BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Government Code Sections 27521, 2752 1.1 Health and Safety Code Section 102870, Penal Code Section 14202, Statutes 2000, Chapter 284 Filed on June 29,200 1, By County of Los Angeles, Claimant.	No. 00-TC- 18 *Postmortem Examinations: Unidentified Bodies, Human Remains* 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 September 25, 2003)*

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

Paula Higashi
PAULA HIGASHI, Executive Director

9/26/2003
Date

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Government Code Sections 27521, 27521.1 Health and Safety Code Section 102870, Penal Code Section 14202, Statutes 2000, Chapter 284 Filed on June 29,2001, By County of Los Angeles, Claimant.	No. 00-TC-18 *Postmortem Examinations: Unidentified Bodies, Human Remains* 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 September 25, 2003)*

STATEMENT OF DECISION

The Commission heard and decided this test claim on July 31, 2003, during a regularly scheduled hearing. Leonard Kaye and David Campbell appeared on behalf of claimant County of Los Angeles. Susan Geanacou appeared on behalf of the Department of Finance (DOF).

At the hearing, testimony was given, 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 article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission approved this test claim by a 5-O vote.

BACKGROUND

Test claim legislation: The test claim legislation states that a postmortem examination or autopsy[2] conducted at the discretion of the coroner on an unidentified body or human remains shall include the following activities:

(1) taking all available fingerprints and palm prints;
(2) a dental exam consisting of dental charts and dental X-rays;
(3) collection of tissue, including a hair sample, or body fluid samples for future DNA testing, if necessary;
(4) frontal and lateral facial photographs with the scale indicated;
(5) notation and photos, with a scale, of significant scars, marks, tattoos, clothing items, or other personal effects found with or near the body;

[1] Statutes 2000, chapter 284; Government Code sections 27521, 27521.1, Health and Safety Code section 102870, Penal Code section 14202.

[2] The terms "autopsy" and "postmortem exam," both in the test claim statute, are synonymous. "Autopsy" is primarily used hereafter.

(6) notations of observations pertinent to the estimation of the time of death; and
(7) precise documentation of the location of the remains.

The test claim legislation authorizes the examination or autopsy to include full body X-rays, and requires the coroner to prepare a final report of investigation in a format established by the Department of Justice (DOJ).

In addition, the jaws and other tissue samples must be removed and retained for one year after identification of the deceased, and no civil or criminal challenges are pending, or indefinitely. If the coroner is unable to establish the identity of the deceased, the coroner must (1) submit dental charts and dental X-rays of the unidentified body to the DOJ on forms supplied by the DOJ within 45 days of the date the body or human remains were discovered; and (2) submit the final report of investigation to the DOJ within 180 days of the date the body or remains were discovered. If the coroner cannot establish the identity of the body or remains, a dentist may examine the body or remains, and if the body still cannot be identified, the coroner must prepare and forward the dental examination record to DOJ. Law enforcement must report the death of an unidentified person to DOJ no later than 10 calendar days after the date the body or remains are discovered.

The test claim legislation was sponsored by the California Society of Forensic Dentistry in response to years of volunteer consultant work by members of the Society helping DOJ identify more than 2,200 unidentified dead persons in California. The sponsors argued that the ways in which evidence was collected or retained was inconsistent, and that information reported to the DOJ varied from very inadequate to extremely detailed. The sponsors also indicated that unidentified bodies had been buried or cremated without retaining evidence that could later assist in identifying them.[3]

Coroner duties: Each county in California performs the coroner's functions as defined in the California Government Code, the Health and Safety Code, the Penal Code and various other codes and regulations. The office of coroner may be elective or appointive,[4] or may be abolished and replaced by the office of medical examiner,[5] or may be consolidated with the duties of the public administrator, district attorney or sheriff! Coroners and deputy coroners are peace officers.[7]

Pre-1975 statutes require coroners to inquire into and determine the circumstances, manner and causes of certain types of deaths. The coroner's duty is to investigate these deaths and ascertain the cause and time of death, which must be stated on the death certificate? The types of death

---

[3] Senate Rules Committee, Office of Senate Floor Analyses, third reading analysis of Senate Bill No. 1736 (1999-2000 Reg. Sess.) as amended August 8, 2000, page 4.

