS.
Feb. 23 Read first time.
Feb. 21 From print. May be acted upon on or after March 23.
Feb. 20 Introduced. To Com. on RLS. for assignment. To print.

BILL NUMBER: SB 2055 CHAPTERED
BILL TEXT

CHAPTER 632
FILED WITH SECRETARY OF STATE SEPTEMBER 21, 1998
APPROVED BY GOVERNOR SEPTEMBER 19, 1998
PASSED THE SENATE AUGUST 28, 1998
PASSED THE ASSEMBLY AUGUST 27, 1998
AMENDED IN ASSEMBLY AUGUST 25, 1998
AMENDED IN ASSEMBLY JULY 7, 1998
AMENDED IN ASSEMBLY JUNE 24, 1998
AMENDED IN SENATE MAY 26, 1998
AMENDED IN SENATE MAY 21, 1998
AMENDED IN SENATE APRIL 28, 1998
AMENDED IN SENATE MARCH 23, 1998

INTRODUCED BY Senator Costa
(Principal coauthor: Senator Rainey)

FEBRUARY 20, 1998

An act to add Section 912.1 to the Welfare and Institutions Code, relating to the Department of the Youth Authority.

LEGISLATIVE COUNSEL'S DIGEST

SB 2055, Costa. Department of the Youth Authority: county payment rates.

Existing law requires each county to pay the state either $150 per month or, in specified instances, an alternative rate for each person committed to the Department of the Youth Authority by a juvenile court in that county. Calculation of the alternative rates paid by the county is based upon specified percentages of the per capita institutional cost of the department.

This bill would define "per capita institutional cost," not to exceed a specified maximum, and require the Department of the Youth Authority to provide counties with monthly statements of the department's per capita institutional cost.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 912.1 is added to the Welfare and Institutions Code, to read:

912.1. (a) The Department of the Youth Authority shall present to each county, not more frequently than monthly, a statement of per capita institutional cost.

(b) As used in this section, "per capita institutional cost" means the lesser of (1) the current per capita institutional cost of the department or (2) the per capita institutional cost the department charged counties pursuant to Section 912.5 as of January 1, 1997.

AUDITOR/CONTROLLER-RECORDER
COUNTY CLERK

COUNTY OF SAN BERNARDINO

AUDITOR/CONTROLLER • 222 West Hospitality Lane, Fourth Floor
San Bernardino, CA 92415-0018 • (909) 387-8322 • Fax (909) 386-8830
RECORDER • COUNTY CLERK • 222 West Hospitality Lane, First Floor
San Bernardino, CA. 92415-0022 • (909) 387-8306 • Fax (909) 386-8940

LARRY WALKER
Auditor/Controller-Recorde
County Clerk

ELIZABETH A. STARBUCK
Assistant Auditor/Controller-Recorder
Assistant County Clerk

PROOF OF SERVICE

I, the undersigned, declare as follows:

I am employed by the County of San Bernardino, State of California. My business address is 222 W. Hospitality Lane, San Bernardino, CA 92415. I am 18 years of age or older.

On March 6, 2007, I faxed the letter dated March 6, 2007 to the Commission on State Mandates in response to Draft Staff Analysis, California Youth Authority, Sliding Scale for Charges 02-TC-01. I mailed it also to the other parties listed on this mailing list.

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 March 6, 2007 at San Bernardino, California.

Wendy D. Sulzmann

WENDY D. SULZMANN

Original List Date: 7/16/2002
Last Updated: 7/7/2006
List Print Date: 02/13/2007
Claim Number: 02-TC-01
Issue: California Youth Authority: Sliding Scale for Charges

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.)

Ms. Bonnie Ter Keurst County of San Bernardino Office of the Auditor/Controller-Recorder 222 West Hospitality Lane San Bernardino, CA 92415-0018	Claimant Tel: (909) 386-8850 Fax: (909) 386-8830
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. David Wellhouse David Wellhouse & Associates, Inc. 9175 Kiefer Blvd, Suite 121 Sacramento, CA 95826	Tel: (916) 368-9244 Fax: (916) 368-5723
Ms. Meg Halloran Office of the Attorney General (D-08) 1300 I Street, 17th Floor P.O. Box 944255 Sacramento, CA 95814	Tel: (916) 323-8549 Fax: (916) 322-2368
Mr. Walter Allen, III California Youth Authority 4241 Williamsbourgh Drive Sacramento, CA 95823	Tel: (916) 262-1480 Fax: (916) 262-1483
Mr. Leonard Kaye, Esq. County of Los Angeles Auditor-Controller's Office 500 W. Temple Street, Room 603 Los Angeles, CA 90012	Tel: (213) 974-8564 Fax: (213) 617-8106

Mr. Allan Burdick MAXIMUS 4320 Auburn Blvd., Suite 2000 Sacramento, CA 95841	Tel: Fax:	(916) 485-8102 (916) 485-0111
Mr. Jim Spano State Controller's Office (B-08) Division of Audits 300 Capitol Mall, Suite 518 Sacramento, CA 95814	Tel: Fax:	(916) 323-5849 (916) 327-0832
Mr. J. Bradley Burgess Public Resource Management Group 1380 Lead Hill Boulevard, Suite #106 Roseville, CA 95661	Tel: Fax:	(916) 677-4233 (916) 677-2283
Ms. Carla Castaneda Department of Finance (A-15) 915 L Street, 11th Floor Sacramento, CA 95814	Tel: Fax:	(916) 445-3274 (916) 323-9584
Ms. Ginny Brummels State Controller's Office (B-08) Division of Accounting & Reporting 3301 C Street, Suite 500 Sacramento, CA 95816	Tel: Fax:	(916) 324-0256 (916) 323-6527
Mr. Glen Everroad City of Newport Beach 3300 Newport Blvd. P. O. Box 1768 Newport Beach, CA 92659-1768	Tel: Fax:	(949) 644-3127 (949) 644-3339
Ms. Beth Hunter Centration, Inc. 8570 Utica Avenue, Suite 100 Rancho Cucamonga, CA 91730	Tel: Fax:	(866) 481-2621 (866) 481-2682
Ms. Marianne O'Malley Legislative Analyst's Office (B-29) 925 L Street, Suite 1000 Sacramento, CA 95814	Tel: Fax:	(916) 319-8315 (916) 324-4281
Ms. Donna Ferebee Department of Finance (A-15) 915 L Street, 11th Floor Sacramento, CA 95814	Tel: Fax:	(916) 445-3274 (916) 323-9584

Mr. Steve Keil
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814-3941

Tel: (916) 327-7523

Fax: (916) 441-5507

EXHIBIT G

DEPARTMENT OF FINANCE
OFFICE OF THE DIRECTOR
ARNOLD SCHWARZENEGGER, GOVERNOR
STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

March 6, 2007

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of February 13, 2007, the Department of Finance has reviewed the draft staff analysis of Claim No. 02-TC-01 "California Youth Authority: Sliding Scale for Charges."

As a result of our review, we concur with the staff analysis recommendation to deny the test claim because the costs associated with the commitment of a juvenile to the California Youth Authority result from a juvenile court mandate and are not subject to the appropriations limit established pursuant to Article XIII B, Section 9 of the California Constitution. Since these costs are not subject to a county's appropriation limit, no reimbursement is required pursuant to Article XIII B, Section 6.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list that accompanied your February 13, 2007 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Carla Castañeda, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,

Thomas E. Dithridge
Program Budget Manager

Attachments

Attachment A

DECLARATION OF CARLA CASTANEDA
DEPARTMENT OF FINANCE
CLAIM NO. CSM—02-TC-01

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

2. We concur that the Welfare and Institutions Code, sections 912, 912.1 &912.5, Statutes 1996, Chapter 6 (SB 681) and Statutes 1998, Chapter 632 (SB 2055) sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

March 6, 2007
at Sacramento, CA

Carla Castaneda
Carla Castaneda

PROOF OF SERVICE

Test Claim Name: California Youth Authority: Sliding Scale for Charges
Test Claim Number: CSM--02-TC-03

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 12 Floor, Sacramento, CA 95814.

On March 6, 2007, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 12 Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Ms. Susan Geanacou
Department of Finance
915 L Street, Suite 1190
Sacramento, CA 95814

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

D-08
Ms. Meg Halloran
Office of the Attorney General
1300 I street, 17th Floor
P.O. Box 944255
Sacramento, CA 95814

Wellhouse and Associates
Attention: David Wellhouse
9175 Kiefer Boulevard, Suite 121
Sacramento, CA 95826

Mr. Walter Allen, III
California Youth Authority
4241 Williamsbourgh Drive
Sacramento, CA 95823

B-08
Mr. Jim Spano
State Controller's Office
Division of Audits
300 Capitol Mall, Suite 518
Sacramento, CA 95814

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

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

Ms. Beth Hunter
Centration, Inc.
8570 Utica Avenue, Suite 100
Rancho, Cucamonga, CA 91730

A-15
Ms. Donna Ferebee
Department of Finance
915 L Street, 12th Floor
Sacramento, Ca 95814

A-15
Ms. Carla Castaneda
Department of Finance
915 L Street, 12th Floor
Sacramento, CA 95814

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

Mr. J. Bradley Burgess
Public Resource Management Group
1380 Lead Hill Blvd., Suite 106
Roseville, CA 95661

Mr. Glen Everroad
City of Newport Beach
3300 Newport Blvd.
P O Box 1768
Newport Beach, CA 92659-1768

Mr. Steve Keil
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814-3941

B-29
Ms. Marianne O'Malley
Legislative Analyst's Office
925 L Street, Suite 1000
Sacramento, CA 95814

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 March 6, 2007 at Sacramento, California.

Ann Slaughter

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

April 10, 2007

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

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

RE: Revised Draft Staff Analysis and Hearing Date
California Youth Authority: Sliding Scale for Charges, 02-TC-01
Welfare and Institutions Code Sections 912, 912.1, and 912.5
Statutes 1996, Chapter 6; Statutes 1998, Chapter 632
County of San Bernardino, Claimant

Dear Ms. Ter Keurst:

The revised 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 Tuesday, **May 1, 2007**. 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 **Thursday, May 31, 2007**, at 9:30 a.m., in Sacramento, CA. The final staff analysis will be issued on or about May 17, 2007. 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

Enclosures

ITEM ____

TEST CLAIM
REVISED DRAFT STAFF ANALYSIS

Welfare and Institutions Code
Sections 912, 912.1 & 912.5

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

California Youth Authority: Sliding Scale for Charges

02-TC-01

County of San Bernardino, Claimant

EXECUTIVE SUMMARY

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

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

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

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

Conclusion

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

Recommendation

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

STAFF ANALYSIS

Claimant

County of San Bernardino

Chronology

07/05/02	County of San Bernardino ("Claimant") filed test claim with the Commission on State Mandates ("Commission")
07/15/02	Commission determined that test claim filing was complete and issued notice that comments were due on August 15, 2002
08/16/02	The Department of Finance submitted comments on test claim with the Commission
08/16/02	The California Department of Justice ("DOJ"), representing the California Department of the Youth Authority ("CYA"), submitted comments on the test claim with the Commission
09/06/02	Claimant requested an extension of time to file rebuttal comments on the test claim
09/09/02	Commission granted extension to November 15, 2002
11/20/02	Claimant requested an additional extension of time to file rebuttal comments
11/22/02	Commission granted extension to December 17, 2000
01/22/03	Claimant submitted rebuttal comments to the state agency comments on the test claim with the Commission
02/13/07	Commission staff issued draft staff analysis
03/06/07	Claimant submitted comments on the draft staff analysis
03/08/07	The Department of Finance submitted comments on the draft staff analysis
04/10/07	Commission staff issued revised draft staff analysis

Background

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

CYA is the state agency responsible for protecting society from the criminal and delinquent behavior of juveniles.[2] The department operates training and treatment programs that seek to

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

educate, correct, and rehabilitate youthful offenders rather than punish them.[3] It is charged with operating 11 institutions and supervising parolees through 16 offices located throughout the state.[4] Individuals can be committed to the CYA by the juvenile court or on remand by the criminal court,[5] or returned to CYA by the Youthful Offender Parole Board.[6] Those juveniles committed to CYA are assigned a category number, ranging from 1 to 7, based on the seriousness of the offense committed; 1 being the most serious and 7 being the least serious.[7]

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

The juvenile court's jurisdiction extends to persons under 18 when the person violates federal, state or local criminal law;[11] however, certain crimes by persons who are 14 or older can be tried by the criminal courts.[12] With some exceptions, the juvenile court may retain jurisdiction over any person who is found to be a ward of that court until the ward attains the age of 21.[13]

If the juvenile court decides that it has jurisdiction of a juvenile who violated a criminal law, the judge – taking into account the recommendations of county probation department staff[14] – decides whether to make the offender a ward of the court[15] and ultimately determines the

---

[2] Welfare and Institutions Code section 1700; according to the Legislative Analyst's Office, juveniles committed to CYA are generally between the ages of 12 and 24, and the average age is 19. (Legislative Analyst's Office, Analysis of the 1999-2000 Budget Bill, Criminal Justice Departmental Issues, page 4.)

[3] Welfare and Institutions Code section 1700.

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

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

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

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

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

[9] Welfare and Institutions Code section 245.

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

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

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

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

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

[15] Welfare and Institutions Code section 725.

appropriate placement and treatment for the juvenile. Placement decisions are based on such factors as the age of the juvenile, circumstances and gravity of the offense committed, criminal sophistication, the juvenile's previous delinquent history,[16] and the county's capacity to provide treatment.[17]

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

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

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

Thus, for several decades, each county was responsible to pay the CYA $25 per month for each person committed to the CYA. Statutes 1961, chapter 1616, renumbered Welfare and

---

[16] Welfare and Institutions Code section 725.5.

[17] Test Claim, page 3.

[18] Welfare and Institutions Code section 726.

[19] Welfare and Institutions Code section 727.

[20] Welfare and Institutions Code section 740.

[21] Welfare and Institutions Code section 730.

[22] Welfare and Institutions Code section 731.

[23] Welfare and Institutions Code section 734.

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

Institutions Code section 869.5 to section 912; that section, as well as sections 912.1 (as added in 1998) and 912.5 (as added in 1996), are the subject of this test claim.

Test Claim Statutes

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

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

> SB 681 [Stats. 1996, ch. 6] imposed a fee schedule upon counties for "low level" offenders sent to the California Youth Authority (CYA). The intent of the legislation was to provide a monetary disincentive for sending "low level" juvenile offenders to the CYA. Clearly, the Legislature wanted counties to treat, punish and house these offenders at the local level.[31]

With the enactment of Statutes 1996, chapter 6, the Legislature also provided $32.7 million in funding to assist the counties in the operation of local juvenile facilities,[32] established the Juvenile Challenge Grant program allocating $50 million to fund a five-year program cycle for 29 different community-based demonstration programs targeting juvenile offenders,[33] and initiated the Repeat Offender Prevention Project (ROPP) with another $3.3 million for seven

---

[26] Welfare and Institutions Code section 912.

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

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

[29] Welfare and Institutions Code section 912.1.

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

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

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

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

counties to identify and intervene at an early stage with potential repeat offenders.[34] The Challenge Grant and ROPP programs have received additional funding to continue in subsequent years. In 1998, $100 million was appropriated by the state to support renovation, reconstruction, and deferred maintenance of county juvenile facilities.[35] Thus, the Legislature has provided and continues to provide significant funding for assistance to counties in providing such locally-based programs.[36]

Claimant's Position

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

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

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

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

Position of Department of Finance

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

- Payment of the additional sliding scale fee merely reimburses the state for a portion of the costs of housing youthful offenders who cannot be held at county facilities.

---

[34] 1996-97 Budget Act.

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

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

Therefore, the test claim statutes do not result in a shift of financial responsibility from the state to local governments.

- Although the test claim statutes do set a higher fee related to the housing and treatment of youthful offenders by the state, the statutes do not require a "new program or higher level of service" to be implemented by the county, as the payment of the fee is related to a service that is being provided by the state and not by the county.
- The county could avoid payment of the fee by providing placement options for less serious youthful offenders within the county. Payment of any fee is predicated on the county not being able to house the youthful offender within its own facilities and hence the court committing the offender to confinement in a state facility.

The Department of Finance filed comments agreeing with the first draft staff analysis to deny the test claim.

Position of California Youth Authority

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

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

of construction of such centers, and *reimburses* counties up to $200 per month per ward. (Welf. & Inst. Code, §§ 1859, 1860.)

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[37] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[38] "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."[39, 40]

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.[41] 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.[42]

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.[43] To

---

[37] 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."

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

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

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

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

[42] *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*).

[43] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (*County of Los Angeles*); *Lucia Mar, supra,* 44 Cal.3d 830, 835).

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

In addition, effective November 2, 2004, article XIII B, section 6, subdivision (c), also specifically defines a "mandated new program or higher level of service" as including "a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility."[46]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[47]

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.[48] 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."[49]

The analysis addresses the following issues:

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

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

Article XIII B, section 6 was adopted in recognition of the state constitutional restrictions on the powers of local government to tax and spend, and requires a subvention of funds to reimburse local agencies when the state imposes a new program or higher level of service upon those agencies. However, article XIII B further provides that certain appropriations shall not be subject to the limitations otherwise imposed by articles XIII A and XIII B. One such

---

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

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

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

[47] *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.

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

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

exclusion to those limitations is set forth in article XIII B, section 9, subdivision (b): "Appropriations required to comply with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly."

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

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

> Article XIII B was adopted less than 18 months after the addition of article XIII A to the state Constitution, and was billed as "the next logical step to Proposition 13" [article XIII A]. While article XIII A was generally aimed at controlling ad valorem property taxes and the imposition of new "special taxes" [citations], the thrust of article XIII B is toward placing certain limitations on the growth of appropriations at both the state and local government level; in particular, article XIII B places limits on the authorization to expend the "proceeds of taxes." (§ 8, subd. (c).)
>
> Article XIII B provides that beginning with the 1980-1981 fiscal year, "an appropriations limit" will be established for each "local government." ... (§ 8, subd. (h).) No "appropriations subject to limitation" may be made in excess of this appropriations limit, and revenues received in excess of authorized appropriations must be returned to the taxpayers within the following two fiscal years. (§ 2.)[50]

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

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

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

expenditure for additional services or which unavoidably make the providing of existing services more costly." (§ 9, subd. (b) ....)[51]

Thus, article XIII B, section 6 requires state reimbursement to local governments in view of taxing and spending limits, but section 9 provides exclusions to the spending limits. Although the courts have not dealt with the *court* mandate exclusion identified in section 9, subdivision (b), the *federal* mandate exclusion from that subdivision was addressed in *City of Sacramento*. In that case, the court found that a state statute extending mandatory unemployment insurance coverage to local government employees imposed "federally mandated" costs on local agencies and not state-mandated costs; hence, local agencies subject to the new statutory requirements may tax and spend as necessary subject to superseding constitutional ceilings on taxation by state and local governments to meet the expenses required to comply with the legislation.[52] Because the plain language of article XIII B, section 9, subdivision (b), also excludes court mandates from the spending limit, these principles must, by extension, apply to court mandates. And, as the courts have made clear, a local agency cannot accept the benefits of being exempt from appropriations limits while asserting an entitlement to reimbursement under article XIII B, section 6.[53]

Since the sliding scale fees are triggered by a commitment to CYA, and that commitment is mandated by the juvenile court,[54] the court's action might be viewed as the actual cause for the increased costs. Claimant asserts, however, that the mandated costs cited in the test claim did not arise from a mandate of the courts, but rather the Legislature, when it enacted the sliding scale fees. Noting that Welfare and Institutions Code section 869.5 established the longstanding requirement for the county to pay the state for each person committed to CYA, claimant argues that "[t]he sliding scale costs were not the result of a required expenditure for additional services, nor were they established because the provisions of the mandates of the courts made the existing services more costly."[55]

Upon further consideration, staff agrees. The plain language of section 9 references court and federal mandates that impose additional expenditures on a local agency, without discretion. The Supreme Court in *City of Sacramento* addressed the issue of "discretion" in the context of such a federal mandate. There, the court noted it was ambiguous whether the *state* had discretion, in light of the federal law, to require local agencies to provide unemployment insurance to their employees. After making a full analysis of the federal program, the court found that "certain regulatory standards imposed by the federal government under 'cooperative federalism' schemes are coercive on the states and localities in every practical sense,"[56] and concluded that the unemployment insurance requirements were indeed a federal mandate within the section 9, subdivision (b), exclusion.

---

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

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

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

[54] Welfare and Institutions Code section 731.

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

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

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

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

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

Courts have recognized the purpose of article XIII B, section 6 is "to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill-equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[57] A test claim statute may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task,[58] and the required activity or task is new, constituting a "new program," or it creates a "higher level of service" over the previously required level of service.[59]

However, in light of the intent of article XIII B, section 6, a reimbursable state-mandated program has been found to exist in some instances when the state shifts fiscal responsibility for a mandated program to local agencies but no actual activities have been imposed by the test claim statute or executive order.[60] Moreover, as of November 3, 2004, article XIII B, section 6, subdivision (c), of the California Constitution defines a "mandated new program or higher level of service" as including "a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a *required program* for which the State previously had complete or partial financial responsibility."[61] (Emphasis added.)

---

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

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

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

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

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

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

Although the decision to commit a juvenile offender to the CYA is ultimately made by the juvenile court, that decision is based on a variety of factors including information and recommendations of the county probation department.[62] Placement decisions are based on such factors as the age of the juvenile, circumstances and gravity of the offense committed, criminal sophistication, the juvenile's previous delinquent history,[63] and the county's capacity to provide treatment.[64]

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

> The information contained in a properly prepared social study report is central to the juvenile court's dispositional decision. ... The social study should also include 'an exploration of and recommendation to wide range of alternative facilities potentially available to rehabilitate the minor." [citations omitted.] Implicit in this requirement appears to be some insight into the minor's problems in order for the probation officer to make a recommendation with rehabilitation in mind.
>
> In arriving at its dispositional decision, the juvenile court must also have in mind the provisions of [Welf. & Inst. Code] section 734 and section 202, subdivision (b) as well as the command of *In re Aline D.* (1975) 14 Cal.3d 557 [ ], which requires proper consideration be given to less restrictive programs before a commitment to CYA is made.[65]

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

---

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

[63] Welfare and Institutions Code section 725.5.

[64] Test Claim, page 3.

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

Furthermore, the CYA stated in its comments that the test claim statutes do not eliminate a juvenile court's discretion to choose dispositions other than CYA for minors adjudicated to come within the terms of Welfare and Institutions Code section 602, nor do they *require* CYA commitments for minors under any circumstances. CYA further notes that "Welfare and Institutions Code section 731(a) makes it clear that a CYA commitment is only one of several dispositions available to a juvenile court as to minors who are found to have committed criminal offenses."[66] The CYA cites additional options available to the court, including placing the ward under the supervision of the probation officer who exercises discretion in selecting the appropriate placement of the minor, and placing wards eligible for probation into a neighborhood youth correction center in which the CYA provides monetary assistance.[67]

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

> SB 681 [Stats. 1996, ch. 6] imposed a fee schedule upon counties for "low level" offenders sent to the California Youth Authority (CYA). The intent of the legislation was to provide a monetary disincentive for sending "low level" juvenile offenders to the CYA. Clearly, the Legislature wanted counties to treat, punish and house these offenders at the local level.[68]

The Legislative Analyst's Office provided the following pertinent information regarding the test claim statutes:

> Legislation that took effect in 1997 to substantially increase the fees paid by counties for committing less serious offenders to the [CYA] appears to be having its desired effects. Admissions in less serious offense categories are down significantly, and counties are moving to increase their menu of local programming options for these offenders. County efforts in this direction have been aided by the availability of over $700 million in state and federal funds for juvenile probation programs. As a result of these successes, we recommend that the state maintain the sliding scale structure.[69]
>
> ... Prior to the passage of the legislation, counties had a strong fiscal incentive to send offenders to the CYA because they only paid a nominal $25 monthly fee per ward. As a result, [CYA] commitments, while often more expensive than other sanction and treatment options, were far less expensive from the counties' perspective.

---

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

[67] *Ibid.*

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

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

> While some counties developed their own locally based programs despite these incentives, other counties appeared to be over-relying on [CYA] commitments. This disparate usage of the [CYA] was reflected in the widely ranging first admission rates across counties. ...
>
> The problems with the prior fee structure were threefold. First, a large body of research on juvenile justice programs suggests that most juvenile offenders can and should be handled in locally based programs. In part, this is because locally based programs can work more closely with the offender, his family, and the community. Second, these locally based programs tend to be less expensive than a [CYA] commitment, which meant that state funding was encouraging counties to use a more expensive as well as less effective sanctioning option for many offenders. Finally, taxpayers in those counties with lower admissions rates for less serious offenders were paying not only for their own locally based options, but also for a share of the costs created by those other counties with higher [CYA] admissions rates. In response to these shortcomings, the Legislature acted to align the fiscal incentives faced by counties with more cost-effective policies, thereby encouraging counties to invest in preventive and early intervention strategies.[70]
>
> ... In the two years since the sliding scale fee took effect, it has significantly reduced the numbers of first admissions to the [CYA]. Overall, first admissions in 1997 were 30 percent lower than in 1996. Admissions data for 1998 continue the 1997 trends. ...
>
> Not only have overall admissions [to the CYA] declined, but admissions for the least serious offenders have dropped significantly. ... [F]irst admissions for the more serious offenses declined by 15 percent, while admissions in the less serious offense categories declined by 41 percent. This change suggests that counties have responded to the sliding scale fees, but have not been deterred by the increase in the monthly fee from committing more serious offenders when appropriate.[71, 72]

In the case of *Lucia Mar*, the Supreme Court recognized that a "new program or higher level of service" within the meaning of article XIII B, section 6 could include a shift in costs from the state to school districts for the purpose of funding state schools for the handicapped,[73] and remanded the case to the Commission for further findings regarding whether the school districts were "mandated" by the statute in question to make the contributions.[74] Article

---

[70] *Id.* at page 10.

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

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

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

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

XIII B, Section 6, subdivision (c), also requires reimbursement for shift of cost cases if the program is "required." The question of whether a statute imposes a mandate was addressed in *Kern High School Dist.* There, the Supreme Court held that the requirements imposed by a test claim statute are not state-mandated if the claimant's participation in the underlying program is voluntary.[75] The court stated:

> [T]he core point . . . is that activities undertaken at the option or discretion of a local governmental entity (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate and hence do not require reimbursement of funds – even if the local entity is obliged to incur costs as a result of its discretionary decision to participate in a particular program or practice. [Citing *City of Merced v. State of California* (1984) 153 Cal.app.3d 777, 783.][76]

Here, as noted above, there is no legal compulsion because no state law requires the counties or the juvenile courts to commit category 5 through 7 juvenile offenders to the CYA, and the juvenile court's decision is based on recommendations from the county probation department which consider, among other things, available treatment options within that county. There is ample evidence in the record, particularly from the Legislative Analyst, and in the law indicating that counties do in fact have discretion to effectuate placement options other than CYA for these juvenile offenders.

The cases have further found that, in the absence of strict legal compulsion, a local agency might be "practically" compelled to take an action thus triggering costs that would be reimbursable. In *Kern High School Dist.*, the court stated that although it analyzed the legal compulsion issue, the court found it "*unnecessary* in this case to decide whether a finding of legal compulsion is *necessary* in order to establish a right to reimbursement under article XIII B, section 6, because we conclude that *even if there are some circumstances in which a state mandate may be found in the absence of legal compulsion*, the circumstances presented in this case do not constitute such a mandate."[77] (Emphasis added.) The court did provide language addressing what might constitute *practical* compulsion, for instance if the state were to impose a substantial penalty for nonparticipation in a program, as follows:

> Finally, we reject claimants' alternative contention that even if they have not been *legally* compelled to participate in the underlying funded programs, as a *practical* matter they have been compelled to do so and hence to incur notice- and agenda-related costs. Although we do not foreclose the possibility that a reimbursable state mandate might be found in circumstances short of legal compulsion — for example, if the state were to impose a substantial penalty (independent of the program funds at issue) upon any local entity that declined to participate in a given program — claimants here faced no such practical compulsion. Instead, although claimants argue that they have had "no true option or choice" other than to

---

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

[76] *Id.* at page 742.

[77] *Id.* at page 736.

> participate in the underlying funded educational programs, the asserted compulsion in this case stems only from the circumstance that claimants have found the benefits of various funded programs "too good to refuse" — even though, as a condition of program participation, they have been forced to incur some costs. On the facts presented, the cost of compliance with conditions of participation in these funded programs does not amount to a reimbursable state mandate. (Emphasis in original.)[78]

The court further concluded that, unlike the circumstances in a previous case which found a state mandate existed,[79] the *Kern* claimants "have not faced 'certain and severe … penalties' such as 'double … taxation' and other 'draconian' consequences."[80]

The 2004 *San Diego Unified School Dist.* case further clarified the Supreme Court's views on the practical compulsion issue. In that case, the test claim statutes required K-12 school districts to afford to a student specified hearing procedures whenever an expulsion recommendation was made and before a student could be expelled.[81] The Supreme Court held that hearing costs incurred as a result of statutorily required expulsion recommendations, e.g., where the student allegedly possessed a firearm, constituted a reimbursable state-mandated program.[82] Regarding expulsion recommendations that were discretionary on the part of the district, the court acknowledged the school district's arguments, stating that in the absence of legal compulsion, compulsion *might* nevertheless be found when a school district exercised its discretion in deciding to expel a student for a serious offense to other students or property, in light of the state constitutional requirement for K-12 school districts to provide safe schools.[83] Ultimately, however, the Supreme Court decided the discretionary expulsion issue on an alternative basis.[84]

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

---

[78] *Id.* at 731.

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

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

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

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

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

[84] *Id.* at page 888.

