

ITEM 5
TEST CLAIM
FINAL STAFF ANALYSIS
AND

PROPOSED STATEMENT OF DECISION

Statutes 2006, Chapter 336 (SB 1178), amending Section 1202.8, and adding Sections 290.04, 290.05, and 290.06 of the Penal Code;

Statutes 2006, Chapter 337 (SB 1128), amending Sections 290, 290.3, 290.46, 1203, 1203c, 1203.6, 1203.075, and adding Sections 290.03, 290.04, 290.05, 290.06, 290.07, 290.08, 1203e, 1203f of the Penal Code;

Statutes 2006, Chapter 886 (SB 1849), amending Sections 290.46, 1202.8, repealing Sections 290.04, 290.05, and 290.06 of the Penal Code;

Statutes 2007, Chapter 579 (SB 172), amending Sections 290.04, 290.05, 290.3, and 1202.7, adding Sections 290.011, 290.012, and repealing and adding Section 290 to the Penal Code; and

California Department of Mental Health's Executive Order, SARATSO (State Authorized Risk Assessment Tool for Sex Offenders) Review Committee Notification, issued on February 1, 2008

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO)

08-TC-03

County of Los Angeles, Claimant

EXECUTIVE SUMMARY

Attached is the proposed statement of decision for this matter. This proposed statement of decision also functions as the final staff analysis, as required by section 1183.07 of the Commission on State Mandates (Commission's) regulations.

Overview

This test claim alleges reimbursable state-mandated increased costs resulting from additions and amendments made to the Penal Code by the Sex Offender Punishment, Control, and Containment Act of 2006¹ and the Sex Offender Registration Act.^{2,3} In addition, the test claim

¹ Statutes 2006, chapter 337 (SB 1128), and amendments made by Statutes 2006, chapter 886 (AB 1849).

² Statutes 2007, chapter 579 (SB 172).

³ Statutes 2006, chapter 336 (SB 1178) is also pled, but three of the code sections addressed in that statute were repealed prior to this test claim being filed, and the other two were subsequently

alleges that the SARATSO Review Committee Notification, issued February 1, 2008, imposes a reimbursable state mandate.

The test claim statutes generally provide for the establishment of a statewide system of risk assessment to be applied to convicted sex offenders. The statutes provide for a committee to select an appropriate risk assessment tool for each population (adult males, adult females, juvenile males, and juvenile females), which will be known as the State Authorized Risk Assessment Tool for Sex Offenders, or SARATSO. The test claim statutes require a statewide committee to develop a training program for those who will administer the SARATSO assessments, and require those persons in turn to be trained at least every two years. Then, when a person is convicted of an offense requiring registration as a sex offender, the SARATSO is utilized to assess the risk of that person committing future sex crimes, so that the higher-risk offenders can be more adequately supervised while on probation or parole. The test claim statutes provide for electronic monitoring of the highest-risk offenders, as well as “intensive and specialized probation supervision.” And finally, the test claim statutes require probation departments to report to statewide authorities regarding the effectiveness of continuous monitoring, and the costs of monitoring weighed against the results in reducing recidivism, and require all relevant agencies to grant reciprocal access to records and information pertaining to a sex offender subject to SARATSO assessment.

Procedural History

On January 22, 2009, the County of Los Angeles (County) filed this test claim. On March 25, 2009, the Department of Finance (Finance) submitted written comments on the test claim, suggesting that some or all of the SARATSO requirements should not be reimbursable consistent with section 17556(g), because the statutes are related to the expansion of crimes or penalties for crimes. On June 8, 2009, the County submitted a written rebuttal to Finance’s comments, asserting that section 17556(g) does not bar reimbursement because the activities required by the test claim statutes are not limited to probationers. On October 11, 2013, the draft staff analysis and proposed statement of decision was issued for comment. On October 25, 2013, the County requested an extension of time to file comments and postponement of the hearing, which was granted for good cause. On December 2, 2013, Finance submitted comments on the draft staff analysis, concurring with staff’s recommendations and findings that the test claim statutes imposed a partially reimbursable state mandate. No comments were filed by the County or any other local agency.

