BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Welfare and Institutions Code Sections 779, 1731.8, 1719, 1720 Statutes 2003, Chapter 4 Filed on December 22, 2004 by County of Los Angeles, Claimant	Case No.: 04-TC-02 *Juvenile Offender Treatment Program Court Proceedings* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted May 25, 2012*) (*Served May 31, 2012)* (*Corrected June 6, 2012*)

CORRECTED STATEMENT OF DECISION

On May 25, 2012, the Commission on State Mandates (Commission) adopted the statement of decision in the above-entitled matter. Pursuant to California Code of Regulations, title 2, section 1188.2(b), the attached corrected statement of decision of the Commission is hereby issued to correct the names of witnesses appearing on behalf of the claimant and the Department of Finance.

Heather Halsey, Executive Director

Dated: June 6, 2012

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STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on May 25, 2012. Leonard Kaye and Lori A. Harris appeared on behalf of claimant. Susan Geanacou and Carla Shelton appeared on behalf of the Department of Finance.

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

The Commission adopted the staff analysis to deny the test claim at the hearing by a vote of 7-0.

Summary of Findings

The Commission denied this test claim for the following reasons:

Court Orders to Modify or Set Aside Order of Commitment - Welfare and Institutions Code section 779: The amendment adds a sentence stating that the statute does not limit the authority of the court to change, modify or set aside an order of commitment after a noticed hearing and upon a showing of good cause that the California Youth Authority (CYA)[1] is not providing treatment consistent with section 734. This statute is merely a clarification of existing law. The

[1] CYA was renamed the Division of Juvenile Justice (DJJ) in a 2005 reorganization, so all references to the Youth Authority or CYA in this analysis now apply to the DJJ.

test claim statute does not mandate a new program or higher level of service subject to article XIII B, section 6.

Parole Consideration Dates and Parole Procedures – Welfare and Institutions Code sections 1719 & 1731.8: These code sections address a juvenile's parole consideration date (PCD), and transfer the duty to set or modify the PCD from the Youthful Offender Parole Board (YOPB)[2] to CYA. The amendments to sections 1731.8 and 1719 simply transfer the duties imposed on YOPB to CYA relating to the ward's PCD, and direct CYA to comply with the existing regulations when modifying or deviating from the PCD. Nothing on the face of these statutes imposes a new duty on local government. Thus, the test claim statute does not mandate a new program or higher level of service subject to article XIII B, section 6.

Ward Reviews - Welfare and Institutions Code section 1720: The amendment to section 1720 changed the process for reviewing the progress of the wards following their commitment to CYA. The wards' reviews were transferred from YOPB to CYA. This section also requires CYA to provide the reviews in writing, include specified treatment information in the report, and send the report to the court and the probation department of the committing county. The amendment to section 1720 (Stats. 2003, ch. 4) does not mandate a new program or higher level of service on county public defenders. The plain language of this code section imposes duties on CYA, but does not impose any requirements on local government. In addition, under prior law, CYA was required to prepare treatment reports and reviews and provide copies of those reports to the ward. The ward could provide those reports to his or her attorney. Moreover, before the test claim statute, a ward had an existing due process right under the Constitution to receive copies of the reviews, have counsel review and evaluate the material in the review, and represent the ward as necessary in a petition for modification of the prior order of commitment to CYA pursuant to Welfare and Institutions Code sections 778 and 779.

COMMISSION FINDINGS

Chronology

12/22/2004	Claimant, County of Los Angeles, filed the test claim 04-TC-02 with the Commission[3]
01/11/2005	Commission staff issued a letter deeming the test claim filing complete and requested comments from state agencies
02/01/2012	Commission staff issued the draft staff analysis
02/15/2012	Department of Finance submitted comments on the draft staff analysis

[2] The Youthful Offender Parole Board (YOPB) became the Youth Authority Board under the 2003 test claim statute, and in 2005 became the Board of Parole Hearings (Welf. & Inst. Code, § 1716). Thus, references in this analysis to the Youth Authority Board also include the Board of Parole Hearings.

[3] Based on the filing date of December 22, 2004, the potential period of reimbursement for this test claim begins on July 1, 2003.

02/16/2012 Claimant filed a request for extension of time to file comments and to postpone the hearing

02/21/2012 Commission staff requested additional information on the reason for the extension and postponement request

03/02/2012 Claimant provided response to additional request for information

03/05/2012 Commission staff granted an extension of time to file comments and postponement of the hearing to May, 25, 2012

04/20/2012 Claimant submitted comments on the draft staff analysis

I. Background

Claimant seeks reimbursement for costs incurred by county public defenders as a result of the test claim statute which realigned the duties of the former Youthful Offender Parole Board (YOPB)[4] and the California Youth Authority (CYA).[5] Before discussing the test claim statutes, some background on the juvenile justice system is provided.

The Juvenile Justice System

In the juvenile justice system, the emphasis is on offender treatment and rehabilitation rather than punishment.[6] Juvenile court proceedings are not considered to be criminal proceedings, and orders making minors wards of the juvenile court are not deemed to be criminal convictions.[7]

[4] The Youthful Offender Parole Board (YOPB) became the Youth Authority Board under the 2003 test claim statute, and in 2005 became the Board of Parole Hearings (Welf. & Inst. Code, § 1716). Thus, references in this analysis to the Youth Authority Board also include the Board of Parole Hearings.

[5] CYA was renamed the Division of Juvenile Justice (DJJ) in a 2005 reorganization, so all references to the Youth Authority or CYA in this analysis now apply to the DJJ.

[6] *In re Aline D.* (1975) 14 Cal.3d 557, 567.

[7] Welfare and Institutions Code section 203. This civil/criminal distinction, however, is not always clear. The U.S. Supreme Court has said:

> [I]t is clear under our cases that determining the relevance of constitutional policies, like determining the applicability of constitutional rights, in juvenile proceedings, requires that courts eschew 'the 'civil' label-of-convenience which has been attached to juvenile proceedings,' [Citation omitted.] and that 'the juvenile process . . . be candidly appraised.' (*Breed v. Jones* (1975) 421 U.S. 519, 529.) … [I]n terms of potential consequences, there is little to distinguish an adjudicatory hearing such as was held in this case from a traditional criminal prosecution. (*Id.* at p. 530.)

Although, since the 1960s, the courts have accorded juvenile offenders some of the constitutional protections afforded criminal defendants.[8]

The Office of the Legislative Analyst (LAO) described the process of juvenile justice as follows:

> Following the arrest of a juvenile offender, a law enforcement officer has the discretion to release the juvenile to his or her parents, or take the offender to juvenile hall. The county probation department, the agency responsible for the juvenile hall, has the discretion to accept and "book" the offender or not, in which case, the disposition of the juvenile is left to the police. Because most of the state's juvenile halls are overcrowded, mainly with juveniles being held for violent offenses, juvenile halls may accept only the most violent arrestees, turning away most other arrestees.
>
> If the offender is placed in juvenile hall, the probation department and/or the district attorney can choose to file a "petition" with the juvenile court, which is similar to filing charges in adult court. Or, the district attorney may request that the juvenile be "remanded" to adult court because the juvenile is "unfit" to be adjudicated as a juvenile due to the nature of his or her offense. For a juvenile who is adjudicated and whose petition is sustained (tried and convicted) in juvenile court, the offender can be placed on probation in the community, placed in a foster care or group home, incarcerated in the county's juvenile ranch or camp, or sent to the Youth Authority[9] as a ward of the state. For a juvenile tried and convicted in adult court, the offender can be sentenced to the Department of Corrections, but can be placed in the Youth Authority through age 24.[10]

Juvenile court proceedings to declare a minor a ward of the court are commenced after the district attorney or probation officer files a petition,[11] which is tantamount to filing charges. The petition triggers a detention hearing,[12] after which the juvenile may be detained under specified circumstances.[13] The court may appoint counsel for the minor and his or her parents if they desire it at this hearing, and is required to appoint counsel for certain minors who are habitual or serious offenders unless the minor makes an "intelligent waiver" of the right to counsel.[14]

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[8] For example, the right to counsel in juvenile judicial proceedings (*Application of Gault* (1967) 387 U.S. 1) and the protection against double jeopardy (*Breed v. Jones* (1975) 421 U.S. 519).