Citing *Lucia Mar*, claimant argues that whenever the state through legislative or regulatory action "drastically changes the basis for 'shared costs' that shifts those costs to local agencies, it has created a new program or higher level of service that requires reimbursement"[85] under article XIII B, section 6. However, as noted in that case and in section 6, subdivision (c), the program in question must be *state mandated*. Because the additional sliding scale costs for CYA commitments of category 5 through 7 juvenile offenders *only* result from an underlying discretionary decision by the county to commit such juveniles to the CYA, staff finds the test claim statutes do not mandate a "new program or higher level of service" within the meaning of article XIII B, section 6.

Conclusion

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

Recommendation

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

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

Commission on State Mandates

Original List Date: 7/16/2002
Last Updated: 7/7/2006
List Print Date: 04/10/2007
Claim Number: 02-TC-01
Issue: California Youth Authority: Sliding Scale for Charges

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.)

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

Claimant

Tel: (909) 386-8850

Fax: (909) 386-8830

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. David Wellhouse
David Wellhouse & Associates, Inc.
9175 Kiefer Blvd, Suite 121
Sacramento, CA 95826

Tel: (916) 368-9244

Fax: (916) 368-5723

Ms. Meg Halloran
Office of the Attorney General (D-08)
1300 I Street, 17th Floor
P.O. Box 944255
Sacramento, CA 95814

Tel: (916) 323-8549

Fax: (916) 322-2368

Mr. Walter Allen, III
California Youth Authority
4241 Williamsbourgh Drive
Sacramento, CA 95823

Tel: (916) 262-1480

Fax: (916) 262-1483

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

Tel: (213) 974-8564

Fax: (213) 617-8106

Mr. Allan Burdick
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841
Tel: (916) 485-8102
Fax: (916) 485-0111

Mr. Jim Spano
State Controller's Office (B-08)
Division of Audits
300 Capitol Mall, Suite 518
Sacramento, CA 95814
Tel: (916) 323-5849
Fax: (916) 327-0832

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. Carla Castaneda
Department of Finance (A-15)
915 L Street, 11th Floor
Sacramento, CA 95814
Tel: (916) 445-3274
Fax: (916) 323-9584

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

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

Ms. Beth Hunter
Centration, Inc.
8570 Utica Avenue, Suite 100
Rancho Cucamonga, CA 91730
Tel: (866) 481-2621
Fax: (866) 481-2682

Ms. Marianne O'Malley
Legislative Analyst's Office (B-29)
925 L Street, Suite 1000
Sacramento, CA 95814
Tel: (916) 319-8315
Fax: (916) 324-4281

Ms. Donna Ferebee
Department of Finance (A-15)
915 L Street, 11th Floor
Sacramento, CA 95814
Tel: (916) 445-3274
Fax: (916) 323-9584

Mr. Steve Keil
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814-3941

Tel: (916) 327-7523
Fax: (916) 441-5507

EXHIBIT I

Board of Corrections (5430)

The state's Board of Corrections oversees the operations of the state's 460 local jails. It does this by inspecting facilities biennially, establishing various standards, including staff training, and administering state and federal funds for jail and juvenile detention facility construction. In addition, the board maintains data on the state's jails and juvenile halls. The board also sets standards for, and inspects, local juvenile detention facilities, and is responsible for the administration of two juvenile justice grant programs.

The budget proposes expenditures of $144 million in 1999-00 ($71 million from the General Fund). This is about $74.8 million, or 108 percent, more than estimated current-year expenditures. The increase is due to (1) the implementing of several law enforcement and juvenile justice local assistance grant programs authorized by the Legislature last year and (2) providing state and federal prison construction funds to jails and local juvenile detention facilities

Board Responsibilities Have Increased Dramatically

The Board of Corrections has been assigned responsibility for distributing almost $200 million in local assistance funds in the current and budget years. These funds are for grants for juvenile crime programs, grants to counties to reduce the population of mentally ill offenders in the jails, and grants to counties for jail construction and juvenile facility construction and renovation. The board is requesting 10.1 positions in the current year and 13.1 positions in the budget year to administer these grants. The Governor's budget does not propose funds to expand the programs in the budget year, contrary to statements of legislative intent included in the measure that established and funded several of the programs.

The proposed 1999-00 budget for the board is more than double its expected expenditures for the current year, and the current year expenditures are estimated to be 72 percent higher than in 1997-98. This dramatic rate of increase reflects the significant increases in responsibilities which the board has absorbed in recent years. The majority of these new funds have been appropriated to the board to distribute to counties for a variety of new grant programs related to juvenile justice and local correctional facility construction, renovation, and management.

Juvenile Justice Grant Programs. The board is currently administering two juvenile justice grant programs--the Repeat Offender Prevention Program (ROPP) and the Juvenile Crime Enforcement and Accountability Challenge Grant--which distribute state funds to county probation departments for juvenile justice-related demonstration programs. The ROPP program was initiated in the *1996-97 Budget Act* with an appropriation of $3.3 million dollars for seven counties (Fresno, Humboldt, Los Angeles, Orange, San Diego, San Mateo, and Solano). The program is based on research conducted by the Orange County probation department indicating that a significant proportion of juvenile crime is committed by a chronic 8 percent of the offender population. Each of the projects funded by this program is aimed at identifying and intervening with this population at an early stage (at the beginning or before the onset of their offending). The 1997-98 and 1998-99 budgets provided additional funds to continue the program until 2001 ($3.4 million and $3.8 million, respectively), and the 1998-99 budget added the City and County of San Francisco as a grantee. The board is requesting a partial position in the current and budget years to handle the workload associated with the addition of San Francisco and the extension of the program

The Juvenile Challenge Grant program was established by Chapter 133, Statutes of 1996 (SB 1760, Lockyer) with an initial *1996-97 Budget Act* appropriation of $50 million to fund a five-year program cycle. This first round of funds was distributed to 14 counties to fund 29 different community-based demonstration programs targeting juvenile offenders. The programs were selected through a competitive process in which 52 counties applied. In 1998-99, the Challenge Grant program received an additional $60 million which will be distributed again on a competitive basis very similar to that employed for the first round. The board has requested position authority for three positions in the current year, and 3.9 positions in the budget year to administer this program. The positions would be supported by the funds previously appropriated to the board for administration of the grants.

The *1999-00 Governor's Budget* includes no additional funds for the Challenge Grants. However, Chapter 325,

Statutes of 1998 (AB 2261, Aguilar) expressed the Legislature's intent to appropriate at least an additional $25 million annually to the program through 2001-02. During the first round of Challenge Grant funding, the board received proposals requesting over $137 million for the available pool of $50 million. The board anticipates that the deman for Challenge Grant funds will again far outstrip the $60 million currently available. Awards for the second round o the Challenge Grants will be made in May 1999.

Both of these programs require that the recipient counties undertake a rigorous quantitative evaluation designed to measure the outcomes of the various programs. The final report for the first round of the Challenge Grant program is due to the Legislature by March 1, 2001, and the final report on the ROPP is due on December 31, 2001. The findings of these reports will be important as the Legislature considers the proper role for the state in funding juvenile justice programs.

Mentally Ill Offender Crime Reduction Grant Program . The Mentally Ill Offender Crime Reduction Grant program is designed as a demonstration grant project to aid counties in finding new collaborative strategies for more effectively responding to the mentally ill offenders who cycle through already overcrowded county jails. Chapter 501, Statutes of 1998 (SB 1485, Rosenthal) created the program, and requires the board to develop an evaluation design that will assess the effect of the program on crime reduction, overcrowding in jails, and local criminal justice costs.

Chapter 502, Statutes of 1998 (SB 2108, Vasconcellos) appropriated $27 million for the program, and Chapter 501 expressed the Legislature's intent to appropriate an additional $25 million for the program in the budget year. However, the Governor's budget does not include any additional funds for this program.

The distribution of the grant funds will be on a competitive basis, and includes a planning grant process that allows counties to receive funds in order to assess their needs and develop programming proposals. Because 45 counties applied for and received initial small planning grants and at least two others appear likely to apply for demonstration grants, it is likely that the demand for the demonstration grant funds will outstrip the $23.7 million currently available. Grant awards for this program will be made in May 1999. The board is requesting one position in the current and budget years to administer this program.

Violent Offender Incarceration/Truth-in-Sentencing Grant. The Violent Offender Incarceration/Truth-in-Sentencing (VOI/TIS) Grant Program is a federally funded program that distributes money to states to construct or upgrade state and local correctional facilities. Under this program, states can spend up to 15 percent of their grant for local adult or juvenile facility construction. However, if the state declares that there are exigent circumstances, a state can use up to the entire amount for local juvenile facility construction.

In 1998, the Legislature enacted Chapter 339 (AB 2793, Migden) which declared exigent circumstances, awarded all of the 1998-99 VOI/TIS funds to counties for adult jail and juvenile detention facility construction, and announced the Legislature's intent to distribute the 1999-00 VOI/TIS funds in the same manner--15 percent for jail construction, and 85 percent for juvenile facility construction. However, the Governor's budget does not include any proposal to expend the 1999-00 federal funds. The board estimates that by 2002, the counties will need to spend an additional $735 million for local adult and juvenile facilities. The board will award the 1998-99 funds in May 1999. The budget includes three positions in the current year and 3.9 positions in the budget year to administer these funds.

Juvenile Hall/Camp Restoration Program. Because the need to restore and maintain existing juvenile facilities is at least as great as the need to expand existing bed capacity, the Legislature enacted Chapter 499, Statutes of 1998 (AB 2796, Wright). This measure appropriated $100 million in General Fund monies to support renovation, reconstruction, and deferred maintenance for juvenile halls and camps. The board will distribute these funds on a competitive basis in conjunction with the federal VOI/TIS funds available for juvenile facilities. Funds for this program are also expected to be awarded in May 1999. The board is requesting three positions in the current year and 3.9 positions in the budget year to administer these funds.

Board of Prison Terms (5440)

The Board of Prison Terms (BPT) is composed of nine members appointed by the Governor and confirmed by the Senate for terms of four years. The BPT considers parole release for all persons sentenced to state prison under the indeterminate sentencing laws. The BPT may also suspend or revoke the parole of any prisoner under its jurisdiction who has violated parole. In addition, the BPT advises the Governor on applications for clemency and helps screen prison inmates who are scheduled for parole to determine if they are sexually violent predators subject to potential civil commitment.

The proposed *1999-00 Governor's Budget* for the support of the BPT is $15.5 million from the General Fund. This is an increase of $778,000, or 5.3 percent, above estimated expenditures for the current year. The proposed current- and budget-year increases are primarily the result of the steadily increasing workload for hearing cases of parole violators and indeterminately sentenced prison inmates. In addition, the budget requests additional staff and contract funding related to expansion of the state Mentally Disordered Offender (MDO) program. This program commits prison inmates who are seriously mentally ill to state mental hospitals (we discuss this proposal below).

Rate Increases for Evaluators Should Be Rejected

We recommend approval of the Board of Prison Terms (BPT) request for $520,000 for two new staff positions and additional contract funding related to expansion of a state program to commit mentally disordered offenders nearing the end of their prison terms to state mental hospitals. However, we recommend reducing by $100,000 the funding proposed for rate increases to private psychiatrists and psychologists paid to evaluate these offenders because BPT's concern that it is being outbid for these services by the Department of Mental Health (DMH) is better addressed by granting part of the BPT rate increase, but also lowering DMH's rates to equal the new BPT rates.

We further recommend that DMH report at budget hearings on where and how DMH will hold the additional mentally disordered offenders resulting from this expansion of the commitment process. (Reduce Item 5440-001-0001 by $100,000 and reduce Item 4440-001-0001 by $137,000.)

The BPT Role in Commitment Process. The MDO program was established by Chapters 1418 and 1419, Statutes of 1985 (SB 1054, Lockyer and SB 1296, McCorquodale) to commit mentally ill prison inmates to state mental hospitals. To be deemed an MDO, an inmate must have committed one of a number of specified violent crimes, be nearing release on parole, have a severe mental disorder, and pose a substantial danger of causing physical harm to others if released to the community. Also, in order to be committed as an MDO, the offender must have been receiving mental health treatment in state prison for at least 90 days in the year prior to his or her anticipated release date.

State law provides that BPT must certify that an inmate being considered for an MDO commitment meets the necessary criteria. The BPT schedules and coordinates the evaluation of such offenders by psychiatrists or psychologists representing DMH and the California Department of Corrections (CDC). If the DMH and CDC evaluators disagree about whether an inmate is eligible for an MDO commitment, state law requires BPT to solicit the opinion of two other, independent evaluators to resolve the matter. Both must concur in an MDO commitment if it is to proceed; otherwise, the offender would likely be released on parole.

MDO Workload Increasing. The BPT has requested a General Fund augmentation of $620,000 to hire a staff psychiatrist and office technician and for additional contract funding to help address an increase in its projected MDO workload. In response to recent court decisions, many more inmates are now receiving ongoing mental health treatment at CDC institutions, with the result that the number of offenders approaching their release dates and potentially eligible for MDO commitments is growing significantly. Accordingly, CDC and DMH also propose to increase their efforts to commit more such offenders to state mental hospitals as MDOs instead of permitting their release to the community on parole.

The BPT has requested the two new positions to coordinate this expansion of MDO-related activities. It has also requested the contract funding necessary for it to address the resulting increase in its evaluation and hearing caseload.

Proposed Rates Should Be Reduced. Our analysis of DMH data documenting recent MDO caseload trends demonstrates that the $177,000 sought for the additional staffing and $125,000 sought for increases in its hearing and evaluation workload are justified. However, we have concluded that an additional $318,000 sought by BPT to increase the rate it pays psychiatrists and psychologists to conduct MDO evaluations is not justified and should be reduced by $100,000.

The BPT based its request on the increasing difficulty it has experienced in finding clinical professionals to conduct its evaluations. According to BPT, this difficulty stems from the fact that the psychiatrists and psychologists who have been performing this type of work have been offered higher rates for similar work by DMH. The BPT noted that, while it has been paying a flat rate of $320 per MDO evaluation, DMH has been paying $614 for MDO evaluations and paying an average of $1,500 for evaluation of offenders being considered for commitments under the Sexually Violent Predator program. The BPT has requested funding sufficient to raise its rates to $568 per evaluation to reduce the rate disparity.

The BPT's concerns about the disparity in rates appears to be valid. However, we believe a better approach to reducing the gap would be to increase the rate BPT pays for MDO evaluations to $490 (an increase of more than 50 percent), and to reduce DMH rates to $490. This change would restore BPT's basic rates to the $400 level they were at until a 1993 budget cut, and additionally provide the same $90 allowance for travel and court-appearance time received by DMH contractors. This approach would reduce the BPT budget request by $100,000 and permit a further $137,000 reduction in the DMH budget. Our recommendation to reduce the DMH rates paid for MDO evaluations is discussed in our analysis of the DMH budget in the Health and Social Services chapter of this *Analysis*.

No Plan for Holding Additional MDOs. We are also concerned that, while both the BPT and DMH are requesting additional funding to expand the MDO commitment process, the DMH budget does not provide additional funding to hold and provide treatment for the additional MDOs that would result from this proposed expansion of commitment efforts. We believe it would be unwise for the Legislature to provide additional funding for the processing of MDO cases unless there is funding and an acceptable plan for holding and treating these offenders.

Accordingly, in our analysis of DMH (please see the Health and Social Services chapter), we recommend that DMH report at budget hearings on its caseload estimates for mentally disordered offenders, along with projected support and capital outlay costs associated with the growing number of MDO referrals.

Analyst's Recommendation. For these reasons, we recommend approval of a $520,000 augmentation for BPT for MDO-related positions and contract evaluations, with a reduction of $100,000 from its original budget request. We also recommend that DMH report at budget hearings regarding the operating and any capital outlay costs relating to the proposed expansion of the MDOs in the state mental hospital system and its plan for holding and providing treatment for these additional offenders.

Department of the Youth Authority (5460)

The Department of the Youth Authority is responsible for the protection of society from the criminal and delinquent behavior of young people (generally ages 12 to 24, average age 19). The department operates training and treatment programs that seek to educate, correct, and rehabilitate youthful offenders rather than punish them. The department operates 11 institutions, including two reception centers/clinics, and four conservation camps. In addition, the department supervises parolees through 16 offices located throughout the state.

The budget proposes total expenditures of $392 million for the Youth Authority in 1999-00. This is $3.1 million, or about 1 percent, more than current-year expenditures. General Fund expenditures are proposed to total $320 million in the budget year, an increase of $4.5 million, or 1.4 percent, above expenditures in 1998-99. The department's proposed General Fund expenditures include $36.6 million in Proposition 98 educational funds. The Youth Authority also estimates that it will receive about $68 million in reimbursements in 1999-00. These reimbursements primarily come from the fees that counties pay for the wards they send to the Youth Authority.

The primary reason for the slight increase in General Fund spending for the budget year is that $15 million of a $25 million appropriation provided to the department in Chapter 499, Statutes of 1998 (AB 2796, Wright) for allocation to nonprofit organizations for youth shelters is proposed to be expended in the budget year.

Approximately 72 percent of the total funds requested for the department is for operation of the department's institutions and camps and 16 percent is for parole and community services. The remaining 12 percent of total funds is for the Youth Authority's education program.

Ward Population

Who Is in the Youth Authority?

There are several ways that an individual can be committed to the Youth Authority's institution and camp population, including:

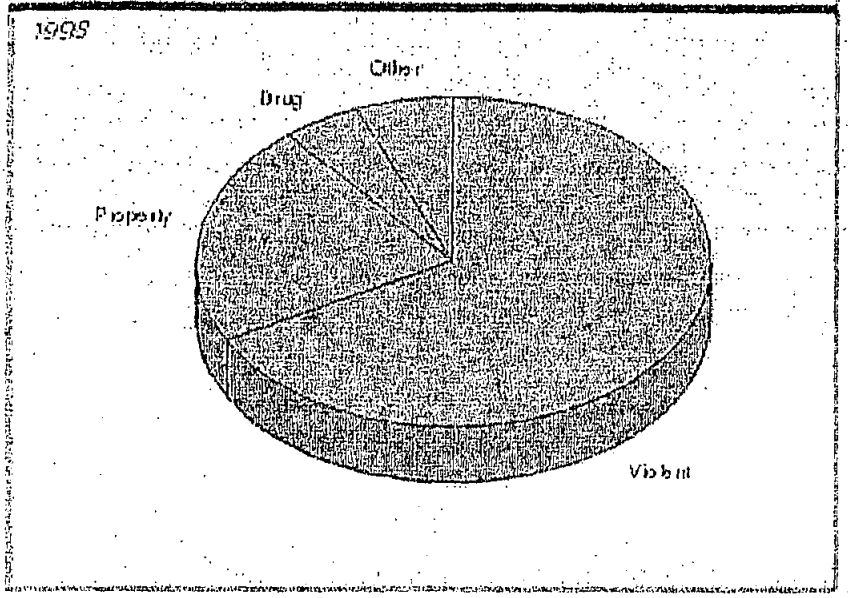
- ***Juvenile Court Admissions.*** The largest number of first-time admissions to the Youth Authority are made by juvenile courts. As of December 1998, 94 percent of the institutional population was committed by the juvenile courts. Juvenile court commitments include offenders who have committed both misdemeanors and felonies.
- ***Criminal Court Commitments.*** These courts send juveniles who were tried and convicted as adults to the Youth Authority. On December 31, 1998, 5 percent of the institutional population were juveniles committed by criminal courts.
- ***Corrections Inmates.*** This segment of the Youth Authority population--2 percent of the population in December 1998--is comprised of inmates from the Department of Corrections (CDC). These inmates are referred to as "M cases" because the letter M is used as part of their Youth Authority identification number. These individuals were under the age of 18 when they were committed to the CDC after a felony conviction in criminal court. Prior to July 22, 1996, these inmates could have remained in the Youth Authority until they reached the age of 25. Chapter 195, Statutes of 1996 (AB 3369, Bordonaro) restricts future "M cases" to only those CDC inmates who are under the age of 18 at the time of sentencing. The new law requires that "M cases" be transferred to the CDC at age 18, unless their earliest possible release date comes before their 21st birthday.
- ***Parole Violators.*** These are parolees who violate a condition of parole and are returned to the Youth Authority. In addition, some parolees are recommitted to the Youth Authority if they commit a new offense while on parole.

Characteristics of the Youth Authority Wards. Wards in Youth Authority institutions are predominately male, 19 years old on average, and come primarily from southern California, with 34 percent coming from Los Angeles County. Hispanics make up the largest racial and ethnic group in Youth Authority institutions, accounting for 49 percent of the total population. African Americans make up 29 percent of the population, whites are 14 percent, and Asians and others are approximately 8 percent.

Most Wards Committed for Violent Offenses. Figure 1 shows the Youth Authority population by type of offense.

Figure 1

Youth Authority Population By Commitment Offense



As of December 1998, 67 percent of the wards housed in departmental institutions were committed for a violent offense, such as homicide, robbery, assault, and various sex offenses.

In contrast, only 42 percent of the CDC's population has been incarcerated for violent offenses. The number of wards incarcerated for property offenses, such as burglary and auto theft, was 22 percent of the total population. The number of wards incarcerated for drug offenses was 5 percent in 1998, and the remaining 6 percent was incarcerated for various other offenses. We believe that the percentage of wards that are incarcerated for violent offenses will probably increase in future years. This is because the state has implemented a sliding fee schedule that provides the counties with an incentive to commit more serious offenders to the Youth Authority while retaining the less serious offenders at the local level. Specifically, counties are charged higher fees for less serious offenders committed to the Youth Authority and lower fees for more serious offenders (we describe this later in this analysis).

Average Period of Incarceration Is Increasing. Wards committed to the Youth Authority for violent offenses serve longer periods of incarceration than offenders committed for property or drug offenses. Because of an increase in violent offender commitments, the average length of stay for a ward in an institution is increasing. For example, the Youth Authority estimates that on average, wards who are first paroled in 1998-99 will have spent 31.3 months in a Youth Authority institution compared to 23.6 months for a ward paroled in 1993-94. This trend is expected to continue; the Youth Authority projects that the length of stay for first parolees in 2002-03 will be 32.3 months, a 3 percent increase.

The longer lengths of stay are explained in part by the fact that wards committed by the juvenile court serve "indeterminate" periods of incarceration, rather than a specified period of incarceration. Wards receive a parole consideration date when they are first admitted to the Youth Authority, based on their commitment offense. Time can be added or reduced by the Youthful Offender Parole Board (YOPB), based on the ward's behavior and whether the ward has completed rehabilitation programs. In contrast, juveniles and most adults sentenced in criminal court serve "determinate" sentences--generally a fixed number of years--that can be reduced by "work" credits and time served prior to sentencing.

As the Youth Authority population changes, so that the number of wards committed for violent offenses makes up a larger share of the total population, the length of stay will become a significant factor in calculating population growth. However, as we point out in our analysis of the YOPB, not all of the increase can be attributed to a change in the population mix, as less serious offenders are experiencing even sharper increases in their lengths of stay than more serious offenders.

Ward Population Continues to Decline

Youth Authority's institutional population continued to decrease in the current year and it is projected to decline further over the next several years until June 2001, at which point it will start to increase. The Youth Authority's forecast is to have 7,510 wards at the end of the budget year and 7,880 wards in 2002-03.

Youth Authority parole populations are expected to decline in the budget year to about 5,060 parolees, and will continue to decrease to about 4,865 parolees by the end of 2002-03. The decline is due to fewer Youth Authority admissions and longer lengths of stay for those wards who are currently incarcerated.

The Youth Authority's September 1998 ward population projections (which form the basis for the *1999-00 Governor's Budget*) estimate that the number of wards and inmates housed in the Youth Authority will decrease by 397, or 5 percent, by the end of 1998-99, compared to 1997-98. A primary reason for this decline in population is the implementation of Chapter 195 which transferred CDC inmates housed at the Youth Authority back to the CDC. In addition, implementation of Chapter 6, Statutes of 1996 (SB 681, Hurtt) increased the fees that counties pay the state for placement of juvenile offenders in the Youth Authority. The new fees went into effect January 1, 1997, and have had an impact on Youth Authority commitments (we discuss the effect of this legislation in more detail below).

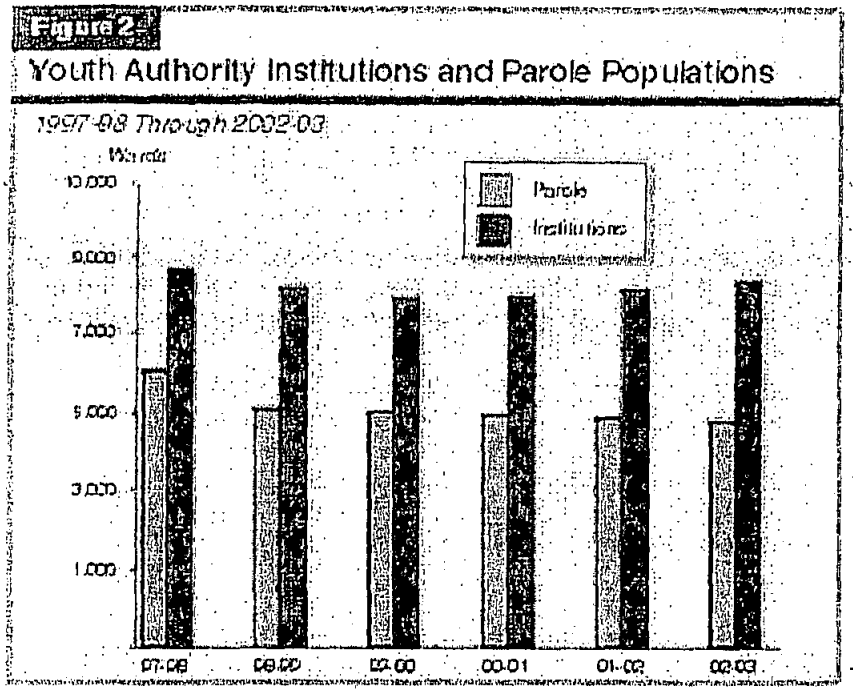
For the budget year through 2002-03, the Youth Authority projects that its population will decline and then grow slightly, reaching just under 8,000 incarcerated wards on June 30, 2003. These estimates are significantly lower than the projections made by the Youth Authority in the spring of 1998 (which was the basis for the enacted 1998-99 budget) and appear to fully reflect the effects of the fee increase discussed below.

While the Youth Authority is experiencing a significant decline in the number of parolees it supervises in the current year, it does not expect a further significant decline in the budget year. Parole populations will decline by only 40 cases, or less than 1 percent, in the budget year. The number of parolees will continue to decline slowly through Figure 2 (see next page) shows the Youth Authority's institutional and parolee populations from 1997-98 through 2002-03.

Ward and Parolee Population Projections Will Be Updated in May

We withhold recommendation on a net $1.4 million decrease from the General Fund based on projected ward and parolee population changes, pending receipt of the revised budget proposal and population projections to be contained in the May Revision.

Ward and Parolee Population in the Budget Year. The Youth Authority population is projected to decrease by 215 wards, or 5 percent, from the end of the current year to the end of the budget year. The budget proposes a net decrease of $1.4 million from the General Fund reflecting this decrease in the Youth Authority population. The dollar decrease is relatively modest because the Youth Authority has decided not to close any housing units in response to the projected drop in population. In fact, the budget requests a small net increase in the number of security personnel staffing the institutions.



The department will submit a revised budget proposal as part of the May Revision that will reflect more current population projections. These revised projections could affect the department's request for funding. To the extent that population decline is greater than currently assumed, it could necessitate closing a housing unit or one of the department's 16 parole offices, which would result in substantially greater savings.

In recent years, Youth Authority projections have tended to be somewhat higher than the actual population, leading to downward revisions for the future projected population. For example, the projection of the June 30, 1999 institutional population projection dropped from 8,315 in the fall 1997 projections to 7,830 in the spring 1998 projections, and currently stands at 7,510.

These decreases appear to be partly caused by the changes in Youth Authority fees. While these changes appear to have stabilized, there is sufficient uncertainty to warrant withholding recommendation on the budget changes associated with the population size pending receipt and analysis of the revised budget proposal.

Youth Authority Fees Charged to Counties

Legislation that took effect in 1997 to substantially increase the fees paid by counties for committing less serious offenders to the Youth Authority appears to be having its desired effects. Admissions in less serious offense categories are down significantly, and counties are moving to increase their menu of local programming options for these offenders. County efforts in this direction have been aided by the availability of over $700 million in state and federal funds for juvenile probation programs. As a result of these successes, we recommend that the state maintain the sliding scale structure.

In this section, we review the 1997 legislation that increased fees paid by counties for commitments to the Youth Authority. We begin by describing the fee changes and outline steps taken to provide additional funding to counties for juvenile justice programs. We then discuss the effects of the fee changes on both the Youth Authority and the counties. This information is based on our review of data and discussions with Youth Authority staff and county probation departments. We follow this with our conclusion about the effects of the fee reforms and several recommendations to the Legislature based on our findings.

Legislation Increased Fees Counties Pay for the Youth Authority

Effective January 1, 1997, counties are charged new and higher fees for their commitments of juvenile offenders to

the Youth Authority. These fees were enacted by Chapter 6.

Prior to the enactment of Chapter 6, counties paid a monthly fee of $25 for each offender sent to the Youth Authority. This fee was set in 1961, and was increased to $150 by Chapter 6 in order to take account of inflationary cost increases to the Youth Authority. In addition, Chapter 6 established a new "sliding scale" fee structure which requires counties to pay a percentage of the per capita monthly cost of wards with less serious offenses who are committed to the Youth Authority.

Sliding Scale Fees Based on Type of Offender. The sliding scale fees are determined by the YOPB based on the category that a ward is assigned to at his initial parole board hearing. The board assigns each juvenile committed to the jurisdiction of the Youth Authority a category number--from I to VII--based on the seriousness of his commitment offense. Because most juveniles are committed on the basis of their entire records, this number would correspond to the most serious offense in their records, not necessarily their most recent offense. Generally, offenses in categories I through IV are considered the most serious, while categories V through VII are less serious. Figure 3 provides typical examples of the offenses in each category.