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. “Test claim” means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class

amended. Therefore, the requirements of Statutes 2006, chapter 336 (SB 1178) are addressed as amended.

actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6. In making its decisions, the Commission cannot apply article XIII B as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.⁴

Claims

The County of Los Angeles alleges that the test claim statutes and executive order impose reimbursable state-mandated increased costs for county probation departments to provide “new probation services;” to be trained in the use of the SARATSO; to perform a presentencing risk assessment of every person convicted of an offense requiring registration as a sex offender; to compile a Facts of Offense Sheet for persons convicted of registerable offenses; to place individuals who are determined to present a high risk of recidivism on intensive and specialized probation; and to ensure that an assessment using the SARATSO is performed for each person convicted of a felony that requires him or her to register as a sex offender, in order to determine the person’s risk of reoffending.⁵

The following chart provides a brief summary of the claims and issues raised and staff’s recommendation.

Subject	Description	Staff Recommendation
Penal Code sections 290.3, 290.46, 1203.6, and 1203.075	Section 290.3 addresses fines for sex offenses but does not require any activities of local agencies. Section 290.46 addresses the DOJ sex offender registry. Sections 1203.06 and 1203.075 provide specific prohibitions against sentencing a person to probation for certain crimes when certain criteria are met.	<i>Deny</i> —These sections do not impose any state-mandated requirements on local agencies and claimant does not allege any activities specific to these sections.
Penal Code section 290.03 (added, Stats. 2006, ch. 337 (SB 1128))	Section 290.03 provides the Legislature’s findings and declarations regarding the need for a “comprehensive system of risk assessment, supervision, monitoring and containment,” and states that the Legislature “hereby creates” a statewide system to identify, assess, monitor and contain known sex offenders for the purpose of reducing the risk of recidivism.	<i>Deny</i> – Section 290.03 does not impose any state-mandated requirements upon county probation departments; the section only states the Legislature’s findings and declarations.
Penal Code section 290.04 (added,	Section 290.04 states that the sex offender risk assessments tools selected for each population (e.g., adult males, juveniles) shall be known as the State-Authorized Risk Assessment Tool for	<i>Deny</i> – Section 290.04 does not impose any state-mandated requirements on county probation

⁴ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802.

⁵ Exhibit A, Test Claim, at pp. 7-8.

Stats. 2006, ch. 337 (SB 1128); amended, Stats. 2007, ch. 579 (SB 172))	Sex Offenders (SARATSO). Section 290.04 also provides that every person required to register as a sex offender under section 290 shall be subject to assessment under the SARATSO, and that a Review Committee shall be established to select an appropriate SARATSO test for each population.	departments; it only provides for the creation of the Review Committee and defines the SARATSO.
Penal Code section 290.05 (added, Stats. 2006, ch. 337 (SB 1128); amended, Stats. 2007, ch. 579 (SB 172))	Section 290.05 provides for a SARATSO Training Committee, charged with developing a training program and protocol for persons authorized by statute to administer the SARATSO. The section requires CDCR, DMH, county probation departments, and authorized local law enforcement agencies to designate personnel to attend training and train others, and requires that all persons administering the SARATSO receive training no less frequently than every two years.	<i>Partially approve</i> – Section 290.05 imposes a reimbursable state mandate on probation departments and authorized local law enforcement agencies to designate key persons within the organization to attend training and to train others, and to ensure that all persons within the department who administer the SARATSO receive training no less frequently than every two years.
Penal Code section 290.06 (added, Stats. 2006, ch. 337 (SB 1128)); Penal Code section 1203 (amended, Stats. 2006, ch. 337 (SB 1128)); Executive Order, SARATSO Review Committee Notification, issued February 1, 2008	Section 290.06 provides that CDCR, DMH, and local probation departments shall administer the SARATSO to all persons under their supervision and custody, and that probation departments shall administer the SARATSO to all persons for whom a presentencing report is prepared pursuant to section 1203. Section 1203 requires a probation department to investigate and prepare a presentencing report for the court when a person is convicted of certain offenses; when the offense is one that requires a person to register under section 290, the probation report is required to include the results of the SARATSO administered pursuant to sections 290.04 to 290.06, if applicable. The alleged executive order announces the Review Committee's determination of an appropriate risk assessment tool, or SARATSO, for adult males and juvenile males, but states that an objective and verifiable tools is not selected for female sex offenders. Section 290.04 provides that if a SARATSO is not identified for a given population any duties to	<i>Partially approve</i> – Sections 290.06 and 1203 impose a reimbursable state mandate on county probation departments to perform SARATSO evaluations and include the results of those evaluations in presentencing reports for adult male offenders and juvenile male offenders, beginning July 1, 2008. These activities are not barred from reimbursement by Government Code section 17556(g), because these activities constitute administrative functions that are not directly related to the enforcement of criminal laws or the augmentation of criminal penalties.