[4] Government Code section 24009.

[5] Government Code section 24010. Any reference to "coroners" in this analysis includes medical examiners, deputy coroners, or peace officers that perform the same duties.

[6] Government Code section 24300.

[7] Penal Code section 830.35, subdivision (c).

[8] Health and Safety Code sections 102855 and 102860.

over which the coroner has jurisdiction, as listed in Government Code section 27491 and Health and Safety Code section 102850, are those that are:

- Violent, sudden or unusual;
- Unattended;
- Where the deceased has not been attended by a physician in the 20 days before death;
- Self-induced or criminal abortion;
- Known or suspected homicide, suicide or accidental poisoning;
- By recent or old injury or accident;
- Drowning, fire, hanging, gunshot, stabbing, cutting, exposure, starvation, acute alcoholism, drug addiction, strangulation, aspiration;
- Suspected sudden infant death syndrome;
- By criminal means;
- Associated with known or alleged rape or crime against nature;
- In prison or while under sentence;
- By known or suspected contagious disease constituting a public hazard;
- By occupational disease or hazard;
- Of a state mental hospital patient;
- Of a developmentally disabled patient in state developmental services hospital,
- Under circumstances as to afford a reasonable ground to suspect that the death was caused by the criminal act of another.
- Where the attending physician and surgeon or physician assistant is unable to state the cause of death.'

When the coroner investigates one of these types of deaths, he or she signs the death certificate." In deaths where it is reasonable to suspect criminal means, the coroner must report the death to local law enforcement, along with all information received by the coroner relating to the death. [11]

In order to carry out the duties of office in investigating death in accordance with applicable statutes, it is necessary that the coroner have wide discretion in ordering an autopsy when, in the coroner's judgment, it is the appropriate means of ascertaining the cause of death.[12] This is still true as evidenced by the express discretion granted the coroner in the statutory scheme. For example, the coroner has "discretion to determine the extent of inquiry to be made into any death occurring under natural circumstances" and falling within Government Code section 27491 (the types of death over which the coroner has jurisdiction).[13] The coroner also "may, in his or her discretion, take possession of the body.. . "[14] and "allow removal of parts of the body by a licensed physician and surgeon or trained transplant technician" for transplant or scientific

---

[9] Government Code section 27491 and Health and Safety Code section 102850.

[10] Government Code section 27491.

[11] Government Code section 27491.1.

[12] *Huntley v. Zurich General Acc. & Liability Ins. Co.* (1929) 100 Cal. App. 201, 213-2 14. 20 Opinions of the California Attorney General 145 (1952).

[13] Government Code section 27491.

[14] Government Code section 2749 1.4.

purposes, under certain conditions. [15] Currently, the only instances in which an autopsy is required by law, i.e., outside the coroner's discretion, is if a spouse (or if none, surviving child or parent or next of kin) requests it in writing,[16] or if the suspected cause of death is Sudden Infant Death Syndrome (SIDS).[17] Even in SIDS cases, the coroner has discretion in deciding whether to autopsy if the physician desires to certify the cause of death is SIDS. [18]

For unidentified bodies, existing law states that coroners shall forward dental examination records to the DOJ if all of the following apply: (1) the coroner investigates the death, (2) the coroner is unable to establish the identity of the body or remains by visual means, fingerprints or other identifying data, and (3) the coroner has a dentist conduct a dental examination of the body or remains and still cannot identify the deceased." Preexisting law authorizes but does not require law enforcement to submit dental or skeletal X-rays to DOJ for missing persons.[20]

A coroner may be liable for "omission of an official duty." [21] *In Davila v. County of Los Angeles,*[22] the county was found negligent for cremating a body without notifying kin. The court held that a coroner has a duty to act with reasonable diligence to locate a family member of a body placed in the coroner's custody before disposing of it. In *Davila,* the court started its analysis by restating and examining Government Code section 8 15.6:

> "[w]here a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty." For liability to attach under this statute, (1) there must be an enactment imposing a mandatory duty, (2) the enactment must be intended to protect against the risk of the kind of injury suffered by the individual asserting liability, and (3) the breach of the duty must be the cause of the injury suffered. [citation.]