Figure 3

Youth Authority Wards--

Categories and Typical Offenses

Ward Category	Typical Offenses	Baseline PCD[a]	Monthly Charge t County
I	Murder, torture, kidnapping resulting in death	7 years	
II	Voluntary manslaughter, child molestation, kidnapping[b]	4 years	
III	Rape/sexual assault[b], carjacking	3 years	
IV	Armed robbery[b], arson[b], drug selling offenses	2 years	
V	Assault with a deadly weapon[b], robbery[b], residential burglary[b], sexual battery	18 months	
VI	Carrying a concealed firearm, commercial burglary, battery[b], all felonies not contained in categories I-V	1 year	
VII	Technical parole violations, all offenses not contained in categories I-VI (for example, misdemeanors)	1 year or less	

[a] Parole consideration date.

[b] If offense results in substantial injury then it would fall into the more serious adjacent category (for example, rape is generally a category III offense, but a rape with subst injury is a category II offense).

Commitments of wards in categories I through IV are billed the $150 monthly fee. Category V commitments are billed to the counties at 50 percent of per capita cost ($1,300 per month), category VI at 75 percent ($1,950 per month), and category VII commitments are billed the full cost of the commitment ($2,600 per month).

Legislation Enacted in 1998 Caps the Fees. This fee structure was modified somewhat by Chapter 632, Statutes of 1998 (SB 2055, Costa) which froze the per capita costs on which the sliding scale fees are based at the levels in effect on January 1, 1997 ($31,200 per year). This legislation was enacted in response to county concerns about rapidly increasing per capita costs as a consequence of recent declines in the Youth Authority population (the sma the ward population, the greater the per capita costs of the Youth Authority). This legislation ensures that counties will not pay higher fees simply because the population decline resulting from the implementation of the sliding scale generates higher per capita costs. However, as a result of this legislation, the Youth Authority's reimbursements from the counties will be continually smaller than the state's actual costs, as both inflation and a declining population lead to increases in per capita costs.

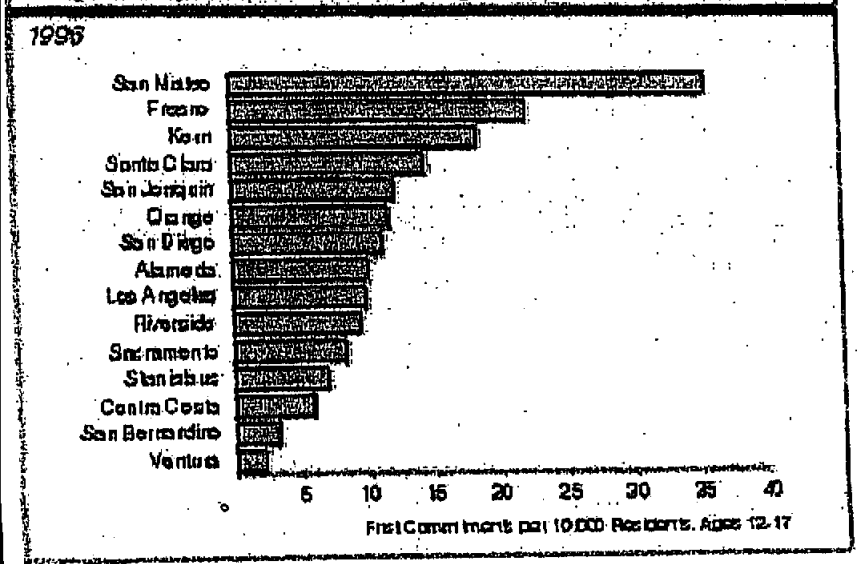
Intent of Sliding Scale Legislation. The sliding scale legislation was intended to provide counties with a fiscal incentive to utilize and develop more locally-based programs for less serious juvenile offenders, and to reduce their dependence on costly Youth Authority commitments. Prior to the passage of the legislation, counties had a strong fiscal incentive to send offenders to the Youth Authority because they only paid a nominal $25 monthly fee per ward. As a result, Youth Authority commitments, while often more expensive than other sanction and treatment options, were far less expensive from the counties' perspective.

While some counties developed their own locally based programs despite these incentives, other counties appeared to be over-relying on Youth Authority commitments. This disparate usage of the Youth Authority was reflected in the widely ranging first admission rates across counties. Figure 4 (see next page) shows the 1996 first admission rates to the Youth Authority for the 15 counties with the largest populations aged 12 through 17 years (the population from which first admissions generally are drawn). The figure shows the large disparities among counties in the use of the Youth Authority that existed prior to the legislation.

The problems with the prior fee structure were threefold. First, a large body of research on juvenile justice programs suggests that most juvenile offenders can and should be handled in locally based programs. In part, this is because locally based programs can work more closely with the offender, his family, and the community. Second, these locally based programs tend to be less expensive than a Youth Authority commitment, which meant that state funding was encouraging counties to use a more expensive as well as less effective sanctioning option for many offenders. Fin taxpayers in those counties with lower admissions rates for less serious offenders were paying not only for their ow locally based options, but also for a share of the costs created by those other counties with higher Youth Authority admissions rates. In response to these shortcomings, the Legislature acted to align the fiscal incentives faced by counties with more cost-effective policies, thereby encouraging counties to invest in preventive and early intervention strategies.

Figure 4

County Commitment Rates to Youth Authority Vary Widely Prior to Fee Change



New State and Federal Funds Ease the

Transition Costs of the Fee Changes. Since the sliding-scale legislation took effect, the Legislature has appropriated over $700 million for various county-based juvenile justice initiatives. These new funds do not directly address the increased fees, but they do help mitigate the financial burden by supplementing existing resources for developing local alternative programs to the Youth Authority. These include:

- ***Temporary Assistance for Needy Families (TANF).*** The Legislature has provided over $370 million in federal TANF funds for county probation departments, $65 million of which is earmarked for probation camps and ranches. The rest of the funds are available on a block grant basis to county probation departments to support a wide range of activities from basic prevention to various kinds of residential placement options. These funds represent an expansion of monies previously available to counties under the prior Aid to Families with Dependent Children (AFDC) program. (The AFDC program was subsequently replaced by the CalWORKS [California Work Opportunity and Responsibility to Kids] program.) Under the prior AFDC program, these funds were claimed by county probation departments under federal Title IV-A (emergency assistance program) from 1993 to September 1995. Subsequently, the federal government notified the counties that juvenile offenders would no longer be eligible for these funds. When the CalWORKS program was implemented, the state decided to reallocate funds from its federal block grant to the counties. This reallocation was at a higher level than under the Title IV-A program. The Governor's budget proposes $200 million for this purpose in 1999-00, the same level as in the current year.
- ***Juvenile Detention Facility Funds.*** The Legislature has provided $221 million in state and federal funds to the Board of Corrections for construction and renovation of county juvenile detention facilities. This amount is comprised of $121 million in federal Violent Offender/Truth-in Sentencing Grant money for county juvenile detention facilities and another $100 million from the General Fund for juvenile facility renovation, construction, and deferred maintenance. In addition, Chapter 339, Statutes of 1998 (AB 2793, Migden), expresses the Legislature's intent to provide 85 percent of federal fiscal year 1999 Violent Offender funds to the counties for juvenile facilities. While this allocation has not yet been made, it is expected to be about the same as the $80 million 1998-99 award. However, the proposed Governor's budget includes no appropriation of the 1999 federal funds.
- ***Challenge Grants.*** The Legislature has provided $110 million to the Board of Corrections for the Juvenile Crime Enforcement and Accountability Challenge Grant Program. The first $50 million of this money was appropriated in 1996 and awarded to 14 counties on a competitive basis to support innovative juvenile justice strategies. In 1998, another $60 million was appropriated to further expand this program. These grant funds will be awarded later this spring. Counties can apply for Challenge Grant funds for a wide array of programs, but first they must convene a juvenile justice coordinating council and undertake a local planning process in order to accurately identify the service gaps in their existing juvenile justice system. As a result, counties are able to receive funds for the programs that address their own identified greatest needs. Chapter 325, Statutes of 1998 (AB 2261, Aguiar) stated the Legislature's intent to appropriate at least $25 million annually through 2001-02 for the program. The Governor's budget, however, does not include any additional funds for this program in the budget year.
- ***Repeat Offender Prevention Program (ROPP).*** The Legislature provided $11 million dollars to the Board of Corrections for the ROPP. The purpose of this program is to support county efforts to identify and treat youth at risk of becoming chronic juvenile offenders before they become serious offenders. The ROPP is a pilot program that is being implemented in eight counties, and is scheduled to be completed in 2001.

Thus, while counties have been faced with new costs as a result of the sliding scale reform, these costs--estimated to have cost the counties less than $100 million dollars since the reform took effect--are far outweighed by the new state and federal funds that have been available to them.

Fees Have Changed Profile Of Youth Authority Wards

Admissions in the Least Serious Offender Categories Have Declined Significantly. In the two years since the sliding scale fee took effect, it has significantly reduced the numbers of first admissions to the Youth Authority. Overall, first admissions in 1997 were 30 percent lower than in 1996. Admissions data for 1998 continue the 1997 trends. These trends seem likely to continue into the future.

Not only have overall admissions declined, but admissions for the least serious offenders have dropped significantly. As Figure 5 shows, first admissions for the more serious offenses declined by 15 percent, while admissions in the less serious offense categories declined by 41 percent. This change suggests that counties have responded to the sliding

scale fees, but have not been deterred by the increase in the monthly fee from committing more serious offenders when appropriate.

Prior Disparities in Youth Authority Usage Have Diminished Significantly. The new fees have also resulted in a more even distribution among counties of first admission rates for less serious offenders (categories V through VII). An examination of the first admissions rate in Figure 6 illustrates these changes in the 15 counties with the largest juvenile populations. This change ensures that those counties that continue to rely heavily on the Youth Authority are paying a greater share of the costs incurred as a result of those commitments.

Figure 5

First Admissions Significantly Decline In Less Serious Offense Categories

1996 Through 1998

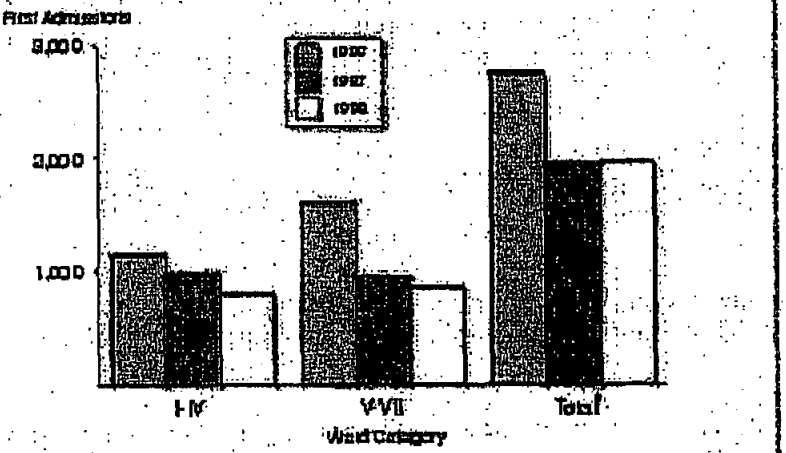
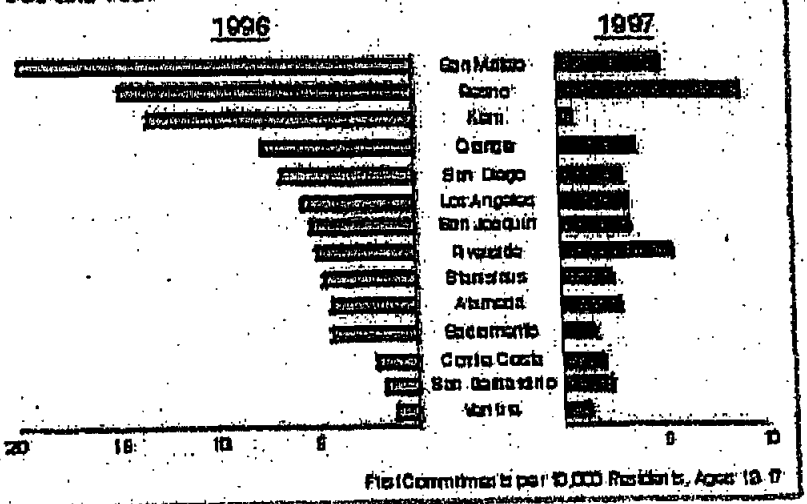


Figure 6

First Commitment Rates In Most Counties Drop In Less Serious Offense Categories

1996 and 1997



Changing Admissions Patterns Have Resulted in a More Violent Youth Authority Population. These changes in the patterns of first admissions have also led to a significant change in the mix of offenders going into the Youth Authority. In 1996, the most serious offenders (categories I through IV) made up 42 percent of the first admissions, while in 1997 they represented 51 percent of first admissions, despite the fact that their numbers dropped in absolute terms by 15 percent. Because offenders in

these categories are likely to have much longer stays in the Youth Authority, their proportion of the overall population tends to be significantly greater than their proportion of first admissions. Thus, at the end of 1998, 63 percent of the wards in institutions had committed more serious offenses (categories I through IV), and 37 percent had committed serious offenses (categories V through VII).

Changes in Population Characteristics Highlight Need for New and Expanded Programming. In the *Supplemental Report of 1997-98 Budget Act,* the Legislature directed the Youth Authority to review its needs for treatment and programs for wards. In response to this requirement, the Youth Authority submitted to the Legislature a report on its program and treatment needs in the face of "an increasingly violent youthful offender population." This report described the changing character of the wards served and described the existing needs in this population that were going unmet. This report focused on the new security and programming needs that have arisen as the Youth Authority population has become more violent and more emotionally disturbed.

In our view, however, the Youth Authority has not considered how it can change its programming for *less serious offenders* in order to better serve the needs of counties as they face the new demands of the sliding scale legislation. These new programming challenges are discussed in detail below.

Counties Have Responded to New Fees in Variety of Ways

Significant Changes in Some Counties, But Not Others. Figure 6 shows that most counties have reduced their admission rates in the less serious categories in response to the sliding scale reform, but only a few have done so dramatically. The effects on the counties range from fairly insignificant in counties such as Contra Costa, to more moderate reductions in Alameda, San Joaquin, Los Angeles, and Fresno, to truly dramatic reductions in counties such as Kern, Santa Clara, and San Mateo.

The main issue raised by these reductions is how these counties are dealing with the wards who are no longer being sent to the Youth Authority and whether the counties are providing appropriate alternative services to them. For the part, we found that counties are adopting fairly similar strategies. These include expansion or creation of boot or ranch programs and implementation of programs inside juvenile halls for offenders already adjudicated by the juvenile court (traditionally juvenile halls are used solely for short-term detention of offenders awaiting adjudication). There are a number of out-of-state placements that counties might have used in lieu of a Youth Authority commitment, but the recent controversies surrounding these placements, as well as the new licensing requirements imposed by Chapter 311, Statutes of 1998 (SB 933, Thompson), have made these options less viable.

Counties Frustrated by Certain Intractable, Less Serious Offenders. The programs implemented by the counties are filling the gaps for a large share of chronic delinquents. However, counties find themselves frustrated by the persistence of a small subset of less serious offenders who do not respond to county programs. Many counties are opting to send these "intractable" offenders through the same county program two or three times despite failure, rather than face the costs of a Youth Authority commitment. They have indicated particular concern about this approach because they fear it will lessen the effectiveness of the sanction for first-time participants.

Some counties have opted to separate these program failures from the other offenders, while other counties have shifted them into juvenile hall- based programs in order to impress upon them the consequences of program failure. In either case, it is clear that many counties are frustrated in their attempts to adequately sanction and treat these chronic and intractable delinquents.

Counties Are Expanding Their Prevention and Early Intervention Activities. Despite these difficulties, most counties we spoke to understood the underlying policy rationale that motivated the change in the fees, and are in the process of implementing new prevention and early intervention strategies. In fact, the fees served as an incentive for the counties to increase their array of locally available programming, particularly at the front end of the system. The state funds available from TANF, the Challenge Grants, and ROPP are aiding the counties in these prevention and intervention efforts. The benefits of these efforts are still a few years away, but counties are optimistic that they will help them reduce their dependence on the Youth Authority as a sanctioning option.

Conclusion: Sliding Scale Legislation Is Achieving Its Intended Objectives

The sliding scale legislation was intended to achieve two primary objectives: (1) reduce the over-reliance by counties on the Youth Authority for less serious juvenile offenders and (2) encourage counties to create a fuller spectrum of locally available programming to meet the needs of juvenile offenders. Available data demonstrate that the first objective has been met. Counties are being significantly more judicious in their use of the Youth Authority as a placement option for wards of the juvenile court. Although it is premature to declare the second objective a success as well, it is clear that many counties are responding to the change by creating new local program options.

On the whole, we believe that these trends are positive, as local programming is likely to be more effective and less expensive than a Youth Authority commitment for less serious offenders. Moreover, because their offense histories do not involve serious violent crimes, these wards are not likely to pose a serious threat to public safety if kept within the community.

Given these positive developments, we do not recommend any fundamental changes to the structure of the sliding scale legislation itself, as it appears to be a success. In the analysis below, however, we make several recommendations that we believe would maximize the benefits that the sliding scale legislation was designed to produce.

Target Future State Juvenile Justice Funds

To the extent that the Legislature chooses to continue to provide funding to counties for new or expanded juvenile justice programs, we recommend that the funds be awarded on a competitive basis and modeled after the Challenge Grant program.

As we indicated earlier, the Legislature has provided a substantial amount of funding to counties for juvenile justice programs since enactment of the sliding scale fees. To the extent that the Legislature continues to provide funding to county probation departments or other juvenile justice agencies and service providers, we believe that it should use the Challenge Grants as a model. This would include requiring that counties first undergo a planning process to reach a consensus on where the service gaps are, and include some kind of evaluation component to ensure accountabil and cost-effectiveness.

Similarly, allocating funds on a competitive basis rewards counties for excellence in program design and insures a higher level of commitment to the program from the participating agencies. For these reasons we recommend that each of these elements--planning, evaluation, and competitive allocation--be included as requirements for any new juvenile justice funds provided by the state.

Counties Should Have Input Into Length of Stay Decisions

We recommend enactment of legislation to modify the process by which parole consideration dates are established for Youth Authority wards with less serious offenses (categories V though VII). Specifically, the process should be modified in order to permit counties to have a greater say in the length of stay of wards that they send to the Youth Authority.

Under current law, once a young offender is accepted by the Youth Authority as a new admission, he becomes a ward of the department, and all decisions regarding length of stay, parole, and parole revocation are within the sole jurisdiction of the YOPB (see our analysis of the YOPB later in this chapter for a more detailed discussion of this process).

This method of determining length of stay may be appropriate for wards where the state is bearing almost all of the costs. However, it is less appropriate for wards in categories V through VII where counties are paying 50 percent or more of the cost to house the ward. This issue takes on particular importance given the large disparities that apparently exist between what the counties and the YOPB view as appropriate periods of secure confinement for these less serious offenders. For example, as discussed in our analysis of the YOPB, parole consideration dates (PC for less serious offenders in the Youth Authority ranged from 19 months for Category V to 13 months for Categor VII. By contrast, most counties are implementing programs for these offenders that are generally six to nine months in duration.

Counties Should Have Greater Say in Length of Stay. Because the counties are now paying a large share of the costs for these wards and given that the wards will likely return to the county from which they were committed when paroled, we believe that the counties should have some role in determining the optimal length of stay for the wards.

For these reasons, we recommend the enactment of legislation to modify the process by which PCDs are established. There are a number of different alternatives that the Legislature could choose from, including:

- ***•Require That the Juvenile Court, Rather Than the YOPB, Set the Initial PCD.*** One option is for the juvenile court, instead of the YOPB, to decide the PCD. The juvenile court offers advantages over the YOPB in that it would already be familiar with the ward's file, and would likely be more responsive to the concerns of the county, while still exercising independent discretion. The main disadvantage with this approach is that the juvenile court would not have access to the lengthy assessment information that is compiled by the Youth Authority staff before each ward's initial hearing before the board.
- ***•Require a Juvenile Court or County Probation Department Recommendation.*** This alternative would have the YOPB continue in its current role, but would allow counties to have more input. For example, counties could recommend an initial PCD to the board and the board would have the discretion to deviate up or down by a fixed amount set in statute. The main advantage of this approach is that it would preserve the input of the Youth Authority, while still allowing counties some control. The primary weakness of this approach is that it would result in a duplication of effort by the board and the county.
- ***•Allow the Juvenile Court or the County Probation Department to Make a Recommendation to the YOPB.*** This alternative would allow, but not require, the court or county to make a nonbinding recommendation to the YOPB as to the appropriate PCD. Under this approach the status quo would be largely maintained except that counties would have the option of having their concerns heard by the board.

These alternatives are intended to be suggestive, and only take into account the initial PCD decision. Subsequent decisions that are currently made by the board could be left with it or county input could again be sought in a manner similar to those recommended above.

Should Be Regularly Adjusted To Account for Effects of Inflation

We recommend the enactment of legislation to adjust the sliding scale fees periodically to account for the effects of inflation.

As discussed above, Chapter 632 capped the sliding scale fees charged to counties at the January 1, 1997 level. It makes sense to protect counties from facing higher sliding scale fees simply because the Youth Authority population is dropping as the natural and intended consequence of the fee change. However, we believe that this 1997 base rate should be periodically adjusted to account for the effects of inflation. Likewise, the $150 fee needs periodic adjustment so that the state is not in the position of making such a radical upward adjustment as was the case in 1996 when the $25 fee set in 1961 was adjusted for inflation.

As a result, we recommend the enactment of legislation to require the Youth Authority to make an inflationary adjustment of the 1997 per capita sliding scale fees, and the $150 monthly fee set by Chapter 6 periodically, at least every three years, based on changes in the Consumer Price Index.

Youth Authority Needs to Develop Targeted Programming for Certain Less Serious Offenders

We recommend that the Legislature adopt supplemental report language directing the Youth Authority to report on the feasibility of developing programming targeted to chronic and intractable offenders in the less serious categories.

The Youth Authority Has a Role to Play With Some Less Serious Offenders. When the sliding scale reform was implemented, the intent was not to eliminate all offenders in categories V to VII from the Youth Authority, but rather to provide counties with more neutral cost incentives when choosing the proper treatment for these offenders. The recent significant declines in first admissions in these categories appear to be driven by two primary factors: the

creation at the local level of new program options for these offenders and a new reluctance to use the Youth Authority for any of these offenders based on the high costs. Discussions with county probation departments make it clear that even with the creation of new programs, there are certain offenders in the less serious categories that they would have sent to the Youth Authority but for the high cost burden. The offenses committed by these offenders are generally property crimes or nonserious assaults, but they are persistent, and the juveniles appear to be unresponsive to the programming made available by the counties.

Shorter Institutional Stays Are Needed With More Services Delivered on Parole. In recent years, the Youth Authority has focused significant attention on the growing proportion of its population who pose a greater threat to staff security and also demand more intensive treatment services. The risk to public safety posed by these wards is significant, such that an extended stay at the Youth Authority which includes a wide array of programming is necessary to meet the demands of public safety as well as the rehabilitative needs of these wards.

For the chronic and intractable delinquents discussed above, however, institutional confinement time is not required primarily to protect the public, but rather to provide structure and accountability for the offender. As a result, institutional confinement time for these offenders should be limited to the time necessary to achieve this objective. At present, the average PCD for these offenders is more than 17 months, while the programs that they are failing at the county level are generally about six months in duration. This 11-month difference appears unnecessarily large, especially given the fact that a Youth Authority commitment of any duration is a more severe and punitive sanction than spending time in a county ranch or camp.

The YOPB is currently responsible for making all decisions on length of stay. One way to encourage it to reduce the length of commitments for these less serious, intractable offenders would be to provide shorter-term institutional programming directly addressed to their needs. Because the counties are opting to use six- to nine-month locally based secure programs, we recommend that the Youth Authority examine the feasibility of providing institutional programming in a similar time frame. We recognize that a six- to nine-month period would not be sufficient to address all of the needs of most of these wards, but many of the issues that require more time, such as substance abuse and academic and vocational skills, could be provided in a community setting under the supervision of Youth Authority parole.

Youth Authority Can Fill a "Market Niche." Clearly there will be wards for whom this intermediate approach is not sufficient, but at present there is a gap in the continuum of graduated sanctions available to most counties that the Youth Authority is in the position to bridge. The next few years present an opportunity for experimentation with such programs because declining populations within Youth Authority institutions and more notably on parole, will create some slack in existing resources that can be used to get pilot programs off the ground. Moreover, if such programs prove effective, they will allow the Youth Authority to more efficiently meet the needs of the greater number of wards expected to enter the juvenile justice system early in the next century.

What Are the Impacts on Counties? These programming changes would also help to ease the cost pressures on counties in a number of ways. Most directly, limiting the confinement time for many of the wards in the less serious categories to six to nine months would reduce the sliding scale fee costs that counties are currently facing. In addition, providing a more cost-effective secure treatment option would relieve the current pressure on counties to recycle offenders through their existing programs despite repeated failure. Counties would prefer to avoid recycling offenders because it diminishes the effect of the local sanction for the offenders who fail as well as the other offenders who see that there is no enhanced penalty as a consequence of program failure. Finally, if the Youth Authority is a more cost-effective treatment option, counties will have less incentive to invest their resources in construction and operation of locally based Youth Authority-style facilities and programs for this group of offenders.

Analyst's Recommendation. We recommend that the Legislature adopt supplemental report language directing the Youth Authority to report on the feasibility of implementing a six- to nine-month institutional program for offenders in categories V through VII, with an intensive parole aftercare component. The report should identify the likely substantive content of such a program, as well as the changes in existing practice and procedures that would be required for implementation to occur. If the Youth Authority concludes that such a program is not feasible, it should report on what steps can be taken to reduce the duration of institutionally based programming for these offenders. We recommend that the report be submitted by December 1, 1999 in order for its findings to be incorporated into *2000-01 Governor's Budget*. The following language is consistent with this recommendation.

The Department of the Youth Authority shall report to the Legislature by December 1, 1999 on the feasibility of implementing a six- to nine-month institutional program for offenders in Youthful Offender Parole Board categories V through VII. The report shall include, but not be limited to: (1) an identification of the core institutional services and programming that less serious offenders require, as well as those that can be effectively delivered on parole; (2) one or more proposals to deliver those services in a sequence that minimizes required institutional time and maximizes the value of aftercare on parole; (3) an estimate of the costs per ward to deliver such programming and any changes in current procedures that would be necessary to implement the programming; and (4) an evaluation of the advantages and disadvantages of adopting the programming which includes discussions of the effects on the rehabilitation of the ward and public safety as well as the cost-effectiveness of the proposal relative to current practice.

Return to 1999-00 Budget Analysis Criminal Justice Table of Contents
Return to 1999-00 Budget Analysis Table of Contents
Return to LAO Home Page

C

Placer County v. CorinCal.App.3.Dist.COUNTY OF PLACER, Petitioner,
v.
F. EARL CORIN, as Treasurer, etc., Respondent.
Civ. No. 19620.

Court of Appeal, Third District, California.
Dec 17, 1980.

SUMMARY

A county petitioned in the Court of Appeal for a writ of mandate to compel the county treasurer to serve notice of assessment on and to collect such assessments from real property owners in a sewer assessment district of the county for the purpose of financing the cost of acquisitions and construction of improvements in the district. The county's board of supervisors had adopted a resolution providing for the acquisition and construction of improvements, and the county had accepted a federal grant representing one-half the cost of the acquisitions and construction of improvements. The county treasurer contended that funds to be derived from the special assessments and from the federal grant proceeds were encompassed with "proceeds of taxes", and thus were required to be included in the county's "appropriations subject to limitation" (Cal. Const., art. XIII B, § 8, subd. (b)).

The Court of Appeal granted the petition. It held that the governmental spending restrictions imposed under Cal. Const., art XIII B, do not limit the ability to expend governmental funds collected from all sources. It further held that as to a local government, limits are placed only on the authorization to expend the proceeds of taxes levied by that entity and the proceeds of specified state subventions (Cal. Const., art. XIII B, § 8, subd. (c)), and no limitation is placed on the expenditure of those revenues that do not constitute "proceeds of taxes." It additionally held that Cal. Const., art. XIII B, does no more than place a ceiling on the expenditure of general state and local tax revenues and does not encompass special assessments and federal grants for the financing of the cost of acquisitions and construction of improvements in a sewer assessment district of a county. (Opinion by Carr, J., with Regan, Acting P. J., and Evans, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b) Municipalities § 36--Fiscal Affairs--Constitutional Limitation on Expenditures--Appropriations Subject to Limitation--Proceeds From Special Assessments and Federal Grants.
The governmental spending restrictions imposed under Cal. Const., art. XIII B, do not limit the ability to expend governmental funds collected from all sources. Rather, the appropriations limit is based on "appropriations subject to limitation" consisting primarily of the authorization to expend during a fiscal year the "proceeds of taxes" (Cal. Const., art. XIII B, § 8, subd. (a)). As to a local government, limits are placed only on the authorization to expend the proceeds of taxes levied by that entity and the proceeds of specified state subventions (Cal. Const., art. XIII B, § 8, subd. (c)), and no limitation is placed on the expendure of those revenues that do not constitute "proceeds of taxes." Cal. Const., art. XIII B, does no more than place a ceiling on the expenditure of general state and local tax revenues and does not encompass special assessments and federal grants for the financing of the cost of acquisitions and construction of improvements in a sewer assessment district of a county.
[See Cal.Jur.3d, Municipalities, § 361; Am.Jur.2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 582.]
(2) Counties § 15--Fiscal Matters--Constitutional Limitation on Expenditures--Appropriations Subject to Limitation--Proceeds From Special Assessments and Federal Grants.
A county was entitled to a writ of mandate against its treasurer who had refused to serve notice of assessment on and to collect assessments from real property owners in a sewer assessment district of the county for the purpose of securing funds for the payment of acquisitions and construction of improvements in the district, the county's petition for a writ of mandate requiring him to do so, where the county board of supervisors had adopted a resolution providing for such acquisitions and construction of improvements and the county had accepted a federal grant of proceeds for one-half the cost of the

acquisitions and construction of improvements. It was not the intent of Cal. Const., art. XIII B, that proceeds from special assessments or a federal grant should be considered as "proceeds of taxes" or *445 within a county's appropriations subject to limitation under Cal. Const., art. XIII B, § 8, subd. (b).