	administer the SARATSO found elsewhere in the Penal Code do not apply.	
Penal Code section 1203c (amended, Stats. 2006, ch. 337 (SB 1128))	Section 1203c provides that if a person is committed to the jurisdiction of the CDCR, the probation officer shall include in the report the results of the SARATSO evaluation performed pursuant to sections 290.04 to 290.06, if applicable.	<i>Approve</i> – Section 1203c imposes a reimbursable state mandate on county probation departments to include the results of the SARATSO evaluation in the report sent to CDCR.
Penal Code section 1203e (added, Stats. 2006, ch. 337 (SB 1128))	Section 1203e requires a probation department, beginning June 1, 2010, to compile a Facts of Offense Sheet for every person convicted of an offense that requires him or her to register as a sex offender. The Facts of Offense Sheet shall include the results of the SARATSO, “if required,” and shall be included in the probation officer’s report to the court and shall be sent to the Department of Justice Sex Offender Tracking Program within 30 days of conviction. The section also requires the CDCR or the DMH to send a copy of the Facts of Offense Sheet to the local law enforcement agency of the community into which the person is released or paroled within three days of release.	<i>Approve</i> – Section 1203e imposes a reimbursable state mandate on county probation departments to compile the Facts of Offense Sheet, including the results of the SARATSO, if applicable, and to send the Facts of Offense Sheet to the Department of Justice Sex Offender Tracking Program. These activities are not barred from reimbursement by section 17556(g), because they are not directly related to the enforcement of criminal laws or the augmentation of criminal penalties.
Penal Code section 1203f (added, Stats. 2006, ch. 337 (SB 1128))	Section 1203f provides that a probation department shall ensure that all probationers under active supervision who are deemed to pose a high risk to the public of committing sex crimes, as determined by the SARATSO, are placed on intensive and specialized probation supervision and are required to report frequently to designated officers.	<i>Deny</i> – Section 1203f imposes new activities on local agencies, but those activities relate directly to the enforcement of the underlying sex crime law and the augmentation of criminal penalties. Therefore section 17556(g) prohibits a finding of costs mandated by the state.
Penal Code section 1202.8 (added,	Section 1202.8 provides that persons on probation who have been assessed with the SARATSO and determined to have a risk level of high shall be continuously electronically monitored while on	<i>Partially Approve</i> – Section 1202.8 requires county probation departments to perform new activities to