In finding the mandatory duty to notify the family, the *Davila* court stated:

> [T]he existence of a mandatory duty is established by Government Code section 27471 subdivision (a): "Whenever the coroner takes custody of a dead body pursuant to law, he or she *shall make a reasonable attempt to locate the family."* [FN1] (Italics added.) The same duty is reflected in Health and Safety Code sections 7104 (when the person with the duty of interrnent "cannot *after reasonable diligence* be found . . . the coroner shall

---

[15] Government Code section 27491.45, subdivision (b).

[16] Government Code section 27520. This section states that the requestor pays the autopsy costs .

[17] Government Code sections 27491, subdivision (a) and 27491.41, subdivision (c).

[18] Government Code sections 27491.41, subdivision (c) (2).

[19] Health and Safety Code section 102870.

[20] Penal Code section 14206, subdivisions (a)(2) and (b).

[21] Code of Civil Procedure section 339 states the statute of limitations is two years. The duties are outlined in Government Code section 27491 and Health and Safety Code section 102850.

[22] *Davila* v. *County* of *Los Angeles* (1996) 50 Cal.App.4th 137, 143.

> inter the remains . . ..") and 7104.1 (if within "30 days after the coroner notifies or *diligently attempts to notify the person responsible for the interment* . . . the person fails, refuses, or neglects to inter the remains, the coroner may inter the remains"). (Italics added.) Quite clearly, the coroner had a mandatory duty to make a reasonable attempt to locate decedent's family. [citation.][23]

Davila implies a coroner also has a duty of reasonable diligence to identify a body because it is necessary to identify the deceased in order to locate the deceased's family.

Related programs: In 1979, California became the first state to implement a statewide Dental Identification Program to process dental records submitted by law enforcement agencies and coroners in California and other states. The DOJ classifies, indexes, and compares dental records of missing and unidentified persons against each other for matches.[24]

In 1998, the Legislature enacted the DNA and Forensic Identification Data Base and Data Bank Act to assist in prosecuting crimes and identifying missing persons. This database consists of DNA samples of those convicted of specified felonies.[25]

The DOJ administers the Violent Crime Information Center to assist in identifying and apprehending persons responsible for specific violent crimes, and for the disappearance and exploitation of persons, particularly children and dependent adults.[26]

The DOJ also keeps a DNA database in which law enforcement collects samples for DNA analysis voluntarily submitted by family members or relatives of a missing person, and the coroner collects samples from the unidentified deceased. Those samples are sent to DOJ for DNA analysis and comparison.[27]

Claimant's Position

Claimant contends that the test claim legislation constitutes a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution and Government Code section 175 14. Claimant seeks reimbursement for the activities related to postmortem examinations of unidentified bodies and human remains and reporting the death of unidentified persons to the DOJ. Specifically, claimant alleges the following activities are now required relating to a postmortem examination or autopsy:

---

[23] *Id.* at page 140.

[24] California Department of Justice, Office of the Attorney General's website <http://www.ag.ca.gov/missing/content/dental.htm> [as of April 18, 2003]. Former Health and Safety Code section 10254 (Stats. 1978, ch. 462) was repealed in 1995 (Stats. 1995, ch. 415).

[25] Penal Code section 295 et. seq. The list of felonies is in Penal Code section 296.

[26] Penal Code section 14200 et. seq.

[27] Penal Code section 14250. California Department of Justice, Office of the Attorney General's website <http://www.ag.ca.gov/missing/content/dna.htm> [as of April 18, 2003]. This program is the subject of the DNA database test claim filed by the County of San Bernardino (OO-TC-27).