COUNSEL

L. J. Dewald, County Counsel, Jones, Hall, Hill & White and Robert G. Auwbrey for Petitioner.

Orrick, Herrington, Rowley & Sutcliffe, John R. Myers and Carlo S. Fowler for Respondent.

CARR, J.

In this mandate proceeding, the issue is whether "proceeds of taxes" as used in article XIII B of the California Constitution includes (1) special assessments of an assessment district and/or (2) federal grants made directly to a local entity for improvements within the assessment district. Petitioner, the County of Placer, seeks to compel respondent, who is the Placer County Treasurer, to serve notice of assessment on and to collect such assessments from property owners in the Tierra Heights Sewer Assessment District A-79.

In April 1979 petitioner's board of supervisors, pursuant to provisions of the Municipal Improvement Act of 1913 and the Improvement Bond Act of 1915, adopted a resolution entitled: A RESOLUTION OF INTENTION TO MAKE ACQUISITIONS AND IMPROVEMENTS-TIERRA HEIGHTS SEWER ASSESSMENT DISTRICT A-79. Petitioner had previously accepted a federal grant in the sum of $55,000 representing one-half the costs of making the required acquisitions and constructing improvements. On March 4, 1980, petitioner directed respondent to mail and serve appropriate notices to pay assessments to owners of real property within the sewer assessment district. Respondent has refused to serve and collect said assessments, asserting the proceeds thereof must be included within the appropriations limits set forth in article XIII B, section 1. We issued an alternative writ pursuant to our original authority, finding this question to be one of both first impression and substantial importance. (See *California Housing Finance Agency v. Elliott* (1976) 17 Cal.3d 575, 580 [131 Cal.Rptr. 361, 551 P.2d 1193]; *446*California Educational Facilities Authority v. Priest* (1974) 12 Cal.3d 593, 598 [116 Cal.Rptr. 361, 526 P.2d 513]; Cal. Civil Writs (Cont.Ed.Bar. 1970) § 85, p. 154.) Respondent by way of return has generally demurred to the petition contending a writ of mandate will not lie to compel performance of an illegal or unconstitutional act.

In November 1979 article XIII B was added to the California Constitution through the adoption of Proposition 4, commonly referred to as the "Gann Initiative." Ballot arguments in support of Proposition 4 referred to it as providing "permanent protection for taxpayers from excessive taxation" and "a reasonable way to provide discipline in tax spending at state and local levels."

Article XIII B was adopted less than 18 months after the addition of article XIII A to the state Constitution, and was billed as "the next logical step to Proposition 13" [article XIII A]. While article XIII A was generally aimed at controlling ad valorem property taxes and the imposition of new "special taxes" (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 231-232 [149 Cal.Rptr. 239, 583 P.2d 1281]; *County of Fresno v. Malmstrom* (1979) 94 Cal.App.3d 974, 980 [156 Cal.Rptr. 777], see article XIII A, § § (1), (4)), the thrust of article XIII B is toward placing certain limitations on the growth of appropriations at both the state and local government level; in particular, article XIII B places limits on the authorization to expend the "proceeds of taxes." (§ 8, subd. (c).)

Article XIII B provides that beginning with the 1980-1981 fiscal year, "an appropriations limit" will be established for each "local government." [FN1] (§ 8, subd. (h).) No "appropriations subject to limitation" may be made in excess of this appropriations limit, and revenues received in excess of authorized appropriations must be returned to the taxpayers within the following two fiscal years. (§ 2.)

FN1 Article XIII B is applicable to both the State of California nd local governments. (See § § 1, 8, subd. (a).) Since this action involves only a local government, i.e., the County of Placer, the operation of article XIII B as it relates to the state is not discussed.

The appropriations limit for the 1980-1981 fiscal year is equal to the total "appropriations subject to limitations" for that entity in the 1978-1979 fiscal year, with certain adjustments for changes in the cost of living, population and financial responsibility for providing services. *447 (§ § 3, 8, subd. (h); see Ops.Cal.Legis. Counsel, No. 15349 (Aug. 24, 1979) Gann Initiative, p. 4.) In succeeding years, the appropriations limit will be equal to the prior year's appropriations limit, subject to the specified

adjustments. Appropriations limits may be changed by the voters, but not to exceed a period longer than four years.

(1a)Billed as a flexible way to provide discipline in government spending, article XIII B does not limit the ability to expend government funds collected from all sources. Rather, the appropriations limit is based on "appropriations subject to limitation," which consists primarily of the authorization to expend during a fiscal year the "proceeds of taxes." (§ 8, subd. (a).) As to local governments, limits are placed only on the authorization to expend the proceeds of taxes levied by that entity, in addition to proceeds of state subventions (§ 8, subd. (c)); no limitation is placed on the expenditure of those revenues that do not constitute "proceeds of taxes." The intended scope of "proceeds of taxes," the source of a local government's "appropriations subject to limitations," is the pivotal issue herein.

(2)Respondent contends the funds derived from the exercise of the power of assessment and from federal grant proceeds used to pay the costs and expenses of acquisitions and improvements, are encompassed within "proceeds of taxes" and must be included in the county's appropriations subject to limitation; that exclusion thereof and the making of other appropriations to the extent of petitioner's appropriations limit without regard to the existence of the authorization to expend these proceeds threatens to impair the validity and enforceability of said assessments and assessment bonds. Petitioner contends the proceeds of the special assessments and the federal grant do not constitute "proceeds of taxes," and will not be included within its budgeted "appropriations subject to limitation" for fiscal year 1980-1981.

This issue is one of substantial importance, involving the continued viability of provisions for initiating and completing special improvements. (See Sts. & Hy. Code, § 5000 et seq., 10000 et seq.) "For over 60 years these laws have provided the most widely used procedure in California for the construction of a variety of public improvements including streets, sewers, sidewalks, water systems, lighting and public utility lines; property owners benefited by the improvements pay for these improvements either in cash or, at their option, by installments over a period of time." (*County of Fresno v. Malmstrom, supra.*, 94 Cal.App.3d at p. 978.) If local entities are required to include special *448 assessment and federal grant proceeds within their "appropriations subject to limitation," such entities will have to decide whether to limit or even discontinue the acquisition and improvement of local improvements or to finance such improvements from general tax revenues, i.e., at the expense of all taxpayers. In light of the enormous demands on reduced general tax revenues following adoption of article XIII A, the latter option appears fiscally unfeasible.

Section 8, subdivision (c) defines "'proceeds of taxes'" as follows: "'Proceeds of taxes' shall include, but not be restricted to, all tax revenues and the proceeds to an entity of government, from (i) regulatory licenses, user charges, and user fees to the extent that such proceeds exceed the costs reasonably borne by such entity in providing the regulation, product, or service, and (ii) the investment of tax revenues. With respect to any local government, 'proceeds of taxes' shall include subventions received from the state, other than pursuant to Section 6 of this Article and, with respect to the state, proceeds of taxes shall exclude such subventions."

In summary, for local entities, "proceeds of taxes" includes, but is not restricted to: (1) all tax revenues; (2) excessive regulatory license fees and excessive user charges and fees; (3) the investment of tax revenues; and (4) subventions from the state.

Respondent asserts that special assessment and federal grants proceeds, though not included within any of the expressly enumerated categories in section 8, are similar in origin and character to user charges and user fees and are of the same general class; that federal grant proceeds are akin to state subventions: and under the doctrine of *ejusdem generis*, [FN2] must be considered "proceeds of taxes," as the latter includes but is not restricted to tax revenues, certain regulatory and user fees and charges, and state subventions. *449

FN2 In its practical application, this rule simply means that "'general and specific words which are capable of an analogous meaning, being associated together, take color from each other, so that the general words are restricted to a sense analogous to the less general.' (3 Words and Phrases Judicially Defined, p. 2328.) ... [Thus,] 'where a statute or other document enumerates several classes of persons or things, and immediately following and classed with such enumeration the clause embraces "other " persons or things, the word "other" will generally be read as

"other such like," so that persons or things therein comprised may be read as *ejusdem generis* with, and not of a quality superior to or different from, those specifically enumerated.'" (*People v. Strickler* (1914) 25 Cal.App. 60, 64, 65 [142 P. 1121].) *Ejusdem generis* is a rule of construction used to carry out, not to defeat, the legislative intent.

Further, respondent notes that article XIII B was intended both to carry out the intent and to extend the scope of article XIII A. While article XIII A was aimed at controlling ad valorem property taxes and imposition of new special taxes (see *County of Fresno v. Malmstrom, supra.*, 94 Cal.App.3d at pp. 980-984.), article XIII B is directed at controlling government spending. (See § § 1, 8, subd. (a), (b) (c).) The source of revenue to be spent is not limited to property taxes; "all tax revenues" are subject to the limitations of article XIII B, in addition to certain user and regulatory charges, state subventions, and the investment of tax revenues. (§ 8, subd. (c).) Respondent urges it is our duty to give article XIII B a broad, liberal interpretation in accordance with the will of the people (see *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization, supra.*, 22 Cal.3d at pp. 245), [FN3] and this mandates a finding that special assessment and federal grant proceeds were intended to be included within the "not restricted to" provision of "proceeds of taxes."

FN3 "The generally accepted rules for construing constitutional provisions may be summarized as follows: (1) a liberal, practical and common-sense approach should be taken, (2) the natural and ordinary meaning of the words used should be followed, (3) the apparent intent of the framers should be fulfilled and absurd results avoided, and (4) interpretations by the Legislature and administrative agencies and the ballot summary, arguments and analysis should be considered in determining the probable meaning of uncertain language. [Citation.]" (62 Ops.Cal.Atty.Gen. 254, 256 (1979); see *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization, supra.*, 22 Cal.3d at pp. 245-246.)

Our analysis of article XIII B, section 8, subdivision (c), compels the conclusion that the framers of the initiative did not intend to include the proceeds derived from special assessments to be included within the "not restricted to" language of "proceeds of taxes." While respondent correctly asserts that assessments are a function of the general power of taxation (*City of Baldwin Park v. Stoskus* (1972) 8 Cal.3d 563, 568 [105 Cal.Rptr. 325, 503 P.2d 1333]; see *Dawson v. Town of Los Altos Hills* (1976) 16 Cal.3d 676, 683 [129 Cal.Rptr. 97, 547 P.2d 1377]; *Los Angeles Co. F.C. Dist. v. Hamilton* (1917) 177 Cal. 119, 130 [169 P. 1028]) "there is a broad and well-recognized distinction between a tax levied for the general public good and without special regard to the benefit conferred upon the individual or property subject to the tax, and a special assessment levied to force the payment of a benefit, ..." (*City Street Imp. Co. v. Regents Etc.* (1908) 153 Cal. 776, 778 [96 P. 801]; see *Inglewood v. County of Los Angeles* (1929) 207 Cal. 697, 702 [280 P. 360].) *450

Taxes are levied by the Legislature, or by counties and municipalities under their delegated power, for the support of the state, county, or municipal government (*Taylor v. Palmer* (1866) 31 Cal. 240, 251-252; 51 Cal.Jur.3d, Public Improvements, § 2, p. 563; 70 Am.Jur.2d, Special or Local Assessments, § 1, pp. 842-843.) Special or local assessments, on the other hand, are imposed on property within a limited area for payment of a local improvement allegedly enhancing the value of the property taxed (*Northwestern Etc. Co. v. St Bd. Equal.* (1946) 73 Cal.App.2d 548, 552 [166 P.2d 917]; see *City of Los Angeles v. Offner* (1961) 55 Cal.2d 103, 108 [10 Cal.Rptr. 470, 358 P.2d 926].) Special assessments can be levied only on the specific property benefited and not on all the property in the district. (*Anaheim Sugar Co. v. County of Orange* (1919) 181 Cal. 212, 216 [183 P. 809]; see *City of Baldwin Park v. Stoskus, supra.*, 8 Cal.3d at p. 568.) [FN4]

FN4 Significant differences between a special assessment and a tax include the following: (1) a special assessment can be levied only on land; (2) a special assessment cannot ordinarily be made a personal liability of the person assessed; (3) a special assessment is ordinarily based wholly on benefits; and (4) a special assessment is exceptional both as to time and locality. (*Northwestern Etc. Co. v. St. Bd. of Equal., supra.*, 73 Cal.App.2d at pp. 551-552.)

In *County of Fresno v. Malmstrom, supra.*, 94 Cal.App.3d 974, the question presented was whether special assessments were "special taxes" within the provisions of article XIII A. While noting that the

terms "tax," "special tax," and "special assessment" have at times become hopelessly entangled in judicial opinions, legislative and legal treatises, the *Malmstrom* court recognized and followed the long standing precedent that strictly speaking, special assessments are not taxes at all. (*Id.* at pp. 982-983; see also *Cedars of Lebanon Hosp. v. County of L.A.* (1950) 35 Cal.2d 729, 747 [221 P.2d 31, 15 A.L.R.2d 1045]; *Los Angeles Co. F.C. Dist. v. Hamilton*, *supra*, 177 Cal. at p. 129; *County of Santa Barbara v. City of Santa Barbara* (1976) 59 Cal.App.3d 364, 379-380 [130 Cal.Rptr. 615]; *County of San Bernardino v. Flournoy* (1975) 45 Cal.App.3d 48, 51-52 [117 Cal.Rptr. 732].) [FN5]

FN5 The *Malmstrom* court analogized assessments as being "more in the nature of loans to property owners for improvements benefiting their property, with bonds representing that loan and secured by the property itself." (94 Cal.App.3d at p. 980, fn. 2.)

In *Solvang Mun. Improvement Dist. v. Board of Supervisors* (1980) 112 Cal.App.3d 545 [169 Cal.Rptr. 391], the court adopted the reasoning ***451** of the *Malmstrom* court in determining special assessments levied to benefit specific properties within a specified district were not includable in the 1 percent of assessed value limitation imposed on ad valorem taxes by article XIII A, section 1 of the California Constitution. The problem in *Solvang*, *supra.*, resulted from an incongruity in the language of subdivisions (a) and (b) of section 1. Subdivision (a) imposed the 1 percent limitation on ad valorem taxes. Subdivision (b) exempted from the 1 percent limitation ad valorem taxes or special assessments to pay interest and redemption charges on indebtedness approved by the voters prior to the effective date of article XIII A. At issue were nonvoted special assessments for a public parking district created pursuant to general and special statutory authority. Bonds were issued and special assessments to pay the principal and interest were levied annually by the board of supervisors against the benefited properties. The board interpreted article XIII A, section 1 to prohibit such assessment. The court first determined such an application of article XIII A would retroactively deprive the bondholders of their contractual right to repayment and such impairment of contract was constitutionally impermissible. Next, the court decided that special assessments designed to directly benefit the property assessed and make it more valuable were not within the 1 percent limitation and the reference to "special assessments" in section 1, subdivision (b) was mere surplusage.

Under article XIII B, with the exception of state subventions, the items that make up the scope of "'proceeds of taxes'" concern charges levied to raise *general revenues* for the local entity. "'Proceeds of taxes,'" in addition to "all tax revenues", includes "proceeds ... from ... regulatory licenses, user charges, and user fees [*only*] *to the extent that such proceeds exceed the costs reasonably borne by such entity in providing the regulation, product or service....*" (§ 8, subd. (c)) (Italics added.) Such "excess" regulatory or user fees are but *taxes* for the raising of general revenue for the entity. (*City of Madera v. Black* (1919) 181 Cal. 306, 313-314 [184 P. 397]; see *Mills v. County of Trinity* (1980) 108 Cal.App.3d 656, 661-663 [166 Cal.Rptr. 674]; *United Business Com. v. City of San Diego* (1979) 91 Cal.App.3d 156, 165 [154 Cal.Rptr. 263].) Moreover, to the extent that an assessment results in revenue above the cost of the improvement or is of general public benefit, it is no longer a special assessment but a tax. (*City of Los Angeles v. Offner*, *supra.*, 55 Cal.2d at pp. 108-109.) We conclude "proceeds of taxes" generally contemplates only those impositions which raise general tax revenues for the entity. ***452**

We find support for this position in the ballot arguments in favor of the initiative, [FN6] which assert that: Proposition 4 will provide "permanent constitutional protection for *taxpayers* from excessive *taxation*;" "will refund or credit excess *taxes* received by the state to the taxpayer;" "will curb *excessive* user fees [which are akin to taxes] imposed by local government;" "will eliminate waste by forcing politicians to rethink priorities while spending our *tax* money." (Italics added.) Finally, the argument states "Your 'yes' vote will guarantee that excess state *tax* surpluses will be returned to the taxpayer...." and "[T]his amendment is a reasonable and flexible way to provide discipline in *tax* spending at the state and local levels...." (Italics added.) In both its supportive and interpretative language, the thrust of article XIII B is directed at limiting *tax* revenues and appropriations.

FN6 Ballot arguments and analyses presented to the electorate may be considered in determining the probable meaning of an initiative's uncertain language. (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, *supra.*, 22 Cal.3d at pp. 245-246.)

Respondent's analysis of the similarities between taxes, user charges, and special assessments is not persuasive that special assessment proceeds were intended to be included within the "not restricted to" clause of "proceeds of taxes." Special assessments are *not* taxes, and are *not* levied for general revenue purposes. We are unable to find anything in article XIII B to indicate that "proceeds of taxes" were intended to include special assessment proceeds. The doctrine of *ejusdem generis* cannot be used to include within the category of "proceeds of taxes" something that is not a tax and which was clearly not intended to be included. [FN7] *453

FN7 Respondent's position appears to be that: (1) although *Malmstrom* found that the provisions of article XIII A were not applicable to special assessments, (2) since article XIII B was designed to carry at and broaden the scope of article XIII A, that (3) special assessment proceeds must have been intended to be included within the parameters of article XIII B.

It is true that article XIII B is broader and more encompassing that its precedessor. Unlike article XIII A, article XIII B is not limited to ad valorem taxes and the imposition of new special taxes; rather, article XIII B is addressed to "all tax revenues," including those derived from the imposition of "excess" regulatory and user charges. (Cf. art. XIII A, § § 1, 4, with art. XIII B, § 8, subd. (c).) Article XIII A did not address the issue of either state subventions or proceeds derived from the investment of tax revenues. Nor did article XIII A place a ceiling on the expenditures of these tax proceeds or require that excess tax revenues be returned to the electorate. But the fact that article XIII B is a more encompassing plan to limit government spending does not compel the conclusion that "proceeds of taxes" was meant to include special assessment proceeds. Article XIII B is directed at limiting the appropriation of tax revenues; special assessments are not taxes, are not raised for the general public welfare, and do not provide general revenues for local entities.

In finding that proceeds derived from the power of assessment were not intended to be included within the provisions of article XIII A, the *Malmstrom* court made the following observation: "Respondent's construction would place local government entities in a rather precarious situation by forcing them into a Hobson's choice of spending general tax funds either for expenditures to benefit the public at large or for projects to benefit certain individual property owners by funding improvements such as the construction of streets, sidewalks, gutters and sewers. *Inherent in the concept of special assessments is the fact that certain property owners receive special benefits.* [Citations.] *It would not be just to the general taxpayers of the political entity to use general funds to pay for such special benefits to a few property owners.* [Citation.]" (*County of Fresno v. Malmstrom, supra.*, 94 Cal.App.3d at p. 981; italics added.)

This analysis is consistent with our interpretation of the intended scope of article XIII B. With only a limited fund from which to spend for general public services *and* special benefit improvements, local entities would be forced into a "Hobson's choice" of limiting or discontinuing general improvements and services for the benefit of the many in order to provide a local area with special benefit improvements for the few. The alternative would be for local areas to do without essential services, such as sewers, water, etc., so that the local government could be assured of remaining within its appropriations limit.

Reference to the ballot arguments in favor of article XIII B demonstrates that no such "Hobson's choice" was intended. Said arguments assert "[t]his measure...Will Not prevent state and local governments from providing essential services.... [¶] Will Not favor one group of taxpayers over another." (Emphasis in original.) Each of these arguments is valid only if we conclude that special assessment proceeds were not intended to and do not come within the parameters of "proceeds of taxes; otherwise, for practical purposes, local governments would be deprived of the ability to fund the construction of major improvements for a particular area within their jurisdiction. (*County of Fresno v. Malstrom, supra.*, 94 Cal.App.3d at p. 981.) [FN8] *454

FN8 Moreover, "[w]here the Legislature has enacted a law in light of a particular constitutional provision, a settled rule of construction is that the Legislature's interpretation of uncertain constitutional terms is entitled to great deference by the courts." (*Mills v. County of Trinity* (1980) 108 Cal.App.3d 656, 662 [166 Cal.Rptr. 674].) Following the adoption of article XIII B, the Legislature enacted Senate Bill No. 1389, signed into law on July 16, 1980, as an urgency measure effective immediately.

(Gov. Code, § 53715, added by Stat. 1980, ch. 516, § 1.) Government Code section 53715, added by Senate Bill No. 1389, provides in part: "As used in Article XIII B of the California Constitution, the term 'proceeds of taxes' *does not include* the proceeds from the sale of bonds, notes, warrants or other obligations required for the purpose of financing or refinancing the acquisition, construction, or completion of public improvements or projects, or any rents, charges, assessments, or levies, other than tax levies, made pursuant to law, the proceeds of which are required for the payment of principal and interest, or to otherwise secure such obligations, and to pay the costs and expenses associated therewith." (Italics added.)

Respondent's assertion that article XIII B was designed to close the loopholes created by article XIII A is without merit.

The use of the special assessment process to construct and improve needed services can hardly be considered a loophole to the provisions of article XIII A. (See 62 Ops.Cal.Atty.Gen. 663, 669 (1979).) Special assessments are one of the oldest used methods for the longterm financing of public improvements. (See *County of Fresno v. Malmstrom, supra.*, 94 Cal.App.3d at p. 978; Hamilton, Guide To California Special Assessment Acts (1966), p. 1; Nichols, *Comment: How Not to Contest Special Assessments in California* (1965) 17 Stan.L.Rev. 247, 247-248.) Special assessments, being levied only for improvements that benefit particular parcels of land, and not to raise general revenues, are simply not the type of exaction that can be used as a mechanism for circumventing these tax relief provisions. (See 62 Ops.Cal.Atty.Gen. 663, 669 (1979).) [FN9]

FN9 Neither is the addition of Articles XIII A and XIII B likely to cause a sudden shift to the use of special assessments *unless said improvements are both needed and desired by those property owners who will pay for such improvements.* Unlike other governmentally imposed burdens, taxes in particular, the various special assessment acts have traditionally and continue to require that one or more hearings by the legislative body be held prior to confirmation and levy of the assessment. (See e.g., Sts. & Hy. Code, § § 5130-5227, 5360-5375, 10300-10350.) Thus, special assessments are not the type of exaction that can be imposed without giving the affected property owners both notice and opportunity to be heard. In addition, most special assessment acts contain provisions for a "majority protest." (See e.g., Sts. & Hy. Code, 5220-5222, 10310-10312.) A majority protest exists if written protests are made by owners of more than one-half of the area of the property to be assessed. (See Sts. & Hy. Code, § 2930.) Such a protest compels abandonment of the proceedings and precludes similar proceedings for one year. (Sts. & Hy. Code, § 2930; but see Sts. & Hy. Code, § 2932.) While majority protests may be overruled in certain instances (e.g., Sts. & Hy. Code, § § 2932, 5222, 10311), it is unlikely that local governments will continue with assessment proceedings once a majority of property owners in the proposed district have voiced their disapproval.

Petitioner accepted a $55,000 federal grant representing one-half of the cost of making acquisitions and constructing improvements in the *455 Tierra Heights Sewer Assessment District. Respondent argues since "proceeds of taxes " includes state subventions, and as federal grants are similar in nature to such subventions, the doctrine of *ejusdem generis* requires that federal grant proceeds be considered "proceeds of taxes." We disagree.

"Subventions" as used in article XIII B is defined as a "subsidy" or "assistance or support" from the state to local government. (Ops.Cal. Legis. Counsel, No. 14076 (July 20, 1979) Gann Initiative, p. 2.) The federal grant at issue was made directly from the federal government to the County of Placer; we do not have state action or subvention in its usual form.

Nor can we conclude that federal grants proceeds were intended to be encompassed within "proceeds of taxes." Federal grants are not mentioned in either article XIII B or in the ballot arguments in support thereof.

Of greater significance, however, is that construing federal grants to be within the scope of "proceeds of taxes" would in no way further the spending and taxing limit objectives of article XIII B. Unlike state subventions, which if not taken and spent will result in a refund of taxes and thus an indirect tax reduction under article XIII B, federal grants not taken and

spent will not give rise to any tax refund; in fact, the opposite will occur. Federal grants return tax monies to California when such grants are accepted. It is unlikely that local governments would be able to accomodate both special assessment proceeds and matching federal funds within the entity's budgeted "appropriations subject to limitation," thereby forcing such entities to reject offers of federal funds. In turn, to refuse to accept such grants would require that area improvements be financed exclusively by local governments and would tend to increase taxes in the long range. This result is in no way consistent with the objectives of article XIII B.

(1b)We determine that article XIII B does no more than place a ceiling on the expenditure of general state and local tax revenues and does not encompass special assessments and federal grants of the kind before us in the case at bench.

Let a peremptory writ of mandate issue commanding respondent to mail appropriate notices of assessment on and collect such assessments *456 from the owners of real property in the Tierra Heights Sewer Assessment District A-79 as provided by law.

Regan, Acting P. J., and Evans, J., concurred.
Cal.App.3.Dist.
County of Placer v. Corin
113 Cal.App.3d 443, 170 Cal.Rptr. 232

END OF DOCUMENT

SENATE RULES COMMITTEE

SB 2055

Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916) 327-4478

UNFINISHED BUSINESS

Bill No: SB 2055
Author: Costa (D), et al
Amended: 8/25/98
Vote: 27

SENATE PUBLIC SAFETY COMMITTEE : 7-0, 4/21/98
AYES: Vasconcellos, Rainey, Burton, Kopp, McPherson, Polanco, Schiff
NOT VOTING: Watson

SENATE APPROPRIATIONS COMMITTEE : 12-0, 5/26/98
AYES: Johnston, Alpert, Burton, Dills, Hughes, Johnson, Kelley, Leslie, McPherson, Mountjoy, O'Connell, Vasconcellos
NOT VOTING: Calderon

SENATE FLOOR : 37-0, 5/28/98
AYES: Alpert, Ayala, Brulte, Burton, Calderon, Costa, Dills, Greene, Hayden, Haynes, Hughes, Hurtt, Johannessen, Johnson, Johnston, Karnette, Kelley, Knight, Kopp, Leslie, Lockyer, Maddy, McPherson, Monteith, Mountjoy, O'Connell, Peace, Polanco, Rainey, Rosenthal, Schiff, Sher, Solis, Thompson, Vasconcellos, Watson, Wright
NOT VOTING: Craven, Lewis

ASSEMBLY FLOOR : 70-2, 8/28/98 - See last page for vote

SUBJECT : Youth Authority commitments: county payment costs

SOURCE : California State Association of Counties

DIGEST : This bill caps the fee currently paid by counties to the California Youth Authority (CYA) for committing a youth to the CYA. Specifically, this bill:

1. Provides that the Department of the Youth Authority must present to each county, not more frequently than monthly, a statement of per capita institutional cost.

2. Defines "per capita institutional cost" to mean the lesser of the current per capita institutional cost of the department, or the per capita institutional cost charged counties as of January 1, 1997.

Assembly Amendments delete Senate language modifying the current sliding scale provisions regarding county payments to Youth Authority and instead provide for a per capita institutional cost approach.

ANALYSIS : Under current law, effective January 1, 1997, counties must pay the state $150 (instead of the former $25) for each minor committed to the Department of the Youth Authority. (Welfare and Institutions Code ("WIC") sec. 912.) In addition, counties must contribute a "sliding scale" contribution for Youth Authority commitments based upon the category of the offender; the sliding scale ranges from 50% of the per capita institutional cost of the Youth Authority for category 5 offenses (category 1 being the most serious out of 7 categories), 75% for category 6 offenses, and 100% for category 7 offenses. (WIC sec. 912.5.)

Sliding Scale; History and Effect

In 1996, the Legislature enacted legislation increasing the fees that counties pay to the State for commitment of juvenile offenders to CYA. (SB 681(Hurtt) (Ch. 6/96).) These new fees went into effect in January of last year. Before SB 681, counties paid the State $25 -- an amount set in 1961-- each month for each offender sent to CYA. SB 681 increased this fee to $150 per offender per month, and also enacted a "sliding fee scale" for offenders sent by counties to CYA. As explained by the Legislative Analyst's office:

> When a ward is sent to the Youth Authority, the Youthful Offender Parole Board assigns the ward a category number -- from 1 to 7 -- based on the seriousness of the commitment offense. Generally, wards in categories 1 through 4 are considered the most serious offenders,

□

> while categories 5 through 7 are less serious. Under this legislation, counties (will) pay 100 percent of the costs of wards in category 7 (the least serious offense category), 75 percent of the costs for wards in category 6, and 50 percent of the costs for wards in category 5. Counties would pay the proposed $150 per month fee for

all other commitments. Wards in categories 5, 6 and 7 generally spend less than 18 months in Youth Authority institutions. Similar types of offenders who are placed in county-run facilities often spend less than six months in the facilities.

In 1994, the Legislative Analyst's office reviewed CYA placements and discovered that 24 counties at that time sent primarily serious offenders to CYA; in contrast, LAO found that "20 counties' total commitments to the Youth Authority consist (at that time) of 50 percent or more of less serious offenders." The legislation imposing a sliding scale fee for CYA commitments was intended to address this situation.