<p>Stats. 2006, ch. 336 (SB 1178); amended, Stats. 2006, ch. 886 (AB 1849))</p>	<p>probation. Section 1202.8 also requires that beginning January 1, 2009, and every two years thereafter, a probation department shall report to the Corrections Standards Authority regarding the effectiveness of continuous electronic monitoring in reducing recidivism.</p>	<p>continuously electronically monitor high risk sex offenders, and to report to the Corrections Standards Authority on the effectiveness of such monitoring at every two years. However, continuous electronic monitoring of probationers relates directly to the enforcement of the underlying sex crime law and augmentation of criminal penalties and is therefore barred from reimbursement by section 17556(g). However, the report required every two years to the Corrections Standards Authority is a new mandated activity, is administrative in nature, and not barred by section 17556(g) and so imposes a reimbursable state-mandate.</p>
<p>Penal Code sections 290, 290.011, 290.012, and 1202.7 (as amended, Stats. 2007, ch. 579 (SB 172))</p>	<p>Section 290 requires every person who has been or is hereafter convicted of one of the specified sex crimes to register with the local police or sheriff's department in the community in which the person is residing. Section 290.011, as amended, requires a person living as a transient to re-register every thirty days. Section 290.012 requires a person adjudicated to be a sexually violent predator to update his or her registration every 90 days. Section 1202.7 provides that "[i]t is the <i>intent of the Legislature</i> that <i>efforts be made</i> with respect to persons who are subject to Section 290.011 who are on probation to <i>engage them in treatment</i>."</p>	<p><i>Deny</i> – Sections 290, 290.011, and 290.012 are pled only to provide context and reference for section 1202.7, and do not impose any state-mandated activities on county probation departments. Section 1202.7 also does not impose any requirements on local agencies based on the plain language, and in any event section 1202.7 is not new. The amendments made by Statutes 2007, chapter 579 (SB 172) were made to ensure that section 1202.7 correctly references section 290.011, as that</p>

		section was renumbered.
Penal Code section 290.07 (added by Stats. 2006, ch. 337 (SB 1128))	Section 290.07 requires that a person authorized by statute to administer the SARATSO shall be granted access to all relevant records pertaining to a registered sex offender, including, but not limited to judicial records, police reports, probation and presentencing reports, psychiatric hospital reports, and records sealed by the courts or the Department of Justice.	<i>Partially Approve</i> – Section 290.07 imposes new requirements on local agencies to provide access to records pertaining to a registered sex offender to any person authorized to administer the SARATSO. However, the claimant has submitted evidence only that the County probation department first incurred costs under section 290.07 within 12 months of the filing date of this test claim. Therefore section 290.07 is denied with respect to all other agencies, and approved for reimbursement only for probation departments.
Penal Code section 290.08 (added by Stats. 2006, ch. 337 (SB 1128))	Section 290.08 requires a District Attorney's office to retain records relating to a conviction for a registerable sex offense for 75 years after disposition of the case.	<i>Deny</i> – Section 290.08 imposed a requirement on District Attorneys' offices to retain records of convictions for registerable sex offenses for 75 years effective September 20, 2006. There, is no evidence in the record to support a finding that District Attorneys' offices first incurred costs to implement this requirement within 12 months of the filing date of this test claim, as required by section 17551.

Analysis

A. The Commission Has Jurisdiction Over the 2006 Test Claim Statutes as Specified, Because Claimant First Incurred Costs In February 2008.

Government Code section 17551(c) establishes the statute of limitations for the filing of test claims as follows:

Local agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.

Section 1183(c) of the Commission's regulations provides, accordingly, that "'within 12 months' means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant."⁶

The effective date of Statutes 2006, chapter 336 (SB 1178), and Statutes 2006, chapter 337 (SB 1128), both enacted as urgency measures, is September 20, 2006. Statutes 2006, chapter 886 (AB 1849) was enacted as urgency legislation September 30, 2006. Therefore, "within 12 months," as defined in the Commission's regulations would be by June 30, 2008. This test claim was filed on January 22, 2009, several months beyond the statute of limitations provided in section 17551 and section 1183 of the Commission's regulations, based on the effective date of the test claim statutes.