- Develop policies and procedures for the initial and continuing implementation of the subject law;
- Perform autopsies, including any required microscopic, toxicology, and microbiological testing, photographs, fingerprints, tissue sampling for future DNA testing, X-ray notation at the time of death, location of the death, dental examination, and preparing the final report to the DOJ;
- Storage and autopsy samples under appropriate conditions, including tissue and fluids, in proper receptacles, and allowing access as necessary for periods of time as required by the autopsy protocol;
- Death scene investigation and related interviews, evidence collection, including specimens and photographs, and travel as required for the fulfillment of the requirements, including travel to pick up a body for autopsy, and to return the body to the original county, if it has been transported out of the county for autopsy;
- Train departmental personnel to prepare the final report to the DOJ;
- Participation in workshops within the state for ongoing professional training as necessary to satisfy standards required by the subject law.

Claimant notes that similar duties to those above were found reimbursable, as evidenced by the State Controller's Office Claiming Instructions for the "Sudden Infant Death Syndrome (SIDS) Autopsy Protocol Program."[28]

Claimant also responds to the DOF's contention (stated below) that the activities of the test claim legislation are discretionary by arguing that the coroner, under Government Code section 2749 1, has a statutory duty to "inquire into and determine the circumstances, manner, and cause of' death and conduct necessary inquiries to determine, among other things, whether the death was "violent, sudden, or unusual," "unattended," and if the deceased had "'not been attended by a physician in the 20 days before death." Claimant contends that this mandatory inquiry has been supplemented, pursuant to Government Code section 27521 of the test claim statute, to determine the identity of the deceased. Claimant states that prior to the test claim legislation certain activities, such as taking palm prints and hair samples, had been limited to homicide victims.

Claimant, in its 6/23/03 amendment to this test claim, comments that the coroner's duties are mandatory, not discretionary. Claimant states that irrespective of the type of postmortem inquiry, examination or autopsy employed by the coroner to complete the mandatory determination of the circumstances, manner and cause of death of an unidentified body or human remains pursuant to Government Code section 27491, further mandatory duties to identify the deceased were added by Government Code section 2752 1. Those duties include:

1. Taking all available fingerprints and palm prints;
2. A dental examination consisting of dental charts and dental X-rays of the deceased's teeth;
3. Collection of tissue, including a hair sample, or body fluid samples for future DNA tests;

---

[28] Claimant refers to CSM# 4393, a test claim on Statutes 1989, chapter 955, entitled ***Sudden Infant Death Syndrome Autopsies,*** which was found to be a reimbursable mandate.

4. Frontal and lateral facial photos with scale indicated;
5. Notation and photos, with a scale, of significant scars, marks, tattoos, clothing, or personal effects found with or near the body;
6. Notations of observations pertinent to estimating the time of death;
7. Precise documentation of location of the remains.

Claimant further commented that the remaining provisions of section 2752 1, as discussed below, are mandatory. Government Code section 2752 1, subdivision (b), which lists the seven activities above, is explicit in what a postmortem examination, for purposes of determining identity, shall include. According to claimant, before the test claim legislation, the following activities were not mandated: (1) frontal and lateral facial photos with scale indicated; (2) retention of jaws and other tissue samples for future possible use (as now required by subdivision (e) of section 27521); (3) storage of material used in positive identification of the body.

State Agency Position

In its comments on the test claim, DOF states that pursuant to Government Code section 27491, the decision by a coroner to examine unidentified remains (other than DNA sampling) is a discretionary act that is not required by the state, nor was it required prior to the test claim legislation. Any subsequent requirements, according to DOF, regarding autopsy procedures are only initiated when a coroner chooses to examine unidentified remains.

DOF argues that the investigating law enforcement agency's report to DOJ is discretionary because it is only initiated after the local agency exercises discretion to investigate a case. Thus, DOF concludes that this test claim does not contain a state mandate that has resulted in a new program or higher level of service and a reimbursable cost.

DOF did not comment on the draft staff analysis.

COMMISSION FINDINGS

In order for the test claim legislation to impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution and Government Code section 175 14, the statutory language must mandate a new program or an increased or higher level of service over the former required level of service. "Mandates" as used in article XIII B, section 6, is defined to mean "orders" or "commands."[29] The California Supreme Court has defined "program" subject to article XIII B, section 6 of the California Constitution 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.[30] 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.[31] Finally, the new program or increased level of service must impose "costs mandated by the state."[32]

---

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

[30] *County of Los Angeles v. State of California (1987) 43* Cal.3d 46, 56.