[9] The California Youth Authority (CYA) was renamed the Division of Juvenile Justice (DJJ) in a 2005 reorganization, so all references to the Youth Authority or CYA in this analysis now apply to the DJJ.

[10] Office of the Legislative Analyst, "Juvenile Crime – Outlook for California." May 1995, p. 1.

[11] Welfare and Institutions Code section 650.

[12] Welfare and Institutions Code sections 632-633.

[13] Welfare and Institutions Code section 636.

[14] Welfare and Institutions Code section 634.

Whether indigent or not, since 1961 the court has been required, at a detention hearing, to notify the juvenile and his or her parents of the right to counsel "at every stage of the proceedings."[15]

Depending on the minor's age and seriousness of the crime, the court may hold a fitness hearing after the detention hearing if the district attorney decides that the minor should be tried as an adult.[16]

After the detention hearing, a jurisdictional hearing is held to decide whether the minor is detained or released to home supervision.[17] During the jurisdictional hearing, the judge decides the merits of the petition. If the judge finds that the allegations in the petition are true, then a dispositional or sentencing hearing is held[18] to determine the minor's care, treatment and guidance, including punishment. Before the hearing, the probation officer writes a "social study" of the minor for the court to help determine what should happen to the minor.

The judge in the disposition hearing may set aside the findings in the jurisdictional hearing, or may put the minor on informal probation. Otherwise, the judge may make the minor a ward of the court, meaning the court makes decisions for the minor instead of his or her parents. Wardship may mean the minor is put on probation, placed in foster care, a group home or private institution,[19] placed in local juvenile detention,[20] or placed in the California Youth Authority.[21] The judge may also impose other conditions, such as fines, restitution, or work programs. If the judge sentences the minor to the youth authority, it means that the judge believes that it would be best for the minor to learn from the discipline or programs at CYA.[22]

Less than two percent of juvenile offenders are committed to CYA and become a state responsibility.[23] County probation departments supervise the remaining 98 percent.

For a graphic depiction of the juvenile justice process, see Appendix 1 attached.

California Youth Authority

CYA is the state agency responsible for protecting society from the criminal and delinquent behavior of juveniles.[24] CYA operates training and treatment programs that seek to educate,

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[15] Welfare and Institutions Code section 633.

[16] Welfare and Institutions Code section 707.

[17] Welfare and Institutions Code section 700.

[18] Welfare and Institutions Code section 706.

[19] Welfare and Institutions Code section 727.

[20] Welfare and Institutions Code section 730.

[21] Welfare and Institutions Code section 731.

[22] Welfare and Institutions Code section 734.

[23] Office of the Legislative Analyst. "California's Criminal Justice System: A Primer." January 2007, page 50. The Legislative Analyst's 1995 report stated that three percent were state wards, as did the (2003) legislative history of the test claim statute.

correct, and rehabilitate youthful offenders rather than punish them.[25] It is charged with operating 11 institutions and supervising parolees through 16 offices located throughout the state.[26] Individuals can be committed to CYA by the juvenile court or on remand by the criminal court,[27] or returned to CYA by the Youth Authority Board (YAB).[28]

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.[29] Counties pay the state a monthly fee for persons who have been committed to CYA.[30] In 1996, a new fee structure was imposed to provide incentives for counties to treat less serious offenders at the county level. Counties are required to pay 100 percent of the average cost for "category 7" wards committed to CYA, 75 percent for "category 6" wards and 50 percent for "category 5" wards. At the time of the test claim statute (2003) counties paid over $50 million annually for their commitments to CYA.[31]

Youthful Offender Parole Board/Youth Authority Board/Board of Parole Hearings

Before the test claim legislation, YOPB was the paroling authority for young persons committed to CYA.[32] Although wards are committed to CYA by local courts, decisions relating to length of stay and parole were made by YOPB, which performed the following duties:

- Return persons to the court of commitment for redisposition by the court;
- Discharge of commitment;
- Orders to parole and conditions thereof;
- Revocation or suspension of parole;
- Recommendation for treatment program;

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[24] 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.

[25] Welfare and Institutions Code section 1700.

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

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

[28] Office of the Legislative Analyst, Analysis of the 1999-2000 Budget Bill, Criminal Justice Departmental Issues, page 5 (referring to YOPB, the predecessor agency of the Youth Authority Board which is currently known as the Board of Parole Hearings).

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

[30] Welfare and Institutions Code sections 912 and 912.5.

[31] In May 2007, the Commission determined that the 1996 statutes raising CYA fees for counties (Welf. & Inst. Code, §§ 912, 912.1, 912.5) were not a reimbursable mandate in the *California Youth Authority: Sliding Scale for Charges* (02-TC-01) test claim.

[32] YOPB is a part of CYA. (Welf. & Inst. Code, § 1716.)

- Determination of the date of next appearance;
- Return nonresident persons to the jurisdiction of the state of legal residence.[33]

The history and duties of YOPB were provided in the test claim statute's legislative history as follows.

> YOPB was established originally in 1941 by the Legislature as the "Youth Authority Board." When the Department of the Youth Authority was created in 1942, the Director also served as the Chairman of the Board. The Board separated from CYA in 1980 and was renamed the Youthful Offender Parole Board.
>
> YOPB members and hearing officers conduct about 20,000 hearings a year at the 11 CYA institutions, 4 camps, and regional parole offices for the approximately 6,400 wards at CYA and 4,000 on parole. Hearing officers include YOPB staff or retired annuitants who are authorized to conduct hearings. YOPB hearings fall into the following general categories:
>
> Within approximately 45-60 days, YOPB used to conduct an Initial Hearing where the initial parole consideration date (PCD) is set and treatment is ordered; however, the Legislature has been advised by the administration that since November of 2002, this function has been shifted to the CYA, with CYA staff recommendations subject to YOPB approval.
>
> Once a year YOPB conducts an Annual Review to assess the progress of the ward and if they deem appropriate, modify the parole consideration date (PCD). YOPB can also hold Progress Reviews more frequently to review progress or modify the PCD.
>
> At the request of CYA, YOPB holds disciplinary hearings to determine whether a time-add should be given (extending the parole consideration date) as a disciplinary action.
>
> At the ward's parole consideration hearing, YOPB determines whether to grant parole or extend the institution stay. If parole is granted, YOPB sets conditions of parole.
>
> YOPB also conducts Parole Revocation Hearings for parole violators to determine whether parole should be revoked and the ward returned to the institution.[34]

The former YOPB had authority over wards committed to CYA, such as permitting the ward "his liberty under supervision and upon such conditions as it believes best designed for the protection of the public" or ordering confinement "as it believes best designed for protection of the public" with specified limitations. The former YOPB could also order reconfinement or renewed release under supervision "as often as conditions indicate to be desirable" or revoke or modify any order

[33] Former Welfare and Institutions Code section 1719.

[34] Senate Committee on Public Safety, Analysis of SB 459 (2003-2004 Reg. Sess.) as amended March 12, 2003, pages G-H.