In its analysis of the 1998-99 Budget, the Legislative Analyst's Office concluded that preliminary data indicates sliding scale has been successful for the state:

> Commitment data suggest that the new sliding fees have had the desired impacts. The 1997 commitments of wards who are in categories 5, 6, and 7 declined almost 40 percent when compared to 1996. Commitments of category 7 wards, for whom counties paid full cost, decreased by 52 percent. There were only 26 commitments in this category to the Youth Authority in 1997.
>
> We believe that as a result of the new sliding fee, counties will continue to have a fiscal incentive to use less costly local options rather than the Youth Authority, especially for the least serious offenders, where the county would pay most of the cost of commitment. Several counties have informed us that in response to the new fees they have developed local alternatives to Youth Authority placements. These new placement options include the creation of new ranch and camp beds and the use of other nonresidential options, such as day-treatment centers, for less serious offenders. As we describe below, counties have received significant new federal funds for creating services for these types of offenders. The budget proposes to further increase these funds. (Legislative Analyst's Office, Analysis of the 1998-99 Budget Bill)

□

As explained by the author, counties argue sliding scale has greatly increased the fees they must pay for Youth Authority commitments. According to a January 1998 survey of 44 counties conducted by CSAC, their total Youth Authority fees increased 909 percent between 1995-96 and 1997-98; at the same time, their low-level offender commitments decreased 51.3 percent.

This bill would change the formula upon which sliding scale fees to the State is based. Instead of basing fees on the per capita institutional costs for Youth Authority, this

bill would base the fees on the marginal costs for Youth Authority. Currently, the per capita cost of Youth Authority is about $32,000; the marginal cost -- that is, the cost to add each additional ward to an institution -- is about $17,000. Counties argue the per capita formula unfairly penalizes counties: as the Youth Authority population decreases, the per capita costs increase, thereby increasing the sliding scale fees charged to counties which go directly to the State.

The proposed change to the formula would greatly reduce sliding scale fees paid to the state. However, under the bill, the counties would have to pay an additional amount to a newly-created local juvenile justice trust fund. In this way, although this bill would decrease sliding scale payments to the State, it would not decrease the overall amount counties would have to pay under the entire sliding scale scheme because of the county juvenile trust fund this bill would mandate.

Background: State Funds for Local Juvenile Programs

In its analysis of the 1998-99 Budget, the Legislative Analyst's Office stated:

> In response to federal welfare reform, the California Legislature established the California Work Opportunity and Responsibility to Kids (CalWORKs) program in 1997. The CalWORKS law specifically provided that TANF funds could be used to provide probation services to juvenile offenders. In the current year, counties received $141 million in TANF block grant funds for juvenile offenders under the care of probation departments. In addition, counties with ranches and camps received an additional $33 million in TANF funds for support of these juvenile facilities. Consequently, a total of $174 million in TANF was allocated to county probation departments.
>
> The budget also continues the $33 million from TANF for counties with juvenile ranches and camps. As a result, the budget proposes allocating $200 million from TANF to county probation departments to provide services to juvenile offenders. As a result of the TANF funds, counties have a source of funds to either defray whatever costs they might incur as a consequence of the new Youth Authority fees or develop alternatives to Youth Authority placements. Furthermore, the significant amount of funding available under the TANF probation grants should allow counties to continue to decrease their reliance on placements in the Youth Authority and accordingly, reduce future sliding scale fee costs. Notwithstanding the overall decrease in Youth Authority placements, the allocation of $200 million to counties for juvenile offenders is substantially more than the estimated $43 million that counties will reimburse the

state for Youth Authority placements.

Prior legislation :

AB 2312 (Woods) passed the Senate 39-0 on 8/29/96 and was vetoed by the Governor.

Governor's Veto Message:

"By relieving counties of some of their responsibility to pay a portion of the cost for committing wards to the Youth Authority, this bill would increase General Fund expenditures by millions of dollars over the next six fiscal years. The State is already providing a considerable amount of funding to counties in support of local juvenile justice programs, including $33 million per year for county probation camps. In further support of county efforts, I recently signed SB 1760, which provides $50 million in grant funds to be awarded to county agencies for the prevention of juvenile crime and treatment of youthful offenders. These funds, not anticipated at the time this bill was introduced, would appear to provide more first year relief than AB 2312.

"I am also concerned with the provision that would allow a juvenile ordered into the custody of the county juvenile correctional administrator pursuant to a community-based punishment plan, to be placed in the Department of Youth Authority under terms and conditions determined by the county administrator rather than state authorities. This bill would appear to obscure the authority of (the Youth Authority and the Youthful Offender Parole Board) by allowing the county correctional administrator to determine the length of

stay and the terms and conditions of the placement.

"I am not unalterably opposed to providing additional relief, of the magnitude sought here, to county juvenile authorities. I have directed my staff to work with the author to explore alternatives to disruption of the formula under which counties contribute to the costs of the Youth Authority."

FISCAL EFFECT : Appropriation: Yes Fiscal Com.: Yes Local: Yes

Fiscal Impact (in thousands)

Major Provisions	1998-99	1999-2000	2000-01	Fund
CYA sliding scale fee loss of revenues	$ 1,000	$ 22,000	$ 22,000	General
Local revenues	$ 1,000	$ 22,000	$ 22,000	Local

SUPPORT : (Verified 5/22/98) (Unable to reverify at time of writing)

California State Association of Counties (source)
San Bernardino County Board of Supervisors
Urban Counties Caucus
Merced County
San Diego County
City and County of San Francisco

ARGUMENTS IN SUPPORT : The author states:

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

The related cost to counties for CYA has increased from just under $2 million in FY 1995-96 to a projected $20-30 million for FY 1997-98. While costs have increased 10-15 fold, low level commitments to the CYA decreased approximately 53.2 percent during that time. . . .

SB 2055 would redirect a portion of the fees currently sent to CYA and return the money to the county of commitment to be placed in a Local Juvenile Justice Program Development Fund. Moneys in the fund would be earmarked for juvenile probation programs and facilities -- such as probation

□

camps and ranches -- dedicated to the punishment, treatment and rehabilitation of juvenile offenders.

Given that the per capita cost CYA charges counties has continually increased, (as counties send fewer kids to CYA, their per kid cost increases) SB 2055 would also freeze the actual per capita costs CYA could charge counties at the January 1, 1997 level.

ASSEMBLY FLOOR :
AYES: Ackerman, Aguiar, Alby, Alquist, Aroner, Ashburn, Baca, Baldwin, Battin, Baugh, Bordonaro, Bowen, Bowler, Brewer, Bustamante, Campbell, Cardenas, Cardoza, Cedillo, Cunneen, Davis, Ducheny, Escutia, Figueroa, Firestone, Frusetta, Gallegos, Goldsmith, Granlund, Havice, Hertzberg, Honda, House, Kaloogian, Keeley, Knox, Kuehl, Kuykendall, Leach, Lempert, Leonard, Margett, Mazzoni, Migden, Miller, Morrissey, Morrow, Murray, Napolitano, Olberg, Oller, Ortiz, Perata, Poochigian, Prenter, Pringle, Runner, Scott, Shelley, Strom-Martin, Sweeney, Thompson, Torlakson, Vincent, Washington, Wayne, Wildman, Woods, Wright, Villaraigosa
NOES: Martinez, McClintock
NOT VOTING: Brown, Floyd, Machado, Pacheco, Papan, Richter, Takasugi, Thomson

RJG:jk/sl 8/28/98 Senate Floor Analyses
SUPPORT/OPPOSITION: SEE ABOVE
**** END ****

Aguimatang v. California State Lottery
Cal.App.3.Dist.FEDERICO S. AGUIMATANG, JR., Plaintiff and Appellant,
v.
CALIFORNIA STATE LOTTERY et al., Defendants, Cross-defendants and Respondents;
ARNULFO MELGAR CHANQUIN, Defendant, Cross-complainant and Appellant.
No. C007401.

Court of Appeal, Third District, California.
Sep 25, 1991.

SUMMARY

Plaintiffs and cross-complainant, who had drawn winning "California Lotto 6/49" tickets, brought an action against the California State Lottery, contending that the jackpot should have been divided among the three persons presenting winning tickets instead of being divided into four shares, with one unclaimed share reverting to the California State Lottery Education Fund. On the lottery's motion for summary judgment, plaintiff and cross-complainant attempted to raise a triable issue as to whether the fourth transaction was an aborted wager for which no valid ticket ever issued. The trial court, concluding that it was immaterial whether a valid fourth ticket ever issued, granted summary judgment for the lottery. (Superior Court of Sacramento County, No. 500233, Ronald B. Robie, Judge.)

The Court of Appeal reversed and remanded the matter for proceedings consistent with the court's opinion. The court held that the $15.9 million jackpot was not a "prize" within the meaning of former Gov. Code, § 8880.32, subd. (c) (where more than one claimant is entitled to particular prize, sole remedy is award to each of them of equal share); rather, a "particular" prize is the share of the jackpot attributable to a winning wager. Thus, the statute did not prevent the lottery from dividing the jackpot four ways and transferring one quarter of the jackpot, representing the fourth unclaimed share, to the education fund, assuming that there were indeed four winning wagers. Further, the lottery was not precluded from transferring one quarter of the jackpot to the education fund, even though Gov. Code, § 8880.4, requires that 50 percent of the total annual revenues be "paid out" as lottery prizes. The court held that a reasonable construction of the statute is that 50 percent of the revenues must be allocated to prizes; unclaimed prizes falling within this 50 percent allocation revert to the education fund. Finally, the court held, the lottery made a prima facie showing of entitlement to summary judgment: its evidence sufficiently showed that four valid winning tickets issued, based not only on its computer records but also on reconciliation of those records with the retailer's information. However, the presence of the number of the fourth ticket on the retailer's request for adjustment tendered the possibility that someone in the lottery thought the request embraced the missing winning ticket, and thus the trial court erred in denying plaintiff's motion for a continuance to pursue this issue. (Opinion by Sims, J., with Carr, Acting P. J., and Nicholson, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Appellate Review § 6--Who May Appeal--Loss or Waiver of Right--Failure to Appeal Order Imposing Sanctions.
On appeal from a summary judgment in favor of defendant California State Lottery in an action in which plaintiff and cross-complainant, who had drawn winning lottery tickets, contended that the jackpot should have been divided among the three persons presenting winning tickets instead of being divided into four shares, with one unclaimed share reverting to the California State Lottery Education Fund, the Court of Appeal declined to review the trial court's order imposing monetary sanctions against the attorneys for plaintiff in connection with a motion to recuse defense counsel. The order was appealable, but no appeal was taken and the order was now final. Plaintiff's appellate brief cited the court's inherent power to correct rulings and claimed that events subsequent to the ruling proved that the recusal motion was not frivolous. However, the cited authority referred only to the trial court's jurisdiction to reconsider its own rulings. Further, the subsequent events were immaterial, since sanctions were not imposed for a frivolous motion but for violation of local rules.

(2) Words, Phrases, and Maxims--Pari-mutuel.
"Pari-mutuel" refers to a system of betting (as on a horse race) in which those who bet on the winner share the total stakes minus a small percent for the management, or a machine for registering and indicating the number and nature of bets made (as on a horse race) in the pari-mutuel system of betting.

(3) Summary Judgment § 3--Propriety.
The purpose of summary judgment is to penetrate evasive language and adept pleading and to ascertain, by means of affidavits, the presence or absence of triable *771 issues of fact. Accordingly, the function of the trial court in ruling on a motion for summary judgment is merely to determine whether such issues of fact exist, and not to decide the merits of the issues themselves. A defendant is entitled to summary judgment if the record establishes as a matter of law that none of the plaintiff's asserted causes of action can prevail. To succeed, the defendant must conclusively negate a necessary element of the plaintiff's case, and demonstrate that under no hypothesis is there a material issue of fact that requires the process of a trial.

(4) Summary Judgment § 26--Appellate Review--Scope--Trial Court's Reasoning.
A reviewing court is not bound by the trial court's reasoning in determining whether summary judgment was properly granted.

(5) Lotteries § 2--Definitions and Distinctions--"Particular Prize."
A $15.9 million California State Lottery jackpot was not a "prize" within the meaning of former Gov. Code, § 8880.32, subd. (c) (where more than one claimant is entitled to particular prize, sole remedy is award to each of them of equal share). A jackpot is not a "particular prize"; rather, a "particular prize" is the share of the jackpot attributable to a winning wager. Thus, where three claimants presented winning tickets for the $15.9 million, the statute did not prevent the California State Lottery Commission from dividing the jackpot four ways and transferring one quarter of the jackpot, representing a fourth unclaimed share, to the California State Lottery Education Fund, assuming that there were indeed four winning wagers.
[See Cal.Jur.3d (Rev), Games, Contests, and Prizes, § 83.]
(6a, 6b, 6c) Lotteries § 6--California State Lottery--Transfer of Unclaimed Share to Education Fund.
The California State Lottery Commission was not prevented from dividing a "California Lotto 6/49" $15.9 million jackpot four ways and transferring one quarter of the jackpot, representing a fourth unclaimed share, to the California State Lottery Education Fund, assuming that there were indeed four winning wagers, notwithstanding that former Gov. Code, § 8880.32, subd. (e), required reversion to the education fund for prizes "directly payable by the Lottery Commission," and jackpot prizes are annuitized payments on annuity investments made by the Treasurer, not the lottery. Since prizes are paid by the Controller or by the retailer, technically no prizes are "directly payable by the Lottery Commission." That phrase should be interpreted as meaning "paid upon the authority of the Lottery Commission" and not by a retailer. The purpose of a subsequent *772 amendment of the statute was to ensure that unclaimed prizes payable directly by retailers would revert to education, in the same manner as other unclaimed prizes, and does not indicate that previously the reverter provision had no application to Lotto at all but applied only to other lottery games such as the "scratcher" game.

(7) Statutes § 22--Construction--Reasonableness.
Where the language of a statutory provision is susceptible of two constructions, one of which, in application, will render it reasonable, fair, and harmonious with its manifest purpose, and another which would be productive of absurd consequences, the reasonable construction will be adopted.

(8) Statutes § 42--Construction--Aids--Subsequent Legislation.
Although subsequent legislation cannot change the meaning of an earlier enactment, it does supply an indication of legislative intent that may be considered with other factors in arriving at the true intent existing when the legislation was enacted.

(9) Statutes § 42--Construction--Aids--Legislative History--Report by Legislative Analyst.
For purposes of statutory construction, a report by the Legislative Analyst is cognizable legislative history.

(10a, 10b, 10c) Lotteries § 6--California State Lottery--Transfer of Unclaimed Share to Education Fund--Effect of Requirement That 50 Percent of Revenues Be Paid Out as Prizes.
The California State Lottery Commission was not precluded from dividing a "California Lotto 6/49" $15.9 million jackpot four ways and transferring one quarter of the jackpot, representing a fourth unclaimed share, to the California State Lottery Education Fund, even though Gov. Code, § 8880.4, requires that 50 percent of the total annual revenues

be "paid out" as lottery prizes. The statute must be construed to mean that a prize is "paid out" when it is paid to the Education Fund. A reasonable construction of the statute is that 50 percent of the revenues must be allocated to prizes; unclaimed prizes falling within this 50 percent allocation revert to the education fund. Although an Attorney General opinion reached an opposite conclusion, the Legislature implicitly disagreed by amending Gov. Code, § 8880.32, subd. (e), so as to authorize reversion to the education fund of any unclaimed Lotto prizes.

(11) Statutes § 39--Construction--Giving Effect to Statute--Conformation of Parts.
The meaning of a statute may not be determined from a single word or sentence; the words must be construed in context, and provisions relating to the same subject matter must be *773 harmonized to the extent possible. An interpretation that renders related provisions nugatory must be avoided; each sentence must be read not in isolation but in the light of the statutory scheme, and if a statute is amenable to two alternative interpretations, the one that leads to the more reasonable result will be followed.

(12) Statutes § 42--Construction--Aids--Statements Submitted to Voters.
In seeking to ascertain the intent of the voters in approving a ballot measure, a court may consider the official statements submitted to the voters.

(13) State of California § 10--Attorney General--Opinions.
Opinions of the Attorney General are not binding on a court. The rule that such opinions are persuasive authority stems from a presumption that the Legislature is aware of the Attorney General's construction and would take corrective measures if that construction misstated the legislative intent.

(14a, 14b, 14c, 14d) Lotteries § 6--California State Lottery-- Actions Against Lottery Commission--Payment of Unclaimed Share to Education Fund--Summary Judgment.
In an action against the California State Lottery in which plaintiff and cross-complainant, who had drawn winning lottery tickets, contended that the jackpot should have been divided among the three persons presenting winning tickets instead of being divided into four shares, with one unclaimed share reverting to the California State Lottery Education Fund, the lottery's initial showing was sufficient to make out a prima facie entitlement to summary judgment. A "prize," subject to reversion to the education fund, is created only when a valid winning ticket issues, and the lottery's evidence sufficiently showed that four valid winning tickets issued, based not only on its computer records but also on reconciliation of those records with the retailer's information. None of the depositions cited by plaintiff and cross-complainant refuted the lottery's evidence or controverted the reasonable inference that the fourth ticket issued. However, the presence of the number of that ticket on the retailer's request for adjustment tendered the possibility that someone in the lottery thought the request embraced the missing winning ticket, and thus the trial court erred in denying plaintiff's motion for a continuance to pursue this issue.

(15) Appellate Review § 108--Briefs--Form and Requisites--Reference to Record--Evidentiary Arguments--Reference to Trial Briefs.
On appeal from a summary judgment in favor of defendant California State Lottery in an action in which plaintiff and cross-*774 complainant, who had drawn winning lottery tickets, contended that the jackpot should have been divided among the three persons presenting winning tickets instead of being divided into four shares, with one unclaimed share reverting to the California State Lottery Education Fund, the Court of Appeal declined to consider plaintiff's and cross-complainants' evidentiary arguments, except to the extent that they were properly briefed, where plaintiff and cross-complainant, for the most part, referred the court to the trial briefs, apparently expecting the court to ferret through 1,400 pages of summary judgment papers in order to locate the challenged evidence. This procedure violated Cal. Rules of Court, rule 15(a) (statement of any matter in record must be supported by appropriate reference to record).

(16) Evidence § 52--Hearsay--Exceptions to the Rule--Business Records-- Statement by Custodian--Requirement of Personal Knowledge.
In an action against the California State Lottery in which plaintiff and cross-complainant, who had drawn winning lottery tickets, contended that the jackpot should have been divided among the three persons presenting winning tickets instead of being divided into four shares, with one unclaimed share reverting to the California State Lottery Education Fund, any error in the trial court's admitting a declaration, on the lottery's motion for summary judgment, stating that the declarant was the custodian of records for the lottery and that certain records attached as exhibits to the declaration of a former lottery auditor were photocopies of original records

kept in the regular course of business, was harmless and did not justify reversal. The declaration was made to the best of the declarant's knowledge and belief, and did not state that it was based on personal knowledge. However, the records in question were primarily forms and worksheets prepared by the former auditor in calculating the prize amounts based on the number of winners for the drawing in issue, and his declaration was made on personal knowledge. [See 1 Witkin, Cal. Evidence (3d ed. 1986) § § 777, 778.]

(17) Evidence § 52--Hearsay--Exceptions to the Rule--Business Records-- Computer Printouts.

In an action against the California State Lottery in which plaintiff and cross-complainant, who had drawn winning lottery tickets, contended that the jackpot should have been divided among the three persons presenting winning tickets instead of being divided into four shares, with one unclaimed share reverting to the California State Lottery Education Fund, the trial court, on the lottery's motion for summary judgment, did not err in admitting declarations by lottery employees that referred to computer records, which were attached to each declaration. Computer printouts, when offered *775 for the truth, must qualify under some hearsay exception, such as business records under Evid. Code, § 1271, and a trial court has wide discretion in determining whether sufficient evidence is adduced to qualify evidence as business records. The records at issue were actually those of the company that was under contract to provide and operate the lottery's on-line system, and that company provided a foundation for admission of the documents as its own business records. Further, if the printouts was not made at or near the time of the event, as required by Evid. Code, § 1271, subd. (b), the magnetic tape that contained the information were, and they qualified as the "writing" that must be made at that time.

(18) Evidence § 52--Hearsay--Exceptions to the Rule--Business Records-- Computer Printouts--Laying of Evidentiary Foundation.

In an action against the California State Lottery in which plaintiff and cross-complainant, who had drawn winning lottery tickets, contended that the jackpot should have been divided among the three persons presenting winning tickets instead of being divided into four shares, with one unclaimed share reverting to the California State Lottery Education Fund, the trial court, on the lottery's summary judgment motion, did not err in admitting a declaration, by the director of the company that was under contract to provide and operate the lottery's on-line system that the various computer printouts submitted as attachments to the declaration were printed in accordance with correct procedures for getting hard copies from magnetic tapes and that the printouts contained pertinent and conforming information. The statement in the declaration was not a mere opinion; the director was qualified to provide the foundational basis for the business records. Further, since the documents were attached to the declaration, there was no need for a statement that the director compared copies to originals in order to assure that a later submission of exhibits matched those referred to in the declaration.

(19) Evidence § 56--Documentary Evidence--Authentication--Computer Printouts--Declaration of Facts Within Personal Knowledge.

In an action against the California State Lottery in which plaintiff and cross-complainant, who had drawn winning lottery tickets, contended that the jackpot should have been divided among the three persons presenting winning tickets instead of being divided into four shares, with one unclaimed share reverting to the California State Lottery Education Fund, the trial court, on the lottery's motion for summary judgment, did not err in admitting a declaration of the lottery's security director in which, in referring to the attached computer printouts, he stated that the printouts appeared to be correct. This *776 was not mere opinion, even though the printouts were the computer records of the company that had contracted to provide and maintain the lottery's on-line system. The director also stated that his security division had conducted a review of all pertinent reports by the contractor for the drawing at issue and found them to be consistent, that as claimants came forward to claim prizes their claim and ticket information matched the computer information, and the director personally supervised the review and found each printout to be correct. Thus the director was stating facts within personal knowledge.

(20) Words, Phrases, and Maxims--Inference.

An inference is more than a surmise or a conjecture. It cannot be based on mere possibilities; it must be based on probabilities.

(21) Summary Judgment § 19--Hearing and Determination--Right to Continuance--Showing Required.

Generally, power to determine when a continuance should be granted is within the discretion of the court, and there is no right to a continuance as a matter of law. However, under Code Civ. Proc., § 437c, a continuance of a summary judgment hearing is mandated upon a good faith showing by affidavit

that a continuance is needed to obtain facts essential to justify opposition to the motion.

COUNSEL

Rentzer & Rentzer, Robert D. Rentzer and Philip C. Greenwald for Plaintiff and Appellant.

Elaine Buhan, Judith P. Blinco and Arthur Azdair for Defendant, Cross-complainant and Appellant.

John K. Van de Kamp and Daniel E. Lungren, Attorney Generals, N. Eugene Hill, Assistant Attorney General, Cathy A. Neff and Linda A. Cabatic, Deputy Attorneys General, for Defendants, Cross-defendants and Respondents.

SIMS, J.

Plaintiff Federico S. Aguimatang, Jr., and cross-complainant Arnulfo Melgar Chanquin appeal from summary judgment entered in favor of defendants/cross-defendants California State Lottery Commission, State *777 Controller, Director of California State Lottery, California State Lottery, State of California, James Barnett, Timothy Ford and California State Lottery Education Fund (collectively State Lottery). [FN1] The litigation involves appellants' claims under the California State Lottery Act of 1984 (Cal. Const., art. IV, § 19, subd. (d); [FN2] Gov. Code, § 8880 et seq. [FN3]) that they, as holders of winning "California Lotto 6/49" tickets, were deprived of a portion of their winnings when the State Lottery divided a $15.9 million Lotto jackpot into four shares, with one unclaimed share reverting to the Education Fund, rather than dividing the jackpot equally between the three persons who came forward with winning tickets. [FN4] The State Lottery prevailed on a motion for summary judgment by showing its computer records indicated four winning transactions. Appellants attempted to raise a triable issue as to whether the fourth transaction was an aborted wager for which no valid ticket ever issued. The trial court concluded it was immaterial whether a valid fourth ticket ever issued.

FN1 The State Board of Control was a named cross-defendant but was dismissed with prejudice following demurrer in May 1989.

FN2 California Constitution, article IV, section 19 provides in part: "(a) The Legislature has no power to authorize lotteries and shall prohibit the sale of lottery tickets in the State. [] [¶] (d) Notwithstanding subdivision (a), there is authorized the establishment of a California State Lottery."

FN3 Undesignated statutory references are to the Government Code.

FN4 The third person, Robert Earl Jorgenson, was joined as a necessary party in the complaint and cross-complaint but failed to answer; his default was taken, and he is not a party to this appeal.

(1)(See fn. 5.) Appellants contend (1) the jackpot should be divided by the number of winning tickets presented; (2) the statutory reversion of unclaimed prizes to the Education Fund does not apply to annuitized prizes; (3) issuance of a ticket is required in order to create a prize, and a triable issue of material fact exists as to whether a fourth ticket issued; (4) the trial court erroneously presumed that if the lottery's computer shows an uncancelled wager, a valid ticket has been issued; (5) the trial court considered inadmissible evidence; and (6) the trial court improperly denied a continuance and foreclosed discovery. [FN5] *778

FN5 In a footnote, Aguimatang's brief also asks this court to direct the trial court to vacate a May 1989 order imposing $523.50 monetary sanctions against each of his two attorneys in connection with a motion to recuse defense counsel. However, at the time, the order was appealable but no appeal was taken from the order and it is now final. (See *I. J. Weinrot & Son, Inc. v. Jackson* (1985) 40 Cal.3d 327, 331 [220 Cal.Rptr. 103, 708 P.2d 682]; *Bauguess v. Paine* (1978) 22 Cal.3d 626, 634, fn. 3 [150 Cal.Rptr. 461, 586 P.2d 942] [order imposing sanctions against attorney is appealable as final order on collateral matter]; compare Code Civ. Proc., § 904.1, subd. (k), enacted following all proceedings in the trial court; Stats. 1989, ch. 1416, § 25.) Aguimatang's appellate brief nevertheless seeks review, citing the court's inherent power to correct rulings and claiming events subsequent to the ruling prove the recusal motion was not frivolous. However, the cited authority refers only to a trial court's jurisdiction to reconsider its own rulings. (*Greenberg v. Superior Court* (1982) 131 Cal.App.3d 441, 445 [182 Cal.Rptr. 466].) Moreover, subsequent events are immaterial, since sanctions were

> imposed not for a frivolous motion but for violation of local rules. Accordingly, we reject the request to review the order imposing sanctions.

We will conclude (1) assuming four winning wagers, the method of division of the jackpot and reversion of the unclaimed share to education complied with the statutes; (2) the issuance of a ticket is material to the determination of a winning wager and the creation of a "prize"; and (3) the trial court abused its discretion in denying a continuance to allow further discovery, based on its conclusion that issuance of a fourth ticket was immaterial. We will therefore reverse the judgment and remand to the trial court for further proceedings.

Factual and Procedural Background

In January 1988, Aguimatang filed a complaint for breach of contract and conversion, alleging he was one of three winning claimants entitled to share a $15.9 million Lotto jackpot but that the State Lottery awarded him only one-fourth of the jackpot. An amended complaint alleged the State Lottery's identification of four winners and set forth Aguimatang's theory that a Lotto jackpot must be divided by the number of claimants who come forward with valid tickets, not by the number of winners reflected in the State Lottery's computer. The misrepresentation cause of action alleged the State Lottery falsely represented that four winning tickets were presented. Aguimatang thus claimed the State Lottery had deprived him of his entitlement by transferring the fourth, unclaimed share to the Education Fund. Aguimatang claimed entitlement to the entire fourth share and therefore joined as necessary parties the Education Fund and the other winning claimants, Chanquin and Jorgenson.

In January 1989, Chanquin filed a cross-complaint which was premised on the same theory as the complaint but also added allegations that no fourth ticket ever issued.

At the demurrer stage, the trial court ruled that no cause of action was stated on the basis that there were only three claimants for the prize; division of the jackpot by the number of winning wagers, with reversion of the unclaimed share to education, conformed to the governing statutes. However, the court ruled a cause of action could be stated on the theory that the fourth ticket either never issued or was cancelled.

Amended pleadings were filed.

Aguimatang's second amended complaint asserts causes of action for breach of contract, declaratory relief, breach of statutory duty, conversion, *779 and negligent misrepresentation, alleging that only three winning tickets were validly issued and so the jackpot should have been divided into thirds.

Chanquin's first amended cross-complaint alleges breach of contract, declaratory relief, breach of statutory duty and injunction, and conversion, premised on the same theories as Aguimatang's action. Chanquin additionally alleges violation of the statutory requirement that 50 percent of lottery revenues to be returned to the public in the form of prizes.

In May 1989, the State Lottery filed a motion for summary judgment or summary adjudication of issues as to both Aguimatang's second amended complaint and Chanquin's first amended cross-complaint.

In support of the summary judgment motion, the State Lottery submitted evidence of the following:

The State Lottery invited the public to participate in the California Lotto 6/49 Drawing for January 17, 1987 (Draw No. 14), with an expected "jackpot" of over $15 million. (2)(See fn. 6.) The general public was informed that the jackpot would be paid out on a "parimutuel" basis, i.e., divided among winning players who match all six numbers drawn. [FN6]

> FN6 Webster's Third New International Dictionary defines "parimutuel" as "a system of betting (as on a horse race) in which those who bet on the winner share the total stakes minus a small percent for the management ... a machine for registering and indicating the number and nature of bets made (as on a horse race) in the pari-mutuel system of betting."

