ITEM 6

TEST CLAIM
FINAL STAFF ANALYSIS

Penal Code Section 13519.4

Statutes 1990, Chapter 480
Statutes 1992, Chapter 1267
Statutes 2000, Chapter 684
Statutes 2001, Chapter 854

Racial Profiling: Law Enforcement Training (K-14)
(02-TC-05)

Santa Monica Community College District, Claimant

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Penal Code Section 13519.4

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Statutes 2000, Chapter 901
Statutes 2001, Chapter 854

Racial Profiling: Law Enforcement Training (K-14)
(02-TC-05)

Santa Monica Community College District, Claimant

EXECUTIVE SUMMARY

This test claim addresses legislation that prohibits law enforcement officers from engaging in racial profiling and establishes racial profiling training requirements for law enforcement officers, with the curriculum developed by the Commission on Peace Officer Standards and Training (POST).

Law enforcement officers are required to take a basic training course prior to exercising their duties as peace officers, and must subsequently complete 24 hours of continuing professional training every two years. The test claim statute, as interpreted by POST, required a five-hour initial racial profiling training course and a two-hour refresher course every five years.

The test claim poses the following issue:

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

The Test Claim Statute Does Not Impose a Reimbursable State-Mandated Program on K-14 School Districts

The test claim statute does not mandate any activities. There is no legal requirement on school districts or community colleges (hereafter, collectively "K-14 school districts") to establish police departments and employ peace officers. Furthermore, there is nothing in the test claim statute, the statute's legislative history, or the record for this test claim indicating that the Legislature intended the statute to protect the health and safety of the state's citizens on school district property in accordance with the Constitutional requirement for safe schools. Thus, the requirement for racial profiling training is only triggered by the K-14 school district's initial discretionary decision to establish a police department, and consequently does not impose a reimbursable state-mandated program on K-14 school districts.

Conclusion

Commission staff concludes that, since the initial decision by K-14 school districts to establish a police department and employ peace officers is discretionary, and there is no other evidence to support a finding that reimbursement should be allowed when triggered by such a discretionary decision, the test claim statute does not impose any mandated activities on K-14 school districts. Therefore, the test claim statute does not impose a reimbursable state-mandated program on K-14 school districts within the meaning of article XIII B, section 6 of the California Constitution.

Recommendation

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

STAFF ANALYSIS

Claimant

Santa Monica Community College District

Chronology

09/13/02	Santa Monica Community College District filed test claim with the Commission on State Mandates (Commission)
10/18/02	The Department of Finance (DOF) submitted comments on test claim with the Commission
08/31/06	Commission staff issued draft staff analysis
10/13/06	Commission staff issued final staff analysis

Background

This test claim addresses legislation that prohibits law enforcement officers from engaging in racial profiling, as defined,[1] and establishes racial profiling training requirements for law enforcement officers, with the curriculum developed by the Commission on Peace Officer Standards and Training (POST).

POST was established by the Legislature in 1959 to set minimum selection and training standards for California law enforcement.[2] The POST program is funded primarily by persons who violate the laws that peace officers are trained to enforce.[3] Participating agencies agree to abide by the standards established by POST and may apply to POST for state aid.[4]

In enacting the test claim statute (Stats. 2000, ch. 684), the Legislature found that racial profiling is a practice that presents a great danger to the fundamental principles of a democratic society, is abhorrent and cannot be tolerated.[5] The Legislature further found that motorists who have been stopped by the police for no reason other than the color of their skin or their apparent nationality or ethnicity are the victims of discriminatory practices.[6]

The test claim statute requires every law enforcement officer in the state to participate in expanded training regarding racial profiling, beginning no later than January 1, 2002.[7] The

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[1] Racial profiling is defined as "the practice of detaining a suspect based on a broad set of criteria which casts suspicion on an entire class of people without any individualized suspicion of the particular person being stopped." (Pen. Code § 13519.4, subd. (d), as enacted in Stats. 2000, ch. 684.)

[2] Penal Code section 13500 et seq.

[3] *About California POST*, <http://www.POST.ca.gov>

[4] Penal Code sections 13522 and 13523.

[5] Penal Code section 13519.4, subdivision (c)(1) (as enacted in Stats. 2000, ch. 684).

[6] Penal Code section 13519.4, subdivision (c)(2).

[7] Penal Code section 13519.4, subdivision (f); Statutes 2004, chapter 700 (SB 1234) renumbered subdivision *(f)* to subdivision *(g)*. Commission staff makes no findings regarding

training shall be prescribed and certified by POST, in collaboration with a five-person panel appointed by the Governor, Senate Rules Committee and Speaker of the Assembly.[8]

Once the initial training on racial profiling is completed, each law enforcement officer in California, as described in subdivision (a) of Penal Code section 13510, who adheres to the standards approved by POST, is required to complete a two-hour refresher course every five years thereafter, or on a more frequent basis if deemed necessary.[9]

POST developed a five-hour approved curriculum to meet the initial training required by Penal Code section 13519.4, subdivision (f). The curriculum was designed to be presented in-house by a trained instructor within the law enforcement agency, who must complete a Racial Profiling Train-the-Trainer Course prior to facilitating the training. That course is given on an ongoing basis by the Museum of Tolerance in Los Angeles at no cost to the law enforcement agency, and the newly-trained instructor is provided with all necessary course material to train his or her own officers.[10] POST also developed a two-hour racial profiling refresher course curriculum, pursuant to subdivision (i).[11]

The five-hour initial racial profiling training was incorporated into the Regular Basic Course[12] for peace officer applicants after January 1, 2004,[13] and POST suggested that incumbent peace

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any substantive changes which may have been made in the 2004 statute since it was not pled in the test claim. Accordingly, staff will continue to refer to this provision as "subdivision (f)" as originally set forth in the test claim statute.

[8] Penal Code section 13519.4, subdivision (f).

[9] Penal Code section 13519.4, subdivision (i).

[10] Letter from POST, August 10, 2005:

> It is believed that in-house instructors provide validity to the training and can relate the material directly to agency policies.
>
> The curriculum was designed as a "course-in-a-box" and includes an instructor guide, facilitated discussion questions, class exercises, and a companion training video. … The course was designed to ensure training consistency throughout the State.
>
> Due to the complexity and sensitivity of the topic, POST regulation requires that each instructor complete the 24-hour Racial Profiling Train-the-Trainer Course prior to facilitation the training. The Training for Trainers course is presented on an on-going basis by the Museum of Tolerance in Los Angeles. The course is presented under contract and is of no cost to the [local law enforcement] agency. At the completion of the training, the instructor is provided with all necessary course material to train their own officers.

[11] Letter from POST, August 10, 2005.

[12] Penal Code section 832.3 requires peace officers to complete a course of training prescribed by POST before exercising the powers of a peace officer.

[13] California Code of Regulations, title 11, section 1081, subdivision (a)(33).

officers complete the five-hour training by July 2004.[14] POST can certify a course retroactively,[15] thus it is possible for racial profiling courses that were developed and presented prior to the time POST developed its curriculum to be certified as meeting the requirements of Penal Code section 13519.4. Additionally, both the five-hour racial profiling course and the two-hour refresher course can be certified by POST to allow agencies and officers to apply the training hours toward their 24-hour Continuing Professional Training requirement.[16, 17]

Prior Test Claim Decisions

In the past, the Commission has decided six other test claims addressing POST training for peace officers, and one other case regarding school peace officers, that are relevant for this analysis.

1. Domestic Violence Training

In 1991, the Commission denied a test claim filed by the City of Pasadena requiring new and veteran peace officers to complete a course regarding the handling of domestic violence complaints as part of their basic training and continuing education courses (*Domestic Violence Training*, CSM-4376). The Commission reached the following conclusions:

- the test claim statute does not require local agencies to implement a domestic violence training program and to pay the cost of such training;
- the test claim statute does not increase the minimum number of basic training hours, nor the minimum number of advanced officer training hours and, thus, no additional costs are incurred by local agencies; and
- the test claim statute does not require local agencies to provide domestic violence training.

2. Domestic Violence and Incident Reporting

In January 1998, the Commission denied a test claim filed by the County of Los Angeles requiring veteran law enforcement officers below the rank of supervisor to complete an updated course of instruction on domestic violence every two years (*Domestic Violence Training and Incident Reporting*, CSM-96-362-01). Although the Commission recognized that the test claim statute imposed a new program or higher level of service, the Commission found that local agencies incurred *no* increased "costs mandated by the state" in carrying out the two-hour course for the following reasons:

- *immediately before and after* the effective date of the test claim statute, POST's minimum required number of continuing education hours for the law enforcement officers in question *remained the same at 24 hours*; after the operative date of the

[14] POST Legislative Training Mandates, updated August, 2004.

[15] California Code of Regulations, title 11, section 1052, subdivision (d).

[16] Letter from POST, dated August 10, 2005.

[17] Title 11, section 1005(d)(1) requires peace officers to complete 24 hours of POST-qualifying training every two years.

test claim statute these officers must still complete at least 24 hours of professional training every two years;

- the two-hour domestic violence training update may be credited toward satisfying the officer's 24-hour minimum;
- the two-hour training is *neither* "separate and apart" *nor* "on top of" the 24-hour minimum;
- POST does not mandate creation and maintenance of a separate schedule and tracking system for this two-hour course;
- POST prepared and provides local agencies with the course materials and video tape to satisfy the training in question; and
- of the 24-hour minimum, the two-hour domestic violence training update is the only course that is legislatively mandated to be continuously completed every two years by the officers in question. The officers may satisfy their remaining 22-hour requirement by choosing from *the many elective courses* certified by POST.

That test claim was subsequently litigated and decided in the Second District Court of Appeal (*County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176 [*County of Los Angeles II*]), where the Commission's decision was upheld and reimbursement was ultimately denied.

3. Sexual Harassment Training in the Law Enforcement Workplace

In September 2000, the Commission approved in part and denied in part a test claim filed by the County of Los Angeles regarding sexual harassment training for peace officers (*Sexual Harassment Training in the Law Enforcement Workplace*, 97-TC-07). The test claim statute required POST to develop complaint guidelines to be followed by local law enforcement agencies for peace officers who are victims of sexual harassment in the workplace. The statute also required the course of basic training for law enforcement officers to include instruction on sexual harassment in the workplace, and veteran peace officers that had already completed basic training were required to receive supplementary training on sexual harassment in the workplace. The Commission reached the following conclusions:

- the sexual harassment complaint guidelines to be followed by local law enforcement agencies developed by POST constituted a reimbursable state-mandated program;
- the modifications to the course of basic training did not constitute a reimbursable state-mandated program since it did not impose any mandated duties on the local agency; and
- the supplemental training that required veteran peace officers to receive a one-time, two-hour course on sexual harassment in the workplace constituted a reimbursable state mandated program when the training occurred during the employee's regular working hours, or when the training occurred outside the employee's regular working hours and was an obligation imposed by a Memorandum of Understanding

existing on the effective date of the statute which required the local agency to provide or pay for continuing education training.[18]

4. Law Enforcement Racial and Cultural Diversity Training

In October 2000, the Commission denied a test claim filed by the County of Los Angeles regarding racial and cultural diversity training for law enforcement officers (*Law Enforcement Racial and Cultural Diversity Training,* 97-TC-06). The test claim statute required that, no later than August 1, 1993, the basic training course for law enforcement officers include adequate instruction, as developed by POST, on racial and cultural diversity. The Commission found that the test claim statute did not impose any mandated duties or activities on local agencies since the requirement to complete the basic training course on racial and cultural diversity is a mandate imposed only on the individual who seeks peace officer status.

5. Elder Abuse Training

In January 2001, the Commission approved in part and denied in part a test claim filed by the City of Newport Beach regarding elder abuse training for city police officers and deputy sheriffs (*Elder Abuse Training,* 98-TC-12). The test claim statute required city police officers or deputy sheriffs at a supervisory level and below who are assigned field or investigative duties to complete an elder abuse training course, as developed by POST, by January 1, 1999, or within 18 months of being assigned to field duties. The Commission reached the following conclusions:

- The elder abuse training *did constitute* a reimbursable state-mandated program when the training occurred during the employee's regular working hours, or when the training occurred outside the employee's regular working hours and was an obligation imposed by a Memorandum of Understanding existing on the effective date of the statute, which requires the local agency to provide or pay for continuing education training.[19]
- The elder abuse training *did not constitute* a reimbursable state-mandated program when applied to city police officers or deputy sheriffs hired after the effective date of the test claim statute, since such officers could apply the two-hour elder abuse training course towards their 24-hour continuing education requirement.

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[18] Reimbursable "costs mandated by the state" for this test claim included: 1) salaries, benefits, and incidental expenses for each veteran officer to receive a one-time, two-hour course on sexual harassment in the workplace; and 2) costs to present the one-time, two-hour course in the form of materials and trainer time.

[19] Reimbursable "costs mandated by the state" for this test claim included: 1) costs to present the one-time, two-hour course in the form of trainer time and necessary materials provided to trainees; and 2) salaries, benefits and incidental expenses for each city police officer or deputy sheriff to receive the one-time, two-hour course on elder abuse in those instances where the police officer or deputy sheriff already completed their 24 hours of continuing education at the time the training requirement was imposed on the particular officer, and when a new two-year training cycle did not commence until after the deadline for that officer or deputy to complete elder abuse training.

6. Mandatory On-The-Job Training For Peace Officers Working Alone

In July 2004, the Commission denied a consolidated test claim, filed by the County of Los Angeles and Santa Monica Community College District, regarding POST Bulletin 98-1 and POST Administrative Manual Procedure D-13, in which POST imposed field training requirements for peace officers that work alone and are assigned to general law enforcement patrol duties (*Mandatory On-The-Job Training For Peace Officers Working Alone*, 00-TC-19/ 02-TC-06). The Commission found that these executive orders do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the following reasons:

- state law does not require school districts and community college districts to employ peace officers and, thus, POST's field training requirements do not impose a state mandate on school districts and community college districts; and
- state law does not require local agencies and school districts to participate in the POST program and, thus, the field training requirements imposed by POST on their members are not mandated by the state.

7. Peace Officer Procedural Bill of Rights

In April 2006, the Commission reconsidered a 1999 Statement of Decision in the *Peace Officer Procedural Bill of Rights* ("POBOR") test claim, to clarify whether the subject legislation imposed a mandate consistent with the California Supreme Court Decision in *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions, as required by Statutes 2005, chapter 72. The Commission determined that the POBOR legislation did impose a reimbursable state-mandated program on school districts[20] for the following reasons:

- the Supreme Court in *San Diego Unified School Dist.* provided an example of circumstances in which a discretionary decision might, in a practical sense, constitute compulsion, i.e., that in light of a school district's constitutional obligation to provide a safe educational environment, incurring due process costs as result of the district's discretionary decision to expel a student for damaging or stealing property, receiving stolen property, engaging in sexual harassment or hate violence, or committing other specified acts of misconduct that warrant such expulsion, may in a practical sense constitute compulsion;
- the Legislature declared that: 1) the rights and protections provided to peace officers under the test claim legislation is a matter of statewide concern; 2) effective law enforcement depends upon the maintenance of stable employer-employee relations; and 3) in order to assure that stable relations are continued throughout the state and to assure that effective services are provided to all people of the state, it was necessary to apply the legislation to all public safety officers;
- the Supreme Court in *Baggett v. Gates* (1982) 32 Cal.3d 128 held that the subject peace officers provided an "essential service" to the public and that the consequences

[20] *Peace Officer Procedural Bill of Rights* (05-RL-4499-01), Statement of Decision, April 26, 2006.

of a breakdown in employment relations between peace officers and their employers — a situation the POBOR legislation was intended to prevent — would create a clear and present threat to the health, safety, and welfare of the citizens of the state; and

- the Supreme Court in *In re Randy G.* (2001) 26 Cal.4th 556 held that, pursuant to article I, section 28, subdivision (c), of the California Constitution, school districts have an obligation to provide safe schools, and California fulfills that obligation by permitting local school districts to establish a police or security department to enforce rules governing student conduct and discipline.

Claimant's Position

The claimant states that the test claim statute constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, for K-14 school districts.

Claimant asserts that costs for the following activities will be incurred and are reimbursable:

- Development of policies and procedures, and periodic updates of policies and procedures, to insure that each law enforcement officer employed by the district shall participate in the expanded training to prevent racial profiling, pursuant to Penal Code section 13519.4.
- Development and implementation of tracking procedures, commencing January 1, 2002, to assure that every law enforcement officer employed by the district shall participate and successfully complete the expanded course of training on racial and cultural differences and the negative impacts of racial profiling, pursuant to Penal Code section 13519.4, subdivision (f).
- Unreimbursed costs for travel, subsistence, meals, training and substitute salaries of law enforcement officers attending expanded training for preventing racial profiling, pursuant to Penal Code section 13519.4, subdivision (f).
- Development and implementation of tracking procedures to assure that every law enforcement officer employed by the district shall participate and successfully complete a refresher course to keep current with changing racial and cultural trends every five years, or possibly on a more frequent basis if deemed necessary, pursuant to Penal Code section 13519.4, subdivision (i).
- Unreimbursed costs for travel, subsistence, meals, training and substitute salaries of law enforcement officers attending refresher courses for preventing racial profiling, pursuant to Penal Code section 13519.4, subdivision (i).

Position of Department of Finance

DOF stated in its comments that the test claim statute does not result in a reimbursable state-mandated program for the following reasons:

- The test claim statute does not impose an obligation on any *law enforcement agency* to provide training — rather the statute imposes the requirement on the *law enforcement officer* — and three previous test claims are cited in which the Commission has found this to be the case.

- The statute does not require local agencies to develop and implement policies and procedures to ensure that law enforcement officers employed by the agency participate in the required training or to track whether or not these individuals participate in and successfully complete the training. Therefore, these activities would be conducted at the option of the local agency and would not result in a reimbursable state-mandated local program.
- The statute does not require local agencies to pay any costs related to travel, subsistence, meals, training, and substitute salaries of law enforcement officers attending the required training course on racial profiling that are not reimbursed by POST. Since the training requirement is on the individual officer and not the local agency, the local agency would not be liable for these costs. In addition, POST has determined that officers attending the courses on racial profiling are eligible for reimbursement of travel, subsistence, and meals. Officers and departments are not charged for the cost of the training course itself, rather these costs are incurred directly by POST, a state agency. POST has made efforts to ensure that the course is available at a number of locations throughout the state to minimize travel costs and officer time away from regular duties. Therefore, any costs related to reimbursement for travel, subsistence, and meals should be minimal. To the extent that a peace officer takes time off from regular duties to attend training, the local agency would incur costs to replace that officer during the time he or she is in training. However, DOF does not view these costs as any different from those that would be incurred if the officer were on vacation or sick leave.
- To the extent a local agency has a policy or agreement with an employee association to provide additional leave to the employees with peace officer status to attend training or to pay for training-related costs incurred by the peace officer, any costs incurred as a result of such policy or agreement is at the option of the local agency. Therefore, regardless of whether an individual officer is required to attend specified training to maintain his or her peace officer status, costs incurred by the local agency would not constitute a reimbursable state-mandated program.

DOF further noted that the test claim identifies Statutes 1992, chapter 1267, and Statutes 1990, chapter 480, as legislation that are alleged to contain a mandate. The chapters are relevant to providing legislative history of the issue, but do not appear to be specifically related to the new duties identified in this claim. DOF cited a previous test claim denied by the Commission — *Law Enforcement Racial and Cultural Diversity Training – CSM 97-TC-06* — which was based on Statutes 1992, chapter 1267, and thus it does not seem appropriate to include references to these chapters as a part of this claim.

DISCUSSION

The courts have found that article XIII B, section 6 of the California Constitution[21] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[22] "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."[23] 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.[24] In 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.[25]

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.[26] To determine if the program is new or imposes a higher level of service, the test claim statute must be compared with the legal requirements in effect immediately before the enactment of the test claim statute.[27] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[28]

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[21] 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."

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

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

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

[25] *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*).

[26] *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 (*Los Angeles I*); *Lucia Mar, supra,* 44 Cal.3d 830, 835).

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

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

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[29]

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.[30] 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."[31]

The analysis addresses the following issue:

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

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

The claimant pled in the test claim Penal Code section 13519.4, as added and amended by four statutes.[32] The 1990 statute enacted the first version of Penal Code section 13519.4, directing POST to develop and disseminate guidelines and training for law enforcement officers on the racial and cultural differences among the residents of California. It did not impose any activities on local law enforcement agencies. Commission staff also notes that the 1992 statute was pled and determined in a previous test claim, *Law Enforcement Racial and Cultural Diversity Training* (97-TC-06), which was denied by the Commission and was not appealed. Therefore, the Commission no longer has jurisdiction over that test claim and the 1992 statute. The 2001 statute made one spelling correction to subdivision (c) of Penal Code section 13519.4, and therefore is not relevant for this analysis. Accordingly, the analysis addresses only the provisions of the 2000 statute as that legislation affects Penal Code section 13519.4.

In order for the test claim statute to impose a reimbursable state-mandated program under article XIII B, section 6, the statutory language must mandate an activity or task upon local governmental agencies or school districts. If the language does not mandate or require local entities to perform a task, then article XIII B, section 6 is not triggered.

The test claim statute, Statutes 2000, chapter 684, amended Penal Code section 13519.4 by adding subdivisions (c)(1) through (c)(4), and subdivisions (d) through (j). Each of these new provisions is summarized below.

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[29] *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.

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

[31] *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.

[32] 1) Statutes 1990, chapter 480; 2) Statutes 1992, chapter 1267; 3) Statutes 2000, chapter 684; and 4) Statutes 2001, chapter 854.

Subdivisions (c)(1) through (c)(4): These subdivisions state the Legislature's findings and declarations regarding racial profiling and do not mandate any activities.

Subdivision (d): This subdivision provides a definition for racial profiling and does not mandate any activities.

Subdivision (e): This subdivision states that law enforcement officers "shall not engage in racial profiling" and thus prohibits, rather than mandates, an activity.

Subdivision (f): This subdivision states that every law enforcement officer in the state shall participate in expanded racial profiling training that is prescribed and certified by POST, to begin no later than January 1, 2002; it further sets forth requirements for POST to collaborate with a five-person panel appointed by the Governor and the Legislature in developing the training. Thus, the provision does mandate an activity on local law enforcement officers. Whether this mandates an activity on K-14 school districts is analyzed below.

Subdivision (g): This subdivision states that members of the panel established pursuant to subdivision (f) shall not be compensated except for reasonable per diem related to their work for panel purposes, and does not mandate any activities on local government entities.

Subdivision (h): This subdivision specifies that certain requirements be incorporated into the racial profiling curriculum, but does not mandate any activities on local government entities.

Subdivision (i): This subdivision requires that once the initial racial profiling training is completed, each law enforcement officer as described in Penal Code section 13510, subdivision (a), who adheres to the standards approved by POST, complete a refresher course every five years thereafter or on a more frequent basis if deemed necessary. Thus, the provision does mandate an activity on specified law enforcement officers. Whether this mandates an activity on K-14 school districts is analyzed below.

Subdivision (j): This provision requires the Legislative Analyst to conduct a study of data being voluntarily collected on racial profiling and provide a report to the Legislature. It does not mandate any activities on local government entities.

A. Does Penal Code section 13519.4 mandate any activities on school districts?

Penal Code section 13519.4, subdivision (f), states in pertinent part:

> Every law enforcement officer in this state shall participate in expanded [racial profiling] training as prescribed and certified by the Commission on Peace Officers Standards and Training. Training shall begin being offered no later than January 1, 2002.

Subdivision (i) states in pertinent part:

> Once the initial basic [racial profiling] training is completed, each law enforcement officer in California as described in subdivision (a) of Section 13510 who adheres to the standards approved by the commission shall be required to complete a refresher course every five years thereafter, or on a more frequent basis if deemed necessary, in order to keep current with changing racial and cultural trends.

Claimant contends that Penal Code section 13519.4 mandates K-14 school districts to: 1) develop, implement and periodically update policies and procedures to insure that each law enforcement officer employed by the district participates in the expanded and refresher racial profiling training; 2) develop and implement tracking procedures to assure that every law enforcement officer employed by the district participates and successfully completes the expanded and refresher racial profiling training; and 3) pay the unreimbursed costs for travel, subsistence, meals, training and substitute salaries of their law enforcement officers attending the expanded and refresher racial profiling training.

The plain meaning of Penal Code section 13519.4, subdivisions (f) and (i), requires only that each law enforcement officer attend the expanded and refresher racial profiling training. Nothing in the test claim statute requires the employer of law enforcement officers to develop and implement policies, procedures, or tracking measures to ensure that the officers attend the required training. Further, nothing in the statute requires employers to pay for travel, subsistence or meals for these officers.

Thus, the only activities for which the claimant has requested reimbursement that could possibly be considered mandated are: 1) the unreimbursed costs of the actual training; and 2) substitute salaries for the officers while attending the training.

1. K-14 School District Police Officers are Subject to the POST Racial Profiling Training Requirements

To determine whether any activities are mandated of K-14 school districts, the first issue which must be addressed is whether K-14 school district police officers are subject to these requirements. Penal Code section 13519.4, subdivision (f), requires "[e]very law enforcement officer in this state," to attend expanded racial profiling training. Subdivision (i) requires "each law enforcement officer in California as described in subdivision (a) of Section 13510 who adheres to the standards approved by [POST]" to attend refresher training. As explained below, K-14 school district police officers hired to enforce the law are required to attend both the initial and refresher racial profiling training.

Penal Code section 13510, subdivision (a), states that, "[f]or the purpose of raising the level of competence of local *law enforcement officers*, [POST] shall adopt … rules establishing minimum standards relating to physical, mental, and moral fitness that shall govern the recruitment of … police officers of a district authorized by statute to maintain a police department …" (Emphasis added.) Subdivision (a) further states that, "[POST] also shall adopt, and may from time to time amend, rules establishing minimum standards for training … police officers of a district authorized by statute to maintain a police department…" Thus, POST is required to adopt minimum standards for the recruitment and training of police officers of districts that are authorized to maintain police departments.

Education Code section 38000[33] authorizes the formation of school district police departments and hiring of peace officers: "(a) The governing board of any school district may establish a … police department… [T]he governing board may employ personnel to ensure the safety of school district personnel and pupils and the security of the real and personal property of the

[33] Formerly numbered Education Code section 39670; derived from 1959 Education Code section 15831.

school district." Section 38001 states that "persons employed and compensated as members of a police department of a school district, when appointed and duly sworn, are *peace officers*, for the purposes of carrying out their duties of employment pursuant to Section 830.32 of the Penal Code."

Education Code section 72330,[34] subdivision (a), authorizes the formation of community college police departments and hiring of peace officers: "The governing board of a community college district may establish a community college police department and ... may employ personnel as necessary to *enforce the law* on or near the campus of the community college and on or near other grounds or properties [of] the community college..." Subdivision (c) states that "[p]ersons employed and compensated as members of a community college police department, when so appointed and duly sworn, are *peace officers* as defined in ... the Penal Code."

Penal Code section 830.32 provides:

> The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. Those peace officers may carry firearms only if authorized and under terms and conditions specified by their employing agency.
>
> (a) Members of a California Community College police department appointed pursuant to Section 72330 of the Education Code, if the primary duty of the police officer is the *enforcement of the law* as prescribed in Section 72330 of the Education Code.
>
> (b) Persons employed as members of a police department of a school district pursuant to Section 38000 of the Education Code, if the primary duty of the police officer is the *enforcement of the law* as prescribed in Section 38000 of the Education Code.
>
> (c) Any peace officer employed by a K-12 public school district or Community College district who has completed training as prescribed by subdivision (f) of Section 832.3 shall be designated a school police officer. (Emphasis added.)

Furthermore, Penal Code section 832.3, subdivisions (f) through (h), state the following:

> (f) Any school police officer first employed by a K-12 public school district or California Community College district after July 1, 1999, shall successfully complete a basic course of training as prescribed by subdivision (a) before exercising the powers of a peace officer ...
>
> (g) [POST] shall prepare a specialized course of instruction for the training of school peace officers, as defined in Section 830.32, to meet the

[34] Derived from 1959 Education Code section 25429.

unique safety needs of a school environment. This course is intended to supplement any other training requirements.

(h) Any school peace officer first employed by a K-12 public school district or California Community College district before July 1, 1999, shall successfully complete the specialized course of training prescribed in subdivision (g) no later than July 1, 2002. Any school police officer first employed by a K-12 public school district or California Community College district after July 1, 1999, shall successfully complete the specialized course of training prescribed in subdivision (g) within two years of the date of first employment.

Thus, K-14 school district police officers are considered peace officers when their primary duties are to enforce the law, and pursuant to those duties would also be considered part of the broader classification of "law enforcement officer" for purposes of POST. Since they are also required to attend basic training and specialized school peace officer training prescribed by POST, these police officers would also be considered law enforcement officers who "adhere to the standards approved by POST." Accordingly, those K-14 employees who exercise the duties of "peace officer" are "law enforcement offers" in the state who are required to attend initial and refresher racial profiling training pursuant to Penal Code section 13519.4, subdivisions (f) and (i).

2. K-14 School Districts Are Not Mandated by the State to Comply with the POST Racial Profiling Training Requirements

The next issue is whether K-14 school districts that employ such peace officers are mandated by the state to comply with the racial profiling training requirements. As noted above, in 1959 both K-12 school districts and community college districts were granted statutory *authority* to establish police departments and employ peace officers. However, while counties and cities are mandated by the California Constitution to establish sheriff or police forces,[35] K-12 school districts and community college districts are not expressly required to do so.

The California Constitution, article IX, Education, establishes and permits the formation of school districts, including community college districts, and county boards of education, all for the purpose of encouraging "the promotion of intellectual, scientific, moral and agricultural improvement."[36] Although the Legislature is permitted to authorize K-14 school districts "to act in any manner which is not in conflict with the laws and purposes for which school districts are established,"[37] and Article I, section 28, subdivision (c), of the California Constitution

[35] Article XI of the California Constitution provides for the formation of cities and counties. Section 1, regarding counties, states that the Legislature shall provide for an elected county sheriff. Section 5, regarding city charters, specifies that city charters are to provide for the "government of the city police force."

[36] California Constitution, article IX, section 1.

[37] California Constitution, article IX, section 14.

requires K-12 school districts to maintain safe schools,[38] the Constitution does not specifically require K-14 school districts to operate police departments or employ school security officers independent of the public safety services provided by the cities and counties a school district serves.

The case law is instructive in analyzing whether programs are mandatory or discretionary. The first significant case addressing the issue was *City of Merced v. State of California* (1984) 153 Cal. App. 3d 777. In that case, the test claim statute had revised the California eminent domain laws to include a new requirement that the owner of a business conducted on condemned property is entitled to compensation for loss of goodwill.[39] The City claimed reimbursement for its required compensation to the business owner for good will pursuant to the new statute, in proceedings to acquire property under the City's power of eminent domain. The court held that, because it was clear from the Legislature's intent in enacting the new statute that the decision to exercise eminent domain is left to the *discretion of the entity authorized to acquire the property*, the payment for loss of goodwill was not a state-mandated cost.[40]

In *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, the Supreme Court addressed another aspect of the issue, i.e., whether a mandate could be created by requirements that attached to a school district as a result of that district's participation in an underlying voluntary program. There, the district had voluntarily participated in various school-related educational programs establishing councils and advisory committees, where participation resulted in state or federal funding grants to operate the programs.[41] Subsequent legislation, in an effort to make such councils and advisory committees more open and accessible to the public, required certain notice and agenda requirements claimed by the school district to constitute a reimbursable state-mandated program.[42]

The court found in this case that the notice and agenda requirements did not constitute a reimbursable state-mandated program, reasoning as follows:

> First, we reject claimants' assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state, based merely upon the circumstance that the notice and agenda provisions are mandatory elements of education-related programs in which claimants have participated, without regard to whether a claimant's participation in the underlying program is voluntary or compelled. Second, we conclude that as to *eight* of the nine underlying funded programs here at issue, claimants have not been legally compelled to participate in those

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[38] Article I, section 28, subdivision (c), of the California Constitution provides that "[a]ll students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful."

[39] *City of Merced, supra,* 153 Cal.App.3d 777, 782.

[40] *Id.* at page 783.

[41] *Kern High School Dist., supra,* 30 Cal.4th 727, 732.

[42] *Ibid.*

> programs, and hence cannot establish a reimbursable state mandate as to those programs based upon a theory of legal compulsion. Third, assuming (without deciding) that claimants have been legally compelled to participate in *one* of the nine programs, we conclude that claimants nonetheless have no entitlement to reimbursement from the state for such expenses, because they have been free at all relevant times to use funds provided by the state for that program to pay required program expenses — including the notice and agenda costs here at issue.

The court also 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."[43] (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 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.)[44]

The 2004 *San Diego Unified School Dist.* case further clarified the Supreme Court's views on the legal compulsion issue. In that case, the test claim statute required the district to afford a student specified hearing procedures whenever an expulsion recommendation was made and before a student may be expelled.[45] The 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.[46] The court found the factor that

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[43] *Id.* at page 736.

[44] *Id.* at 731.

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

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

triggered the mandate was the *state statute* requiring an expulsion recommendation, and that state statute did not implement a federal law or regulation then in existence.[47]

Regarding expulsion recommendations that were *discretionary* on the part of the district, the court acknowledged the school district's argument that the hearing procedures were mandated even when the district exercised its discretion, despite the *City of Merced* and *Kern High School Dist.* cases. The court stated:

> Indeed, the Court of Appeal below suggested that the present case is distinguishable from *City of Merced* [citation omitted], in light of article I, section 28, subdivision (c), of the state Constitution. That constitutional subdivision, part of Proposition 8 (known as the Victims' Bill of Rights initiative, adopted by the voters at the Primary Election in June 1982), states: "All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful." The Court of Appeal below concluded: "In light of a school district's constitutional obligation to provide a safe educational environment ..., the incurring of [due process hearing] costs cannot properly be viewed as a nonreimbursable 'downstream' consequence of a decision to [seek to] expel a student under [the discretionary expulsion provisions] for damaging or stealing school or private property, suing or selling illicit drugs, receiving stolen property, engaging in sexual harassment or hate violence, or committing other specified acts of misconduct ... that warrant such expulsion."
>
> Building upon this theme, amicus curiae on behalf of the District, California School Boards Association, argues that based upon article I, section 28, subdivision (c), of the state Constitution, together with Education Code section 48200 et seq. and article IX, section 5 of the state Constitution (establishing and implementing a right of public education), *no* expulsion recommendation is "truly discretionary." Indeed, amicus curiae argues, school districts may not, "either as a matter of law or policy, realistically choose to [forgo] expelling [a] student [who commits one of the acts, other than firearm possession, referenced in [the] Education Code ... discretionary provision], because doing so would fail to meet that school district's legal obligations to provide a safe, secure and peaceful learning environment for the other students."[48]

In response to these arguments, the Supreme Court stated that "[u]pon reflection, we agree with the District and amici curiae that there is reason to question an extension of the holding of *City of Merced* so as to preclude reimbursement under article XIII B, section 6 of the state Constitution and Government Code section 17514, whenever an entity makes an initial

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[47] *Ibid.*

[48] *San Diego Unified School Dist., supra,* 33 Cal.4th at page 887, footnote 22.

discretionary decision that in turn triggers mandated costs."[49] (Emphasis added.) The court provided the following explanation:

> Indeed, it would appear that under a strict application of the language in *City of Merced*, public entities would be denied reimbursement for state-mandated costs in apparent contravention of the intent underlying article XIII B, section 6 of the state Constitution and Government Code section 17514 and contrary to past decisions in which it has been proper. For example, as explained above, in *Carmel Valley, supra,* 190 Cal.App.3d 531, ... an executive order requiring that county firefighters be provided with protective clothing and safety equipment was found to create a reimbursable state mandate for the added costs of such clothing and equipment. (*Id.* at pp. 537-538 ... .) The court in *Carmel Valley* apparently did not contemplate that reimbursement would be foreclosed in that setting merely because a local agency possessed discretion concerning how many firefighters it would employ — and hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected. Yet, under a strict application of the rule gleaned from *City of Merced* [citation omitted], such costs would not be reimbursable *for the simple reason that the local agency's decision to employ firefighters involves an exercise of discretion concerning, for example, how many firefighters are needed to be employed, etc.* We find it doubtful that the voters who enacted article XIII B, section 6, or the Legislature that adopted Government Code section 17514, intended that result, and hence we are reluctant to endorse, in this case, an application of the rule of *City of Merced* that might lead to such a result. (Emphasis added.)[50]

The Supreme Court did not decide the issue in *San Diego Unified School Dist.* on that basis, however, stating: "[i]n any event, we have determined that we need not address in this case the problems posed by such an application of the rule articulated in *City of Merced*, because this aspect of the present case can be resolved on an alternative basis."[51] Ultimately, no reimbursement was allowed where the district exercised its discretion in recommending an expulsion, because the court found that "all hearing costs ... triggered by the District's exercise of discretion to seek expulsion, should be treated as having been incurred pursuant to a mandate of federal [due process] law ..."[52]

Nevertheless, both *Kern High School Dist.* and *San Diego Unified School Dist.* demonstrate the Supreme Court's hesitation to apply the rule from *City of Merced,* where that rule would preclude reimbursement in *every* instance that an entity makes an initial discretionary decision which in turn triggers mandated costs.

In summary, the *Kern High School Dist.* case provided an example of "practical" compulsion, i.e., where a local entity might face substantial penalties for nonparticipation in a program, and

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[49] *Id.* at page 887.

[50] *Id.* at pages 887-888.

[51] *Id.* at page 888.

[52] *Id.* at page 890.

thus reimbursement might be appropriate. The court in *San Diego Unified School Dist.* supported the district's argument regarding "practical" compulsion in the circumstance where a K-12 school district makes a discretionary decision to expel a student who commits one of the acts set forth in the Education Code's discretionary provisions, in order to fulfill its legal obligations under the constitutional requirement to provide a safe, secure and peaceful learning environment at the school. The court in *San Diego Unified School Dist.* also expressed concerns that the intent of article XIII B, section 6, might not be carried out if the *City of Merced* rule were used to preclude reimbursement "for the simple reason" that the local agency's decision to employ firefighters, and how many to employ, involves an exercise of discretion.

One additional case, *In re Randy G.* (2001) 26 Cal.4th 556, is relevant for this analysis. There, the Supreme Court held that pursuant to the safe schools provision of the Constitution, K-12 school districts, apart from education, have an "obligation to protect pupils from other children, and also to protect teachers themselves from violence by the few students whose conduct in recent years has prompted national concern." The court further held that California fulfills its obligations under the K-12 safe schools constitutional provision by permitting local school districts to establish a police or security department to enforce rules governing student conduct and discipline.[53]

As previously noted, reimbursement has been denied, pursuant to *Kern*, for activities imposed on K-14 school districts when those activities were triggered by the district's discretionary decision to establish a police department and employ peace officers, since there was neither any legal compulsion to establish a police department, nor any "practical" compulsion in the form of "substantial penalties" for the school district to fail to establish a police department.

On the other hand, the Commission has approved reimbursement for activities imposed on K-14 school district police departments in light of the constitutional requirement for safe schools coupled with the Legislature's declaration that the condition being addressed by the test claim statute would "create a clear and present threat to the health, safety, and welfare of the citizens of the state." Thus, previous interpretations of the *San Diego Unified School Dist.* case have allowed reimbursement where the test claim statute establishes a direct connection to the need to provide safe schools pursuant to the Constitution.

In the test claim statute at issue here, pursuant to the *Kern High School Dist.* case, K-14 school districts have neither the legal compulsion nor any practical compulsion to establish a police department and employ peace officers, since the statutes authorize but do not require establishment, and no "substantial penalties" would be imposed for the district's failure to establish a police department. In addition, staff finds that the purpose of the test claim statute is not to provide safe schools. Thus, there is no showing of practical compulsion pursuant to the *San Diego Unified School Dist.* case.

The test claim statute requires racial profiling training for "every law enforcement officer" in California. In Penal Code section 13519.4, subdivision (c), the Legislature declared that:

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[53] *In re Randy G.* (2001) 26 Cal.4th 556, 562-563.

(1) Racial profiling is a practice that presents a great danger to the fundamental principles of a democratic society. It is abhorrent and cannot be tolerated.

(2) Motorists who have been stopped by the police for no reason other than the color of their skin or their apparent nationality or ethnicity are the victims of discriminatory practices.

(3) It is the intent of the Legislature in enacting the changes to Section 13519.4 of the Penal Code made by the act that added this subdivision that more than additional training is required to address the pernicious practice of racial profiling and that enactment of this bill is in no way dispositive of the issue of how the state should deal with racial profiling.

Although the test claim statute affects all law enforcement officers in the state, and addresses a "discriminatory practice" that presents a "great danger to the fundamental principles of a democratic society," it does not provide a direct connection to the constitutional requirement to provide safe schools. There is no evidence in the test claim statute or its legislative history, or the record of this test claim, which indicates that the Legislature intended the statute to protect the health and safety of the citizens on school district property. Therefore, no "practical" compulsion with regard to safe schools can be found with this test claim statute.

Furthermore, since the constitutional provision requiring safe schools does not apply to community colleges, the cases cited above do not address the issue for community college districts.

No other indications by the Supreme Court, the Constitution or the Legislature support a finding that *reimbursement should be allowed* when triggered by a K-14 school district's discretionary decision to establish a police department and employ peace officers, and there is no other evidence in the record to support such a finding.

CONCLUSION

Commission staff concludes that, since the initial decision by K-14 school districts to establish a police department and employ peace officers is discretionary, and there is no other evidence to support a finding that reimbursement should be allowed when triggered by such a discretionary decision, the test claim statute does not impose any mandated activities on K-14 school districts. Therefore, the test claim statute does not impose a reimbursable state-mandated program on K-14 school districts within the meaning of article XIII B, section 6 of the California Constitution.

Recommendation

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

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SixTen and Associates
Mandate Reimbursement Services

EXHIBIT A

KEITH B. PETERSEN, MPA, JD, President
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RECEIVED

SEP 13 2002

COMMISSION ON STATE MANDATES

September 10, 2002

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

Re: TEST CLAIM OF SANTA MONICA COMMUNITY COLLEGE DISTRICT

Chapter 854, Statutes of 2001
Chapter 684, Statutes of 2000
Chapter 1267, Statutes of 1992
Chapter 480, Statutes of 1990
Penal Code Section 13519.4

Racial Profiling: Law Enforcement Training (K-14)

Dear Ms. Higashi:

Enclosed are the original and seven copies of the Santa Monica Community College District claim for the above referenced mandate. This claim is a duplicate and supplement to CSM #01-TC-01 to establish eligibility for school district remibursement.

I have been appointed by the District as its representative for the test claim. The District requests that all correspondence originating from your office and documents subject to service by other parties be directed to me, with copies to:

Cheryl Miller
Associate Vice President, Business Services
Santa Monica Community College District
1900 Pico Avenue
Santa Monica, California 90405-1628

The Commission regulations provide for an informal conference of the interested parties within thirty days. If this meeting is deemed necessary, I request that it be conducted in conjunction with a regularly scheduled Commission hearing. Please advise.

Sincerely,

Keith B. Petersen

C: Dr. Carol Berg, Consultant, Education Mandated Cost Network
Cheryl Miller, Santa Monica Community College District
Nancy Gust, SB-90 Coordinator, County of Sacramento
Pamela A. Stone, Maximus, Inc.
William McGuire, Clovis Unified School District

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

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SEP 13 2002
COMMISSION ON STATE MANDATES

TEST CLAIM FORM

Claim No. CSM 02-TC-05

Local Agency or School District Submitting Claim

SANTA MONICA COMMUNITY COLLEGE DISTRICT

Contact Person	Telephone Number
Keith B. Petersen, President SixTen and Associates	Voice: 858-514-8605 Fax: 858-514-8645

Claimant Address
Cheryl Miller
Santa Monica Community College District
1900 Pico Avenue
Santa Monica, California 90405-1628

Representative Organization to be Notified

Dr. Carol Berg, Consultant, Education Mandated Cost Network
c/o School Services of California
1121 L Street, Suite 1060
Sacramento, CA 95814

Voice: 916-446-7517
Fax: 916-446-2011

This claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B 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 citation(s) within the chaptered bill, if applicable.

Racial Profiling: Law Enforcement Training

Chapter 854, Statutes of 2001
Chapter 684, Statutes of 2000
Chapter 1267, Statutes of 1992
Chapter 480, Statutes of 1990

Penal Code Section 13519.4

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

Name and Title of Authorized Representative	Telephone No.
Cheryl Miller Associate Vice President - Business Services	(310) 434-9221 FAX (310) 434-3607

Signature of Authorized Representative	Date
x Cheryl Miller	August 30, 2002

Claim Prepared By:
Keith B. Petersen
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117
Voice: (858) 415-8605
Fax: (858) 514-8645

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

Test Claim of:	)	No. CSM. 02-TC-05
	)	
	)	
Santa Monica Community College District	)	Chapter 854, Statutes of 2001 Chapter 684, Statutes of 2000 Chapter 1267, Statutes of 1992 Chapter 480, Statutes of 1990
Test Claimant.	)	
	)	Penal Code Section 13519.4

Racial Profiling: Law Enforcement Training (K-14)

TEST CLAIM FILING

PART I. AUTHORITY FOR THE CLAIM

The Commission on State Mandates has the authority pursuant to Government Code Section 17551(a) to "...hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution." Santa Monica Community College District is a "school district" as defined

in Government Code section 17519.[1]

PART II. LEGISLATIVE HISTORY OF THE CLAIM

This test claim alleges mandated costs reimbursable by the state for school districts and community college districts to follow prescribed guidelines from the Commission on Peace Officer Standards and Training for peace officer training in racial profiling and understanding, to send peace officers to a required expanded course of training developed by the Commission, and to send peace officers for a refresher course at least every five years.

SECTION 1. LEGISLATIVE HISTORY PRIOR TO JANUARY 1, 1975

Penal Code Section 13500[2] provided that there shall be a Commission on Peace

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[1]Government Code Section 17519, as added by Chapter 1459/84:

"School district" means any school district, community college district, or county superintendent of schools.

[2]Penal Code Section 13500, added by Chapter 1823, Statutes of 1959, Section 2, as amended by Chapter 1540, Statutes of 1974, Section 1:

"There is in the Department of Justice a Commission on Peace Officer Standards and Training, hereafter referred to in this chapter as the commission. The commission consists of 10 members appointed by the Governor, after consultation with, and with the advice of, the Attorney General and with the advice and consent of the Senate.

The commission shall be composed of the following members:

(1) Two members shall be (i) sheriffs or chiefs of police or peace officers nominated by their respective sheriffs or chiefs of police, (ii) peace officers who are deputy sheriffs or city policemen, or (iii) any combination thereof.

(2) Three members shall be sheriffs or chiefs of police or peace officers nominated by their respective sheriffs or chiefs of police.

(3) One member shall be a peace officer of the rank of sergeant or below with a minimum of five years' experience as a deputy sheriff or city policeman.

(4) Two members shall be elected officers or chief administrative officers of

1 Officer Standards and Training within the Department of Justice and identifies the

2 members who shall be elected to it and the length of their terms.

3 Penal Code Section 13503[3] describes the Commission's powers which includes,

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counties in this state.

(5) Two members shall be elected officers or chief administrative officer of cities in this state.

The Attorney General shall be an ex officio member of the commission.

Of the members first appointed by the Governor, three shall be appointed for a term of one year, three for a term of two years, and three for a term of three years. Their successors shall serve for a term of three years and until appointment and qualification of their successors, each term to commence on the expiration date of the term of the predecessor.

The additional member provided for by the Legislature in its 1973-1974 Regular Session shall be appointed by the Governor on or before January 15, 1975, and shall serve for a term of three years."

[3]Penal Code Section 13503, added by Chapter 1823, Statutes of 1959, Section 2, as amended by Chapter 1640, Statutes of 1967, Section 1:

"In carrying out its duties and responsibilities, the commission shall have all of the following powers:

(a) To meet at such times and places as it may deem proper;

(b) To employ an executive secretary and, pursuant to civil service, such clerical and technical assistants as may be necessary;

(c) To contract with such other agencies, public or private, or persons as it deems necessary, for the rendition and affording of such services, facilities, studies, and reports to the commission as will best assist it to carry out its duties and responsibilities;

(d) To cooperate with and to secure the cooperation of county, city, city and county, and other local law enforcement agencies in investigating any matter within the scope of its duties and responsibilities, and in performing its other functions;

(e) To develop and implement programs to increase the effectiveness of law enforcement and when such programs involve training and education courses to cooperate with and secure the cooperation of state-level officers, agencies, and bodies having jurisdiction over systems of public higher education in continuing the development of college-level training and education programs;

(f) To cooperate with and secure the cooperation of every department, agency, or instrumentality in the State Government;

(g) To do any and all things necessary or convenient to enable it fully and

1 in subdivision (e), the power to develop and implement programs to increase the

2 effectiveness of law enforcement.

3 Penal Code Section 13506[4] provided that the commission may adopt regulations

4 as are necessary to carry out the purposes of the chapter.

5 Penal Code Section 832[5] provided that peace officers must complete a basic

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adequately to perform its duties and to exercise the power granted to it."

[4]Penal Code Section 13506, as added by Chapter 1823, Statutes of 1959, Section 2:

"The commission may adopt such regulations as are necessary to carry out the purposes of this chapter."

[5]Penal Code Section 832, as added by Chapter 1504, Statutes of 1971, as amended by Chapter 410, Statutes of 1974, Section 1:

"(a) Every person described in this chapter as a peace officer, shall receive a course of training in the exercise of his powers to arrest and a course of training in the carrying and use of firearms. The course of training in the carrying and use of firearms shall not be required of any peace officer whose employing agency prohibits the use of firearms. Such courses shall meet the minimum standards prescribed by the Commission on Peace Officer Standards and Training.

(b) (1) Every such peace officer described in this chapter shall, by July 1, 1974, or within 12 months following the date that he was first employed by any employing agency to exercise the powers of a peace officer, whichever period is greater, have satisfactorily completed the course of training in the carrying and use of firearms described in subdivision (a).

(2) Every such peace officer described in this chapter, except a peace officer described by subdivision (l) of Section 830.3, shall, by July 1, 1974, or within 12 months following the date that he was first employed by any employing agency to exercise the powers of a peace officer, whichever period is greater, have satisfactorily completed the course of training in the exercise of his powers to arrest described in subdivision (a).

(3) Every peace officer described by subdivision (l) of Section 830.3 shall, by January 1, 1975, or within 12 months following the date that he was first employed by any employing agency to exercise the powers of a peace officer, whichever period is

1 course of training within twelve months of employment in the carrying and use of
2 firearms and in the exercise of their powers to arrest.
3 Prior to January 1, 1975 there was no requirement that all peace officers in the
4 state complete a course of expanded training in understanding racial differences and the
5 prevention of racial profiling. And there was no requirement that all peace officers
6 complete a refresher course on the subject every five years, or more frequently.
7 SECTION 2. LEGISLATIVE HISTORY AFTER JANUARY 1, 1975
8 Chapter 480, Statutes of 1990, Section 1, added Penal Code Section 13519.4[6]
9 which requires the commission to develop and disseminate guidelines and training for all

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greater, have satisfactorily completed the course of training as described in subdivision (a).

(c) Persons described in this chapter as peace officers who have not so satisfactorily completed the courses described in subdivision (a) by the dates specified in subdivision (b), shall not have the powers of a peace officer until they satisfactorily complete such courses.

(d) Any peace officer who on the effective date of this section possesses or is qualified to possess the basic certificate as awarded by the Commission on Peace Officer Standards and Training shall be exempted from the provisions of this section."

[6]Penal Code Section 13519.4, as added by Chapter 480, Statutes of 1990, Section 1:

"Effective July 1, 1991, the commission shall develop and disseminate guidelines and training for all law enforcement officers in California as described in subdivision (a) of Section 13510 and who adhere to the standards approved by the commission, on the racial and cultural differences among the residents of this state. The course or courses of instruction and the guidelines shall stress understanding and respect for racial and cultural differences, and development of effective, noncombative methods of carrying out law enforcement duties in a racially and culturally diverse environment."

1 law enforcement officers in California, as described in subdivision (a) of Section 13510[7],
2 on the racial and cultural differences among the residents of this state.
3 Chapter 1267, Statutes of 1992, Section 2, amended Penal Code Section
4 13519.4[8] to add subdivision (b) and (c). Subdivision (b) requires the course of basic
5 training for law enforcement to include adequate instruction on racial and cultural
6 diversity. Subdivision (c) defines "culturally diverse" and "cultural diversity" to include
7 gender and sexual orientation issues. Technical changes were also made.
8 Chapter 684, Statutes of 2000, Section 1, amended Penal Code Section 13519.4[9]

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[7] The description of "law enforcement officers" in Penal Code Section 13510 includes "police officers of a district authorized by statute to maintain a police department".

[8] Penal Code Section 13519.4, added by Chapter 480, Statutes of 1990, Section 1, as amended by Chapter 1267, Statutes of 1992, Section 2:

(a) ~~Effective July 1, 1991~~ On or before August 1, 1993, the commission shall develop and disseminate guidelines and training for all law enforcement officers in California as described in subdivision (a) of Section 13510 and who adhere to the standards approved by the commission, on the racial and cultural differences among the residents of this state. The course or courses of instruction and the guidelines shall stress understanding and respect for racial and cultural differences, and development of effective, noncombative methods of carrying out law enforcement duties in a racially and culturally diverse environment.

(b) The course of basic training for law enforcement officers shall, no later than August 1, 1993, include adequate instruction on racial and cultural diversity in order to foster mutual respect and cooperation between law enforcement and members of all racial and cultural groups. In developing the training, the commission shall consult with appropriate groups and individuals having an interest and expertise in the field of cultural awareness and diversity.

(c) For the purposes of this section, "culturally diverse" and "cultural diversity" include, but are not limited to, gender and sexual orientation issues."

[9] Penal Code Section 13519.4, added by Chapter 480, Statutes of 1990, Section 1, as amended by Chapter 684, Statutes of 2000, Section 1:

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"(a) On or before August 1, 1993, the commission shall develop and disseminate guidelines and training for all law enforcement officers in California as described in subdivision (a) of Section 13510 and who adhere to the standards approved by the commission, on the racial and cultural differences among the residents of this state. The course or courses of instruction and the guidelines shall stress understanding and respect for racial and cultural differences, and development of effective, noncombative methods of carrying out law enforcement duties in a racially and culturally diverse environment.