[31] *Lucia Mar Unified School Dist. v. Honig (1988) 44* Cal.3d 830, 835.

[32] Government Code section 175 14.

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 on local officials within the meaning of article XIII B, section 6 of the California Constitution?
- Does the test claim legislation impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?

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

A. Does the test claim legislation impose state-mandated duties?

Article XIII B, section 6 of the California Constitution provides, with exceptions not relevant here, 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." This constitutional provision was specifically intended to prevent the state from forcing programs on local government that require expenditure by local governments of their tax revenues.'[33] In this respect, the California Supreme Court and the courts of appeal have held that article XIII B, section 6 was not intended to entitle local agencies and school districts to reimbursement for all costs resulting from legislative enactments, but only those costs "mandated" by a new program or higher level of service imposed upon them by the state.[34]

To implement article XIII B, section 6, the Legislature enacted section 17500 and following. Section 175 14 defines "costs mandated by the state" as "any increased costs which a local agency or school district is required to incur . . . as a result of any statute. . . .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." Mandate is defined as ""orders" or "commands."[35] Thus, in order for a statute to be subject to article XIII B, section 6, the statutory language must command or order an activity or task on local governmental agencies. If the statutory language does not mandate coroners to perform a task, then compliance with the test claim statute is at the option of the coroner and a reimbursable state mandated program does not exist.

The question of whether a test claim statute is a state-mandated program within the meaning of article XIII B, section 6 is purely a question of law.[36] Thus, based on the principles outlined

---

[33] *County of Fresno v. State of California (1991) 53* Cal.3d 482, 487; *County of Los Angeles,* (1987) 43 Cal.3d *46, 56. County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, *56; County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283-*1284.*

[34] *Lucia Mar Unified School Dist., supra, 44* Cal.3d *830, 834; City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816.

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

[36] *City of San Jose v. State of California, supra,* 45 Cal. App .4th 1802, 1810.

below, when making the determination on this issue, the Commission, like the court, is bound by the rules of statutory construction.

Health and Safety Code section 102870: This section, enacted in 1995, requires coroners to forward dental examination records to the DOJ if all of the following apply: (1) the coroner investigates the death, (2) the coroner is unable to establish the identity of the body or remains by visual means, fingerprints or other identifying data, and (3) the coroner has a dentist conduct a dental examination of the body or remains and still cannot identify the deceased.

The test claim statute (Stats. 2000, ch. 284) technically amended subdivision (b) of section 102870 to refer to Government Code section 27521 and to the Violent Crime Information Center.[37] This amendment to the test claim statute does not impose any state-mandated duties on local agencies. Because this amendment to section 102870 imposes no state-mandated duty, the Commission finds that section 102870, as amended by Statutes 2000, chapter 284, is not subject to article XIII B, section 6.

Penal Code section 14202: This section, operative since 1989, requires the DOJ to maintain the Violent Crime Information Center. The test claim statute (Stats. 2000, ch. 284) technically amended Penal Code section 14202 by adding a reference to Government Code section 2752 1. This amendment to the test claim statute does not impose any state-mandated duties on local agencies. Therefore, because this amendment imposes no state-mandated duty, the Commission finds that Penal Code section 14202, as amended by Statutes 2000, chapter 284, is not subject to article XIII B, section 6.

Government Code section 27521: This section specifies that autopsies conducted at the discretion of the coroner shall include collecting identifying data on the unidentified body or human remains and reporting the data to DOJ. Subdivision (a) states that any autopsy conducted "at the discretion" of a coroner on an unidentified body or human remains shall be subject to section 2752 1.

Subdivision (b) states that county coroners are to include the following data in the discretionary autopsies:

1. All available fingerprints and palm prints;
2. A dental examination consisting of dental charts and dental X-rays of the deceased person's teeth, which may be conducted on the body or human remains by a qualified dentist as determined by the coroner;
3. The collection of tissue, including a hair sample, or body fluid samples for future DNA testing, if necessary;
4. Frontal and lateral facial photographs with the scale indicated;
5. Notation and photographs, with a scale, of significant scars, marks, tattoos, clothing items, or other personal effects found with or near the body;
6. Notations of observations pertinent to the estimation of the time of death;
7. Precise documentation of the location of the remains.