In opposing summary judgment, both Aguimatang and Chanquin disputed the State Lottery's factual assertion that "The general public was specifically informed that all payouts on Lotto 6/49 tickets were made on a pari-mutuel basis." This assertion was partially inaccurate, because small prizes are not paid on a pari-mutuel basis. Thus, it is apparent from the evidence cited by Chanquin that his dispute relates only to the immaterial fact that players who match "3

of 6" winning numbers do not share on a pari-mutuel basis but receive a set prize of $5. The "3 of 6" prize category is not at issue in this case.
The evidence before the trial court included the "play slip" on which players make their selections, and which both Aguimatang and Chanquin assert is part of their contract with the State Lottery. The play slip clearly stated that, other than the $5 prizes, "all other payouts are calculated by a parimutuel formula." While on the one hand asserting the play slip as part of his contract, Aguimatang nevertheless disputed the State Lottery's factual assertion of pari-mutuel prize division with the irrelevant statement, unsupported by any citation of evidence, that "The Defendants' advertising did not make it clear that parimutuel betting was involved."

On January 17, 1987, a drawing was held, and the State Lottery announced the winning numbers. After the numbers were announced, the lottery auditors began calculating the prize pools for the different categories of prizes, based upon computer reports. Once all computer reports were completed, the State Lottery began final calculations and verifications of the amount of the prize pools for the different categories. *780

The State Lottery contracts with GTECH Corporation to operate the on-line lottery system. All betting transactions originate at retailer terminals. The central computer receives, processes, and stores the transaction. After the central computer determines that the transaction has been properly stored, a response is sent to the terminal to print the ticket. Information printed on the ticket includes numbers played, issuing retailer, date purchased, drawing date, and a secure control number.

Records for all transactions are stored in the computer in a file called Transaction Master File (TMF). A Transaction Master File Information Retrieval Report (TMIR) is used to report on the transactions stored in the TMF. Information on the TMIR includes the date, time, and amount of the transaction, and whether the transaction is good or cancelled. Certain error conditions would show under the column title "ERR" on the TMIR.

The State Lottery maintains an Internal Control System (ICS) of total sales that is compared with the TMF's record of total sales.

When a drawing is held, the winning numbers are entered into the computer to check for winning transactions. The prize pool for each prize category is calculated based on the amount of sales. [FN7] Prizes are determined based on the number of winners found in each prize category. High tier prize winners are identified on a computer report entitled "FINDBIG." Information on FINDBIG includes identification of retailers.

FN7 The available gross prize pool is approximately 50 percent of total sales for the drawing period immediately preceding the drawing at which the prize winners are determined. (Cal. State Lottery Rules & Regs. (6/49), rule 5(a).) The gross prize pool is broken down as follows: 40 percent is allocated to the prize category matching all six winning numbers; 21.35 percent is allocated to players who match "5 of 6 plus the bonus number;" 11 percent is allocated to the "5 of 6" prize category; 10 percent is allocated to the "4 of 6" prize category; and an estimated 17.65 percent is allocated to "3 of the 6" prize category. (*Ibid.*)

Retailers are provided with an on-line retailer/operator manual that requires each retailer to complete a "weekly settlement" used for final accounting of transactions. A request for adjustment form is provided for those instances when a retailer is unable to cancel a transaction due to a failure of the on-line system. The request for adjustment must indicate the date, approximate time, and circumstances of the failure.

For the January 17, 1987 drawing, the computer records show five transactions [FN8] matching all six winning numbers. The FINDBIG report shows *781 one of those five transactions was cancelled before the drawing. [FN9] The other four transactions were shown on the computer as uncancelled, good transactions.

FN8 The State Lottery used the word "wagers" instead of "transactions." The term "wager" was disputed by Aguimatang and Chanquin, who claim that "transactions" not "wagers" show on the lottery's computer because there can be no "wager" without evidence of a valid legible "ticket."

FN9 Apparently, this was a transaction initiated by Aguimatang that was cancelled due to a defective ticket. A valid ticket was then issued. Thus, the computer showed two

transactions-one valid and one void-at the California Club in San Diego, where Aguimatang bought his ticket. On January 18, 1987, a State Lottery security agent retrieved the cancelled ticket from that retailer.

There was no indication of error in the computer system, dedicated lines, or retailer terminals. There was no discrepancy between computer reports generated by GTECH and by the State Lottery. The accounts receivable records balanced with ticket sales.

Of the four uncancelled transactions, the one for which no claim was made is serial number 7715988, which was a $1 sale made at the New Lun Wah Company in San Francisco on January 17, 1987, at 3:43 p.m. New Lun Wah Company's settlement envelope for that Drawing period reconciled with the computer report of total sales. All cancelled transactions for the drawing period were accounted for. New Lun Wah Company's settlement envelope also contained a retailer request for adjustment dated January 18, 1987, and signed by owner Paul Lee. Lee sought adjustment for a $5 sale that occurred on January 17, 1987, at approximately 1 p.m., due to printer fault and cutter fault. The settlement envelope contained a misprinted ticket and a cut-off "Reprint" ticket.

Based upon all its information, on January 20, 1987, the State Lottery announced there were four winners of the January 17, 1987, jackpot of $15.9 million.

Three persons-Aguimatang, Chanquin, and Jorgenson-presented valid winning tickets within the allowable claim period, and each received an annuitized prize of approximately $4 million, representing one-fourth of the prize pool.

No fourth ticket was presented for payment. Upon expiration of the 180- day period for claiming prizes, the State Lottery announced the reversion of the fourth share to the Education Fund.

In opposition to the State Lottery's showing on the motion for summary judgment, appellants showed that certain errors would not show on the State Lottery's computer. Thus, the computer would not show the issuance of a defective ticket or the failure to issue a ticket due to a retailer's printer *782 jamming or running out of paper. The retailer is a critical component in the State Lottery's process of reconciliation and accuracy.

Appellants also filed extensive papers, discussed *post*, attempting to raise a triable issue as to whether a valid fourth ticket ever issued for the fourth winning transaction. The document on which Aguimatang placed primary emphasis was a copy of a January 18, 1987, request for adjustment submitted to the State Lottery by Paul Lee of the New Lun Wah Company, where the missing ticket was supposed to have issued. Aguimatang's copy of that form bore the handwritten notation "7715988" (the transaction number of the missing winning ticket) in the upper right hand corner. A copy of the form is found at appendix A, *post*.

Aguimatang also submitted a declaration from Paul Lee which we shall discuss later.

The trial court ultimately concluded the question whether a valid fourth ticket issued was immaterial, because the State Lottery's computer process, which was indisputably functioning properly, produced four winning wagers, and there is a presumption that if a wager is made and not cancelled, a valid ticket has been issued. The trial court rejected appellants' attempts to relitigate the legal issues decided against them at the demurrer stage regarding whether the State Lottery's procedures for division and reversion of prizes complied with the statutes. The trial court thus granted the motion for summary judgment as to the entire lawsuit. [FN10] Aguimatang and Chanquin appeal.

FN10 The trial court treated the motion as to the negligent misrepresentation cause of action as a motion for judgment on the pleadings, which the court granted since there was no entitlement to the fourth share.

Discussion

I. *Standard of Review*

"A motion for summary judgment 'shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' (Code Civ. Proc., § 437c, subd. (c).) (3) The purpose of summary judgment is to penetrate evasive language and adept pleading and to ascertain, by means of affidavits, the presence or absence of triable issues of fact. [Citation.] Accordingly, the function of the trial court in ruling on a motion for summary

judgment is merely to determine whether such issues of fact exist, and not to decide the merits of the issues themselves. [Citation.] *783

"

"A defendant is entitled to summary judgment if the record establishes as a matter of law that none of the plaintiff's asserted causes of action can prevail. [Citation.] To succeed, the defendant must conclusively negate a necessary element of the plaintiff's case, and demonstrate that under no hypothesis is there a material issue of fact that requires the process of a trial. [Citation.]" (*Molko v. Holy Spirit Assn.* (1988) 46 Cal.3d 1092, 1107 [252 Cal.Rptr. 122, 762 P.2d 46].)

(4) The reviewing court is not bound by the trial court's reasoning in determining whether summary judgment was properly granted. (*Barnett v. Delta Lines, Inc.* (1982) 137 Cal.App.3d 674, 682 [187 Cal.Rptr. 219].)

II. *The State Lottery's Division and Reversion of Unclaimed Shares to Education Complies With the Statutes*

We first address the legal questions of statutory and rule interpretation as to the proper handling of prizes, assuming four winning wagers. We will then address the factual question whether a triable issue exists in this case as to the number of winning wagers.

Appellants renew in this court their challenge to the statutory authorization for the State Lottery's handling of the jackpot. [FN11]

FN11 We find no assistance in the cases cited by the parties. (*Horan v. State of California* (1990) 220 Cal.App.3d 1503 [270 Cal.Rptr. 194] [retailer who recovered stolen winning scratchoff ticket from employee was not entitled to prize because had not played ticket consistent with principles of fair chance]; *City of Gilroy v. State Bd. of Equalization* (1989) 212 Cal.App.3d 589 [260 Cal.Rptr. 723] [manufacturer's sale of printed tickets to lottery commission was not exempt from taxation as "lottery ticket sales" because printed tickets do not constitute lottery tickets until sold to the public for opportunity to win prize]; *McCabe v. Director of New Jersey Lottery Comm'* (1976) 143 N.J.Super. 443 [363 A.2d 387] [lottery statutes construed to preclude winner's assignment of annuitized prize]; *Karafa v. New Jersey State Lottery Com'n* (1974) 129 N.J. Super. 499 [324 A.2d 97] [lottery had no obligation to pay prize for lost ticket regardless whether claimant could otherwise prove wager; unlike other writings merely serving as evidence of underlying obligation, lottery ticket is itself the obligation and the debt].)

We deny Chanquin's request that we take judicial notice of the State Lottery's appellate brief in the *Horan* appeal.

We deny Chanquin's request for judicial notice of Ohio cases identified only by court docket number.

A. *How a Prize Is Created*

(5) Appellants contend the jackpot must be divided by the number of qualified claimants who present valid winning tickets, not by the number of *784 computer entries matching the winning numbers. Their contentions turn on their characterization of the $15.9 million jackpot as "the prize." We conclude appellants overlook the distinction between creating a prize and claiming a prize.

Appellants rely on former section 8880.32, subdivision (c), which at the time of Draw No. 14 provided: "No particular prize in any Lottery Game may be paid more than once, and in the event the Commission reaches a binding determination that more than one claimant is entitled to a particular prize, the sole remedy of the claimants is the award to each of them of an equal share in the prize and the Commission shall direct the Controller to disburse the award to the claimants in equal shares." [FN12] (Stats. 1986, ch. 848, § 2.)

FN12 A 1989 amendment rewrote section 8880.32, subdivision (c), which now reads: "No particular prize in any Lottery Game shall be paid more than once." (Stats. 1989, ch. 917, § 5.)

Chanquin cites a letter from the State Lottery's legislative liaison to the Senate Governmental Organization Committee explaining the reason for the amendment of section 8880.32, subdivision (c), was because disputes between two or more holders of

a single ticket should be decided by the courts. However, even assuming for the sake of argument the letter constitutes properly cognizable legislative history, the letter merely supports the conclusion, evident from the statutory language itself, that former section 8880.32, subdivision (c), referred to the inapposite situation of disputes between competing claimants under a single ticket.

Appellants' underlying premise is that the $15.9 million jackpot was a "particular prize." They apparently argue that "the sole remedy of the claimants is the award to them of an equal share in the [particular] prize," i.e., in the jackpot. However, as we shall explain, the jackpot is not a "particular prize." Rather, a "particular" prize is the share of the jackpot attributable to a winning wager.

"Prize" is not defined in the statutes. However, subject to limitations not material to this dispute, the State Lottery Commission has authority to promulgate rules and regulations "specify[ing] the number and value of prizes for winning tickets or shares in each Lottery Game" (§ 8880.29) and "specify [ing] the method for determining winners" (§ 8880.30).

The State Lottery's rules define "prize" as "amount paid for a winning number selection contained on an individual game board." [FN13] (Cal. State *785 Lottery Rules & Regs. (6/49), rule 2(l). [FN14]) Rule 2(c) defines "selection" as "a set of six (6) unique numbers chosen by a player from a set of integers, one (1) through forty- nine (49) inclusive, which set appears on a ticket as a single set of numbers to be played by a player in a game."

FN13 The "game board" referred to in the prize definition is not a ticket. The game board is any one of five number grids on a "play slip" on which a player marks selection(s). (Cal. State Lottery Rules & Regs. (6/49), rule 2(e).) A "play slip" is "a card used in marking a player's selections(s)," which will then be recorded on a ticket. (Rule 2(d).) A play slip is not evidence of ticket purchase or of numbers selected. (Rule 3(c).) " '*Ticket*' means a California Lotto 6/49 ticket produced by a CSL terminal and containing a record of the selection(s) made by a player and the amount paid for such selection(s)." (Rule 2(b).)

FN14 Undesignated rule references are to the California State Lottery California Lotto (6/49) Rules and Regulations that were in effect for the January 17, 1987, Drawing, a copy of which was submitted to the trial court in connection with a prior demurrer and incorporated by reference in the motion for summary judgment We note the record also contains a subsequent version of the rules with amendments made after Draw No. 14.

The lottery rules and regulations are exempt from the Administrative Procedure Act (§ 8880.26), and so do not appear in the California Code of Regulations.

To make a selection, "a player must select one or more sets of six (6) different numbers ... for input into a retailer terminal. ... The retailer will then issue a ticket, via the terminal, containing the selected set or sets of numbers, each set of which constitutes a selection. A ticket can contain up to five (5) selections, labelled A through E." (Rule 3(b).)

"Each selection made during the Drawing period shall be placed into a California Lotto 6/49 pool, which shall be eligible for the Drawing of the winning numbers at the conclusion of the period." (Rule 3(c).)

A ticket is the only proof of selection and the only valid receipt for claiming a prize. (Rule 3(c).)

In the event that more than one player is successful in matching all six winning numbers, all players with such winning selections shall divide equally the respective prize pool amount for that prize category. (Rules 4(c), 5(c)(2).)

In the event there is no valid winning ticket for the "6 of 6," "5 of 6 plus bonus number," "5 of 6," or "4 of 6" prize categories in any given Drawing, all monies allocated for those prize categories shall be carried forward or rolled over to the following week. (Rule 5(c)(4).)

From the foregoing rules, it is apparent that a "prize" is the entitlement due on an individual wager, with the amount determined by total sales. Thus, in this case, the $15.9 million jackpot was the "prize pool" for the six-of-six "prize category." Where four players win that prize category, there will be four prizes, each amounting to one-fourth of the prize pool.

This delineation of prizes is within the State Lottery's

statutory authority to specify the number and value of prizes and the method for determining winners. (§ § 8880.29, 8880.30.) It does not conflict with former section *786 8880.32, subdivision (c), which on its face addressed the situation of competing claims for the same prize-e.g., where two persons made a claim on the same wager.

We therefore conclude that, assuming four winning wagers, the fourth share was a separate prize and a "particular prize" within the meaning of former section 8880.32, subdivision (c). The $15.9 million jackpot was not a "particular prize." Consequently, former section 8880.32, subdivision (c) did not require division of the jackpot among claimants presenting winning tickets.

B. *Reversion to Education Was Proper*

(6a) Appellants contend reversion of the prize money to education under former section 8880.32, subdivision (e) was improper.

Section 8880.32, subdivision (e), at the time of Draw No. 14, provided as follows: "Players shall have the right to claim prize money for 180 days after the drawing or the end of the Lottery Game or play in which the prize was won. The Commission may define shorter time periods for eligibility for participation in, and entry into, drawings involving entries or finalists. *If a valid claim is not made for a prize directly payable by the Lottery Commission within the period applicable for that prize, the unclaimed prize money shall revert to the benefit of the public purpose described in this chapter* [i.e., public education]." (Stats. 1986, ch. 848, § 2, italics added.)

Appellants first note the statute allows reversion only "*If a valid claim is not made for a prize*" (italics in original), and argue they made claims for the fourth prize, hence the statute is inapplicable. We have already concluded that a prize is an entitlement under an individual winning wager. Therefore, assuming four winning wagers, appellants had no valid claim for the fourth prize.

Aguimatang then contends reversion to education applies only to prizes "directly payable *by the Lottery Commission*" (italics in original), and jackpot prizes are annuitized payments on annuity investments made by the State Treasurer, not the State Lottery.

The question, then, is what is a prize "directly payable *by the Lottery Commission*"?

Technically, no prizes are directly payable by the Lottery Commission. They are paid by the Controller or by a retailer. Thus, the Lottery Fund is a special fund within the State Treasury. (§ 8880.61.) "Money may be drawn *787 from the Treasury only through an appropriation made by law and upon a Controller's duly drawn warrant." (Cal. Const., art. XVI, § 7.) Section 8880.62 provides in part: "Funds shall be disbursed from the State Lottery Fund by the State Controller for [] the payment of prizes to the holders of valid lottery tickets or shares ...." The State Controller's answers to interrogatories say that "all prizes which are not paid to the public through lottery retailers are paid by state defendant and cross-defendant Controller on behalf of state defendant and cross-defendant Lottery Commission."

The State Lottery may authorize the retailer to validate claims and pay prizes. Thus section 8880.32, subdivision (a), provides (and provided at the time in question): "For convenience of the public, Lottery Game Retailers may be authorized by the Commission to pay winners of up to six hundred dollars ($600) after performing validation procedures on their premises appropriate to the Lottery Game involved." The State Lottery has exercised this authority in the Lotto game by authorizing retailers to pay Lotto prizes up to $99. (Rule 7(b).) Chanquin thinks the Lottery itself can directly pay prizes under section 8880.32, subdivision (d), which provides: "The Commission may specify that winners of less than twenty-five dollars ($25) claim the prizes from either the same Lottery Game Retailer from whom it was purchased or from the Lottery itself." By its terms, however, this subdivision speaks only of taking claims, not of paying claims. Its evident purpose is to allow the State Lottery to require small prize winners to go through the retailer. The State Lottery has chosen to require $5 Lotto prize winners to claim their prize from the retailer (unless the winner resides out of state). (Rule 7(b).)

Since prizes are paid by the Controller or by the retailer, technically no prizes are "directly payable by the Lottery Commission."

We will not adopt a technical interpretation of section 8880.32, subdivision (e), because it would lead to the absurd result that no unclaimed prize money would revert to education. (7) " '[W]here the language of a statutory provision is susceptible of two constructions, one of which, in application, will render it reasonable, fair and harmonious with its

manifest purpose, and another which would be productive of absurd consequences, the former construction will be adopted.' " (*Western Oil & Gas Assn. v. Monterey Bay Unified Air Pollution Control Dist.* (1989) 49 Cal.3d 408, 425 [261 Cal.Rptr. 384, 777 P.2d 157], quoting *Clements v. T. R. Bechtel Co.* (1954) 43 Cal.2d 227, 233 [273 P.2d 5].)

Moreover, in this instance, we will give deference to the interpretation of an administrative agency (the State Lottery) charged with administration of the statute. (See *788*Norman v. Unemployment Ins. Appeals Bd.* (1983) 34 Cal.3d 1, 8 [192 Cal.Rptr. 134, 663 P.2d 904].) (6b) Hence, we will interpret "directly payable by the Lottery Commission" to mean "paid upon the authority of the Lottery Commission" and not by a retailer.

A 1989 amendment changed the last sentence of subdivision (e) of section 8880.32 to read: "If a valid claim is not made for a prize directly payable by the Lottery Commission *or for any Lotto prize* within the period applicable for that prize, the unclaimed prize money shall revert [to education]." (Stats. 1989, ch. 917, § 5, italics added.)

Chanquin contends that the 1989 amendment prospectively affects only retailer-payable Lotto prizes, and that the new language means that the reverter provision had no prior application to Lotto at all but applied only to other Lottery Games such as the "scratcher" game. The 1989 amendment, though not in place at the time of Draw No. 14 may shed light on the meaning of the statute in place at the time of Draw No. 14. (8) Although subsequent legislation cannot change the meaning of an earlier enactment, it does supply an indication of legislative intent which may be considered with other factors in arriving at the true intent existing when the legislation was enacted. (*Russ Bldg. Partnership v. City and County of San Francisco* (1988) 44 Cal.3d 839, 852 [244 Cal.Rptr. 682, 750 P.2d 324].)

Chanquin filed in this court a motion for judicial notice of numerous legislative materials relating to the 1989 amendment. Some of the materials do not constitute appropriate legislative history. However, an Assembly Governmental Organization Committee statement, constituting cognizable legislative history (*Hutnick v. United States Fidelity & Guaranty Co.* (1988) 47 Cal.3d 456, 465, fn. 7 [253 Cal.Rptr. 236, 763 P.2d 1326]) states in part: "[T]he State Controller stated that $5.9 million in unclaimed Lotto prizes were illegally being held by the Lottery Commission which should have gone exclusively to education. [¶] The State Lottery Commission counters that the law only requires reversion to education of 'unclaimed prize money *directly* payable by the Lottery Commission' [] and that the Lotto prize money at issue is directly payable be [*sic*] retailers not the Lottery Commission since retailers pay the small [up to $10] Lotto prize winnings. [¶] This bill would resolve the debate in favor of the Controller's position by declaring that unclaimed Lotto prizes shall be reverted to education the same as all other unclaimed prizes payable by the Commission."

(9) Chanquin also cites a legislative analyst's report, which is also cognizable legislative history. (*Moradi-Shalal v. Fireman's Fund Ins. Companies* (1988) 46 Cal.3d 287, 300 [250 Cal.Rptr. 116, 758 P.2d 58].) The report states in part: "The provisions of this bill providing unclaimed Lotto prize money to revert to the benefit of public education is assumed will *789 result in some additional funds for public education. The Commission indicates that $9 million went unclaimed in 1987-88 from *retailer-payable* Lotto prizes." (Italics added.) [FN15]

FN15 Chanquin's request for judicial notice is therefore granted as to the materials discussed in the text and is denied with respect to the remainder.

(6c) It therefore appears that the purpose of the 1989 amendment was to insure that unclaimed prizes payable directly by retailers would revert to education, in the same manner as other unclaimed prizes paid upon the authority of the commission.

We also note the effect of the 1989 amendment was to resolve an ambiguity in the disposition of low level Lotto prizes, created by the State Lottery's rule making payment of $5 prizes dependent on the state of residence of the winner. Thus, under rule 7(b)(1), "a [Lotto] prize of $5.00 or less must be claimed *only* from an authorized CSL retailer, unless the claimant resides outside California." [FN16] Since, when a prize is unclaimed, it cannot be known whether the winner is a California resident, there would have been no way to determine whether unclaimed $5 Lotto prizes should revert to education under former section 8880.32, subdivision (e). The statutory amendment resolved that question.

FN16 Compare the rules for the "Instant Game" with scratch-off tickets; low-level prizes are validated and paid by the retailer,

apparently without regard to the residence of the winner. (Cal. State Lottery Rules & Regs. for Instant Game, rules 2.10, 13.1(g), 13.2(g).)

We conclude that, assuming four winning wagers, reversion of the unclaimed fourth prize to education was proper under former section 8880.32, subdivision (e). [FN17]

FN17 We reach this conclusion without reliance on the opinions expressed in the State Lottery's declarations, and so need not address appellants' evidentiary objections to those declarations.

C. *Reversion Does Not Violate the Requirement That 50 Percent of Revenues Be Returned to the Public*

(10a) Chanquin contends, as alleged in his cross-complaint, that reversion of the fourth prize to the Education Fund is precluded by the statutory requirement that "50% of the total annual revenues shall be returned to the public in the form of prizes ...." (§ 8880.4.) This requirement is found in section 8880.4, which provides in pertinent part: "Not less than 84% of the total annual revenues from the sale of state lottery tickets or shares shall be returned to the public in the form of prizes and net revenues to benefit public education. 50% of the total annual revenues shall be returned to the public in the form of prizes as described in this Chapter and at least 34% shall be allocated to the benefit of public education as specified in § 8880.5. In *790 addition, all unclaimed prize money shall revert to the benefit of public education as provided for in § 8880.32(e)."

The State Lottery's evidence on the motion for summary judgment merely showed that 50 percent of Lotto revenues on a weekly basis are *allocated* for prizes (40 percent for the jackpot and 10 percent split among the lower prize categories), with rollover from the previous drawing added to the prize pool after the 50 percent calculation is made. Thus, it is apparent that reversion to education of any prize would result in less than 50 percent return to the public.

Although the statutory language of the second sentence of section 8880.4, read in isolation, is unambiguous in requiring a "return" of money to the public, there is a latent ambiguity that becomes apparent with the next sentence of section 8880.4. Thus, while the statute first directs that 50 percent of revenues be returned to the public and a minimum of 34 percent be allocated to education, section 8880.4 goes on: "*In addition,* all unclaimed prize money shall revert to the benefit of public education ...." (Italics added.)

Since the Lottery Act also directs that 50 percent of revenues be "apportioned" to prizes (§ 8880.63 [FN18]), to interpret literally the "return to public" language would preclude any unclaimed prize money from ever reverting to education, in direct contradiction to the further mandate of section 8880.4 and section 8880.32, subdivision (e).

FN18 Section 8880.63 provides: "As nearly as practical, 50% of the total projected revenue, computed on a year-round basis for each lottery game, accruing from the sales of all lottery tickets or shares from that lottery game shall be apportioned for payment of prizes."

(11) "The meaning of a statute may not be determined from a single word or sentence; the words must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible. [Citation.] [] An interpretation that renders related provisions nugatory must be avoided [citation]; each sentence must be read not in isolation but in the light of the statutory scheme [citation]; and if a statute is amenable to two alternative interpretations, the one that leads to the more reasonable result will be followed [citation]. ..." (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735 [248 Cal.Rptr. 115, 755 P.2d 299].)

(12) In seeking to ascertain the intent of the voters in approving a ballot measure, we may consider the official statements submitted to the voters. (*City of Gilroy v. State Bd. of Equalization, supra,* 212 Cal.App.3d 589, 599.) Here, the November 1984 ballot materials on Proposition 37 stated in part: "The measure would require that 50 percent of the proceeds from lottery *791 ticket sales be paid out as lottery *prizes,* and that no more than 16 percent be used for *administrative costs* .... The remainder of the proceeds from ticket sales-at least 34 percent of the total-would be placed into a new special fund from which moneys would be appropriated for the benefit of *public education.* Any unclaimed lottery prizes and unused funds available for administrative costs would also be placed into this fund." (Ballot Pamp., analysis of Prop. 37 by the Legis. Analyst as presented to the Voters, Gen. Elec. (Nov. 6, 1984), italics in original.)

(10b) The first and last sentences of this argument may be reconciled if we construe this language to mean that a prize is "paid out" when it is paid to the Education Fund.

Moreover, the Lottery Act, as approved by the voters, states: "The People of the State of California declare that the purpose of this Act is support for preservation of the rights, liberties and welfare of the people by providing additional monies to benefit education without the imposition of additional or increased taxes. []" (§ 8880.1.)

In light of this purpose, it thus seems the more reasonable construction of section 8880.4 is that the 50 percent of revenues must be *allocated* to prizes.

We recognize that the Attorney General reached a contrary conclusion in connection with a short-lived opinion under former section 8880.32, subdivision (e), that unredeemed "3 of 6" Lotto prizes of California residents were not required to be transferred to education because they were paid by the retailer, hence not directly payable by the Lottery Commission. [FN19] (72 Ops.Cal.Atty.Gen. 200 (1989).) The Attorney General reasoned in part that reversion would upset the 50 percent "return to public" requirement.

> FN19 The Attorney General opinion specified it addressed only unredeemed prizes of California residents, (72 Ops.Cal.Atty.Gen. 200, 202, fn. 5 (1989)), because the rules require California residents to claim their $5 prize only from the retailer but allow out-of-state residents to claim $5 prizes from the Lottery Commission. We question the value of the Attorney General opinion because, as we have noted, it cannot be determined whether "unredeemed" tickets were purchased by California residents.

(13) However, Attorney General opinions are not binding on this court. (*California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 17 [270 Cal.Rptr. 796, 793 P.2d 2].) The rule that such opinions are persuasive authority stems from a presumption that the Legislature is aware of the Attorney General's construction and would take corrective measures if that construction misstates the legislative intent. (*Ibid.*) (10c) In this case, the Attorney General's opinion was published in October 1989-one month after the Governor signed into law the amendment to section 8880.32, *792 subdivision (e), authorizing reversion of any unclaimed Lotto prize to education. (Stats. 1989, ch. 917, § 5.) The Attorney General opinion specified it applied only until the January 1, 1990, effective date of the statutory amendment. It thus appears the Legislature, by authorizing reversion of any unclaimed Lotto prizes, implicitly disagreed with the Attorney General that rollover of unclaimed "3 of 5" prizes is compelled by the requirement that 50 percent of revenues be returned to the public.

We therefore construe section 8880.4 as requiring that 50 percent of revenues be *allocated* to prizes. Unclaimed prizes falling within this 50 percent allocation revert to the Education Fund.

Having resolved the legal questions regarding disposition of the fourth share of the jackpot, we turn now to the questions of the sufficiency of the State Lottery's showing on summary judgment and whether appellants raised a triable issue of material fact.

III. *The State Lottery's Initial Showing Was Sufficient to Make Out a Prima Facie Entitlement to Summary Judgment*

(14a) Appellants contend the State Lottery failed to establish entitlement to summary judgment because it failed to prove that the fourth winning transaction was a completed wager for which a valid ticket issued.

The State Lottery takes the position that it may rely on its computer information regardless whether a valid fourth ticket ever issued, and that responsibility for nonproduction of tickets is not assumed by the state but is left with those whose fault, neglect, or inadvertence caused the loss. [FN20]

> FN20 The State Lottery refers to rule 3(e), which states in part: "It shall be the sole responsibility of the player to verify the accuracy of the player's selection(s) and other data printed on the ticket. The making of a selection is done at the player's risk through the on-line retailer who is acting on behalf of the player in entering the selection. The CSL shall not be responsible for tickets printed in error, and its liability to the player in such case shall be limited to the voiding (cancellation) of the erroneous ticket ...."

While we agree with appellants that issuance of a valid ticket is material to the determination of winners, we find the State Lottery's initial showing sufficient. [FN21] *793

FN21. Because we conclude the State Lottery had to show issuance of a valid ticket, we do not address appellants' speculation as to the statutory authority for the trial court's "presumption" that the fourth ticket issued.