(b) The course of basic training for law enforcement officers shall, no later than August 1, 1993, include adequate instruction on racial and cultural diversity in order to foster mutual respect and cooperation between law enforcement and members of all racial and cultural groups. In developing the training, the commission shall consult with appropriate groups and individuals having an interest and expertise in the field of cultural awareness and diversity.

(c) For the purposes of this section, "culturally diverse" and "cultural diversity" include, but are not limited to, gender and sexual orientation issues. The Legislature finds and declares as follows:

(1) Racial profiling is a practice that presents a great danger to the fundamental principals of a democratic society. It is abhorrent and cannot be tolerated.

(2) Motorists who have been stopped by the police for no reason other than the color of their skin or their apparent nationality or ethnicity are the victims of discriminatory practices.

(3) It is the intent of the Legislature in enacting the changes to Section 13519.4 of the Penal Code made by the act that added this subdivision that more than additional training is required to address the pernicious practice of racial profiling and that enactment of this bill is in no way dispositive of the issue of how the state should deal with racial profiling.

(4) The working men and women in California law enforcement risk their lives every day. The people of California greatly appreciate the hard work and dedication of law enforcement officers in protecting public safety. The good name of these officers should not be tarnished by the actions of those few who commit discriminatory practices.

(d) "Racial profiling," for purposes of this section, is the practice of detaining a suspect based on a broad set of criteria which casts suspicion on an entire class of people without any individualized suspicion of the particular person being stopped.

(e) A law enforcement officer shall not engage in racial profiling.

(f) Every law enforcement officer in this state shall participate in expanded training as prescribed and certified by the Commission on Peace Officers Standards and Training. Training shall begin being offered no later than January 1, 2002. The curriculum shall be created by the commission in collaboration with a five-person panel, appointed no later than March 1, 2001, as follows: the Governor shall appoint three

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members and one member each shall be appointed by the Senate Committee on Rules and the Speaker of the Assembly. Each appointee shall be appointed from among prominent members of the following organizations:

(1) State Conference of the NAACP.
(2) Brotherhood Crusade.
(3) Mexican American Legal Defense and Education Fund.
(4) The League of United Latin American Citizens.
(5) American Civil Liberties Union.
(6) Anti-Defamation League.
(7) California NOW.
(8) Asian Pacific Bar of California.
(9) The Urban League.

(g) Members of the panel shall not be compensated, except for reasonable per diem expenses related to their work for panel purposes.

(h) The curriculum shall utilize the Tools for Tolerance for Law Enforcement Professionals framework and shall include and examine the patterns, practices, and protocols that make up racial profiling. This training shall prescribe patterns, practices, and protocols that prevent racial profiling. In developing the training, the commission shall consult with appropriate groups and individuals having an interest and expertise in the field of racial profiling. The course of instruction shall include, but not be limited to, adequate consideration of each of the following subjects:

(1) Identification of key indices and perspectives that make up cultural differences among residents in a local community.

(2) Negative impact of biases, prejudices, and stereotyping on effective law enforcement, including examination of how historical perceptions of discriminatory enforcement practices have harmed police-community relations.

(3) The history and the role of the civil rights movement and struggles and their impact on law enforcement.

(4) Specific obligations of officers in preventing, reporting, and responding to discriminatory or biased practices by fellow officers.

(5) Perspectives of diverse, local constituency groups and experts on particular cultural and police-community relations issues in a local area.

(i) Once the initial basic training is completed, each law enforcement officer in California as described in subdivision (a) of Section 13510 who adheres to the standards approved by the commission shall be required to complete a refresher course every five years thereafter, or on a more frequent basis if deemed necessary, in order to keep current with changing racial and cultural trends.

(j) The Legislative Analyst shall conduct a study of the data being voluntarily collected by those jurisdictions that have instituted a program of data collection with regard to racial profiling, including, but not limited to, the California Highway Patrol, the

1 to add subparagraphs (1) through (4) to subdivision (c) and to add subdivisions ((d), (e),
2 (f), (g), (h), (i), and (j). The new subparagraphs of subdivision (c) adds legislative
3 findings and declarations. Subdivision (d) defines "racial profiling". Subdivision (e)
4 provides that law enforcement officers shall not engage in racial profiling. Subdivision (f)
5 requires every law enforcement officer[10] in the state to participate in expanded training
6 as prescribed and certified by the Commission on Peace Officer Standards and Training
7 no later than January 1, 2002. Subdivision (g) provides that members of the panel shall
8 not be compensated. Subdivision (h) sets forth curriculum requirements. Subdivision (i)
9 requires each law enforcement officer to complete a refresher course every five years,
10 or more frequently if deemed necessary. Subdivision (j) requires the Legislative Analyst
11 to gather data and conduct a study to prevent cases of racial profiling. Therefore, for
12 the first time, every law enforcement officer in the state is required to participate in
13 expanded training to prevent racial profiling as prescribed and certified by the

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City of San Jose, and the City of San Diego, both to ascertain the incidence of racial profiling and whether data collection serves to address and prevent such practices, as well as to assess the value and efficacy of the training herein prescribed with respect to preventing local profiling. The Legislative Analyst may prescribe the manner in which the data is to be submitted and may request that police agencies collecting such data submit it in the requested manner. The Legislative Analyst shall provide to the Legislature a report and recommendations with regard to racial profiling by July 1, 2002."

[10] The Legislature uses the terms "law enforcement officers" and "police officers" interchangeably, i.e., "for the purpose of raising the level of competence of local law enforcement officers, the commission shall adopt...minimum standards...that shall govern the recruitment of any...police officers of a district..." Penal Code Section 13510(a) As used in this chapter, "district" means any of the following...a community college district...a school district..." Penal Code Section 13507 (e)(f)

Commission on Peace Officer Standards and Training, and is to complete a refresher course on that subject every five years, or more frequently.

Chapter 854, Statutes of 2001, Section 63, amended Penal Code Section 13519.4 to make technical changes.

PART III. STATEMENT OF THE CLAIM

SECTION 1. COSTS MANDATED BY THE STATE

The Statutes and Penal Code Section referenced in this test claim result in school districts incurring costs mandated by the state, as defined in Government Code Section 17514[11], by creating new state-mandated duties related to the uniquely governmental function of providing public safety services to students and these statutes apply to school districts and do not apply generally to all residents and entities in the state.[12]

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[11]Government Code Section 17514, as added by Chapter 1459, Statutes of 1984:

"'Costs mandated by the state' means 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 in 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."

[12] "Public schools are a Article XIII B, Section 6 "program," pursuant to Long Beach Unified School District v. State of California, (1990) 275 Cal.Rptr. 449, 225 Cal.App.3d 155: "In the instant case, although numerous private schools exist, education in our society is considered to be a peculiarly government function. (Cf. Carmel Valley Fire Protection Dist. V. State of California (1987) 190 Cal.App.3d at p. 537) Further, public education is administered by local agencies to provide service to the public. Thus public education constitutes a 'program' within the meaning of Section 6."

The new duties mandated by the state upon school districts, county offices of Education and community college districts require state reimbursement of the direct and indirect costs of labor, material and supplies, data processing services and software, contracted services and consultants, equipment and capital assets, staff and student training and travel to implement the following activities:

A) To develop and implement policies and procedures, and to periodically update those policies and procedures, to insure that each law enforcement officer employed by the district shall participate in the expanded training as prescribed and certified by the Commission on Peace Officer Standards and Training to prevent racial profiling, pursuant to Penal Code Section 13519.4.

B) Commencing January 1, 2002, to develop and to implement tracking procedures to assure that every law enforcement officer employed by the district shall participate and successfully complete the expanded course of training on racial and cultural differences and the negative impacts of racial profiling, pursuant to Penal Code Section 13519.4, subdivision (f).

C) To pay the unreimbursed costs for travel, subsistence, meals, training and substitute salaries of their law enforcement officers attending expanded training to prevent racial profiling, pursuant to Penal Code Section 13519.4, subdivision (f).

D) To develop and implement tracking procedures to assure that every law

enforcement officer employed by the district shall participate and successfully complete a refresher course to keep current with changing racial and cultural trends every five years, or possibly on a more frequent basis if deemed necessary, pursuant to Penal Code Section 13519.4, subdivision (i).

E) To pay the unreimbursed costs for travel, subsistence, meals, training and substitute salaries of their law enforcement officers attending refresher courses to prevent racial profiling, pursuant to Penal Code Section 13519.4, subdivision (i).

SECTION 2. EXCEPTIONS TO MANDATE REIMBURSEMENT

None of the Government Code Section 17556[13] statutory exceptions to a finding

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[13]Government Code Section 17556 as last amended by Chapter 589, Statutes of 1989:

"The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

(a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

(b) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.

(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

(d) The local agency or school district has the authority to levy service

1 of costs mandated by the state apply to this test claim. Note, that to the extent school
2 districts may have previously performed functions similar to those mandated by the
3 referenced code sections, such efforts did not establish a preexisting duty that would
4 relieve the state of its constitutional requirement to later reimburse school districts when
5 these activities became mandated.[14]

6 SECTION 3. FUNDING PROVIDED FOR THE MANDATED PROGRAM

7 No funds are appropriated by the state for reimbursement of these costs
8 mandated by the state and there is no other provision of law for recovery of costs from
9 any other source. To the extent that reimbursement is received from the Commission
10 on Peace Officer Standards and Training, any reimbursement will offset reimbursable
11 costs.

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charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

(f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.

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

[14]Government Code Section 17565:

"If a local agency or school district, at its option, had been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate."

PART IV. ADDITIONAL CLAIM REQUIREMENTS

The following elements of this claim are provided pursuant to Section 1183, Title 2, California Code of Regulations:

Exhibit 1: Declaration of Eileen Miller, Chief of Police
Santa Monica Community College District

and

Declaration of Gregg Bass, Director of Child Welfare and Attendance
Clovis Unified School District

Exhibit 2: Copies of Code Sections Cited

Penal Code Section 13519.4

Exhibit 3: Copies of Statutes Cited

Chapter 854, Statutes of 2001

Chapter 684, Statutes of 2000

Chapter 1267, Statutes of 1992

Chapter 480, Statutes of 1990

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PART V. CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete of my own knowledge or information and belief.

Executed on August 30, 2002, at Santa Monica, California, by

Cheryl Miller

Cheryl Miller
Associate Vice President
Business Services

Voice: (310) 434-9221
Fax: (310) 434-3607

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PART VI. APPOINTMENT OF REPRESENTATIVE

Santa Monica Community College District appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.

Cheryl Miller

Cheryl Miller
Associate Vice President
Business Services

Aug 30, 2002
Date

EXHIBIT 1
DECLARATIONS

DECLARATION OF EILEEN MILLER

Santa Monica Community College District

Test Claim of Santa Monica Community College District

COSM No. _____

Chapter 854, Statutes of 2001
Chapter 684, Statutes of 2000
Chapter 1267, Statutes of 1992
Chapter 480, Statutes of 1990

Penal Code Section 13519.4

Racial Profiling: Law Enforcement Training

I, Eileen Miller, Chief of Police, Santa Monica Community College District, make the following declaration and statement.

In my capacity as Chief of Police of the Santa Monica Community College District, I am responsible for the district's compliance with peace officer training standards. I am familiar with the provisions and requirements of the Penal Code Section enumerated above.

This Penal Code section requires the Santa Monica Community College District to:

1) Pursuant to Penal Code Section 13519.4, develop and implement policies and procedures, and periodically update those policies and procedures, to insure that each law enforcement officer employed by the district shall participate in the expanded training as prescribed and certified by the Commission on Peace Officer Standards and Training to prevent racial profiling.

2) Pursuant to Penal Code Section 13519.4, subdivision (f), to develop and implement tracking procedures to assure that every law enforcement officer

employed by the district shall participate and successfully complete the expanded course of training as prescribed and certified by the Commission on Peace Officer Standards and Training to prevent racial profiling.

3) Pursuant to Penal Code Section 13519.4, subdivision (f), to pay the unreimbursed costs for travel, subsistence, meals, training fees and substitute salaries of its law enforcement officers attending expanded training as prescribed and certified by the Commission on Peace Officer Standards and Training to prevent racial profiling.

4) Pursuant to Penal Code Section 13519.4, subdivision (i), to develop and implement tracking procedures to assure that every law enforcement officer employed by the district shall participate and successfully complete a refresher course to keep current with changing racial and cultural trends every five years, or possibly on a more frequent basis if deemed necessary.

5) Pursuant to Penal Code Section 13519.4, subdivision (i), to pay the unreimbursed costs for travel, subsistence, meals, training fees and substitute salaries of its law enforcement officers attending a refresher course to keep current with changing racial and cultural trends every five years, or possibly on a more frequent basis if deemed necessary.

It is estimated that the Santa Monica Community College District will incur approximately $200, or more, In staffing and other costs to implement these new duties mandated by the state for which the school district has not been reimbursed by any

federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED this 30 day of Aug, 2002, at Santa Monica, California

Eileen Miller
Chief of Police
Santa Monica Community College District

DECLARATION OF GREG BASS

Clovis Unified School District

Test Claim of Santa Monica Community College District

COSM No. _____

Chapter 854, Statutes of 2001
Chapter 684, Statutes of 2000
Chapter 1267, Statutes of 1992
Chapter 480, Statutes of 1990

Penal Code Section 13519.4

Racial Profiling: Law Enforcement Training

I, Greg Bass, Director of Child Welfare and Attendance, Clovis Unified School District, make the following declaration and statement.

In my capacity as Director of Child Welfare and Attendance for Clovis Unified School District, I am the supervisor of the district police department and responsible for the district's compliance with peace officer training standards. I am familiar with the provisions and requirements of the Penal Code Section enumerated above.

This Penal Code section requires the Clovis Unified School District to:

1) Pursuant to Penal Code Section 13519.4, develop and implement policies and procedures, and periodically update those policies and procedures, to insure that each law enforcement officer employed by the district shall participate in the expanded training as prescribed and certified by the Commission on Peace Officer Standards and Training to prevent racial profiling.

2) Pursuant to Penal Code Section 13519.4, subdivision (f), to develop and implement tracking procedures to assure that every law enforcement officer employed by the district shall participate and successfully complete the expanded

course of training as prescribed and certified by the Commission on Peace Officer Standards and Training to prevent racial profiling.

3) Pursuant to Penal Code Section 13519.4, subdivision (f), to pay the unreimbursed costs for travel, subsistence, meals, training fees and substitute salaries of its law enforcement officers attending expanded training as prescribed and certified by the Commission on Peace Officer Standards and Training to prevent racial profiling.

4) Pursuant to Penal Code Section 13519.4, subdivision (i), to develop and implement tracking procedures to assure that every law enforcement officer employed by the district shall participate and successfully complete a refresher course to keep current with changing racial and cultural trends every five years, or possibly on a more frequent basis if deemed necessary.

5) Pursuant to Penal Code Section 13519.4, subdivision (i), to pay the unreimbursed costs for travel, subsistence, meals, training fees and substitute salaries of its law enforcement officers attending a refresher course to keep current with changing racial and cultural trends every five years, or possibly on a more frequent basis if deemed necessary.

It is estimated that Clovis Unified School District will incur approximately $200, or more, In staffing and other costs to implement these new duties mandated by the state for which the school district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED this 28 day of Aug., 2002, at Clovis, California

Greg Bass
Director of Child Welfare and Attendance
Clovis Unified School District

EXHIBIT 2
COPIES OF CODE SECTIONS CITED

§ 13519.05. Stalking; training course and guidelines

(a) The commission shall implement by January 1, 2002, a course or courses of instruction for the training of law enforcement officers in California in the handling of stalking complaints and also shall develop guidelines for law enforcement response to stalking. The course or courses of instruction and the guidelines shall stress enforcement of criminal laws in stalking situations, availability of civil remedies and community resources, and protection of the victim. Where appropriate, the training presenters shall include stalking experts with expertise in the delivery of direct services to victims of stalking. Completion of the course may be satisfied by telecommunication, video training tape, or other instruction.

(b)(1) As used in this section, "law enforcement officer" means any officer or employee of a local police department or sheriff's office, any peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, any peace officer of the University of California Police Department, as defined in subdivision (b) of Section 830.2, any peace officer of the California State University Police Departments, as defined in subdivision (c) of Section 830.2, a peace officer, as defined in subdivision (d) of Section 830.31, or a peace officer as defined in subdivisions (a) and (b) of Section 830.32.

(2) As used in this section, "stalking" means the offense defined in Section 646.9.

(c)(1) The course of instruction, the learning and performance objectives, the standards for the training, and the guidelines shall be developed by the commission in consultation with appropriate groups and individuals having an interest and expertise in the field of stalking.

(2) The commission, in consultation with these groups and individuals, shall review existing training programs to determine in what ways stalking training might be included as a part of ongoing programs.

(d) Participation in the course or courses specified in this section by peace officers or the agencies employing them, is voluntary.

(Added by Stats.2000, c. 564 (S.B.1589), § 2.)

§ 13519.4. Racial and cultural diversity training; racial profiling

(a) On or before August 1, 1998, the commission shall develop and disseminate guidelines and training for all law enforcement officers in California as described in subdivision (a) of Section 13510 and who adhere to the standards approved by the commission, on the racial and cultural differences among the residents of this state. The course or courses of instruction and the guidelines shall stress understanding and respect for racial and cultural differences, and development of effective, noncombative methods of carrying out law enforcement duties in a racially and culturally diverse environment.

(b) The course of basic training for law enforcement officers shall, no later than August 1, 1998, include adequate instruction on racial and cultural diversity in order to foster mutual respect and cooperation between law enforcement and members of all racial and cultural groups. In developing the training, the commission shall consult with appropriate groups and individuals having an interest and expertise in the field of cultural awareness and diversity.

(c) For the purposes of this section, "culturally diverse" and "cultural diversity" include, but are not limited to, gender and sexual orientation issues. The Legislature finds and declares as follows:

(1) Racial profiling is a practice that presents a great danger to the fundamental principles of a democratic society. It is abhorrent and cannot be tolerated.

(2) Motorists who have been stopped by the police for no reason other than the color of their skin or their apparent nationality or ethnicity are the victims of discriminatory practices.

(3) It is the intent of the Legislature in enacting the changes to Section 13519.4 of the Penal Code made by the act that added this subdivision that more than additional training is required to address the pernicious practice of racial profiling and that enactment of this bill is in no way dispositive of the issue of how the state should deal with racial profiling.

(4) The working men and women in California law enforcement risk their lives every day. The people of California greatly appreciate the hard work and dedication of law enforcement officers in protecting public safety. The good name of these officers should not be tarnished by the actions of those few who commit discriminatory practices.

(d) "Racial profiling," for purposes of this section, is the practice of detaining a suspect based on a broad set of criteria which casts suspicion on an entire class of people without any individualized suspicion of the particular person being stopped.

(e) A law enforcement officer shall not engage in racial profiling.

Additions or changes indicated by underline; deletions by asterisks * * *

(f) Every law enforcement officer in this state shall participate in expanded training as prescribed and certified by the Commission on Peace Officers Standards and Training. Training shall begin being offered no later than January 1, 2002. The curriculum shall be created by the commission in collaboration with a five-person panel, appointed no later than March 1, 2001, as follows: the Governor shall appoint three members and one member each shall be appointed by the Senate Committee on Rules and the Speaker of the Assembly. Each appointee shall be appointed from among prominent members of the following organizations:

(1) State Conference of the NAACP.

(2) Brotherhood Crusade.

(3) Mexican American Legal Defense and Education Fund.

(4) The League of United Latin American Citizens.

(5) American Civil Liberties Union.

(6) Anti–Defamation League.

(7) California NOW.

(8) Asian Pacific Bar of California.

(9) The Urban League.

(g) Members of the panel shall not be compensated, except for reasonable per diem expenses related to their work for panel purposes.

(h) The curriculum shall utilize the Tools for Tolerance for Law Enforcement Professionals framework and shall include and examine the patterns, practices, and protocols that make up racial profiling. This training shall prescribe patterns, practices, and protocols that prevent racial profiling. In developing the training, the commission shall consult with appropriate groups and individuals having an interest and expertise in the field of racial profiling. The course of instruction shall include, but not be limited to, adequate consideration of each of the following subjects:

(1) Identification of key indices and perspectives that make up cultural differences among residents in a local community.

(2) Negative impact of biases, prejudices, and stereotyping on effective law enforcement, including examination of how historical perceptions of discriminatory enforcement practices have harmed police-community relations.

(3) The history and the role of the civil rights movement and struggles and their impact on law enforcement.

(4) Specific obligations of officers in preventing, reporting, and responding to discriminatory or biased practices by fellow officers.

(5) Perspectives of diverse, local constituency groups and experts on particular cultural and police-community relations issues in a local area.

(i) Once the initial basic training is completed, each law enforcement officer in California as described in subdivision (a) of Section 13510 who adheres to the standards approved by the commission shall be required to complete a refresher course every five years thereafter, or on a more frequent basis if deemed necessary, in order to keep current with changing racial and cultural trends.

(j) The Legislative Analyst shall conduct a study of the data being voluntarily collected by those jurisdictions that have instituted a program of data collection with regard to racial profiling, including, but not limited to, the California Highway Patrol, the City of San Jose, and the City of San Diego, both to ascertain the incidence of racial profiling and whether data collection serves to address and prevent such practices, as well as to assess the value and efficacy of the training herein prescribed with respect to preventing local profiling. The Legislative Analyst may prescribe the manner in which the data is to be submitted and may request that police agencies collecting such data submit it in the requested manner. The Legislative Analyst shall provide to the Legislature a report and recommendations with regard to racial profiling by July 1, 2002.

(Amended by Stats.2000, c. 684 (S.B.1102), § 1; Stats.2001, c. 854 (S.B.205), § 63.)

Historical and Statutory Notes

2000 Legislation

Stats.2000, c. 684 (S.B.1102), in subd. (c), added "The legislature finds and declares as follows:" in the second sentence, and added paragraphs (1), (2), (3), and (4) relating to racial profiling and additional training; and added subds. (d) through (j) relating to law enforcement officer's participation in additional training against racial profiling and the study of data collected on racial profiling.

EXHIBIT 3
COPIES OF STATUTES CITED

CRIMES AND OFFENSES—TECHNICAL CORRECTIONS

CHAPTER 854

S.B. No. 205

AN ACT to amend Sections 1282.3 and 5536 of the Business and Professions Code, to amend Sections 670, 1036.2, and 1350 of the Evidence Code, to amend Section 11019.9 of the Government Code, to amend Sections 11362.9, 11372.7, 11550, 11573.5, 42400.1, 42400.2, 42400.3, 42402.1, 42402.2, 42402.3, and 109580 of the Health and Safety Code, to amend Sections 28, 182, 186.11, 186. 22, 186.26, 243.1, 312.1, 320.5, 368, 466, 481.1, 530.7, 593d, 593e, 645, 646.93, 666.7, 667.7, 670, 778a, 933.06, 1170.11, 1174.4, 1203.044, 1203.097, 1280.1, 2677, 2717.4, 3000, 3000.1, 3058.9, 4011.1, 6008, 6126.5, 6236, 7012, 11180, 11418, 12022.53, 12094, 12288, and 13519.4 of, to amend and renumber Sections 113, 597.2, 1511, and 5058.5 of, and to amend and renumber the heading of Title 10.5 (commencing with Section 14150) of Part 4 of, the Penal Code, to amend Section 19705 of the Revenue and Taxation Code, to amend Sections 1808.21, 13202.4, and 22658.1 of the Vehicle Code, and to amend Sections 302, 319.1, 367, 602, 635.1, and 5270.55 of, to amend and renumber Sections 602.5 and 730.7 of, and to amend and renumber the heading of Article 18.5 (commencing with Section 743) of Chapter 2 of Part 1 of Division 2 of, the Welfare and Institutions Code, relating to crime.

[Filed with Secretary of State October 13, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

SB 205, McPherson. Crime.

Existing law contains numerous provisions pertaining to crime and the implementation of the criminal laws of this state.

This bill would make numerous, nonsubstantive changes to clarify and update these provisions.

The bill would also make various technical revisions.

This bill would amend an initiative statute that provides its provisions may be amended by the Legislature by a ⅔ vote of the membership of each house, and therefore requires a ⅔ vote.

This bill would incorporate additional changes to Section 3000 of the Penal Code proposed by AB 1004, contingent upon the prior enactment of that bill.

This bill would incorporate additional changes in Section 19705 of the Revenue and Taxation Code, proposed by SB 1185, to be operative only if SB 1185 and this bill are both chaptered and become effective January 1, 2002.

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

SECTION 1. Section 1282.3 of the Business and Professions Code is amended to read:

1282.3. (a) It is unlawful for any person to act with willful or wanton disregard for a person's safety that exposes the person to a substantial risk of, or that causes, great bodily injury by affecting the integrity of a clinical laboratory test or examination result through improper collection, handling, storage, or labeling of the biological specimen or the erroneous transcription or reporting of clinical laboratory test or examination results.

(b) Notwithstanding Section 1287, a violation of this section shall be punished * * * as follows:

(1) A first conviction * * * is punishable by imprisonment in a county jail for a period of not more than one year, or by imprisonment in the state prison for 16 months, or two or three years, by a fine not exceeding fifty thousand dollars ($50,000), or by both this * * * imprisonment and fine.

(2) A second or subsequent conviction is punishable by imprisonment in the state prison for two, four, or six years, or by a fine not exceeding fifty thousand dollars ($50,000), or by both this * * * imprisonment and fine.

(c) The enforcement remedies provided under this section are not exclusive, and shall not preclude the use of any other criminal or civil remedy. However, an act or omission punishable in different ways by this section and any other provision of law shall not be punished under more than one provision. Under those circumstances, the penalty to be imposed shall be determined as set forth in Section 654 of the Penal Code.

SEC. 2. Section 5536 of the Business and Professions Code is amended to read:

5536. (a) It is a misdemeanor, punishable by a fine of not less than one hundred dollars ($100) nor more than five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, for any person who is not licensed to practice architecture under this chapter to practice architecture in this state, to use any term confusingly similar to the word architect, * * * to use the stamp of a licensed architect, as provided in Section 5536.1, or to advertise or put out any sign, card, or other device that might indicate to the public that he or she is an architect, that he or she is qualified to engage in the practice of architecture, or that he or she is an architectural designer.

(b) It is a misdemeanor, punishable as specified in subdivision (a), for any person who is not licensed to practice architecture under this chapter to affix a stamp or seal that bears the legend "State of California" or words or symbols that represent or imply that the person is so licensed by the state to prepare plans, specifications, or instruments of service.

(c) It is a misdemeanor, punishable as specified in subdivision (a), for any person to advertise or represent that he or she is a "registered building designer" or is registered or otherwise licensed by the state as a building designer.

SEC. 3. Section 670 of the Evidence Code is amended to read:

670. (a) In any dispute concerning payment by means of a check, a copy of the check produced in accordance with Section 1550 of the Evidence Code, together with the original bank statement that reflects payment of the check by the bank on which it was drawn or a copy thereof produced in the same manner, creates a presumption that the check has been paid.

(b) As used in this section:

(1) "Bank" means any person engaged in the business of banking and includes, in addition to a commercial bank, a savings and loan association, savings bank, or credit union.

(2) "Check" means a draft, other than a documentary draft, payable on demand and drawn on a bank, even though it is described by another term, such as "share draft" or "negotiable order of withdrawal."

SEC. 4. Section 1036.2 of the Evidence Code is amended to read:

1036.2. As used in this article, "sexual assault" includes all of the following:

(a) Rape, as defined in Section 261 of the Penal Code.

(b) Unlawful sexual intercourse, as defined in Section 261.5 of the Penal Code.

(c) Rape in concert with force and violence, as defined in Section 264.1 of the Penal Code.

(d) Rape of a spouse, as defined in Section 262 of the Penal Code.

(e) Sodomy, as defined in Section 286 of the Penal Code, except a violation of subdivision (e) of that section.

(f) A violation of Section 288 of the Penal Code.

(g) Oral copulation, as defined in Section 288a of the Penal Code, except a violation of subdivision (e) of that section.

(h) Sexual penetration * * *, as defined in Section 289 of the Penal Code.

(i) Annoying or molesting a child under 18, as defined in Section 647a of the Penal Code.

(j) Any attempt to commit any of the above acts.

SEC. 5. Section 1350 of the Evidence Code is amended to read:

person, a coparticipant, or a coconspirator, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Section 12028.

(*l*) The enhancements specified in this section shall not apply to the lawful use or discharge of a firearm by a public officer, as provided in Section 196, or by any person in lawful self-defense, lawful defense of another, or lawful defense of property, as provided in Sections 197, 198, and 198.5.

SEC. 61. Section 12094 of the Penal Code is amended to read:

12094. (a) Any person with knowledge of any change, alteration, removal, or obliteration described herein, who buys, receives, disposes of, sells, offers for sale, or has in his or her possession any pistol, revolver, or other firearm which has had the name of the maker, model, or the manufacturer's number or other mark of identification including any distinguishing number or mark assigned by the Department of Justice changed, altered, removed, or obliterated is guilty of a misdemeanor.

(b) Subdivision (a) does not apply to any of the following:

(1) The acquisition or possession of a firearm described in subdivision (a) by any member of the military forces of this state or of the United States, while on duty and acting within the scope and course of his or her employment.

(2) The acquisition or possession of a firearm described in subdivision (a) by any peace officer described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, while on duty and acting within the scope and course of his or her employment.

(3) The acquisition or possession of a firearm described in subdivision (a) by any employee of a forensic laboratory, while on duty and acting within the scope and course of his or her employment.

(4) The possession and disposition of a firearm described in subdivision (a) by a person who meets * * * all of the following:

(A) He or she is not prohibited from possessing firearms or ammunition pursuant to Section 12021 or 12021.1 or paragraph (1) of subdivision (b) of Section 12316 of this code, or Section 8100 or 8103 of the Welfare and Institutions Code.

(B) The person possessed the firearm no longer than was necessary to deliver the same to a law enforcement agency for that agency's disposition according to law.

(C) If the person is transporting the firearm, he or she is transporting the firearm to a law enforcement agency in order to deliver the firearm to the law enforcement agency for the agency's disposition according to law.

(D) If the person is transporting the firearm to a law enforcement agency, he or she has given prior notice to the law enforcement agency that he or she is transporting the firearm to that law enforcement agency for that agency's disposition according to law.

(E) The firearm is transported in a locked container as defined in subdivision (d) of Section 12026.2.

SEC. 62. Section 12288 of the Penal Code is amended to read:

12288. Any individual may arrange in advance to relinquish an assault weapon to a police or sheriff's department. The assault weapon shall be transported in accordance with Section 12026.1.

SEC. 63. Section 13519.4 of the Penal Code is amended to read:

13519.4. (a) On or before August 1, 1993, the commission shall develop and disseminate guidelines and training for all law enforcement officers in California as described in subdivision (a) of Section 13510 and who adhere to the standards approved by the commission, on the racial and cultural differences among the residents of this state. The course or courses of instruction and the guidelines shall stress understanding and respect for racial and cultural differences, and development of effective, noncombative methods of carrying out law enforcement duties in a racially and culturally diverse environment.

(b) The course of basic training for law enforcement officers shall, no later than August 1, 1993, include adequate instruction on racial and cultural diversity in order to foster mutual respect and cooperation between law enforcement and members of all racial and cultural

groups. In developing the training, the commission shall consult with appropriate groups and individuals having an interest and expertise in the field of cultural awareness and diversity.

(c) For the purposes of this section, "culturally diverse" and "cultural diversity" include, but are not limited to, gender and sexual orientation issues. The Legislature finds and declares as follows:

(1) Racial profiling is a practice that presents a great danger to the fundamental principles of a democratic society. It is abhorrent and cannot be tolerated.

(2) Motorists who have been stopped by the police for no reason other than the color of their skin or their apparent nationality or ethnicity are the victims of discriminatory practices.

(3) It is the intent of the Legislature in enacting the changes to Section 13519.4 of the Penal Code made by the act that added this subdivision that more than additional training is required to address the pernicious practice of racial profiling and that enactment of this bill is in no way dispositive of the issue of how the state should deal with racial profiling.

(4) The working men and women in California law enforcement risk their lives every day. The people of California greatly appreciate the hard work and dedication of law enforcement officers in protecting public safety. The good name of these officers should not be tarnished by the actions of those few who commit discriminatory practices.

(d) "Racial profiling," for purposes of this section, is the practice of detaining a suspect based on a broad set of criteria which casts suspicion on an entire class of people without any individualized suspicion of the particular person being stopped.

(e) A law enforcement officer shall not engage in racial profiling.

(f) Every law enforcement officer in this state shall participate in expanded training as prescribed and certified by the Commission on Peace Officers Standards and Training. Training shall begin being offered no later than January 1, 2002. The curriculum shall be created by the commission in collaboration with a five-person panel, appointed no later than March 1, 2001, as follows: the Governor shall appoint three members and one member each shall be appointed by the Senate Committee on Rules and the Speaker of the Assembly. Each appointee shall be appointed from among prominent members of the following organizations:

(1) State Conference of the NAACP.

(2) Brotherhood Crusade.

(3) Mexican American Legal Defense and Education Fund.

(4) The League of United Latin American Citizens.

(5) American Civil Liberties Union.

(6) Anti-Defamation League.

(7) California NOW.

(8) Asian Pacific Bar of California.

(9) The Urban League.

(g) Members of the panel shall not be compensated, except for reasonable per diem expenses related to their work for panel purposes.

(h) The curriculum shall utilize the Tools for Tolerance for Law Enforcement Professionals framework and shall include and examine the patterns, practices, and protocols that make up racial profiling. This training shall prescribe patterns, practices, and protocols that prevent racial profiling. In developing the training, the commission shall consult with appropriate groups and individuals having an interest and expertise in the field of racial profiling. The course of instruction shall include, but not be limited to, adequate consideration of each of the following subjects:

(1) Identification of key indices and perspectives that make up cultural differences among residents in a local community.

(2) Negative impact of biases, prejudices, and stereotyping on effective law enforcement, including examination of how historical perceptions of discriminatory enforcement practices have harmed police-community relations.

(3) The history and the role of the civil rights movement and struggles and their impact on law enforcement.

(4) Specific obligations of officers in preventing, reporting, and responding to discriminatory or biased practices by fellow officers.

(5) Perspectives of diverse, local constituency groups and experts on particular cultural and police-community relations issues in a local area.

(i) Once the initial basic training is completed, each law enforcement officer in California as described in subdivision (a) of Section 13510 who adheres to the standards approved by the commission shall be required to complete a refresher course every five years thereafter, or on a more frequent basis if deemed necessary, in order to keep current with changing racial and cultural trends.

(j) The Legislative Analyst shall conduct a study of the data being voluntarily collected by those jurisdictions that have instituted a program of data collection with regard to racial profiling, including, but not limited to, the California Highway Patrol, the City of San Jose, and the City of San Diego, both to ascertain the incidence of racial profiling and whether data collection serves to address and prevent such practices, as well as to assess the value and efficacy of the training herein prescribed with respect to preventing local profiling. The Legislative Analyst may prescribe the manner in which the data is to be submitted and may request that police agencies collecting such data submit it in the requested manner. The Legislative Analyst shall provide to the Legislature a report and recommendations with regard to racial profiling by July 1, 2002.

SEC. 64. The heading of Title 10.5 (commencing with Section 14150) of Part 4 of the Penal Code is amended and renumbered to read:

TITLE 10.6. COMMUNITY CONFLICT RESOLUTION PROGRAMS

SEC. 65. Section 19705 of the Revenue and Taxation Code is amended to read:

19705. (a) Any person who does any of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned * * * <u>in the state prison</u>, or both, together with the costs of investigation and prosecution:

(1) Willfully makes and subscribes any return, statement, or other document, that contains or is verified by a written declaration that it is made under penalty of perjury, and he or she does not believe to be true and correct as to every material matter.

(2) Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the Personal Income Tax Law or the Bank and Corporation Tax Law, of a return, affidavit, claim, or other document, that is fraudulent or is false as to any material matter, whether or not that falsity or fraud is with the knowledge or consent of the person authorized or required to present that return, affidavit, claim, or document.

(3) Simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the Personal Income Tax Law or the Bank and Corporation Tax Law, or by any regulation pursuant to that law, or procures the same to be falsely or fraudulently executed or advises, aids in, or connives at that execution.

(4) Removes, deposits, or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property upon which levy is authorized by Chapter 5 (commencing with Section 19201); or Chapter 8 (commencing with Section 688.010) of Division 1 of, and Chapter 5 (commencing with Section 706.010) of Division 2 of, Title 9 of the Code of Civil Procedure, with intent to evade or defeat the assessment or collection of any tax, additions to tax, penalty, or interest imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

(5) In connection with any settlement under Section 19442, or offer of that settlement, or in connection with any closing agreement under Section 19441 or offer to enter into that agreement, or compromise under Section 19443, or offer of that compromise, willfully does any of the following:

with an additional 30-day certification, the professional person in charge of the facility shall cause an evaluation to be made, based on the patient's current condition and past history, as to whether it appears that the person, even after up to 30 days of additional treatment, is likely to qualify for appointment of a conservator. If the appointment of a conservator appears likely, the conservatorship referral shall be made during the 14-day period of intensive treatment.

(b) If it appears that with up to 30 days additional treatment a person is likely to reconstitute sufficiently to obviate the need for appointment of a conservator, then the person may be certified for the additional 30 days.

(c) Where no conservatorship referral has been made during the 14-day period and where during the 30-day certification it appears that the person is likely to require the appointment of a conservator, then the conservatorship referral shall be made to allow sufficient time for conservatorship investigation and other related procedures. If a temporary conservatorship is obtained, it shall run concurrently with and not consecutively to the 30-day certification period. The conservatorship hearing shall be held by the 30th day of the certification period. The maximum involuntary detention period for gravely disabled persons pursuant to Sections 5150, 5250 and 5270.15 shall be limited to 47 days. Nothing in this section shall prevent a person from exercising his or her right to a hearing as stated in Sections 5275 and 5353.

SEC. 78. Section 49.5 of this bill incorporates amendments to Section 3000 of the Penal Code proposed by both this bill and AB 1004. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 3000 of the Penal Code, and (3) this bill is enacted after AB 1004, in which case Section 49 of this bill shall not become operative.

SEC. 79. Section 65.5 of this bill incorporates amendments to Section 19705 of the Revenue and Taxation Code proposed by both this bill and SB 1185. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, and (2) each bill amends Section 19705 of the Revenue and Taxation Code, in which case Section 65 of this bill shall not become operative.

CRIMES AND OFFENSES—CHILDREN AND MINORS—UNATTENDED IN VEHICLES

CHAPTER 855

S.B. No. 255

AN ACT to add Division 6.7 (commencing with Section 15600) to the Vehicle Code, relating to vehicles.

[Filed with Secretary of State October 13, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

SB 255, Speier. Crimes: unattended children in vehicles.

(1) Existing law makes it a crime for any person, under circumstances or conditions likely to produce great bodily harm or death, to willfully cause or permit any child to suffer, or inflict thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully cause or permit the person or health of that child to be injured, or willfully cause or permit that child to be placed in a situation where his or her person or health is endangered. This crime is required to be punished by imprisonment in a county jail not exceeding one year, or in the state prison for 2, 4, or 6 years.

This bill would additionally make it an infraction, punishable by a fine of $100, for the parent, legal guardian, or other person responsible for a child who is 6 years of age or younger to leave that child inside a motor vehicle, without being subject to the supervision of a person who is 12 years of age or older, and where there are conditions that present a significant risk to the child's health or safety, or when the vehicle's engine is running or the

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

PEACE OFFICERS—TRAINING—RACIAL PROFILING

CHAPTER 684

S.B. No. 1102

AN ACT to amend Section 13591.4 of the Penal Code, relating to peace officer training.

[Filed with Secretary of State September 26, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1102, Murray. Peace officers: racial profiling training.

Existing law generally prescribes peace officer training conducted by the Commission on Peace Officer Standards and Training.

This bill would prohibit law enforcement officers from engaging in racial profiling. It would require every law enforcement officer in the state to participate in racial profiling training, with the curriculum developed by the Commission on Peace Officer Standards and Training, in collaboration with a 5-person panel as specified. By imposing additional training duties on local law enforcement entities, this bill would impose a state-mandated local program.

This bill would require a report by the Legislative Analyst to the Legislature, not later than January 1, 2002, regarding data collection in connection with racial profiling, as specified.

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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

SECTION 1. Section 13519.4 of the Penal Code is amended to read:

13519.4. (a) On or before August 1, 1993, the commission shall develop and disseminate guidelines and training for all law enforcement officers in California as described in subdivision (a) of Section 13510 and who adhere to the standards approved by the commission, on the racial and cultural differences among the residents of this state. The course or courses of instruction and the guidelines shall stress understanding and respect for racial and cultural differences, and development of effective, noncombative methods of carrying out law enforcement duties in a racially and culturally diverse environment.

(b) The course of basic training for law enforcement officers shall, no later than August 1, 1993, include adequate instruction on racial and cultural diversity in order to foster mutual respect and cooperation between law enforcement and members of all racial and cultural groups. In developing the training, the commission shall consult with appropriate groups and individuals having an interest and expertise in the field of cultural awareness and diversity.

(c) For the purposes of this section, "culturally diverse" and "cultural diversity" include, but are not limited to, gender and sexual orientation issues. The Legislature finds and declares as follows:

(1) Racial profiling is a practice that presents a great danger to the fundamental principals of a democratic society. It is abhorrent and cannot be tolerated.

(2) Motorists who have been stopped by the police for no reason other than the color of their skin or their apparent nationality or ethnicity are the victims of discriminatory practices.

(3) It is the intent of the Legislature in enacting the changes to Section 13519.4 of the Penal Code made by the act that added this subdivision that more than additional training is required to address the pernicious practice of racial profiling and that enactment of this bill is in no way dispositive of the issue of how the state should deal with racial profiling.

(4) The working men and women in California law enforcement risk their lives every day. The people of California greatly appreciate the hard work and dedication of law enforcement officers in protecting public safety. The good name of these officers should not be tarnished by the actions of those few who commit discriminatory practices.

(d) "Racial profiling," for purposes of this section, is the practice of detaining a suspect based on a broad set of criteria which casts suspicion on an entire class of people without any individualized suspicion of the particular person being stopped.

(e) A law enforcement officer shall not engage in racial profiling.

(f) Every law enforcement officer in this state shall participate in expanded training as prescribed and certified by the Commission on Peace Officers Standards and Training. Training shall begin being offered no later than January 1, 2002. The curriculum shall be created by the commission in collaboration with a five-person panel, appointed no later than March 1, 2001, as follows: the Governor shall appoint three members and one member each shall be appointed by the Senate Committee on Rules and the Speaker of the Assembly. Each appointee shall be appointed from among prominent members of the following organizations:

(1) State Conference of the NAACP.

(2) Brotherhood Crusade.

(3) Mexican American Legal Defense and Education Fund.

(4) The League of United Latin American Citizens.

(5) American Civil Liberties Union.

(6) Anti-Defamation League.

(7) California NOW.

(8) Asian Pacific Bar of California.

(9) The Urban League.

(g) Members of the panel shall not be compensated, except for reasonable per diem expenses related to their work for panel purposes.

(h) The curriculum shall utilize the Tools for Tolerance for Law Enforcement Professionals framework and shall include and examine the patterns, practices, and protocols that make up racial profiling. This training shall prescribe patterns, practices, and protocols that prevent racial profiling. In developing the training, the commission shall consult with appropriate groups and individuals having an interest and expertise in the field of racial profiling. The course of instruction shall include, but not be limited to, adequate consideration of each of the following subjects:

(1) Identification of key indices and perspectives that make up cultural differences among residents in a local community.

(2) Negative impact of biases, prejudices, and stereotyping on effective law enforcement, including examination of how historical perceptions of discriminatory enforcement practices have harmed police-community relations.

(3) The history and the role of the civil rights movement and struggles and their impact on law enforcement.

(4) Specific obligations of officers in preventing, reporting, and responding to discriminatory or biased practices by fellow officers.

(5) Perspectives of diverse, local constituency groups and experts on particular cultural and police-community relations issues in a local area.

(i) Once the initial basic training is completed, each law enforcement officer in California as described in subdivision (a) of Section 13510 who adheres to the standards approved by the commission shall be required to complete a refresher course every five years thereafter, or on a more frequent basis if deemed necessary, in order to keep current with changing racial and cultural trends.

(j) The Legislative Analyst shall conduct a study of the data being voluntarily collected by those jurisdictions that have instituted a program of data collection with regard to racial profiling, including, but not limited to, the California Highway Patrol, the City of San Jose, and the City of San Diego, both to ascertain the incidence of racial profiling and whether data collection serves to address and prevent such practices, as well as to assess the value and efficacy of the training herein prescribed with respect to preventing local profiling. The Legislative Analyst may prescribe the manner in which the data is to be submitted and may request that police agencies collecting such data submit it in the requested manner. The Legislative Analyst shall provide to the Legislature a report and recommendations with regard to racial profiling by July 1, 2002.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

TAXATION—GROSS INCOME EXCLUSION—REPARATIONS

CHAPTER 685

A.B. No. 1728

AN ACT to add Section 17155.5 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Filed with Secretary of State September 27, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1728, Villaraigosa. Gross income exclusion: reparations.

The Personal Income Tax Law allows various exclusions in computing the income that is subject to the taxes imposed by that law, including an exclusion for any amount received as compensation by a taxpayer pursuant to the German Act Regulating Unresolved Property Claims and any amount received by a taxpayer who is a Holocaust victim or the heir or beneficiary of a Holocaust victim as a result of a settlement of claims for any recovered asset.

This bill would additionally exempt any amounts received from the German Foundation known as Remembrance, Responsibility, and the Future, or any other source of humanitarian reparations made as reparations to persons who were required to perform slave or forced labor during World War II.

This bill would take effect immediately as a tax levy.

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

SECTION 1. Section 17155.5 is added to the Revenue and Taxation Code, to read:

17155.5. Gross income does not include any amount received as reparation payments paid by the German Foundation known as Remembrance, Responsibility, and the Future, or any

changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 30. This act is an urgency statute 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 the necessity are:

In order to increase the redemption of beverage containers and ensure the continuation of recycling operations, thereby protecting public health and safety and the environment, it is necessary that this act take effect immediately.

CHAPTER 1267

An act to amend Sections 13500 and 13519.4 of the Penal Code, relating to law enforcement.

[Approved by Governor September 30, 1992. Filed with Secretary of State September 30, 1992.]

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

SECTION 1. Section 13500 of the Penal Code is amended to read:

13500. There is in the Department of Justice a Commission on Peace Officer Standards and Training, hereafter referred to in this chapter as the commission. The commission consists of 13 members appointed by the Governor, after consultation with, and with the advice of, the Attorney General and with the advice and consent of the Senate. Racial, gender, and ethnic diversity shall be considered for all appointments to the commission.

The commission shall be composed of the following members:

(1) Two members shall be (i) sheriffs or chiefs of police or peace officers nominated by their respective sheriffs or chiefs of police, (ii) peace officers who are deputy sheriffs or city policemen, or (iii) any combination thereof.

(2) Three members shall be sheriffs or chiefs of police or peace officers nominated by their respective sheriffs or chiefs of police.

(3) Three members shall be a peace officers of the rank of sergeant or below with a minimum of five years' experience as a deputy sheriff, city police officer, marshal, or state-employed peace officer for whom the commission sets standards. These members shall have demonstrated leadership in their local or state peace officer association or union.

(4) One member shall be an elected officer or chief administrative officer of a county in this state.

(5) One member shall be an elected officer or chief administrative officer of a city in this state.

(6) Two members shall be public members who shall not be peace officers.

(7) One member shall be an educator or trainer in the field of criminal justice.

The Attorney General shall be an ex officio member of the commission.

Of the members first appointed by the Governor, three shall be appointed for a term of one year, three for a term of two years, and three for a term of three years. Their successors shall serve for a term of three years and until appointment and qualification of their successors, each term to commence on the expiration date of the term of the predecessor.

The additional member provided for by the Legislature in its 1973–1974 Regular Session shall be appointed by the Governor on or before January 15, 1975, and shall serve for a term of three years.

The additional member provided for by the Legislature in its 1977–78 Regular Session shall be appointed by the Governor on or after July 1, 1978, and shall serve for a term of three years.

The additional members provided for by the Legislature in its 1991–92 Regular Session shall be appointed by the Governor on or before January 15, 1993, and shall serve for a term of three years.

SEC. 2. Section 13519.4 of the Penal Code is amended to read:

13519.4. (a) On or before August 1, 1993, the commission shall develop and disseminate guidelines and training for all law enforcement officers in California as described in subdivision (a) of Section 13510 and who adhere to the standards approved by the commission, on the racial and cultural differences among the residents of this state. The course or courses of instruction and the guidelines shall stress understanding and respect for racial and cultural differences, and development of effective, noncombative methods of carrying out law enforcement duties in a racially and culturally diverse environment.

(b) The course of basic training for law enforcement officers shall, no later than August 1, 1993, include adequate instruction on racial and cultural diversity in order to foster mutual respect and cooperation between law enforcement and members of all racial and cultural groups. In developing the training, the commission shall consult with appropriate groups and individuals having an interest and expertise in the field of cultural awareness and diversity.

(c) For the purposes of this section, "culturally diverse" and "cultural diversity" include, but are not limited to, gender and sexual orientation issues.

(d) A fee of fifty dollars ($50) shall be paid by the plaintiff to the Secretary of State for each public agency on which service is made in this manner.

CHAPTER 480

An act to add Section 13519.4 to the Penal Code, relating to peace officers.

[Approved by Governor August 7, 1990. Filed with Secretary of State August 8, 1990.]

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

SECTION 1. Section 13519.4 is added to the Penal Code, to read:

13519.4. Effective July 1, 1991, the commission shall develop and disseminate guidelines and training for all law enforcement officers in California as described in subdivision (a) of Section 13510 and who adhere to the standards approved by the commission, on the racial and cultural differences among the residents of this state. The course or courses of instruction and the guidelines shall stress understanding and respect for racial and cultural differences, and development of effective, noncombative methods of carrying out law enforcement duties in a racially and culturally diverse environment.

CHAPTER 481

An act to amend Section 10751 of the Vehicle Code, relating to vehicles.

[Approved by Governor August 7, 1990. Filed with Secretary of State August 8, 1990.]

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

SECTION 1. Section 10751 of the Vehicle Code is amended to read:

10751. (a) No person shall knowingly buy, sell, offer for sale, receive, or have in his possession, any vehicle, or component part thereof, from which the manufacturer's serial or identification number has been removed, defaced, altered, or destroyed, unless the vehicle or component part has attached thereto an identification number assigned or approved by the department in lieu of the manufacturer's number.

(b) Whenever a vehicle or component part described in subdivision (a) comes into the custody of a peace officer, it shall be destroyed, sold, or otherwise disposed of under the conditions as

64020

EXHIBIT B

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

October 17, 2002

RECEIVED
OCT 18 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 September 18, 2002, the Department of Finance has reviewed the test claim submitted by the Santa Monica Community College District (claimant) asking the Commission to determine whether specified costs incurred under Chapter No. 854, Statutes of 2001, Chapter 684, Statutes of 2000, Chapter 1267, Statutes of 1992, and Chapter 480, Statutes of 1990, are reimbursable state mandated costs (Claim No. CSM-02-TC-05 "Racial Profiling: Law Enforcement Training"). Commencing with page 11 of the test claim, the claimant has identified the following new duties, which it asserts are reimbursable state mandates:

1. The development and implementation of policies and procedures to ensure that law enforcement officers employed by the claimant participate in the required training provided by the Commission on Peace Officer Standards and Training (POST).

2. The development and implementation of tracking procedures to ensure that all law enforcement officers employed by the claimant participate in and successfully complete the required course on racial profiling.

3. The payment of any costs related to travel, subsistence, meals, training, and substitute salaries of law enforcement officers attending the required training course on racial profiling, that are not reimbursed by POST.

4. The development and implementation of tracking procedures to ensure that all law enforcement officers employed by the claimant participate in and successfully complete the required refresher course on racial profiling once every five years.

5. The payment of any costs related to travel, subsistence, meals, training, and substitute salaries of law enforcement officers attending the required refresher course on racial profiling once every five years, which are not reimbursed by POST.

As the result of our review, we have concluded that these statutes do not result in a reimbursable state-mandated local program for the following reasons:

- Chapter 684, Statutes of 2000, requires all law enforcement officers to participate in racial profiling training, however it does not require local government agencies to provide this training to employees who are law enforcement officers. Therefore, the duties imposed by this legislation are duties of the individual officers, not the agency employing the officer. We note that in the past the Commission has found that other legislation requiring peace officers

to receive certain types of training did not result in new duties on local agencies and did not result in a reimbursable state-mandated local program. Specifically, in the Statement of Decision for CSM-97-TC-06, *Law Enforcement Racial and Cultural Diversity Training*, the Commission stated that, "the test claim statute does not impose any activities or duties upon local law enforcement agencies, rather the requirement to complete the basic training course on racial and cultural diversity is a mandate imposed only on the individual who seeks peace officer status (p. 5-6)." Similar findings were made in two other test claims related to training requirements for peace officers, *Domestic Violence Training*, CSM-4376 and *Domestic Violence Training and Incident Reporting*, CSM-96-362-01.

- The test claim legislation does not require local agencies to develop and implement policies and procedures to ensure that law enforcement officers employed by the agency participate in the required training or to track whether or not these individuals participate in and successfully complete the training. Therefore, these activities would be conducted at the option of the local agency and would not result in a reimbursable state-mandated local program.

- The test claim legislation does not require local agencies to pay any costs related to travel, subsistence, meals, training, and substitute salaries of law enforcement officers attending the required training course on racial profiling that are not reimbursed by POST. Since the training requirement in the legislation is on the individual officer and not the local agency, the local agency would not be liable for these costs. In addition, we note that POST has determined that officers attending the courses on racial profiling required by the test claim legislation are eligible for reimbursement of travel, subsistence, and meals. Officers and departments are not charged for the cost of the training course itself, these costs are incurred directly by POST, a State agency. In addition, POST has made efforts to ensure that the course is available at a number of locations throughout the State to minimize travel costs and officer time away from their regular duties. Therefore, any costs related to reimbursement for travel, subsistence, and meals should be minimal. To the extent that a peace officer takes time off from their regular duties to attend training, the local agency would incur costs to replace that officer during the time he or she is in training. However, we do not view these costs as any different than those that would be incurred if the officer were on vacation or sick leave.

- To the extent a local agency has a policy or agreement with an employees association to provide additional leave to employees with peace officer status to attend training or to pay for training-related costs incurred by the peace officer, any costs incurred as a result of such a policy or agreement is at the option of the local agency. Therefore, regardless of whether an individual officer is required to attend specified training to maintain his or her peace officer status, costs incurred by the local agency would not constitute a reimbursable state-mandated program.