"except an order of discharge" or modify an order of discharge, or discharge him or her from its control "when it is satisfied that such discharge is consistent with the protection of the public."[35]

The Test Claim Legislation

The purpose of the test claim legislation was to "consolidate the operations of the Youthful Offender Parole Board under the Department of the Youth Authority and make related changes to the juvenile law."[36] The test claim statute abolished YOPB and created the YAB[37] within the Department of the Youth Authority. YOPB's duties relating to releases (discharge and parole), parole revocations, and disciplinary appeals were allocated to the YAB and YOPB's remaining duties were shifted to CYA.[38]

The powers and duties shifted to CYA include: returning persons to the court of commitment for redisposition by the court, determining the offense category, setting PCDs using existing guidelines, conducting annual reviews, treatment program orders, making institutional placements, making furlough placements, returning nonresident persons to the jurisdiction of the state of legal residence, disciplinary decision making (with appeals to the board), and referring dangerous persons to prosecutors for extended detention.[39]

Additionally, CYA is now required to provide county probation departments and juvenile courts with specified information concerning ward treatment and progress, and must compile specified data concerning CYA's population and effectiveness of treatment.

According to the legislative history of the test claim statute, it "contains important checks and balances that will enhance the relationship between CYA and the counties, which will improve CYA correctional services."[40] The legislative history also cites the following December 2002 findings by the Office of the Inspector General on YOPB:

- YOPB "lacks treatment expertise";
- YOPB appears to order more programs than wards can reasonably complete by the parole consideration date;
- YOPB hearing staff routinely checks off programs to be provided without documentation linking the programs to the ward's history and treatment needs as identified by the (CYA); and

[35] Former Welfare and Institutions Code section 1766.

[36] Senate Committee on Public Safety, Analysis of SB 459 (2003-2004 Reg. Sess.) as amended March 12, 2003, page B.

[37] The board was renamed the Board of Parole Hearings in 2005 (Stats. 2005, ch. 10) and the Juvenile Parole Board in 2010 (Stats. 2010, ch. 729).

[38] Senate Committee on Public Safety, Analysis of SB 459 (2003-2004 Reg. Sess.) as amended March 12, 2003, page I.

[39] Welfare and Institutions Code section 1719 (c).

[40] Senate Committee on Public Safety, Analysis of SB 459 (2003-2004 Reg. Sess.) as amended March 12, 2003, page F.

- YOPB hearing staff members who recommend the treatment programs are not necessarily trained in fields related to the programs at issue and in some cases appear to lack basic understanding of the programs available.[41]

Although the test claim statute added, repealed or amended 48 statutes, claimant pled only the following four: Welfare and Institutions Code sections 779, 1719, 1720 and 1731.8. As amended, these code sections clarified the authority of the juvenile court to change, modify, or set aside a prior order of commitment to CYA; shifted from YOPB to CYA the duty to set parole consideration dates; transferred the duties regarding the annual review of CYA ward from YOPB to CYA and specified that CYA shall provide copies of the reviews to the court and the county probation department.

II. Positions of the Parties and Interested Parties

A. Claimant Position

Claimant alleges that the test claim statute imposes a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution and Government Code section 17514 for public defenders to perform the following duties that are "reasonably necessary in implementing" the test claim statutes:

1. Review case and court files, mental health, school, medical, psychological and psychiatric records and familiarize themselves with treatment and service needs of the youth;
2. Review court documents to assure court has followed the mandates of SB 459;
3. Prepare and argue motions in cases where the court has not followed the mandates of SB 459 in its dispositional orders;
4. Contact, visit and interview public defender clients sentenced to the California Youth Authority (CYA);
5. Monitor the setting of parole consideration dates to assure they comply with statutory mandates;
6. Assess CYA treatment plans to assure they comply with statutory mandates, needs of the client and orders of the court;
7. Review CYA files, including education, special education, mental health, behavioral, gang and any other specialized files (all kept in separate locations);
8. Monitor the provision of treatment and other services;
9. Advocate for the provision of needed treatment and services within the CYA system, including advocacy at individual education plan [IEP], treatment plan, and similar meetings;
10. File motions in the sentencing court pursuant to Welfare and Institutions Code section 779 where the client's needs are not being adequately addressed by CYA.

[41] *Id.* at page J.

11. Coordinate with the Youth Authority in order to assist our clients in preparing for parole hearings, and represent our clients at parole hearings in appropriate cases.[42]

In its comments on the draft staff analysis, claimant asserts that the analysis is wrong and generally argues that:

- The amendment to section 779 creates a mandate for the courts to begin overseeing the treatment of wards while in CYA facilities, and to intervene when those treatment needs are not being met, resulting in a new remedy and due process rights for public defender clients.
- The juvenile court has a responsibility to review and intervene when CYA treatment orders and programming are deficient and county public defenders clients have a new remedy to ensure the test claim statute's treatment standards are applied in their case. This requires coordination of public defenders and CYA and participation in their meetings to the extent allowed.
- Section 1720(e) and (f) mandate a new program or higher level of service by imposing higher treatment standards and reporting requirements on CYA.[43]

B. State Agencies and Interested Parties

The Department of Finance, in comments filed February 15, 2012, concurs with the draft staff analysis recommending that the Commission deny the test claim on the ground that the test claim statute does not mandate a new program or higher level of service on the county public defender.

III. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

> 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 programs or increased level of service.

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."[44] Thus, the subvention requirement of section 6 is "directed to state mandated increases in the services provided by [local government] …"[45]

[42] Exhibit A, page 6.
[43] Exhibit D. Claimant, comments on the Draft Staff Analysis.
[44] *County of San Diego, supra,* 15 Cal.4th 68, 81.
[45] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or "mandates" local agencies or school districts to perform an activity.[46]
2. The mandated activity either:
    a. Carries out the governmental function of providing a service to the public; or
    b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.[47]
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.[48]
4. The mandated activity results in the local agency or school district incurring increased costs. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity. [49]

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.[50] The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.[51] 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."[52]

A. DO THE TEST CLAIM STATUTES MANDATE A NEW PROGRAM OR HIGHER LEVEL OF SERVICE SUBJECT TO ARTICLE XIII B, SECTION 6 OF THE CALIFORNIA CONSTITUTION?

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[46] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

[47] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

[48] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

[49] *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; Government Code sections 17514 and 17556.

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

[51] *County of San Diego, supra,* 15 Cal.4th 68, 109.

[52] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

1. Court Orders to Modify or Set Aside the Order of Commitment to CYA (§ 779)

As indicated in the background, any person who is under the age of 18 when he or she commits a criminal offense is within the jurisdiction of the juvenile court. Once the individual is adjudged a ward of the juvenile court, the court may retain jurisdiction over the ward until the ward attains the age of 21 or 25 depending on the nature of the offense.[53] The court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the minor in its care of the ward.[54]

Under this existing authority, the court may commit a ward to CYA if the court determines, pursuant to Welfare and Institutions Code section 734,[55] that the mental and physical condition and qualifications of the ward are such as to render it probable that the ward will be benefited by the reformatory educational discipline or other treatment provided by CYA. CYA, in turn, is required to accept the ward if it believes that the person can be materially benefitted by its reformatory and educational discipline, and if it has adequate facilities to provide care.[56]

Once a ward is committed to CYA, the ward is kept under the control and supervision of CYA as long as is necessary for the protection of the public.[57] "[C]ommitment to the [CYA] in particular, brings about a drastic change in the status of the ward which not only has penal overtones, including institutional confinement with adult offenders, but also removes the ward from the *direct supervision* of the juvenile court."[58] CYA is responsible for providing necessary medical and dental treatments, mental health services, and educational programs to the ward.[59] CYA also has the authority to correct the "socially harmful tendencies" of a person committed to CYA by requiring a ward's participation in vocational, physical, educational, corrective training

[53] Welfare and Institutions Code sections 602 and 607.