A. *A Prize Is Created Only if a Valid Ticket Issues, Constituting a Winning Wager.*

The State Lottery concedes the existence of an implied contract with appellants. We are aware of authority holding that, in the absence of a winning ticket, no enforceable contractual right exists against the stakeholder in pari-mutuel betting. (*Valois v. Gulfstream Park Racing Ass'n* (Fla.Dist.Ct.App. 1982) 412 So.2d 959; *Seder v. Arlington Park Race Track Corp.* (1985) 134 Ill.App.3d 512 [481 N.E.2d 9]; *Bourgeois v. Fairground Corp.* (La.Ct.App. 1985) 480 So.2d 408; *Hochberg v. New York City Off-Track Bet. Corp.* (1973) 74 Misc.2d 471 [343 N.Y.S.2d 651]; *Holberg v. Westchester Racing Ass'n* (1945) 184 Misc. 581 [53 N.Y.S.2d 490].) We need not determine that issue here, because appellants' assertion of rights is based on their possession of winning tickets. Under these circumstances, the State Lottery properly concedes the existence of a contractual relationship with appellants.

The State Lottery's rules are part of its contract with appellants, as stated in the rules (rule 8), on the play slip, and on the ticket. [FN22]

FN22 Rule 8 says: "In purchasing a ticket, the customer agrees to comply with, and abide by, California law, and all rules and regulations and final decisions of the CSL, and all procedures and instructions established by the CSL or Director for the conduct of the game." The play slip says: "Lotto 6/49 is governed by state law and the rules and regulations of the California State Lottery." The ticket says: "Determination of winners is subject to California Lottery Commission Rules and Regulations."

As we have noted, the rules define "prize" as "amount paid for a winning number selection ...." (Rule 2(l).) Rule 2(c) defines "selection" as "a set of six (6) unique numbers chosen by a player from a set of integers, one (1) through forty-nine (49) inclusive, *which set appears on a ticket* as a single set of numbers to be played by a player in a game." (Italics added.) Since a prize requires a winning number selection, and since a selection appears on a ticket, a ticket is necessary to create a prize. This conclusion is reinforced by rule 3(b) which states in part: "The retailer will then issue a ticket, via the terminal, containing the selected set or sets of numbers, *each set of which constitutes a selection.*" (Italics added.) Once again, since a selection is necessary for a prize, and since the selection appears on a ticket, issuance of a ticket is necessary to create a prize.

Additionally, rule 3(c) provides that a ticket is the only proof of selection and the only valid receipt for claiming a prize.

Finally, issuance of a valid ticket to create a prize is consistent with the State Lottery's advertisement of the Lotto game as based on a "parimutuel" *794 basis. A pari-mutuel system is one in which those who bet on the winner share the total stakes minus a small percent for the management. (See fn. 6, *ante.*) It would be wholly unreasonable and unfair for the public to think that shares of the jackpot (prizes) would be created even though no valid wager was ever made because no valid ticket ever issued.

For all these reasons, a "prize," subject to reversion to the Education Fund, is created only when a valid winning ticket issues. If no valid ticket issues and there is consequently no wager or bet, no "prize" is created.

B. *The State Lottery Made a Prima Facie Showing That It Was Entitled to Summary Judgment.*

This leaves the question whether there is a triable issue of fact with respect to whether the fourth missing ticket issued. We shall examine first the showing made by the State Lottery to see whether it made out a prima facie entitlement to summary judgment. (See Code Civ. Proc., § 437c, subd. (b).)

As we have described, the State Lottery submitted evidence of how its procedures work, that the computer process was functioning properly at the time in question, that no errors were indicated, that the computer information reconciled with accounts receivable records, and that New Lun Wah

Company's settlement envelope reconciled with the State Lottery's information, with no indication that that fourth winning transaction was a void transaction.

The State Lottery's evidence sufficiently showed that four valid winning tickets issued, resulting in the creation of four prizes, based not only on its computer records but also on reconciliation of those records with the retailer's information.

We disagree with appellants' contention that the only way the State Lottery could show issuance of the fourth ticket was by showing the ticket itself because the State Lottery's own rules say the "ticket is the only proof." (Rule 3(c). [FN23]) Since the State Lottery never has physical possession of a ticket until a player presents a ticket to claim a prize or a retailer returns a cancelled ticket, the rule can only be reasonably construed to mean that the ticket is the only proof for purposes of *claiming* a prize. [FN24] The rule does not *795 require the State Lottery to produce a ticket in order to show that the ticket issued.

FN23 Rule 3 is entitled "Method of Play." Rule 3(c) states in part: "A California Lotto 6/49 *ticket* shall be the only proof of selection or play and the only valid receipt for claiming a prize or prizes."

FN24 We note, however, that after Draw No. 14, section 8880.32, subdivision (b) was amended and now provides in part: "The Lottery may pay a prize of less than one million dollars ($1,000,000) even though the actual winning ticket is not received by the Lottery if the Lottery validates the claim for the prize based upon substantial proof." (Stats. 1988, ch. 1065, § 1.)

Citing *People v. Rath Packing Co.* (1974) 44 Cal.App.3d 56 [118 Cal.Rptr. 438], Chanquin contends the State Lottery had the burden to show that there was no possibility of error in its procedures. *Rath* was an action brought by the People to enjoin a meat processor from selling allegedly short-weight bacon packages. The trial court granted the People's motion for summary judgment based on the inspector's affidavit that on a number of occasions he weighed Rath bacon packages which contained less than their stated weights. (*Id.* at p. 62.) The appellate court noted this affidavit, if uncontroverted, would entitle the People to judgment. (*Id.* at p. 62.) However, the opposition's declarations contained facts from which the inference could be drawn that the inspector erred-that the inspector never weighed the actual net contents but took gross weight and subtracted an estimated wrapper weight, that the inspector's estimated wrapper weight was of a wet rather than dry wrapper, which could result in a lesser calculated net weight, and that some of the package codes reported by the inspector were not Rath products. (*Id.* at pp. 61, 64.) The presumption that official duty has been regularly performed (Evid. Code, § 664) did not alter the substantive showing required for summary judgment; as the Court of Appeal stated, "[the People] must demonstrate that there is no possible way in which Rath can claim error in the weighing procedures used by [the inspector]." (*Rath, supra,* at p. 65.) Summary judgment was reversed because the meat processor demonstrated a possibility of error. (*Ibid.*)

We do not read *Rath* as requiring the State Lottery in its *initial* showing to demonstrate the absence of any possibility of error. As *Rath* noted, the People's initial showing of short- weighted inspections was sufficient, if uncontroverted. (44 Cal.App.3d at p. 62.) It only became insufficient when controverted by the party opposing summary judgment. Once the opposing party demonstrated the possibility of error in weighing procedures, the People would have to demostrate no possibility of error in weighing procedures in order to overcome the opposition.

Here, the State Lottery's initial showing was sufficient.

C. *Appellants' Evidentiary Objections to the State Lottery's Showing Are Not Meritorious.*

Appellants make numerous contentions that the State Lottery's evidence was for the most part inadmissible. *796

In response to appellants' extensive objections below, the trial court stated: "Evidence objections of plaintiff and cross-complainant are overruled as to facts material to the issues of the case. They were not considered as to immaterial facts."

(15) Appellants fail on appeal to articulate evidentiary objections in the form required by California Rules of Court, rule 15(a), which provides in part: "The statement of any matter in the record shall be supported by appropriate reference to the record." Appellants mainly refer us to the trial briefs

and apparently expect this court to ferret through 1,400 pages of summary judgment papers in order to locate the challenged evidence.

In *Biljac Associates v. First Interstate Bank* (1990) 218 Cal.App.3d 1410, 1422 [267 Cal.Rptr. 819], the appellate court declined to review evidentiary objections insofar as they were not properly briefed on appeal. The court noted the rule that "an appellant must fully present all arguments in briefs rather than incorporate them by reference from papers filed below." (*Id.* at p. 1422.)

Here, where the record contains 1,400 pages of papers supporting and opposing the motion, it was particularly important for appellants properly to brief the issues on appeal, with appropriate citation to the location of the challenged evidence in the record.

We will therefore consider appellants' evidentiary arguments only insofar as they have been properly briefed. [FN25]

FN25 We will also disregard the contention that not all originals were produced at the hearing in the trial court, as required pursuant to appellants' demand, because appellants do not specify which documents were not produced.

(16) Aguimatang's brief argues that supposedly "all" of the State Lottery's declarations were defective because they included the phrase "to the best of my knowledge," which is assertedly insufficient as failing to show personal knowledge. (*Witchell v. De Korne* (1986) 179 Cal.App.3d 965 [225 Cal.Rptr. 176]; *Bowden v. Robinson* (1977) 67 Cal.App.3d 705 [136 Cal.Rptr. 871].)

However, Aguimatang cites only one declaration with the claimed defect (and our review of the declarations filed with the moving papers disclose no others.) Thus, Carol Clark declared she was custodian of records for the State Lottery and that certain records attached as exhibits to the declaration of Alfred Dial (former lottery auditor) are photocopies of original records kept in the regular course of business. The declaration is made to the best of *797 her knowledge and belief. [FN26] However, these documents are primarily forms and worksheets prepared by Dial in calculating the prize amounts based on the number of winners for Draw No. 14. Dial's declaration is made on personal knowledge. Therefore, any error in admitting the Clark declaration was harmless and does not justify reversal. (Evid. Code, § 353, subd. (b).)

FN26 The same declaration by Clark accompanies all declarations by other State Lottery persons, which were resubmitted with the reply papers.

(17) We note Dial's declaration includes a computer printout of the number of winners. Chanquin objects generally to all declarations of State Lottery employees on the ground that they refer to computer records (attached to each declaration) that are inadmissible hearsay.

Computer printouts are admissible and are presumed to be an accurate representation of the data in the computer. (Evid. Code, § 1500.5, [FN27]) If offered for the truth, however, they must qualify under some hearsay exception, such as business records under Evidence Code sections 1271. [FN28] (1 Jefferson, Cal. Evidence Benchbook (2d ed. 1982) § 4.3, pp. 236-237.) A trial court has wide discretion in determining whether sufficient evidence is adduced to qualify evidence as a business record. (*People v. Lugashi* (1988) 205 Cal.App.3d 632, 640 [252 Cal.Rptr. 434] [a "qualified witness" for purpose of admitting computer records need not be computer expert but need only generally understand system's operation and possess sufficient skill to properly use system and explain resulting data].)

FN27 Evidence Code section 1500.5 makes computer recorded information "admissible to prove the existence and content of the computer information or computer program" and provides that "Printed representations of computer information and computer programs will be presumed to be accurate representations of the computer information or computer programs that they purport to represent. This presumption, however, will be a presumption affecting the burden of producing evidence only. If any party to a judicial proceeding introduces evidence that such a printed representation is inaccurate or unreliable, the party introducing it into evidence will have the burden of proving, by a preponderance of evidence, that the printed representation is the best available evidence of the existence and content of the computer information or computer programs that it purports to represent."

> FN28 Evidence Code section 1271 provides: "Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered to prove the act, condition, or event if: [¶] (a) The writing was made in the regular course of a business; [¶] (b) The writing was made at or near the time of the act, condition, or event; [¶] (c) The custodian or other qualified witness testifies to its identity and the mode of its preparation; and [¶] (d) The sources of information and method and time of preparation were such as to indicate its trustworthiness."

Chanquin contends the computer printouts do not qualify as business records of the State Lottery, because they are records not of the State Lottery but of GTECH, the private firm under contract to provide and operate the lottery's on-line system. This overlooks the fact that GTECH itself provided *798 a foundation for admission of the documents as its own business records through a declaration from GTECH director Leonard Paster.

Chanquin further complains that the computer records were not shown to qualify as business records, because they were not made at or near the time of the event. (Evid. Code, § 1271, subd. (b).) This apparently refers to the TMIR printout (showing time and dollar amount of transactions for the Jan. 17, 1987, drawing), which was dated October 1988. TMIRs are printed out only on an as needed basis because it would be too cumbersome to store hard copies of each transaction recorded for each draw. However, the information contained on the computer's magnetic tapes, from which the TMIR is printed, is recorded daily as it is generated.

Chanquin cites no authority holding that the retrieval, rather than the entry, of computer data must be made at or near the time of the event. Thus, although to qualify as a business record the "writing" must be made at or near the time of the event, "writing" is not limited to the commonly understood forms of writing but is defined very broadly to include all "means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof." (Evid. Code, § 250.) Here, the "writing" is the magnetic tape. The data entries on the magnetic tapes are made contemporaneously with the Lotto transactions, hence qualify as business records. The computer printout does not violate the best evidence rule, because a computer printout is considered an "original." (Evid. Code, § 255.)

We conclude appellants fail to show the trial court abused its discretion in admitting the computer records.

(18) Chanquin then objects to one of Paster's declarations which states that various computer printouts were printed in accordance with correct procedures for getting hard copies from magnetic tapes and that the printouts contained pertinent and conforming information. We disagree with the apparent argument that the statement is a mere opinion. As director of GTECH, Paster was qualified to provide the foundational basis for the business records.

Aguimatang objects to Paster's declaration on the ground that Paster did not state he compared copies to originals, as required by *Dugar v. Happy Tiger Records, Inc.* (1974) 41 Cal.App.3d 811, 818 [116 Cal.Rptr. 412]. That case is distinguishable. *Dugar* held that where affidavits referred to "attached" documents that were not in fact attached, an attempt by the party's attorney to add the documents as an exhibit via his own declaration was *799 insufficient, since the attorney did not attest he had personally examined the documents and determined they were the same. (*Id.* at pp. 814-815.) Here, the documents were attached to the declaration, so there was no need for comparison to assure that a later submission of exhibits matched those referred to in the declaration. There was no problem under *Dugar*.

(19) Chanquin next objects to the declaration of the State Lottery's security director Lew Ritter, because his references to the computer printouts attached to his declaration state they "appear" to be correct. Chanquin says this is mere opinion and illustrates that CSL has no original data of its own to verify the validity of transactions. Ritter's declaration is not mere opinion, however, because as to each printout he goes on to state (1) his security division conducted a review of all pertinent GTECH reports for Draw No. 14 and found them to be consistent; (2) as claimants came forward to claim prizes, their claim/ticket information matched the computer information; and (3) Ritter personally supervised the review and found each printout to be correct. Thus, Ritter states facts within personal knowledge, not opinion.

We need not address Chanquin's evidentiary

objections to the declarations of the State Lottery's public affairs officer and accounting officer, because their declarations are not material to our decision.

We conclude appellants' evidentiary objections are either waived or meritless, and the State Lottery's moving papers established prima facie entitlement to summary judgment.

IV. *Appellants' Opposition to the Motion Raised No Triable Issue of Fact; However, Appellants Should Have Been Granted a Continuance to Pursue Discovery*

(14b) We next examine the opposition to determine whether appellants raised any triable issue of material fact.

In addition to his motion to strike evidence, Aguimatang filed an opposition. Aguimatang's response to the State Lottery's separate statement of undisputed facts disputes almost all of the facts asserted by the State Lottery and adds an "additional statement of undisputed facts" containing 80 new factual assertions. Chanquin's opposition raised similar issues.

Whether appellants showed a triable issue of fact is determined under subdivision (c) of Code of Civil Procedure section 437c. That statute provides that, in determining summary judgment, the court considers the evidence, and "all inferences reasonably deducible from the evidence, except *800 summary judgment shall not be granted by the court based on inferences reasonably deducible from the evidence, if contradicted by other inferences or evidence, which raise a triable issue as to any material fact." (Code Civ. Proc., § 437c, subd. (c).)

As we shall discuss, appellants ask us to draw inferences from evidence they adduced at the hearing. In deciding whether an inference may be drawn, we have in mind that, "An inference is a deduction of fact that may *logically and reasonably* be drawn from another fact or group of facts found or otherwise established in the action." (Evid. Code, § 600, subd. (b), italics added.) (20) An inference is more than a surmise or a conjecture. (*People v. Mayo* (1961) 194 Cal.App.2d 527, 535 [15 Cal.Rptr. 366]; *Estate of Braycovich* (1957) 153 Cal.App.2d 505, 512 [314 P.2d 767].) An inference cannot be based on mere possibilities; it must be based on probabilities. (*People v. Mayo, supra*, 194 Cal.App.2d at p. 536; *People v. Berti* (1960) 178 Cal.App.2d 872 [3 Cal.Rptr. 514]; *Sanders v. MacFarlane's Candies* (1953) 119 Cal.App.2d 497, 500 [259 P.2d 1010].)

With these rules in mind, we turn to the evidence appellants submitted in opposition to the motion.

As to the State Lottery's numerous factual assertions regarding the number of transactions recorded by the computer and the absence of any indication of computer error, Aguimatang responded repeatedly as follows: "Disputed: 'Transactions' not 'wagers' show on computer. Defendants offer no evidence that a Ticket was issued for transaction no. 7715988." As evidence of a dispute, Aguimatang cited testimony from three depositions as follows:

First, Gordon Jones (apparently a State Lottery employee) testified it could happen that the central computer registers a wager but no ticket issues from the terminal because the printer jams or the terminal runs out of paper. Such occurrences are very rare. The person in that situation would not receive a prize.

Second, State Lottery security agent William Brewer testified that, though he is comfortable that a ticket was issued, no one can be 100 percent certain that a ticket issued.

Third, Louis Mucci, Chief Gaming Systems and Planning Manager for the State Lottery, stated he had no opinion on whether a ticket was issued at the retailer terminal, and that the retailer is a critical component in the process of reconciliation and accuracy. *801

(14c) None of this testimony refutes the State Lottery's evidence or controverts the reasonable inference that the fourth ticket issued. A showing that a glitch may occur is insufficient to contradict the inference raised by the State Lottery's evidence that no glitch occurred on that day, with that retailer, for that transaction. The cited testimony failed to show a *probability* of malfunction necessary to the creation of an inference. (E.g., *People v. Mayo, supra*, 194 Cal.App.2d at p. 536.)

As to the State Lottery's assertions that computer reports were in balance and showed that recorded transactions reconciled with ticket sales, Aguimatang submitted a declaration from Paul Lee, owner of the New Lun Wah Company, the retailer involved in the missing winning ticket. [FN29] Although Lee recounted a general problem with the terminal and his own failure to follow State Lottery procedures regarding

cancellation, his only statement regarding the critical date of January 17, 1987, was that he recalled the incident of the $5 adjustment because it occurred on the day of the drawing. However, Lee deleted the typewritten portion of the declaration to the effect there were other mishaps that day and handwrote: "... I don't recall if there were more."

FN29 Lee made and initialled handwritten changes to the typewritten declaration, which states in part (with handwritten additions underlined):
"[O]n more than one occasion from the time I started to sell Lotto 6/49 tickets, up to and including January 17, 1987, my cash drawer where we place money from Lotto 6/49 sales has been different from what the terminal indicated had been sold on a particular day. Sales are made by me and my employee Mei Hua Chu who is assigned that duty regularly.
"The cash drawer occasionally contained more and occasionally less money than our terminal indicated should have been in the drawer based upon sales of tickets for each day, *because of sometimes maybe wrong change on merchandise purchases.*"
Lee then recounts his own failure to follow State Lottery procedures in that he sometimes reported "cancellation" late or not at all. "On occasion we were unable to complete the 'cancellation' process through the terminal." On other occasions, Lee paid claims even though the customer had no ticket and gave a refund for an unreadable ticket the day after the sale, then reported the cancellation to the State Lottery the following day. There were instances in which Lee never reported misprinted tickets but refunded the player's money and paid for the ticket out of Lee's own pocket in order to keep his report to the Lottery correct.
As to the critical date of January 17, 1987, Lee declared: "I recall the $5.00 refund/adjustment I requested of the CSL for the day of the Saturday, January 17, 1987 drawing. I remember specifically because the Errors committed by the Terminal occurred on the Day of the Draw. Although I requested an adjustment of only $5.00. *I have struck out the above because I don't recall if there were more.*
"The day of January 17, 1987 draw was a very busy day of sales of Lotto 6/49 tickets. [] Mei had a lot of problems with the Terminal *on many days.* It Misprinted, Double Printed, and Tickets Failed to Come Out of the Terminal."

Contrary to appellants' contentions, Lee's declaration does not suggest the $5 adjustment was necessitated by the computer's failure to acknowledge a *802 cancellation. Nor does Lee's declaration support the inference that other void transactions occurred on January 17, 1987. To the contrary, the fact that Lee specifically remembered the $5 adjustment but could recall no other such incidents on the day of the drawing supports an inference that there were no others because, had there been, Lee most likely would have recalled them as well.

This brings us to the copy of the request for adjustment submitted by the New Lun Wah Company (where the missing winning ticket was supposedly purchased) to the State Lottery, attached as appendix A, *post.* As we have said, the request for adjustment is the means by which a retailer seeks adjustment for lottery tickets that were not, in fact, issued by the retailer because of error in the retailer's machine. The request on its face seeks adjustment for an error occurring at 1 p.m. whereas the missing winning ticket issued at 3:43 p.m.

Aguimatang argues the request for adjustment may refer to the missing winning ticket because *two* lottery tickets were included with the request when it was sent to the State Lottery. Copies of the two tickets are a part of the record. One is improperly cut off and the other is marked "reprint." The tickets therefore match the explanations on the request for adjustment: "printer's fault"; "cutter's fault." Since there is a coherent and satisfactory explanation for the presence of two tickets in connection with the request for adjustment, there is no reasonable basis upon which to infer that the two tickets resulted from different transactions at 1 p.m. and at 3:43 p.m. The mere presence of two tickets did not create a triable issue of fact.

This brings us to the fact that the handwritten notation "7715988" appears on the upper right hand corner of the request for adjustment. The number is an internal control number assigned by the State Lottery. It does not appear on a ticket. According to the declaration of Aguimatang's attorney, the number was on the copy of the request for adjustment furnished to him by the State Lottery. This is not disputed by the State Lottery. The number "7715988" is the number assigned by the State Lottery to the missing winning ticket. The reasonable inference is that somebody in the State Lottery organization wrote the number on the copy of the request for adjustment furnished to Aguimatang's attorney. [FN30]

FN30 The original of the request for

> adjustment was produced at the hearing on the motion but is not included in the record on appeal. The omission is immaterial, since the probative value of the number does not depend upon whether it was written on the original or a copy. Rather, the probative value lies in the origin of the number within the State Lottery.

The mere fact that somebody in the State Lottery wrote the transaction number of the missing ticket on the request for adjustment-without more- *803 does not create a reasonable inference that the request for adjustment refers to the missing winning ticket. This is because, as we have explained, an inference must be based upon probabilities, not possibilities. The mere presence of the number does not establish the probability that the request for adjustment embraces the missing winning ticket. Too many other explanations are possible. For example, the number may have been added simply as a clerical device to correlate the request for adjustment with this lawsuit. The presence of the number, in and of itself, created no triable issue of fact.

Nonetheless, the presence of the number of the missing winning ticket on the request for adjustment undeniably tenders the *possibility* that someone in the State Lottery thought the request for adjustment embraced the missing winning ticket. If so, why? Might the retailer have indicated an incorrect time on the request for adjustment, so that, in fact, it referred to the transaction occurring at 3:43 p.m.? The situation is like that encountered by Sherlock Holmes, when he examined a note that was undated, and without either signature or address. Asked by Dr. Watson what the note meant, Holmes responded, "I have no data yet. It is a capital mistake to theorise before one has data. Insensibly one begins to twist facts to suit theories instead of theories to suit facts." (Doyle, A Scandal in Bohemia, in 1 Baring-Gould, The Ann. Sherlock Holmes (2d ed 1970) pp. 350-351.)

More data is what appellants sought. At the hearing on the motion for summary judgment, Aguimatang's attorney sought a continuance to allow the taking of depositions of State Lottery officials, scheduled for that very day, designed to pursue the issue. The trial court denied the motion erroneously concluding it was immaterial whether a valid fourth ticket issued. We conclude the trial court abused its discretion in denying the motion for a continuance.

Code of Civil Procedure section 437c, subdivision (h), provides: "If it appears from the affidavits submitted in opposition to a motion for summary judgment ... that facts essential to justify opposition may exist but cannot, for reasons stated, then be presented, the court shall deny the motion, or order a continuance to permit affidavits to be obtained or discovery to be had or may make any other order as may be just."

(21) "Generally, power to determine when a continuance should be granted is within the discretion of the court, and there is no right to a continuance as a matter of law. [Citation.] However, Code of Civil Procedure section 437c mandates a continuance of a summary judgment hearing upon a good faith showing by affidavit that a continuance is needed to obtain facts essential to justify opposition to the motion." (*804*Fisher v. Larsen* (1982) 138 Cal.App.3d 627, 648 [188 Cal.Rptr. 216], cert. den. (1983) 464 U.S. 959 [78 L.Ed.2d 335, 104 S.Ct. 390].)

(14d) The circumstances of this case do not suggest that appellants were dilatory in conducting discovery. The request for adjustment was apparently furnished to appellants about the same time that the State Lottery moved for summary judgment on May 16, 1989. The request for continuance was made at the hearing on the motion on June 30, 1989. In any event, as we have said, the trial court did not deny the requested continuance on grounds of lack of diligence but rather upon the erroneous assumption that it was immaterial whether a valid fourth ticket issued. Given the drastic nature of summary judgment, the continuance should have been granted. (*Nazar v. Rodeffer* (1986) 184 Cal.App.3d 546, 556-557 [229 Cal.Rptr. 209].)

Disposition

The judgment is reversed and the matter remanded for proceedings consistent with this opinion. The parties will bear their own costs on appeal.

Carr, Acting P. J., and Nicholson, J., concurred.
Petitions for a rehearing were denied October 21, 1991, and the petition of appellant Arnulfo Melgar Chanquin for review by the Supreme Court was denied January 15, 1992. *805

*806

27/598 X

CALIFORNIA STATE LOTTERY

DISTRIBUTION

ON-LINE RETAILER REQUEST FOR ADJUSTMENT

PLEASE READ INSTRUCTIONS ON REVERSE SIDE BEFORE COMPLETING THIS FORM

ITEM 1 — RETAILER NO.: 2 5 8 6 9 1 — BUSINESS NAME: NW Lin Jr Co.

ITEM 2 — BUSINESS ADDRESS, CITY, ZIP: 1117 Stockton St S.F. CA 94133

ITEM 3 — RETAILER ACCOUNT NUMBER | CORPORATE STORE NUMBER | BUSINESS TELEPHONE NUMBER: 415 986-7156

ITEM 4 — MY RECORDS INDICATE THAT: ☐ I OWE THE LOTTERY ☑ THE LOTTERY OWES ME

DOLLAR AMOUNT	DATE FIRST ACCOUNTED	APPROXIMATE TIME	DRAWN DATE
$100	01/17/87	1 AM/PM	01/17/87

ITEM 5 — RETAILER'S STATEMENT:

Lin Jr's Ticket found
Cutter's Ticket found

ITEM 6

YOUR NAME (PRINT)	SIGNATURE	DATE
Paul Lee	Paul Lee	1/18/87

DISPOSITION OF REQUEST — **FOR LOTTERY USE ONLY** — DISPOSITION OF REQUEST

THIS REQUEST FOR ADJUSTMENT FOR $_____ HAS BEEN ☐ APPROVED FOR $_____ ☐ DENIED

EXPLANATION:

001638

EXHIBIT 3C

Cal.App.3.Dist.
Aguimatang v. California State Lottery
234 Cal.App.3d 769, 286 Cal.Rptr. 57

END OF DOCUMENT

In re L.S.Cal.App.5.Dist.In re L. S., a Person Coming Under the Juvenile Court Law.
THE PEOPLE, Plaintiff and Respondent,
v.
L. S., Defendant and Appellant
No. F012431.

Court of Appeal, Fifth District, California.
May 24, 1990.

SUMMARY

A juvenile was adjudged a ward of the court under Welf. & Inst. Code, § 602, for possession of cocaine base for sale (Health & Saf. Code, § 11351.5), and the juvenile court committed the minor to the Youth Authority. The court made the commitment order based on its finding that less restrictive programs and forms of custody were inappropriate dispositions. However, the court did not have the benefit of a current written social study of the minor at the disposition hearing. (Superior Court of Fresno County, No. 63309, Gary S. Austin and A. Dennis Caeton, Judges. [FN*])

The Court of Appeal affirmed the jurisdictional order, but otherwise reversed and remanded. It held that the preparation, filing, and consideration of a current social study is mandatory at a dispositional hearing before a minor may be committed to the Youth Authority.

FN* Judge Caeton conducted the adjudication hearing; Judge Austin conducted the disposition hearing.(Opinion by Brown (G. A.), J., [FN†]]] with Martin, Acting P. J., and Stone (W.A.), J., concurring.)

FN† Retired Presiding Justice of the Court of Appeal sitting under assignment by the Chairperson of the Judicial Council.

HEADNOTES

Classified to California Digest of Official Reports

(1) Criminal Law § 684--Appellate Review--Remand--For Resentencing--Defendant's Right to Current Probation Report.
A criminal defendant is entitled to an updated current probation report before being resentenced after reversal on appeal and remand for resentencing. Absent such a report, the cause must be reversed and remanded for an updated probation report and further sentencing. *1101

(2) Delinquent, Dependent, and Neglected Children § 36--Commitment to Youth Authority; Findings--Propriety--Lack of Current Social Study.
The juvenile court erred in committing a minor to the Youth Authority after adjudging him a ward of the court under Welf. & Inst. Code, § 602, for possession of cocaine base for sale (Health & Saf. Code, § 11351.5), where it did not have the benefit of a current social study at the dispositional hearing. In juvenile proceedings, the probation officer is under a mandatory duty to prepare a social study of the minor for every dispositional hearing after the minor has been adjudged a ward of the court. Further, the court itself must evaluate the minor in accordance with the factors set forth in Welf. & Inst. Code, § § 202, subd. (b), 734, and must consider less restrictive programs before making a commitment to the Youth Authority. Such an evaluation is not possible without a current social study.
[See Cal.Jur.3d (Rev), Delinquent and Dependent Children, § 182; 10 Witkin, Summary of Cal. Law (9th ed. 1989) Parent and Child, § 816 et seq.]