---

[37] As stated above under related programs, the Violent Crime Information Center is administered by DOJ to assist in identifying and apprehending persons responsible for specific violent crimes, and for the disappearance and exploitation of persons. (Pen. Code, § 14200 et. seq.).

Subdivision (c) states that the examination or autopsy "may include full body X-rays."

Subdivision (d) states the coroner shall prepare a final report of investigation in a format established by DOJ, to include the autopsy information in subdivision (b).

Subdivision (e) states:

> The body of an unidentified deceased person may not be cremated or buried until the jaws (maxilla and mandible with teeth) and other tissue samples are retained for future possible use. Unless the coroner has determined that the body of the unidentified deceased person has suffered significant deterioration or decomposition, the jaws shall not be removed until immediately before the body is cremated or buried. The coroner shall retain the jaws and other tissue samples for one year after a positive identification is made, and no civil or criminal challenges are pending, or indefinitely.

Subdivision (f) states:

> If the coroner with the aid of the dental examination and any other identifying findings is unable to establish the identity of the body or human remains, the coroner shall submit dental charts and dental X-rays of the unidentified deceased person to the Department of Justice on forms supplied by the Department of Justice within 45 days of the date the body or human remains were discovered.

Subdivision (g) states:

> If the coroner with the aid of the dental examination and other identifying findings is unable to establish the identity of the body or human remains, the coroner shall submit the final report of investigation to the Department of Justice within 180 days of the date the body or human remains were discovered.

As noted above, the DOF argues that pursuant to Government Code section 27491 (a pre-1975 statute that states the types of death over which the coroner has jurisdiction) the coroner's decision to examine unidentified remains (other than DNA sampling) is a discretionary act that is not required by the State, nor was it required prior to the test claim legislation. Any subsequent requirements, according to DOF, regarding autopsy procedures are only initiated when a coroner chooses to examine unidentified remains.

Claimant responds to DOF by arguing that the coroner, under Government Code section 2749 1, has a statutory duty to "inquire into and determine the circumstances, manner, and cause of' death and conduct necessary inquiries to determine, among other things, whether the death was "violent, sudden, or unusual," "unattended," and if the deceased had "not been attended by a physician in the 20 days before death." Claimant contends that these requirements have been supplemented, pursuant to Government Code section 27521 of the test claim statute, to determine the identity of the deceased.

Pursuant to the rules of statutory construction, courts and administrative agencies are required, when the statutory language is plain, to enforce the statute according to its terms. The California Supreme Court explained:

> In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. We begin by examining the statutory language, giving the words their usual and ordinary meaning. If the terms of the

> statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citations omitted][38]

Subdivision (a) of Government Code section 27521 states, "[a]ny postmortem examination or autopsy conducted *at the discretion* of a coroner upon an unidentified body or human remains shall be subject to this section." (Emphasis added.) The plain language of subdivision (a) is unambiguous in making the coroner's autopsy activities discretionary rather than mandatory.

If a local agency decision is discretionary, no state-mandated costs will be found. In *City of Merced v. State of California,*[39] in which the court determined that the city's decision to exercise eminent domain was discretionary so that no state reimbursement was required for loss of goodwill to businesses over which eminent domain was exercised, the court reasoned as follows:

> We agree that the Legislature intended for payment of goodwill to be discretionary. The above authorities reveal that whether a city or county decides to exercise eminent domain is, essentially, an option of the city or county rather than a mandate of the state. *The fundamental concept is that the city or county is not required to exercise eminent domain.* [Emphasis added.] [40]

The California Supreme Court has explained the *City of Merced* case as follows:

> [T]he core point articulated by the court in *City of Merced* is 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.[41]

The legislative history of Government Code section 27521 also indicates that its autopsy activities are not mandatory.