[54] Welfare and Institutions Code section 727.

[55] Welfare and Institutions Code section 734 states: "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."

[56] Welfare and Institutions Code section 1731.5. After commitment, CYA may order the return of the ward to the juvenile court pursuant to Welfare and Institutions Code section 780 if the ward appears to be an improper person to be received by or retained by CYA or to be so incorrigible or incapable of reformation under the discipline of CYA as to render his or her retention detrimental to the interests of the department. However, section 780 states that the return of the ward to the committing court does not relieve CYA of any of its duties or responsibilities under the original commitment, and that commitment continues in full force and effect until the order of commitment is vacated, modified, or set aside by order of the court.

[57] Welfare and Institutions Code section 1765.

[58] *In re Allen N.* (2000) 84 Cal.App.4th 513, 515, emphasis in original quote.

[59] Welfare and Institutions Code section 1712; California Code of Regulations, title 15, sections 4730 et seq.

and activities, and other methods of treatment conducive to the correction of the ward and to the prevention of future public offenses by the ward.[60]

Although the court is not responsible for the direct supervision of a ward committed to CYA, the court retains jurisdiction of the ward's case, and, since 1961, has had the power to change, modify, or set aside any prior order with respect to the disposition of the ward pursuant to Welfare and Institutions Code sections 775 et seq.[61]

Welfare and Institutions Code section 779 specifically extends the court's power to change, modify, or set aside orders committing a juvenile to CYA. As originally enacted in 1961, section 779 did not identify the circumstances under which the court could change, modify, or set aside a prior order of commitment to CYA.[62] When the test claim statute was enacted in 2003, the Legislature amended section 779 by adding the last sentence to the statute to provide that the court may change, modify, or set aside an order of commitment to CYA upon a showing of good cause that CYA is unable to, or is failing to, provide treatment consistent with educational discipline and treatment requirements of section 734. The amendments made by the 2003 test claim statute are reflected below in underline and strikeout:

> The court committing a ward to the Youth Authority may thereafter change, modify, or set aside the order of commitment. Ten days' notice of the hearing of the application therefor shall be served by United States mail upon the Director of the Youth Authority. In changing, modifying, or setting aside the order of commitment, the court shall give due consideration to the effect thereof upon the discipline and parole system of the Youth Authority or of the correctional school in which the ward may have been placed by the Youth Authority. Except as in this section provided, nothing in this chapter shall be deemed to interfere with the system of parole and discharge now or hereafter established by law, or by rule of the Youth Authority, for the parole and discharge of wards of the juvenile court committed to the Youth Authority, or with the management of any school, institution, or facility under the jurisdiction of the Youth Authority. Except as provided in this section ~~provided~~, ~~nothing in~~ this chapter ~~shall be deemed to~~ does not interfere with the system of transfer between institutions and facilities under the jurisdiction of the Youth Authority. This section does not limit the authority of the court to change, modify, or set aside an order of commitment after a noticed hearing and upon a showing of good cause that the Youth Authority is unable to, or failing to, provide treatment consistent with Section 734.

[60] Welfare and Institutions Code section 1768.

[61] Statutes 1961, chapter 1616.

[62].Statutes 1961, chapter 1616.

The legislative history of the test claim statute refers to the amendment of section 779 as a clarification of prior law.[63]

Claimant, however, alleges that the last sentence of section 779, added by the test claim statute, results in a reimbursable new program as follows:

> Under prior law, the court had no authority to change, modify, or set aside an order of commitment after a noticed hearing and upon a showing of good cause that the Youth Authority was unable to, or failed to, provide treatment consistent with Section 734. Further, under prior law, including the holding in Owen E. (1979) 23 Cal.3d 398, Section 779 does not constitute authority for a juvenile court to set aside an order committing a ward to the California Youth Authority merely because the court's view of rehabilitative progress and continuing treatment needs of the ward differ from CYA determination of such matters.[64]

In comments on the draft staff analysis, claimant argues the amendment to section 779 creates a mandate for the courts to begin overseeing the treatment of wards while in CYA facilities, and to intervene when those treatment needs are not being met, resulting in a new remedy and due process right for public defender clients. Before being amended, section 779 did not include language regarding "treatment" or showing "good cause." And although section 779 contained a reference to section 734 which did mention treatment, the "other treatment provided by the Youth Authority" in section 734 is general and not specific, and it is not possible to evaluate deficient treatment without monitoring compliance with treatment standards and intervening when treatment is deficient. Thus, claimant argues that the test claim statute now requires juvenile courts to continuously supervise and regulate the treatment of wards, along with CYA.[65]

Thus, claimant argues that the test claim amendment, for the first time, requires public defenders to:

- File motions in the sentencing court pursuant to Welfare and Institutions Code section 779 where the client's needs are not being adequately addressed by CYA.
- Prepare and argue motions in cases where the court has not followed the mandates of SB 459 in its dispositional orders.
- Assess CYA treatment plans to assure they comply with statutory mandates, needs of the client and orders of the court.
- Review CYA files, including education, special education, mental health, behavioral, gang and other specialized files (all kept in separate locations).
- Monitor the provision of treatment and other services;

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[63] Senate Committee on Public Safety, Analysis of SB 459 (2003-2004 Reg. Sess.) as amended March 12, 2003, page E. See also, the unpublished decision in *In re Michael M.* 2007 WL 4555337 (Cal.App.5 Dist.).

[64] Exhibit A. County of Los Angeles, test claim, page 4, emphasis in original.

[65] Exhibit D. Claimant, comments on the draft staff analysis, April 20, 2012, pp. 7-13.

- Advocate for the provision of needed treatment and services within the CYA system, including advocacy at individual education plan (IEP), treatment plan, and similar meetings.

For the reasons below, the Commission finds that section 779, as amended by Statutes 2003, chapter 4, does not impose any new state-mandated duties on county public defenders. Contrary to claimant's assertion, the 2003 amendment to section 779 simply clarifies the existing jurisdiction of the juvenile court to change, modify, or set aside an order of commitment to CYA under section 779, and does not mandate any new duties on local government.

In 1979, before the enactment of the 2003 amendment, the California Supreme Court in *In re Owen E.*, interpreted the interplay between the authority of CYA and the jurisdiction of the juvenile court to set aside a prior court order of commitment to CYA under section 779.[66] In the *Owen* case, the ward applied for parole two years after commitment to CYA and was denied parole. The ward's mother petitioned the juvenile court to vacate the commitment. The juvenile court agreed with the mother and concluded that the ward's rehabilitative needs would best be satisfied if he were released from custody. The juvenile court set aside its original commitment order and placed the minor on probation.[67]

On appeal by the Director of CYA, the California Supreme Court reversed the order of the juvenile court, finding that the juvenile court's statutory authority to change, modify, or set aside an order of commitment does not apply when the court simply disagrees with the rehabilitation plan because CYA has the exclusive jurisdiction to determine questions of rehabilitation. In its analysis, the California Supreme Court recognized that the Legislature enacted different code sections to regulate the division of responsibility between CYA and the court. Pursuant to these statutes, CYA has been delegated the discretionary authority to determine whether its program will be or of benefit to the ward; that commitment to CYA removes the ward from the direct supervision of the juvenile court; and that it is the function of CYA to determine the proper length of its jurisdiction over a ward.[68] The court then compared the proceedings in juvenile court to those of adult court to find that it is unreasonable to assume the Legislature intended that both the juvenile court and CYA are required to regulate juvenile rehabilitation. The court reasoned as follows:

> In the related field of jurisdiction to determine the rehabilitative needs of persons convicted of crimes, we have concluded the Adult Authority had the exclusive power to determine questions of rehabilitation. "If …the court were empowered … to recall the sentence and grant probation if the court found that the defendant had become rehabilitated after his incarceration, there manifestly would be two bodies (one judicial and one administrative) determining the matter of rehabilitation, and it is unreasonable to believe that the Legislature intended such a result." [Citations omitted.] While different statutes – even different codes –

[66] *In re Owen E.* (1979) 23 Cal.3d 398.