We note that on the Test Claim Form, the claimant identifies Chapter 1267, Statutes of 1992 and Chapter 480, Statutes of 1990 as legislation that are alleged the contain a mandate. Although these chapters are relevant to providing the legislative history of this issue, they do not appear to be specifically related to the new duties identified in this claim. In addition, the Commission denied a previous claim based on Chapter 1267, Statutes of 1992, CSM-97-TC-06, *Law Enforcement Racial and Cultural Diversity Training*. Therefore, it does not seem appropriate to include references to these chapters as a part of this claim.

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 September 18, 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 Marcia Caballin, Principal Program Budget Analyst at (916) 445-8913 or Keith Gmeinder, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

Nona Martinez for

S. Calvin Smith
Program Budget Manager

Attachments

Attachment A

DECLARATION OF MARCIA CABALLIN
DEPARTMENT OF FINANCE
CLAIM NO. CSM-02-TC-05

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. 854, Statutes of 2001, and Chapter No. 684, Statutes of 2000 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.

October 17, 2002
at Sacramento, CA

Marcia Caballin
Marcia Caballin

PROOF OF SERVICE

Test Claim Name: Racial Profiling: Law Enforcement Training
Test Claim Number: CSM-02-TC-05

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, Floor, Sacramento, CA 95814.

On October 17, 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, 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 Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

Ms. Harmeet Barkschat
Mandate Resource Services
5325 Elkhorn Blvd. #307
Sacramento, CA 95842

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

Executive Director
California Peace Officers' Association
1455 Response Road, Suite 190
Sacramento, CA 95815

B-8
State Controller's Office
Division of Accounting & Reporting
Attention: Michael Havey
3301 C Street, Room 500
Sacramento, CA 95816

Santa Monica Community College District
1900 Pico Avenue
Santa Monica, CA 90405-1628

Dr. Carol Berg
Education Mandated Cost Network
1121 L Street, Suite 1060
Sacramento, CA 95814

Mr. Mark Cousineau
County of San Bernardino
Office of the Auditor/Controller-Recorder
222 West Hospitality Lane
San Bernardino, CA 92415-0018

Ms. Beth Hunter, Director
Cetration, Inc.
8316 Red Oak Street, Suite 101
Rancho Cucamonga, CA 91730

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

Ms. Cheryl Miller
Santa Monica Community College District
1900 Pico Blvd.
Santa Monica, CA 90405-1628

Mr. Arthur Pallkowitz
San Diego Unified School District
4100 Normal Street Room 3159
San Diego, CA 92103-8363

Ms. Sandy Reynolds
Reynolds Consulting Group, Inc.
P.O. Box 987
Sun City, CA 92586

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816

Ms. Pam Stone
MAXIMUS
4320 Auburn Blvd. Suite 2000
Sacramento, CA 95841

Mr. Patrick Lenz, Executive Vice Chancellor
California Community Colleges
1102 Q Street, Suite 300
Sacramento, CA 95814-6549

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

Mr. Keith Peterson
SixTen & Associates
5252 Balboa Ave., Suite 807
San Diego, CA 92117

Ms. Gerry Shelton
Department of Education
School Fiscal Services
560 J Street, Suite 150
Sacramento, CA 95814

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

Mr. David Wellhouse
David Wellhouse & Associates, Inc.
9175 Keifer 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 October 17, 2002, at Sacramento, California.

Paula Pimentel

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

August 31, 2006

Mr. Keith B. Petersen
SixTen & Associates
5252 Balboa Avenue, Suite 900
San Diego, CA 92117

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

RE: Draft Staff Analysis and Hearing Date
Racial Profiling: Law Enforcement Training (K-14) (02-TC-05)
Santa Monica Community College District, Claimant
Penal Code Section 13519.4
Statutes 1990, Chapter 480 (SB 2680); Statutes 1992, Chapter 1267 (AB 401);
Statutes 2000, Chapter 684 (SB 1102); and Statutes 2001, Chapter 854 (SB 205)

Dear Mr. Petersen:

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 Thursday, **September 21, 2006**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. (Cal. Code Regs., tit. 2, § 1181.2.) If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

Hearing
This test claim is set for hearing on **Thursday, October 26, 2006** at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. The final staff analysis will be issued on or about October 12, 2006. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

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

Sincerely,

PAULA HIGASHI
Executive Director

Enc. Draft Staff Analysis

150

MAILED: FAXED:
DATE: 8/31/06 INITIAL: LD
CHRON: FILE:
WORKING BINDER:

ITEM ___

TEST CLAIM
DRAFT STAFF ANALYSIS

Penal Code Section 13519.4

Statutes 1990, Chapter 480
Statutes 1992, Chapter 1267
Statutes 2000, Chapter 684
Statute 2001, Chapter 854

Racial Profiling: Law Enforcement Training (K-14)
(02-TC-05)

Santa Monica Community College District, Claimant

EXECUTIVE SUMMARY

STAFF WILL INSERT THE EXECUTIVE SUMMARY IN THE FINAL ANALYSIS.

STAFF ANALYSIS

Claimant

Santa Monica Community College District

Chronology

09/13/02	Santa Monica Community College District filed test claim with the Commission
10/18/02	The Department of Finance submitted comments on test claim with the Commission
08/31/06	Commission staff issued draft staff analysis

Background

This test claim addresses legislation that prohibits law enforcement officers from engaging in racial profiling, as defined,[1] and establishes racial profiling training requirements for law enforcement officers, with the curriculum developed by the Commission on Peace Officer Standards and Training ("POST").

POST was established by the Legislature in 1959 to set minimum selection and training standards for California law enforcement.[2] The POST program is funded primarily by persons who violate the laws that peace officers are trained to enforce.[3] Participating agencies agree to abide by the standards established by POST and may apply to POST for state aid.[4]

In enacting the test claim legislation (Stats. 2000, ch. 684), the Legislature found that racial profiling is a practice that presents a great danger to the fundamental principles of a democratic society, is abhorrent and cannot be tolerated.[5] The Legislature further found that motorists who have been stopped by the police for no reason other than the color of their skin or their apparent nationality or ethnicity are the victims of discriminatory practices.[6]

The test claim legislation requires every law enforcement officer in the state to participate in expanded training regarding racial profiling, beginning no later than January 1, 2002.[7] The

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[1] Racial profiling is defined as "the practice of detaining a suspect based on a broad set of criteria which casts suspicion on an entire class of people without any individualized suspicion of the particular person being stopped." (Pen. Code § 13519.4, subd. (d), as enacted in Stats. 2000, ch. 684.)

[2] Penal Code section 13500 et seq.

[3] *About California POST*, <http://www.POST.ca.gov>

[4] Penal Code sections 13522 and 13523.

[5] Penal Code section 13519.4, subdivision (c)(1) (as enacted in Stats. 2000, ch. 684).

[6] Penal Code section 13519.4, subdivision (c)(2).

[7] Penal Code section 13519.4, subdivision (f); Statutes 2004, chapter 700 (SB 1234) renumbered subdivision *(f)* to subdivision *(g)*. Commission staff makes no findings regarding

training shall be prescribed and certified by POST, in collaboration with a five-person panel appointed by the Governor, Senate Rules Committee and Speaker of the Assembly.[8]

Once the initial training on racial profiling is completed, each law enforcement officer in California, as described in subdivision (a) of Penal Code section 13510 who adheres to the standards approved by POST, is required to complete a two-hour refresher course every five years thereafter, or on a more frequent basis if deemed necessary.[9]

POST developed a five-hour approved curriculum to meet the initial training required by Penal Code section 13519.4, subdivision (f). The curriculum was designed to be presented in-house by a trained instructor within the law enforcement agency, who must complete a Racial Profiling Train-the-Trainer Course prior to facilitating the training. That course is given on an ongoing basis by the Museum of Tolerance in Los Angeles at no cost to the law enforcement agency, and the newly-trained instructor is provided with all necessary course material to train his or her own officers.[10] POST also developed a two-hour racial profiling refresher course curriculum, pursuant to subdivision (i).[11]

The five-hour initial racial profiling training was incorporated into the Regular Basic Course[12] for peace officer applicants after January 1, 2004,[13] and POST suggested that incumbent peace

---

any substantive changes which may have been made in the 2004 legislation since it was not pled in the test claim. Accordingly, staff will continue to refer to this provision as "subdivision (f)" as originally set forth in the test claim statute.

[8] Penal Code section 13519.4, subdivision (f).

[9] Penal Code section 13519.4, subdivision (i).

[10] Letter from POST, August 10, 2005:

> It is believed that in-house instructors provide validity to the training and can relate the material directly to agency policies.
>
> The curriculum was designed as a "course-in-a-box" and includes an instructor guide, facilitated discussion questions, class exercises, and a companion training video. ... The course was designed to ensure training consistency throughout the State.
>
> Due to the complexity and sensitivity of the topic, POST regulation requires that each instructor complete the 24-hour Racial Profiling Train-the-Trainer Course prior to facilitation the training. The Training for Trainers course is presented on an on-going basis by the Museum of Tolerance in Los Angeles. The course is presented under contract and is of no cost to the [local law enforcement] agency. At the completion of the training, the instructor is provided with all necessary course material to train their own officers.

[11] Letter from POST, August 10, 2005.

[12] Penal Code section 832.3 requires peace officers to complete a course of training prescribed by POST before exercising the powers of a peace officer.

[13] California Code of Regulations, title 11, section 1081, subdivision (a)(33).

officers complete the five-hour training by July 2004.[14] POST can certify a course retroactively,[15] thus it is possible for racial profiling courses that were developed and presented prior to the time POST developed its curriculum to be certified as meeting the requirements of Penal Code section 13519.4. Additionally, both the five-hour racial profiling course and the two-hour refresher course can be certified by POST to allow agencies and officers to apply the training hours toward their 24-hour Continuing Professional Training requirement.[16, 17]

Prior Test Claim Decisions

In the past, the Commission has decided six other test claims addressing POST training for peace officers, and one other case regarding school peace officers, that are relevant for this analysis.

1. Domestic Violence Training

In 1991, the Commission denied a test claim filed by the City of Pasadena requiring new and veteran peace officers to complete a course regarding the handling of domestic violence complaints as part of their basic training and continuing education courses (*Domestic Violence Training*, CSM-4376). The Commission reached the following conclusions:

- the test claim legislation does not require local agencies to implement a domestic violence training program and to pay the cost of such training;
- the test claim legislation does not increase the minimum number of basic training hours, nor the minimum number of advanced officer training hours and, thus, no additional costs are incurred by local agencies; and
- the test claim legislation does not require local agencies to provide domestic violence training.

2. Domestic Violence and Incident Reporting

In January 1998, the Commission denied a test claim filed by the County of Los Angeles requiring veteran law enforcement officers below the rank of supervisor to complete an updated course of instruction on domestic violence every two years (*Domestic Violence Training and Incident Reporting*, CSM-96-362-01). Although the Commission recognized that the test claim legislation imposed a new program or higher level of service, the Commission found that local agencies incurred *no* increased "costs mandated by the state" in carrying out the two-hour course for the following reasons:

- *immediately before and after* the effective date of the test claim legislation, POST's minimum required number of continuing education hours for the law enforcement officers in question *remained the same at 24 hours*; after the operative date of the

[14] POST Legislative Training Mandates, updated August, 2004.

[15] California Code of Regulations, title 11, section 1052, subdivision (d).

[16] Letter from POST, dated August 10, 2005.

[17] Title 11, section 1005(d)(1) requires peace officers to complete 24 hours of POST-qualifying training every two years.

test claim statute these officers must still complete at least 24 hours of professional training every two years;

- the two hour domestic violence training update may be credited toward satisfying the officer's 24-hour minimum;
- the two hour training is *not* separate and apart nor "on top of" the 24-hour minimum;
- POST does not mandate creation and maintenance of a separate schedule and tracking system for this two hour course;
- POST prepared and provides local agencies with the course materials and video tape to satisfy the training in question; and
- of the 24-hour minimum, the two hour domestic violence training update is the only course that is legislatively mandated to be continuously completed every two years by the officers in question. The officers may satisfy their remaining 22-hour requirement by choosing from *the many elective courses* certified by POST.

That test claim was subsequently litigated and decided in the Second District Court of Appeal (*County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176 [*County of Los Angeles II*]), where the Commission's decision was upheld and reimbursement was ultimately denied.

3. Sexual Harassment Training in the Law Enforcement Workplace

In September 2000, the Commission approved in part and denied in part a test claim filed by the County of Los Angeles regarding sexual harassment training for peace officers (*Sexual Harassment Training in the Law Enforcement Workplace*, 97-TC-07). The test claim statute required POST to develop complaint guidelines to be followed by local law enforcement agencies for peace officers who are victims of sexual harassment in the workplace. The statute also required the course of basic training for law enforcement officers to include instruction on sexual harassment in the workplace, and veteran peace officers that had already completed basic training were required to receive supplementary training on sexual harassment in the workplace. The Commission reached the following conclusions:

- the sexual harassment complaint guidelines developed by POST constituted a reimbursable state mandated program;
- the modifications to the course of basic training did not constitute a reimbursable state mandated program since it did not impose any mandated duties on the local agency; and
- the supplemental training that required veteran peace officers to receive a one-time, two-hour course on sexual harassment in the workplace constituted a reimbursable state mandated program when the training occurred during the employee's regular working hours, or when the training occurred outside the employee's regular working hours and was an obligation imposed by a Memorandum of Understanding

existing on the effective date of the statute which required the local agency to provide or pay for continuing education training.[18]

4. Law Enforcement Racial and Cultural Diversity Training

In October 2000, the Commission denied a test claim filed by the County of Los Angeles regarding racial and cultural diversity training for law enforcement officers (*Law Enforcement Racial and Cultural Diversity Training*, 97-TC-06). The test claim statute required that, no later than August 1, 1993, the basic training course for law enforcement officers include adequate instruction, as developed by POST, on racial and cultural diversity. The Commission found that the test claim statute did not impose any mandated duties or activities on local agencies since the requirement to complete the basic training course on racial and cultural diversity is a mandate imposed only on the individual who seeks peace officer status.

5. Elder Abuse Training

In January 2001, the Commission approved in part and denied in part a test claim filed by the City of Newport Beach regarding elder abuse training for city police officers and deputy sheriffs (*Elder Abuse Training*, 98-TC-12). The test claim statute required city police officers or deputy sheriffs at a supervisory level and below who are assigned field or investigative duties to complete an elder abuse training course, as developed by POST, by January 1, 1999, or within 18 months of being assigned to field duties. The Commission reached the following conclusions:

- The elder abuse training *did constitute* a reimbursable state-mandated program when the training occurred during the employee's regular working hours, or when the training occurred outside the employee's regular working hours and was an obligation imposed by a Memorandum of Understanding existing on the effective date of the statute which requires the local agency to provide or pay for continuing education training.[19]
- The elder abuse training *did not constitute* a reimbursable state-mandated program when applied to city police officers or deputy sheriffs hired after the effective date of the test claim statute, since such officers could apply the two-hour elder abuse training course towards their 24-hour continuing education requirement.

---

[18] Reimbursable "costs mandated by the state" for this test claim included: 1) salaries, benefits, and incidental expenses for each veteran officer to receive a one-time, two-hour course on sexual harassment in the workplace; and 2) costs to present the one-time, two-hour course in the form of materials and trainer time.

[19] Reimbursable "costs mandated by the state" for this test claim included: 1) costs to present the one-time, two-hour course in the form of trainer time and necessary materials provided to trainees; and 2) salaries, benefits and incidental expenses for each city police officer or deputy sheriff to receive the one-time, two-hour course on elder abuse in those instances where the police officer or deputy sheriff already completed their 24 hours of continuing education at the time the training requirement was imposed on the particular officer, and when a new two-year training cycle did not commence until after the deadline for that officer or deputy to complete elder abuse training.

6. Mandatory On-The-Job Training For Peace Officers Working Alone

In July 2004, the Commission denied a consolidated test claim, filed by the County of Los Angeles and Santa Monica Community College District, regarding POST Bulletin 98-1 and POST Administrative Manual Procedure D-13, in which POST imposed field training requirements for peace officers that work alone and are assigned to general law enforcement patrol duties (*Mandatory On-The-Job Training For Peace Officers Working Alone*, 00-TC-19/ 02-TC-06). The Commission found that these executive orders do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the following reasons:

- state law does not require school districts and community college districts to employ peace officers and, thus, POST's field training requirements do not impose a state mandate on school districts and community college districts; and
- state law does not require local agencies and school districts to participate in the POST program and, thus, the field training requirements imposed by POST on their members are not mandated by the state.

7. Peace Officer Procedural Bill of Rights

In April 2006, the Commission reconsidered a 1999 statement of decision in the *Peace Officer Procedural Bill of Rights* ("POBOR") test claim, to clarify whether the subject legislation imposed a mandate consistent with the California Supreme Court Decision in *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions, as required by Statutes 2005, chapter 72. The Commission determined that the POBOR legislation did impose a reimbursable state-mandated program on school districts[20] for the following reasons:

- the Supreme Court in *San Diego Unified School Dist.* provided an example of circumstances in which a discretionary decision might, in a practical sense, constitute compulsion, i.e., that in light of a school district's constitutional obligation to provide a safe educational environment, incurring due process costs as result of the district's discretionary decision to expel a student for damaging or stealing property, receiving stolen property, engaging in sexual harassment or hate violence, or committing other specified acts of misconduct that warrant such expulsion, may in a practical sense constitute compulsion;
- the Legislature declared that: 1) the rights and protections provided to peace officers under the test claim legislation is a matter of statewide concern; 2) effective law enforcement depends upon the maintenance of stable employer-employee relations; and 3) in order to assure that stable relations are continued throughout the state and to assure that effective services are provided to all people of the state, it was necessary to apply the legislation to all public safety officers;
- the Supreme Court in *Baggett v. Gates* (1982) 32 Cal.3d 128 held that the subject peace officers provided an "essential service" to the public and that the consequences

[20] *Peace Officer Procedural Bill of Rights* (05-RL-4499-01), Statement of Decision, April 26, 2006.

of a breakdown in employment relations between peace officers and their employers — a situation the POBOR legislation was intended to prevent — would create a clear and present threat to the health, safety, and welfare of the citizens of the state; and

- the Supreme Court in *In re Randy G.* (2001) 26 Cal.4th 556 held that, pursuant to article I, section 28, subdivision (c), of the California Constitution, school districts have an obligation to provide safe schools, and California fulfills that obligation by permitting local school districts to establish a police or security department to enforce rules governing student conduct and discipline.

Claimant's Position

The claimant states that the test claim legislation constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, for school districts, county offices of education, and community college districts (hereafter, collectively, "K-14 school districts").

Claimant asserts that costs for the following activities will be incurred and are reimbursable:

- Development of policies and procedures, and periodic updates of policies and procedures, to insure that each law enforcement officer employed by the district shall participate in the expanded training to prevent racial profiling, pursuant to Penal Code section 13519.4.
- Development and implementation of tracking procedures, commencing January 1, 2002, to assure that every law enforcement officer employed by the district shall participate and successfully complete the expanded course of training on racial and cultural differences and the negative impacts of racial profiling, pursuant to Penal Code section 13519.4, subdivision (f).
- Unreimbursed costs for travel, subsistence, meals, training and substitute salaries of law enforcement officers attending expanded training for preventing racial profiling, pursuant to Penal Code section 13519.4, subdivision (f).
- Development and implementation of tracking procedures to assure that every law enforcement officer employed by the district shall participate and successfully complete a refresher course to keep current with changing racial and cultural trends every five years, or possibly on a more frequent basis if deemed necessary, pursuant to Penal Code section 13519.4, subdivision (i).
- Unreimbursed costs for travel, subsistence, meals, training and substitute salaries of law enforcement officers attending refresher courses for preventing racial profiling, pursuant to Penal Code section 13519.4, subdivision (i).

Position of Department of Finance

The Department of Finance stated in its comments that the test claim legislation does not result in a reimbursable state-mandated program for the following reasons:

- The test claim legislation does not impose an obligation on any *law enforcement agency* to provide training — rather the statute imposes the requirement on the *law enforcement officer* — and three previous test claims are cited in which the Commission has found this to be the case.

- The legislation does not require local agencies to develop and implement policies and procedures to ensure that law enforcement officers employed by the agency participate in the required training or to track whether or not these individuals participate in and successfully complete the training. Therefore, these activities would be conducted at the option of the local agency and would not result in a reimbursable state-mandated local program.
- The legislation does not require local agencies to pay any costs related to travel, subsistence, meals, training, and substitute salaries of law enforcement officers attending the required training course on racial profiling that are not reimbursed by POST. Since the training requirement is on the individual officer and not the local agency, the local agency would not be liable for these costs. In addition, POST has determined that officers attending the courses on racial profiling are eligible for reimbursement of travel, subsistence, and meals. Officers and departments are not charged for the cost of the training course itself, rather these costs are incurred directly by POST, a state agency. POST has made efforts to ensure that the course is available at a number of locations throughout the state to minimize travel costs and officer time away from regular duties. Therefore, any costs related to reimbursement for travel, subsistence, and meals should be minimal. To the extent that a peace officer takes time off from regular duties to attend training, the local agency would incur costs to replace that officer during the time he or she is in training. However, the Department does not view these costs as any different from those that would be incurred if the officer were on vacation or sick leave.
- To the extent a local agency has a policy or agreement with an employee association to provide additional leave to the employees with peace officer status to attend training or to pay for training-related costs incurred by the peace officer, any costs incurred as a result of such policy or agreement is at the option of the local agency. Therefore, regardless of whether an individual officer is required to attend specified training to maintain his or her peace officer status, costs incurred by the local agency would not constitute a reimbursable state-mandated program.

The Department further noted that the test claim identifies Statutes 1992, chapter 1267, and Statutes 1990, chapter 480, as legislation that are alleged to contain a mandate. The chapters are relevant to providing legislative history of the issue, but do not appear to be specifically related to the new duties identified in this claim. The Department cited a previous test claim denied by the Commission — *Law Enforcement Racial and Cultural Diversity Training – CSM 97-TC-06* — which was based on Statutes 1992, chapter 1267, and thus it does not seem appropriate to include references to these chapters as a part of this claim.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[21] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[22] "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."[23] 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.[24] In 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.[25]

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.[26] 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.[27] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[28]

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[21] 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."

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

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

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

[25] *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*).

[26] *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 (*Los Angeles I*); *Lucia Mar, supra,* 44 Cal.3d 830, 835).

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

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

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[29]

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.[30] 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."[31]

The analysis addresses the following issue:

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

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

The claimant pled in the test claim Penal Code section 13519.4, as added and amended by four statutes.[32] The 1990 statute enacted the first version of Penal Code section 13519.4, directing POST to develop and disseminate guidelines and training for law enforcement officers on the racial and cultural differences among the residents of California. It did not impose any activities on local law enforcement agencies. Commission staff also notes that the 1992 statute was pled and determined in a previous test claim, *Law Enforcement Racial and Cultural Diversity Training* (97-TC-06), which was denied by the Commission and was not appealed. Therefore, the Commission no longer has jurisdiction over that test claim and the 1992 statute. The 2001 statute made one spelling correction to subdivision (c) of Penal Code section 13519.4, and therefore is not relevant for this analysis. Accordingly, the analysis addresses only the provisions of the 2000 statute as that legislation affects Penal Code section 13519.4.

In order for the test claim legislation to impose a reimbursable state-mandated program under article XIII B, section 6, the statutory language must mandate an activity or task upon local governmental agencies. If the language does not mandate or require local agencies to perform a task, then article XIII B, section 6 is not triggered.

The test claim legislation, Statutes 2000, chapter 684, amended Penal Code section 13519.4 by adding subdivisions (c)(1) through (c)(4), and subdivisions (d) through (j). Each of these new provisions is summarized below.

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[29] *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.

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

[31] *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.

[32] 1) Statutes 1990, chapter 480; 2) Statutes 1992, chapter 1267; 3) Statutes 2000, chapter 684; and 4) Statutes 2001, chapter 854.

Subdivisions (c)(1) through (c)(4): These subdivisions state the Legislature's findings and declarations regarding racial profiling and do not mandate any activities.

Subdivision (d): This subdivision provides a definition for racial profiling and does not mandate any activities.

Subdivision (e): This subdivision states that law enforcement officers "shall not engage in racial profiling" and thus prohibits, rather than mandates, an activity.

Subdivision (f): This subdivision states that every law enforcement officer in the state shall participate in expanded racial profiling training that is prescribed and certified by POST, to begin no later than January 1, 2002; it further sets forth requirements for POST to collaborate with a five-person panel appointed by the Governor and the Legislature in developing the training. Thus, the provision does mandate an activity on local law enforcement officers. Whether this mandates an activity on K-14 school districts is analyzed below.

Subdivision (g): This subdivision states that members of the panel established pursuant to subdivision (f) shall not be compensated except for reasonable per diem related to their work for panel purposes, and does not mandate any activities on local government agencies.

Subdivision (h): This subdivision specifies that certain requirements be incorporated into the racial profiling curriculum, but does not mandate any activities on local government agencies.

Subdivision (i): This subdivision requires that once the initial racial profiling training is completed, each law enforcement officer as described in Penal Code section 13510, subdivision (a), who adheres to the standards approved by POST, complete a refresher course every five years thereafter or on a more frequent basis if deemed necessary. Thus, the provision does mandate an activity on specified law enforcement officers. Whether this mandates an activity on K-14 school districts is analyzed below.

Subdivision (j): This provision requires the Legislative Analyst to conduct a study of data being voluntarily collected on racial profiling and provide a report to the Legislature. It does not mandate any activities on local agencies.

A. Does Penal Code section 13519.4 mandate any activities on school districts?

Penal Code section 13519.4, subdivision (f), states in pertinent part:

> Every law enforcement officer in this state shall participate in expanded [racial profiling] training as prescribed and certified by the Commission on Peace Officers Standards and Training. Training shall begin being offered no later than January 1, 2002.

Subdivision (i) states in pertinent part:

> Once the initial basic [racial profiling] training is completed, each law enforcement officer in California as described in subdivision (a) of Section 13510 who adheres to the standards approved by the commission shall be required to complete a refresher course every five years thereafter, or on a more frequent basis if deemed necessary, in order to keep current with changing racial and cultural trends.

Claimant contends that Penal Code section 13519.4 mandates K-14 school districts to: 1) develop, implement and periodically update policies and procedures to insure that each law enforcement officer employed by the district participates in the expanded and refresher racial profiling training; 2) develop and implement tracking procedures to assure that every law enforcement officer employed by the district participates and successfully completes the expanded and refresher racial profiling training; and 3) pay the unreimbursed costs for travel, subsistence, meals, training and substitute salaries of their law enforcement officers attending the expanded and refresher racial profiling training.

The plain meaning of Penal Code section 13519.4, subdivisions (f) and (i), requires only that each law enforcement officer attend the expanded and refresher racial profiling training. Nothing in the test claim legislation requires the employer of law enforcement officers to develop and implement policies, procedures, or tracking measures to ensure that the officers attend the required training. Further, nothing in the legislation requires employers to pay for travel, subsistence or meals for these officers.

Thus, the only activities for which the claimant has requested reimbursement that could possibly be considered mandated are: 1) the unreimbursed costs of the actual training; and 2) substitute salaries for the officers while attending the training.

1. K-14 School District Police Officers are Subject to the POST Racial Profiling Training Requirements

To determine whether any activities are mandated of K-14 school districts, the first issue which must be addressed is whether K-14 school district police officers are subject to these requirements. Penal Code section 13519.4, subdivision (f), requires "[e]very law enforcement officer in this state," to attend expanded racial profiling training. Subdivision (i) requires "each law enforcement officer in California as described in subdivision (a) of Section 13510 who adheres to the standards approved by [POST]" to attend refresher training. As explained below, K-14 school district police officers hired to enforce the law are required to attend both the initial and refresher racial profiling training.

Penal Code section 13510, subdivision (a), states that, "[f]or the purpose of raising the level of competence of local *law enforcement officers*, [POST] shall adopt ... rules establishing minimum standards relating to physical, mental, and moral fitness that shall govern the recruitment of ... police officers of a district authorized by statute to maintain a police department ..." (Emphasis added.) Subdivision (a) further states that, "[POST] also shall adopt, and may from time to time amend, rules establishing minimum standards for training ... police officers of a district authorized by statute to maintain a police department... Thus, POST is required to adopt minimum standards for the recruitment and training of police officers of districts that are authorized to maintain police departments.

Education Code section 38000[33] authorizes the formation of school district police departments and hiring of peace officers: "(a) The governing board of any school district may establish a ... police department... [T]he governing board may employ personnel to ensure the safety of school district personnel and pupils and the security of the real and personal property of the

[33] Formerly numbered Education Code section 39670; derived from 1959 Education Code section 15831.

school district." Section 38001 states that "persons employed and compensated as members of a police department of a school district, when appointed and duly sworn, are *peace officers*, for the purposes of carrying out their duties of employment pursuant to Section 830.32 of the Penal Code."

Education Code section 72330,[34] subdivision (a), authorizes the formation of community college police departments and hiring of peace officers: "The governing board of a community college district may establish a community college police department and ... may employ personnel as necessary to *enforce the law* on or near the campus of the community college and on or near other grounds or properties [of] the community college..." Subdivision (c) states that "[p]ersons employed and compensated as members of a community college police department, when so appointed and duly sworn, are *peace officers* as defined in ... the Penal Code."

Penal Code section 830.32 provides:

> The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. Those peace officers may carry firearms only if authorized and under terms and conditions specified by their employing agency.
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> (a) Members of a California Community College police department appointed pursuant to Section 72330 of the Education Code, if the primary duty of the police officer is the *enforcement of the law* as prescribed in Section 72330 of the Education Code.
>
> (b) Persons employed as members of a police department of a school district pursuant to Section 38000 of the Education Code, if the primary duty of the police officer is the *enforcement of the law* as prescribed in Section 38000 of the Education Code.
>
> (c) Any peace officer employed by a K-12 public school district or Community College district who has completed training as prescribed by subdivision (f) of Section 832.3 shall be designated a school police officer. (Emphasis added.)

Furthermore, Penal Code section 832.3, subdivisions (f) through (h), state the following:

> (f) Any school police officer first employed by a K-12 public school district or California Community College district after July 1, 1999, shall successfully complete a basic course of training as prescribed by subdivision (a) before exercising the powers of a peace officer ...
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> (g) [POST] shall prepare a specialized course of instruction for the training of school peace officers, as defined in Section 830.32, to meet the

[34] Derived from 1959 Education Code section 25429.

unique safety needs of a school environment. This course is intended to supplement any other training requirements.

(h) Any school peace officer first employed by a K-12 public school district or California Community College district before July 1, 1999, shall successfully complete the specialized course of training prescribed in subdivision (g) no later than July 1, 2002. Any school police officer first employed by a K-12 public school district or California Community College district after July 1, 1999, shall successfully complete the specialized course of training prescribed in subdivision (g) within two years of the date of first employment.

Thus, K-14 school district police officers are considered peace officers when their primary duties are to enforce the law, and pursuant to those duties would also be considered part of the broader classification of "law enforcement officer" for purposes of POST. Since they are also required to attend basic training and specialized school peace officer training prescribed by POST, these police officers would also be considered law enforcement officers who "adhere to the standards approved by POST." Accordingly, those K-14 employees who exercise the duties of "peace officer" are "law enforcement offers" in the state who are required to attend initial and refresher racial profiling training pursuant to Penal Code section 13519.4, subdivisions (f) and (i).

2. K-14 School Districts Are Not Mandated by the State to Comply with the POST Racial Profiling Training Requirements

The next issue is whether K-14 school districts that employ such peace officers are mandated by the state to comply with the racial profiling training requirements. As noted above, in 1959 both K-12 school districts and community college districts were granted statutory *authority* to establish police departments and employ peace officers. However, while counties and cities are mandated by the California Constitution to establish sheriff or police forces,[35] K-12 school districts and community college districts are not expressly required to do so.

The California Constitution, article IX, Education, establishes and permits the formation of school districts, including community college districts, and county boards of education, all for the purpose of encouraging "the promotion of intellectual, scientific, moral and agricultural improvement."[36] Although the Legislature is permitted to authorize K-14 school districts "to act in any manner which is not in conflict with the laws and purposes for which school districts are established,"[37] and Article I, section 28, subdivision (c), of the California Constitution

[35] Article XI of the California Constitution provides for the formation of cities and counties. Section 1, regarding counties, states that the Legislature shall provide for an elected county sheriff. Section 5, regarding city charters, specifies that city charters are to provide for the "government of the city police force."

[36] California Constitution, article IX, section 1.

[37] California Constitution, article IX, section 14.

requires K-12 school districts to maintain safe schools,[38] the Constitution does not specifically require K-14 school districts to operate police departments or employ school security officers independent of the public safety services provided by the cities and counties a school district serves.

The case law is instructive in analyzing whether programs are mandatory or discretionary. The first significant case addressing the issue was *City of Merced v. State of California* (1984) 153 Cal. App. 3d 777. In that case, the test claim legislation had revised the California eminent domain laws to include a new requirement that the owner of a business conducted on condemned property is entitled to compensation for loss of goodwill.[39] The City claimed reimbursement for its required compensation to the business owner for good will pursuant to the new statute, in proceedings to acquire property under the City's power of eminent domain. The court held that, because it was clear from the Legislature's intent in enacting the new statute that the decision to exercise eminent domain is left to the *discretion of the entity authorized to acquire the property*, the payment for loss of goodwill was not a state-mandated cost.[40]

In *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, the Supreme Court addressed another aspect of the issue, i.e., whether a mandate could be created by requirements that attached to a school district as a result of that district's participation in an underlying voluntary program. There, the district had voluntarily participated in various school-related educational programs establishing councils and advisory committees, where participation resulted in state or federal funding grants to operate the programs.[41] Subsequent legislation, in an effort to make such councils and advisory committees more open and accessible to the public, required certain notice and agenda requirements claimed by the school district to constitute a reimbursable state-mandated program.[42]

The court found in this case that the notice and agenda requirements did not constitute a reimbursable state-mandated program, reasoning as follows:

> First, we reject claimants' assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state, based merely upon the circumstance that the notice and agenda provisions are mandatory elements of education-related programs in which claimants have participated, without regard to whether a claimant's participation in the underlying program is voluntary or compelled. Second, we conclude that as to *eight* of the nine underlying funded programs here at issue, claimants have not been legally compelled to participate in those

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[38] Article I, section 28, subdivision (c), of the California Constitution provides that "[a]ll students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful."

[39] *City of Merced, supra,* 153 Cal.App.3d 777, 782.

[40] *Id.* at page 783.

[41] *Kern High School Dist., supra,* 30 Cal.4th 727, 732.

[42] *Ibid.*

> programs, and hence cannot establish a reimbursable state mandate as to those programs based upon a theory of legal compulsion. Third, assuming (without deciding) that claimants have been legally compelled to participate in *one* of the nine programs, we conclude that claimants nonetheless have no entitlement to reimbursement from the state for such expenses, because they have been free at all relevant times to use funds provided by the state for that program to pay required program expenses — including the notice and agenda costs here at issue.

The court also 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."[43] (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 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.)[44]

The 2004 *San Diego Unified School Dist.* case further clarified the Supreme Court's views on the legal compulsion issue. In that case, the test claim legislation required the district to afford a student specified hearing procedures whenever an expulsion recommendation was made and before a student may be expelled.[45] The 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.[46] The court found the factor that

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[43] *Id.* at page 736.

[44] *Id.* at 731.

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

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

triggered the mandate was the *state statute* requiring an expulsion recommendation, and that state statute did not implement a federal law or regulation then in existence.[47]

Regarding expulsion recommendations that were *discretionary* on the part of the district, the court acknowledged the school district's argument that the hearing procedures were mandated even when the district exercised its discretion, despite the *City of Merced* and *Kern High School Dist.* cases. The court stated:

> Indeed, the Court of Appeal below suggested that the present case is distinguishable from *City of Merced* [citation omitted], in light of article I, section 28, subdivision (c), of the state Constitution. That constitutional subdivision, part of Proposition 8 (known as the Victims' Bill of Rights initiative, adopted by the voters at the Primary Election in June 1982), states: "All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful." The Court of Appeal below concluded: "In light of a school district's constitutional obligation to provide a safe educational environment ..., the incurring of [due process hearing] costs cannot properly be viewed as a nonreimbursable 'downstream' consequence of a decision to [seek to] expel a student under [the discretionary expulsion provisions] for damaging or stealing school or private property, suing or selling illicit drugs, receiving stolen property, engaging in sexual harassment or hate violence, or committing other specified acts of misconduct ... that warrant such expulsion."
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> Building upon this theme, amicus curiae on behalf of the District, California School Boards Association, argues that based upon article I, section 28, subdivision (c), of the state Constitution, together with Education Code section 48200 et seq. and article IX, section 5 of the state Constitution (establishing and implementing a right of public education), *no* expulsion recommendation is "truly discretionary." Indeed, amicus curiae argues, school districts may not, "either as a matter of law or policy, realistically choose to [forgo] expelling [a] student [who commits one of the acts, other than firearm possession, referenced in [the] Education Code ... discretionary provision], because doing so would fail to meet that school district's legal obligations to provide a safe, secure and peaceful learning environment for the other students."[48]

In response to these arguments, the Supreme Court stated that "[u]pon reflection, we agree with the District and amici curiae that there is reason to question an extension of the holding of *City of Merced* so as to preclude reimbursement under article XIII B, section 6 of the state Constitution and Government Code section 17514, whenever an entity makes an initial

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[47] *Ibid.*

[48] *San Diego Unified School Dist., supra,* 33 Cal.4th at page 887, footnote 22.

discretionary decision that in turn triggers mandated costs."[49] (Emphasis added.) The court provided the following explanation:

> Indeed, it would appear that under a strict application of the language in *City of Merced*, public entities would be denied reimbursement for state-mandated costs in apparent contravention of the intent underlying article XIII B, section 6 of the state Constitution and Government Code section 17514 and contrary to past decisions in which it has been proper. For example, as explained above, in *Carmel Valley, supra,* 190 Cal.App.3d 531, ... an executive order requiring that county firefighters be provided with protective clothing and safety equipment was found to create a reimbursable state mandate for the added costs of such clothing and equipment. (*Id.* at pp. 537-538 ... .) The court in *Carmel Valley* apparently did not contemplate that reimbursement would be foreclosed in that setting merely because a local agency possessed discretion concerning how many firefighters it would employ — and hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected. Yet, under a strict application of the rule gleaned from *City of Merced* [citation omitted], such costs would not be reimbursable *for the simple reason that the local agency's decision to employ firefighters involves an exercise of discretion concerning, for example, how many firefighters are needed to be employed, etc.* We find it doubtful that the voters who enacted article XIII B, section 6, or the Legislature that adopted government Code section 17514, intended that result, and hence we are reluctant to endorse, in this case, an application of the rule of *City of Merced* that might lead to such a result. (Emphasis added.)[50]

The Supreme Court did not decide the issue in *San Diego Unified School Dist.* on that basis, however, stating: "[i]n any event, we have determined that we need not address in this case the problems posed by such an application of the rule articulated in *City of Merced*, because this aspect of the present case can be resolved on an alternative basis."[51] Ultimately, no reimbursement was allowed where the district exercised its discretion in recommending an expulsion, because the court found that "all hearing costs ... triggered by the District's exercise of discretion to seek expulsion, should be treated as having been incurred pursuant to a mandate of federal [due process] law ..."[52]

Nevertheless, both *Kern High School Dist.* and *San Diego Unified School Dist.* demonstrate the Supreme Court's hesitation to apply the rule from *City of Merced*, where that rule would preclude reimbursement in *every* instance that an entity makes an initial discretionary decision which in turn triggers mandated costs.

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[49] *Id.* at page 887.

[50] *Id.* at pages 887-888.

[51] *Id.* at page 888.

[52] *Id.* at page 890.

In summary, the *Kern High School Dist.* case provided an example of "practical" compulsion, i.e., where a local entity might face substantial penalties for nonparticipation in a program, and thus reimbursement might be appropriate. The court in *San Diego Unified School Dist.* supported the district's argument regarding "practical" compulsion in the circumstance where a K-12 school district makes a discretionary decision to expel a student who commits one of the acts set forth in the Education Code's discretionary provisions, in order to fulfill its legal obligations under the constitutional requirement to provide a safe, secure and peaceful learning environment at the school. The court in *San Diego Unified School Dist.* also expressed concerns that the intent of article XIII B, section 6, might not be carried out if the *City of Merced* rule were used to preclude reimbursement "for the simple reason" that the local agency's decision to employ firefighters, and how many to employ, involves an exercise of discretion.

One additional case, *In re Randy G.* (2001) 26 Cal.4th 556, is relevant for this analysis. There, the Supreme Court held that pursuant to the safe schools provision of the Constitution, K-12 school districts, apart from education, have an "obligation to protect pupils from other children, and also to protect teachers themselves from violence by the few students whose conduct in recent years has prompted national concern." The court further held that California fulfills its obligations under the K-12 safe schools constitutional provision by permitting local school districts to establish a police or security department to enforce rules governing student conduct and discipline.[53]

As previously noted, reimbursement has been denied, pursuant to *Kern*, for activities imposed on K-14 school districts when those activities were triggered by the district's discretionary decision to establish a police department and employ peace officers, since there was neither any legal compulsion to establish a police department, nor any "practical" compulsion in the form of "substantial penalties" for the school district to fail to establish a police department.

On the other hand, the Commission has approved reimbursement for activities imposed on K-14 school district police departments in light of the constitutional requirement for safe schools coupled with the Legislature's declaration that the condition being addressed by the test claim legislation would "create a clear and present threat to the health, safety, and welfare of the citizens of the state." Thus, previous interpretations of the *San Diego Unified School Dist.* case have allowed reimbursement where the test claim legislation establishes a direct connection to the need to provide safe schools pursuant to the Constitution.

In the test claim legislation at issue here, pursuant to the *Kern High School Dist.* case, K-14 school districts have neither the legal compulsion nor any practical compulsion to establish a police department and employ peace officers, since the statutes authorize but do not require establishment, and no "substantial penalties" would be imposed for the district's failure to establish a police department. In addition, staff finds that the purpose of the test claim legislation is not to provide safe schools. Thus, there is no showing of practical compulsion pursuant to the *San Diego Unified School Dist.* case,

The test claim legislation requires racial profiling training for "every law enforcement officer" in California. In Penal Code section 13519.4, subdivision (c), the Legislature declared that:

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[53] *In re Randy G.* (2001) 26 Cal.4th 556, 562-563.

(1) Racial profiling is a practice that presents a great danger to the fundamental principles of a democratic society. It is abhorrent and cannot be tolerated.

(2) Motorists who have been stopped by the police for no reason other than the color of their skin or their apparent nationality or ethnicity are the victims of discriminatory practices.

(3) It is the intent of the Legislature in enacting the changes to Section 13519.4 of the Penal Code made by the act that added this subdivision that more than additional training is required to address the pernicious practice of racial profiling and that enactment of this bill is in no way dispositive of the issue of how the state should deal with racial profiling.

Although the test claim legislation affects all law enforcement officers in the state, and addresses a "discriminatory practice" that presents a "great danger to the fundamental principles of a democratic society," it does not provide a direct connection to the constitutional requirement to provide safe schools. There is no evidence in the test claim legislation or its legislative history, or the record of this test claim, which indicates that the Legislature intended the statute to protect the health and safety of the citizens on school district property. Therefore, no "practical" compulsion with regard to safe schools can be found with this test claim legislation.

Furthermore, since the constitutional provision requiring safe schools does not apply to community colleges, the cases cited above do not address the issue for community college districts.

No other indications by the Supreme Court, the Constitution or the Legislature support a finding that *reimbursement should be allowed* when triggered by a K-14 school district's discretionary decision to establish a police department and employ peace officers, and there is no other evidence in the record to support such a finding.

Commission staff finds that because there is no mandate for school districts to establish a police department and employ peace officers, the test claim legislation does not impose any mandated activities on K-14 school districts.

Conclusion

Based on the foregoing analysis, Commission staff recommends the test claim be denied.

Original List Date: 9/18/2002
Last Updated: 7/19/2006
List Print Date: 08/31/2006
Claim Number: 02-TC-05
Issue: Racial Profiling: Law Enforcement Training (K-14)

Mailing Information: Draft Staff Analysis

Mailing List

Related Matter(s)

01-TC-01 Racial Profiling: Law Enforcement Training

TO ALL PARTIES AND INTERESTED PARTIES:

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COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

The mission of the California Commission on Peace Officer Standards and Training is to continually enhance the professionalism of California law enforcement in serving its communities.

STATE OF CALIFORNIA

Arnold Schwarzenegger
Governor

Bill Lockyer
Attorney General

RECEIVED
AUG 15 2005
COMMISSION ON STATE MANDATES

August 10, 2005

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

Dear Ms. Higashi:

In response to SB 1102, the Commission on POST assembled subject matter experts from throughout the State and worked in concert with the Governor's Panel on Racial Profiling to design the *Racial Profiling: Issues and Impact* curriculum.

The curriculum was designed to be presented in-house by a trained instructor within the law enforcement agency. It is believed that in-house instructors provide validity to the training and can relate the material directly to agency policies.

The curriculum was designed as a "course-in-a-box" and includes an instructor guide, facilitated discussion questions, class exercises, and a companion training video. The video covers additional instructional information and contains three scenarios that the students watch and then discuss among themselves with the instructor as a facilitator. The course was designed to ensure training consistency throughout the State..

Due to the complexity and sensitivity of the topic, POST regulation requires that each instructor complete the 24-hour Racial Profiling Train-the-Trainer Course prior to facilitating the training. The Training for Trainers course is presented on an on-going basis by the Museum of Tolerance in Los Angeles. The course is presented under contract and is of no cost to the agency. At the completion of the training, the instructor is provided with all the necessary course material to train their own officers.

The course was originally planned to be four hours in length. After two pilot presentations it was determined that the material could not be covered sufficiently in four hours; therefore, an additional hour was added, which extended the mandated curriculum to five hours.

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The racial profiling course, as well as the two-hour update, can be certified by POST which would allow agencies to apply the training hours towards the 24-hour Continuing Professional Training requirement.

Feel free to contact me or Special Consultant Jill Taylor, Training Program Services Bureau, at (916) 227-0471 if you have additional questions regarding this most worthwhile program.

Sincerely,

KENNETH J. O'BRIEN
Executive Director

KJO:rb:dar

Training, Certificates & Services

Legislative Training Mandates

(Updated 8/2004)

Disclaimer: This handout is intended for use as a quick reference. Its purpose is not regulatory. For complete text refer to appropriate law section.

This document shows those courses with specific curriculum as adopted in Commission Regulation 1081. The Training Delivery Bureau may require specific curriculum for certification of other courses.

LAW SECTION	HOURS	COURSE TITLE * = requires POST certification Bold type = POST specified curriculum in Regulation 1081.	REQUIRED FOR	OTHER PERTINENT INFORMATION
B&P 25755	160	Alcoholic Beverage Control, Narcotic Enforcement – **Narcotic Investigation Course*** and Narcotic Investigation Field Training Program (see Information in Reg. 1081)	All peace officer investigators of the Department of Alcoholic Beverage Control.	The 160 hours of training is satisfied by combination of the 80-hour POST certified Narcotics Investigation Course* plus the 80-hour Narcotics Investigation Field Training Program. POST curriculum specified for the Narcotic Investigation Course only. *The Narcotics Inv. Course may be satisfied by a single training course, or by completion of two or more POST-certified courses (totaling a minimum of 80 hours) which include the Narcotic. Inv. curriculum. POST curriculum required. Refer to Regulation 1081 for information on Narcotic Inv. Field Training Programs.
PC 832	64	**Arrest and Firearms*** (comprised of two modules – Arrest Module (40 hours), and Firearms Module (24 hours).	All peace officers described in Chapter 4.5 of the Penal Code.	This requirement must be met prior to the exercise of the powers of a peace officer. Training can be satisfied by

				a stand- alone course or completion of a larger course which includes the Arrest and Firearms curriculum and testing, e.g. Regular Basic Course. POST reserves the right to make this determination. IVD format is available and meets the requirements. Refer to Regulation 1080 for "3-year rule" on this training. POST curriculum specified.
PC 832.1	40	**Aviation Security***	Any ... airport policeman, or ... of a city, county, city and county or district must complete within 90 days of hire or shall not continue to have peace officer powers after 90 days until satisfactory completion.	Hours were increased to 40 effective August 1, 2000. POST curriculum specified.
PC 832.3	664	**Basic Course (Regular)***	Entry level requirement for all peace officers in the POST program except Level II and Level III reserve officers, custodial deputy sheriffs appointed pursuant to 830.1(c), coroners, and peace officers whose primary duties are investigative (Reg. 1005).	This requirement must be met prior to the exercise of the powers of a peace officer. There is a waiver process for the Regular Basic Course. There is a 3-year rule and 6-year rule for requalification specified in Commission Regulation 1008. POST curriculum specified.
Cal OSHA Regulation 5193	See Cal OSHA reg.	Bloodborne Pathogens (LD34)	All public and private employees who are exposed to blood in the workplace.	Training included in the Regular Basic Course (RBC). Annual refresher training required.
PC 832.2 (school police reserves) PC832.3(g) (school police)	32	**Campus Law Enforcement**	School police reserve officers and school police officers.	School police first employed by a K-12 public school district or CA Comm. College district before 7-1-99 must complete no later than 7-1-02. Other school police must complete within 2 years of hire date. No deadline specified for school police reserve officers. POST curriculum specified.

H&S1797.187	4	**Carcinogenic Materials (LD41)**	POST requires for all peace officers who must complete the Regular Basic Course.	Curriculum included in the Regular Basic Course and SIBC. POST curriculum specified.
PC 12403	4 2 4	**Chemical Agents (LD 35)** **Module A** **Module B** **Module C**	All peace officers as defined in Chapter 4.5 of Title 3 of Part 2 commencing with Penal Code section 830.	Completion of this training is required for peace officers purchasing, possessing, transporting, or using tear gas or a tear gas weapon. Training that satisfies the requirements of PC 12403 for peace officers who will be using aerosol chemical agents and who are expected to use a gas mask in a chemical environment is included in the Regular Basic Course and SIBC (referred to as Modules A & B in Regulation 1081). The addition of a Module C (as specified in Reg. 1081) satisfies the training requirement for peace officers responsible for the deployment of tactical chemical agent munitions. These modules, A B & C, refer to the structure of the training and are in no way associated with reserve training modules. POST curriculum specified.
PC 13517	40	**Child Abuse Investigation (LD 30)**	Mandates Commission to include training in the Basic Course by July 1, 1979. Any individual completing the Regular Basic Course after this date has completed the training. No mandate placed on officers.	Included in the Regular Basic Course and SIBC. POST curriculum specified.
PC 13519.2	4	**Developmental Disabilities and Mental Illness (LD 37)**	Mandates Commission to include training in the Basic Course by July 1, 1990. Any individual completing the Regular Basic Course after this date has completed the training.	Included in the Regular Basic Course and SIBC. POST curriculum specified.
PC 13515.25	8	**Mental Illness and Developmental Disabilities**	Continuing training for peace officers, but not mandated.	POST curriculum specified.
GC 8607		Disaster Response	All emergency	The Office of Emergency

			response personnel	Services mandated to develop course in coordination with POST a others. No POST curriculum specified.
PC 13519	8	**Domestic Violence* (LD25)**	Mandates Commission to include training in the Basic Course. Mandates various classifications of peace officers to complete training by certain dates (see PC 13519). Obsolete now because time periods have expired.	Included in the Regular Basic Course and SIBC. Officers who did not complete in Basic Course must complete supplementary training. Prior to January 1, 1986, peace officers who did not complete in the Regular Basic Course were required to complete supplementary training with various deadlines depending on individual's peace officer category. POST curriculum specified.
PC 13519(g)	2	**Domestic Violence Update**	Each law enforcement officer below the rank of supervisor who is assigned to patrol duties and would normally respond to domestic violence shall complete every two years.	For all other officers local law enforcement agencies are encouraged to include update training but not mandatory. Update training available as a POST-certified course. POST curriculum specified.
PC 13515	2	**Elder and Dependent Adult Abuse***	Every city police officer or deputy sheriff at a supervisory level or below who is assigned field or investigative duties shall complete within 18 months of assignment.	POST curriculum specified.
PC 13518	21	First Aid/CPR	Every city police officer, sheriff or deputy, marshal or deputy, CHP officer, or police officer of a district authorized by statute to maintain a police department, except those whose duties are primarily clerical or administrative. Mandates the Commission to include training in the Basic Course.	Included in the Regular Basic Course and SIBC. Curriculum standards set by Emergency Medical Services Authority (EMSA) (Reference California Code of Regulations, Title 22, Division 9, Chapter 1.5, sections 100005-100028.)
PC 13518(a)	12	First Aid/CPR Refresher (LD 34)	Peace officers subject to initial training shall complete refresher	Frequency and content a prescribed by EMSA.

			training.	
PC13519.5	No hours specified	Gang and Drug Enforcement (LD12, 38)	Mandates the Commission to implement course of training. Statute specifies training is for "appropriate" officers.	Included in the Regular Basic Course and SIBC. Also available as POST Telecourse training. Other POST-certified technical training available. No deadline specified for completion. No POST curriculum specified.
PC 13519.6	4	Hate Crimes (LD 42)	Mandates the Commission to include training in the Regular Basic Course. Specifically states that training is for peace officers designated in 830.1 and 830.2.	Included in the Regular Basic Course and SIBC. No deadline specified for completion. No POST curriculum specified.
CF 910.120(q)(6)	Set by OES	Hazardous Materials Response	Training mandate varies based on the duties and functions of the responder in an emergency response organization.	OES sets hour and curriculum standards for training. No POST curriculum specified.
PC 872(b)	1	**Hearsay Testimony* (LD 17)**	All peace officers with less than five years of service and who wish to testify to hearsay evidence in preliminary hearings.	Included in the Regular Basic Course and SIBC. Also available in video training. POST curriculum specified.
PC 13515.55	4	**High Technology Crimes***	City police and deputy sheriff supervisors assigned to field or investigative duties.	Must be completed by 1-1-00 or within 18 months of assignment to supervisory duties. POST curriculum specified.
PC629.94		Interception of Wire, Pager, and Cellular Communications	Those who apply for orders authorizing the interception of private wire, electronic digital pager, or cellular ... (see statute)	Training not developed.
VC40802	8	**Laser Operator***	Peace officers issuing speed violation citations using laser or any other electronic speed measuring devices and where a traffic and engineering survey is beyond five years.	Prerequisite Radar Operator Course. POST curriculum specified.
PC 13519.1	4 or 2 in service	**Missing Persons* (LD 27)**	Peace officers and dispatchers of a local police department, sheriff's department or California Highway Patrol	Included in the Regular Basic Course and P.S. Dispatcher's Basic Course. If Regular Basic Course or Public Safety Dispatcher's Basic Course was completed prior to 1-1-89, completion of

				supplementary in-service training is required. POST curriculum specifi
VC 40802	24	**Radar Operator***	Peace officers issuing speed violation citations using radar speed measuring devices and where a traffic and engineering survey is beyond five years.	POST curriculum specified.
PC 13519.4 (a)	No hours specified	Racial and Cultural Diversity (LD42)	All peace officers specified in Penal Code section 13510(a) [Note: this includes reserves].	Racial and Cultural Diversity is included in the Regular Basic Course and SIBC. A POST-certified Cultural Diversity Course is offered for officers who did not receive training in the Regular Basic Course. No POST curriculum specified.
PC13519.4 (f)	5	**Racial Profiling***	All law enforcement officers	Incumbent officers are suggested to complete by July 2004. Included in Regular Basic Course after 7-1-03. POST curriculum specifi
PC 13519.4 (i)	2	**Racial Profiling Refresher***	All peace officers specified in Penal Code section 13510(a) [Note this includes reserves].	Required every five years or on a more frequent basis if deemed necessary, in order to keep current with changing racial and cultural trends. POST curriculum specified.
PC 832.6	340 LI 228 LII 162 LIII	**Reserve Level I Module*** **Reserve Level II Module*** **Reserve Level III Module (2 parts)***	Level I Reserve officers must complete all three modules (730 hours) or the Regular Basic Course. Level II Reserve officers must complete Reserve Level II and III Modules (390 hours). Reserve Level III officers must complete Reserve Level III Module (162 hours).	Training must be completed before being assigned duties which include the exercise of peace officer powers. POST curriculum specified.
PC 13516(c)	40	**Sexual Assault Investigation* (LD 30)**	Investigator specialists who handle cases of sexual exploitation or sexual abuse of children within six months of the date of assignment.	Partial curriculum included in the Regular Basic Course and SIBC, but does not satisfy mandate for specialists. POST curriculum specifi
PC 13519.7(b)	2	**Sexual Harassment***	Peace officers who	Included in the Regular

PC 13519.7 (c)		(LD 42)	completed the Regular Basic Course before January 1, 1995, shall complete supplementary training.	Basic Course and SIBC. Supplementary training is available for peace officers who did not complete in the Regular Basic Course. POST curriculum specified.
PC 12020 (b) (1)	16	**Shotgun (Long/Short Barrel) (LD 35) [see comment A]**	Peace officers of local police departments, sheriffs departments, marshals departments, California Highway Patrol or Department of Justice and reserve officers of these departments.	Comment A – This training requirement is satisfied by completing the Regular Basic Course or Reserve Training Modules I or II. Previously satisfied by now obsolete Reserve Modules A, B, C, and D.
	16	**Rifle (Long/Short Barrel) [see comment B]**	Completion of this training exempts these officers from the provisions of PC12020 (a).	Comment B – Prerequisite for Rifle training is completion of the Regular Basic Course or Reserve Training Modules I , II and III, or Reserve Modules A, B, C, and D. POST curriculum specified.
PC 13519.05	2	**Stalking Course***	Peace officers of local police departments, sheriff's dept., Dept. of Parks & Recreation, Universities of CA, CA State Univ. Also peace officers defined in PC 830.31(d) and 830.32 (a & b).	POST curriculum specified.
PC 13519.3	2	**Sudden Death of Infants, Investigation of* (LD 30)**	All peace officers specified in PC13510 (a), who are assigned to patrol or investigations.	Included in the Regular Basic Course and SIBC. Supplementary training required for in-service officers who did not receive in the Basic Course. POST curriculum specified.
PC 13519.8(a)	2	**Vehicle Pursuit Training I* (LD 19)**	Peace officers of a local police department, sheriff's department or California Highway Patrol who are below middle management rank and who completed the Regular Basic Course prior to 7-15-95.	Included in the Regular Basic Course. Penal Code 13519.8 encourages periodic update training. POST curriculum specified.