As introduced, the test claim legislation expressly required an autopsy in cases where the coroner could not otherwise identify the body. The original version of Senate Bill No. 1736 (Stats. 2000, ch. 284) amended Health and Safety Code section 102870, stating in relevant part:

> SECTION 1. Section 102870 of the Health and Safety Code is amended to read:
> 102870. *(a)* In deaths investigated by the coroner or medical examiner where he or she is unable to establish the identity of the body or human remains by visual means, fingerprints, or other identifying data, the coroner or medical examiner ~~may have a qualified dentist, as determined by the coroner or medical examiner, carry out a dental examination of the body or human remains.~~ *shall conduct a medical examination on the body or human remains that includes, but is not limited to, all the following procedures:* . . .

---

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

[39] *City of Merced v. State of California* (1984) 153 Cal. App. 3d 777, 783.

[40] *Ibid.*

[41] *Department of Finance v. Commission on State Mandates (2003) 30* Cal. 4th 727, 742.

The May 23, 2000 version amended the bill to move these unidentified body autopsy procedures to Government Code sections 2752 1, and to make the procedures discretionary.

Rejection of a specific provision contained in an act as originally introduced is most persuasive that the act should not be interpreted to include what was left out.[42] Since the bill originally required an autopsy for unidentified decedents, but was amended to make the decision to perform an autopsy discretionary (keeping consistent with the statutory scheme), the autopsy should not be interpreted to be a required activity.

Therefore, because Government Code section 27521 does not constitute a state mandate, the Commission finds that this statute is not subject to article XIII B, section 6. This includes all the activities of section 27521 because they are based on the coroner's discretion to autopsy, such as submitting autopsy data, submitting the final report of investigation, retention of jaws, and submitting dental records to DOJ.

Government Code section 27521.1: This section requires a local law enforcement agency investigating the death of an unidentified person to report the death to the DOJ no later than 10 calendar days after the date the body or human remains are discovered. Because this section imposes a reporting requirement on a local agency, the Commission finds that Government Code section 2752 1.1 imposes a state-mandated duty and is therefore subject to article XIII B, section 6. Therefore, this statute is further discussed below.

B. Does Government Code section 27521.1 qualify as a "program"?

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program," defined 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. [43] Only one of these findings is necessary to trigger article XIII B, section 6.[44]

Government Code section 2752 1.1 involves the duty of law enforcement agencies investigating the death of an unidentified person to report the death to DOJ no later than 10 days after the body or human remains are discovered. This is a program that provides governmental functions in the areas of public safety, criminal justice, crime and vital statistics, and location of missing persons.

Moreover, Government Code section 2752 1.1 imposes unique data collecting and reporting duties on local law enforcement agencies that do not apply generally to all residents and entities in the state. Therefore, the Commission finds that the test claim legislation constitutes a "program" within the meaning of article XIII B, section 6 of the California Constitution.

---

[42] *Bollinger* v. *San Diego Civil Service Comm.* (1999) 7 1 Cal. App. 4th *568, 575. Robert Woodbury v. Patricia Brown-Dempsy (2003)* 108 Cal. App. 4th 421, 436.

[43] *County of Los Angeles, supra, 43* Cal.3d 46, 56.

[44] *Carmel Valley Fire Protection Dist.* (1987) 190 Cal.App.3d 521, 537.

Issue 2: Does Government Code section 27521.1 impose a new program or higher level of service on local agencies within the meaning of article XIII B, section 6 of the California Constitution?

Article XIII B, section 6 of the California Constitution states, "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 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.[45]

Government Code section 27521.1, law enforcement agency report: This section requires a law enforcement agency investigating the death of an unidentified person to report the death to the DOJ, in a DOJ-approved fornat, within 10 days of discovery.

DOF stated that the investigating law enforcement agency's report to DOJ is discretionary because the local law enforcement agency first must choose to go forward with a criminal investigation. According to DOF, DOJ's report is only initiated after the local agency exercises discretion to investigate a case.

The Commission disagrees. Failure of peace officers to investigate criminal activities would be a dereliction of duty.[46] California law imposes on sheriffs the duty to "preserve peace,"[47] arrest "all persons who attempt to commit or who have committed a public offense,"[48] and "prevent and suppress any affrays, breaches of the peace, riots, and insurrections, and investigate public offenses which have been committed."[49] Police have the same duties.[50] These are mandatory duties, as evidenced by use of the word "shall" in the statutes?