(3) Delinquent, Dependent, and Neglected Children § 23.6--Disposition Hearings--Delinquency Cases--Currency of Social Study.
In juvenile proceedings against a minor charged with possession of cocaine base for sale (Health & Saf. Code, § 11351.5), a social study prepared for the minor 19 months earlier as a result of a previous finding of possession for sale did not satisfy the requirement of a current social study at the dispositional hearing.

(4) Delinquent, Dependent, and Neglected Children § 37--Commitment to Youth Authority; Findings--Review--Standard.
A probation officer's failure to prepare and file, and the juvenile court's failure to consider, a current social study report for a juvenile offender at his dispositional hearing in compliance with Welf. &

Inst. Code, § 280, and Cal. Rules of Court, rule 1495, is not subject to harmless error analysis on review. Rather, if the requirements are not complied with, reversal is required.

COUNSEL

Michael Freund, under appointment by the Court of Appeal, for Defendant and Appellant.

John K. Van de Kamp, Attorney General, Richard B. Iglehart, Chief Assistant Attorney General, Arnold O. Overoye, Assistant Attorney *1102 General, William G. Prahl and Mary Jane Hamilton, Deputy Attorneys General, for Plaintiff and Respondent.

BROWN, (G. A.), J. [FN*]

FN* Retired Presiding Justice of the Court of Appeal sitting under assignment by the Chairperson of the Judicial Council.

This is an appeal from juvenile court orders adjudicating appellant L.S., a minor, a ward of the court (Welf. & Inst. Code, [FN1] § 602) and committing him to the California Youth Authority (CYA). The juvenile court's adjudication followed its finding that the minor had violated Health and Safety Code section 11351.5 (possession of cocaine base for the purpose of sale). Because the juvenile court did not have the benefit of a current social study at the disposition hearing, appellant contends it improperly committed him to CYA. We agree and will reverse.

FN1 All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Facts

On April 23, 1989, a Fresno police officer drove to the area of West Strother Street based on an anonymous tip about drug sales in the area. When the officer arrived on the scene, he found appellant talking to the driver of a double-parked car. When he became aware of the officer, appellant turned away from the vehicle and started walking to the sidewalk. As he walked, he placed a cellophane object into the crotch of his pants.

The officer detained appellant and during a subsequent search of the minor's crotch, seized a cellophane cigarette package containing .55 grams of cocaine base or rock cocaine. The officer also found $198 in appellant's front pocket.

Based on the foregoing, a juvenile court petition was filed on April 25, 1989, alleging appellant came within section 602, in that on April 23, he possessed cocaine base for sale (Health & Saf. Code, § 11351.5). At an adjudication hearing on June 23, 1989, Judge Caeton found appellant violated Health and Safety Code section 11351.5; he referred the matter to the probation department for a report and set a hearing date of July 7. The clerk's minute order adds: "Rev. hrg 7/7/89 #A 8am - assessed for SAU [substance abuse unit] and adjust programs also."

Based on the minute order, the probation officer assigned to the case believed he was only required to prepare a review report rather than a "full" *1103 disposition report. The district attorney's office subsequently informed the probation officer the hearing scheduled for July 7 was for disposition in the matter. The probation officer could not prepare a disposition report in time for the July 7th hearing. In a report to the juvenile court, he requested the July 7th hearing "be continued to allow adequate time to prepare the report and recommendations."

Judge Austin, who was new at the juvenile court, presided at the July 7th disposition hearing. The public defender correctly argued that a social studies report was required because the matter was on for disposition. The probation officer informed the court orally that appellant was ineligible for "adjust program" because he had served a 120-day commitment at the Asjian Treatment Center in 1987 for a prior finding of possession of cocaine for sale. In regard to the substance abuse unit (SAU), the probation officer indicated he needed more time to arrive at a decision because the probation officer had not determined if the minor had a substance abuse problem.

Nevertheless, the court made a finding that it had considered all local, less restrictive programs and forms of custody and was fully satisfied that they were inappropriate dispositions and that the minor could better benefit from programs provided by the CYA. The court then adjudged appellant a ward of the court pursuant to section 602 and committed him to CYA for a maximum term of five years.

Discussion

(1) Initially we think it instructive to point out by way of analogy that cases in the criminal area hold a defendant is entitled to an updated current probation report before being resentenced after reversal on appeal and remand for resentencing. (*People v.*

Flores (1988) 198 Cal.App.3d 1156, 1160 [244 Cal.Rptr. 322]; *People* v. *Brady* (1984) 162 Cal.App.3d 1, 7 [208 Cal.Rptr. 21]; *People* v. *Cooper* (1984) 153 Cal.App.3d 480 [200 Cal.Rptr. 317].) Absent such a report the cause must be reversed and remanded for an updated probation report and further sentencing.

(2) In the juvenile justice area it is the duty of the probation officer to prepare a social study of the minor for every disposition hearing after the juvenile court has found the minor to be a ward of the court pursuant to section 602. (§ § 280, 702; Cal. Rules of Court, rule 1495.) [FN2] The social study *1104 shall contain "such matters as may be relevant to a proper disposition of the case" and a "recommendation for the disposition of the case." (§ 280.) The juvenile court shall receive the social study into evidence at the disposition hearing (§ 706), and "In any order of disposition the court shall state that the social study has been read and considered by the court." (Cal. Rules of Court, rule 1495.)

FN2 Section 280 provides in relevant part: "It shall be the duty of the probation officer to prepare for every hearing on the disposition of a case ... as is appropriate for the specific hearing, or, for a hearing as provided by Section 702, a social study of the minor, containing such matters as may be relevant to a proper disposition of the case. The social study shall include a recommendation for the disposition of the case."

California Rules of Court, rule 1495, provides in relevant part: "(b) Prior to every disposition hearing, the probation officer shall prepare a social study concerning the child, which shall contain those matters relevant to disposition and a recommendation for disposition. If the child is a parolee of the Youth Authority, the social study shall include the results of any contact between the probation officer and the parole officer. The social study shall be furnished to all parties at least 48 hours prior to the commencement of the disposition hearing by depositing copies with the clerk. A continuance of 48 hours shall be granted upon request of any party who has not been furnished the probation officer's report in accordance with this rule.

"

. . . . .

"(d) The court shall receive in evidence the social study prepared by the probation officer and other relevant and material evidence offered by the petitioner, the child, or the parent or guardian. The court may receive other relevant and material evidence on its own motion. In any order of disposition, the court shall state that the social study has been read and considered by the court."

Appellant cites rule 1371 in his briefing. However, the Judicial Council repealed rule 1371, effective July 1, 1989 and replaced it effective the same date with rule 1495 which contains the identical provision.

Use of the word "shall" in section 280 and rule 1495 of the California Rules of Court denotes the preparation, submission and consideration of a social study before the court makes a dispositional decision is mandatory. (§ 15; Cal. Rules of Court, rule 1401(b)(1); *Holt* v. *Superior Court* (1960) 186 Cal.App.2d 524, 527 [9 Cal.Rptr. 353]; *In re Eugene R.* (1980) 107 Cal.App.3d 605, 614-615 [166 Cal.Rptr. 219].)

The information contained in a properly prepared social study report is central to the juvenile court's dispositional decision. While there are no precise requirements outlined in the code or case law as to the contents of the social study, drawing an analogy from what the juvenile court must consider in making a disposition, the probation officer's report should address, in addition to other relevant and material evidence, the age of the minor, his social, personal and behavioral history, the circumstances and gravity of the offense committed by the minor, and the minor's "previously delinquent history." (§ 725.5.) The social study should also include "an exploration of and recommendation to the wide range of alternative facilities potentially available to rehabilitate the minor." (*In re Devin J.* (1984) 155 Cal.App.3d 1096, 1100 [202 Cal.Rptr. 543].) Implicit in this requirement appears to be some insight into the minor's problems in order for the *1105 probation officer to make a recommendation with rehabilitation in mind. (See § 202, fn. 4, *post*.)

In arriving at its dispositional decision, the juvenile court must also have in mind the provisions of section 734 [FN3] and section 202, subdivision (b) [FN4] as well as the command of *In re Aline D.* (1975) 14 Cal.3d 557 [121 Cal.Rptr. 816, 536 P.2d 65], which requires proper consideration be given to less restrictive programs before a commitment to CYA is made. (See *In re Michael D.* (1987) 188 Cal.App.3d 1392, 1396 [234 Cal.Rptr. 103].)

FN3 Section 734 provides: "No ward of the juvenile court shall be committed to the

> Youth Authority unless the judge of the court is fully satisfied that the mental and physical condition and qualifications of the ward are such as to render it probable that he will be benefited by the reformatory educational discipline or other treatment provided by the Youth Authority."
>
> FN4 Section 202, subdivision (b) provides, in relevant part: "Minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interests of public safety and protection, receive care, treatment and guidance which is consistent with their best interest, which holds them accountable for their behavior, and which is appropriate for their circumstances. Such guidance may include punishment that is consistent with the rehabilitative objectives of this chapter. Juvenile courts and other public agencies charged with enforcing, interpreting and administering the Juvenile Court Law shall consider the safety and protection of the public and the best interest of the minor in all deliberations pursuant to this chapter."

On this record, without the benefit of a current social study there is no evaluation or insight into appellant's problems, aside from the obvious Health and Safety Code violation. Given the law's concern for rehabilitation of minors, tempered with accountability (§ 202, see fn. 4 *ante*), it would seem impossible without the benefit of a current social study for the juvenile court to give the required sensitive consideration to all of the factors required to make any commitment, much less a CYA commitment which requires evidence of a probable benefit to the minor and the inappropriateness of less restrictive alternatives.

More specifically in this instance there were unanswered questions as to whether appellant had a substance abuse problem and whether appellant would be eligible for commitment to the local substance abuse program. A social study would have given this information and other current personal, social and behavioral information to fill the 19-month gap between his former commitment to the social adjustment program and the time of the current commitment. (3) The social study report prepared 19 months earlier as a result of appellant's 1987 possession-for-sale finding does not satisfy this requirement. [FN5]

> FN5 It is not formally part of the record on this appeal.

Relying on *In re Eugene R., supra*, 107 Cal.App.3d at pages 614-615, respondent argues it is not reasonably probable that had the juvenile court ***1106** received a formal, written, updated social study before disposition, a result more favorable to the minor would have occurred. The argument is grounded on a social study done on appellant nineteen months earlier as a result of a former offense and an oral report from the probation officer at the time of the dispositional hearing, at which the probation officer orally explained that because this was appellant's second drug-sale violation in less than two years, neither of the two local programs would be recommended for appellant. On its face, a recommendation that appellant be committed to CYA because of two possession-for-sale determinations does not satisfy the requirements of a social study as required by section 280 and California Rules of Court, rule 1495.

After holding it is mandatory to have a current social study prepared, the court in *In re Eugene R.*, found there was substantial compliance with the requirement. (107 Cal.App.3d at p. 615.) Because of the peculiar facts of *In re Eugene R.*, we have no quarrel with that precise holding. (4) However, we disagree with *In re Eugene R.* insofar as it suggests the probation officer's failure to prepare and file, and the court's failure to consider a current social studies report in compliance with section 280 and rule 1495 is subject to harmless-error analysis under *In re Ronald E.* (1977) 19 Cal.3d 315, 325 [137 Cal.Rptr. 781, 562 P.2d 684], and *People v. Watson* (1956) 46 Cal.2d 818, 836 [299 P.2d 243].

There are important reasons for requiring a social study to be in writing. The writing requirement assures diligent investigation, thoroughness in collection and analysis of facts, and reasoned judgments in the opinions and conclusions expressed. Also, the writing requirement assures a degree of author accountability, unattainable in opinions expressed orally upon the spur of the moment without all the facts and absent thorough study. Further, the requirements of California Rules of Court, rule 1495, that the report be received in evidence and the juvenile judge recite on the record he has read and considered the report, point up the importance the authors of rule 1495 have placed on the social study report.

A harmless-error analysis is a highly subjective process. When a social study report is not filed, it is nigh impossible for an appellate court to decide whether a juvenile judge would or would not have made the same decision had one been filed. In any event, the reasoning process involved in a harmless-error analysis diminishes the protection afforded to minors by the mandatory requirements that a written social report be prepared, made available to the minor's counsel, filed, and read and considered by the juvenile judge before he makes his disposition. Considering the special solicitude the law has always shown toward minors, we do not think the drafters of section 280 and rule 1495 of the California Rules of Court could have intended the *1107 mandates of those sections to be so qualified. Accordingly, we conclude if the requirements are not complied with, reversal is required.

That part of the order finding appellant was subject to juvenile court jurisdiction is affirmed; the order is otherwise reversed and the cause remanded for further proceedings consistent with this opinion.

Martin, Acting P. J., and Stone (W. A.), J., concurred.
Cal.App.5.Dist.
In re L. S.
220 Cal.App.3d 1100, 269 Cal.Rptr. 700

END OF DOCUMENT

AUDITOR/CONTROLLER-RECORDER
COUNTY CLERK

OR/CONTROLLER • 222 West Hospitality Lane, Fourth Floor
San Bernardino, CA 92415-0018 • (909) 387-8322 • Fax (909) 386-8830
RECORDER • **COUNTY CLERK** • 222 West Hospitality Lane, First Floor
San Bernardino, CA 92415-0022 • (909) 387-8306 • Fax (909) 386-8940

EXHIBIT J

LARRY WALKER
Auditor/Controller-Recorder
County Clerk

ELIZABETH A. STARBUCK
Assistant Auditor/Controller-Recorder
Assistant County Clerk

May 1, 2007

Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

RE: **Revised Draft Staff Analysis and Hearing Date**
California Youth Authority: Sliding Scale for Charges, 02-TC-01
Welfare and Institutions Code Sections 912, 912.1, and 912.5
Statutes 1996, Chapter 6; Statutes 1998, Chapter 632

Dear Ms. Higashi,

The County of San Bernardino (County) received a draft staff analysis dated February 13, 2007 for the above named claim. The Commission staff found the following:

> Staff finds that any costs associated with commitment of a juvenile to the CYA result from a juvenile court mandate within the meaning of Article XIII B, Section 9, subdivision (b). Consequently, the Article XIII A and Article XIII B taxing and spending restrictions are not applicable to these costs, and no reimbursement under Article XIII B, Section 6 is required.

On March 6, 2007, the County submitted a rebuttal, setting forth reasons for disagreeing with the staff's interpretation. The Department of Finance submitted a response March 6, 2007 as well. Their response was in support of the Commission findings. Subsequently, April 10, 2007, the Commission staff issued a revised draft staff analysis. The revised basis for denying the test claim as stated:

> "Since the increased costs flow from an *initial discretionary decision* by counties to commit their category 5 through 7 juveniles to the CYA, the test claim statutes do not constitute a "required program" within the meaning of article XIII B, section 6, subdivision (c). (Draft staff analysis, April 10, 2007, pg 13)

The County disagrees with this interpretation as well. However, based on the revised analysis, the County would like to request that a decision on this test claim be postponed. At this time, there is a matter pending before the Superior Court of the State of California, County of Los Angeles; Case No. BS 106052 (County of San Bernardino v. Commission on State Mandates of the State of California, et al.) (hereafter referred to as SEMS) addressing the same arguments.

The Petitioner has filed the Memorandum of Points and Authorities in Support of the Motion for Writ of Mandate. The Petition for Writ of Mandate is going to be heard September 12, 2007.

In the SEMS test claim, as is true for the California Youth Authority (CYA) test claim, the underlying issue is 'discretionary participation in the program.' In 2002, the Los Angeles County Superior Court concluded that the SEMS test claim legislation constitutes a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution. In making its ruling, the court identified the position of the respondent as follows:

> Respondent contended that SEMS implementation by local agencies is optional and [*Government Code*] section 8607, in requiring said agencies to use SEMS to be eligible for funding of response-related costs, is only an incentive to use SEMS. (Statement of Decision, page 2) *(italics added for clarification)*

In the draft staff analysis for CYA, page 16, it reads:

> Here, as noted above, there is no legal compulsion because no state law requires the counties or the juvenile courts to commit category 5 through 7 juvenile offenders to the CYA, and the juvenile court's decision is based on recommendations from the county probation department which consider, among other things, available treatment options within that county. There is ample evidence in the record, particularly from the Legislative Analyst, and in the law indicating that counties do in fact have discretion to effectuate placement options other than CYA for these juvenile offenders.

> On page 14:
>
> SB 681 [Stats. 1996, ch. 6] imposed a fee schedule upon counties for "low level" offenders sent to the California Youth Authority (CYA). The intent of the legislation was to provide a monetary disincentive for sending "low level" juvenile offenders to the CYA.....
> *(underlining added)*

The two test claims address the same initial issue, that of permissible, not mandatory participation. There is a second issue that both test claims address as well: "In the absence of strict legal compulsion, a local agency might be 'practically' compelled to take an action thus triggering costs that would be reimbursable." (CYA draft staff analysis, pg 16) Both these issues have been put forth in the Superior Court hearing.

Based on the complexity of the issues and the parallels found in both the arguments and legal cases cited, the County of San Bernardino is requesting that the test claim decision for 02-TC-01 California Youth Authority: Sliding Scale for Charges be postponed, pending the adjudication for Case No. BS 106052 before the Superior Court on September 12, 2007.

Respectfully submitted,

CLAIM CERTIFICATION

The foregoing facts are known to me personally and if so required, I could and would testify to the statements made herein. I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 1st day of May, 2007, at San Bernardino, California, by:

Bonnie Ter Keurst
Manager, Reimbursable Projects
Office of the Auditor/Controller-Recorder
County of San Bernardino
222 W. Hospitality Lane, 4th Floor
San Bernardino, CA 92415-0018
Phone: (909) 386-8850

BT:wds

Original List Date: 7/16/2002
Last Updated: 7/7/2006
List Print Date: 04/10/2007
Claim Number: 02-TC-01
Issue: California Youth Authority: Sliding Scale for Charges

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.)

Ms. Bonnie Ter Keurst County of San Bernardino Office of the Auditor/Controller-Recorder 222 West Hospitality Lane San Bernardino, CA 92415-0018	**Claimant** Tel: (909) 386-8850 Fax: (909) 386-8830
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. David Wellhouse David Wellhouse & Associates, Inc. 9175 Kiefer Blvd, Suite 121 Sacramento, CA 95826	Tel: (916) 368-9244 Fax: (916) 368-5723
Ms. Meg Halloran Office of the Attorney General (D-08) 1300 I Street, 17th Floor P.O. Box 944255 Sacramento, CA 95814	Tel: (916) 323-8549 Fax: (916) 322-2368
Mr. Walter Allen, III California Youth Authority 4241 Williamsbourgh Drive Sacramento, CA 95823	Tel: (916) 262-1480 Fax: (916) 262-1483
Mr. Leonard Kaye, Esq. County of Los Angeles Auditor-Controller's Office 500 W. Temple Street, Room 603 Los Angeles, CA 90012	Tel: (213) 974-8564 Fax: (213) 617-8106

Mr. Allan Burdick MAXIMUS 4320 Auburn Blvd., Suite 2000 Sacramento, CA 95841	Tel: Fax:	(916) 485-8102 (916) 485-0111
Mr. Jim Spano State Controller's Office (B-08) Division of Audits 300 Capitol Mall, Suite 518 Sacramento, CA 95814	Tel: Fax:	(916) 323-5849 (916) 327-0832
Mr. J. Bradley Burgess Public Resource Management Group 1380 Lead Hill Boulevard, Suite #106 Roseville, CA 95661	Tel: Fax:	(916) 677-4233 (916) 677-2283
Ms. Carla Castaneda Department of Finance (A-15) 915 L Street, 11th Floor Sacramento, CA 95814	Tel: Fax:	(916) 445-3274 (916) 323-9584
Ms. Ginny Brummels State Controller's Office (B-08) Division of Accounting & Reporting 3301 C Street, Suite 500 Sacramento, CA 95816	Tel: Fax:	(916) 324-0256 (916) 323-6527
Mr. Glen Everroad City of Newport Beach 3300 Newport Blvd. P. O. Box 1768 Newport Beach, CA 92659-1768	Tel: Fax:	(949) 644-3127 (949) 644-3339
Ms. Beth Hunter Centration, Inc. 8570 Utica Avenue, Suite 100 Rancho Cucamonga, CA 91730	Tel: Fax:	(866) 481-2621 (866) 481-2682
Ms. Marianne O'Malley Legislative Analyst's Office (B-29) 925 L Street, Suite 1000 Sacramento, CA 95814	Tel: Fax:	(916) 319-8315 (916) 324-4281
Ms. Donna Ferebee Department of Finance (A-15) 915 L Street, 11th Floor Sacramento, CA 95814	Tel: Fax:	(916) 445-3274 (916) 323-9584

Mr. Steve Keil
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814-3941

Tel: (916) 327-7523

Fax: (916) 441-5507

AUDITOR/CONTROLLER-RECORDER
COUNTY CLERK

COUNTY OF SAN BERNARDINO

OR/CONTROLLER • 222 West Hospitality Lane, Fourth Floor
San Bernardino, CA 92415-0018 • (909) 387-8322 • Fax (909) 386-8830
RECORDER • **COUNTY CLERK** • 222 West Hospitality Lane, First Floor
San Bernardino, CA 92415-0022 • (909) 387-8306 • Fax (909) 386-8940

LARRY WALKER
Auditor/Controller-Recorder
County Clerk

ELIZABETH A. STARBUCK
Assistant Auditor/Controller-Recorder
Assistant County Clerk

PROOF OF SERVICE

I, the undersigned, declare as follows:

I am employed by the County of San Bernardino, State of California. My business address is 222 W. Hospitality Lane, San Bernardino, CA 92415. I am 18 years of age or older.

On May 1, 2007, I faxed and mailed the letter dated May 1, 2007 to the Commission on State Mandates re: Revised Draft Staff Analysis and Hearing Date; California Youth Authority: Sliding Scale for Charges, 02-TC-01. I mailed and/or faxed it also to the other parties listed on this mailing list.

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 May 1, 2007 at San Bernardino, California.

WENDY SULZMANN

STATE OF CALIFORNIA GRAY DAVIS, 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

EXHIBIT K

May 2, 2007

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

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

RE: Denial of Request for Postponement of Hearing
California Youth Authority: Sliding Scale for Charges, 02-TC-01
Welfare and Institutions Code Sections 912, 912.1, and 912.5
Statutes 1996, Chapter 6; Statutes 1998, Chapter 632
County of San Bernardino, Claimant

Dear Ms. Ter Keurst:

The County's May 1, 2007 request to postpone the hearing on the *California Youth Authority: Sliding Scale for Charges* test claim is denied for failure to show good cause, pursuant to sections 1183.01, subdivision (c)(2) and 1181.1, subdivision (h), of the Commission's regulations.

The stated need for postponement is the pending adjudication of Case Number BS 106052, regarding the standardized emergency management system test claim (hereafter "*SEMS*"), scheduled before the Los Angeles County Superior Court on September 12, 2007. However, pending lawsuits that are not directly related to the test claim do not satisfy the definition of good cause.

Although the pending *SEMS* case deals with a "practical" compulsion issue, the program at issue in *SEMS* is in no way similar to the new sliding scale fees for California Youth Authority commitments. In fact, the Supreme Court in *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, established well-settled principles in state mandates law regarding "practical" compulsion, to which the Commission must adhere. Postponing the hearing to wait for a ruling on *SEMS*, which will not likely impact the *California Youth Authority: Sliding Scale for Charges* test claim, does not constitute good cause.

The revised draft analysis for the *California Youth Authority: Sliding Scale for Charges* test claim was released on April 10, 2007. Comments were due by all parties by May 1, 2007, and the test claim remains set for hearing on May 31, 2007.

As provided in section 1181, subdivision (c), of the Commission's regulations, the County may appeal to the Commission for review of this action and decision by the executive director. Please contact Deborah Borzelleri at (916) 322-4230 with any questions regarding the above.

Sincerely,

Paula Higashi

PAULA HIGASHI
Executive Director

MAILED: Mail Liaison FAXED:
DATE: 5/13/02 INITIAL: [illegible]
CHRON: FILE:
WORKING BINDER:

Original List Date: 7/16/2002
Last Updated: 7/7/2006
List Print Date: 05/02/2007
Claim Number: 02-TC-01
Issue: California Youth Authority: Sliding Scale for Charges

Mailing Information: Other

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.)

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

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

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. David Wellhouse
David Wellhouse & Associates, Inc.
9175 Kiefer Blvd, Suite 121
Sacramento, CA 95826

Tel: (916) 368-9244
Fax: (916) 368-5723

Ms. Meg Halloran
Office of the Attorney General (D-08)
1300 I Street, 17th Floor
P.O. Box 944255
Sacramento, CA 95814

Tel: (916) 323-8549
Fax: (916) 322-2368

Mr. Walter Allen, III
California Youth Authority
4241 Williamsbourgh Drive
Sacramento, CA 95823

Tel: (916) 262-1480
Fax: (916) 262-1483

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

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

Mr. Allan Burdick MAXIMUS 4320 Auburn Blvd., Suite 2000 Sacramento, CA 95841	Tel: Fax:	(916) 485-8102 (916) 485-0111
Mr. Jim Spano State Controller's Office (B-08) Division of Audits 300 Capitol Mall, Suite 518 Sacramento, CA 95814	Tel: Fax:	(916) 323-5849 (916) 327-0832
Mr. J. Bradley Burgess Public Resource Management Group 1380 Lead Hill Boulevard, Suite #106 Roseville, CA 95661	Tel: Fax:	(916) 677-4233 (916) 677-2283
Ms. Carla Castaneda Department of Finance (A-15) 915 L Street, 11th Floor Sacramento, CA 95814	Tel: Fax:	(916) 445-3274 (916) 323-9584
Ms. Ginny Brummels State Controller's Office (B-08) Division of Accounting & Reporting 3301 C Street, Suite 500 Sacramento, CA 95816	Tel: Fax:	(916) 324-0256 (916) 323-6527
Mr. Glen Everroad City of Newport Beach 3300 Newport Blvd. P. O. Box 1768 Newport Beach, CA 92659-1768	Tel: Fax:	(949) 644-3127 (949) 644-3339
Ms. Beth Hunter Centration, Inc. 8570 Utica Avenue, Suite 100 Rancho Cucamonga, CA 91730	Tel: Fax:	(866) 481-2621 (866) 481-2682
Ms. Marianne O'Malley Legislative Analyst's Office (B-29) 925 L Street, Suite 1000 Sacramento, CA 95814	Tel: Fax:	(916) 319-8315 (916) 324-4281
Ms. Donna Ferebee Department of Finance (A-15) 915 L Street, 11th Floor Sacramento, CA 95814	Tel: Fax:	(916) 445-3274 (916) 323-9584

Mr. Steve Keil
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814-3941

Tel: (916) 327-7523
Fax: (916) 441-5507

DEPARTMENT OF FINANCE
OFFICE OF THE DIRECTOR
ARNOLD SCHWARZENEGGER, GOVERNOR
STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

EXHIBIT L

May 1, 2007

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of April 10, 2007, the Department of Finance has reviewed the revised draft staff analysis of Claim No. 02-TC-01 "California Youth Authority: Sliding Scale for Charges."

As a result of our review, we have no objections to the staff analysis recommendation to deny the test claim. Commission staff notes that while the juvenile court has discretion over the commitment of juvenile offenders, the court does not have any discretion regarding the cost of this commitment to the counties. There is; however, discretion on the part of counties to recommend commitment of juvenile offenders to the California Youth Authority, now known as the Division of Juvenile Justice. Therefore, the test claim statutes do not result in a reimbursable state mandate. Finance also notes that there is no new program or higher level of service required.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list that accompanied your April 10, 2007 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Carla Castañeda, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,

Thomas E. Dithridge
Program Budget Manager

Attachments

Attachment A

DECLARATION OF CARLA CASTANEDA
DEPARTMENT OF FINANCE
CLAIM NO. CSM—02-TC-01

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

May 4, 2007
at Sacramento, CA

Carla Castaneda
Carla Castaneda

PROOF OF SERVICE

Test Claim Name: California Youth Authority: Sliding Scale for Charges
Test Claim Number: CSM–02-TC-03

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 12 Floor, Sacramento, CA 95814.

On May 1, 2007, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 12 Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Ms. Susan Geanacou
Department of Finance
915 L Street, Suite 1190
Sacramento, CA 95814

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

D-08
Ms. Meg Halloran
Office of the Attorney General
1300 I street, 17th Floor
P.O. Box 944255
Sacramento, CA 95814

Ms. Beth Hunter
Centration, Inc.
8570 Utica Avenue, Suite 100
Rancho, Cucamonga, CA 91730

B-29
Ms. Marianne O'Malley
Legislative Analyst's Office
925 L Street, Suite 1000
Sacramento, CA 95814

Wellhouse and Associates
Attention: David Wellhouse
9175 Kiefer Boulevard, Suite 121
Sacramento, CA 95826

Mr. Bernard Warner
California Youth Authority
4241 Williamsbourgh Drive
Sacramento, CA 95823

B-08
Mr. Jim Spano
State Controller's Office
Division of Audits
300 Capitol Mall, Suite 518
Sacramento, CA 95814

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

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

Mr. Steve Keil
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814-3941

A-15
Ms. Donna Ferebee
Department of Finance
915 L Street, 12th Floor
Sacramento, Ca 95814

A-15
Ms. Carla Castaneda
Department of Finance
915 L Street, 12th Floor
Sacramento, CA 95814

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

Mr. J. Bradley Burgess
Public Resource Management Group
1380 Lead Hill Blvd., Suite 106
Roseville, CA 95661

Mr. Glen Everroad
City of Newport Beach
3300 Newport Blvd.
P O Box 1768
Newport Beach, CA 92659-1768

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 May 1, 2007 at Sacramento, California.

Ann Slaughter