PC13519.8(c)	1	**Vehicle Pursuit Training II***	Middle managers and above of local police departments, sheriff departments or California Highway Patrol who completed the Regular Basic Course prior to 7-15-95.	This training can be satisfied by completion of either High Speed Vehicle Pursuit Training I or II. POST curriculum specified.

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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Claim of: City of Pasadena, Claimant	CSM-4376 Penal Code Section 13519, Subdivisions (b) and (c) Chapter 1609, Statutes of 1984 Domestic Violence Training

DECISION

The attached Proposed Statement of Decision of the Commission on State Mandates is hereby adopted by the Commission on State Mandates as its decision in the above-entitled matter.

This Decision shall become effective on February 28, 1991.

IT IS SO ORDERED February 28, 1991.

Lafenus Stancell

Lafenus Stancell, Chairperson
Commission on State Mandates

WP0554h(12)

PAPER
CALIFORNIA
REV 8-72

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Claim of: City of Pasadena, Claimant	No, CSM-4376 Penal Code Section 13519, Subdivisions (b) and (c) Chapter 1609, Statutes of 1984 Domestic Violence Training

PROPOSED STATEMENT OF DECISION

This claim was heard by the Commission on State Mandates (Commission) on August 23, 1990, in Sacramento, California, during a regularly scheduled hearing.

Ms. Ann Higginbotham, Assistant City Attorney for Pasadena; Mr. Louis Chappuie, David M. Griffith & Associates, Ltd., representing the City of Pasadena: Mr. Norman Coppinger, League of California Cities; Sgt. Kevin White, Pasadena Police Department; Ms. Marsha Bedwell, Deputy Attorney General, representing the Commission on Peace Officer Standards and Training (POST): Mr. Norman Boehm, Executive Director of POST; and Mr. Jim Apps, Department of Finance, introduced themselves and appeared in conjunction with this item. There were no other appearances.

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CALIFORNIA
(REV 8-72)
31759

Evidence both oral and documentary having been introduced, the matter submitted, and vote taken, the Commission finds:

ISSUES

Do the provisions of Penal Code section 23519, subdivisions (b) and (c), as added by Chapter 1609, Statutes of 1984 (Chapter 1609/84), require local agencies to implement a new program or provide a higher level of service in an existing program, within the meaning of Government Code section 17514 and section 6, article XIII B of the California Constitution?

If so, are local agencies entitled to reimbursement under the provisions of section 6 of article XIIIB?

FINDINGS OF FACT

The test claim was filed with the Commission on March 28, 1990, by the City of Pasadena. The elements for filing a test claim, as specified in section 1183 of Title 2 of the California Code of Regulations, were satisfied.

The subject of this test claim pertains to the provisions of Penal Code section 13519, subdivisions (b) and (c), as added by Chapter 1609/84. This legislation requires domestic violence training to become a part of a law enforcement officer's basic training course. In addition, all law enforcement officers who

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have received their basic training before January 1, 1986, shall participate in supplemental training on domestic violence subjects, as prescribed and certified by POST.

Prior to the passage of Chapter 1609/84, law enforcement officers were not required to obtain domestic violence training.

The City of Pasadena alleged that it incurred $22,274.00 in unrecovered salary costs in providing domestic violence training pursuant to Penal Code section 13519, subdivisions (b) and (c).

The Department of Finance and POST recommended that the test claim be denied because the provisions of Penal Code section 13519, subdivisions (b) and (c), do not constitute a reimbursable state mandated program upon local government.

The Office of Criminal Justice Planning recommended that the claim be approved because the legislation subject to the test claim results in a reimbursable state mandated program.

Penal Code section 13519 states, in pertinent part:

> "(a) The commission [POST] shall implement by January 1, 1986, a course or courses of instruction for the training of law enforcement officers in California in the handling of domestic violence complaints and also shall develop guidelines for law enforcement response to domestic violence. The course or courses of instruction and the guidelines shall stress

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enforcement of criminal laws in domestic: violence situations, availability of civil remedies and community resources, and protection of the victim. . . .

"As used in this section, 'law enforcement officer' means any officer or employee of a local police department or sheriff's office.

"(b) The course of basic training for law enforcement officers shall, no later than January 1, 1986, include adequate instruction in the procedures and techniques described below:

".. .... - .. . .

"(c) All law enforcement officers who have received their basic training before January 1, 1986, shall participate in supplementary training on domestic violence subjects, as prescribed and certified by the commission. This training shall be completed no later than January 1, 1989.

"Local law enforcement agencies are encouraged to include, as part of -their advanced officer training program, periodic updates and training of domestic violence. The commission shall assist where possible."

The Commission found that the provisions of Penal Code section 13519, subdivisions (b) and (c), impose upon law enforcement officers the requirements of domestic violence training.

Moreover, the Commission found that the provisions of Penal Code section 13519, subdivisions (b) and (c), do not require local agencies to train law enforcement officers in domestic violence and to pay for the cost of such training.

Furthermore, the Commission found that some local agencies may have incurred the cost of training their law enforcement

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officers in domestic violence subjects through collective bargaining agreements.

Section 1005, subdivision (a), of Title 11, Code of California Regulations, states in pertinent part:

> "Basic Training (Required).
>
> "(1) Every regular officer except those participating in a POST-approved field training program, shall satisfactorily meet the training requirements of the Basic Course before being assigned duties which include the exercise of peace officer power.
>
> "Requirements for the Basic Course are set forth in PAM [POST Administrative Manual], Section D-1-3.
>
> " . . . . . ."

The basic training portion of the POST Administrative Nanual under sections D-1-2, subdivision (d), and D-1-3 provide that a minimum of 520 hours of instruction in the Basic Course is required.

section 1005, subdivision (d), of Title 11, California Code of Regulations, states in pertinent part:

> "Continuing Professional Training (Required).
>
> "(1) Every peace officer below the rank of a middle management position as defined in Section 100 (p) shall satisfactorily complete the Advanced Officer Course of 24 or more hours at least once every two years after completion of the Basic Course,
>
> ". . . . . .* . . . . . .
>
> "(4) Requirements for the Advanced Officer Course are set forth in the POST Administrative Manual, Section D-2."

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The advanced officer course set forth in section D-2-5 of the POST Administrative Manual states:

> "Minimum Hours: The Advanced Officer Course shall consist of time blocks of not less than two hours each, regardless of subject matter, with an overall minimum of no less than 24 hours. . . ."

Section 1005, subdivision (g), of Title 11, California Code of Regulations, provides in pertinent part:

> "Approved Courses.
>
> "(1) Approved courses pertain only to training mandated by the Legislature for various kinds of peace officers and other groups. The Commission may designate training institutions or agencies to present approved courses.
>
> "(2) Requirements for Approved Courses are set forth in PAM [POST Administrative Manual], Section D-7."

The approved courses set forth in the POST Administrative Manual, section D-7-2, provides that a minimum of 8 hours of domestic violence training is required pursuant to Penal Code section 13519.

The Commission found that section 1005, subdivision (g), of Title 11, California Code of Regulations and POST Administrative Manual, section D-7-2, required the inclusion of 8 hours of domestic violence training.

In addition, the Commission found that domestic violence training was included within the existing 520 minimum basic course training hours and that the 520 minimum hours remained the same before and after the enactment of Penal Code section 13519, subdivisions (b) and (c).

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Also, the Commission found that domestic violence training may be included within the existing 24 minimum advanced officer training program hours and that the 24 minimum hours remained the same before and after the enactment of Penal Code section 13519, subdivisions (b) and (c).

Section 1005, subdivision (f), of Title 11, California Code of Regulations, states in pertinent part:

> "Technical Courses (Optional) .
>
> "(1) Technical Courses are designed to develop skills and knowledge in subjects requiring special expertise,
>
> II. . . . . "

The Commission found that domestic violence training through the skills and knowledge module are optional courses and not required by the provisions of Penal Code section 13519, subdivisions (b) and (c).

APPLICABLE LAW RELEVANT TO THE DETERMINATION OF A REIMBURSABLE STATE MANDATED PROGRAM

Government Code section 17500 reads, in pertinent part:

> " . . The Legislature finds and declares that the failure of the existing process to adequately and consistently resolve the complex legal questions involved in the determination of state-mandated costs has led to an increasing reliance by local agencies and school districts on the judiciary and, therefore, in order to relieve unnecessary congestion of the judicial system, it is necessary to create a mechanism which is capable of rendering sound quasi--judicial decisions and providing

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an effective means of resolving disputes over the existence of state-mandated local programs.

"It is the intent of the Legislature in enacting this part to provide for the implementation of Section 6 of Article XIII B of the California Constitution and to consolidate the procedures for reimbursement of statutes specified in the Revenue and Taxation Code with those identified in the Constitution. Further, the Legislature intends that the Commission on State Mandates, as a quasi-judicial body, will act in a deliberative manner in accordance with the requirements of Section 6 of Article XIII B of the California Constitution2

Government Code section 17514 provides:

"'Costs mandated by the state' means 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."

Government Code section 17551, subdivision (a), provides:

"The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution."

Government Code section 17552 reads:

"This chapter shall provide the sole and exclusive procedure by which a local agency or school district may claim reimbursement for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution/

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Section 6, article XIIIB of the California Constitution reads:

> "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, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:
>
> "(a) Legislative mandates requested by the local agency affected;
> "(b) Legislation defining a new crime or changing an existing definition of a crime; or
> "(c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

CONCLUSION

The Commission determines that it has the authority to decide this claim under the provisions of Government Code sections 17508 and 17551, subdivision (a).

The Commission concludes that the provisions of Penal Code section 13519, subdivisions (b) and (c), as added by Chapter 1609/84:

1. do not require local agencies to implement a domestic violence training program for their law enforcement officers and to pay for the cost of such training;

2. do not increase the minimum basic course training hours nor the minimum advanced officer training hours and,

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consequently, no additional costs are. incurred by local agencies: and

3. do not require local agencies to provide domestic violence training pursuant to the POST skills and knowledge module.

Accordingly, the Commission further concludes that the legislation subject to this test claim does not constitute a reimbursable state mandated program upon local agencies within the meaning of Government Code section 17514 and section 6, article XIIIB of the California Constitution,,

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DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of, employment and business address is 1414 K Street, Suite 315, Sacramento, California 95814.

On March 14, 1991, I served the attached Statement of Decision regarding Domestic Violence Training by placing a true copy thereof in an envelope addressed to each of the persons named below at the address set out immediately below each respective name, and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully prepaid.

See attached service 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 14, 1991 at Sacramento, California.

Charlotte Smith

CHARLOTTE SMITH

WP0554h(14)

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON:	NO. CSM - 96-362-01
Penal Code Sections 13519 and 13730, as amended by Chapter 965, Statutes of 1995 And filed on December 27, 1996; By the County of Los Angeles, Claimant.	DOMESTIC VIOLENCE TRAINING AND INCIDENT REPORTING PROPOSED STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (Presented for adoption on January 29, 1998)

PROPOSED STATEMENT OF DECISION

This test claim was heard by the Commission on State Mandates (Commission) on December 18, 1997, during a regularly scheduled hearing. Mr. Leonard Kaye appeared for the County of Los Angeles; Mr. Glen Fine, appeared for the Commission on Peace Officer Standards and Training; and Mr. James Apps and Mr. James Foreman appeared for the Department of Finance. The following persons were witnesses for the County of Los Angeles: Captain Dennis D. Wilson, Deputy Bernice K. Abram, and Ms. Martha Zavala.

At the hearing, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

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

PART I. DOMESTIC VIOLENCE TRAINING

Issue 1: Does the domestic violence continuing education requirement upon law enforcement officers under Penal Code section 13519, subdivision (e), impose a new program or higher level of service

upon local agencies under section 6 of article XIII B of the California Constitution?

The County of Los Angeles alleged that Penal Code section 13519, subdivision (e), as amended by Chapter 965, Statutes of 1995, imposes a new program or higher level of service in an existing program upon local agencies within the meaning of section 6, article XIII B of the California Constitution. The statute which is the subject of this test claim is as follows:

> "(e) Each law enforcement *officer* below the rank of supervisor who is assigned to patrol duties and would normally respond to domestic violence calls or incidents of domestic violence *shall complete, every two years, an updated course of instruction on domestic violence that is developed according to the standards and guidelines developed pursuant to subdivision (d)*. The instruction required pursuant to this subdivision *shall be funded from existing resources* available for the training required pursuant to this section. It is the intent of the Legislature *not* to increase the annual training costs of local government." (Emphasis added.)

COMMISSION FINDINGS:

In order for a statute, which is the subject of a test claim, to impose a reimbursable state mandated program, the statutory language (1) must direct or obligate an activity or task upon local governmental entities, and (2) the required activity or task must be new or it must create an increased or higher level of service over the former required level of service. To determine if a required activity is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately prior to the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must be state mandated.[1]

The foregoing provisions require each law enforcement *officer* below the rank of supervisor, who is assigned to patrol duties and normally responds to domestic violence calls or incidents, to complete an updated course of instruction on domestic violence every two years. This course of instruction must be developed according to POST's standards and guidelines, which are described in subdivision (d) of section 13519. Although the statute imposes an express continuing education requirement upon individual officers and not local agencies, the last sentence of subdivision (e) indicates the Legislature's awareness of the potential impact of this training course upon local

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

governments (i.e., "[i]t is the intent of the Legislature not to increase the annual training costs of local government.")

Thus, the Commission found this continuing education activity is imposed upon local agencies whose local law enforcement officers carry out a basic governmental function by providing services to the public. Such activity is not imposed on state residents generally.[2] In sum, the Commission found that the first requirement to determine whether the test claim legislation imposes state-mandated program is satisfied.

Second, subdivision (e) of section 13519 imposes a new requirement on certain law enforcement officers below the rank of supervisor to complete an updated course of instruction on domestic violence every two years. This training obligation was not required immediately prior to the enactment of subdivision (e). Instead, local law enforcement agencies were *encouraged*, but not required, to include periodic updates and training on domestic violence *as part of their advance officer training program only*. (Former Pen. Code § 13519, subd. (c).) Accordingly, the Commission found that the second requirement to determine whether the test claim legislation imposes a state mandated program is satisfied.

Third, the Commission found that subdivision (e) is state mandated because local agencies have no options or alternatives available to them and, therefore, the officers described in subdivision (e) must attend and complete the updated domestic violence training course from a POST-certified class.[3]

Based on the foregoing, the Commission found that section 13519, subdivision (e), imposes a new program upon local agencies.

Issue 2: Does section 13519, subdivision (e), impose costs mandated by the state upon local agencies which are reimbursable from the State Treasury?

The latter portion of Penal Code section 13519, subdivision (e), provides in pertinent part:

> ". . . . The instruction required pursuant to this subdivision *shall be funded from existing resources* available for the training required pursuant to this section. It is the intent of the Legislature not to increase the annual training costs of local governmental entities." (Emphasis added.)

Given the above statutory language, the Commission continued its inquiry to determine whether local law enforcement agencies incur any increased costs as a result of the test claim statute.

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

[3] *Lucia Mar Unified School Dist.* v. *Honig* (1988) 44 Cal.3d 830, 832 and 836.

COMMISSION FINDINGS:

Government Code section 17514 defines *costs mandated by the state* as:

> ". . . . [A]ny 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."

If the claimant's domestic violence training course, under section 13519, subdivision (e), caused an increase in the total number of continuing education hours required for these certain officers, then the increased costs associated with the new training course are reimbursable as "costs mandated by the state" (subject to any offset from the receipt of any state moneys received for the costs incurred in attending and completing the subdivision (e) domestic violence training course).

On the other hand, if there is no overall increase in the total number of continuing education hours for these officers attributable to the subdivision (e) domestic violence training course, then there are no increased training costs associated with this training course. Instead, the subdivision (e) course is accommodated or absorbed by local law enforcement agencies within their existing resources available for training.

Based on the evidence submitted by the parties, and the plain language of the test claim statute, the Commission found that local agencies incur *no* increased "costs mandated by the state" in carrying out the two hour domestic violence update training.

POST regulations provide that local law enforcement officers must receive at least 24 hours of Advanced Officer continuing education training every two years. Section 1005, subdivision (d), of Title 11, California Code of Regulations, states in pertinent part:

> "Continuing Professional Training (Required).
>
> "(1) Every peace officer below the rank of a middle management position as defined in section 1001 and every designated Level 1 Reserve Officer as defined in Commission Procedure H-1-2 (a) *shall satisfactorily complete the Advanced Officer Course of 24 or more hours at least once every two years after meeting the basic training requirement."*
>
> "(2) The above requirement may be met by satisfactory completion of one or more Technical Courses totaling 24 or more hours, or satisfactory completion of an alternative method of compliance as determined by the Commission..."
>
> "(3) Every regular officer, regardless of rank, may attend a certified Advanced Officer Course and the jurisdiction may be reimbursed."
>
> "(4) Requirements for the Advanced Officer Course are set forth in the POST Administrative Manual, section D-2."

The evidence submitted by the parties reveals that the updated training is accommodated or absorbed within the 24-hour continuing education requirement provided in the above regulation.

POST Bulletin 96-2 was forwarded to local law enforcement agencies shortly after the test claim statute was enacted. The Bulletin specifically recommends that local agencies make the required updated domestic violence training part of the officer's continuing professional training. It does not mandate creation and maintenance of a separate schedule and tracking system for the required domestic violence training. To satisfy the training in question, POST prepared and provided local agencies with course materials and a two-hour videotape.

Additionally, the letter dated July 11, 1997, from Glen Fine of POST indicates POST's interpretation of the test claim statute that the domestic violence update training be included *within* the 24 hour continuing education requirement set forth above. Accordingly, the two-hour course may be credited toward satisfying the officer's 24-hour continuing education requirement.

The Commission disagreed with the claimant's contention that it is entitled to reimbursement as a result of the test claim statute since it cannot redirect funds for salary reimbursement from other non-funded POST training modules. The POST memorandum submitted by the claimant, dated July 6, 1993, reveals that the claimant has not received salary reimbursement for officer training since 1993, before the enactment of the test claim statute.

Accordingly, the Commission found that local agencies incur no increased costs mandated by the state in carrying out this two hour course because:

- *immediately before and after* the effective date of the test claim legislation, POST's minimum required number of continuing education hours for the law enforcement officers in question *remained the same at 24 hours*. After the operative date of the test claim statute these officers must still complete at least 24 hours of professional training every two years,
- the two hour domestic violence training update may be credited toward satisfying the officer's 24 hour minimum,
- the two hour training is *not* separate and apart nor "on top of" the 24 hour minimum,
- POST does not mandate creation and maintenance of a separate schedule and tracking system for this two hour course,
- POST prepared and provides local agencies with the course materials and video tape to satisfy the training in question, and
- of the 24 hour minimum, the two hour domestic violence training update is the only course that is legislatively mandated to be continuously completed every two years by the officers in question. The officers may satisfy their remaining 22 hour requirement by choosing from *the many elective courses* certified by POST.

In sum, the Commission found that local agencies do *not* incur increased training costs for the two hour domestic violence training update because the course is accommodated or absorbed by local law enforcement agencies within their existing resources available for training as spelled out in the test claim statute. The minimum POST requirement for continuing education for the officers in question *immediately before and after* the effective date of the test claim statute was and remains at 24 hours. Of the 24 hours, the Legislature requires that two out of the 24 must be an updated course on domestic violence certified by POST.

PART I CONCLUSION

Based on the foregoing evidence, the Commission concludes that Penal Code section 13519, subdivision (e), does not impose a reimbursable state mandated program upon local law enforcement agencies and denies this portion of the test claim.

PART II: DOMESTIC VIOLENCE INCIDENT REPORTING

Issue 1: Do the provisions of Penal Code section 13730, subdivision (c), as amended by Chapter 965, Statutes of 1995, impose a new program or higher level of service upon local agencies within the meaning of section 6, article XIII B of the California Constitution?

BACKGROUND:

Penal Code section 13730 was originally added by Chapter 1609, Statutes of 1984. At that time, the statute required each law enforcement agency to develop a domestic violence incident report. The 1984 statute provided the following:

> "(a) Each law enforcement agency shall develop a system, by January 1, 1986 for recording all domestic violence-related calls for assistance made to the department including whether weapons are involved. Monthly, the total number of domestic violence calls received and the numbers of such cases involving weapons shall be compiled by each law enforcement agency and submitted to the Attorney General.
>
> (b) The Attorney General shall report annually to the Governor, the Legislature, and the public, the total number of domestic violence-related calls received by California law enforcement agencies, the number of cases involving weapons, and a breakdown of calls received by agency, city, and county.
>
> (c) *Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic violence, a report shall be written and shall be thus identified on the face of the report as a domestic violence incident.*" (Emphasis added.)

Chapter 1609, Statutes of 1984, was the subject of a previous test claim (CSM-4222) approved by the Commission on January 22, 1987. The Parameters and Guidelines for Chapter 1609, Statutes of 1984, provided that the following costs were reimbursable:

(1) the "costs associated with the *development of a Domestic Violence Incident Report form* used to record and report domestic violence calls"; and

(2) costs incurred "for the *writing of mandated reports which shall include domestic violence reports, incidents or crime reports directly related to the domestic violence incident.*"

In 1993, the Legislature made minor nonsubstantive changes to section 13730 and amended subdivision (a) to include the second underlined sentence relating to the written incident report required under subdivision (c):

> "(a) Each law enforcement agency shall develop a system, by January 1, 1986 for recording all domestic violence-related calls for assistance made to the department including whether weapons are involved. <u>All domestic violence-related calls for assistance shall be supported with a written incident report, as described in subdivision (c), identifying the domestic violence incident.</u> Monthly, the total number of domestic violence calls received and the numbers of such cases involving weapons shall be compiled by each law enforcement agency and submitted to the Attorney General." (Chapter 1230, Statutes of 1993.)

Since the Legislature required local law enforcement agencies to develop and complete the domestic violence incident report form in subdivision (c) under the 1984 legislation, the 1993 amendment to subdivision (a) merely *clarified* this reporting requirement, rather than mandating a new or additional requirement. The Commission further noted that a test claim has never been filed on Chapter 1230, Statutes of 1993, requesting that the amendment constitute a new program or higher level of service.

During fiscal years 1992/93 through 1996/97, the Legislature no longer mandated the incident reporting requirements set forth in Penal Code section 13730 pursuant to Government Code section 17581. Accordingly, it was optional for local law enforcement agencies to implement the domestic violence incident reporting activity during these fiscal years. The fiscal year 1997/98 budget continues the suspension, effective August 18, 1997. (Chapter 282, Statutes of 1997, Item 9210-295-0001, par. 2, pp. 587-588.)

In 1995, the Legislature amended Penal Code section 13730, subdivision (c), in Chapter 965, Statutes of 1995. Subdivision (c), as amended by Chapter 965, Statutes of 1995, provides the following:

> "Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic violence, a report shall be written and shall be

identified on the face of the report as a domestic violence incident. A report shall include at least both of the following:

(1) A *notation* of whether the officer or officers who responded to the domestic violence call observed any signs that the alleged abuser was under the influence of alcohol or a controlled substance.

(2) A *notation* of whether the officer or officers who responded to the domestic violence call determined if any law enforcement agency had previously responded to a domestic violence call at the same address involving the same alleged abuser or victim." (Underscored text added by Chapter 965, Statutes of 1995)

The County of Los Angeles alleged that Penal Code section 13730, subdivision (c), as amended by Chapter 965, Statutes of 1995, imposes a new program or higher level of service in an existing program upon local agencies within the meaning of section 6, article XIII B of the California Constitution.

COMMISSION FINDINGS:

The Commission found that Penal Code section 13730, subdivision (c), obligates local law enforcement agencies to include in the domestic violence incident reports additional information relating to the use of alcohol or controlled substances by the abuser, and any prior domestic violence responses to the same address. This additional reporting activity is performed by local law enforcement agencies that carry out basic governmental functions by providing a service to the public. Such activities are not imposed on state residents generally.[4] Thus, the Commission found that the first requirement to determine whether a statute imposes a reimbursable state mandated program is satisfied.

Second, before the enactment of the test claim statute, local law enforcement agencies were required to develop and complete domestic violence incident reports. However, local agencies were *not* required to include in the report specific information relating to the alleged abuser's use of alcohol or controlled substances, or information relating to any prior domestic violence calls made to the same address.

Accordingly, the Commission found that Penal Code section 13730, subdivision (c), constitutes a new program by satisfying two of the requirements necessary to determine whether legislation imposes a reimbursable state mandated program.

The Commission's inquiry continued to determine whether the test claim legislation is state mandated for purposes of reimbursement from the State Treasury.[5] As previously indicated, the original statute, which required the development and completion of a

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

[5] *Lucia Mar Unified School Dist.* v. *Honig* (1988) 44 Cal.3d 830, 832 and 836.

domestic violence incident report was determined by the Commission to be a reimbursable state mandated program. However, this program was made optional by the Legislature under Government Code section 17581.

Issue 2: If Penal Code section 13730, as originally added by Chapter 1609, Statutes of 1984, is made optional by the Legislature pursuant to Government Code section 17581, are subsequent legislative amendments to section 13730 also made optional?

The County of Los Angeles contended that Chapter 965, Statutes of 1995, is not included in the Legislature's suspension of the original statute. The County contended that the chapters need to be addressed separately. The County further contended that Chapter 965, Statutes of 1995, is not automatically made optional by association with the original statute. Rather the determination of whether a statute is suspended is up to Legislature.

COMMISSION FINDINGS:

Government Code section 17581 provides, in pertinent part, the following:

> "(a) No local agency shall be required to implement or give effect to any statute or executive order, or portion thereof, during any fiscal year if all of the following apply:
>
> "(1) The statute or executive order, or portion thereof, has been determined by the Legislature, the commission, or any court to mandate a new program or higher level of service requiring reimbursement of local agencies pursuant to section 6 of article XIIIB of the California Constitution.
>
> "(2) The statute or executive order, or portion thereof, has been specifically identified by the Legislature in the Budget Act for that fiscal year as being one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered to have been specifically identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act and it is specifically identified in the language of a provision of the item providing the appropriation for mandate reimbursements.
>
> "(b) Notwithstanding any other provision of law, if a local agency elects to implement or give effect to a statute or executive order described in subdivision (a), the local agency may assess fees to persons or entities which benefit from the statute or executive order. Any fee assessed pursuant to this subdivision shall not exceed the costs reasonably borne by the local agency.
>
> " . . . . . ."

The provisions of section 17581 provide that if both of the conditions set forth therein are satisfied, the identified state mandated program becomes optional and the affected local agencies are not required to carry out the state program. If the local agency elects to carry out the identified state program, however, it is authorized to assess a fee to recover the costs reasonably borne by the local agency.

The Commission determined that Penal Code section 13730, as originally added by Chapter 1609, Statutes of 1984, imposed a reimbursable state mandated program upon local law enforcement agencies. As previously indicated, this program required all law enforcement agencies to develop and complete an incident report relating to all domestic violence calls.

However, during fiscal years 1992/93 through 1997/98, the Legislature specifically identified Chapter 1609, Statutes of 1984 in the Budget Act for the periods in question pursuant to Government Code section 17581, assigning zero dollar appropriations to the original state mandated program under Chapter 1609, Statutes of 1984. Both conditions set forth in section 17581 were met, i.e., (1) the Commission determined that Penal Code section 13730 of Chapter 1609, Statutes of 1984, imposed a state mandated program and (2) the Legislature identified Chapter 1609, Statutes of 1984, and appropriated zero funds. Thus, the domestic violence incident report program was optional and no longer state mandated. Notwithstanding, the Commission recognized that during the period from July 1, 1997 through August 17, 1997, and during subsequent periods when the state operates without a budget, the original suspension of the mandate would not be in effect.

The test claim statute (Chapter 965, Statutes of 1995) amends Penal Code section 13730 by requiring additional information to be contained within the domestic violence incident report. Since the development and completion of the incident report has been made optional by the Legislature pursuant to Government Code section 17581, the Commission inquired whether the additional requirements imposed by the test claim are also optional.

On its face, the 1997/98 State Budget Act does not identify Chapter 965, Statutes of 1995, as a suspended mandate. However, the Commission found that, in substance, the test claim legislation *is* affected by the Legislature's actions making the original test claim legislation optional.

The 1995 amendment to subdivision (c) of section 13730 requires information relating to the alleged abuser's use of alcohol or controlled substances, and any prior responses to the same address be *added to the domestic violence incident report form itself*. The Commission agreed that the additional notations required under the test claim statute constitute an additional activity. For this reason, the Commission found that the test claim statute constitutes a new program or higher level of service.

However, with the Legislature's use of the word "notation" in subdivision (c), the Commission disagreed that the 1995 amendment to section 13730 made the domestic violence incident report "very different" from what was required in 1984. The test

claim statute does not require a new or different report. It simply specifies the minimum content of the underlying report.

Therefore, the Commission found that the new requirements imposed by Chapter 965, Statutes of 1995, are *not* independent of the incident report as suggested by the claimant; rather, they are encompassed and directly connected to the underlying incident reporting program established by the Legislature in Chapter 1609, Statutes of 1984.[6]

The Commission further found that section 13730, subdivision (c), requires additional information to be included on the domestic violence incident report, the performance of domestic violence incident reporting is *not* state mandated because the development and completion of the report itself was made optional by the Legislature. In other words, since the development and completion of the incident report are not state mandated, then the new information to be included on the incident report is likewise not state mandated.

On the other hand, *if* a local agency voluntarily opts or elects to complete the incident report, then the additional information must be included on the report pursuant to the provisions of the test claim statute. In this respect, Chapter 965, Statutes of 1995, is not a meaningless and unnecessary law as suggested by the claimant.

Therefore, the Commission determined that the new additional information to the domestic violence incident report is not a reimbursable state-mandated program because:

- Presently, the State Budget Act of 1997/98 makes the completion of the incident report *optional* and
- The new additional information under the test claim statute comes into play only after a local agency opts or elects to complete the incident report.

Notwithstanding the foregoing, the Commission determined that for the *limited* window period from July 1, 1997 through August 17, 1997, the domestic violence incident reporting, including the inclusion and completion of the new additional information to the form, is a reimbursable state mandated activity because the 1997/98 Budget Act was not chaptered until August 18, 1997. (Chapter 282, Statutes of 1997.)

The Commission further determined that in all subsequent "window periods" when the state operates without a budget, the domestic violence incident reporting program,

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[6] This test claim is to be distinguished from the previously decided test claim (September 25, 1997), entitled *Domestic Violence Arrest Policies and Standards*, where the Commission determined that the legislation in question imposed new and distinct activities and, therefore, was not affected by Government Code section 17581. In the *Domestic Violence Arrest Policies and Standards* test claim, the Legislature made optional the original requirement to develop, adopt and implement written policies for *response* to domestic violence calls pursuant to Government Code section 17581. The test claim legislation amended the statute adding the requirement to develop and implement *arrest* policies for domestic violence offenders, a new and distinct requirement not encompassed by the previously suspended requirement to develop response policies.

including the inclusion and completion of the new additional information to the form, is a reimbursable state mandated activity until the Budget Act is chaptered and makes the incident reporting program optional under Government Code section 17581.

PART II CONCLUSION

The Commission concludes that pursuant to section 6 of article XIII B of the California Constitution and section 17514 of the Government Code that:

- Penal Code section 13730, subdivision (c), as amended by Chapter 965, Statutes of 1995, does not impose a reimbursable state mandated program for the period in which the underlying incident reporting program is made optional under Government Code section 17581.

- Penal Code section 13730, subdivision (c), as amended by Chapter 965, Statutes of 1995, does impose a reimbursable state mandated program for the *limited* window period from July 1, 1997 (the start of the new fiscal year) through August 17, 1997, when the State Budget Act makes the incident reporting program optional.

- Penal Code section 13730, subdivision (c), as amended by Chapter 965, Statutes of 1995, does impose a reimbursable state mandated program for all *subsequent* window periods from July 1 (the start of the new fiscal year) until the Budget Act is chaptered and makes the incident reporting program optional under Government Code section 17581.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM: Penal Code Section 13519.7, As Amended by Statutes of 1993, Chapter 126; and Filed on December 23, 1997; By the County of Los Angeles, Claimant.	NO. CSM 97-TC-07 *Sexual Harassment Training in the Law Enforcement Workplace* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 (Adopted on September 28, 2000)

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

This Decision shall become effective on September 29, 2000.

Paula Higashi, Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM: Penal Code Section 13519.7, As Amended by Statutes of 1993, Chapter 126; and Filed on December 23, 1997; By the County of Los Angeles, Claimant.	NO. CSM 97-TC-07 *Sexual Harassment Training in the Law Enforcement Workplace* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 (Adopted on September 28, 2000)

STATEMENT OF DECISION

On August 24, 2000 the Commission on State Mandates (Commission) heard this test claim during a regularly scheduled hearing. Mr. Leonard Kaye appeared for the County of Los Angeles. Captain Tom Laing and Lieutenant Randy Olson appeared as witnesses for the Los Angeles County Sheriff's Department. Mr. James W. Miller and Ms. Amber D. Pearce appeared for the Department of Finance. Mr. Hal Snow appeared for the Commission on Peace Officer Standards and Training (POST). Mr. Allan Burdick appeared on behalf of the California State Association of Counties (CSAC).

At the hearing, oral and documentary evidence was introduced, the test claim was submitted, and the vote was taken.

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

The Commission, by a vote of 6 to 1, partially approved this test claim.

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BACKGROUND

The test claim statute, Penal Code section 13519.7, addresses the implementation of complaint guidelines and training on sexual harassment in the workplace for local law enforcement officers. The test claim statute became effective on January 1, 1994, and requires the Commission on Peace Officer Standards and Training (POST) to develop complaint guidelines by August 1, 1994 to be followed by local law enforcement agencies for peace officers who are victims of sexual harassment in the workplace. The test claim statute also requires the course of basic training for law enforcement officers to include instruction on sexual harassment in the workplace no later than January 1, 1995. Peace officers that completed basic training before January 1, 1995 are required to receive supplementary training on sexual harassment in the workplace by January 1, 1997.

In the past, the Commission has decided three test claims addressing training for peace officers and firefighters. In 1991, the Commission denied a test claim filed by the City of Pasadena requiring new and veteran peace officers to complete a course regarding the handling of domestic violence complaints as part of their basic training and continuing education courses (*Domestic Violence Training*, CSM-4376). The Commission reached the following conclusions:

- The test claim legislation does not require local agencies to implement a domestic violence training program and to pay the cost of such training;
- The test claim legislation does not increase the minimum number of basic training hours, nor the minimum number of advanced officer training hours and, thus, no additional costs are incurred by local agencies; and
- The test claim legislation does not require local agencies to provide domestic violence training.

In January 1998, the Commission denied a test claim filed by the County of Los Angeles requiring veteran law enforcement officers below the rank of supervisor to complete an updated course of instruction on domestic violence every two years (*Domestic Violence Training and Incident Reporting*, CSM-96-362-01). Although the statute imposed an express continuing education requirement upon individual officers and not local agencies, the last sentence of the test claim statute stated that "it is the intent of the Legislature not to increase the annual training costs of local government." Thus, the Commission recognized the Legislature's awareness of the potential impact of the training course upon local governments and found that the continuing education activity was imposed upon local agencies. The Commission denied the test claim, however, based on the finding that local agencies incur *no* increased "costs mandated by the state" in carrying out the two-hour course for the following reasons:

- *Immediately before and after* the effective date of the test claim legislation, POST's minimum required number of continuing education hours for the law enforcement officers in question *remained the same at 24 hours*. After the operative date of the test claim statute these officers must still complete at least 24 hours of professional training every two years,

- The two hour domestic violence training update may be credited toward satisfying the officer's 24-hour minimum,
- The two hour training is *not* separate and apart nor "on top of" the 24-hour minimum,
- POST does not mandate creation and maintenance of a separate schedule and tracking system for this two hour course,
- POST prepared and provides local agencies with the course materials and video tape to satisfy the training in question, and
- Of the 24-hour minimum, the two hour domestic violence training update is the only course that is legislatively mandated to be continuously completed every two years by the officers in question. The officers may satisfy their remaining 22-hour requirement by choosing from *the many elective courses* certified by POST.

In December 1998, the Commission approved a test claim filed by the County of Los Angeles and remanded by the court, which required new and veteran firefighters to complete a training course on Sudden Infant Death Syndrome (*Sudden Infant Death Syndrome (SIDS) for Firefighters*, CSM-4412). The test claim statute further authorized local agencies to provide the instruction and training, and to assess a fee to pay for the costs of the training. In its order, the court found that there were no state training programs available to provide SIDS training to new and veteran firefighters. Thus, the court concluded that the SIDS training program was a new program imposed on the county. The court remanded the case to the Commission to determine if the fee authority provided by the statute could be realistically recovered from firefighters. In this respect, the Commission recognized that local agencies have the unilateral authority to impose changes regarding terms of employment, such as training fees, on employees. However, based on the evidence presented at the hearing, the Commission found that the fee authority could not be realistically exercised. The Commission also recognized that, unlike POST, an agency charged with overseeing peace officer training, there is no state agency charged with developing and overseeing firefighter training. Accordingly, the Commission reached the following conclusions:

- The SIDS training program is a new program imposed on local agencies and does not impose requirements on firefighters alone.
- When SIDS instruction is provided by a private facility, local agencies still incur "costs mandated by the state" in the form of salaries, benefits, and other incidental expenses for the time that its employees spend in training (trainee time), registration and materials.
- When SIDS training is provided by the local agency, the local agency incurs "costs mandated by the state" for the development of the training, trainee time, trainer time and materials since the fee authority provided in the statute cannot be realistically exercised.

COMMISSION FINDINGS

In order for a statute or an executive order to impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution and Government Code section 17514, the statutory language must first direct or obligate an activity or task upon local governmental agencies. If the statutory language does not direct or obligate local agencies to perform a task, then compliance with the test claim statute or executive order is within the discretion of the local agency and a reimbursable state mandated program does not exist.

In addition, the required activity or task must constitute a new program or create an increased or higher level of service over the former required level of service. The California Supreme Court has defined a "new program" or "higher level of service" as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the State. To determine if the "program" is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must impose "costs mandated by the state".[1]

This decision addresses the following issues:

- Do the sexual harassment complaint guidelines developed by POST in response to Penal Code section 13519.7, subdivision (a), constitute a reimbursable state mandated program for local agencies?
- Does the requirement that the course of basic training for law enforcement officers include instruction on sexual harassment in the workplace no later than January 1, 1995 constitute a reimbursable state mandated program?
- Does the requirement for peace officers that completed basic training before January 1, 1995 to receive supplementary training on sexual harassment in the workplace by January 1, 1997 constitute a reimbursable state mandated program?

The Commission's findings on these issues are presented below.

Issue 1: Do the sexual harassment complaint guidelines developed by POST in response to Penal Code section 13519.7, subdivision (a), constitute a reimbursable state mandated program for local agencies?

Penal Code section 13519.7, subdivision (a), states the following:

> "On or before August 1, 1994, [POST] shall develop complaint guidelines to be followed by city police departments, county sheriffs' departments, districts, and state university departments, for peace officers who are victims of sexual harassment in the workplace. In developing the

[1] Article XIII B, section 6 of the California Constitution; *County of Los Angeles* v. *State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist.* v. *State of California* (1987) 190 Cal.App.3d 521, 537; *City of Sacramento* v. *State of California* (1990) 50 Cal.3d 51, 66; *Lucia Mar Unified School Dist.* v. *Honig* (1988) 44 Cal.3d 830, 835; Gov. Code, § 17514.

complaint guidelines, [POST] shall consult with appropriate groups and individuals having an expertise in the area of sexual harassment."

The Department of Finance contended that this provision does not constitute a reimbursable state mandated program because it is not unique to local government. The Department contended that the test claim statute affects all peace officers in the State, including those in the University of California and California State University systems. The Department cites the *County of Los Angeles* v. *State of California* and *City of Sacramento* v. *State of California* cases in support of its position.[2]

The claimant disagreed. The claimant argued that the test claim statute is unique to government and that the cases cited by the Department are not applicable here. The claimant also submitted with the test claim a document prepared by POST entitled "Sexual Harassment in the Workplace, Guidelines and Curriculum, 1994" in support of its position that Penal Code section 13519.7, subdivision (a), imposes reimbursable state mandated activities on local agencies.

The Commission found that POST's "Sexual Harassment in the Workplace, Guidelines and Curriculum, 1994" constitutes an executive order under Government Code section 17516. That section defines an "executive order," in relevant part, as any order, plan, requirement, rule, or regulation issued by any agency, department, board, or commission of state government.

The Commission also found that the Department's reliance on the *County of Los Angeles* and *City of Sacramento* cases, to support its argument that sexual harassment complaint guidelines for peace officers is not unique to government, is misplaced. Both cases involved state-mandated increases in workers' compensation benefits, which affected public and *private* employers alike. The California Supreme Court found that the term "program" as used in article XIII B, section 6, and the intent underlying section 6 "was to require reimbursement to local agencies for the costs involved in carrying out functions *peculiar to government*, not for expenses incurred as an incidental impact of law that apply generally to all state residents and entities." (Emphasis added.)[3] Since the increase in workers' compensation benefits applied to all employees of private and public businesses, the court found that no reimbursement was required.

Here, on the other hand, the sexual harassment complaint guidelines are to be followed by city police departments, county sheriffs' departments, districts, and state university departments. They do not apply "generally to all state residents and entities" in the state, such as private businesses. In addition, the Court of Appeal, Third Appellate District, has recognized that police protection is a peculiarly governmental function.[4] Accordingly, the Commission found that the sexual harassment complaint guidelines developed by POST in response to Penal Code section 13519.7, subdivision (a), are unique to government and constitute a "program" within the meaning of article XIII B, section 6 of the California Constitution.

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[2] *County of Los Angeles* v. *State of California*, supra; 43 Cal.3d 46; *City of Sacramento* v. *State of California*, *supra*, 50 Cal.3d 51.

[3] *County of Los Angeles*, *supra*, 43 Cal.3d at 56-57; *City of Sacramento*, *supra*, 50 Cal.3d at 67.

[4] *Carmel Valley Fire Protection Dist.*, *supra*, 190 Cal.App.3d 521, 537.

The Commission further found that the complaint guidelines prepared by POST in response to Penal Code section 13519.7, subdivision (a), constitute a "new program" and impose "costs mandated by the state" on local law enforcement agencies. The document lists twelve guidelines, nine of which *require* local agencies to develop a formal written complaint procedure containing specified procedures. The nine required guidelines state the following:

- "Each law enforcement agency . . . *shall* develop a formal written procedure for the acceptance of complaints from peace officers who are the victims of sexual harassment in the work place."
- "Each law enforcement agency . . . *shall* provide a written copy of their complaint procedure to every peace officer employee."
- "Agency sexual harassment complaint procedures *shall* include the definitions and examples of sexual harassment as contained in the Code of Federal Regulations (29 CFR 1604.11) and California Government Code Section 12950."
- "Agency sexual harassment complaint procedures *shall* identify the specific steps complainants should follow for initiating a complaint."
- "Agency sexual harassment complaint procedures *shall* address supervisory/management responsibilities to intervene and/or initiate an investigation when possible sexual harassment is observed in the work place."
- "Sexual harassment complaint procedures *shall* state that agencies must attempt to prevent retaliation, and, under the law, sanctions can be imposed if complainants and/or witnesses are subjected to retaliation."
- "[T]he agency procedure *shall* identify parties to whom the incident should/may be reported . . . , *shall* allow the complainant to circumvent their normal chain of command in order to report a sexual harassment incident [and] *shall* include a specific statement that the complainant is always entitled to go directly to the California Department of Fair Employment and Housing (DFEH) and/or the Federal Equal Employment Opportunity Commission (EEOC) to file a complaint."
- "Agency sexual harassment complaint procedures *shall* require that all complaints shall be fully documented by the person receiving the complaint."
- "All sexual harassment prevention training *shall* be documented for each participant and maintained in an appropriate file."

The Commission determined that local law enforcement agencies were not required to follow the sexual harassment guidelines developed by POST prior to the enactment of the test claim statute.

Accordingly, the Commission found that the sexual harassment complaint guidelines entitled "Sexual Harassment in the Workplace, Guidelines and Curriculum, 1994," which were developed by POST in response to Penal Code section 13519.7, subdivision (a), constitute a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Issue 2: **Does the requirement that the course of basic training for law enforcement officers include instruction on sexual harassment in the workplace no later than January 1, 1995 constitute a reimbursable state mandated program?**

Penal Code section 13519.7, subdivision (b), states the following:

> "The course of basic training for law enforcement officers shall, no later than January 1, 1995, include instruction on sexual harassment in the workplace. The training shall include, but not be limited to, the following:
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> (1) The definition of sexual harassment.
>
> (2) A description of sexual harassment, utilizing examples.
>
> (3) The illegality of sexual harassment.
>
> (4) The complaint process, legal remedies, and protection from retaliation available to victims of sexual harassment.
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> In developing this training, [POST] shall consult with appropriate groups and individuals having an interest and expertise in the area of sexual harassment."

Article XIII B, section 6 of the California Constitution states that "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." (Emphasis added.)

Thus, in order for a statute to be subject to article XIII B, section 6 of the California Constitution, the statutory language must direct or obligate an activity or task upon local governmental agencies. If the statutory language does not mandate local agencies to perform a task, then compliance with the test claim statute is within the discretion of the local agency and a reimbursable state mandated program does not exist.

The claimant contended that local agencies are required to provide basic training, including sexual harassment training, to new recruit employees. Even if an agency hires persons who have already obtained the training, the claimant states that the first law enforcement agency that actually provides the training should be reimbursed. The claimant is requesting reimbursement for the salaries, benefits and other incidental expenses for the time that its new recruit employees spend in training and the costs incurred to present the course at its basic training academy.

At the hearing, Mr. Leonard Kaye, Certified Public Accountant, Office of Auditor-Controller, testified on behalf of the claimant. Mr. Kaye acknowledged that local agencies are not specifically required by state law to be responsible for basic training. However, he contended that when the Legislature requires a new basic training component or course, the basic training academies, which include cities, counties, and community colleges, are required to provide the new basic training course.[5]

The Department of Finance contended that Penal Code section 13519.7, subdivision (b), does not impose a new program or higher level of service since there is no obligation

[5] Hearing Transcript (August 24, 2000), page 35, lines 4-15.

imposed on any local law enforcement agency to provide the training. Rather, the Department contended that the statute imposes a training obligation on recruits alone. Since the statute applies to new recruits, the Department contended that the local agency has the option of hiring only those persons who have already obtained the sexual harassment training. Thus, the Department concluded that if a local agency trains its recruit employees on sexual harassment, the local agency does so at its option.

POST did not submit any written comments on the issue of whether Penal Code section 13519.7, subdivision (b), mandates a new program or higher level of service on local agencies. However, Mr. Hal Snow, Assistant Executive Director of POST, provided testimony at the hearing. Mr. Snow testified that POST certifies about 39 academies in the state as basic training institutions. Mr. Snow stated that the academies are not required to be certified. Rather, it is an option on the part of the entity. Mr. Snow's testimony is as follows:

> "We certify about 39 academies around the state, and they are certified voluntarily; that is, no agency or community college or other organization is required to be certified. For those who are certified, they, of course, incur substantial costs in operating those academies, most of which are not reimbursable by POST. Some of them are subvented by community college funding, but, in every case, it is - - it's an option on the part of the entity, whether it's an agency or a community college, to be certified as a basic training institution."[6]

Mr. Snow further testified that roughly 6,000 people graduate from basic academy per year. Of the 6,000 graduates, about 2,000 are unemployed and pay for their own training.[7]

For the reasons stated below, the Commission found that Penal Code section 13519.7, subdivision (b), does not impose any activities or duties upon local law enforcement agencies. Rather, the requirement to complete the basic training course on sexual harassment is a mandate imposed on the individual who seeks peace officer status.

The test claim statute states that "the course of basic training for law enforcement officers" shall include sexual harassment in the workplace. The test claim statute itself does not mandate local agencies to provide the course of basic training to recruits. Rather, the statute is silent in this respect and does not specify who is required to provide the basic training course.

In addition, the Commission determined that there are no provisions in other statutes or regulations issued by POST that require local agencies to provide basic training. Since 1959, Penal Code section 13510 and following have required POST to adopt rules establishing minimum standards relating to the physical, mental and moral fitness governing the recruitment of new local law enforcement officers.[8] In establishing the standards for training, the Legislature instructed POST to permit the required training to

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[6] Hearing Transcript (August 24, 2000), page 36, lines 18-25, and page 37, lines 1-2.

[7] Hearing Transcript (August 24, 2000) page 32, lines 8-21.

[8] These standards can be found in Title 11 of the California Code of Regulations.

be conducted at *any* institution approved by POST.[9] For those "persons" who have acquired prior equivalent peace officer training, POST is required to provide the opportunity for testing instead of the attendance at a "basic training academy or accredited college."[10] Moreover, "each *applicant* for admission to a basic course of training certified by [POST] who is *not* sponsored by a local or other law enforcement agency . . . shall be required to submit written certification from the Department of Justice . . . that the applicant has no criminal history background. . . . "

Since 1971, Penal Code section 832 has required "every *person* described in this chapter as a peace officer" to satisfactorily complete an introductory course of training prescribed by POST before they can exercise the powers of a peace officer.[11] Any "*person*" completing the basic training course "who does *not become employed* as a peace officer" within three years is required to re-take and pass the basic training examination. Since 1994, POST has been authorized to charge a fee for the basic training examination to each "*applicant*" who is *not* sponsored or employed by a local law enforcement agency.[12]

The Commission acknowledged that some local law enforcement agencies, including the claimant, employ persons who have not yet completed their basic training course, and then sponsor or provide the training themselves.[13] Based on the statutory and regulatory scheme outlined above, however, the state has *not* mandated local agencies to do so.

In fact, the Commission recognized that there are several community colleges approved by POST offering basic training academy courses, including the course on sexual harassment in the workplace, that are open to any interested individual, whether or not employed or sponsored by a local agency. The colleges charge an average of $2000 to cover their costs for law enforcement basic training and financial assistance is available to those students in need.[14]

Thus, the Commission found that the test claim statute does not mandate local agencies to provide basic training, including the course on sexual harassment, and does not mandate local agencies to incur costs to send their new employees to basic training.

The Commission further disagreed with the claimant's arguments contained in its comments to the Draft Staff Analysis submitted on February 10, 2000, and comments to the Final Staff Analysis submitted on July 19, 2000. The claimant contended that the Commission's past decisions regarding training are precedential and hold that when the Legislature imposes training, it is a mandate upon the local law enforcement agency. The

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[9] Pen. Code, § 13511.