[67] *Id*. at pages 400-401.

[68] *Id*. at page 404.

> regulate the division of responsibility between the concerned administrative agency and court, it appears to be as unreasonable to assume the Legislature intended that both the juvenile court and CYA are to regulate juvenile rehabilitation as it is to assume that both the superior court and Adult Authority are to regulate criminal rehabilitation.[69]

Based on this analysis, the court held that Welfare and Institutions Code section 779 does not constitute authority for a juvenile court to set aside an order committing a ward to CYA merely because the court's view of the rehabilitative progress and continuing treatment needs of the ward differ from CYA determinations. Rather, "[t]he critical question is thus whether the Youth Authority acted within the discretion conferred upon it."[70] A juvenile court's authority to change, modify, or set aside a prior order of commitment under section 779 is limited to situations where it is shown that "CYA has failed to comply with law or has abused its discretion in dealing with a ward in its custody."[71] If CYA acts within its discretion, there is no basis for judicial intervention under section 779.[72]

Owen was decided before section 779 was amended to add the last sentence to the statute stating that the juvenile court has the authority to change, modify, or set aside an order of commitment "upon a showing of good cause" that the CYA is "unable to, or is failing to, provide treatment as required by law." Thus, this sentence authorizes the court to modify a prior commitment order when there is evidence that services required by law are not being provided. While this sentence does not use the "abuse of discretion" language identified in *Owen*, the standard articulated in the last sentence of section 779 has the same meaning. If CYA is failing to provide treatment required by law, it has abused its discretion. The courts have found that the failure of an agency to abide by the law is an abuse of discretion.[73]

Moreover, there is nothing in the plain language of the statute or the legislative history to suggest a legislative intent to change or limit the existing authority of CYA to determine how to meet a ward's treatment and training needs and to determine whether the ward has been rehabilitated. The plain language of section 779 still requires the court to give due consideration to CYA's authority as follows:

> In changing, modifying, or setting aside the order of commitment, the court shall give due consideration to the effect thereof upon the discipline and parole system of the Youth Authority or of the correctional school in which the ward may have been placed by the Youth Authority. Except as in this section provided, nothing in this chapter shall be deemed to interfere with the system of parole and discharge now or hereafter established by law, or by rule of the Youth Authority,

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[69] *Id*. at pages 404-405.

[70] *Id.* at page 405.

[71] *Id*. at page 406.

[72] *Id.* at page 405; *In re Allen, supra*, 84 Cal.App.4th at page 515.

[73] *Environmental Protection Information Center, Inc. v. Johnson* (1985) 170 Cal.App.3d 604, 622; Code of Civil Procedure section 1094.5.

> for the parole and discharge of wards of the juvenile court committed to the Youth Authority, or with the management of any school, institution, or facility under the jurisdiction of the Youth Authority.

Nor does the legislative history of the 2003 statute show intent to grant the court additional authority to supervise the treatment of a ward, as suggested by claimant, or to nullify the court's analysis and interpretation of the statutes in *Owen*. The Legislature's division of responsibility between CYA and the juvenile court with respect to a section 779 motion has remained the same. After the 2003 amendment to section 779, CYA still has the discretion to regulate and supervise the ward's rehabilitation, and pursuant to section 779, the court retains jurisdiction only to review petitions alleging the failure of CYA to act according to the law. The form and quality of treatment provided by CYA, however, is a matter outside of the juvenile court's jurisdiction under section 779. Rulings by the court after the enactment of the test claim statute concur with this interpretation of the statutes, and show that the *Owens* decision remains good law.[74]

While a petition under section 779 is available to a ward only when CYA fails to comply with the law, a petition under section 778 may be used by the ward to give the court jurisdiction to change, modify, or set aside a prior order of commitment to CYA when there is a *change of circumstances or new evidence* that makes a change in disposition or commitment to CYA "desirable or necessary for the continued welfare of the child."[75] If there is a change of circumstance or new evidence, the court may address the continuing treatment needs of the ward,

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[74] See, *In re Antoine D*. (2006) 137 Cal.App.4th 1314, 1322 and 1324-1325, where the court stated that the authority to set aside or modify an order committing the ward to CYA where it appears CYA has failed to comply with the law or abused its discretion in dealing with the ward stems from section 779 ***and*** the *Owen* case.

[75] *In re Corey* (1964) 230 Cal.App.2d 813, 822; *In re Joaquin S.* (1979) 88 Cal.App.3d 80. Welfare and Institutions Code section 778 states in relevant part the following:

> Any parent or other person having an interest in a child who is a ward of the juvenile court or the child himself through a properly appointed guardian may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a ward of the juvenile court for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court. The petition shall be verified and, if made by a person other than the child, shall state the petitioner's relationship to or interest in the child and shall set forth in concise language any change in circumstance or new evidence which are alleged to require such change of order or termination of jurisdiction.
>
> If it appears that the best interests of the child may be promoted by the proposed change of order or termination of jurisdiction, the court shall order that a hearing be held and shall be give prior notice, or cause prior notice to be given, to such persons and by means as prescribed by Section 776 and 779, and, in such instances as the means of giving notice is not prescribed by such sections, then by such means as the court prescribes.

as alleged by claimant. Claimant has not identified section 778 in its claim. Section 778 was enacted in 1961 and was not affected by the test claim statute.

Thus, both before and after the enactment of the test claim statute, the only way for the court to review the educational program or treatment provided by CYA to a ward is if:

- There is an allegation that CYA has failed to provide the treatment or education required by law (§ 779); or
- There has been a substantial change of circumstances or new evidence that warrants the court's review of the services provided to the ward at CYA and, based on the new circumstance or evidence, make any changes necessary for the continued welfare of the ward (§ 778).

Neither the jurisdiction of the court, nor the rights provided to a ward, have been changed by the amendment to Welfare and Institutions Code section 779.

Accordingly, the standard for juvenile court intervention under the test claim amendment to Welfare and Institutions Code section 779 requiring a "showing of good cause that the Youth Authority is unable to, or failing to, provide treatment" is not new program or a higher level of service over that expressed by the California Supreme Court in the *Owen* case.

For these reasons, the Commission finds that section 779, as amended by Statutes 2003, chapter 4, does not mandate a new program or higher level of service subject to article XIII B, section 6 on county public defenders.

2. Parole Consideration Date(s) (§ 1731.8) and Parole Procedures (§ 1719)

Welfare and Institutions Code sections 1719 and 1731.8 address a juvenile's PCD. The regulation that defines a PCD states: "A parole consideration date represents, from its date of establishment, an interval of time in which a ward may reasonably and realistically be expected to achieve readiness for parole. It is not a fixed term or sentence, nor is it a fixed parole release date."[76] One court described the PCD as follows:

> The parole consideration date is neither a parole release date, a term, or a sentence. It is a date for further review, subject to change by the Youth Authority depending upon the rehabilitation process of the ward. Moreover, pursuant to Welfare and Institutions Code section 1762, wards must be considered for parole at least annually. The parole consideration date is merely an additional review of parole readiness based upon the ward's projected rehabilitation progress. It is not an inflexible time but may, within the principles of the rehabilitation program of the Youth Authority, be modified to reflect the needs of the ward.[77]

Under preexisting law, a PCD is required to be established for each ward at an initial YOBP hearing.[78] The initial PCD is established "from the date of acceptance by the Youth Authority of

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[76] California Code of Regulations, title 15, section 4945 (a).