Preexisting law requires law enforcement to report immediately to DOJ when a person reported missing has been found.[52] Also, for found children under 12 or found persons with evidence that they were at risk,[53] a report must be filed within 24 hours after the person is found. And if a missing person is found alive or dead within 24 hours and local law enforcement has reason to

---

[45] *Lucia Mar Unified School vDist. Hosupra, 44* Cal.3d 830, 835.

[46] *People v. Mejia* (1969) 272 Cal. App. 2d 486,490.

[47] Governrnent Code section 26600.

[48] Government Code section 26601.

[49] Government Code section 26602.

[50] Government Code section 4 160 1.

[51] Government Code section 14.

[52] Penal Code section 14207.

[53] Evidence that the person is at risk includes, but is not limited to, (1) The person missing is the victim of a crime or foul play. 2) The person missing is in need of medical attention. 3) The person missing has no pattern of running away or disappearing. (4) The person missing may be the victim of parental abduction. (5) The person missing is mentally impaired. (Pen. Code, § 14213, subd. (b).)

believe the person was abducted, local law enforcement must also report that information to the DOJ.[54] These statutes do not require the person to be found alive.

Given that law enforcement already had to report to DOJ findings of missing persons, the new activities for finding a deceased person are limited to those in which the deceased is over 12 and not a missing person with evidence of being at risk, as defined.

Thus, the Commission finds that it is a new program or higher level of service for local law enforcement investigating the death of an unidentified person to report the death to the DOJ, in a DOJ-approved format, within 10 calendar days of the date the body or human remains are discovered. The exceptions is for children under 12 or found persons with evidence that they were at risk, as defined by Penal Code section 142 13.

Issue 3: Does Government Code section 27521.1 impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?

In order for the activities listed above to impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, two criteria must apply. First, the activities must impose costs mandated by the state.[55] Second, no statutory exceptions as listed in Government Code section 17556 can apply. Government Code section 17514 defines "costs mandated by the state" as follows:

> . . . 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.

In its test claim, the claimant stated it would incur costs of over $200 per annum,[56] which was the standard under Government Code section 17564, subdivision (a) when the claim was filed.[57] There is no evidence in the record to rebut this declaration. In addition, the Commission finds that the exceptions to reimbursement in section 17556 do not apply here.

In summary, the Commission finds that Government Code section 27521.1 imposes costs mandated by the state pursuant to Government Code section 175 14.

---

[54] Penal Code section 14207.

[55] *Lucia Mar Unified School Dist., supra, 44* Cal.3d 830, 835. Government Code section 17514.

[56] Declaration of David Campbell, County of Los Angeles Coroner's Office.

[57] Currently the claim must exceed $1000 in costs. (Gov. Code, § 17564, subd. (a).)

CONCLUSION

The Commission finds that Government Code section 2752 1.1 imposes a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 175 14. The mandate is for local law enforcement investigating the death of an unidentified person to report the death to the DOJ, in a DOJ-approved format, within 10 calendar days of the date the body or human remains are discovered. The exception is for children under 12 or found persons with evidence that they were at risk, as defined by Penal Code section 142 13.

The Commission also finds that Government Code section 27521, Penal Code section 14202 and Health and Safety Code section 102870, as added or amended by Statutes 2000, chapter 284, do not constitute a reimbursable state-mandated program because they are not subject to article XIII B, section 6.

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 95 8 14.

September 26, 2003, I served the:

Adopted Statement of Decision
Postmortem Examinations: Unidentified Bodies, Human Remains, OO-TC-18
County of Los Angeles, Claimant
Government Code Sections 2752 1, 27521.1; Health and Safety Code Section 102870, Penal Code Section 14202; Statutes 2000, Chapter 284

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

Leonard Kaye, Esq.
County of Los Angeles
Auditor-Controller's Office
Kenneth Hahn Hall of Administration
500 West Temple Street, Room 525
Los Angeles, CA 90012-2766

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 26, 2003, at Sacramento, California.

Victoria Soriano

VICTORIA SORIANO