[10] *Id.*

[11] See also POST's regulation, tit. 11, Cal. Code Regs., § 1005, subd. (a)(9).

[12] Pen. Code, § 832, subd. (g), added by Stats. 1994, c. 43.

[13] Other agencies, however, require the successful completion of POST Basic Training *before* the applicant will be considered for the job. (See, Job Announcement for Amador County Deputy Sheriff.)

[14] POST Certified Basic Training Academies including Los Medanos College Basic Training Academy, charging $2200 for California State residents and offering financial assistance; Allan Hancock College Law Enforcement Academy stating that "the course is open to law enforcement agency 'sponsored' recruits and other interested students"; and Golden West College, whose mission statement promises that "90% of the academy graduates received jobs within three years of completion of the academy course."

claimant cited the Commission's decisions in *Domestic Violence Training and Incident Reporting* (CSM – 96-362-01) and *SIDS* (CSM – 4412). The Commission determined that these prior Commission decisions are distinguishable from this test claim and should not be applied.

Domestic Violence Training and Incident Reporting involved a statute that required *veteran* law enforcement officers below the rank of supervisor to complete an updated course of instruction on domestic violence every two years. The Commission denied the test claim finding no increased "costs mandated by the state".

The Commission recognized that the test claim statute at issue here, on the other hand, involves basic training for recruits who may or may not be employed. Thus, the Commission found that its findings in *Domestic Violence Training and Incident Reporting* do not apply to this test claim.

The Commission further determined that the statutory scheme presented by this test claim is different than the *SIDS* training test claim approved by the Commission in 1998 following the remand from the court. In *SIDS*, the Commission found that the training program for both new and veteran firefighters was a new program imposed on local agencies and not on firefighters alone. In contrast to the present claim, the *SIDS* statute expressly authorized local agencies to provide the instruction and training, and to assess a fee to cover their costs. Furthermore, unlike the training provided for law enforcement recruits, the court found *no* state training programs available to provide SIDS training to new and veteran firefighters. Thus, the Commission concluded that its findings in *SIDS* do not apply to this test claim.

Based on the foregoing, the Commission found that Penal Code section 13519.7, subdivision (b), is not subject to article XIII B, section 6 of the California Constitution because it does not impose any mandated duties or activities on any local governmental agency to provide basic training, including the course on sexual harassment, or to incur costs to send their new employees to basic training. Rather, the requirement to complete the basic training course on sexual harassment is a mandate imposed on the individual who seeks peace officer status.

Issue 3: **Does the requirement for peace officers that completed basic training before January 1, 1995 to receive supplementary training on sexual harassment in the workplace by January 1, 1997 constitute a reimbursable state mandated program?**

Penal Code section 13519.7, subdivision (c), states the following:

> "All *peace officers* who have received their basic training before January 1, 1995, shall receive supplementary training on sexual harassment in the workplace by January 1, 1997."

A. Is Penal Code section 13519.7, subdivision (c), subject to article XIII B, section 6 of the California Constitution?

In order for a statute to be subject to article XIII B, section 6 of the California Constitution, the statutory language must direct or obligate an activity or task upon local governmental agencies. If the statutory language does not mandate local agencies to

perform a task, then compliance with the test claim statute is within the discretion of the local agency and a reimbursable state mandated program does not exist.

The claimant contended that Penal Code section 13519.7, subdivision (c), requires local agencies to provide supplementary sexual harassment training to veteran officers. The claimant is requesting reimbursement for the salaries, benefits and other incidental expenses for the time that its veteran employees spend in training and the costs incurred to present the course.

The Department of Finance contended that reimbursement is not required under article XIII B, section 6 since Penal Code section 13519.7, subdivision (c), does not impose any obligations on any local law enforcement agency to provide the training. Rather, the Department contended that the statute imposes a training obligation on law enforcement officers alone.

Penal Code section 13519.7, subdivision (c), requires veteran peace officers to receive continuing education training on sexual harassment by January 1, 1997. The plain language of the test claim statute does not mandate or require local agencies to provide or pay for the supplemental training. In addition, there are no other state statutes or executive orders requiring local agencies to pay for continuing education training.

Nevertheless, Penal Code section 13519.7, subdivision (c), specifically refers to "peace officers." Section 830.1 of the Penal Code defines "peace officers" as those persons who are "*employed*" by a public safety agency of a county, city or special district.

Since peace officers, by definition, are employed by local agencies, the Commission agreed with the claimant that the federal Fair Labor Standards Act (FLSA), which requires local agencies to compensate their employees for training under specified circumstances, is relevant to this claim.

Generally, the FLSA provides employee protection by establishing the minimum wage, maximum hours and overtime pay under federal law. In 1985, the United States Supreme Court found that the FLSA applies to state and local governments.[15] The FLSA is codified in title 29 of the Code of Federal Regulations (CFR).

The requirement to compensate employees for training time under the FLSA is described below.

Training Conducted During Regular Working Hours

The claimant contended that since sexual harassment training is required by the state, is not voluntary, and is conducted during regular working hours, training time needs to be counted as compensable working time under 29 CFR section 785.27 of the FLSA and treated as an obligation imposed on the local agency. Section 785.27 states the following:

> "Attendance at lectures, meetings, training programs and similar activities need not be counted as working time if the following four criteria are met:
>
> (a) Attendance is outside of the employee's regular workings hours;

[15] *Garcia* v. *San Antonio Metropolitan Transit Authority et al.* (1985) 469 U.S. 528.

(b) Attendance is in fact voluntary;

(c) The course, lecture, or meeting is not directly related to the employee's job; and

(d) The employee does not perform any productive work during such attendance."

The Commission agreed with the claimant that local agencies are required under the FLSA to compensate their employees for mandatory training *if* the training occurs during the employee's regular working hours. However, this raises the issue whether the obligation to pay for sexual harassment training is an obligation imposed by the state, or an obligation arising out of existing federal law through the provisions of the FLSA.

The Commission found that there is no federal statutory or regulatory scheme requiring local agencies to provide sexual harassment training to veteran officers. Rather, what sets the provisions of the FLSA in motion requiring local agencies to compensate veteran officers for sexual harassment training is the test claim statute. If the state had not created this program, veteran officers would not be required to receive sexual harassment training and local agencies would not be obligated to compensate their veteran employees for such training.

Accordingly, the Commission found that local agencies are mandated by the state though subdivision (c) of the test claim statute to provide sexual harassment training to veteran officers *if* the training occurs during the employee's regular working hours.

Training Conducted Outside Regular Working Hours

The Commission noted, however, that an exception to the FLSA was enacted in 1987, which provides that time spent by employees of state and local governments in training required for certification by a higher level of government that occurs outside of the employee's regular working hours is noncompensable. In this regard, 29 CFR section 553.226 states in pertinent part the following:

> "(a) The general rules for determining the compensability of training time under the FLSA are set forth in §§ 785.27 through 785.32 of this title.
>
> (b) While time spent in attending training required by an employer is normally considered compensable hours of work, following are situations where time spent by employees of State and local governments in required training is considered to be *noncompensable*:
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> (2) *Attendance outside of regular working hours at specialized or follow-up training, which is required for certification of employees of a governmental jurisdiction by law of a higher level of government (e.g., where a State or county law imposes a training obligation on city employees), does not constitute compensable hours of work.*" (Emphasis added.)

The Commission found that 29 CFR section 553.226, subdivision (b)(2), applies when the sexual harassment training is conducted outside the employee's regular working hours. In such cases, the local agency is not required to compensate the employee. Rather, the cost of sexual harassment training becomes a term or condition of

employment subject to the negotiation and collective bargaining between the local agency and the employee.[16]

Collective bargaining between local agencies and their employees is governed by the Meyers-Milias-Brown Act. (Gov. Code, §§ 3500 et al.) The Act requires the governing body of the local agency and its representatives to meet and confer in good faith regarding wages, hours and other terms of employment with representatives of employee organizations. If an agreement is reached, the parties enter into a collective bargaining agreement, or memorandum of understanding (MOU). Only upon the approval and adoption by the governing board of the local agency, the MOU becomes binding on the local agency and employees.[17]

Although providing or paying for sexual harassment training conducted outside the employee's regular working hours is an issue negotiated at the local level, the Commission recognized that the California Constitution prohibits the Legislature from impairing obligations or denying rights to the parties of a valid, binding contract absent an emergency.[18] In the present case, the test claim statute became effective on January 1, 1994, and was not enacted as an urgency measure.

Accordingly, the Commission found that providing sexual harassment training outside the employee's regular working hours is an obligation imposed on those local agencies that, as of January 1, 1994 (the effective date of the statute) are bound by an existing MOU, which requires that the agency provide or pay for continuing education training.

However, when the existing MOU terminates, or in the case of a local agency that is not bound by an existing MOU on January 1, 1994 requiring that the agency pay for continuing education training, sexual harassment training conducted outside the employee's regular working hours becomes a negotiable matter subject to the discretion of the local agency. Thus, under such circumstances, the Commission found that the requirement to provide or pay for sexual harassment training is not an obligation imposed by the state on a local agency.

Conclusion

Based on the foregoing, the Commission found that Penal Code section 13519.7, subdivision (c), is subject to article XIII B, section 6 of the California Constitution because it imposes an obligation on local agencies to provide sexual harassment training under the following circumstances:

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[16] The claimant contended that 29 CFR section 553.226 is not relevant since that section addresses overtime pay. While Commission agreed that many of the 1985 amendments to the FLSA involved overtime pay for state and local governmental employees, section 553.226 addresses the compensability of training only. (52 Federal Register 2012.)

[17] Gov. Code, §§ 3500, 3505, and 3505.1. The Commission analyzed the Meyers-Milias-Brown Act in the *SIDS* test claim to determine if the fee authority established in the statute could realistically be imposed on firefighter employees. Based on evidence presented at the hearing, the Commission found that even though local agencies have the unilateral authority to impose changes regarding the terms of employment, the use of the unilateral authority is rare. Therefore, the Commission determined that the authority to impose fees upon firefighters in the SIDS case could not be realistically exercised by local agencies.

[18] Cal. Const., art. 1, § 9.

- When the sexual harassment training occurs during the employee's regular working hours; and
- When the sexual harassment training occurs outside the employee's regular working hours *and* there is an obligation imposed by an MOU existing on January 1, 1994 (the effective date of the statute), which requires that the local agency provide or pay for continuing education training.

B. Does Penal Code section 13519.7, subdivision (c), constitute a new program or higher level of service, and impose "costs mandated by the state"?

Veteran peace officers were not required to receive sexual harassment training before the enactment of the test claim statute. Thus, the Commission found that Penal Code section 13519.7, subdivision (c), constitutes a new program or higher level of service under article XIII B, section 6 of the California Constitution. The Commission continued its inquiry to determine if there are any "costs mandated by the state."

Government Code section 17514 defines "costs mandated by the state" as any *increased* costs which a local agency is required to incur as a result of any statute or executive order that mandates a new program or higher level of service.

The claimant contended that Penal Code section 13519.7, subdivision (c), results in increased costs mandated by the state in the form of salaries, benefits and other incidental expenses for the time that its veteran employees spend in training and the costs incurred to present the course. The claimant submitted cost data and records to support its claim. The claimant further contended that the costs are reimbursable, regardless of whether the county's annual training costs increase, since the test claim statute results in work being redirected by the state.

On July 19, 2000, the claimant submitted supplemental comments to the Final Staff Analysis further describing its sexual harassment training program. Attached to the supplemental comments is a document signed by Lt. Randy Olson, which states that the claimant's approved sexual harassment curriculum requires eight (8) hours of training for chiefs and above, eight (8) hours of training for managers (area and unit commanders), six (6) hours of training for supervisors (lieutenants, sergeants, and civilian equivalents), and four (4) hours of training for line personnel. The claimant has also hired a consultant to design and implement a sexual harassment prevention program.

POST stated that it developed a two-hour telecourse on sexual harassment for in-service, or veteran officers and made the telecourse available to local agencies. POST contended that since it developed the telecourse, POST estimates *no* increased costs to local agencies to present the training. However, POST estimates increased costs to local agencies for the salaries of the veteran officers attending the two-hour training while on duty.

The Department of Finance did not provide any comments on the issue of whether Penal Code section 13519.7, subdivision (c), imposes costs mandated by the state.

In order to determine if there are any costs mandated by the state, the Commission first determined the scope of the mandate.

The test claim statute expressly requires POST to develop the sexual harassment training. In this regard, the test claim statute states the following:

> "In developing this training, the commission [i.e., POST] shall consult with appropriate groups and individuals having an interest and expertise in the area of sexual harassment."

Therefore, the Commission found that local agencies are *not* required by the state to incur costs to develop or design the training course and, thus, such costs are not reimbursable under article XIII B, section 6 of the California Constitution.

The Commission further found that a *one-time, two-hour course* for each veteran officer is mandated by the state. The test claim statute requires veteran officers to receive supplemental training on sexual harassment *by* January 1, 1997. Based on the express completion date for training, the Commission found that the Legislature intended to require sexual harassment training on a one-time basis. Additionally, the sexual harassment training course developed by POST consists of two hours of training. Thus, any training on sexual harassment beyond two hours is within the discretion of the local agency.

The Commission also found that local agencies may have incurred increased costs mandated by the state to present the training in the form of materials provided to employees and/or trainer time during the two-hour course. The POST document entitled "Sexual Harassment in the Workplace, Guidelines and Curriculum" states that a written copy of the complaint procedure shall be provided to every employee. The POST document further suggests that "all instructors should have training expertise regarding sexual harassment issues."

The question remains, however, if there are increased costs mandated by the state for the time the veteran employees spend in training.

In 1998, the Commission analyzed whether a statute requiring continuing education training for peace officers imposed "costs mandated by the state" in the *Domestic Violence Training and Incident Reporting* test claim. That test claim statute included a the following language: "The instruction required pursuant to this subdivision shall be funded from existing resources available for the training required pursuant to this section. It is the intent of the Legislature not to increase the annual training costs of local government."

Thus, the Commission determined in the *Domestic Violence Training and Incident Reporting* test claim that if the domestic violence training course caused an increase in the total number of required continuing education hours, then the increased costs associated with the new training course were reimbursable as "costs mandated by the state". On the other hand, if there was no overall increase in the total number of continuing education hours, then there were no increased training costs associated with the training course. Instead, the cost of the training course was accommodated or absorbed by local law enforcement agencies within their existing resources available for training.

The Commission recognized POST regulations, which provide that local law enforcement officers must receive at least 24 hours of Advanced Officer continuing education training every two years. POST regulations state in pertinent part the following:

> "Continuing Professional Training (Required).
>
> "(1) Every peace officer below the rank of a middle management position as defined in section 1001 and every designated Level 1 Reserve Officer as defined in Commission Procedure H-1-2 (a) *shall satisfactorily complete the Advanced Officer Course of 24 or more hours at least once every two years after meeting the basic training requirement.*"
>
> "(2) The above requirement may be met by satisfactory completion of one or more Technical Courses totaling 24 or more hours, or satisfactory completion of an alternative method of compliance as determined by the Commission..."
>
> "(3) Every regular officer, regardless of rank, may attend a certified Advanced Officer Course and the jurisdiction may be reimbursed."
>
> "(4) Requirements for the Advanced Officer Course are set forth in the POST Administrative Manual, section D-2."[19]

The Commission found that there were no costs mandated by the state in the *Domestic Violence Training and Incident Reporting* test claim and, thus, denied the claim for the following reasons:

- *Immediately before and after* the effective date of the test claim legislation, POST's minimum required number of continuing education hours for the law enforcement officers in question *remained the same at 24 hours*. After the operative date of the test claim statute these officers must still complete at least 24 hours of professional training every two years,
- The two hour domestic violence training update may be credited toward satisfying the officer's 24-hour minimum,
- The two hour training is *not* separate and apart nor "on top of" the 24-hour minimum,
- POST does not mandate creation and maintenance of a separate schedule and tracking system for this two hour course,
- POST prepared and provides local agencies with the course materials and video tape to satisfy the training in question, and
- Of the 24-hour minimum, the two-hour domestic violence training update is the only course that is legislatively mandated to be continuously completed every two years by the officers in question. The officers may satisfy their remaining 22-hour requirement by choosing from *the many elective courses* certified by POST.

[19] Cal.Code Regs., tit. 11, § 1005, subd. (d).

The Commission found that the facts of this case are different than the facts in the *Domestic Violence Training and Incident Reporting* test claim. Unlike the test claim statute in *Domestic Violence Training and Incident Reporting*, the test claim statute here does not contain legislative intent language that sexual harassment training shall be funded from existing resources and that the annual training costs of local government should not be increased.

Additionally, in *Domestic Violence Training and Incident Reporting*, the Commission recognized a bulletin issued by POST recommending that local agencies make the required updated domestic violence training part of the officer's continuing education. Moreover, POST interpreted the *Domestic Violence Training* statute to require the inclusion of the domestic violence training within the 24-hour continuing education requirement. These facts are not present here. Rather, POST estimates increased costs to local agencies for the sexual harassment training for the officer's salaries in the approximate amount of $2,839,208.00.

Further, the Commission recognized that the purpose of the *Domestic Violence Training* course, as well as the other courses mandated by the Legislature during the training period in question, is to provide training to officers in their role as peace officers in the community. Sexual harassment training in the workplace, on the other hand, addresses internal employment issues and relationships with fellow co-workers.

Moreover, the Commission agreed with the claimant that a substantial number of officers may have already met their 24-hour requirement before they had to take sexual harassment training.

Thus, the Commission found that the two-hour sexual harassment training is not accommodated or absorbed by local law enforcement agencies within their existing resources available for training. Rather, the Commission determined that local agencies incur increased "costs mandated by the state" for the time spent by veteran officers in the one-time, two-hour sexual harassment training course. In this regard, the Commission found that Penal Code section 13519.7, subdivision (c), does impose "costs mandated by the state".

Conclusion

Based on the foregoing, the Commission found that Penal Code section 13519.7, subdivision (c), constitutes a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 when the sexual harassment training occurs during the employee's regular working hours, or when the sexual harassment training occurs outside the employee's regular working hours *and* is an obligation imposed by an MOU existing on

January 1, 1994 (the effective date of the statute), which requires that the local agency provide or pay for continuing education training, for the following increased "costs mandated by the state":

- Salaries, benefits, and incidental expenses for each veteran officer to receive a one-time, two-hour course on sexual harassment; and
- Costs to present the one-time, two-hour course in the form of materials and trainer time.

CONCLUSION

Based on the foregoing, the Commission concluded the following:

Issue 1

The sexual harassment complaint guidelines, entitled "Sexual Harassment in the Workplace, Guidelines and Curriculum, 1994," which were developed by POST in response to Penal Code section 13519.7, subdivision (a), constitute a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514;

Issue 2

Penal Code section 13519.7, subdivision (b), which requires that the course of basic training include instruction on sexual harassment, does not constitute a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution since it does not impose any mandated duties on the local agency; and

Issue 3

Penal Code section 13519.7, subdivision (c), which requires peace officers to receive a one-time, two-hour course on sexual harassment by January 1, 1997, constitutes a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 when the sexual harassment training occurs during the employee's regular working hours, or when the sexual harassment training occurs outside the employee's regular working hours *and* is an obligation imposed by an MOU existing on January 1, 1994 (the effective date of the statute), which requires that the local agency provide or pay for continuing education training, for the following increased "costs mandated by the state":

- Salaries, benefits, and incidental expenses for each veteran officer to receive a one-time, two-hour course on sexual harassment; and
- Costs to present the one-time, two-hour course in the form of materials and trainer time.

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 350, Sacramento, California 95814.

September 29, 2000, I served the:

Adopted Statement of Decision
Sexual Harassment Training (CSM – 97-TC-07)
Penal Code Section 13519.7
Statutes of 1993, Chapter 126
County of Los Angeles, Claimant

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

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

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

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

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

Julie Shelton

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM: Penal Code Section 13519.4, As Amended by Statutes of 1992, Chapter 1267; and Filed on December 24, 1997; By the County of Los Angeles, Claimant.	NO. CSM 97-TC-06 *Law Enforcement Racial and Cultural Diversity Training* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 (Adopted on October 26, 2000)

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

This Decision shall become effective on October 31, 2000.

Paula Higashi

Paula Higashi, Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM: Penal Code Section 13519.4, As Amended by Statutes of 1992, Chapter 1267; and Filed on December 24, 1997; By the County of Los Angeles, Claimant.	NO. CSM 97-TC-06 *Law Enforcement Racial and Cultural Diversity Training* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 (Adopted on October 26, 2000)

STATEMENT OF DECISION

On August 24, 2000 and September 28, 2000, the Commission on State Mandates (Commission) heard this test claim during a regularly scheduled hearing. Mr. Leonard Kaye appeared for the County of Los Angeles. Captain Tom Laing and Lieutenant Randy Olson appeared as witnesses for the Los Angeles County Sheriff's Department. Mr. James W. Miller, Ms. Amber D. Pearce, Mr. James Foreman, and Mr. Tom Lutzenberger appeared for the Department of Finance. Mr. Hal Snow appeared for the Commission on Peace Officer Standards and Training (POST). Mr. Allan Burdick appeared on behalf of the California State Association of Counties (CSAC). Mr. Steve Johnson appeared for the Los Angeles Police Department.

At the hearings, oral and documentary evidence was introduced, the test claim was submitted, and the vote was taken.

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

The Commission, by a vote of 6 to 0, denied this test claim.

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BACKGROUND

In order to foster mutual respect and cooperation between law enforcement and members of all racial and cultural groups, the Legislature enacted the test claim legislation in 1992 by amending Penal Code section 13519.4. The test claim statute requires that, no later than August 1, 1993, the basic training course for law enforcement officers include adequate instruction, as developed by the Commission on Peace Officer Training (hereafter "POST"), on racial and cultural diversity.[1]

In the past, the Commission has decided three test claims addressing training for peace officers and firefighters. In 1991, the Commission denied a test claim filed by the City of Pasadena requiring new and veteran peace officers to complete a course regarding the handling of domestic violence complaints as part of their basic training and continuing education courses (*Domestic Violence Training*, CSM-4376). The Commission reached the following conclusions:

- The test claim legislation does not require local agencies to implement a domestic violence training program and to pay the cost of such training;
- The test claim legislation does not increase the minimum number of basic training hours, nor the minimum number of advanced officer training hours, and, thus, no additional costs are incurred by local agencies; and
- The test claim legislation does not require local agencies to provide domestic violence training.

In January 1998, the Commission denied a test claim filed by the County of Los Angeles requiring veteran law enforcement officers below the rank of supervisor to complete an updated course of instruction on domestic violence every two years (*Domestic Violence Training and Incident Reporting*, CSM-96-362-01). Although the Commission recognized that the test claim legislation imposed a new program or higher level of service, the Commission found that local agencies incurred *no* increased "costs mandated by the state" in carrying out the two-hour course for the following reasons:

- *Immediately before and after* the effective date of the test claim legislation, POST's minimum required number of continuing education hours for the law enforcement officers in question *remained the same at 24 hours*. After the operative date of the test claim statute these officers must still complete at least 24 hours of professional training every two years;
- The two hour domestic violence training update may be credited toward satisfying the officer's 24-hour minimum;
- The two hour training is *not* separate and apart nor "on top of" the 24-hour minimum;

[1] The phrase "cultural diversity" includes, but is not limited to, gender and sexual orientation issues. (Pen. Code, § 13519.4, subd. (c).)

- POST does not mandate creation and maintenance of a separate schedule and tracking system for this two hour course;
- POST prepared and provides local agencies with the course materials and video tape to satisfy the training in question; and
- Of the 24-hour minimum, the two hour domestic violence training update is the only course that is legislatively mandated to be continuously completed every two years by the officers in question. The officers may satisfy their remaining 22-hour requirement by choosing from *the many elective courses* certified by POST.

In December 1998, the Commission approved a test claim filed by the County of Los Angeles and remanded by the court, which required new and veteran firefighters to complete a training course on Sudden Infant Death Syndrome (*Sudden Infant Death Syndrome (SIDS) for Firefighters*, CSM-4412). The test claim statute further authorized local agencies to provide the instruction and training, and to assess a fee to pay for the costs of the training. In its order, the court found that there were no state training programs available to provide SIDS training to new and veteran firefighters. Thus, the court concluded that the SIDS training program was a new program imposed on the county. The court remanded the case to the Commission to determine if the fee authority provided by the statute could be realistically recovered from firefighters. In this respect, the Commission recognized that local agencies have the unilateral authority and the discretion to impose changes regarding terms of employment, such as training fees, on employees. However, based on the evidence presented at the hearing, the Commission found that the fee authority could not be realistically exercised. The Commission also recognized that, unlike POST, an agency charged with overseeing peace officer training, there is no state agency charged with developing and overseeing firefighter training. Accordingly, the Commission reached the following conclusions:

- The SIDS training program is a new program imposed on local agencies and does not impose requirements on firefighters alone;
- When SIDS instruction is provided by a private facility, local agencies still incur "costs mandated by the state" in the form of salaries, benefits, and other incidental expenses for the time that its employees spend in training (trainee time), registration and materials; and
- When SIDS training is provided by the local agency, the local agency incurs "costs mandated by the state" for the development of the training, trainee time, trainer time and materials since the fee authority provided in the statute cannot be realistically exercised.

COMMISSION FINDINGS

In order for a statute to impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution and Government Code section 17514, the statutory language must first direct or obligate an activity or task upon local governmental agencies. If the statutory language does not mandate or require local

agencies to perform a task, then compliance with the test claim statute is within the discretion of the local agency and a reimbursable state mandated program does not exist.

In addition, the required activity or task must constitute a new program or create an increased or higher level of service over the former required level of service. The California Supreme Court has defined a "new program" or "higher level of service" as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the State. To determine if the "program" is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the new program or increased level of service must impose "costs mandated by the state."[2]

The test claim statute amended Penal Code section 13519.4 by requiring that the basic training course for law enforcement officers include adequate instruction on racial and cultural diversity. The test claim statute states in relevant part the following:

> "*The course of basic training* for law enforcement officers shall, no later than August 1, 1993, include adequate instruction on racial and cultural diversity in order to foster mutual respect and cooperation between law enforcement and members of all racial and cultural groups..." (Emphasis added.)

Issue 1: **Is the test claim statute, which requires that the basic training course for law enforcement officers include adequate instruction on racial and cultural diversity, subject to article XIII B, section 6 of the California Constitution?**

The claimant contends that racial and cultural diversity training is a mandated new program or higher level of service imposed on local agencies within the meaning of article XIII B, section 6 of the California Constitution. The claimant states that local agencies are required to provide basic training, including racial and cultural diversity training, to new officer employees. The claimant is requesting reimbursement for the salaries, benefits and other incidental expenses for the time that its new officer employees spend in training and the costs incurred to present the course at its basic training academy.

At the Commission hearing on August 24, 2000, the claimant clarified that its test claim is limited to the alleged reimbursable state mandated program to provide racial and cultural diversity training to new employees.

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[2] Article XIII B, section 6 of the California Constitution; *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 66; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835; Government Code section 17514.

On August 31, 2000, the claimant submitted supplemental information stating, in relevant part, the following:

> "Mr. Kaye noted that Commission staff claim, on page 10 of their analysis that the test claim statute does not specify who is required to provide the basic training course. However, to us (POST and the County) it is obvious. Basic training academies must provide this course. Indeed, only basic training academies can provide this course.
>
> The Legislature need not state the obvious – repeat and recite California's basic training scheme in every passing measure. Such a mandate was obvious to the County. It was obvious to POST. Indeed, it was obvious to all basic training academies in California.
>
> We all complied. And who are we? We are cities, counties, community colleges that operate basic training academies. The same cities, counties, community colleges that are eligible for state subvention under article XIII B, section 6 of the California Constitution and Government Code section 17514."

The Department of Finance contends that the test claim statute does not impose a new program or higher level of service since there is no obligation imposed on any local law enforcement agency to provide the training. Rather, the Department contends that the statute imposes a training obligation on law enforcement officers alone. Since the statute applies to new officers, the Department contends that the local agency has the option of hiring only those persons who have already obtained the racial and cultural diversity training. Thus, the Department concludes that if a local agency trains its officers on racial and cultural diversity, the local agency does so at its option. The Department urges the Commission to adopt a decision similar to the Commission's 1991 decision in *Domestic Violence Training* (CSM-4376) and find that the test claim legislation does not require local agencies to implement a racial and cultural diversity training program.

POST contends that the test claim statute does not impose a mandate on local agencies to undertake the training, but does impose a mandate on "academy training for recruit officers."

Article XIII B, section 6 of the California Constitution states that "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." (Emphasis added.)

Thus, in order for a statute to be subject to article XIII B, section 6 of the California Constitution, the statutory language must direct or obligate an activity or task upon local governmental agencies. If the statutory language does not mandate local agencies to perform a task, then compliance with the test claim statute is within the discretion of the local agency and a reimbursable state mandated program does not exist.

For the reasons stated below, the Commission finds that the test claim statute does not impose any activities or duties upon local law enforcement agencies. Rather, the

requirement to complete the basic training course on racial and cultural diversity is a mandate imposed only on the individual who seeks peace officer status.

The test claim statute states that "the course of basic training for law enforcement officers" shall include adequate instruction on racial and cultural diversity. The test claim statute itself does not mandate local agencies to provide the course of basic training to recruits. Rather, the statute is silent in this respect and does not specify who is required to provide the basic training course.

In addition, there are no provisions in other statutes or regulations issued by POST that require local agencies to provide basic training to recruits. Since 1959, Penal Code section 13510 and following have required POST to adopt rules establishing minimum standards relating to the physical, mental and moral fitness governing the recruitment of new local law enforcement officers.[3] In establishing the standards for training, the Legislature instructed POST to permit the required training to be conducted at *any* institution approved by POST.[4] For those "persons" who have acquired prior equivalent peace officer training, POST is required to provide the opportunity for testing instead of the attendance at a "basic training academy or accredited college."[5] Moreover, "each *applicant* for admission to a basic course of training certified by [POST] who is *not* sponsored by a local or other law enforcement agency . . . shall be required to submit written certification from the Department of Justice . . . that the applicant has no criminal history background. . . . "

Since 1971, Penal Code section 832 has required "every *person* described in this chapter as a peace officer" to satisfactorily complete an introductory course of training prescribed by POST before they can exercise the powers of a peace officer.[6] Any "*person*" completing the basic training course "who does *not become employed* as a peace officer" within three years is required to re-take and pass the basic training examination. Since 1994, POST has been authorized to charge a fee for the basic training examination to each "*applicant*" who is *not* sponsored or employed by a local law enforcement agency.[7]

The Commission acknowledges that some local law enforcement agencies, such as the claimant, employ persons who have not yet completed their basic training course, and then sponsor or provide the training themselves.[8] Based on the statutory and regulatory scheme outlined above, however, the state has *not* mandated local agencies to do so.

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[3] These standards can be found in Title 11 of the California Code of Regulations.

[4] Penal Code section 13511.

[5] *Id.*

[6] See also POST's regulation, Title 11, California Code of Regulations, section 1005, subdivision (a)(9).

[7] Penal Code section 832, subdivision (g), added by Statutes of 1994, Chapter 43.

[8] Other agencies, however, require the successful completion of POST Basic Training *before* the applicant will be considered for the job. (Job Announcement for Amador County Deputy Sheriff.)

In fact, there are several community colleges approved by POST offering basic training academy courses, including the course on racial and cultural diversity, that are open to any interested individual, whether or not they are employed or sponsored by a local agency. The colleges charge an average of $2000 to cover their costs for law enforcement basic training and financial assistance is available to those students in need.[9]

Thus, the Commission finds that the test claim statute does not mandate local agencies to provide basic training, including the course on racial and cultural diversity, and does not mandate local agencies to incur costs to send their new employees to basic training.

The Commission further disagrees with the claimant's additional arguments contained in its comments to the Draft Staff Analysis submitted on February 10, 2000 and in the comments to the Final Staff Analysis dated July 19, 2000. The claimant contends that the "Guidelines for Law Enforcement's Design of Cultural Awareness Training Programs" issued by POST in February 1992 imposes new duties on local law enforcement agencies and not their employees.

However, the guidelines issued by POST were prepared in response to Senate Bill 2680, which added section 13519.4 to the Penal Code in 1990, *before* the test claim statute was enacted to amend that section.[10] As originally enacted, Penal Code section 13519.4 required POST to develop and disseminate training guidelines on the racial and cultural differences among the residents of this state. Although the guidelines provide suggestions to local law enforcement agencies, they do *not* require local agencies to provide basic training to recruits and/or train recruits on racial and cultural diversity.

Moreover, the claimant submitted a declaration from Captain Dennis Wilson with the test claim agreeing that Penal Code section 13519.4, as originally enacted by Senate Bill 2680, did not impose any state-mandated duties on local law enforcement agencies. In the declaration, Captain Wilson states the following:

> "I declare that under prior law (PC 13519.4, as added by Chapter 480, Statutes of 1990), the County of Los Angeles had no State-mandated duty to provide the subject training and that only the California Commission on Peace Officer Standards and Training's duties were addressed and that such commission duties were only to develop and disseminate guidelines for the subject training . . ."

Thus, the Commission finds that the "Guidelines for Law Enforcement's Design of Cultural Awareness Training Programs" issued by POST in February 1992 do not impose any state mandated duties on local law enforcement agencies.

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[9] See List of POST Certified Basic Training Academies; Los Medanos College Basic Training Academy, charging $2200 for California State residents and offering financial assistance; Allan Hancock College Law Enforcement Academy stating that "the course is open to law enforcement agency 'sponsored' recruits and other interested students"; and Golden West College, whose mission statement promises that "90% of the academy graduates received jobs within three years of completion of the academy course."

[10] Statutes of 1990, Chapter 480.

The claimant also contends that the Commission's past decisions regarding training are precedential and hold that when the Legislature imposes training, it is a mandate upon the local law enforcement agency. The claimant cites the Commission's decisions in *Domestic Violence Training and Incident Reporting* (CSM - 96-362-01), *SIDS* (CSM - 4412), and the parameters and guidelines in *Domestic Violence Arrest Policies* (CSM - 96-362-02). However, these prior Commission decisions are distinguishable from this test claim and should not be applied.

The *Domestic Violence Training and Incident Reporting* test claim involved a statute that required *veteran* law enforcement officers below the rank of supervisor to complete an updated course of instruction on domestic violence every two years. The Commission denied the test claim finding no increased "costs mandated by the state".

The test claim statute at issue here, on the other hand, involves basic training for recruit officers who may or may not be employed, and does not address the continuing education of veteran officers. Thus, the Commission finds that the Commission's findings in *Domestic Violence Training and Incident Reporting* do not apply to this test claim.

The statutory scheme presented by this test claim is also different than the *SIDS* training test claim approved by the Commission in 1998 following the remand from the court. In *SIDS*, the Commission found that the training program was a new program imposed on local agencies and not on firefighters alone. In contrast to the present claim, the *SIDS* statute expressly authorized local agencies to provide the instruction and training, and to assess a fee to cover their costs. Furthermore, the SIDS training requirement applied to veteran firefighters already employed by a local agency. In addition, unlike the training provided for law enforcement officers, the court found that there were *no* state training programs available to provide SIDS training to new and veteran firefighters. Thus, the Commission finds that the Commission's findings in *SIDS* do not apply to this test claim.

Moreover, the parameters and guidelines adopted by the Commission in *Domestic Violence Arrest Policies and Standards* should not be applied here. The test claim statute in *Domestic Violence Arrest Policies and Standards* required local law enforcement agencies to develop, adopt and implement written arrest policies for domestic violence offenders. Although the Commission authorized reimbursement in the parameters and guidelines for training employed officers about the new arrest policies as an activity reasonably related to the mandated program, the test claim statute itself did not address training at all. Thus, unlike the present test claim, training recruits was *not* the "program" in question. Accordingly, the Commission finds that the *Domestic Violence Arrest Policies and Standards* test claim is not relevant here.

Finally, the claimant cites the federal Fair Labor Standards (FLSA) and the court case of *Wilson v. County of Santa Clara*[11] to support its position that local law enforcement agencies are required to pay for training. For the reasons stated below, however, the

[11] *Wilson* v. *County of Santa Clara* (1977) 68 Cal.App.3d 78.

Commission finds that these authorities are *not* controlling and do not apply to this test claim.

The FLSA provides employee protection by establishing the minimum wage, maximum hours and overtime pay under federal law. It is codified in title 29 of the Code of Federal Regulations (CFR). The claimant supports its position that federal law requires local agencies to pay for racial and cultural diversity training by citing 29 CFR section 785.27. Section 785.27 establishes the general rules for determining compensability of training time under the FLSA. Section 785.27 states the following:

> "Attendance at lectures, meetings, training programs and similar activities need not be counted as working time if the following four criteria are met:
>
> (a) Attendance is outside of the employee's regular workings hours;
>
> (b) Attendance is in fact voluntary;
>
> (c) The course, lecture, or meeting is not directly related to the employee's job; and
>
> (d) The employee does not perform any productive work during such attendance."

The claimant contends that since racial and cultural diversity training is required by the state and is not voluntary, then training time needs to be counted as compensable working time under section 785.27.

The Commission agrees that section 785.27 establishes the general rules for compensability of training time for employees. As stated above, however, the test claim statute applies to people enrolled in a basic training course approved by POST, whether or not they are employed or sponsored by a local agency. Since the state has not mandated local agencies to employ persons who have not yet completed basic training, the wage provisions of the FLSA are not relevant to this claim.

In addition, there is an exception to the general rules of compensability under the FLSA in 29 CFR section 553.226, which applies to those people who are employed by a local agency as a recruit and are enrolled in a basic training course outside their regular working hours. Section 553.226 describes the situations where time spent by employees of state and local governments in required training is *noncompensable*. Section 553.226 states, in pertinent part, the following:

> "(a) The general rules for determining the compensability of training time under the FLSA are set forth in §§ 785.27 through 785.32 of this title.
>
> (b) While time spent in attending training required by an employer is normally considered compensable hours of work, following are situations where time spent by employees of State and local governments in required training is considered to be *noncompensable*:

(2) *Attendance outside of regular working hours at specialized or follow-up training, which is required for certification of employees of a governmental jurisdiction by law of a higher level of government (e.g., where a State or county law imposes a training obligation on city employees), does not constitute compensable hours of work.*" (Emphasis added.)

The test claim statute requires that the course of basic training for recruit officers include adequate instruction on racial and cultural diversity. As stated above, recruits are required by statute and POST regulations to complete a basic training course before they can be "certified" to exercise the powers of a peace officer.[12]

Thus, the Commission finds that under section 553.226, subdivision (b)(2), the time taken by recruits, who are employed by a local agency, to receive racial and cultural diversity training outside of regular working hours is noncompensable under the FLSA.

The claimant also cites the 1977 case of *Wilson* v. *County of Santa Clara* for the proposition that attendance at the employer's school of instruction requires full compensation under the FLSA.[13] The Commission finds, however, that the *Wilson* case is distinguishable from this test claim and does not apply.

The *Wilson* case involves Health and Safety Code section 217, which requires law enforcement officers to receive training to administer first aid, including cardiopulmonary resuscitation. The last sentence of the statute expressly stated that "[s]uch training shall be provided *at no cost to the trainee*." (Emphasis added.) The plaintiff, a deputy sheriff, contended that this last sentence required the county to compensate the officer for the time spent in training if the training occurred outside an officer's normal duty hours. Alternatively, the plaintiff contended that officers were entitled to overtime compensation.

The *Wilson* court analyzed the history of Health and Safety Code section 217 and found that the last sentence, providing that the trainee shall not bear the cost of the training, was added six years after the statute was originally enacted. The court noted that until the statute was amended to add the last sentence, "the time, cost and manner in which such training would be secured was a matter to be *negotiated* between the public employee and his public employer." (Emphasis added.) The court found that the addition of the last sentence to the statute restricted the bargaining between the employer and employee. The court, however, expressed no opinion as to whether the state or the public employer would bear the expense.[14]

Unlike the statute in the *Wilson* case, the test claim statute contains *no* provision regarding who shall bear the cost of the training. Thus, based on the language of the test claim statute and as noted by the court in *Wilson*, the Commission finds that the

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[12] Penal Code section 832; Title 11, California Code of Regulations section 1005, subdivision (a)(9).

[13] *Wilson, supra*, 68 Cal.App.3d 78.

[14] Id. at pg. 84.

time, cost and manner in which racial and cultural diversity training is to be secured for recruits is a *negotiable* matter between the local agency and the employee, and is not a mandate imposed on the local agency.

The *Wilson* court also analyzed the plaintiff's claim under the FLSA. The court stated that the "time spent in attending the employer's school of instruction are properly included in the hours of employment, and, under the act, compensation must be paid for those hours."[15] However, the *Wilson* case is a 1977 case and the court analyzed the FLSA as written in 1977. At that time, the FLSA did not contain the exception found in 29 CFR section 553.226 (described above), which provides that specialized training outside of regular work hours required for certification of employees of a governmental jurisdiction by law of a higher level of government does *not* constitute compensable hours of work. That exception was added to the FLSA in 1987.[16] Therefore, the Commission finds that the court's holding and analysis of the FLSA in the *Wilson* case is not controlling.

CONCLUSION

Based on the foregoing, the Commission concludes that the test claim statute is not subject to article XIII B, section 6 of the California Constitution because it does not impose any mandated duties or activities on any local governmental agency to provide the training, or to incur costs to send their new employees to basic training. Rather, the requirement to complete the basic training course on racial and cultural diversity is a mandate imposed only on the individual who seeks peace officer status.

Accordingly, the Commission denies this test claim.

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[15] Id. at pg. 87.

[16] 52 Federal Register 2012.

Commission on State Mandates

List Date: 12/26/1997 **Mailing Information** Draft Staff Analysis

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Claim Number 97-TC-06 **Claimant** Claim of the County of Los Angeles

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Claim Number 97-TC-06 **Claimant** Claim of the County of Los Angeles

Subject 1267/92, amending Penal Code section 13519.4

Issue Law Enforcement Racial and Cultural Diversity Training

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DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

October 31, 2000, I served the:

Adopted Statement of Decision
Law Enforcement Racial and Cultural Diversity Training (CSM – 97-TC-06)
Penal Code Section 13519.4
Statutes of 1992, Chapter 1267
County of Los Angeles, Claimant

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

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

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 31, 2000, at Sacramento, California

Thomas Dempsey

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM: Penal Code Section 13515, Statutes of 1997, Chapter 444; and Filed on January 21, 1999; By the City of Newport Beach	NO. CSM 98-TC-12 *Elder Abuse Training* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 (Adopted on January 25, 2001)

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

This Decision shall become effective on January 29, 2001.

Paula Higashi, Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM: Penal Code Section 13515, Statutes of 1997, Chapter 444; and Filed on January 21, 1999; By the City of Newport Beach	NO. CSM 98-TC-12 *Elder Abuse Training* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 (Adopted on January 25, 2001)

STATEMENT OF DECISION

On November 30, 2000, the Commission on State Mandates (Commission) heard this test claim during a regularly scheduled hearing. Ms. Pamela Stone and Mr. Glen Everroad, appeared for the City of Newport Beach. Sergeant Kent Stoddard appeared as a witness for the City of Newport Beach Police Department. Mr. Tom Lutzenberger and Mr. Daniel Stone, Deputy Attorney General, appeared for the Department of Finance.

At the hearing, oral and documentary evidence was introduced, the test claim was submitted, and the vote was taken.

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

The Commission, by a vote of 7 to 0, approved this test claim.

Background

Test Claim Statute

The test claim legislation, Statutes of 1997, Chapter 444, enacted Penal Code section 13515 which provides:

> Every city police officer or deputy sheriff at a supervisory level and below who is assigned field or investigative duties shall complete an elder abuse training course certified by the Commission on Peace Officers Standards and Training [POST] by January 1, 1999, or within 18 months of assignment of field duties. . . .

COMMISSION FINDINGS

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

This test claim presents the following issues:

- Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?
- Does the test claim legislation impose a new program or higher level of service upon local agencies within the meaning of article XIII B, section 6 of the California Constitution and constitute costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514?
- Does Government Code section 17556, subdivision (a), apply to the test claim?

Issue 1

Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

In order for a statute to be subject to article XIII B, section 6 of the California Constitution, the statutory language must direct or obligate an activity or task upon local governmental agencies. If the statutory language does not mandate local agencies to perform a task, then compliance with the test claim statute is within the discretion of the local agency and a reimbursable state mandated program does not exist.

The claimant contends that Penal Code section 13515 requires cities to provide elder abuse training to all police officers or deputy sheriffs at a supervisory level or below that are assigned field or investigative duties. The claimant is requesting reimbursement for the salaries and benefits for officers attending the training and for costs associated with a sergeant's time to set up and prepare the training. The claimant is also requesting reimbursement for ongoing costs associated with training new officers as they are hired by the City of Newport Beach.

The Department of Finance (DOF) contends that reimbursement is not required under article XIII B, section 6 since the training requirements detailed in Penal Code section 13515 are imposed upon the peace officers themselves, and not the city.

Penal Code section 13515 requires that every city police officer or deputy sheriff at a supervisory level and below assigned field or investigative duties shall receive elder abuse training by

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

[2] *City of Sacramento* v. *State of California* (1990) 50 Cal.3d 51, 76; *Hayes* v. *Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1594; Government Code sections 17513, 17556.

January 1, 1999, or within 18 months of assignment to field duties. The plain language of section 13515 does not require local agencies to provide or pay for the training. In addition, there are no other state statutes or executive orders requiring local agencies to pay for the training.

Nevertheless, section 13515 specifically refers to "police officer" or "deputy sheriff." Penal Code section 830.1 defines "police officers" and "deputy sheriffs" as those persons who are "*employed*" by a public safety agency of a county, city, or special district. Since police officers and deputy sheriffs, by definition, are employed by local agencies, The Commission finds that the federal Fair Labor Standards Act (FLSA), which requires local agencies to compensate their employees for training under specified circumstances, is relevant to this claim.

Generally, the FLSA provides employee protection by establishing the minimum wage, maximum hours, and overtime pay under federal law. In 1985, the United States Supreme Court found that the FLSA applies to state and local governments.[3] The FLSA is codified in title 29 of the Code of Federal Regulations. The requirement to compensate employees for training time under the FLSA is described below.

Training Conducted During Regular Working Hours

If elder abuse training is required by the state, is not voluntary, and is conducted during regular working hours, training time needs to be counted as compensable working time under section 785.27 of the FLSA and treated as an obligation imposed on the local agency. Section 785.27 provides:

> Attendance at lectures, meetings, training programs and similar activities *need not be counted* as working time if the following four criteria are met:
>
> (a) Attendance is outside of the employee's regular working hours;
>
> (b) Attendance is in fact voluntary;
>
> (c) The course, lecture, or meeting is not directly related to the employee's job; and
>
> (d) The employee does not perform any productive work during such attendance. (Emphasis added.)

The Commission finds that local agencies are required under the FLSA to compensate their employees for mandatory training *if* the training occurs during the employee's regular working hours. The Commission finds section 785.27 is inapplicable to this test claim because elder abuse training can be offered during regular working hours, officers' attendance is not voluntary, the training is directly related to the officers' job, and officers engage in productive work while attending elder abuse training. Further support that section 785.27 is inapplicable to this test claim is that the obligation to pay for elder abuse training is an obligation imposed by state, not federal, law. The Commission finds that there is no federal statutory or regulatory scheme that requires cities to provide elder abuse training to its officers and sheriffs. Rather, what sets the provisions of the FLSA in motion, requiring local agencies to compensate officers for elder abuse training, is the test claim statute. If the state had not created this program, officers would not be required to receive elder abuse training and local agencies would not be obligated to compensate their officers for such training.

[3] *Garcia* v. *San Antonio Metropolitan Transit Authority et al.* (1985) 469 U.S. 528.

Accordingly, the Commission finds that local agencies are mandated by the state through section 13515 to provide elder abuse training to police officers and deputy sheriffs assigned to field or investigative duties *if* the training occurs during the employee's regular working hours.

Training Conducted Outside Regular Working Hours

The claimant asserts that the City of Newport Beach would need to provide training to its officers outside regular working hours. The Commission notes that an exception to the FLSA was enacted in 1987, which provides that time spent by employees of state and local governments in training required for certification by a higher level of government that occurs outside of the employee's regular working hours is noncompensable. In this regard, 29 CFR section 553.226 provides the following:

> (a) The general rules for determining the compensability of training time under the FLSA are set forth in §§ 785.27 through 785.32 of this title.
>
> (b) While time spent in attending training required by an employer is normally considered compensable hours of work, following are situations where time spent by employees of State and local governments in required training is considered to be *noncompensable*:
>
> "……
>
> "(2) *Attendance outside of regular working hours at specialized or follow-up training, which is required for certification of employees of a governmental jurisdiction by law of a higher level of government (e.g., where a State or county law imposes a training obligation on city employees), does* ***not*** *constitute compensable hours of work.* (Emphasis added.)

The Commission finds that 29 CFR section 553.226, subdivision (b)(2), applies when the elder abuse training is conducted outside the employee's regular working hours. In such cases, the local agency is not required to compensate the employee. Rather, the cost of elder abuse training becomes a term or condition of employment subject to the negotiation and collective bargaining between the local agency and the employee. However, the inquiry must continue to analyze how the inclusion of training in a memorandum of understanding (MOU) between local agencies and their employees relates to a determination of whether section 13515 is subject to article XIII B, section 6 of the California Constitution.

The Meyers-Milias-Brown Act governs collective bargaining between local agencies and their employees.[4] The Act requires the governing body of the local agency and its representatives to meet and confer in good faith regarding wages, hours, and other terms of employment with representatives of employee organizations. If an agreement is reached, the parties enter into a collective bargaining agreement, or MOU. The MOU becomes binding on the local agency and employees only upon the approval and adoption by the governing board of the local agency.[5]

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[4] Government Code sections 3500 et al.

[5] Government Code sections 3500, 3505, and 3505.1. The Commission analyzed the Meyers-Milias-Brown Act in the *SIDS* test claim to determine if the fee authority established in the statute could realistically be imposed on firefighter employees. Based on evidence presented at the hearing, the Commission found that even though local agencies have the unilateral authority to impose changes regarding the terms of employment, the use of the unilateral authority is rare. Therefore, the Commission determined that the authority to impose fees upon firefighters in the SIDS case could not be realistically exercised by local agencies.

Although providing or paying for elder abuse training conducted outside the employee's regular working hours is an issue negotiated at the local level, the California Constitution prohibits the Legislature from impairing obligations or denying rights to the parties of a valid, binding contract absent an emergency.[6] Therefore, if a MOU requires a local agency to provide or pay for training, then section 13515 is subject to article XIII B, section 6 of the California Constitution.

The test claim statute became effective on September 24, 1997. Accordingly, the Commission finds that providing elder abuse training outside the employee's regular working hours is an obligation imposed on those local agencies that, as of September 24, 1997, were bound by a MOU that required the agency to provide or pay for continuing education training. However, when that MOU terminated training conducted outside the employee's regular working hours becomes a negotiable matter subject to the discretion of the local agency. Thus, under such circumstances, the Commission finds that the requirement to provide or pay for elder abuse training is not an obligation imposed by the state on a local agency.

Conclusion

Based on the foregoing, the Commission finds that Penal Code section 13515 is subject to article XIII B, section 6 of the California Constitution because it imposes an obligation on local agencies to provide elder abuse training under the following circumstances:

- When the elder abuse training occurs during the employee's regular working hours; or
- When the elder abuse training occurs outside the employee's regular working hours *and* there is an obligation imposed by an MOU existing on September 24, 1997 (the effective date of the statute) that requires the local agency to provide or pay for continuing education training.

However, the issue remains whether the test claim legislation imposes a new program or higher level of service upon local agencies that constitute costs mandated by the state. This issue is addressed below.

Issue 2

Does the test claim legislation impose a new program or higher level of service upon local agencies within the meaning of article XIII B, section 6 of the California Constitution and constitute costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514?

City police officers and deputy sheriffs were not required to receive elder abuse training before the enactment of Penal Code section 13515. Thus, the Commission finds that section 13515 constitutes a new program or higher level of service under article XIII B, section 6 of the California Constitution. However, the Commission must continue its inquiry to determine if there are any "costs mandated by the state."

Government Code section 17514 defines "costs mandated by the state" as any *increased* costs a local agency is required to incur as a result of any statute or executive order that mandates a new program or higher level of service.

The claimant contends that Penal Code section 13515 results in increased costs mandated by the state in the form of salaries and benefits for the time that city police officers and deputy sheriffs

[6] California Constitution, article 1, section 9.

spend in training and the costs incurred to present the course. The claimant submitted cost data to support its claim.

DOF contends that the test claim legislation has not imposed any costs on local agencies since the training may be available from other sources. DOF also contends that section 13515 does not impose costs on local agencies since the two-hour elder abuse training course was intended by the Legislature to be delivered as part of the continuing education requirement of 24 hours every two years.

In response to DOF's contentions, the claimant states that elder abuse training is unavailable from other sources. The claimant further contends that if the Legislature intended elder abuse training to be included in the 24-hour requirement, it would have expressly stated that intent. However, the express language of section 13515 provides that such training shall occur "by January 1, 1999 or within 18 months of assignment to field duties," not that elder abuse training must be included in the 24-hour requirement. Finally, the claimant contends that Government Code section 17556, subdivision (a), is inapplicable to the present test claim.

Scope of the Mandate

In order to determine if there are any costs mandated by the state, the Commission must first determine the scope of the mandate. Section 13515 expressly requires city police officers and deputy sheriffs to receive elder abuse training by January 1, 1999 or within 18 months of being assigned to field duties. The claimant alleges a reimbursable state-mandated program exists for the following activities: (1) the costs to develop the elder abuse training course; (2) trainer time associated with administering the elder abuse training course (including necessary materials provided to trainees); and (3) trainee time associated with attending the elder abuse training program. The Commission addresses each of these issues below.

1. *Costs to Develop the Elder Abuse Training Program*

In DOF's enrolled bill report for the test claim legislation, DOF notes that:

> [POST] indicates that this bill will have *no fiscal impact on [POST] because an elder abuse telecourse has already been developed and broadcasted to law enforcement agencies over closed-circuit television.* In addition, POST staff indicate[s] this bill would likely have no fiscal impact on local law enforcement agencies because, in most instances, law enforcement agencies record these broadcasts for future training purposes. *A law enforcement agency without this telecourse may request a video taped copy from POST free of charge.*[7] (Emphasis added.)