[77] *In re Davis* (1978) 87 Cal.App.3d 919, 923-924.

[78] California Code of Regulations, title 15, section 4945 (b).

a ward committed by a court of competent jurisdiction or from the date of the disposition hearing in which parole is revoked."[79]

The test claim statute made CYA responsible for setting PCDs[80] and added the following:

> Notwithstanding any other provision of law, within 60 days of the commitment of a ward to the Department of the Youth Authority, the department shall set an initial parole consideration date for the ward and shall notify the probation department and the committing juvenile court of that date. The department shall use the category offense guidelines contained in Sections 4951 to 4957, inclusive, of, and the deviation guidelines contained in subdivision (i) of Section 4945 of, title 15 of the California Code of Regulations, that were in effect on January 1, 2003, in setting an initial parole consideration date.[81]

The test claim statute also amended section 1719 to specify the duties for the YAB (former YOPB) and CYA, and granted to CYA some of YOPB's former duties, and added the following language authorizing modification of PCDs:

> The department [CYA] may extend a ward's parole consideration date, subject to appeal pursuant to subdivision (b) [authorizing a ward's appeal of adjustment to the parole consideration date to "at least two board members"] from one to not more than 12 months, inclusive, for a sustained serious misconduct violation if all other sanctioning options have been considered and determined to be unsuitable in light of the ward's previous case history and the circumstances of the misconduct. In any case in which a parole consideration date has been extended, the disposition report shall clearly state the reasons for the extension. The length of any parole consideration date extension shall be based on the seriousness of the misconduct, the ward's prior disciplinary history, the ward's progress toward treatment objectives, the ward's earned program credits, and any extenuating or mitigating circumstances. … The department may also promulgate regulations to establish a process for granting wards who have successfully responded to disciplinary sanctions a reduction of up to 50 percent of any time acquired for disciplinary matters. (§ 1719 (d).)

Claimant argues that the amendments to sections 1731.8 and 1719 mandate a new program or higher level of service for public defenders to monitor the parole procedures described in these sections in order to further assist the ward in a possible section 779 motion asking the court to change, amend, or modify a commitment order granting parole for the ward. Claimant reasserts its argument that pursuant to the test claim statute, the court may now substitute its judgment on rehabilitation for that of CYA. According to claimant:

> Since the Youth Authority's Administrative Committee, (YAAC), order the youth's treatment and programming, it is inextricably bound with his or her

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[79] California Code of Regulations, title 15, section 4945 (c).

[80] Welfare and Institutions Code section 1719(c).

[81] Welfare and Institutions Code section 1731.8.

> success or failure at CYA. Since failure would be addressed by a § 779 motion, public defenders are under an obligation to coordinate with the YAAC and participate in their meetings to the extent allowed. Under the law prior to [the test claim statute], the court was powerless to challenge CYA's parole denials and the court was precluded from "substituting its judgment for that of CYA." (See In re Owen E., supra, 23 Cal.3d 398 at 405 …)
>
> Accordingly, [the test claim statute] now mandates a statutory scheme in which the court does substitute its judgment for that of the CYA, tantamount to the granting of parole; thus, the Public Defender has a new duty to monitor parole procedures and assist its clients in their attempts to gain parole.[82]

In comments on the draft staff analysis, claimant repeats the arguments above and states:

> (1) YAAC's treatment orders and programming are not excluded from treatment standards and procedures required under SB 459 [the test claim statute], so the juvenile court has a responsibility to review them and intervene when they are deficient and (2) the County Public Defender's clients have a new remedy to ensure that SB 459 treatment standards and procedures are applied in their case --- and this, of course, requires coordination with YAAC and participation in their meetings to the extent allowed.

Claimant's interpretation of these statutes is wrong. First, as described above, the court's jurisdiction to change, modify, or amend a commitment order under Welfare and Institutions Code section 779 has not changed. The court does not have jurisdiction when a section 779 motion is filed to "substitute its judgment for that of the CYA," as suggested by claimant.

Second, the plain language of sections 1731.8 and 1719 does not impose any new duties on local government. Under prior law, parole consideration dates could be modified by YOPB. For category 1 through 3 offenses, a board panel or referee could "approve a deviation or modification of six months earlier or later than the prescribed or previously established parole consideration date, except that a referee may modify a parole consideration date up to 12 months for DDMS [Disciplinary Decision Making System] behavior."[83] Any deviation in excess of this modification must be submitted to the full Board panel for decision.[84]

For category 4 (serious) offenses, a referee could approve a six-month deviation from the prescribed parole consideration date and may recommend further deviation by submitting the matter to a full Board panel for decision.[85] For category 5 offenses, a board panel or referee could in any annual review year modify an established parole consideration date by six months

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[82] Exhibit A. Test claim, page 6. Emphasis in original.

[83] California Code of Regulations, title 15, sections 4951(b)(2), 4952 (b)(2), 4953 (b)(2). DDMS is a process to ensure a ward the right to due process in disciplinary matters. California Code of Regulations, title 15, sections 4630.

[84] California Code of Regulations, title 15, sections 4951(b)(3), 4952 (b)(3), 4953 (b)(3).

[85] California Code of Regulations, title 15, section 4954(b)(2).

with certain exceptions.[86] For category 6 offenses, a referee can in any annual review year modify an established parole consideration date by six months with certain exceptions.[87] For category 7 offenses, a parole consideration date of one year or less is established subject to a six-month modification by a referee in any annual review year, with certain exceptions.[88]

Preexisting regulations also contain 20 factors to consider when modifying a parole consideration date, including:

1. Extent of involvement in commitment of offense(s);
2. Prior history of delinquency or criminal behavior including sustained petitions and/or convictions;
3. Involvement with dangerous or deadly weapons, their possession or use;
4. Violence, actual or potential. Injury to victims;
5. Behavior or adjustment while in custody prior to acceptance of commitment;
6. Attitude toward commitment offense(s) and victims of offense(s);
7. Alcohol/drug abuse;
8. Facts in mitigation or aggravation as established by court findings;
9. Psychiatric/psychological needs;
10. Staff evaluation;
11. Available confinement time;
12. Maturity and level of sophistication;
13. Motivation of the ward and prognosis for success or failure;
14. Multiplicity of counts of the same, related, or different offense;
15. Factors evaluated in the Community Assessment Report;
16. Availability of community-based programs and the ability to function in the same under parole supervision without danger to the public;
17. Mental or emotional injury to victim;
18. Vulnerable victim: aged or handicapped;
19. Presence of victim during commission of burglary, first degree;
20. Extent the committing offense was youth gang related.[89]

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[86] California Code of Regulations, title 15, section 4955(b)(2).

[87] California Code of Regulations, title 15, section 4956(b)(2).

[88] California Code of Regulations, title 15, section 4957(b)(2).

[89] California Code of Regulations, title 15, section 4945(i).

The regulations also include deviation guidelines for modifying an established parole consideration date to assist in determining readiness for parole.[90]

The test claim statute amendments to sections 1731.8 and 1719 simply transferred the duties imposed on YOPB to CYA relating to the ward's PCD, and directed CYA to comply with the existing regulations that are described above when modifying or deviating from the PCD. The statutes do not require local government to perform any new duties.

Accordingly, sections 1731.8 and 1719, as amended by the test claim statute, do not mandate a new program or higher level of service on local government subject to article XIII B, section 6 of the California Constitution.