Section 13515 requires city police officers and deputy sheriffs to receive elder abuse training *by* January 1, 1999 or within 18 months of being assigned field duties. Based on the express completion date for training, by January 1, 1999 or within 18 months of being assigned field duties, the Commission finds that the Legislature intended to require elder abuse training on a one-time basis. Moreover, section 13515 requires that any elder abuse training course must be certified by POST. The elder abuse training course developed and certified by POST consists of two hours of training.

Based on the fact POST has already developed and provided the elder abuse training course to law enforcement agencies, the Commission finds that local agencies are *not* required by the state

[7] The Department of Finance Enrolled Bill Report for AB 870 is attached as Exhibit I to the Department of Finance's April 15, 1999 Opposition.

to incur costs to develop or design the training course and, thus, such costs are not reimbursable under article XIII B, section 6 of the California Constitution and Government Code section 17514. Thus, the Commission finds that any training on elder abuse beyond two hours is provided at the discretion of the city and is not reimbursable under article XIII B, section 6.

2. *Trainer Time Providing the Elder Abuse Training Course*

POST's regulations provide that elder abuse training shall include instruction in the law, elder abuse recognition, reporting requirements and procedures, neglect, fraud, and victim/witness issues.[8] As stated in the test claim legislation's enrolled bill report, POST has developed the two-hour elder abuse training video to be used by law enforcement agencies. Although POST has developed the two-hour elder abuse training course, the course must still be administered by staff that is knowledgeable of the course. The Commission finds that local agencies will incur increased costs to *present* the training in the form of trainer time associated with administering the course including necessary materials provided to trainees. Therefore, the Commission finds that such costs are reimbursable under article XIII B, section 6 of the California Constitution and Government Code section 17514.

3. *Trainee Time Associated with Attending the Elder Abuse Training Course*

In 1998, the Commission analyzed whether a statute requiring continuing education training for peace officers imposed "costs mandated by the state" in the *Domestic Violence Training and Incident Reporting* test claim.[9] That test claim statute included the following language:

> The instruction required pursuant to this subdivision shall be funded from existing resources available for the training required pursuant to this section. It is the intent of the Legislature not to increase the annual training costs of local government.

Thus, the Commission determined in the *Domestic Violence Training and Incident Reporting* test claim that if the domestic violence training course caused an increase in the total number of required continuing education hours, then the increased costs associated with the new training course were reimbursable as "costs mandated by the state." On the other hand, if there was no overall increase in the total number of continuing education hours, then there were no increased training costs associated with the course. Instead, the cost of the training course was absorbed by local law enforcement agencies within their existing resources available for training.

The Commission recognized POST regulations, which provide that local law enforcement officers must receive at least 24 hours of Advanced Officer continuing education training every two years. POST regulations provide:

> Continuing Professional Training (Required).
> (1) Every peace officer below the rank of a middle management position as defined in section 1001 and every designated Level 1 Reserve Officer as defined in Commission Procedure H-1-2 (a) *shall satisfactorily complete the Advanced Officer Course of* ***24 or more hours*** *at least once every two years after meeting the basic training requirement.*[10] (Emphasis added.)

The Commission found that no costs were mandated by the state in the *Domestic Violence Training and Incident Reporting* test claim denying the claim for the following reasons:

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[8] Title 11, California Code of Regulations, section 1081, subdivision (a)(26).

[9] CSM 96-362-01, *Domestic Violence Training and Incident Reporting*.

[10] Title 11, California Code of Regulations, section 1005, subdivision (d).

- *Immediately before and after* the effective date of the test claim legislation, POST's minimum required number of continuing education hours for the law enforcement officers in question *remained the same at 24 hours*. After the operative date of the test claim legislation these officers must still complete at least 24 hours of professional training every two years;
- The two hour domestic violence training update may be credited toward satisfying the officer's 24-hour minimum;
- The two hour training is neither separate and apart nor "on top of" the 24-hour minimum;
- POST does not mandate creation and maintenance of a separate schedule and tracking system for this two hour course;
- POST prepared and provides local agencies with the course materials and video tape to satisfy the training in question; and
- Of the 24-hour minimum, the two-hour domestic violence training update is the only course that is legislatively mandated to be continuously completed every two years by the officers in question. The officers may satisfy their remaining 22-hour requirement by choosing from *the many elective courses* certified by POST.

Like the *Domestic Violence Training and Incident Reporting* test claim, POST prepared and presented the elder abuse training course for city police officers and deputy sheriffs as a two-hour telecourse. In addition, the elder abuse training course is a one-time course. Every city police officer or deputy sheriff must complete the course by January 1, 1999 or within 18 months of being assigned field duties.

Moreover, the elder abuse training course did not cause the minimum number of required continuing education hours to increase. Rather, the minimum number of continuing education hours remained at 24 hours immediately before and after the effective date of the test claim legislation. The two-hour elder abuse training course may be credited toward satisfying an officer's 24-hour minimum.

Like the Commission's finding in the *Domestic Violence Training and Incident Reporting* test claim, it would appear that local law enforcement agencies do not incur increased training costs for the one-time, two-hour elder abuse training course because the cost of the course is absorbed by local agencies within their existing resources available for training.

However, the Commission finds that this test claim differs from the *Domestic Violence Training and Incident Reporting* test claim in one important respect. In the *Domestic Violence Training and Incident Reporting* test claim, the two-hour domestic violence training course must be completed every two years. While in the present test claim, the two-hour elder abuse training course need only be completed *once*, by January 1, 1999 or within 18 months of being assigned field duties. The Commission finds that there are two instances where the two-hour elder abuse training course would impose costs mandated by the state upon local agencies for the trainee time associated with attending the course.

The following table outlines the two instances where the Commission finds that the two-hour elder abuse training course would impose costs mandated by the state upon local agencies:

	24-Hour Continuing Education Requirement	**When Requirement Completed**	**When New 2-Year Cycle Begins**	**Reimbursable Activity**
OFFICER A	Completed 24	*Before* 9/24/97	Anytime *after*	Attending elder

(assigned field duties *before* the enactment of the TC legislation)	hours	(effective date of TC legislation)	1/1/99	abuse training course
OFFICER B (assigned field duties *after* enactment of TC legislation)	Completed 24 hours	Anytime	Anytime *after* 18 month requirement as outlined in section 13515	Attending elder abuse training course

Based on the example above, section 13515 requires OFFICER A to attend the elder abuse training course by January 1, 1999. If OFFICER A has already completed the 24-hour requirement, and their new cycle begins *after* January 1, 1999, then their attendance in the course is above and beyond the 24-hour requirement. In essence, OFFICER A would complete 26 hours of training, two more hours than required by state law, and therefore, under this example, those two hours of elder abuse training are reimbursable.

Based on the example above, section 13515 requires OFFICER B to attend the elder abuse training course within 18 months of being assigned field duties. If OFFICER B has already completed their 24-hour requirement *before* being assigned field duties, and their new cycle begins *later* than 18 months after being assigned field duties, then their attendance in the course is above and beyond the 24-hour requirement. In essence, OFFICER B would complete 26 hours of training, two more hours than required by state law, and therefore, under this example, those two hours of elder abuse training are reimbursable.

Therefore, the Commission finds that the test claim legislation has imposed costs mandated by the state upon local agencies for the following activities: (1) trainer time associated with administering the elder abuse training course (including necessary materials distributed to trainees); and (2) the trainee time associated with attending the elder abuse training course in those instances where the police officer or deputy sheriff has already completed their 24 hours of continuing education when the requirement of section 13515 applied to the particular officer. The Commission further finds that training city police officers or deputy sheriffs hired after September 24, 1997, the effective date of the test claim statue, *does not* impose costs mandated by the state upon local agencies because such officers can apply the two-hour elder abuse training course towards their 24-hour requirement.

Issue 3

Does Government Code section 17556, subdivision (a), apply to this test claim?

DOF contends that, even if costs had been imposed on local agencies, subvention would not lie because section 13515 was enacted at the request of local agencies. Therefore, DOF contends that Government Code section 17556, subdivision (a), applies to the present test claim.

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

> The commission shall not find costs mandated by the state . . . in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:
>
> (a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local

agency or school district requesting the legislation authority. *A resolution from the governing body or a letter from a delegated representative* of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program *shall constitute a request within the meaning of this paragraph.* (Emphasis added.)

DOF maintains that the sponsor of AB 870, the test claim's implementing legislation, was the San Francisco District Attorney's Office, a local agency, and that AB 870 was supported by the California District Attorneys Association (CDAA). DOF further contends that since the CDAA represents the elected district attorneys in all 58 counties, the CDAA is, in effect, the delegated representative for the City of Newport Beach.

The claimant contends that section 17556, subdivision (a), is inapplicable to the present test claim. The claimant states that the CDAA's support of AB 870 does not equate to the City of Newport Beach requesting the legislation. The claimant further contends that DOF fails to provide any evidence that the City of Newport Beach expressly requested the legislation either though board resolution or a letter from a delegated city representative.

Based on the plain language of section 17556, subdivision (a), there are only two instances where the Commission can find that a local agency or school district requested legislative authority to implement a particular program: (1) when the governing body for the local agency or school district, by resolution, makes such a request: or (2) when a delegated representative of a local agency or school district submits a letter making such a request. In both circumstances, the key fact is that the governing body of a local agency or school district must make the request. Based on the documentation provided by the parties, and the Commission's review of the legislative history of AB 870, there is no evidence that the claimant requested authority to implement elder abuse training for city police officers or deputy sheriffs. Therefore, the Commission finds that the CDAA's *support* of AB 870 does not meet the threshold specified in subdivision (a). Thus, the Commission finds that Government Code section 17556, subdivision (a), is inapplicable to this test claim.

CONCLUSION

The Commission finds that Penal Code section 13515 is subject to article XIII B, section 6 of the California Constitution because it imposes an obligation on local agencies to provide elder abuse training under the following circumstances:

- When the elder abuse training occurs during the employee's regular working hours; or
- When the elder abuse training occurs outside the employee's regular working hours **and** there is an obligation imposed by an MOU existing on September 24, 1997 (the effective date of the statute) that requires the local agency to provide or pay for continuing education training.

Further, the Commission finds that the test claim legislation has imposed costs mandated by the state upon local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities:

- Costs to present the one-time, two-hour course in the form of trainer time and necessary materials provided to trainees; and
- Salaries, benefits and incidental expenses for each city police officer or deputy sheriff to receive the one-time, two-hour course on elder abuse in those instances where the police officer or deputy sheriff has already completed their 24 hours of continuing education

when the requirement of section 13515 applied to the particular officer, and when a new two-year training cycle does not commence until after the deadline for that officer or deputy to complete elder abuse training.[11]

However, the Commission also finds that training city police officers or deputy sheriffs hired after September 24, 1997, the effective date of the test claim statue, **does not** impose costs mandated by the state because such officers can apply the two-hour elder abuse training course towards their 24-hour requirement.

In addition, the Commission finds that Government Code section 17556, subdivision (a), is inapplicable to the test claim, because there is no evidence that the claimant requested authority to implement elder abuse training for city police officers or deputy sheriffs.

[11] This paragraph was modified pursuant to Dan Stone's comments at the hearing.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE CONSOLIDATED TEST CLAIM ON: Commission on Peace Officer Standards and Training (POST) Bulletin: 98-1; POST Administrative Manual, Procedure D-13; Filed on June 29, 2001; By County of Los Angeles, Claimant; Filed on September 13, 2002; By Santa Monica Community College District, Claimant.	No. 00-TC-19/02-TC-06 *Mandatory On-The-Job Training For Peace Officers Working Alone* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on July 29, 2004)*

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

_____ _____

PAULA HIGASHI, Executive Director Date

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE CONSOLIDATED TEST CLAIM ON: Commission on Peace Officer Standards and Training (POST) Bulletin 98-1; POST Administrative Manual, Procedure D-13; Filed on June 29, 2001; By County of Los Angeles, Claimant; Filed on September 13, 2002; By Santa Monica Community College District, Claimant.	No. 00-TC-19/02-TC-06 *Mandatory On-The-Job Training For Peace Officers Working Alone* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on July 29, 2004)*

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on July 29, 2004. Leonard Kaye appeared on behalf of the County of Los Angeles. Leo Shaw appeared on behalf of the Santa Monica Community College District. Pamela Stone appeared on behalf of the California State Association of Counties. Georgia Johas appeared on behalf of the Department of Finance (DOF). Howell Snow and Bud Lewellen appeared on behalf of the Commission on Peace Officer Standards and Training.

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 section 17500 et seq., and related case law.

The Commission adopted the staff analysis to deny this test claim by a vote of 5-0.

BACKGROUND

This test claim has been filed on documents issued by the Commission on Peace Officer Standards and Training (POST). POST Bulletin 98-1 and the POST Administrative Manual (PAM) procedure D-13, establish field training requirements for peace officers that work alone and are assigned to general law enforcement patrol duties. The claimants contend that the POST bulletin and manual constitute an executive order that requires reimbursement pursuant to article XIII B, section 6 of the California Constitution.

The POST bulletin, which was issued on January 9, 1998, states in pertinent part the following:

> Following a public hearing on November 6, 1997, the Commission on Peace Officer Standards and Training (POST) approved amendments to Commission Regulation 1005 and Procedure D-13 relating to establishing

a mandatory POST-approved Field Training Program for peace officers assigned to general law enforcement patrol duties. This Commission action implements one of the objectives in its strategic plan (to increase standards and competencies of officers by integrating a mandatory field training program as part of the basic training requirement). POST's regulations and procedures have incorporated most of the important elements of successful field training programs already in existence in California law enforcement agencies. Significant changes in regulation include:

- All regular officers, appointed after January 1, 1999 and after completing the Regular Basic Course are required to complete a POST-approved Field Training Program (described in PAM section D-13) prior to working alone in general law enforcement patrol assignments. Trainees in a Field Training Program shall be under the direct and immediate supervision (physical presence) of a qualified field training officer.
- The field training program, which shall be delivered over a minimum of 10 weeks, shall be based upon structured learning content as recommended in the *POST Field Training Program Guide* or upon a locally developed field training guide which includes the minimum POST specified topics.
- Officers are exempt from this requirement: 1) while the officer's assignment remains custodial, 2) if the employing agency does not provide general law enforcement patrol services, 3) if the officer is a lateral entry officer possessing a POST Regular Basic Certificate whose previous employment included general law enforcement patrol duties, or 4) if the employing authority has obtained a waiver as provided in PAM section D-13 as described below.
- A waiver provision has been established to accommodate any agency that may be unable to comply with the program's requirements due to either financial hardship or lack of availability of personnel who qualify as field training officers.
- Agencies are encouraged to apply for a POST-Approved Field Training Program prior to January 1, 1999, and as soon as all POST program requirements are in place (e.g., agency policies reviewed for conformance and sufficient numbers of qualified field training officers have been selected and trained) to ensure availability of a POST-approved program for new hires after that date.
- Requirements for the POST Regular Basic Certificate are not affected by the field training requirement.

Only those agencies affected by the new requirements (Police Departments, Sheriff's Departments, School/Campus Police Departments, and selected other agencies in the POST program) will receive additional documents attached to this bulletin as follows:

1. Description of the program approval process
2. Copies of the Commission Regulations which are effective January 1, 1999
3. Copy of the Application for POST-Approved Field Training Program (POST 2-229, Rev 12/97)
4. Copy of the POST Field Training Guide 1997

Effective January 1, 1999, section 1005 of the POST regulations was amended to provide for the field training program.[1] As amended, section 1005, subdivision (a)(2), stated in relevant part that "[e]very regular officer, following completion of the Regular Basic Course and before being assigned to perform general law enforcement patrol duties without direct and immediate supervision, shall complete a POST-approved Field Training Program as set forth in PAM [POST Administrative Manual] section D-13."

On July 1, 2004, further amendments to POST's regulations and administrative manual on the field training program went into effect. According to the regulatory notice issued by POST, section 1005 of the POST regulations was amended to "eliminate possible confusion with other courses in the POST Administrative Manual listed as 'Basic' courses." In addition, some of the required activities for the field training program that were originally listed in Procedure D-13 of the POST Administrative Manual were placed in section 1004 of the POST regulations.[2]

The field training activities provided in the POST Administrative Manual and in POST regulations include the following:

- Any department that employs peace officers and/or Level I Reserve peace officers shall have a POST-approved field training program. Requests for approval of the program shall be submitted on form 2-229, signed by the department head.
- The field training program shall be delivered over a minimum of 10 weeks and based upon the structured learning content specified in the POST Administrative Manual section D-13 and the POST Field Training Program Guide.[3]
- The trainee shall have successfully completed the Regular Basic Course before participating in the field training program.

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[1] California Code of Regulations, title 11, section 1005.

[2] See exhibit I, Bates pages 481 et seq., Item 5, July 29. 2004 Commission Hearing, for POST's notice of rulemaking. In addition, on July 1, 2004, the field training program content and course curricula was updated to include specific components of leadership, ethics, and community oriented policing.

[3] The POST Field Training Program Guide, Exhibit I, Bates pages 374 et seq., Item 5, July 29, 2004 Commission Hearing.

- The field training program shall have a training supervisor/administrator/coordinator that has been awarded or is eligible for the award of a POST Supervisory Certificate, and meets specified POST requirements, including completion of a POST-certified Field Training Supervisor/Administrator/Coordinator Course.
- The field training program shall have field training officers that meet specified POST requirements, including completion of a POST-certified Field Training Officer Course.
- A trainee assigned to general law enforcement patrol duties shall be under the direct and immediate supervision (physical presence) of a qualified field training officer. A trainee assigned to non-peace officer, specialized functions for the purpose of specialized training or orientation (i.e., complaint/dispatcher, records, jail, investigations) is not required to be in the immediate presence of a qualified field training officer.
- Each trainee shall be evaluated daily with written summaries of performance prepared and reviewed with the trainee by the field training officer. Each trainee's progress shall be monitored by a field training administrator/supervisor by review and signing of daily evaluations and/or completing weekly written summaries of performance that are reviewed by the trainee.
- Each field training officer shall be evaluated by the trainee and supervisor/administrator at the end of the program.[4]

Claimants' Positions

Both claimants contend that POST Bulletin 98-1 and Administrative Manual Procedure D-13 constitute a reimbursable state-mandated program. The County of Los Angeles is requesting reimbursement for the following activities:

- One-time cost to design and develop a ten-week on-the-job training program, including course content and evaluation procedures to comply with the subject law.[5]
- One-time cost to meet and confer with training experts on curriculum development.[6]
- One-time cost to design training materials including, but not limited to, training videos and audio visual aids.[7]

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[4] Exhibit A (Bates pp. 169-175) and Exhibit I (Bates p. 481), POST Administrative Manual, Procedure D-13, and section 1004 of the POST regulations, effective July 1, 2004. (Item 5, July 29, 2004 Commission Hearing.)

[5] Declaration of Lieutenant Bruce Fogarty, Los Angeles County Sheriff's Department, dated June 21, 2001. Staff notes that the County of Los Angeles' field training program is 28 weeks of training. (See Exhibit A, Bates p. 194, to Item 5, July 29, 2004 Commission Hearing, for the County of Los Angeles Field Training Program Manual.)

[6] *Ibid.*

- One-time cost to comply with POST application process for POST approval of county field training program.[8]
- Continuing cost for instructor time to prepare and teach ten-week training classes.[9]

  This includes the following instructor and administrator training:

  - 40-hour POST field training officer course in accordance with POST procedure, D-13-5;[10]
  - 24-hour POST field training administrator course, POST procedure D-13-6;[11] and
  - 24- hour field training officer's update, POST procedure D-13-7.[12]
- Continuing cost for trainee time to attend the ten-week training class.[13]
- Continuing cost to review and evaluate trainees to ensure that each phase is successfully completed.[14]

Santa Monica Community College District requests reimbursement for the following activities:

- Develop and implement policies and procedures, with periodic updates.
- Develop and implement tracking procedures to assure that every law enforcement officer employed by the district participates in the field training program.
- Pay the unreimbursed costs for travel, subsistence, meals, training fees and substitute salaries of field training officers and law enforcement officers attending the training.
- Plan, develop and implement a field training program and submit an application for approval of the field training program.
- Apply for a waiver of the field training requirements when unable to comply due to either financial hardship or lack of availability of personnel who qualify as field training officers.[15]

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[7] *Ibid.*

[8] Exhibit A, Bates pages 113-115, to Item 5, July 29, 2004 Commission Hearing.

[9] Declaration of Lt. Bruce Fogarty.

[10] Exhibit A, Bates pages 116 and 121, to Item 5, July 29, 2004 Commission Hearing.

[11] *Id.* at page 122.

[12] *Ibid.*

[13] Declaration of Lt. Bruce Fogarty.

[14] *Ibid.*

Position of the Department of Finance

The Department of Finance filed comments on both test claims arguing that the test claim should be denied for the following reasons:

- Local law enforcement agency participation in POST programs is optional. Local entities agree to participate in POST programs and comply with POST regulations by adopting a local ordinance or resolution pursuant to Penal Code sections 13522 and 13510. Therefore, any costs associated with participation in an optional program are not reimbursable state-mandated local costs.
- Local agency participation in the training is optional because local entities can request a waiver exempting them from the training.[16]

Position of POST

POST filed comments on the County of Los Angeles test claim as follows:

> The Commission on Peace Officer Standards and Training did enact new regulations, effective January 1, 1999, requiring that certain peace officers complete a minimum ten-week Field Training Program. This new requirement was enacted by the Commission on POST under its authority to set standards for employment and training of peace officers employed by participating agencies. There was no statutory enactment by the Legislature compelling adoption of Field Training program regulations.
>
> Local entities, such as the County of Los Angeles, participate in the POST program on a voluntary basis. The County has passed an ordinance under the terms of which it agrees to abide by current and future employment and training standards enacted by the POST Commission.
>
> The Commission's regulations include a waiver provision for participating agencies unable to comply due to significant financial constraints.[17]

POST also filed comments on the Santa Monica Community College test claim, which further alleges that agencies choosing to participate in the POST program should budget annually for anticipated costs. POST also states that participants in the POST program are reimbursed for travel, per diem, and tuition associated with attendance at field training officer courses.[18]

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[15] See declaration of Eileen Miller, Chief of Police of the Santa Monica Community College District, and declaration from Greg Bass, Director of Child Welfare and Attendance, Clovis Unified School District (Exhibit B to Item 5, July 29, 2004 Commission Hearing).

[16] Exhibit C to Item 5, July 29, 2004 Commission Hearing.

[17] Exhibit D to Item 5, July 29, 2004 Commission Hearing.

[18] *Ibid.*

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution[19] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[20] "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."[21] 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.[22] 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.[23]

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.[24] To determine if the program is new or imposes a higher level of service, the

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[19] Article XIII B, section 6 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 such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

[20] *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 735.

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

[22] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174. In *Department of Finance v. Commission on State Mandates*, *supra*, 30 Cal.4th at page 742, the court agreed that "activities undertaken at the option or discretion of a local government 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 obligated to incur costs as a result of its discretionary decision to participate in a particular program or practice." The court left open the question of whether non-legal compulsion could result in a reimbursable state mandate, such as in a case where failure to participate in a program results in severe penalties or "draconian" consequences.
(*Id.*, at p. 754.)

[23] *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836.

[24] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar*, *supra*,
44 Cal.3d 830, 835.

test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.[25] Finally, the newly required activity or increased level of service must impose costs mandated by the state.[26]

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.[27] 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."[28]

Issue I: Are the documents issued by POST, Bulletin 98-1 and POST Administrative Manual Procedure D-13, subject to article XIII B, section 6 of the California Constitution?

A. State law does not require school districts and community college districts to employ peace officers and, thus, the field training requirements do not impose a state mandate on school districts and community college districts.

Santa Monica Community College District contends that the documents issued by POST constitute executive orders that impose a mandate on school districts and community college districts to provide the required field training to their officers. The Commission disagrees. For the reasons described below, the Commission finds that the documents issued by POST are not subject to article XIII B, section 6 of the California Constitution because they do not impose a mandate on school districts and community college districts. School districts and community college districts are not required by state law to employ peace officers.

The California Constitution, article IX, Education, establishes and permits the formation of school districts, including community college districts, and county boards of education, all for the purpose of encouraging "the promotion of intellectual, scientific, moral and agricultural improvement."[29] Although the Legislature is permitted to authorize school districts "to act in any manner which is not in conflict with the laws and purposes for which school districts are established,"[30] the Constitution does not require school districts to operate police departments or employ school security officers as part of their essential educational function. Article I, section 28, subdivision (c), of the California Constitution does require K-12 school districts to maintain safe schools.

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[25] *Lucia Mar, supra*, 44 Cal.3d 830, 835.

[26] *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.

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

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

[29] California Constitution, article IX, section 1.

[30] California Constitution, article IX, section 14.

However, there is no constitutional requirement to maintain safe schools through school security or a school district police department independent of the public safety services provided by the cities and counties a school district serves.[31]

In *Leger v. Stockton Unified School District*, the court interpreted the safe schools provision of the California Constitution as declaring only a general right *without* specifying any rules for its enforcement.[32] The claimant argues that the Commission should ignore the portion of the court's ruling that the safe schools provision does not specify any rules because the *Leger* case is a tort case where the plaintiff was seeking monetary damages for the alleged negligent actions of the school district. The claimant further argues that the Commission should follow the *Leger* court's statements that "all branches of government are required to comply with constitutional directives," such as providing a safe school through police services.[33]

But, the claimant is mischaracterizing the court's holding. When interpreting the safe schools provision of the Constitution, the court was applying rules of constitutional interpretation. The court stated the following:

> The following rule has been consistently applied in California to determine whether a constitutional provision is self-executing in the sense of providing a specific method for its enforcement: " 'A constitutional provision may be said to be self-executing if it supplies a sufficient rule by means of which the right given may be enjoyed and protected, or the duty imposed may be enforced; and *it is not self-executing when it merely indicates principles, without laying down rules by means of which those principles may be given the force of law*.'" [Citations omitted.] (Emphasis added.)[34]

The court further held that the safe schools provision of the Constitution is not self-executing because it does not lay down rules that are given the force of law.

> [H]owever, section 28(c) declares a general right without specifying *any* rules for its enforcement. It imposes no express duty on anyone to make schools safe. It is wholly devoid of guidelines, mechanisms, or procedures from which a damages remedy could be inferred. Rather, "it merely indicates principles, without laying down rules by means of which those principles may be given the force of law." [Citation omitted.][35]

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[31] Article I, section 28, subdivision (c) of the California Constitution provides "All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are *safe*, secure and peaceful." (Emphasis added.)

[32] *Leger v. Stockton Unified School Dist.* (1988) 202 Cal.App.3d 1448, 1455.

[33] Exhibit K, Bates pages 598-601, to Item 5, July 29, 2004 Commission Hearing.

[34] *Leger v. Stockton Unified School District, supra,* 202 Cal.App.3d at page 1455.

[35] *Ibid.*

Furthermore, the court reviewed the ballot materials for the safe schools provision and found that the provision was intended to be implemented through reforms in criminal laws.[36] For example, the court noted in footnote 3 of the decision that the Legislature implemented the safe schools provision by establishing procedures in the Penal Code by which non-students can gain access to school grounds and providing punishments for violations. The Legislature also enacted the "Interagency School Safety Demonstration Act of 1985" to encourage school districts, county offices of education, and law enforcement to develop and implement interagency strategies, programs, and activities to improve school attendance and reduce the rates of school crime and vandalism.[37] But, as shown below, the Legislature has not implemented the safe schools provision by requiring school districts to employ peace officers.

Accordingly, the California Constitution does not require or mandate school districts, through the safe schools provision, to employ peace officers.

Finally, although the Legislature authorizes school districts and community college districts to employ peace officers, the Legislature does not require school districts and community college districts to employ peace officers. Pursuant to Education Code section 38000:[38]

> [t]he governing board of any school district may establish a security department ... or a police department ...[and] may employ personnel to ensure the safety of school district personnel and pupils and the security of the real and personal property of the school district. In addition, a school district may assign a school police reserve officer who is deputized pursuant to Section 35021.5 to a schoolsite to supplement the duties of school police personnel pursuant to this section. It is the intention of the Legislature in enacting this section that a school district police or security department is supplementary to city and county law enforcement agencies and is not vested with general police powers.

Education Code section 72330, derived from the same 1959 Education Code section, provides the law for community colleges. "The governing board of a community college district may establish a community college police department ... [and] may employ personnel as necessary to enforce the law on or near the campus. ... This subdivision shall not be construed to require the employment by a community college district of any additional personnel."

In 2003, the California Supreme Court decided *Department of Finance v. Commission on State Mandates* and found that "if a school district elects to participate in or continue participation in any *underlying voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirements related to that program

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[36] *Id.* at page 1456.

[37] *Id.* at page 1456, footnote 3.

[38] Formerly numbered Education Code section 39670; derived from 1959 Education Code section 15831.

does not constitute a reimbursable state mandate."[39] The court further stated, on page 731 of the decision, that:

> [*W*]*e reject claimants' assertion that they have been legally compelled to incur* notice and agenda *costs,* and hence are entitled to reimbursement from the state, based merely upon the circumstance that notice and agenda provisions are mandatory elements of education-related program in which claimants have participated, *without regard to whether claimant's participation in the underlying program is voluntary or compelled.* [Emphasis added.]

The decision of the California Supreme Court interpreting the state-mandate issue is relevant to this test claim. The Commission is not free to disregard clear statements of the California Supreme Court. Pursuant to state law, school districts and community college districts are not required by the state to have a police department and employ peace officers. That decision is a local decision.[40] Thus, the field training duties imposed by the POST documents that follow from the discretionary decision to employ peace officers do not impose a reimbursable state mandate.

In response to the draft staff analysis, Santa Monica Community College District contends that staff has misconstrued the *Department of Finance* case. The claimant alleges that the controlling authority on the subject of legal compulsion of a state statute is *City of Sacramento v. State of California.*[41, 42] The claimant, however, is mischaracterizing the Supreme Court's holding in *Department of Finance*.

In *Department of Finance*, the school districts argued that the definition of a state mandate should not be limited to circumstances of strict legal compulsion, but, instead, should be controlled by the court's broader definition of a federal mandate in the *City of Sacramento* case.[43] In *City of Sacramento*, the court analyzed the definition of a federal mandate and determined that because the financial consequences to the state and its residents for failing to participate in the federal plan were so onerous and punitive, and the consequences amounted to "certain and severe federal penalties" including "double

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[39] *Department of Finance v. Commission on State Mandates, supra*, 30 Cal.4th at page 743. (Emphasis added.)

[40] Santa Monica Community College District admits that the decision to have a police department and employ peace officers is a local decision. On page 25 of its comments to the draft staff analysis (Exhibit K, Bates p. 621, to Item 5, July 29, 2004 Commission Hearing), the claimant states the following:

> The people and the legislature has [sic] not directly specified how the constitutional duty to provide safe schools is to be accomplished. They left this decision to local agencies who [sic] have first hand knowledge of what is necessary for their respective communities. It is a local decision.

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

[42] Exhibit K, Bates pages 626-630, to Item 5, July 29, 2004 Commission Hearing.

[43] *Department of Finance, supra*, 30 Cal.4th at pp. 749-751.

taxation" and other "draconian" measures, the state was mandated by federal law to participate in the plan, even the federal legislation did not legally compel the participation.[44]

The Supreme Court in *Department of Finance*, however, found it "unnecessary to resolve whether [its] reasoning in *City of Sacramento* [citation omitted] applies with regard to the proper interpretation of the term 'state mandate' in section 6 of article XIII B."[45] Although the school districts argued that they had no true choice but to participate in the school site council programs, the court stated that, assuming for purposes of analysis only, the *City of Sacramento* case applies to the definition of a state mandate, the school districts did not face "certain and severe penalties" such as "double taxation" and other "draconian" consequences."[46]

Here, even assuming that the *City of Sacramento* case applies, there is no evidence in the law or in the record that school districts would face "certain and severe" penalties" such as "double taxation" or other "draconian" consequences if they don't employ peace officers.

Finally, the claimant argues that the staff analysis is arbitrary and unreasonable since it is not consistent with the Commission's prior decisions approving school district peace officer cases, such as the *Peace Officer Procedural Bill of Rights* (CSM 4499).[47] The claimant acknowledges the California Supreme Court's decision in *Weiss v. State Board of Education*, which held that the failure of a quasi-judicial agency to consider prior decisions is not a violation of due process as long as the action is not arbitrary or unreasonable.[48] But, the claimant states that "staff has offered no compelling reason ... why mandated activities of district peace officers were reimbursable in previous rulings and now activities of district peace officers are not reimbursable, other than what appears to be a whim or current fancy."[49]

As explained above, the compelling reason is the California Supreme Court's decision in *Department of Finance*, which affirmed the 1984 decision of *City of Merced*, and requires the Commission to determine whether the claimant's participation in the underlying program is voluntary or compelled. All of the previous Commission decisions cited by the claimant were decided before the Supreme Court issued the *Department of Finance* decision.[50]

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[44] *City of Sacramento, supra,* 50 Cal.3d at pages 73-76.

[45] *Id.* at page 751.

[46] *Id.* at pages 751-752.

[47] Exhibit K, Bates pages 623-626, to Item 5, July 29, 2004 Commission Hearing.

[48] *Weiss v. State Board of Equalization* (1953) 40 Cal.2d 772, 777.

[49] Exhibit K, Bates page 626, to Item 5, July 29, 2004 Commission Hearing.

[50] *City of Merced v. State of California* (1984) 153 Cal.App.3d 777 was a case brought by the city seeking reimbursement for eminent domain statutes under the former Senate Bill 90, Revenue and Taxation Code, provisions. The claim was not brought pursuant to article XIII B, section 6 of the California Constitution.

Therefore, the POST documents are not subject to article XIII B, section 6 of the California Constitution with respect to school districts because they do not impose a mandate on school districts and community college districts.

B. State law does not require local agencies and school districts to participate in the POST program and, thus, the field training requirements imposed by POST on their members are not mandated by the state.

Assuming for the sake of argument only that school districts are required to employ peace officers, the Commission finds that POST Bulletin 98-1 and the POST Administrative Manual Procedure D-13 do not impose a state-mandated program on either school districts or local agencies. Thus, the POST documents are not subject to article XIII B, section 6 of the California Constitution. As more fully described below, participation in POST and compliance with POST's field training program are voluntary, and not mandated by the state. Furthermore, POST's field training program is *not* part of the basic training requirement imposed by the state on all officers to obtain peace officer status, as suggested by the claimants.

Participation in POST is voluntary

As described by POST in their comments to the test claims, the ten-week field training program was enacted by POST under their authority to set standards for employment and training of peace officers employed by agencies that participate in the POST program.

POST was created in 1959 "[f]or the purpose of raising the level of competence of local law enforcement officers ..." (Pen. Code, § 13510.) To accomplish this purpose, POST has the authority, pursuant to Penal Code section 13510, to adopt rules establishing minimum standards relating to the physical, mental, and moral fitness of peace officers, and to the training of peace officers. But, these rules apply only to those cities, counties, and school districts that participate in the POST program and receive state aid. Penal Code section 13510, subdivision (a), expressly states that "[t]hese rules shall apply to those cities, counties, cities and counties, and districts receiving state aid pursuant to this chapter ..."[51]

The state aid is provided in Penal Code section 13520, which states the following: "There is hereby created in the State Treasury a Peace Officers' Training Fund, which is hereby appropriated, without regard to fiscal years, exclusively for costs of administration and for grants to local governments and districts pursuant to this chapter."

Penal Code section 13522 further provides that any local agency or school district may apply for the state aid by filing an application with POST, accompanied by an ordinance or resolution from the governing body stating that the agency will adhere to the standards for recruitment and training established by POST. Penal Code section 13522 states the following:

> Any city, city and county, or district which desires to receive state aid pursuant to this chapter shall make application to the commission for the aid. The initial application shall be accompanied by a certified copy of an

[51] Penal Code section 13507, subdivision (e) and (f), defines "district" to include school districts and community college districts.

> ordinance, or.... a resolution, adopted by its governing body providing that while receiving any state aid pursuant to this chapter, the city, county, city and county, or district will adhere to the standards for recruitment and training established by the commission. The application shall contain any information the commission may request.

Penal Code section 13523 provides that "[i]n no event shall any allocation be made to any city, county, or district which is not adhering to the standards established by the commission as applicable to such city, county, or district."

In the *Department of Finance* case, the California 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.[52] As 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.][53]

Here, participation in the underlying POST program is voluntary. The plain language of Penal Code section 13522 authorizes the governing body of local agencies and school districts to decide whether to apply for state aid through POST. If the local entity decides to file an application, the entity must adopt an ordinance or regulation agreeing to abide by POST rules and regulations as a condition of applying for state aid. Not all local agencies and school districts have applied for POST membership.[54]

In response to the draft staff analysis, the County of Los Angeles filed documents from the websites of cities that are listed by POST as non-participating agencies. These documents show that the nonparticipating cities contract their police services with agencies that do participate in the POST program.[55] But, the fact remains that there is no state statute, or other state law, that requires local agencies and school districts to participate in the POST program. The decision to participate is a local decision.

Thus, like the school districts in the *Department of Finance* case, local agencies and school districts here are free to decide whether to 1) continue to participate and receive POST funding, even though they must also incur program-related costs associated with the field training program, or 2) decline to participate in the POST program.[56] Therefore,

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[52] *Department of Finance, supra*, 30 Cal.4th at page 731.

[53] *Department of Finance, supra*, 30 Cal.4th at page 742.

[54] See Exhibit I, Bates pages 469-480, to Item 5, July 29, 2004 Commission Hearing, for POST's list of law enforcement agencies, with several agencies, as of March 11, 2004, noted as not a POST participating agency.

[55] Exhibit J to Item 5, July 29, 2004 Commission Hearing.

[56] *Department of Finance, supra*, 30 Cal.4th at page 753.

local agencies and school districts are not mandated by the state to provide field training to their officers.

Finally, the field training program at issue in this case is not like other legislatively-mandated training programs imposed on law enforcement agencies, as asserted by the County of Los Angeles. The County argues that the Commission's analysis of this claim should be the same as its analysis and findings of state-mandated programs in *Sexual Harassment Training in the Law Enforcement Workplace* (CSM 97-TC-07, adopted September 28, 2000) and *Domestic Violence Training* (CSM 96-362-01, adopted February 26, 1998).[57] But, the test claims on the Sexual Harassment and Domestic Violence Training involved Penal Code statutes (Pen. Code, §§ 13519.7 and 13519) that required POST to develop the training courses and required local law enforcement agencies to provide the POST-developed training courses to their officers.[58] Here, the Legislature has not enacted a statute compelling POST to develop a field training course and has not compelled local agencies and school districts to provide a field training program for their officers. Thus, the same rationale does not apply. Instead, local agencies and school districts are not mandated by the state, as described above, to provide field training to their officers.

Accordingly, the Commission finds that participation in POST and compliance with POST's field training program are voluntary, and not mandated by the state.

<u>POST's field training program is *not* part of the basic training requirement imposed by the state on all officers to obtain peace officer status</u>

The claimants allege that the field training program for officers working alone is part of the basic training requirement imposed by the state on all officers to obtain peace officer status. Thus, the claimants argue that field training is not voluntary. The Commission disagrees.

It is true, as argued by the claimants, that officers are required to complete a basic course of training prescribed by POST before they can exercise the powers of a peace officer, and must obtain the basic certificate issued by POST within 18 months of employment in order to continue to exercise the powers of a peace officer.[59] If the officer fails to complete the POST basic training or obtain the basic certificate, the officer may exercise only non-peace officer powers; for example, the officer may not exercise the powers of arrest, serve warrants, or carry a concealed weapon without a permit.[60] The basic training

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[57] Exhibit A, County of Los Angeles test claim, Bates pages 149-151, to Item 5, July 29, 2004 Commission Hearing.

[58] The Commission ultimately denied the test claim on Domestic Violence Training because there was no evidence that the state mandated local agencies to incur increased costs mandated by the state. The Second District Court of Appeal upheld the Commission's decision. (*County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1194.)

[59] Penal Code sections 832, 832.3, subdivision (a), and 832.4.

[60] 80 Opinions of the California Attorney General 293, 297 (1997).

and certificate is mandated by statute, and applies to all officers, whether or not their employers are POST members.[61]

But, based on the plain language of Bulletin 98-1, POST Regulations, the POST Administrative Manual, and the comments filed by POST on these test claims, the field training program is not part of the legislatively-mandated basic training requirement imposed on all officers. Field training is required only if the local agency or school district employer has elected to become a member of POST and, for those officers employed by a POST participating agency, only after the officer has completed the basic training course.

Page two of the POST Bulletin 98:1 expressly states that the "requirements for the POST regular Basic Certificate are *not* affected by the field training requirement." (Emphasis added.) Page two of the bulletin also describes those agencies affected by the new requirements as "Police Departments, Sheriff's Departments, School/Campus Police Departments, and selected other agencies *in the POST program*..." (Emphasis added.) Thus, agencies that decide not to participate in the POST program are not affected by the field training requirement.

In addition, section 1005, subdivision (a)(1), of the POST regulations, as amended in January 1999, provided that "[a]n officer as described in Penal Code section 832.2 (a) [a peace officer, first employed after January 1, 1975, that successfully completes the basic training course prescribed by POST] *is authorized to exercise peace officer powers while engaged in a field training program* ..." (Emphasis added.) Section 1005, subdivision (a)(2), further provided that "[e]very regular officer, *following completion of the Regular Basic Course* and before being assigned to perform general law enforcement patrol duties without direct and immediate supervision, shall complete a POST-approved Field Training Program as set forth in PAM section D-13." (Emphasis added.)[62] Thus, unlike the statutory requirement to successfully complete the basic training course before exercising the powers of a peace officer, an officer is not required to complete the field training program before he or she has the powers of a peace officer to make arrests, serve warrants, and carry a concealed weapon. Therefore, the field training program is not part of the basic training program.

Moreover, on July 1, 2004, further amendments to POST's regulations and the POST Administrative Manual on the field training program went into effect. According to the regulatory notice issued by POST, section 1005 of the POST regulations was amended to "eliminate possible confusion with other courses in the POST Administrative Manual listed as 'Basic' courses." The plain language of section 1005, as amended, indicates that the field training program is not part of the basic training program. Section 1005, as amended, provides as follows:

> (a) Minimum Entry-Level Training Standards (Required).
>
> (1) Basic Course Requirement: Every peace officer, except Reserve Levels II and III, those peace officers listed in Regulation

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[61] 55 Opinions of the California Attorney General 373, 375 (1972).

[62] See also, POST Administrative Manual Procedure D-13-3.

1005(a)(3) ..., and 1005(a)(4) ..., *shall complete the Regular Basic Course before being assigned duties which include the exercise of peace officer powers*. Requirements for the Regular Basic Course are set forth in PAM, section D-1-3.

(A) Field Training Program Requirement: Every peace officer, except Reserve Levels II and III and those officers described in sections (B)1-5(below), *following completion of the Regular Basic Course and before being assigned to perform general law enforcement uniformed patrol duties without direct and immediate supervision*, shall complete a POST-approved Field Training Program as set forth in PAM section D-13. (Emphasis added.)

The statutory authority and reference listed for section 1005 of the POST regulations includes Penal Code section 832 and 832.3, the statutes that require the successful completion of a basic course of training prescribed by POST before a person can exercise the powers of a peace officer.[63]

In addition, the activities required to be performed by POST participating agencies under the field training program that were originally listed in Procedure D-13 of the POST Administrative Manual was placed in section 1004 of the POST regulations on July 1, 2004. The statutory authority and reference for section 1004 of the POST regulations are Penal Code 13503, 13506, 13510, and 13510.5, the statutes that authorize POST to set standards for employment and training of peace officers employed by agencies that participate in POST.[64]

In addition to the plain language of the regulations and the POST Administrative Manual, the comments filed by POST on these test claims indicate that the field training program adopted by POST was meant only for POST participating agencies. POST states that the "new requirement was enacted by the Commission on POST under its authority to set standards for employment and training of peace officers *employed by participating agencies*."[65] POST's interpretation of their regulations and Administrative Manual, is entitled to great weight and the courts generally will not depart from such construction unless it is clearly erroneous or unauthorized.[66, 67]

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[63] See exhibit I to Item 5, July 29, 2004 Commission Hearing, for POST's notice of rulemaking; California Code of Regulations, title 11, sections 1004 and 1005 (eff. 7/1/04).

[64] *Ibid.*

[65] Exhibit D to Item 5, July 29, 2004 Commission Hearing. (Emphasis added).

[66] *Yamaha Corporation of America v. State Board of Equalization* (1998) 19 Cal.4th 1, 10-11.

[67] In response to the draft staff analysis, Santa Monica Community College District contends that the *Yamaha* case supports the conclusion that POST's interpretation of its own regulations and rules is not entitled to deference by the Commission because POST's interpretation is a quasi-judicial interpretation of a statute. (Exhibit K, Bates pp.

Accordingly, POST's field training program is *not* part of the basic training requirement imposed by the state on all officers to obtain peace officer status, as suggested by the claimants. Rather, the field training program is imposed only on POST participating agencies.

CONCLUSION

The Commission concludes that POST Bulletin 98-1 and the POST Administrative Manual Procedure D-13 do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the following reasons:

- State law does not require school districts and community college districts to employ peace officers and, thus, POST's field training requirements do not impose a state mandate on school districts and community college districts.
- State law does not require local agencies and school districts to participate in the POST program and, thus, the field training requirements imposed by POST on their members are not mandated by the state.

634-635 to Item 5, July 29, 2004 Commission Hearing.) The Commission disagrees. As indicated in the analysis, the state has *not* enacted a statute compelling POST to develop a field training course. Thus, POST was not exercising a quasi-judicial function to interpret a state statute. Rather, POST's field training course was adopted as a quasi-legislative action and, thus, under *Yamaha,* POST's interpretation of its own regulations and rules is entitled to great weight. (*Yamaha, supra*, 19 Cal.4th at pp. 10-11.)

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR STATEMENT OF DECISION ON: Government Code Sections 3300 through 3310 As Added and Amended by Statutes 1976, Chapter 465;Statutes 1978, Chapters 775, 1173, 1174, and 1178; Statutes1979, Chapter 405; Statutes 1980, Chapter 1367; Statutes 1982, Chapter 994; Statutes 1983, Chapter 964; Statutes 1989, Chapter 1165; and Statutes 1990, Chapter 675 (CSM 4499) Directed by Government Code Section 3313, Statutes 2005, chapter 72, section 6 (Assem. Bill (AB) No. 138), Effective July 19, 2005.	**Case No.: 05-RL-4499-01** ***Peace Officer Procedural Bill of Rights*** STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 (Adopted on April 26, 2006)

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

PAULA HIGASHI, Executive Director _____ Date

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR STATEMENT OF DECISION ON:	**Case No.: 05-RL-4499-01**
Government Code Sections 3300 through 3310	***Peace Officer Procedural Bill of Rights***
As Added and Amended by Statutes 1976, Chapter 465;Statutes 1978, Chapters 775, 1173, 1174, and 1178; Statutes1979, Chapter 405; Statutes 1980, Chapter 1367; Statutes 1982, Chapter 994; Statutes 1983, Chapter 964; Statutes 1989, Chapter 1165; and Statutes 1990, Chapter 675 (CSM 4499)	STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7
Directed by Government Code Section 3313, Statutes 2005, chapter 72, section 6 (Assem. Bill (AB) No. 138), Effective July 19, 2005.	(Adopted on April 26, 2006)

STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on April 26, 2006. Pam Stone, Dee Contreras, and Ed Takach appeared for the City of Sacramento. Lt. Dave McGill appeared for the Los Angeles Police Department. Susan Geanacou appeared for 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 section 17500 et seq., and related case law.

The Commission adopted the staff analysis to partially approve the test claim at the hearing by a vote of 5 to 1.

Summary of Findings

Statutes 2005, chapter 72, section 6 (AB 138) added section 3313 to the Government Code to direct the Commission to "review" the Statement of Decision, adopted in 1999, on the *Peace Officer Procedural Bill of Rights* test claim (commonly abbreviated as "POBOR") to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions.

In 1999, the Commission approved the test claim and adopted the original Statement of Decision. The Commission found that certain procedural requirements under POBOR were rights already provided to public employees under the due process clause of the

United States and California Constitutions. Thus, the Commission denied the procedural requirements of POBOR that were already required by law on the ground that they did not impose a new program or higher level of service, or impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c). Government Code section 17556, subdivision (c), generally provides that the Commission shall not find costs mandated by the state for test claim statutes that implement a federal law, unless the test claim statute mandates costs that exceed the federal mandate. The Commission approved the activities required by POBOR that exceeded the requirements of existing state and federal law.

On July 27, 2000, the Commission adopted parameters and guidelines that authorized reimbursement, beginning July 1, 1994, to counties, cities, a city and county, school districts, and special districts that employ peace officers for the ongoing activities summarized below:

- Developing or updating policies and procedures.
- Training for human resources, law enforcement, and legal counsel.
- Updating the status of cases.
- Providing the opportunity for an administrative appeal for permanent, at-will, and probationary employees that were subject to certain disciplinary actions that were not covered by the due process clause of state and federal law.
- When a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the employer that could lead to certain disciplinary actions, the following costs and activities are eligible for reimbursement: compensation to the peace officer for interrogations occurring during off-duty time; providing prior notice to the peace officer regarding the nature of the interrogation and identification of investigating officers; tape recording the interrogation; providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time or if any further specified proceedings are contemplated; and producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of complaints of reports or complaints made by investigators.
- Performing certain activities, specified by the type of local agency or school district, upon the receipt of an adverse comment against a peace officer employee.

On review of this claim pursuant to Government Code section 3313, the Commission finds that the *San Diego Unified School Dist.* case supports the Commission's 1999 Statement of Decision, which found that the POBOR legislation constitutes a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for counties, cities, school districts, and special districts identified in Government Code section 3301 that employ peace officers.

The Commission further finds that the *San Diego Unified School Dist.* case supports the Commission's 1999 Statement of Decision that the test claim legislation constitutes a partial reimbursable state-mandated program within the meaning of article XIII B,

section 6 of the California Constitution and Government Code section 17514 for all activities previously approved by the Commission except the following:

- The activity of providing the opportunity for an administrative appeal to probationary and at-will peace officers (except when the chief of police is removed) pursuant to Government Code section 3304 is no longer a reimbursable state-mandated activity because the Legislature amended Government Code section 3304 in 1998. The amendment limited the right to an administrative appeal to only those peace officers "who successfully completed the probationary period that may be required" by the employing agency and to situations where the chief of police is removed. (Stats. 1998, ch. 786, § 1.)
- The activities of obtaining the signature of the peace officer on the adverse comment or noting the officer's refusal to sign the adverse comment, pursuant to Government Code sections 3305 and 3306, when the adverse comment results in a punitive action protected by the due process clause[1] does not constitute a new program or higher level of service and does not impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c).

BACKGROUND

Statutes 2005, chapter 72, section 6 (AB 138) added section 3313 to the Government Code to direct the Commission to "review" the Statement of Decision, adopted in 1999, on the *Peace Officer Procedural Bill of Rights* test claim. Government Code section 3313 states the following:

> In the 2005-06 fiscal year, the Commission on State Mandates shall review its statement of decision regarding the Peace Officer Procedural Bill of Rights test claim and make any modifications necessary to this decision to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in San Diego Unified School Dist. v. Commission on State Mandates (2004) 33 Cal.4th 859 and other applicable court decisions. If the Commission on State Mandates revises its statement of decision regarding the Peace Officer Procedural Bill of Rights test claim, the revised decision shall apply to local government Peace Office Procedural Bill of Rights activities occurring after the date the revised decision is adopted.

Commission's Decision on *Peace Officer Procedural Bill of Rights* (CSM 4499)

The Legislature enacted the Peace Officers Procedural Bill of Rights Act (commonly abbreviated as "POBOR"), by adding Government Code sections 3300 through 3310, in 1976. POBOR provides a series of rights and procedural safeguards to peace officers employed by local agencies and school districts that are subject to investigation or

[1] Due process attaches when a permanent employee is dismissed, demoted, suspended, receives a reduction in salary, or receives a written reprimand. Due process also attaches when the charges supporting a dismissal of a probationary or at-will employee constitute moral turpitude that harms the employee's reputation and ability to find future employment and, thus, a name-clearing hearing is required.

discipline. Generally, POBOR prescribes certain protections that must be afforded officers during interrogations that could lead to punitive action against them; gives officers the right to review and respond in writing to adverse comments entered in their personnel files; and gives officers the right to an administrative appeal when any punitive action is taken against them, or they are denied promotion on grounds other than merit.[2]

Legislative intent for POBOR is expressly provided in Government Code section 3301 as follows:

> The Legislature hereby finds and declares that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that stable relations are continued throughout the state and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, within the State of California.

POBOR applies to all employees classified as "peace officers" under specified provisions of the Penal Code, including those peace officers employed by counties, cities, special districts and school districts.[3]

In 1995, the City of Sacramento filed a test claim alleging that POBOR, as it existed from 1976 until 1990, constituted a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.[4] In 1999, the Commission approved the test claim and adopted a Statement of Decision.[5] The Commission found that certain procedural requirements under POBOR were rights already provided to public employees under the due process clause of the United States and California Constitutions. Thus, the Commission denied the procedural requirements of POBOR that were already required by law on the ground that they did not impose a new program or

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[2] See California Supreme Court's summary of the legislation in *Baggett v. Gates* (1982) 32 Cal.3d 128, 135.

[3] Government Code section 3301 states: "For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code."

[4] The POBOR Act has been subsequently amended by the Legislature. (See Stats. 1994, ch. 1259; Stats. 1997, ch. 148; Stats. 1998, ch. 263; Stats. 1998, ch. 786; Stats. 1999, ch. 338; Stats. 2000, ch. 209; Stats. 2002, ch. 1156; Stats. 2003, ch. 876; Stats. 2004, ch. 405; and Stats. 2005, ch. 22.) These subsequent amendments are outside the scope of the Commission's decision in POBOR (CSM 4499), and therefore are *not* analyzed to determine whether they impose reimbursable state-mandated activities within the meaning of article XIII B, section 6.

[5] Administrative Record, page 859.

higher level of service, or impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c). Government Code section 17556, subdivision (c), generally provides that the Commission shall not find costs mandated by the state for test claim statutes that implement a federal law, unless the test claim statute mandates costs that exceed the federal mandate. The Commission approved the activities required by POBOR that exceeded the requirements of existing state and federal law.