3. Ward Reviews (§ 1720(e) & (f))

Under prior law, Welfare and Institutions Code section 1720 required the YOPB to hear the case of each ward "immediately after the case study of the ward has been completed and at such other times as is necessary to exercise the powers and duties of the board."[91] YOPB was also required to "periodically review the case of each ward for the purpose of determining whether existing orders and dispositions in individual cases should be modified or continued in force."[92] The reviews were required as frequently as the YOPB considered desirable, and at a minimum annually after the initial review. If the review was delayed beyond the year, the ward was entitled to notice that contained the reason for the delay and the date the review hearing was to be held.[93] Failure of the YOPB to review the case of the ward within 15 months of a previous review entitled the ward to petition the superior court for an order of discharge, and the court was required to discharge the ward unless the court was satisfied that the ward needed further control.[94]

The test claim statute amended section 1720 to transfer YOPB's review duties to CYA. Now, CYA is required to review each ward's case within 45 days of arrival at CYA and at other times as is necessary to meet the requirements of law.[95] The duty to "periodically review the case of each ward for the purpose of determining whether existing orders and dispositions in individual cases should be modified or continued in force" is transferred to CYA. Like the review by YOPB, the CYA reviews are required as frequently as CYA considers desirable, and at least annually after the initial review.[96]

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[90] California Code of Regulations, title 15, section 4945(j).

[91] Former Welfare and Institutions Code section 1720 (a). Section 1720 was initially enacted in 1979 (Stats. 1979, ch. 860) and last amended in 1984 (Stats. 1984, ch. 680).

[92] Former Welfare and Institutions Code section 1720(b).

[93] Former Welfare and Institutions Code section 1720(b) and (c).

[94] Former Welfare and Institutions Code section 1720 d).

[95] Welfare and Institutions Code section 1720(a).

[96] Welfare and Institutions Code section 1720(c).

In addition, the test claim statute added subdivision (e) to section 1720 to specify that the annual reviews of the ward shall be written and include the following content:

- Verification of the treatment or program goals and orders for the ward to ensure the ward is receiving treatment and programming that is narrowly tailored to address the correctional treatment needs of the ward and is being provided in a timely manner that is designed to meet the parole consideration date set for the ward;
- An assessment of the ward's adjustment and responsiveness to treatment, programming, and custody;
- A review of the ward's disciplinary history and response to disciplinary sanctions;
- An updated individualized treatment plan for the ward that makes adjustments based on the review required by this subdivision;
- An estimated timeframe for the ward's commencement and completion of the treatment programs or services; and
- A review of any additional information relevant to the ward's progress.

Finally, subdivision (f) was added to the statute to require CYA to "provide copies of the reviews prepared pursuant to this section to the court and the probation department of the committing county."

Claimant alleges that the amendment to section 1720 (f), requiring that copies of the reviews be provided to the court and probation department of the committing county, requires the public defender to review, evaluate, monitor, and change treatment plans as necessary to assure compliance with the order of the court, the needs of the client, and the possible filing of a section 779 motion. As indicated above, the section 779 motion is used to request the court to change, modify, or set aside an order of commitment to CYA when CYA has failed to comply with law or has allegedly abused its discretion in dealing with a ward in its custody.

Claimant, in comments to the draft staff analysis, further alleges that section 1720(e) and (f) mandate a new program or higher level of service by setting higher treatment standards and reporting requirements. Claimant alleges that:

1. The test claim statute, for the first time in section 1720(e), requires the periodic review of cases be in writing and address the specific treatment goals, needs, and progress of the ward.
2. Prior to the 2003 amendment to section 1720, CYA was not required to provide written copies of its review of cases of the ward to the court and probation department.
3. The words "treatment" and "report" are not found in the statute before the test claim statute amended the code section.
4. Before the amendment, CYA was not required to report on the progress of the rehabilitative treatment of the ward to the juvenile court, and county public defenders were not aware of the "serious treatment deficiencies" noted by the California Inspector General in the provision of treatment.

5. The county public defender is now required to provide new services designed to ensure that its clients receive the treatment called for in the statute. As a result of the test claim statute, the county created a CYA Unit in the public defender's office to advocate on behalf of the wards.

For the reasons below, the Commission finds that section 1720, as amended by Statutes 2003, chapter 4, does not mandate a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

State mandates under the Constitution that require reimbursement "are requirements imposed on local government by legislation or executive orders."[97] Here, the requirements in section 1720 are imposed solely on CYA. The plain language of the statute does not impose any duties on local government.

Moreover, the requirement to have treatment goals for the ward and put progress reports in writing is not new. Under prior law, a ward received complete medical diagnostic services upon commitment to CYA and was referred to appropriate specialists as needed.[98] An initial case conference was conducted within five weeks after the ward's assignment, whereby the treatment team at CYA was required to establish treatment goals for the ward.[99] It was required that the ward be present throughout each case conference in order to participate in the process unless information being discussed was too psychologically damaging to the ward, the ward decided not to attend, or the ward was hospitalized.[100] Moreover, for purposes of the annual review of the ward, prior law required the treatment team at CYA to:

- Advise the ward that an annual review was to be conducted;
- Prepare a comprehensive progress report reviewing the ward's adjustment for the year;
- Schedule the ward for the annual review by the YOPB;
- Inform the ward of the content and recommendation of the case report prior to preparation in final form; and
- Provide the ward with a copy of the final case report no later than five days before the scheduled hearing date.[101]

Under prior law, the ward could not be denied or obstructed in his or her efforts to present a petition or legal document to the courts after receiving a written case report. Although CYA was not responsible for obtaining an attorney for the ward, the ward was not prohibited from

[97] *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1189.

[98] California Code of Regulations, title 15, section 4611 (last amended in 1985).

[99] California Code of Regulations, title 15, section 4618 (last amended in 1985).

[100] California Code of Regulations, title 15, section 4617 (last amended in 1985).

[101] California Code of Regulations, title 15, section 4622 (last amended in 2001).

contacting his or her attorney or other member of the public for assistance in the preparation of a petition.[102]

Moreover, under prior law, the ward had a constitutional due process right to have his or her attorney receive a copy of the progress report, to review and evaluate the information, and to represent the ward as necessary. The amendments to section 1720 did not change that right.

In 1998, before the enactment of the test claim statute, the court in *In re Michael I*. interpreted the requirements of section 1720 regarding the ward's right to have his or her attorney review the ward's file and consult with the ward before an annual review.[103] Under the facts of the case, CYA did not permit the ward's counsel to meet with the ward until the afternoon before the review hearing and did not make the ward's file available until a month after the hearing. Thus, the court determined that CYA violated the ward's constitutional due process rights.[104]

The *Michael I.* court explained that a decision to deny parole is not part of the criminal prosecution and, thus, there is no absolute constitutional right to counsel at a parole revocation hearing. However, the loss of liberty entailed is a serious deprivation requiring that the ward be accorded due process. In this respect, the state's decision regarding the ward's need for counsel at the review hearing must be made on a case-by-case basis. If the ward denies that he committed any violations outlined in the reviews of the ward, or when the ward asserts complex matters in mitigation, the ward has a right to counsel. The right to counsel should also be seriously considered when an admission is coerced.[105]

In the *In re Michael I.* case, however, the ward was not requesting that his counsel be present at the review hearing, or that the state provide him with appointed counsel from the public defender's office. Rather, the ward asserted he had a due process right to meet with counsel before the review hearing and to have the state provide his counsel with access to the ward's review file before the hearing. In agreeing, the court stated:

> However, if due process is to mean anything, CYA cannot deliberately structure procedures which prevent counsel retained at the ward's expense from reviewing the ward's file and consulting with the ward before such a hearing. Here, CYA frustrated all of McDonald's [the attorney's] reasonable and timely attempts to review Michael's file and arrange for a prehearing meeting so he and Michael could review its contents, discuss challenges thereto, if any, explore possible mitigating evidence, and arrange to present such challenges and evidence to the board. A "brief meeting less than 24 hours before the hearing, without access to the file that outlined the recommendation and its factual support, renders Michael's retention of counsel worthless. . . . Moreover, one of the factors discussed above in determining whether counsel should be permitted to be present at the review is whether Michael planned to contest the allegations, present

[102] California Code of Regulations, title 15, section 4131 (last amended in 1985).

[103] *In re Michael I.* (1998) 63 Cal.App.4th 462.

[104] *Id* at page 469.

[105] *Id.* at pages 467-468.

> complex mitigating evidence, or claim any admissions were coerced. Without the ability to review his file and discuss its contents and any response with his lawyer, Michael and CYA could not know whether he would be entitled to McDonald's presence.[106]

Thus, claimant's assertion that the test claim statute, for the first time, requires the public defender's office to review and evaluate the information in the wards' reviews, is wrong. This right and duty existed in prior law under the ward's constitutional due process rights.

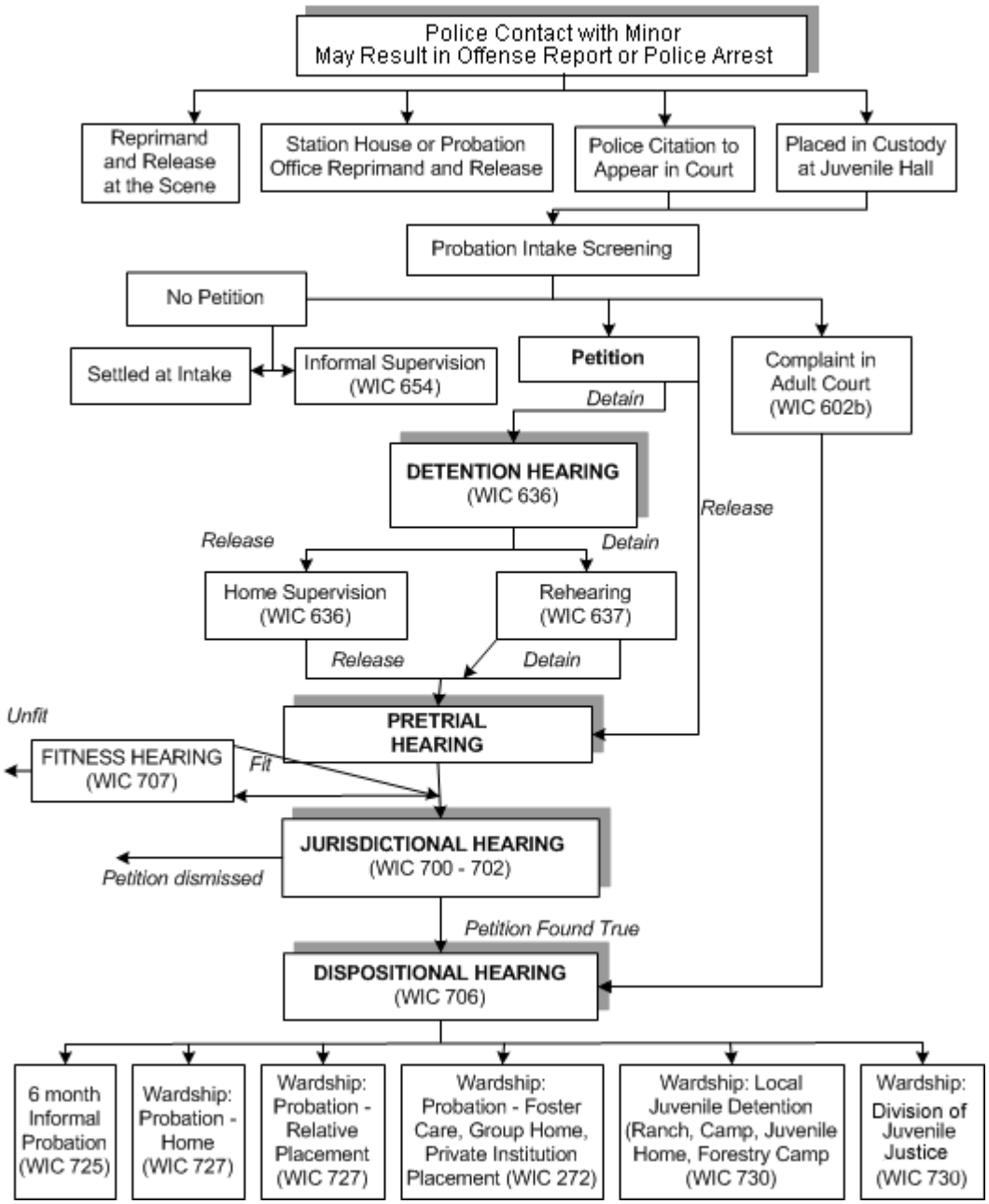
Furthermore, although the statute now requires CYA to provide copies of the reports to the court and the probation department, the court cannot take action on the report for any alleged deficiencies in treatment, as suggested by claimant, unless a petition is filed by the ward or on behalf of the ward pursuant to Welfare and Institutions Code sections 778 and 779. Under prior law, both the ward and the ward's attorney could obtain copies of the reports to assess whether or not to file a petition for modification or set aside of the prior order of commitment under these statutes. The test claim statute did not change those rights.

Accordingly, the Commission finds that section 1720 as amended by Statutes 2003, chapter 4, does not mandate a new program or higher level of service on county public defenders.

IV. Conclusion

The Commission finds that the test claim statutes pled by claimant (Welf. & Inst. Code, §§ 779, 1731.8, 1719 & 1720, as amended by Stats. 2003, ch. 4) do not constitute a reimbursable state-mandated program subject to article XIII B, section 6 of the California Constitution.

[106] *In re Michael I., supra*, 63 Cal.App.4th at p. 468.


Police Contact with Minor
May Result in Offense Report or Police Arrest
Reprimand and Release at the Scene
Station House or Probation Office Reprimand and Release
Police Citation to Appear in Court
Placed in Custody at Juvenile Hall
Probation Intake Screening
No Petition
Settled at Intake
Informal Supervision (WIC 654)
Petition
Detain
Complaint in Adult Court (WIC 602b)
DETENTION HEARING (WIC 636)
Release
Release
Detain
Home Supervision (WIC 636)
Rehearing (WIC 637)
Release
Detain
Unfit
PRETRIAL HEARING
FITNESS HEARING (WIC 707)
Fit
JURISDICTIONAL HEARING (WIC 700 - 702)
Petition dismissed
Petition Found True
DISPOSITIONAL HEARING (WIC 706)
6 month Informal Probation (WIC 725)
Wardship: Probation - Home (WIC 727)
Wardship: Probation - Relative Placement (WIC 727)
Wardship: Probation - Foster Care, Group Home, Private Institution Placement (WIC 272)
Wardship: Local Juvenile Detention (Ranch, Camp, Juvenile Home, Forestry Camp (WIC 730)
Wardship: Division of Juvenile Justice (WIC 730)

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RE: **Corrected Statement of Decision**

Juvenile Offender Treatment Program Court Proceedings, 04-TC-02
Welfare and Institutions Code Sections 779, 1731.8, 1719, and 1720
Statutes 2003, Chapter 4 (SB 459)
County of Los Angeles, Claimant

On May 25, 2012, the foregoing statement of decision of the Commission on State Mandates was adopted in the above-entitled matter.

Dated: June 6, 2012

Heather Halsey, Executive Director