On July 27, 2000, the Commission adopted parameters and guidelines that authorized reimbursement, beginning July 1, 1994, to counties, cities, a city and county, school districts, and special districts that employ peace officers for the ongoing activities summarized below:

- Developing or updating policies and procedures.
- Training for human resources, law enforcement, and legal counsel.
- Updating the status of cases.
- Providing the opportunity for an administrative appeal for permanent, at-will, and probationary employees that were subject to certain disciplinary actions that were not covered by the due process clause of state and federal law.
- When a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the employer that could lead to certain disciplinary actions, the following costs and activities are eligible for reimbursement: compensation to the peace officer for interrogations occurring during off-duty time; providing prior notice to the peace officer regarding the nature of the interrogation and identification of investigating officers; tape recording the interrogation; providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time or if any further specified proceedings are contemplated; and producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of complaints of reports or complaints made by investigators.
- Performing certain activities, specified by the type of local agency or school district, upon the receipt of an adverse comment against a peace officer employee.[6]

On March 29, 2001, the Commission adopted a statewide cost estimate covering fiscal years 1994-1995 through 2001-2002 in the amount of $152,506,000.[7]

Audit by the Bureau of State Audits

The Legislative Analyst's Office (LAO), in its Analysis of the 2002-2003 Budget Bill, reviewed a sample of POBOR reimbursement claims and found that the annual state costs associated with the program was likely to be two to three times higher than the amount projected in the statewide cost estimate and significantly higher than what the Legislature initially expected. LAO projected costs in the range of $50 to $75 million annually.

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[6] Administrative Record, page 1273.

[7] Administrative Record, page 1309.

LAO also found a wide variation in the costs claimed by local governments. Thus, LAO recommended that the Legislature refer the POBOR program to the Joint Legislative Audit Committee for review, possible state audit, and possible revisions to the parameters and guidelines.

In March 2003, the Joint Legislative Audit Committee authorized the Bureau of State Audits to conduct an audit of the process used by the Commission to develop statewide cost estimates and to establish parameters and guidelines for the claims related to POBOR.

On October 15, 2003, the Bureau of State Audits issued its audit report, finding that reimbursement claims were significantly higher than anticipated and that some agencies claimed reimbursement for questionable activities.[8] While the Bureau of State Audits recommended the Commission make changes to the overall mandates process, it did not recommend the Commission make any changes to the parameters and guidelines for the POBOR program. The Commission implemented all of the Bureau's recommendations.

On July 19, 2005, the Legislature enacted Government Code section 3313 (Stats. 2005, ch. 72, § 6 (AB 138)) and directed the Commission to "review" the Statement of Decision in POBOR.

Comments Filed Before the Issuance of the Draft Staff Analysis by the City and County of Los Angeles

On October 19, 2005, Commission staff requested comments from interested parties, affected state agencies, and interested persons on the Legislature's directive to "review" the POBOR program. Comments were received from the City of Los Angeles and the County of Los Angeles. The City and County both contend that the Commission properly found that POBOR constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution. The County further argues that, under the California Supreme Court decision in *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, reimbursement must be expanded to include all activities required under the test claim statutes including those procedures required by the federal due process clause. The County of Los Angeles also proposes that the Commission adopt a reasonable reimbursement methodology in the parameters and guidelines to reimburse these claims.

Comments Filed on the Draft Staff Analysis

On February 24, 2006, Commission staff issued the draft staff analysis and requested comments on the draft. The Commission received responses from the following parties:

<u>City of Sacramento</u>

The City of Sacramento argues the following:

- Prior law does not require due process protections for employees receiving short-term suspensions, reclassifications, or reprimands. Therefore, the administrative appeal required by the test claim legislation constitutes a new program or higher

[8] Administrative Record, page 1407 et seq.

level of service when an officer receives a short-term suspension, reclassification, or reprimand.

- Not every termination of a police chief warrants a liberty interest hearing required under prior law. The decision of the Commission should distinguish between those situations where there is a valid right to a liberty interest hearing under principles of due process, from the remaining situations where a police chief is terminated.
- The decision of the Commission should reflect "the onerous requirements imposed when interrogations are handled under POBOR."
- All activities required when an officer receives an adverse comment are reimbursable.

County of Alameda

The County of Alameda states that interrogation of a sworn officer under POBOR is difficult and requires preparation. The County alleges that ten hours of investigation must be conducted before an interview that might take thirty minutes.

County of Los Angeles

The County of Los Angeles contends that investigation is a reimbursable state-mandated activity. The County also argues that, pursuant to the *San Diego Unified School Dist.* case, all due process activities are reimbursable.

County of Orange

The County of Orange believes the staff analysis "does not fully comprehend or account for the [investigation] requirements of interrogation governed by Government Code section 3303." The County contends that the requirements of law enforcement agencies to investigate complaints have correspondingly increased under POBOR. When a complaint is received, the County argues that "every department is called upon to conduct very detailed investigations when allegations of serious misconduct occur. These investigations can vary in scope and depth from abuses of authority, the use of deadly force, excessive force where injuries may be significant, serious property damage, and criminal behavior." The County also contends that the investigation involves the subject officer and other officer witnesses.

Department of Finance

The Department of Finance contends that the *San Diego Unified School Dist.* case does not support the finding that the test claim legislation constitutes a reimbursable state-mandated program for school districts. Finance acknowledges the language in *San Diego Unified School Dist.* declining to extend the *City of Merced* decision to preclude reimbursement whenever any entity makes a discretionary decision that triggers mandated costs. Finance argues, however, that the Supreme Court's findings are not applicable to school districts since there is no requirement in law for school districts to form a police department. Finance states the following:

> . . . there is no requirement in law for these districts to form a police department and safe schools can be maintained without the need to hire

police officers as is evidenced by the many school districts that do not have police departments. The fact that the Legislature has declared it necessary for POBOR to apply to all public safety officers is not the same as requiring their hiring in the first place. School districts could, indeed, control or even avoid the extra cost of the POBOR legislation by not forming a police department at all, which is materially different from fire protection services that must be provided by fire protection districts. POBOR activities that might be claimed by school districts are, instead, analogous to non-reimbursable activities in the *Department of Finance v. Commission on State Mandates [Kern High School Dist.]* case that flowed from an underlying exercise of discretion and those in past Commission decisions that denied reimbursement to school districts for other peace officer activities.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[9] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[10] "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."[11] 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.[12] 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.[13]

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[9] Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: "(a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

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

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

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

[13] *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*).

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.[14] 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.[15] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[16]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[17]

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.[18] 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."[19]

I. Commission Jurisdiction and Period of Reimbursement for Decision on Reconsideration

It is a well-settled issue of law that administrative agencies, such as the Commission, are entities of limited jurisdiction. Administrative agencies have only the powers that have been conferred on them, expressly or by implication, by statute or constitution. The Commission's jurisdiction in this case is based solely on Government Code section 3313. Absent Government Code section 3313, the Commission would have no jurisdiction to review and reconsider its decision on POBOR since the decision was adopted and issued well over 30 days ago.[20]

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

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

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

[17] *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.

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

[19] *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.

[20] Government Code section 17559.

Thus, the Commission must act within the jurisdiction granted by Government Code section 3313, and may not substitute its judgment regarding the scope of its jurisdiction on reconsideration for that of the Legislature.[21] Since an action by the Commission is void if its action is in excess of the powers conferred by statute, the Commission must narrowly construe the provisions of Government Code section 3313.

Government Code section 3313 provides:

> In the 2005-06 fiscal year, the Commission on State Mandates shall review its statement of decision regarding the Peace Officer Procedural Bill of Rights test claim and make any modifications necessary to this decision *to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in San Diego Unified School Dist. v. Commission on State Mandates (2004) 33 Cal.4th 859 and other applicable court decisions.* If the Commission on State Mandates revises its statement of decision regarding the Peace Officer Procedural Bill of Rights test claim, the revised decision shall apply to local government Peace Office Procedural Bill of Rights activities occurring after the date the revised decision is adopted. (Emphasis added.)

The Commission's jurisdiction on review is limited by Government Code section 3313, to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in *San Diego Unified School Dist.* ... and other applicable court decisions."

In addition, Government Code section 3313 states that "the revised decision shall apply to local government Peace Officer Procedural Bill of Rights activities *occurring after the date the revised decision is adopted.*" Thus, the Commission finds that the decision adopted by the Commission on this reconsideration or "review" of POBOR applies to costs incurred and claimed for the 2006-2007 fiscal year.

II. Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

In 1999, the Commission found that the test claim legislation mandates law enforcement agencies to take specified procedural steps when investigating or disciplining a peace officer employee.[22] The Commission found that Government Code section 3304 mandates, under specified circumstances, that "no punitive action ['any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment'], nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the public safety officer with an opportunity for administrative appeal."

The Commission also found that the following activities are mandated by Government Code section 3303 when the employer wants to interrogate an officer:

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[21] *Cal. State Restaurant Assn. v. Whitlow* (1976) 58 Cal.App.3d 340, 346-347.

[22] Original Statement of Decision (AR, p. 862).

- When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)
- Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subds. (b) and (c).)
- Providing the peace officer employee with access to a tape recording of his or her interrogation prior to any further interrogation at a subsequent time, as specified. (Gov. Code, § 3303, subd. (g).)
- Under specified circumstances, producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons when requested by the officer. (Gov. Code, § 3303, subd. (g).)

Finally, Government Code sections 3305 and 3306 provide that no peace officer shall have any adverse comment entered into the officer's personnel file without having first read and signed the adverse comment. If the peace officer refuses to sign the adverse comment, that fact shall be noted on the document and signed or initialed by the peace officer. In addition, the peace officer shall have 30 days to file a written response to any adverse comment entered into the personnel file. The Commission found that Government Code sections 3305 and 3306 impose the following requirements on employers before an adverse comment is placed in an officer's personnel file:

- To provide notice of the adverse comment to the officer.
- To provide an opportunity to review and sign the adverse comment.
- To provide an opportunity to respond to the adverse comment within 30 days.
- To note on the document that the peace officer refused to sign the adverse comment and to obtain the peace officer's signature or initials under such circumstances.

POBOR, by the terms set forth in Government Code section 3301, expressly applies to counties, cities, school districts, and special districts and the Commission approved the test claim for these local entities. Government Code section 3301 states the following: "For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5 of the Penal Code." The legislation, however, does not apply to reserve or recruit officers,[23] coroners, or railroad police officers commissioned by the Governor.

Government Code section 3313 requires the Commission to review these findings to clarify whether the subject legislation imposes a mandate consistent with the California Supreme Court Decision in *San Diego Unified School Dist.* and other applicable court decisions.

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[23] *Burden v. Snowden* (1992) 2 Cal.4th 556, 569.

Generally, in order for test claim legislation to impose a reimbursable state-mandated program, the statutory language must mandate an activity or task on local governmental entities. If the statutory language does not impose a mandate, then article XIII B, section 6 of the California Constitution is not triggered and reimbursement is not required.

In the present case, although the procedural rights and protections afforded a peace officer under POBOR are expressly required by statute, the required activities are not triggered until the employing agency makes certain local decisions. For example, in the case of a city or county, agencies that are required by the Constitution to employ peace officers,[24] the POBOR activities are not triggered until the city or county decides to interrogate the officer, take punitive action against the officer, or place an adverse comment in the officer's personnel file. These initial decisions are not expressly mandated by state law, but are governed by local policy, ordinance, city charter, or memorandum of understanding.[25]

In the case of a school district or special district, the POBOR requirements are not triggered until the school district or special district (1) decides to exercise the statutory authority to employ peace officers, and (2) decides to interrogate the officer, take punitive action against the officer, or place an adverse comment in the officer's personnel file.

After the Commission issued its decision in this case, two California Supreme Court decisions were decided that address the "mandate" issue; *Kern High School Dist.* and *San Diego Unified School Dist.*[26] Thus, based on the court's ruling in these cases, the issue is whether the test claim legislation constitutes a state-mandated program within the meaning of article XIII B, section 6 in light of the local decisions that trigger the POBOR requirements.

As described below, the Legislature expressly declared its intent that the POBOR legislation is a matter of statewide concern and was designed to assure that effective police protection services are provided to all people of the state. The California Supreme Court found that POBOR protects the health, safety, and welfare of the citizens. Thus,

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[24] Article XI of the California Constitution provides for the formation of cities and counties. Section 1, Counties, states that the Legislature shall provide for an elected county sheriff. Section 5, City charter provision, specifies that city charters are to provide for the "government of the city police force."

[25] See *Baggett v. Gates* (1982) 32 Cal.3d 128, 137-140, where the California Supreme Court determined that POBOR *does not* (1) interfere with the setting of peace officers' compensation, (2) regulate qualifications for employment, (3) regulate the manner, method, times, or terms for which a peace officer shall be elected or appointed, nor does it (4) affect the tenure of office or purpose to regulate or specify the causes for which a peace officer can be removed. These are local decisions. But the court found that POBOR impinges on the city's implied power to determine the *manner* in which an employee can be disciplined.

[26] *Kern High School Dist., supra*, 30 Cal.4th 727; *San Diego Unified School Dist., supra*, 33 Cal.4th 859.

based on the facts of this case, the Commission finds that the Supreme Court's decision in *San Diego Unified School Dist.* supports the Commission's original finding that the test claim legislation constitutes a state-mandated program for cities, counties, school districts, and special districts as described below.

A. POBOR constitutes a state-mandated program even though a local decision is first made to interrogate the officer, take punitive action against the officer, or place an adverse comment in the officer's personnel file.

The procedural rights and protections afforded a peace officer under POBOR are required by statute. The rights are not triggered, however, until the employing agency decides to interrogate an officer, take punitive action against the officer, or place an adverse comment in an officer's personnel file. These initial decisions are not mandated by the state, but are governed by local policy, ordinance, city charter, or a memorandum of understanding.

Nevertheless, based on findings made by the California Supreme Court regarding the POBOR legislation and in *San Diego Unified School Dist.*, the Commission finds that the test claim legislation constitutes a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

After the Commission issued its Statement of Decision in this case, the California Supreme Court decided the *Kern High School Dist.* case and considered the meaning of the term "state mandate" as it appears in article XIII B, section 6 of the California Constitution.[27] In *Kern High School Dist.*, school districts requested reimbursement for notice and agenda costs for meetings of their school site councils and advisory bodies. These bodies were established as a condition of various education-related programs that were funded by the state and federal government.

When analyzing the term "state mandate," the court reviewed the ballot materials for article XIII B, which provided that "a state mandate comprises something that a local government entity is required or forced to do."[28] The ballot summary by the Legislative Analyst further defined "state mandates" as "requirements imposed on local governments by legislation or executive orders."[29]

The court also reviewed and affirmed the holding of *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, determining that, when analyzing state-mandate claims, the Commission must look at the underlying program to determine if the claimant's participation in the underlying program is voluntary or legally compelled.[30] The court stated the following:

> In *City of Merced*, the city was under no legal compulsion to resort to eminent domain-but when it elected to employ that means of acquiring property, its obligation to compensate for lost business goodwill was not a

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

[28] *Id.* at page 737.

[29] *Ibid.*

[30] *Id.* at page 743.

> reimbursable state mandate, because the city was not required to employ eminent domain in the first place. Here as well, if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate. (Emphasis in original.)[31]

Thus, the Supreme Court held as follows:

> [W]e reject claimants' assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state, based merely upon the circumstance that notice and agenda provisions are mandatory elements of education-related programs in which claimants have participated, *without regard to whether claimant's participation in the underlying program is voluntary or compelled.* [Emphasis added.][32]

Based on the plain language of the statutes creating the underlying education programs in *Kern High School Dist.*, the court determined that school districts were not legally compelled to participate in eight of the nine underlying programs.[33]

The school districts in *Kern High School Dist.*, however, urged the court to define "state mandate" broadly to include situations where participation in the program is coerced as a result of severe penalties that would be imposed for noncompliance. The court previously applied such a broad construction to the definition of a federal mandate in the case of *City of Sacramento v. State* (1990) 50 Cal.3d 51, 74, where the state's failure to comply with federal legislation that extended mandatory coverage under the state's unemployment insurance law would result in California businesses facing "a new and serious penalty – full, double unemployment taxation by both state and federal governments."[34] Although the court in *Kern High School Dist.* declined to apply the reasoning in *City of Sacramento* that a state mandate may be found in the absence of strict legal compulsion on the facts before it in *Kern*, after reflecting on the purpose of article XIII B, section 6 – to preclude the state from shifting financial responsibilities onto local agencies that have limited tax revenue– the court stated:

> In light of that purpose, we do not foreclose the possibility that a reimbursable state mandate under article XIII B, section 6, properly might be found in some circumstances in which a local entity is not legally compelled to participate in a program that requires it to expend additional funds.[35]

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[31] *Ibid.*

[32] *Id.* at page 731.

[33] *Id.* at pages 744-745.

[34] *City of Sacramento, supra*, 50 Cal.3d 51, 74.

[35] *Kern High School Dist., supra*, 30 Cal.4th 727, 752.

Thus, the court in *Kern* recognized that there could be a case, based on its facts, where reimbursement would be required under article XIII B, section 6 in circumstances where the local entity was not legally compelled to participate in a program.

One year later, the Supreme Court revisited the "mandate" issue in *San Diego Unified School Dist.*, a case that addressed a challenge to a Commission decision involving a school district's expulsion of a student. The school district acknowledged that under specified circumstances, the statutory scheme at issue in the case gave school districts discretion to expel a student. The district nevertheless argued that it was mandated to incur the costs associated with the due process hearing required by the test claim legislation when a student is expelled. The district argued that "although any particular expulsion recommendation may be discretionary, as a practical matter it is inevitable that some school expulsions will occur in the administration of any public school program" and, thus, the ruling in *City of Merced* should not apply.[36]

In *San Diego Unified School Dist.*, the Supreme Court did not overrule the *Kern* or *City of Merced* cases, but stated that "[u]pon reflection, we agree with the District and amici curiae that there is reason to question an extension of the holding of *City of Merced* so as to preclude reimbursement under article XIII B, section 6 of the state Constitution and Government Code section 17514, whenever an entity makes an initial discretionary decision that in turn triggers mandated costs."[37] The court explained as follows:

> Indeed, it would appear that under a strict application of the language of *City of Merced*, public entities would be denied reimbursement for state-mandated costs in apparent contravention of the intent underlying article XIII B, section 6 of the state Constitution and Government Code section 17514 and contrary to past decisions in which it has been established that reimbursement was in fact proper. For example, in *Carmel Valley* [citation omitted] an executive order requiring that county firefighters be provided with protective clothing and safety equipment was found to create a reimbursable state mandate for the added costs of such clothing and equipment. [Citation omitted.] the court in *Carmel Valley* apparently did not contemplate that reimbursement would be foreclosed in that setting merely because a local agency possessed discretion concerning how many firefighters it would employ – and hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected. Yet, under a strict application of the rule gleaned from *City of Merced* [citation omitted], such costs would not be reimbursable for the simple reason that the local agency's decision to employ firefighters involves an exercise of discretion concerning, for example, how many firefighters are needed to be employed, etc. We find it doubtful that the voters who enacted article XIII B, section 6, or the Legislature that adopted Government Code section 17514, intended that result, and hence

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

[37] *Id.* at page 887.

> we are reluctant to endorse, in this case, an application of the rule of *City of Merced* that might lead to such result.[38]

Ultimately, however, the court did not resolve the issue regarding the application of the *City of Merced* case to the discretionary expulsions, and resolved the case on alternative grounds.[39]

In the present case, the purpose of POBOR, as stated in Government Code section 3301, is to assure that stable employment relations are continued throughout the state and to further assure that effective law enforcement services are provided to all people of the state. The Legislature declared POBOR a matter of statewide concern.

In 1982, the California Supreme Court addressed the POBOR legislation in *Baggett v. Gates*.[40] In *Baggett*, the City of Los Angeles received information that certain peace officer employees were engaging in misconduct during work hours. The city interrogated the officers and reassigned them to lower paying positions (a punitive action under POBOR). The employees requested an administrative appeal pursuant to the POBOR legislation and the city denied the request, arguing that charter cities cannot be constitutionally bound by POBOR. The court acknowledged that the home rule provision of the Constitution gives charter cities the power to make and enforce all ordinances and regulations, subject only to the restrictions and limitations provided in the city charter. Nevertheless, the court found that the City of Los Angeles was required by the POBOR legislation to provide the opportunity for an administrative appeal to the officers.[41] In reaching its conclusion, the court relied, in part, on the express language of legislative intent in Government Code section 3301 that the POBOR legislation is a "matter of statewide concern."[42]

The court in *Baggett* also concluded that the consequences of a breakdown in employment relations between peace officers and their employers would create a clear and present threat to the health, safety, and welfare of the citizens of the city, which would extend far beyond local boundaries.

> Finally, it can hardly be disputed that the maintenance of stable employment relations between police officers and their employers is a matter of statewide concern. The consequences of a breakdown in such relations are not confined to a city's borders. These employees provide an essential service. Its absence would create a clear and present threat not only to the health, safety, and welfare of the citizens of the city, but also to the hundreds, if not thousands, of nonresidents who daily visit there. Its effect would also be felt by the many nonresident owners of property and businesses located within the city's borders. Our society is no longer a

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[38] *Id.* at pages 887-888.

[39] *Id.* at page 888.

[40] *Baggett v. Gates* (1982) 32 Cal.3d 128.

[41] *Id.* at page 141.

[42] *Id.* at page 136.

> collection of insular local communities. Communities today are highly interdependent. The inevitable result is that labor unrest and strikes produce consequences which extend far beyond local boundaries.[43]

Thus, the court found that "the total effect of the POBOR legislation is not to deprive local governments of the right to manage and control their police departments but to secure basic rights and protections to a segment of public employees who were thought unable to secure them for themselves."[44]

In 1990, the Supreme Court revisited the POBOR legislation in *Pasadena Police Officers Assn. v. City of Pasadena (Pasadena)*.[45] The *Pasadena* case addressed the POBOR requirement in Government Code section 3303 to require the employer to provide an officer subject to an interrogation with any reports or complaints made by investigators. In the language quoted below, the court described the POBOR legislation and recognized that the public has a high expectation that peace officers are to be held above suspicion of violation of the laws they are sworn to enforce. Thus, in order to maintain the public's confidence, "a law enforcement agency *must* promptly, thoroughly, and fairly investigate allegations of officer misconduct ... [and] institute disciplinary proceedings." (Emphasis added.)

> Courts have long recognized that, while the off-duty conduct of employees is generally of no legal consequence to their employers, the public expects peace officers to be "above suspicion of violation of the very laws they are sworn ... to enforce." [Citations omitted.] Historically, peace officers have been held to a higher standard than other public employees, in part because they alone are the "guardians of peace and security of the community, and the efficiency of our whole system, designed for the purpose of maintaining law and order, depends upon the extent to which such officers perform their duties and are faithful to the trust reposed in them." [Citation omitted.] To maintain the public's confidence in its police force, a law enforcement agency must promptly, thoroughly, and fairly investigate allegations of officer misconduct; if warranted, it must institute disciplinary proceedings.[46]

Under a strict application of the *City of Merced* case, the requirements of the POBOR legislation would not constitute a state-mandated program within the meaning of article XIII B, section 6 "for the simple reason" that the local entity's ability to decide who to discipline and when "could control or perhaps even avoid the extra costs" of the POBOR legislation.[47] But a local entity does not decide who to investigate or discipline based on the costs incurred to the entity. The decision is made, as indicated by the Supreme Court, to maintain the public's confidence in its police force and to protect the health, safety,

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[43] *Id.* at page 139-140.

[44] *Id.* at page 140.

[45] *Pasadena Police Officers Assn. v. City of Pasadena* (1990) 51 Cal.3d 564.

[46] *Id.* at page 571-572.

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

and welfare of its citizens. Thus, as indicated by the Supreme Court in *San Diego Unified School Dist.*, a finding that the POBOR legislation does not constitute a mandated program would conflict with past decisions like *Carmel Valley*, where the court found a mandated program for providing protective clothing and safety equipment to firefighters and made it clear that "[p]olice and fire protection are two of the most essential and basic functions of local government."[48] Moreover, the POBOR legislation implements a state policy to maintain stable employment relations between police officers and their employers to "assure that effective services are provided to all people of the state." POBOR, therefore, carries out the governmental function of providing a service to the public, and imposes unique requirements on local agencies to implement the state policy.[49] Thus, a finding that the test claim legislation does not impose a state-mandated program contravenes the purpose of article XIII B, section 6 "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" due to the tax and spend provisions of articles XIII A and XIII B.[50]

Accordingly, even though local decisions are first made to interrogate an officer, take punitive action against the officer, or to place an adverse comment in an officer's personnel file, the Commission finds, based on *San Diego Unified School Dist.* and the facts presented in this case, that POBOR constitutes a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

B. POBOR constitutes a state-mandated program for school districts and for special districts identified in Government Code section 3301 that employ peace officers.

Government Code section 3301, the statute that identifies the peace officers afforded the rights and protections granted in the POBOR legislation, expressly includes peace officers employed by school districts and community college districts pursuant to Penal Code section 830.32. Penal Code section 830.32 provides that members of a school district and community college district police department appointed pursuant to Education Code sections 39670 and 72330 are peace officers if the primary duty of the officer is the enforcement of law as prescribed by Education Code sections 39670 (renumbered section 38000) and 72330, and the officers have completed an approved course of training prescribed by the Commission on Peace Officer Standards and Training (POST) before exercising the powers of a peace officer.

POBOR also applies to special districts authorized by statute to maintain a police department, including police protection districts, harbor or port police, transit police, peace officers employed by the San Francisco Bay Area Rapid Transit District (BART),

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[48] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 887-888; *Carmel Valley Fire Protection Dist. v. State* (1987) 190 Cal.App.3d 521, 537.

[49] *San Diego Unified School, supra*, 33 Cal.4th at page 874.

[50] *Id.* at page 888, fn. 23.

peace officers employed by airport districts, peace officers employed by a housing authority, and peace officers employed by fire protection districts.[51]

While counties and cities are mandated by the California Constitution to employ peace officers,[52] school districts and special districts are not expressly required by the state to employ peace officers. School districts and special districts have statutory authority to employ peace officers.

Following the Supreme Court's decision in *Kern High School Dist.*, the Commission denied school district test claims addressing peace officer employees on the ground that school districts are not mandated by state law to have a police department and employ peace officers. In these decisions, the Commission acknowledged the provision in the Constitution (Cal. Const., art. 1, § 28, subd. (c)) that requires K-12 school districts to maintain safe schools. The Commission found, however, that there is no constitutional or statutory requirement to maintain safe schools through school security or a school district police department. Moreover, school districts have governmental immunity under Government Code section 845 and cannot be liable for civil damages for "failure to establish a police department or otherwise to provide police protection service or, if police protection service is provided, for failure to provide sufficient police protection service."[53] Comments on Government Code section 845 by the Law Revision Commission state that the immunity was enacted by the Legislature to prevent judges and juries from removing the ultimate decision-making authority regarding police protection from those (local governments) that are politically responsible for making the decision.[54]

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[51] Government Code section 3301; Penal Code section 830.1, subdivision (a) ["police officer of a district (including police officers of the San Diego Unified Port District Harbor Police) authorized by statute to maintain a police department"]; Penal Code section 830.31, subdivision (d) ["A housing authority patrol officer employed by the housing authority of a ... district ..."]; Penal Code section 830.33 ["(a) A member of the San Francisco Bay Area Rapid Transit District Police Department appointed pursuant to Section 28767.5 of the Public Utilities Code ... (b) Harbor or port police regularly employed and paid ... by a ... district ... (c) Transit police officers or peace officers of a ... district ... (d) Any person regularly employed as an airport law enforcement officer by a ... district ..."; and Penal Code section 830.37 ["(a) Members of an arson-investigating unit ... of a fire department or fire protection agency of a ... district ... if the primary duty of these peace officers is the detection and apprehension of persons who have violated any fire law or committed insurance fraud ...(b) Members ... regularly paid and employed in that capacity, of a fire department or fire protection agency of a ... district ... if the primary duty of these peace officers ... is the enforcement of law relating to fire prevention or fire suppression."

[52] See ante, footnote 21.

[53] See *Leger v. Stockton Unified School Dist.* (1988) 202 Cal.App.3d 1448.

[54] 4 California Law Revision Commission Reports 801 (1963).

Immunity under Government Code section 845 also applies to community college districts and special districts.[55]

Thus, based on the Supreme Court's holding in *Kern High School Dist.*, past decisions of the Commission have determined that local entities, such as school districts, are not entitled to reimbursement for activities required by the state when the activities are triggered by the discretionary local decision to employ peace officers.

This case presents different facts, however. Here, unlike the other cases, the Legislature expressly stated in Government Code section 3301 that POBOR is a matter of statewide concern and found that it was necessary to apply the legislation to all public safety officers, as defined. Government Code section 3301 states the following:

> The Legislature hereby finds and declares that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that stable relations are continued throughout the state and to assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, wherever situated within the State of California.

Legislative declarations of policy are entitled to great weight by the courts "and it is not the duty or prerogative of the courts to interfere with such legislative finding unless it clearly appears to be erroneous and without reasonable foundation."[56]

Furthermore, in *San Diego Unified School Dist.*, the Supreme Court acknowledged the school district's argument that the due process hearing procedures were mandated when the district exercised its discretion and expelled a student, despite the *City of Merced* and *Kern* cases. The court stated the following:

> Indeed, the Court of Appeal below suggested that the present case is distinguishable from *City of Merced* [citation omitted], in light of article I, section 28, subdivision (c), of the state Constitution. That constitutional subdivision, part of Proposition 8 (known as the Victim's Bill of Rights initiative, adopted by the voters at the Primary Election in June 1982), states: "All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure, and peaceful." The Court of Appeal below concluded: "In light of a school district's constitutional obligation to provide a safe educational environment ..., the incurring [due process] hearing costs ... cannot properly be viewed as a nonreimbursable 'downstream' consequence of a decision to seek to expel a student under

[55] *Peterson v. San Francisco Community College Dist.* (1984) 36 Cal.3d 799; *Hernandez v. Southern California Rapid Transit Dist.* (1983) 142 Cal.App.3d 1063.

[56] *Paul v. Eggman* (1966) 244 Cal.App.2d 461, 471-472.

> Education Code section 48915's discretionary provision for damaging or stealing school or private property, receiving stolen property, engaging in sexual harassment or hate violence, or committing other specified acts of misconduct ... that warrant such expulsion."[57]

In response, the Supreme Court stated that "[u]pon reflection, we agree with the District and amici curiae that there is reason to question an extension of the holding of *City of Merced* so as to preclude reimbursement under article XIII B, section 6 of the state Constitution and Government Code section 17514, whenever an entity makes an initial discretionary decision that in turn triggers mandated costs."[58] The court explained as follows:

> Indeed, it would appear that under a strict application of the language of *City of Merced*, public entities would be denied reimbursement for state-mandated costs in apparent contravention of the intent underlying article XIII B, section 6 of the state Constitution and Government Code section 17514 and contrary to past decisions in which it has been established that reimbursement was in fact proper. For example, in *Carmel Valley* [citation omitted] an executive order requiring that county firefighters be provided with protective clothing and safety equipment was found to create a reimbursable state mandate for the added costs of such clothing and equipment. [Citation omitted.] The court in *Carmel Valley* apparently did not contemplate that reimbursement would be foreclosed in that setting merely because a local agency possessed discretion concerning how many firefighters it would employ – and hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected. Yet, under a strict application of the rule gleaned from *City of Merced* [citation omitted], such costs would not be reimbursable for the simple reason that the local agency's decision to employ firefighters involves an exercise of discretion concerning, for example, how many firefighters are needed to be employed, etc. We find it doubtful that the voters who enacted article XIII B, section 6, or the Legislature that adopted Government Code section 17514, intended that result, and hence we are reluctant to endorse, in this case, an application of the rule of *City of Merced* that might lead to such result.[59]

The Department of Finance contends that the *San Diego Unified School Dist.* case does not support the finding that the test claim legislation constitutes a reimbursable state-mandated program for school districts. Finance acknowledges the language in *San Diego Unified School Dist.* declining to extend the *City of Merced* decision to preclude reimbursement whenever any entity makes a discretionary decision that triggers mandated costs. Finance argues, however, that the Supreme Court's findings are not

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[57] *San Diego Unified School Dist., supra,* 33 Cal.4th at page 887, footnote 22.

[58] *Id.* at page 887.

[59] *Id.* at pages 887-888.

applicable to school districts since there is no requirement in law for school districts to form a police department. Finance states the following:

> In the *Carmel Valley Fire Protection District* case ((1987) 190 Cal.App.3d 521), unlike the situation here, the fire districts did not have the option to form a fire department and hire firefighters. In fact, the *San Diego Unified School Dist.* case cited *Carmel Valley* to make it clear that "[p]olice and fire protection are two of the most essential and basic functions of local government." (*San Diego Unified School Dist., supra*, 33 Cal.4th 859, 887-888, *Carmel Valley Fire Protection Dist., supra*, 190 Cal.App.3d 521, 537). Such is not the case for school districts and community college districts.
>
> As stated above, there is no requirement in law for these districts to form a police department and safe schools can be maintained without the need to hire police officers as is evidenced by the many school districts that do not have police departments. The fact that the Legislature has declared it necessary for POBOR to apply to all public safety officers is not the same as requiring their hiring in the first place. School districts could, indeed, control or even avoid the extra cost of the POBOR legislation by not forming a police department at all, which is materially different from fire protection services that must be provided by fire protection districts. POBOR activities that might be claimed by school districts are, instead, analogous to non-reimbursable activities in the *Department of Finance v. Commission on State Mandates [Kern High School Dist.]* case that flowed from an underlying exercise of discretion and those in past Commission decisions that denied reimbursement to school districts for other peace officer activities.

Finance, in response to the draft staff analysis, makes no comments with respect to special districts that also have the authority, but are not required, to employ peace officers.[60] At the hearing, however, Finance argued that its comments apply equally to special districts.

The Commission disagrees with the Department of Finance. The fire protection districts in *Carmel Valley* were not mandated by the state to be formed, as asserted by Finance. Fire protection districts are established either by petition of the voters or by a resolution adopted by the legislative body of a county or city within the territory of the proposed district. Once a petition has been certified or a resolution adopted, the local agency

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[60] See, for example, Public Utilities Code section 28767.5, which authorizes BART to employ peace officers:

> The district may employ a suitable security force. The employees of the district that are designated by the general manager as security officers shall have the authority and powers conferred by Section 830.9 of the Penal Code upon peace officers. The district shall adhere to the standards for recruitment and training of peace officers established by the Commission on Peace Officer Standards and Training ...

formation commission must approve the formation of the district "with or without amendment, wholly, partially, or conditionally." A local election is then held and the district is created if a majority of the votes are cast in favor of forming the district.[61] Furthermore, the implication that the phrase "local government" in the *Carmel Valley* case excludes school districts is wrong. "Local government" is specifically defined in article XIII B, section 8 of the Constitution to include school districts and special districts. The definitions in article XIII B, section 8 apply to the mandate reimbursement provisions of section 6. Article XIII B, section 8 states in relevant part the following:

> As used in this article and except as otherwise expressly provided herein:
>
> (d) "Local government" means any city, county, city and county, school district, special district, authority, or other political subdivision of or within the state.

Therefore, the arguments raised by the Department of Finance do not resolve the issue. The Supreme Court in *San Diego Unified School Dist.* did not resolve the issue either. Rather, the court stated the following:

> In any event, we have determined that we need not address in this case the problems posed by such an application of the rule articulated in *City of Merced,* because this aspect of the present case can be resolved on an alternative basis.[62]

Thus, the Commission has the difficult task of resolving the issue for purposes of this claim. For the reasons below, the Commission finds that the POBOR legislation constitutes a state-mandated program for school districts and the special districts identified in Government Code section 3301 that employ peace officers.

Under a strict application of the *City of Merced* case, the requirements of the POBOR legislation would not constitute a state-mandated program within the meaning of article XIII B, section 6 for school districts and the special districts that employ peace officers "for the simple reason" that the ability of the school district or special district to decide whether to employ peace officers "could control or perhaps even avoid the extra costs" of the POBOR legislation.[63] But here, the Legislature has declared that, as a matter of statewide concern, it is necessary for POBOR to apply to all public safety officers, as defined in the legislation. As previously indicated, the California Supreme Court concluded that the peace officers identified in Government Code section 3301 of the POBOR legislation provide an "essential service" to the public and that the consequences of a breakdown in employment relations between peace officers and their employers would create a clear and present threat to the health, safety, and welfare of the citizens of the state.[64]

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[61] Health and Safety Code sections 13815 et seq.

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

[63] *Ibid.*

[64] *Baggett, supra*, 32 Cal.3d 128, 139-140.

In addition, in 2001, the Supreme Court determined that school districts, apart from education, have an "obligation to protect pupils from other children, and also to protect teachers themselves from violence by the few students whose conduct in recent years has prompted national concern." The court further held that California fulfills its obligations under the safe schools provision of the Constitution (Cal. Const., art. I, § 28, subd. (c)) by permitting local school districts to establish a police or security department to enforce rules governing student conduct and discipline.[65] The arguments by the school districts regarding the safe schools provision of the Constitution caused the Supreme Court in *San Diego Unified School Dist.* to question the application of the *City of Merced* case.[66]

The Legislature has also recognized the essential services provided by special district peace officers in Government Code section 53060.7. The special districts identified in that statute (Bear Valley Community Services District, Broadmoor Police Protection District, Kensington Police Protection and Community Services District, Lake Shastina Community Services District, and Stallion Springs Community Services District) "wholly supplant the law enforcement functions of the county within the jurisdiction of that district."

Thus, as indicated by the Supreme Court in *San Diego Unified School Dist.*, a finding that the POBOR legislation does not constitute a state-mandated program for school districts and special districts identified in Government Code section 3301 would conflict with past decisions like *Carmel Valley*, where the court found a mandated program for providing protective clothing and safety equipment to firefighters and made it clear that "[p]olice and fire protection are two of the most essential and basic functions of local government."[67] The constitutional definition of "local government" for purposes of article XIII B, section 6 includes school districts and special districts. (Cal. Const., art. XIII B, § 8.)

Accordingly, the Commission finds that POBOR constitutes a state-mandated program for school districts that employ peace officers. The Commission further finds that POBOR constitutes a state-mandated program for the special districts identified in Government Code section 3301. These districts include police protection districts, harbor or port police, transit police, peace officers employed by airport districts, peace officers employed by a housing authority, and peace officers employed by fire protection districts.

III. Does the test claim legislation constitute a new program or higher level of service and impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514?

Government Code section 3313 requires the Commission to review its previous findings to clarify whether the test claim legislation constitutes a new program or higher level of service and imposes costs mandated by the state consistent with the California Supreme

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[65] *In re Randy G.* (2001) 26 Cal.4th 556, 562-563.

[66] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 887, fn. 22.

[67] *Id.* at pages 887-888; *Carmel Valley Fire Protection Dist. v. State* (1987) 190 Cal.App.3d 521, 537.

Court Decision in *San Diego Unified School Dist.* and other applicable court decisions. The test claim legislation will impose a new program or higher level of service, and costs mandated by the state when it compels a local entity to perform activities not previously required, and results in actual increased costs mandated by the state.[68] In addition, none of the exceptions to reimbursement found in Government Code section 17556 can apply. The activities found by the Commission to be mandated are analyzed below.

Administrative Appeal

Government Code section 3304, as added by the test claim legislation, provides that "no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the public safety officer with an opportunity for administrative appeal."

Punitive action is defined in Government Code section 3303 as follows:

> "For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary,[69] written reprimand, or transfer for purposes of punishment."

The California Supreme Court determined that the phrase "for purposes of punishment" in the foregoing section relates only to a transfer and not to other personnel actions.[70] Thus, in transfer cases, the peace officer is required to prove that the transfer was intended for purposes of punishment in order to be entitled to an administrative appeal. If the transfer is to "compensate for a deficiency in performance," however, an appeal is not required.[71]

In addition, at least one California appellate court determined that employers must extend the right to an administrative appeal under the test claim legislation to peace officers for other actions taken by the employer that result in "disadvantage, harm, loss or hardship" and impact the peace officer's career.[72] In *Hopson*, the court found that an officer who received a report in his personnel file by the police chief regarding a shooting in violation of policies and procedures was entitled to an administrative appeal under Government Code section 3304. The court held that the report constituted "punitive action" under the

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

[69] The courts have held that "reduction in salary" includes loss of skill pay (*McManigal* v. *City of Seal Beach* (1985) 166 Cal.App.3d 975, pay grade (*Baggett* v. *Gates* (1982) 32 Cal.3d 128, rank (*White* v. *County of Sacramento* (1982) 31 Cal.3d 676, and probationary rank (*Henneberque* v. *City of Culver City* (1983) 147 Cal.App.3d 250.

[70] *White* v. *County of Sacramento* (1982) 31 Cal.3d 676.

[71] *Holcomb* v. *City of Los Angeles* (1989) 210 Cal.App.3d 1560; *Heyenga* v. *City of San Diego* (1979) 94 Cal.App.3d 756; *Orange County Employees Assn., Inc.* v. *County of Orange* (1988) 205 Cal.App.3d 1289.

[72] *Hopson* v. *City of Los Angeles* (1983) 139 Cal.App.3d 347, 354, relying on *White* v. *County of Sacramento* (1982) 31 Cal.3d 676, 683.

test claim legislation based on the source of the report, its contents, and its potential impact on the career of the officer.[73]

Thus, under Government Code section 3304, as it existed when the Statement of Decision was adopted, the employer is required to provide the opportunity for an administrative appeal to permanent, at-will or probationary peace officers for any action leading to the following actions:

- Dismissal.
- Demotion.
- Suspension.
- Reduction in salary.
- Written reprimand.
- Transfer for purposes of punishment.
- Denial of promotion on grounds other than merit.
- Other actions against the employee that results in disadvantage, harm, loss or hardship and impacts the career opportunities of the employee.

The test claim legislation does not specifically set forth the hearing procedures required for the administrative appeal. Rather, the type of administrative appeal is left up to the discretion of each local entity.[74] The courts have determined, however, that the type of hearing required under Government Code section 3304 must comport with due process standards.[75, 76]

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[73] *Id* at p. 353-354.

[74] *Binkley* v. *City of Long Beach* (1993) 16 Cal.App.4th 1795, 1806.

[75] *Doyle* v. *City of Chino* (1981) 117 Cal.App.3d 673, 684. In addition, the court in *Stanton* v. *City of West Sacramento* (1991) 226 Cal.App.3d 1438, 1442, held that the employee's due process rights were protected by the administrative appeals process mandated by Government Code section 3304.

[76] At least two cases have referred to the need for an administrative appeals procedure that would enable the officer to obtain court review pursuant to Code of Civil Procedure section 1094.5. Such a review implies that an evidentiary hearing be held from which a record and findings may be prepared for review by the court. (*Doyle, supra*, 117 Cal.App. 3d 673; *Henneberque, supra*, 147 Cal.App.3d 250. In addition, the California Supreme Court uses the words "administrative appeal" of section 3304 interchangeably with the word "hearing." (*White, supra*, 31 Cal.3d 676.) A hearing before the Chief of Police was found to be appropriate within the meaning of Government Code section 3304 in a case involving a written reprimand since the Chief of Police was not in any way involved in the investigation and the employee and his attorney had an opportunity to present evidence and set forth arguments on the employee's behalf. (*Stanton, supra*, 226 Cal.App,3d 1438, 1443.)

Finally, the courts have been clear that the administrative hearing required by Government Code section 3304 does *not* mandate an investigatory process. "It is an adjudicative process by which the [peace officers] hope to restore their reputations" and where "the reexamination [of the employer's decision] must be conducted by someone who has not been involved in the initial determination."[77]

In 1999, the Commission concluded that under certain circumstances, the administrative appeal required by the POBOR legislation was already required to be provided by the due process clause of the United States and California Constitutions when an action by the employer affects an employee's property interest or liberty interest. A permanent employee with civil service protection, for example, has a property interest in the employment position if the employee is dismissed, demoted, suspended, receives a reduction in salary, or receives a written reprimand. Under these circumstances, the permanent employee is entitled to a due process hearing.[78]

In addition, the due process clause applies when the charges supporting a dismissal of a probationary or at-will employee harms the employee's reputation and ability to find future employment.[79] For example, an at-will employee, such as the chief of police, is entitled to a liberty interest hearing (or name-clearing hearing) under the state and federal constitutions when the dismissal is supported by charges of misconduct, mismanagement, and misjudgment – all of which "stigmatize [the employee's] reputation and impair his ability to take advantage of other employment opportunities in law enforcement administration."[80] In *Williams v. Department of Water and Power*, a case cited by the City of Sacramento, the court explained that the right to a liberty interest hearing arises in cases involving moral turpitude. There is no constitutional right to a liberty interest hearing when an at-will employee is removed for incompetence, inability to get along with others, or for political reasons due to a change of administration.

> The mere fact of discharge from public employment does not deprive one of a liberty interest hearing. [Citations omitted.] Appellant must show her dismissal was based on charges of misconduct which "stigmatize" her reputation or "seriously impair" her opportunity to earn a living. [Citations omitted.] ... "Nearly any reason assigned for dismissal is likely to be to some extent a negative reflection on an individual's ability, temperament, or character. [Citation omitted.] But not every dismissal assumes a constitutional magnitude." [Citation omitted.]
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> The leading case of *Board of Regents v. Roth* (1972) 408 U.S. 564, 574 [unofficial cite omitted] distinguishes between a stigma of moral turpitude, which infringes the liberty interest, and other charges such as incompetence or inability to get along with coworkers which does not. The Supreme Court recognized that where "a person's good name,

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[77] *Caloca v. County of San Diego* (2002) 102 Cal.App.4th 433, 443-444 and 447-448.

[78] See original Statement of Decision (AR, p. 864).

[79] See original Statement of Decision (AR, pp. 863-866, 870).

[80] *Binkley v. City of Long Beach* (1993) 16 Cal.App.4th 1795, 1807.

> reputation, honor or integrity is at stake" his right to liberty under the Fourteenth Amendment is implicated and deserves constitutional protection. [Citation omitted.] "In the context of *Roth*-type cases, a charge which infringes one's liberty can be characterized as an accusation or label given the individual by his employer which belittles his worth and dignity as an individual and, as a consequence is likely to have severe repercussions of which primarily affect professional life, and which may well force the individual down one or more notches in the professional hierarchy." [Citation omitted.][81]

Thus, the Commission found that, when a hearing was required by the due process clause of the state and federal constitutions, the activity of providing the administrative appeal did not constitute new program or higher level of service, or impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c).

The Commission found that the administrative appeal constitutes a new program or higher level of service, and imposes costs mandated by the state, in those situations where the due process clause of the United States and California Constitutions did not apply. These include the following:

- Dismissal, demotion, suspension, salary reduction or written reprimand received by *probationary and at-will employees* whose liberty interest *are not* affected (i.e.; the charges do not harm the employee's reputation or ability to find future employment).
- Transfer of permanent, probationary and at-will employees for purposes of punishment.
- Denial of promotion for permanent, probationary and at-will employees for reasons other than merit.
- Other actions against permanent, probationary and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

As noted by the Commission in the Statement of Decision and parameters and guidelines, the Legislature amended Government Code section 3304 in 1998 by limiting the right to an administrative appeal to only those peace officers "who [have] successfully completed the probationary period that may be required" by the employing agency and to situations where the chief of police is removed. (Stats. 1998, ch. 786, § 1.) Thus, as of January 1, 1999, providing the opportunity for an administrative appeal to probationary and at-will peace officers (except when the chief of police is removed) is no longer a reimbursable state-mandated activity.

Thus, the issue is whether the activity of providing the opportunity for an administrative appeal is reimbursable under current law when (1) permanent peace officer employees are subject to punitive actions, as defined in Government Code section 3303, or denials of promotion on grounds other than merit; and when (2) a chief of police is subject to removal.

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[81] *Williams v. Department of Water and Power* (1982) 130 Cal.App.3d 677, 684-685.

As indicated above, under prior law, permanent employees were already entitled to an administrative hearing pursuant to the due process clause of the United States and California Constitutions if they were subject to the following punitive actions: dismissal, demotion, suspension, reduction in salary, or a written reprimand. In addition, an at-will employee, such as the chief of police, was entitled to a due process liberty interest hearing under prior law if the charges supporting the dismissal constitute moral turpitude that harms the employee's reputation and ability to find future employment. The County of Los Angeles argues, however, that under the California Supreme Court decision in *San Diego Unified School District*, reimbursement must be expanded to include all activities required under the test claim statute, including those procedures previously required by the due process clause. A close reading of the *San Diego Unified School District* case, however, shows that it does not support the County's position.

The County relies on the Supreme Court's analysis on pages 879 (beginning under the header "2. Are the hearing costs state-mandated?") through page 882 of the *San Diego Unified School District* case. There, the court addressed two test claim statutes: Education Code section 48915, which *mandated* the school principal to immediately suspend and recommend the expulsion of a student carrying a firearm or committing another specified offense; and Education Code section 48918, which lays out the due process hearing requirements once the mandated recommendation is made to expel the student. The court recognized that the expulsion recommendation required by Education Code section 48915 was mandated "in that it establishes conditions under which the state, rather than local officials, has made the decision requiring a school district to incur the costs of an expulsion hearing.[82] The Commission and the state, relying on Government Code section 17556, subdivision (c), argued, however, that the district's costs are reimbursable only if, and to the extent that, hearing procedures set forth in Education Code section 48918 exceed the requirements of federal due process.[83] The court disagreed. The court based its conclusion on the fact that the expulsion decision mandated by Education Code 48915, which triggers the district's costs incurred to comply with due process hearing procedures, did not implement a federal law. Thus, the court concluded that all costs incurred that are triggered by the state-mandated expulsion, including those that satisfy the due process clause, are fully reimbursable. The court's holding is as follows:

> [W]e cannot characterize any of the hearing costs incurred by the District, triggered by the mandatory provision of Education Code section 48915, as constituting a federal mandate (and hence being nonreimbursable). We conclude that under the statutes existing at the time of the test claim in this case (state legislation in effect through mid-1994), all such hearing costs – those designed to satisfy the minimum requirements of federal due process, and those that may exceed those requirements – are, with respect

[82] *San Diego Unified School Dist., supra*, 33 Cal.4th at page 880.

[83] *Ibid.*

to the mandatory expulsion provision of section 48915, state mandated costs, fully reimbursable by the state.[84]

The POBOR legislation is different. The costs incurred to comply with the administrative appeal are *not* triggered by a state-mandated event, but are triggered by discretionary decisions made by local officials to take punitive action, or deny a promotion on grounds other than merit against a peace officer employee. Therefore, the Commission finds that the court's holding, authorizing reimbursement for *all* due process hearing costs triggered by a state-mandated event, does not apply to this case.

Rather, what applies from the *San Diego Unified School Dist.* decision to the administrative appeal activity mandated by Government Code section 3304 is the court's holding regarding discretionary expulsions. In the *San Diego* case, the court analyzed the portion of Education Code section 48915 that provided the school principal with the discretion to recommend that a student be expelled for specified conduct. If the recommendation was made and the district accepted the recommendation, then the district was required to comply with the mandatory due process hearing procedures of Education Code section 48918.[85] In this situation, the court held that reimbursement for the procedural hearing costs triggered by a local discretionary decision to seek an expulsion was not reimbursable because the hearing procedures were adopted to implement a federal due process mandate.[86] The court found that the analysis by the Second District Court of Appeal in *County of Los Angeles v. Commission on State Mandates* (*County of Los Angeles II*) was instructive.[87] In the *County of Los Angeles II* case, the court determined that even in the absence of the test claim statute, counties would be still be responsible for providing services under the constitutional guarantees of federal due process.[88]

This analysis applies here. As indicated above, permanent employees were already entitled to an administrative hearing pursuant to the due process clause of the United States and California Constitutions if they were subject to the following punitive actions: dismissal, demotion, suspension, reduction in salary, or a written reprimand. In addition, an at-will employee, such as the chief of police, was entitled to a due process hearing under prior state and federal law if the charges supporting the dismissal constitute moral turpitude that harms the employee's reputation and ability to find future employment.

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

[85] *San Diego Unified School Dist., supra*, 33 Cal.4th at pages 884-890.

[86] *Id.* at page 888.

[87] *Id.* at page 888-889; *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805. The test claim statute in *County of Los Angeles* required counties to provide indigent criminal defendants with defense funds for ancillary investigation services for capital murder cases. The court determined that even in the absence of the test claim statute, indigent defendants in capital cases were entitled to such funds under the Sixth Amendment of the federal Constitution. (*Id.* at p. 815.)

[88] *San Diego Unified School Dist., supra*, 33 Cal.4th at page 888-889; *County of Los Angeles, supra,* 32 Cal.App.4th at page 815.

Thus, even in the absence of Government Code section 3304, local government would still be required to provide a due process hearing under these situations.

The City of Sacramento, however, contends in comments to the draft staff analysis that prior law does not require due process protections outlined by the Supreme Court in *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, for employees receiving short-term suspensions, reclassifications, or reprimands. The City states that five-day suspensions, written reprimands and other lesser forms of punishment are covered by POBOR, but not *Skelly* and, thus, the administrative appeal required by POBOR is reimbursable for the lesser forms of punishment.

The City raised the same argument when the Commission originally considered the test claim, and the Commission disagreed with the arguments.[89] The Commission finds that the Commission's original conclusion on this issue is correct.

As discussed below, the City is correct that the *pre-disciplinary* protections outlined in *Skelly* do not apply to a short-term suspension or written reprimand. But prior law still requires due process protection, including an administrative hearing, when a permanent employee receives a short-term suspension, reprimand, or other lesser form of punishment. Thus, the administrative hearing required by the test claim legislation under these circumstances does not constitute a new program or higher level of service or impose costs mandated by the state.

Skelly involved the discharge of a permanent civil service employee. The court held that such employees have a property interest in the permanent position and the employee may not be dismissed or subjected to other forms of punitive action without due process of law. Based on the facts of the case (that a discharged employee faced the bleak prospect of being without a job and the need to seek other employment hindered by the charges against him), the court held that the employee was entitled to receive notice of the discharge, the reasons for the action, a copy of the charges and materials upon which the action is based, and the right to a hearing to respond to the authority imposing the discipline *before* the discharge became effective.[90] The Supreme Court in *Skelly* recognized, however, that due process requirements are not so inflexible as to require an evidentiary trial at the *preliminary* stage in every situation involving the taking or property. Although some form of notice and hearing must preclude a final deprivation of property, the timing and content of the notice, as well as the nature of the hearing will depend on the competing interests involved.[91]

Three years after *Skelly*, the Supreme Court decided *Civil Service Association v. the City and County of San Francisco*, a case involving the short-term suspensions of eight civil service employees.[92] The court held that the punitive action involved with a short-term suspension is minor and does not require pre-disciplinary action procedures of the kind

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[89] See original Statement of Decision (AR, pp. 865-866).

[90] *Skelly, supra*, 15 Cal.3d 194, 213-215.

[91] *Id.* at page 209.

[92] *Civil Service Association v. City and County of San Francisco* (1978) 22 Cal.3d 552.

required by *Skelly*.[93] But the employees were still entitled to due process protection, including the right to a hearing, since the temporary right of enjoyment to the position amounted to a taking for due process purposes.[94] The court held as follows:

> However, while the principles underlying *Skelly* do not here compel the granting of predisciplinary procedures there mentioned, it does not follow that the employees are totally without right to hearing. *While due process does not guarantee to these appellants any Skelly-type predisciplinary hearing procedure, minimal concepts of fair play and justice embodied in the concept of due process require that there be a 'hearing,' of the type hereinafter explained.* The interest to be protected, i.e., the right to continuous employment, is accorded due process protection. While appellants may not in fact have been deprived of a salary earned but only of the opportunity to earn it, they had the expectancy of earning it free from arbitrary administrative action. [Citation omitted.] This expectancy is entitled to some modicum of due process protection. [Citation and footnote omitted.]
>
> For the reasons state above, however, we believe that such protection will be adequately provided in circumstances such as these by procedures of the character outlined in *Skelly*, (i.e., one that will apprise the employee of the proposed action, the reasons therefore, provide for a copy of the charges including materials upon which the action is based, and the right to respond either orally or in writing, to the authority imposing the discipline) *if provided either during the suspension or within reasonable time thereafter*.[95] (Emphasis added.)

Thus, the court held that the employees that did not receive a hearing at all were entitled to one under principles of due process.[96] As indicated in the Commission's original Statement of Decision, the Third District Court of Appeal in the *Stanton* case also found that due process principles apply when an employee receives a written reprimand without a corresponding loss of pay.[97]

Therefore, in the following situations, the Commission finds that the Commission's original decision in this case was correct in that Government Code section 3304 does not constitute a new program or higher level of service, or impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c), since the administrative appeal merely implements the due process requirements of the state and federal Constitutions:

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[93] *Id.* at page 560.

[94] *Ibid.*

[95] *Id.* at page 564.

[96] *Id.* at page 565.

[97] *Stanton, supra,* 226 Cal.App.3d 1438, 1442.

- When a permanent employee is subject to a dismissal, demotion, suspension, reduction in salary, or a written reprimand.
- When the charges supporting the dismissal of a chief of police constitute moral turpitude, which harms the employee's reputation and ability to find future employment, thus imposing the requirement for a liberty interest hearing.

The due process clause, however, does not apply when a permanent employee is transferred for purposes of punishment, denied a promotion on grounds other than merit, or suffers other actions that result in disadvantage, harm, loss or hardship that impacts the career opportunities of the permanent employee. In addition, the due process clause does not apply when local officials want to remove the chief of police under circumstances that do not create a liberty interest since the chief of police is an at-will employee and does not have a property interest in the position. Providing the opportunity for an administrative appeal under these circumstances is new and not required under prior law. In addition, none of the exceptions in Government Code section 17556 to the finding of costs mandated by the state apply to these situations.

Accordingly, the Commission finds that Government Code section 3304 constitutes a new program or higher level of service and imposes costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for providing the opportunity for an administrative appeal in the following circumstances only:

- When a permanent employee is transferred for purposes of punishment, denied a promotion on grounds other than merit, or suffers other actions that result in disadvantage, harm, loss or hardship that impacts the career opportunities of the permanent employee.
- When local officials want to remove the chief of police under circumstances that do not create a liberty interest (i.e., the charges do not constitute moral turpitude, which harms the employee's reputation and ability to find future employment).

Interrogations

Government Code section 3303 prescribes protections that apply when "any" peace officer is interrogated in the course of an administrative investigation that might subject the officer to the punitive actions listed in the section (dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment). The procedures and rights given to peace officers under section 3303 do not apply to any interrogation in the normal course of duty, counseling, instruction, or informal verbal admonition by, or other routine or unplanned contact with, a supervisor. In addition, the requirements do not apply to an investigation concerned solely and directly with alleged criminal activities.[98]

The Commission found that the following activities constitute a new program or higher level of service and impose costs mandated by the state:

[98] Government Code section 3303, subdivision (i).

- When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)
- Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subds. (b) and (c).)
- Tape recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g).)

Government Code section 3313 directs the Commission to review these findings in order "to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions." The Commission finds that neither the *San Diego Unified School Dist.* case, nor any other court decision published since 1999, changes the Commission's conclusion that these activities constitute a new program or higher level of service and impose costs mandated by the state. Thus, these activities remain eligible for reimbursement when interrogating "any" peace officer, including probationary, at-will, and permanent officers that might subject the officer to punitive action.

The Commission also found that Government Code section 3303, subdivision (g), requires that:

- The peace officer employee shall have access to the tape recording of the interrogation if (1) any further proceedings are contemplated or, (2) prior to any further interrogation at a subsequent time.
- The peace officer shall be entitled to a transcribed copy of any interrogation notes made by a stenographer or any reports or complaints made by investigators or other persons, except those that are deemed confidential.

The Commission found that providing the employee with access to the tape prior to a further interrogation at a subsequent time constitutes a new program or higher level of service and imposes costs mandated by the state. However, the due process clause of the United States and California Constitutions already requires the employer to provide an employee who holds either a property or liberty interest in the job with the materials upon which the punitive, disciplinary action is based. Thus, the Commission found that even in the absence of the test claim legislation, the due process clause requires employers to provide the tape recording of the interrogation, and produce the transcribed copy of any interrogation notes made by a stenographer or any reports or complaints made by investigators or other persons, except those that are deemed confidential, to the peace officer employee when:

- a permanent employee is dismissed, demoted, suspended, receives a reduction in pay, or written reprimand; or
- a probationary or at-will employee is dismissed and the employee's reputation and ability to obtain future employment is harmed by charges of moral turpitude, which support the dismissal.

Under these circumstances, the Commission concluded that the requirement to provide these materials under the test claim legislation *does not* impose a new program or higher level of service because this activity was required under prior law through the due process clause. Moreover, pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing these materials merely implements the requirements of the United States Constitution.

The Commission finds that the conclusion denying reimbursement to provide these materials following the interrogation when the activity is already required by the due process clause of the United States and California Constitutions is consistent with the Supreme Court's ruling in *San Diego Unified School Dist.* The costs incurred to comply with these interrogation activities are *not* triggered by a state-mandated event, but are triggered by discretionary decisions made by local officials to interrogate an officer. Under these circumstances, the court determined that even in the absence of the test claim statute, counties would still be responsible for providing services under the constitutional guarantees of due process under the federal Constitution.[99]

Thus, the Commission finds that the Commission's decision, that Government Code section 3303, subdivision (g), constitutes a new program or higher level of service and imposes costs mandated by the state for the following activities, is legally correct:

- Provide the employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories:

  (a) the further proceeding is not a disciplinary punitive action;

  (b) the further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e., the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);

  (c) the further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;

  (d) the further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;

  (e) the further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.

- Produce transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer following the interrogation, in the following circumstances:

  (a) when the investigation *does not* result in disciplinary punitive action; and

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[99] *San Diego Unified School Dist., supra,* 33 Cal.4th at page 888-889; *County of Los Angeles, supra,* 32 Cal.App.4th at page 815.

(b) when the investigation results in:

- a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e.; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
- a transfer of a permanent, probationary or at-will employee for purposes of punishment;
- a denial of promotion for a permanent, probationary or at-will employees for reasons other than merit; or
- other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

In comments to the draft staff analysis, the Counties of Orange, Los Angeles, and Alameda, and the City of Sacramento contend that the interrogation of an officer pursuant to the test claim legislation is complicated and requires the employer to fully investigate in order to prepare for the interrogation. The County of Orange further states that "[t]hese investigations can vary in scope and depth from abuses of authority, the use of deadly force, excessive force when injuries may be significant, serious property damage, and criminal behavior." These local agencies are requesting reimbursement for the time to investigate.

The Commission disagrees and finds that investigation services are not reimbursable. First, investigation of criminal behavior is specifically excluded from the requirements of Government Code section 3303. Government Code section 3303, subdivision (i), states that the interrogation requirements do not apply to an investigation concerned solely and directly with alleged criminal activities. Moreover, article XIII B, section 6, subdivision (a)(2), and Government Code section 17556, subdivision (g), state that no reimbursement is required for the enforcement of a crime.

The County of Los Angeles supports the argument that reimbursement for investigative services is required by citing Penal Code section 832.5, which states that each department that employs peace officers shall establish a procedure to investigate complaints. Penal Code section 832.5, however, was not included in this test claim, and the Commission makes no findings on that statute. The County of Los Angeles also cites to the phrase in Government Code section 3303, subdivision (a), which states that "[t]he interrogation shall be conducted ..." to argue that investigation is required. The County takes the phrase out of context. Government Code section 3303, subdivision (a), states the following:

> The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If the interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for any off-duty time in accordance

with regular department procedures, and the public safety officer shall not be released from employment for any work missed.

Government Code section 3303, subdivision (a), establishes the timing of the interrogation, and requires the employer to compensate the interrogated officer if the interrogation takes place during off-duty time. In other words, the statute defines the process that is due the peace officer who is subject to an interrogation. This statute does not require the employer to investigate complaints. When adopting parameters and guidelines for this program, the Commission recognized that Government Code section 3303 does not impose new mandated requirements to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review responses given by officers and/or witnesses to an investigation.[100]

Thus, investigation services go beyond the scope of the test claim legislation and are ***not*** reimbursable. As explained by the courts, POBOR deals with labor relations.[101] It does not interfere with the employer's right to manage and control its own police department.[102]

Finally, the County of Orange contends that "[s]erious cases also tend to involve lengthy appeals processes that require delicate handling due to the increased rights under POBOR." For purposes of clarification, at the parameters and guidelines phase of this claim, the Commission denied reimbursement for the cost of defending lawsuits appealing the employer action under POBOR, determining that the test claim did not allege that the defense of lawsuits constitutes a reimbursable state-mandated program.[103] Government Code section 3313 does not give the Commission jurisdiction to change this finding.

Nevertheless, when adopting parameters and guidelines for this program, the Commission recognized the complexity of the procedures required to interrogate an officer, and approved several activities that the Commission found to be reasonable methods to comply with the mandated activities pursuant to the authority in section 1183.1, subdivision (a)(4), of the Commission's regulations. For example, the Commission authorized reimbursement, when preparing the notice regarding the nature of the interrogation, for reviewing the complaints and other documents in order to properly prepare the notice. The Commission also approved reimbursement for the mandated interrogation procedures when a peace officer witness was interrogated since the interrogation could lead to punitive action for that officer. Unlike other reconsideration statutes that directed the Commission to revise the parameters and guidelines, the Commission does not have jurisdiction here to change any discretionary findings or add any new activities to the parameters and guidelines that may be

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[100] Analysis adopted by the Commission on the Parameters and Guidelines, July 22, 2000 (AR, p. 912).

[101] *Sulier v. State Personnel Bd.* (2004) 125 Cal.App.4th 21, 26.

[102] *Baggett, supra*, 32 Cal.3d 128, 135.

[103] Analysis adopted by the Commission on the Parameters and Guidelines, July 22, 2000 Commission hearing (AR, pp. 904-906).

considered reasonable methods to comply with the program. The jurisdiction in this case is very narrow and limited to reviewing the Statement of Decision to clarify, as a matter of law, whether the test claim legislation constitutes a new program or higher level of service and imposes costs mandated by the state consistent with the California Supreme Court Decision in *San Diego Unified School Dist.* and other applicable court decisions.[104]

Adverse Comments

Government Code sections 3305 and 3306 provide that no peace officer "shall" have any adverse comment entered in the officer's personnel file without the peace officer having first read and signed the adverse comment. If the peace officer refuses to sign the adverse comment, that fact "shall" be noted on the document and signed or initialed by the peace officer. In addition, the peace officer "shall" have 30 days to file a written response to any adverse comment entered in the personnel file. The response "shall" be attached to the adverse comment.

Thus, Government Code sections 3305 and 3306 impose the following requirements on employers:

- to provide notice of the adverse comment;[105]
- to provide an opportunity to review and sign the adverse comment;
- to provide an opportunity to respond to the adverse comment within 30 days; and
- to note on the document that the peace officer refused to sign the adverse comment and to obtain the peace officer's signature or initials under such circumstances.

As noted in the 1999 Statement of Decision, the Commission recognized that the adverse comment could be considered a written reprimand or could lead to other punitive actions taken by the employer. If the adverse comment results in a dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer or the comment harms an officer's reputation and opportunity to find future employment, then the provisions of the test claim legislation which require notice and an opportunity to review and file a written response are already guaranteed under the due process clause of the state and federal constitutions.[106] Under such circumstances, the Commission found that the notice, review and response requirements of Government Code sections 3305 and 3306 *do not* constitute a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution. Moreover, the Commission recognized that pursuant to Government Code section 17556, subdivision (c), the costs incurred in

[104] However, any party may file a request to amend the parameters and guidelines pursuant to the authority in Government Code section 17557.

[105] The Commission found that notice is required since the test claim legislation states that "no peace officer shall have any adverse comment entered in the officer's personnel file *without the peace officer having first read and signed the adverse comment.*" Thus, the Commission found that the officer must receive notice of the comment before he or she can read or sign the document.

[106] *Hopson, supra,* 139 Cal.App.3d 347.

providing notice and an opportunity to respond do not impose "costs mandated by the state". The Commission finds that this finding is consistent with *San Diego Unified School Dist.* since the local entity would be required, in the absence of the test claim legislation, to perform these activities to comply with federal due process procedures.[107]

However, the Commission found that under circumstances where the adverse comment affects the officer's property or liberty interest as described above, the following requirements imposed by the test claim legislation *are not* specifically required by the case law interpreting the due process clause:

- obtaining the signature of the peace officer on the adverse comment, or
- noting the peace officer's refusal to sign the adverse comment and obtain the peace officer's signature or initials under such circumstances.

The Commission approved these two procedural activities since they were not expressly articulated in case law interpreting the due process clause and, thus, exceed federal law. The City of Sacramento contends that these activities remain reimbursable.

The Commission finds, however, that the decision in *San Diego Unified School Dist.* requires that these notice activities be denied pursuant to Government Code section 17556, subdivision (c), since they are "part and parcel" to the federal due process mandate, and result in "de minimis" costs to local government.

In *San Diego Unified School Dist.*, the Supreme Court held that in situations when a local discretionary decision triggers a federal constitutional mandate such as the procedural due process clause, "the challenged state rules or procedures that are intended to implement an applicable federal law -- and whose costs are, in context, de minimis -- should be treated as part and parcel of the underlying federal mandate."[108] Adopting the reasoning of *County of Los Angeles II*, the court reasoned as follows:

> In *County of Los Angeles II*, supra 32 Cal.App.4th 805 [unofficial cite omitted], the initial discretionary decision (in the former case, to file charges and prosecute a crime; in the present case, to seek expulsion) in turn triggers a federal constitutional mandate (in the former case, to provide ancillary defense services; in the present case, to provide an expulsion hearing). In both circumstances, the Legislature, in adopting specific statutory procedures to comply with the general federal mandate, reasonably articulated various incidental procedural protections. These protections are designed to make the underlying federal right enforceable and to set forth procedural details that were not expressly articulated in the case law establishing the respective rights; viewed singly or cumulatively, they do not significantly increase the cost of compliance with the federal mandate. The Court of Appeal in *County of Los Angeles II* concluded that, for purposes of ruling upon a claim for reimbursement, such incidental procedural requirements, producing at most de minimis added cost, should be viewed as part and parcel of the underlying federal

[107] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 888-889.

[108] *Id.* at page 890.

> mandate, and hence nonreimbursable under Government Code section 17556, subdivision (c). We reach the same conclusion here.[109]

The Commission finds that obtaining the officer's signature on the adverse comment or indicating the officer's refusal to sign the adverse comment, when the adverse comment results in a punitive action protected by the due process clause, are designed to prove that the officer was on notice about the adverse comment. Since providing notice is already guaranteed by the due process clause of the state and federal constitutions under these circumstances, the Commission finds that the obtaining the signature of the officer or noting the officer's refusal to sign the adverse comment is part and parcel of the federal notice mandate and results in "de minimis" costs to local government.

Therefore, the Commission finds that, under current law, the Commission's conclusion that obtaining the signature of the peace officer on the adverse comment or noting the officer's refusal to sign the adverse comment, when the adverse comment results in a punitive action protected by the due process clause is not a new program or higher level of service and does not impose costs mandated by the state. Thus, the Commission denies reimbursement for these activities.

Finally, the courts have been clear that an officer's rights under Government Code sections 3305 and 3306 are not limited to situations where the adverse comment results in a punitive action where the due process clause may apply. Rather, an officer's rights are triggered by the entry of "any" adverse comment in a personnel file, "or any other file used for personnel purposes," that may serve as a basis for affecting the status of the employee's employment.[110] In explaining the point, the Third District Court of Appeal stated: "[E]ven though an adverse comment does not directly result in punitive action, it has the potential for creating an adverse impression that could influence future personnel decisions concerning an officer, including decisions that do not constitute discipline or punitive action."[111] Thus, the rights under sections 3305 and 3306 also apply to uninvestigated complaints. Under these circumstances (where the due process clause does not apply), the Commission determined that the Legislature, in statutes enacted before the test claim legislation, established procedures for different local public employees similar to the protections required by Government Code sections 3305 and 3306. Thus, the Commission found no new program or higher level of service to the extent the requirements existed in prior statutory law. The Commission approved the test claim for the activities required by the test claim legislation that were not previously required under statutory law.[112] Neither *San Diego Unified School Dist.*, nor any other

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[109] *Id.* at page 889.

[110] *Sacramento Police Officers Assn. v. Venegas* (2002) 101 Cal.App.4th 916, 925.

[111] *Id.* at page 926.

[112] For example, for counties, the Commission approved the following activities that were not required under prior statutory law:

> If an adverse comment is related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities:

case, conflicts with the Commission's findings in this regard. Therefore, the Commission finds that the denial of activities following the receipt of an adverse comment that were required under prior statutory law, and the approval of activities following the receipt of an adverse comment that were *not* required under prior statutory law, was legally correct.

CONCLUSION

The Commission finds that the *San Diego Unified School Dist.* case supports the Commission's 1999 Statement of Decision, which found that the POBOR legislation constitutes a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for counties, cities, school districts, and special districts identified in Government Code section 3301 that employ peace officers.

The Commission further finds that the *San Diego Unified School Dist.* case supports the Commission's 1999 Statement of Decision that the test claim legislation constitutes a partial reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for all activities previously approved by the Commission except the following:

- The activity of providing the opportunity for an administrative appeal to probationary and at-will peace officers (except when the chief of police is removed) pursuant to Government Code section 3304 is no longer a reimbursable state-mandated activity because the Legislature amended Government Code section 3304 in 1998. The amendment limited the right to an administrative appeal to only those peace officers "who successfully completed the probationary period that may be required" by the employing agency and to situations where the chief of police is removed. (Stats. 1998, ch. 786, § 1.)

- Providing notice of the adverse comment;
- Providing an opportunity to review and sign the adverse comment;
- Providing an opportunity to respond to the adverse comment within 30 days; and
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

If an adverse comment is not related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for:

- Providing notice of the adverse comment; and
- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

- The activities of obtaining the signature of the peace officer on the adverse comment or noting the officer's refusal to sign the adverse comment, pursuant to Government Code sections 3305 and 3306, when the adverse comment results in a punitive action protected by the due process clause[113] does not constitute a new program or higher level of service and does not impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c).

[113] Due process attaches when a permanent employee is dismissed, demoted, suspended, receives a reduction in salary, or receives a written reprimand. Due process also attaches when the charges supporting a dismissal of a probationary or at-will employee constitute moral turpitude that harms the employee's reputation and ability to find future employment and, thus, a name-clearing hearing is required.

Briefs and Other Related Documents

In re RANDY G., a Person Coming Under the Juvenile Court Law.
THE PEOPLE, Plaintiff and Respondent,
v.
RANDY G., Defendant and Appellant.
No. S089733.

Supreme Court of California
Aug. 13, 2001.

SUMMARY

After denying a 14-year-old minor's motion to suppress evidence, the juvenile court declared the minor to be a ward of the court for possessing a knife with a locking blade on school grounds in violation of Pen. Code, § 626.10, subd. (a). School security officers had taken the minor from a classroom to the hallway and obtained his consent to a search of his bag and to a patdown search, during which the officers found the knife. In his motion to suppress, the minor alleged that the officers lacked reasonable suspicion that he engaged in criminal conduct or violated a school rule, and thus his consent to the searches was the product of an unlawful detention. (Superior Court of Los Angeles County, No. FJ21687, Gary Bounds, Temporary Judge. [FN*]) The Court of Appeal, Second Dist., Div. Three, No. B133952, affirmed, applying a reasonable-suspicion standard and concluding that the detention was reasonable under the circumstances.

FN* Pursuant to California Constitution, article VI, section 21.

The Supreme Court affirmed the judgment of the Court of Appeal. The court held that school officials have the power to stop a minor student in order to ask questions or conduct an investigation even in the absence of reasonable suspicion of criminal activity or a violation of a school rule, so long as this authority is not exercised in an arbitrary, capricious, or harassing manner. Although individualized suspicion is usually a prerequisite to a constitutional search or seizure, under the Constitution, the usual prerequisites can be modified when special needs render those rules impracticable. Special needs exist in the public school context in light of the high governmental interest in education and the need to maintain order in schools, and in light of the minimal intrusion on a minor stopped and questioned. (Opinion by Baxter, J., with George, C. J., Kennard, Chin, and Brown, JJ., concurring. Concurring opinion by Werdegar, J. (see p. 569).)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c, 1d) Schools § 52--Students--Minor Student on School Grounds--Detention by School Official--In Absence of Reasonable Suspicion:Arrest § 8--Temporary Detention.

In a wardship proceeding, the juvenile court did not err in denying a 14-year-old minor's motion to suppress evidence of a knife with a locking blade (Pen. Code, § 626.10, subd. (a)), found by school security officers in a consensual patdown search of the minor on school grounds, which occurred after the officers had taken the minor from a classroom to the hallway. The search was not the fruit of an unlawful detention. Even if a detention occurred when the officers took the minor from the classroom to the hallway, detentions of minor students on school grounds do not offend the federal Constitution, so long as they are not arbitrary, capricious, or for the purposes of harassment. Reasonable suspicion need not be shown. Although individualized suspicion is usually a prerequisite to a constitutional search or seizure, under the Constitution, the usual prerequisites can be modified when special needs render those rules impracticable. Special needs exist in the public school context in light of the high governmental interest in education and the need to maintain order in schools, and in light of the minimal intrusion on a minor stopped and questioned. Further, there is no distinction between school security officers and other school personnel for the purpose of this rule. (Disapproving to the extent inconsistent: *In re Alexander B.* (1990) 220 Cal.App.3d 1572[270 Cal.Rptr. 342]; *In re Frederick B.* (1987) 192 Cal.App.3d 79[237 Cal.Rptr. 338].)

[See 4 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Illegally Obtained Evidence, § 319; West's

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Key Number Digest, Schools k. 169.5.]
(2) Criminal Law § 331--Evidence--Admissibility--Products of Search and Seizure.
To decide whether relevant evidence, obtained by means asserted to be unlawful, must be excluded, courts look exclusively to whether its suppression is required by the United States Constitution.

(3) Arrest § 9--Detention.
A detention occurs only when an officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen. Normally, where the police have succeeded in apprehending a suspect, there is no dispute that the suspect's liberty has been restrained, since the suspect, in the absence of the stop, would have been free to continue on his or her way. ***558**

(4) Schools § 52--Students--Freedom While on School Grounds.
Minor students at school lack freedoms afforded adults. Unemancipated minors lack some of the most fundamental rights of self-determination, including even the right of liberty in its narrow sense, i.e., the right to come and go at will. They are subject, even as to their physical freedom, to the control of their parents or guardians. The power that public schools exercise is custodial and tutelary, permitting a degree of supervision and control that could not be exercised over free adults. Minor students are required to be in school (Ed. Code, § 48200). While they are in school, the primary duty of school officials and teachers is their education and training. The state has a compelling interest in assuring that the schools meet this responsibility. Without first establishing discipline and maintaining order, teachers cannot begin to educate their students. Apart from education, the school has the obligation to protect pupils from mistreatment by other children and to protect teachers themselves from violence.

(5) Schools § 60--Students--Discipline--Supervisory Powers.
At school, occurrences calling for discipline are frequent occurrences and sometimes require immediate, effective action. To respond in an appropriate manner, teachers and school administrators must have broad supervisory and disciplinary powers. Encounters on school grounds between students and school personnel are constant and much more varied than those on the street between citizens and law enforcement officers. While at school, a student may be stopped, told to remain in or leave a classroom, directed to go to a particular classroom, given an errand, sent to study hall, called to the office, or held after school. Unlike a citizen on the street, a minor student is subject to the ordering and direction of teachers and administrators.

(6) Arrest § 35--Reasonableness:Searches and Seizures § 54--Reasonableness.
The test for assessing the reasonableness of official conduct under U.S. Const., 4th Amend., is essentially the same for a seizure as for a search. It is necessary to focus upon the governmental interest that is alleged to justify the official intrusion upon the constitutionally protected interests of the private citizen. There is no ready test for determining reasonableness other than to balance the need to search or seize against the invasion that the search or seizure entails.

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Parker & Covert, Spencer E. Covert and Barbara J. Ginsberg for California School Boards Association's Education Legal Alliance and California Association of Supervisors of Child Welfare and Attendance as Amici Curiae on behalf of Plaintiff and Respondent.
BAXTER, J.
In this case we are asked to determine whether school officials may detain a minor student on school grounds in the absence of reasonable suspicion of criminal activity or violation of a school rule. The minor, Randy G., contends that when school security officers called him out of class into the hallway, he was detained without cause in violation of his rights under the Fourth Amendment to the United States Constitution. The Court of Appeal, relying on *In re Frederick B.* (1987) 192 Cal.App.3d 79 [237 Cal.Rptr. 338], applied the reasonable-suspicion standard to this encounter, which occurred on school

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grounds and during school hours, and found that it had been satisfied. We do not decide whether the record supports that finding of reasonable suspicion because we conclude instead that the broad authority of school administrators over student behavior, school safety, and the learning environment requires that school officials have the power to stop a minor student in order to ask questions or conduct an investigation even in the absence of reasonable suspicion, so long as such authority is not exercised in an arbitrary, capricious, or harassing manner. On this ground, we affirm the Court of Appeal.

I. Background

A petition filed pursuant to Welfare and Institutions Code section 602 alleged that the 14-year-old minor had violated Penal Code section 626.10, *560 subdivision (a) by possessing a knife with a locking blade on school grounds. Prior to the jurisdictional hearing, the minor moved to suppress evidence of the knife, asserting that its discovery during a consent search had been tainted by the preceding illegal detention in violation of the Fourth Amendment. Moving him from the classroom into the hallway for questioning was, he claimed, an unreasonable detention because there was no articulable basis for a reasonable suspicion that he had engaged or was engaging in the proscribed activity, i.e., violation of a criminal statute or school rule. The motion was denied, after which the petition was sustained. The minor was declared a ward of the court and placed on probation.

The evidence offered at the hearing on the motion to suppress reflects the following:

Cathy Worthy, a campus security officer at the public high school attended by the minor, testified that during "passing time," [FN1] approximately 9:00 a.m. on March 16, 1999, she was between "C building and A auditorium." As she came around one of two large pillars in that area, she observed the minor and a friend in an area of the campus in which students are not permitted to congregate. When the minor saw Worthy, he "fixed his pocket very nervously." Some of the lining of the left pocket was still sticking out. Worthy asked the two if they needed anything and instructed them to go to class. The minor finished fixing his pocket and went back to class. Worthy followed them to see where they were going because the minor acted "very paranoid and nervous." She then notified her supervisor and at his direction summoned another security officer.

FN1 This appears to be a term used to describe the time between classes when high school students move from one classroom to another.

When the two officers went to the classroom, Worthy asked the minor if she could see him outside. Once in the hallway, Worthy asked the minor if he had anything on him. He replied "no" and repeated that denial when asked again. The second officer asked the minor for consent to search his bag. The minor consented, and replied "no" again to Worthy's repeated question whether he had anything on him. The second officer then asked the minor for permission to do a patdown search. Worthy asked if it was okay, and the minor replied "yes." A patdown search by the other officer revealed a knife, later found to have a locking blade, in the minor's left pocket.

During the 10 minutes the minor was in the hallway being questioned by Worthy before the consent to search was given, he was not free to leave.

Commenting that the officer had engaged in "good security work" based on the minor's looking nervous or paranoid and adjusting his pocket upon seeing her, the judge denied the motion to suppress. *561

On appeal from the order declaring him a ward of the court, the minor repeated the arguments made in support of his motion to exclude the knife-i.e., that because the campus security officer had lacked reasonable suspicion of criminal activity or violation of a school rule, the detention violated his right to be free of unreasonable searches and seizures guaranteed by the Fourth Amendment, and that his consent to search was a product of that unlawful detention. The Court of Appeal agreed with the minor that the standard to be applied was whether "the detaining officer has reasonable suspicion that the person to be detained has been, is, or is about to be engaged in criminal activity" (*In re Frederick B., supra*, 192 Cal.App.3d at pp. 84-85) or is about to engage in a violation of those school rules that exist for the protection of other students attending school or for the preservation of order at the school. The *Frederick B.* court had adapted its standard for judging the lawfulness of a *detention* of a student from *In re William G.* (1985) 40 Cal.3d 550, 564 [221 Cal.Rptr. 118, 709 P.2d 1287] (*William G.*) and *New Jersey v.*

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T. L. O. (1985) 469 U.S. 325, 341-342 [105 S.Ct. 733, 742-743, 83 L.Ed.2d 720] (*T. L. O.*), both of which involved the *search* of a student. Applying that standard (as expanded to include school rules and regulations designed for the protection of students or the preservation of order), the Court of Appeal held that the detention of the minor was reasonable. The minor's violation of a school rule, together with his nervous fixing of the protruding lining of his pocket, gave rise to reasonable suspicion sufficient to justify a detention for the purpose of asking questions about the conduct the security officer had observed.

In this court, the minor contends that no articulable facts supported a reasonable suspicion of misconduct. The People argue that the reasonable-suspicion standard does not apply to a detention of a student by a school official on school grounds.

II. Discussion

(1a) According to the minor, the question presented here is whether the circumstances outlined above "made the security officer aware of sufficient 'articulable facts' to warrant reasonable suspicion that [the minor] was committing a crime, or violating a rule designed to protect other students or to maintain order in the school, thereby justifying his detention for investigation of the offense." He contends that the absence of facts supporting reasonable suspicion rendered his detention invalid under the Fourth Amendment, requiring suppression of the locking-blade knife found in his pocket.

(2) To decide whether relevant evidence obtained by assertedly unlawful means must be excluded, we look exclusively to whether its suppression is ***562** required by the United States Constitution. (*In re Lance W.* (1985) 37 Cal.3d 873, 885-890 [210 Cal.Rptr. 631, 694 P.2d 744].)

A

() The first question, then, is whether the minor was detained. (3)A detention occurs "[o]nly when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen ...." (*Terry v. Ohio* (1968) 392 U.S. 1, 19, fn. 16 [88 S.Ct. 1868, 1879, 20 L.Ed.2d 889]; *People v. Souza* (1994) 9 Cal.4th 224, 229 [36 Cal.Rptr.2d 569, 885 P.2d 982].) In the general run of cases, where the police have succeeded in apprehending the suspect, there is no dispute that the suspect's liberty has been thereby restrained. (E.g., *Terry, supra*, 392 U.S. at pp. 6-7 [88 S.Ct. at p. 1872] [officer grabbed defendant while he was walking down the street and spun him around]; *Souza, supra*, 9 Cal.4th at p. 228 [defendant was stopped while running down the street].) After all, in those cases, the defendant, in the absence of the stop, would have been free to continue on his way.

(4) A minor at school, however, can hardly be said to be free to continue on his or her way. "Traditionally at common law, and still today, unemancipated minors lack some of the most fundamental rights of self-determination-including even the right of liberty in its narrow sense, *i.e.*, the right to come and go at will. They are subject, even as to their physical freedom, to the control of their parents or guardians." (*Vernonia School Dist. 47J v. Acton* (1995) 515 U.S. 646, 654 [115 S.Ct. 2386, 2391, 132 L.Ed.2d 564] (*Vernonia*).) Although the high court has rejected the notion that public schools, like private schools, exercise only parental power over their students, the power that public schools do exercise is nonetheless "custodial and tutelary, permitting a degree of supervision and control that could not be exercised over free adults." (*Id.* at p. 655 [115 S.Ct. at p. 2392].)

To begin, minor students are required to be in school. (Ed. Code, § 48200.) While they are there, the "primary duty of school officials and teachers ... is the education and training of young people. A State has a compelling interest in assuring that the schools meet this responsibility. Without first establishing discipline and maintaining order, teachers cannot begin to educate their students. And apart from education, the school has the obligation to protect pupils from mistreatment by other children, and also to protect teachers themselves from violence by the few students whose conduct in recent years has prompted national concern." (*T. L. O., supra*, 469 U.S. 325, 350 [105 S.Ct. 733, 747] (conc. opn. of Powell, J.); Cal. Const., art. I, § 28, subd. (c) ["All students and staff of public primary, elementary, ***563** junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful"].) California fulfills its obligations by requiring each school board to establish rules and regulations to govern student conduct and discipline (Ed. Code, § 35291) and by permitting the local district to establish a police or security department to enforce those rules. (Ed. Code, § 38000.)

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(5) At school, events calling for discipline are frequent occurrences and sometimes require "immediate, effective action." (*Goss v. Lopez* (1975) 419 U.S. 565, 580 [95 S.Ct. 729, 739, 42 L.Ed.2d 725].) To respond in an appropriate manner, " 'teachers and school administrators must have broad supervisory and disciplinary powers.' " (*William G., supra*, 40 Cal.3d at p. 563, quoting *Horton v. Goose Creek Ind. Sch. Dist.* (5th Cir. 1982) 690 F.2d 470, 480.) California law, for example, permits principals, teachers, and any other certificated employees to exercise "the same degree of physical control over a pupil that a parent would be legally privileged to exercise ... which in no event shall exceed the amount of physical control reasonably necessary to maintain order, protect property, or protect the health and safety of pupils, or to maintain proper and appropriate conditions conducive to learning." (Ed. Code, § 44807.)

Encounters on school grounds between students and school personnel are constant and much more varied than those on the street between citizens and law enforcement officers. While at school, a student may be stopped, told to remain in or leave a classroom, directed to go to a particular classroom, given an errand, sent to study hall, called to the office, or held after school. Unlike a citizen on the street, a minor student is "subject to the ordering and direction of teachers and administrators.... [¶] [A student is] not free to roam the halls or to remain in [the] classroom as long as she please[s], even if she behave[s] herself. She [is] deprived of liberty to some degree from the moment she enter[s] school, and no one could suggest a constitutional infringement based on that basic deprivation." (*Wallace by Wallace v. Batavia School Dist. 101* (7th Cir. 1995) 68 F.3d 1010, 1013 (*Wallace*); see also *Milligan v. City of Slidell* (5th Cir. 2000) 226 F.3d 652, 655 (*Milligan*) ["any such right of unhindered attendance [in class] is logically inconsistent with the mandate of compulsory attendance and a structured curriculum, and it hardly squares with the schools' obligation to 'inculcate the habits and manners of civility ....' "].)

() Thus, when a school official stops a student to ask a question, it would appear that the student's liberty has not been restrained over and above the limitations he or she already experiences by attending school. Accordingly, the conduct of school officials in moving students about the *564 classroom or from one classroom to another, sending students to the office, or taking them into the hallway to ask a question would not seem to qualify as a detention as defined by the Fourth Amendment. In the absence of a Fourth Amendment claim, relief, if at all, would come by showing that school officials acted in such an arbitrary manner as to deprive the student of substantive due process in violation of the Fourteenth Amendment. (See *County of Sacramento v. Lewis* (1998) 523 U.S. 833, 845-847 [118 S.Ct. 1708, 1716-1717, 140 L.Ed.2d 1043].)

A number of factors, however, counsel caution before holding that the Fourth Amendment does not apply to the exercise of physical control by school officials over their students. First, we must acknowledge the United States Supreme Court's reluctance to expand the concept of substantive due process. The court has instructed that " '[w]here a particular Amendment provides an explicit textual source of constitutional protection against *a particular sort of government behavior*, that Amendment, not the more generalized notion of substantive due process, must be the guide for analyzing these claims.' " (*County of Sacramento v. Lewis, supra*, 523 U.S. at p. 842 [118 S.Ct. at p. 1714], italics added.) Here, of course, the "particular sort of government behavior" engaged in by school officials would unquestionably constitute a detention *outside* the school setting.

Second, we have employed the Fourth Amendment framework in the analogous circumstances of parole and probation searches, even though it might appear that parolees and probationers have no Fourth Amendment protection against suspicionless searches and seizures. (See *People v. Reyes* (1998) 19 Cal.4th 743 [80 Cal.Rptr.2d 734, 968 P.2d 445]; *In re Tyrell J.* (1994) 8 Cal.4th 68 [32 Cal.Rptr.2d 33, 876 P.2d 519].) In *Tyrell J.*, for example, we held that a juvenile probationer subject to a valid search condition does not have a *reasonable* expectation of privacy over his or her person or property, which is the " 'touchstone' " of Fourth Amendment analysis. (*Tyrell J.*, at pp. 83, 86.) Nonetheless, we rejected the notion that the probationer has no legally cognizable privacy rights at all and permitted the probationer to challenge a search as arbitrary, capricious, or undertaken for harassment. (*Id.* at p. 87 & fn. 5.) Similarly, in *Reyes*, we held that a parolee subject to a valid search condition does not have "any expectation of privacy 'society is " prepared to recognize as legitimate" ' " yet may still challenge the search as arbitrary, capricious, or undertaken for harassment. (*Reyes, supra*, 19 Cal.4th at pp. 753-754.) By analogy, we might permit a minor student, even though he appears to retain no appreciable

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liberty on school grounds, to challenge the conduct of school officials as arbitrary, capricious, or harassing under the Fourth Amendment, which, after all, was crafted to " ' "safeguard the privacy and security of individuals against ***565** *arbitrary* invasions by governmental officials." ' ..." (*Id.* at p. 750, citations omitted.)

Finally, we note that a number of federal cases have (without much analysis) held or assumed that, notwithstanding the considerable restraints on a student's movement by virtue of being at school, conduct by a school official to control that movement is a seizure within the meaning of the Fourth Amendment. (E.g., *Milligan, supra*, 226 F.3d at p. 655; *Wallace, supra*, 68 F.3d at pp. 1012-1014; *Hassan v. Lubbock Independent School Dist.* (5th Cir. 1995) 55 F.3d 1075, 1079-1080; *Edwards for and in behalf of Edwards v. Rees* (10th Cir. 1989) 883 F.2d 882, 884.)

Neither this court nor the Supreme Court has deemed stopping a student on school grounds during school hours, calling a student into the corridor to discuss a school-related matter, or summoning a student to the principal's office for such purposes to be a detention within the meaning of the Fourth Amendment. For the reasons stated above, we would be hesitant to term such conduct a "detention" here. However, we find it unnecessary to decide whether school officials' infringement on the residuum of liberty retained by the student is properly analyzed as a detention under the Fourth Amendment or as a deprivation of substantive due process under the Fourteenth Amendment, for (as we explain below) we discover that the test under either clause is substantially the same-namely, whether the school officials' conduct was arbitrary, capricious, or undertaken for purposes of harassment.

B

Although individualized suspicion is usually a prerequisite to a constitutional search or seizure, "such suspicion is not an 'irreducible' component of reasonableness." (*Indianapolis v. Edmond* (2000) 531 U.S. 32, 37 [121 S.Ct. 447, 451, 148 L.Ed.2d 333].) Under the Constitution, the usual prerequisites can be modified when " 'special needs' " render those rules impracticable. (See, e.g., *Griffin v. Wisconsin* (1987) 483 U.S. 868, 873 [107 S.Ct. 3164, 3168, 97 L.Ed.2d 709].) "Special needs" exist "in the public school context." (*Vernonia, supra*, 515 U.S. at p. 653 [115 S.Ct. at p. 2391].) In *T. L. O.*, for example, the court permitted the on-campus search of a minor student's person, the type of intrusion that ordinarily must be supported by probable cause to believe a violation of the law has occurred, so long as there were reasonable grounds for suspecting the search would uncover evidence of a violation of law or school rules. (*T. L. O., supra*, 469 U.S. at pp. 340-342 [105 S.Ct. at pp. 742-743].) In *Vernonia*, the court approved drug testing of student-athletes, even in the absence of any individualized suspicion of drug use, based once again on the special needs of the public school context. (*Vernonia, supra*, 515 U.S. at pp. 653-657 [115 S.Ct. at p. 2390-2393].) ***566**

Vernonia and *T. L. O.* both involved searches. The issue here is a seizure. (6) Still, the test for assessing the reasonableness of official conduct under the Fourth Amendment is essentially the same: "it is necessary 'first to focus upon the governmental interest which allegedly justifies official intrusion upon the constitutionally protected interests of the private citizen,' for there is 'no ready test for determining reasonableness other than by balancing the need to search [or seize] against the invasion which the search [or seizure] entails.' " (*Terry v. Ohio, supra*, 392 U.S. at pp. 20-21 [88 S.Ct. at p. 1879], quoting *Camara v. Municipal Court* (1967) 387 U.S. 523, 534-537 [87 S.Ct. 1727, 1733-1735, 18 L.Ed.2d 930].) () Here, "the 'reasonableness' inquiry cannot disregard the schools' custodial and tutelary responsibility for children." (*Vernonia, supra*, 515 U.S. at p. 656 [115 S.Ct. at p. 2392].)

The governmental interest at stake is of the highest order. "[E]ducation is perhaps the most important function of state and local governments." (*Brown v. Board of Education* (1954) 347 U.S. 483, 493 [74 S.Ct. 686, 691, 98 L.Ed. 873, 38 A.L.R.2d 1180].) "Some modicum of discipline and order is essential if the educational function is to be performed." (*Goss v. Lopez, supra*, 419 U.S. at p. 580 [95 S.Ct. at p. 739].) School personnel, to maintain or promote order, may need to send students into and out of classrooms, define or alter schedules, summon students to the office, or question them in the hall. Yet, as the high court has observed, school officials "are not in the business of investigating violations of the criminal laws ... and otherwise have little occasion to become familiar with the intricacies of this Court's Fourth Amendment jurisprudence." (*Skinner v. Railway Labor Executives' Assn.* (1989) 489 U.S. 602, 623 [109 S.Ct. 1402, 1417, 103 L.Ed.2d 639].) Those officials must be permitted to exercise their broad

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supervisory and disciplinary powers, without worrying that every encounter with a student will be converted into an opportunity for constitutional review. To allow minor students to challenge each of those decisions, through a motion to suppress or in a civil rights action under 42 United States Code section 1983, as lacking articulable facts supporting reasonable suspicion would make a mockery of school discipline and order.

On the other hand, the intrusion on the minor student is trivial since, as stated, the minor is not free to move about during the school day. If the school can require the minor's presence on campus during school hours, attendance at assigned classes during their scheduled meeting times, appearance at assemblies in the auditorium, and participation in physical education classes out of doors, liberty is scarcely infringed if a school security guard leads the student into the hall to ask questions about a potential rule violation. ***567**

In *T. L. O.*, the court balanced the competing interests involving a search of a minor student on school grounds and reduced the quantum of suspicion required from probable cause to reasonable suspicion. The minor argues that the same reasonable-suspicion standard used for school searches should govern the assumed detention here. We disagree. Different interests are implicated by a search than by a seizure (*Horton v. California* (1990) 496 U.S. 128, 133 [110 S.Ct. 2301, 2305-2306, 110 L.Ed.2d 112]), and a seizure is "generally less intrusive" than a search. (*Segura v. United States* (1984) 468 U.S. 796, 806 [104 S.Ct. 3380, 3386, 82 L.Ed.2d 599](lead opn. of Burger, C. J.); cf. *United States v. Place* (1983) 462 U.S. 696, 706-708 [103 S.Ct. 2637, 2644-2645, 77 L.Ed.2d 110].) In recognition of that distinction, the constitutionality of investigative detentions of persons on the streets is already measured by the standard of reasonable suspicion, not probable cause. Were we simply to extend that standard to the school setting, we would have failed utterly to accommodate the special needs existing there. Therefore, we conclude instead that detentions of minor students on school grounds do not offend the Constitution, so long as they are not arbitrary, capricious, or for the purposes of harassment. (Cf. *People v. Reyes, supra,* 19 Cal.4th at pp. 753-754 [applying same test to search of parolees]; *In re Tyrell J., supra,* 8 Cal.4th at p. 87 [juvenile probationers]; *People v. Bravo* (1987) 43 Cal.3d 600, 610 [238 Cal.Rptr. 282, 738 P.2d 336] [adult probationers].) Reasonable suspicion-whether called "particularized suspicion" (*People v. Reyes, supra,* 19 Cal.4th at p. 754), "articulable and individualized suspicion" (*People v. Glaser* (1995) 11 Cal.4th 354, 369 [45 Cal.Rptr.2d 425, 902 P.2d 729]), "founded suspicion" (*People v. Souza, supra,* 9 Cal.4th at p. 230), or "reasonable cause" (*id.* at p. 232)-need not be shown. [FN2]

FN2. To the extent that *In re Alexander B.* (1990) 220 Cal.App.3d 1572 [270 Cal.Rptr. 342] and *In re Frederick B., supra,* 192 Cal.App.3d 79, are inconsistent with this conclusion, they are disapproved.

Our conclusion finds support in cases from other jurisdictions. In *In re D.E.M.* (1999) 1999 Pa.Super. 59 [727 A.2d 570], school officials, after learning that police had received an anonymous tip that the minor had a gun, removed the minor from class and brought him to the principal's office. The gun was discovered during a consent search. The minor sought to suppress the gun as the fruit of an unlawful detention. The court assessed the reasonableness of the school officials' conduct in removing the minor from class by balancing the state's substantial interest in maintaining a safe educational environment against the minor's limited control over his person during school hours and concluded that the policy served by *Terry*'s reasonable-suspicion standard does not apply to the detention and questioning of a student by school officials. (*Id.* at pp. 577-578 & fn. 19.) The court noted, as we have above, that "the mere detention and questioning of a student ***568** constitutes a more limited intrusion than a search of his person and effects. Thus, we think it makes no sense to require the same level of suspicion to justify the school officials' actions in each situation." (*Id.* at p. 577, fn. 18.) "To require teachers and school officials to have reasonable suspicion before merely questioning a student would destroy the informality of the student teacher relationship, which the United States Supreme Court has respected and preserved. *See T.L.O., supra,* at 339, 105 S.Ct. at 741, 83 L.Ed.2d at 733. Instead, teachers and school officials would be forced to conduct surveillance, traditionally a law enforcement function, before questioning a student about conduct which poses a serious threat to the safety of the students for whom they are responsible." (*Id.* at p. 577, fn. omitted.)

The Florida District Court of Appeal reached the same conclusion in *W. J. S. v. State* (Fla.Dist.Ct.App. 1982) 409 So.2d 1209. There, a teacher had a security guard bring four students to the principal's

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office; the students looked suspicious because "they 'appeared to look away from her, to look at something else.' " A subsequent search uncovered a small purse containing marijuana. The court held that reasonable suspicion was not necessary to "detain a student and take him ... 'to be checked out' on the school premises." (*Id.* at p. 1210.)

The minor has never contended that Worthy acted arbitrarily, capriciously, or in a harassing manner in calling him into the hall. Hence, no Fourth Amendment violation occurred.

C

Seemingly acknowledging the state's vital interest in establishing and maintaining a safe educational environment, the minor then urges that the reasonable-suspicion standard, even if inapplicable to the conduct of teachers and administrators, should apply to encounters between students and school *security officers*. In holding that the reasonable-suspicion standard remains appropriate for such cases, he reasons, this court will not necessarily be committing itself to that standard "across the whole range of student encounters with teachers, principals, or other personnel." We decline the invitation to distinguish the power of school security officers over students from that of other school personnel, whose authority over student conduct may have been delegated to those officers. The same observation and investigation here could well have been undertaken by a teacher, coach, or even the school principal or vice-principal. If we were to draw the distinction urged by the minor, the extent of a student's rights would depend not on the nature of the asserted infringement but on the happenstance of the status of the employee who observed and investigated the misconduct. Of equal ***569** importance, were we to hold that school security officers have less authority to enforce school regulations and investigate misconduct than other school personnel, there would be no reason for a school to employ them or delegate to them duties relating to school safety. Schools would be forced instead to assign certificated or classified personnel to yard and hall monitoring duties, an expenditure of resources schools can ill afford. The title "security officer" is not constitutionally significant. [FN3] (Cf. *Ferguson v. City of Charleston* (2001) 532 U.S. 67, 83-84 [121 S.Ct. 1281, 1291-1292, 149 L.Ed.2d 205] [because the "primary purpose" of a program of testing obstetrics patients' urine for narcotics was "to generate evidence *for law enforcement purposes* .... this case simply does not fit within the closely guarded category of 'special needs' " (fns. omitted)].) Therefore, we will not interfere in the method by which local school districts assign personnel to monitor school safety.

FN3 The minor did not describe Worthy or the other guard as a law enforcement officer in his motion to suppress, which refers instead to a "School Official." Once found, the knife was turned over by the school principal to Officer Berrera, who was employed by the City of Montebello as a school police officer. The Montebello Police Department took the minor into custody and referred him for juvenile proceedings. In short, the school security officers who found the knife did not act as law enforcement officers. We therefore do not consider here the appropriate standard for assessing the lawfulness of seizures conducted by school officials in conjunction with or at the behest of law enforcement agencies. (See *T. L. O., supra*, 469 U.S. at p. 341, fn. 7 [105 S.Ct. at p. 743].)

III. Disposition

The judgment of the Court of Appeal is affirmed.

George, C. J., Kennard, J., Chin, J., and Brown, J., concurred.**WERDEGAR, J.**
I concur. We face in this case a tension between two important considerations: On the one hand, teachers and school administrators have a solemn responsibility to protect the safety and well-being of our children and to ensure that schools can fulfill their educational mission. [FN1] On the other hand, minor children attending school, like all persons in America, possess rights under the Constitution. (See, e.g., *New Jersey v. T.L.O., supra*, 469 U.S. at pp. 333-334 [105 S.Ct. at pp. 738-739] [Fourth Amendment rights]; *Tinker v. Des Moines Independent School Dist.* (1969) 393 U.S. 503, 506 [89 S.Ct. 733, 736, 21 L.Ed.2d 731] (*Tinker*) [First Amendment rights]; ***570** *Goss v. Lopez* (1975) 419 U.S. 565 [95 S.Ct. 729, 42 L.Ed.2d 725] [due process rights].) [FN2]

FN1 "The primary duty of school officials and teachers ... is the education and training of young people. A State has a compelling

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interest in assuring that the schools meet this responsibility. Without first establishing discipline and maintaining order, teachers cannot begin to educate their students." (*New Jersey v. T. L. O.* (1985) 469 U.S. 325, 350 [105 S.Ct. 733, 747, 83 L.Ed.2d 720] (conc. opn. of Powell, J.).)

FN2 That school officials "are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes." (*Board of Education v. Barnette* (1943) 319 U.S. 624, 637 [63 S.Ct. 1178, 1185, 87 L.Ed. 1628, 147 A.L.R. 674].)

The high court, while recognizing that students do not leave their constitutional rights "at the schoolhouse gate" (*Tinker, supra*, 393 U.S. at p. 506 [89 S.Ct. at p. 736]), has also recognized the need for balance in evaluating the scope of their Fourth Amendment rights, explaining that "maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures, and we have respected the value of preserving the informality of the student-teacher relationship." (*New Jersey v. T. L. O., supra*, 469 U.S. at p. 340 [105 S.Ct. at p. 742].) In addition, "[i]t is evident that the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject." (*Ibid.*)

The majority acknowledges this framework by considering a minor student's right to freedom from unreasonable searches and seizures under the Fourth Amendment within the context of a modern school setting. Although students unquestionably retain Fourth Amendment rights while in school, and "public school officials are subject to the limits placed on state action by the Fourteenth Amendment" (*New Jersey v. T. L. O., supra*, 469 U.S. at p. 334 [105 S.Ct. at p. 739]), not every encounter between teacher and student implicates the Fourth Amendment, for "the nature of those [constitutional] rights is what is appropriate for children in school." (*Vernonia School Dist. 47J v. Acton* (1995) 515 U.S. 646, 656 [115 S.Ct. 2386, 2392, 132 L.Ed.2d 564] (*Vernonia*); cf. *Terry v. Ohio* (1968) 392 U.S. 1, 19, fn. 16 [88 S.Ct. 1868, 1879, 20 L.Ed.2d 889] ["not all personal intercourse between policemen and citizens involves 'seizures' of persons"].)

Moreover, even where, as here, the circumstances of the encounter as viewed in the context of a school setting arguably support the conclusion the minor has been subjected to a "seizure" within the meaning of the Fourth Amendment, the standard for assessing the reasonableness of the challenged action must take into account "the schools' custodial and tutelary responsibility for children." (*Vernonia, supra*, 515 U.S. at p. 656 [115 S.Ct. at p. 2392].) As *Terry v. Ohio, supra*, 392 U.S. at page 21 [88 S.Ct. at page 1879], recognizes, "there is 'no ready test for determining reasonableness other than by balancing the need to [seize] against the invasion which the [seizure] entails.' " (Quoting *Camara v. Municipal Court* (1967) 387 U.S. 523, 536-537 [87 S.Ct. 1727, 1734-1735, 18 L.Ed.2d 930].) Accordingly, I agree with *571 the majority's conclusion that "detentions of minor students on school grounds do not offend the Constitution, so long as they are not arbitrary, capricious, or for the purposes of harassment." (Maj. opn., *ante*, at p. 567.)

The majority finds it unnecessary to decide whether the security guard in this case subjected minor Randy G. to a detention within the meaning of the Fourth Amendment. (Maj. opn., *ante*, at p. 565.) Accordingly, the majority does not foreclose the possibility that a teacher or school official may be found, in an appropriate setting, to have done so. With that understanding of the majority opinion, I concur. *572

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