However, some activities required by the test claim statutes, including conducting SARATSO assessments, were not required to be performed until July 1, 2008. Additionally, the claimant has declared under penalty of perjury that "[c]ounty probation officers began incurring SARATSO costs during February 2008 and, [sic] so this test claim, filed on January 9, 2009, within one year of the date the County began incurring such costs is timely filed in accordance with Government Code Section 17553."⁷ There is no evidence in the record to rebut the County's declaration with regard to costs first incurred by the probation department in February 2008.

Moreover, training activities, and any activities that rely on being first trained, could not have been performed by any local agency prior to February 1, 2008, when the alleged executive order was issued. The SARATSO Review Committee Notification identified the SARATSO for certain populations and invited local agencies to designate personnel to receive training and begin to train others to meet the July 1, 2008 implementation date. The plain language of the statutes requires that local agency personnel administering the SARATSO receive training to administer the SARATSO, and the plain language of the alleged executive order makes clear that probation departments and authorized local law enforcement agencies were expected to begin training activities on or after February 1, 2008. Therefore, the statute of limitations is satisfied as to activities imposed by the test claim statutes on probation departments, and for the training activities of probation departments and authorized local law enforcement agencies that could not have been performed prior to the issuance of the executive order inviting the local agencies to

⁶ Code of Regulations, title 2, section 1183 (Register 2003, No. 17).

⁷ Exhibit A, Test Claim, at p. 42.

attend training on the identified SARATSO. Section 290.08, as added by Statutes 2006, chapter 337, does not impose any requirements on probation departments, and does not rely on the issuance of the alleged executive order, and therefore the Commission declines to take jurisdiction. Section 290.07 is addressed below only with respect to probation departments.

Based on the foregoing, the Commission does not have jurisdiction of Statutes 2006, chapters 336, 337, and 886 (SB 1178; SB 1128; AB 1849), except those activities required of county probation departments, and those activities that could not be performed prior to the issuance of the alleged executive order on February 1, 2008.

B. Some of the Test Claim Statutes, Triggered by the Executive Order, Impose New Required Activities on Local Agencies.

Penal Code sections 290.3, 290.46, 1203.6, and 1203.075 are included in the caption in Box 4 of the test claim form, but are not addressed in the claimant's narrative. Moreover, staff finds that the plain language of these sections does not impose any new activities on local government, and therefore recommends these sections be denied.

Section 290.04 provides for a Review Committee to select an appropriate risk assessment tool for each population of sex offenders, and identifies a SARATSO for adult males to be used in the interim, while the Committee evaluates whether to supplement that tool. The section further provides that if a tool "has not been selected for a given population pursuant to this section, no duty to administer the SARATSO elsewhere in the code shall apply with respect to that population." Section 290.05 requires that every person administering the SARATSO be trained no less frequently than every two years, and requires the SARATSO Training Committee to develop a training program for administering the SARATSO, while the alleged executive order demonstrates that issuance of the Review Committee's findings was a necessary prerequisite to the development of any training program. Therefore, staff finds that while the executive order does not in itself mandate any activities, it sets in motion all other requirements of the test claim statutes, including and especially the training requirements; and the executive order limits the requirement to administer the SARATSO to only male offenders, because no risk assessment tool is identified for female offenders. Therefore, staff finds that some of the test claim statutes impose new required activities on local agencies, primarily triggered by the executive order, as follows:

For county probation departments and authorized local law enforcement agencies, beginning February 1, 2008, to:

1. Designate key persons within their organizations to attend training and, as authorized by the department, to train others within their organizations;⁸ and,
2. Ensure that persons administering the SARATSO receive training no less frequently than every two years.⁹

⁸ Penal Code section 290.05 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)); SARATSO Review Committee Notification, issued February 1, 2008).

⁹ Penal Code section 290.05 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)); SARATSO Review Committee Notification, issued February 1, 2008).

For county probation departments to:

1. Assess, using the SARATSO, as set forth in section 290.04, every eligible person for whom the department prepares a presentencing report pursuant to section 1203 and every eligible person under the department's supervision who was not assessed pursuant to a presentencing report, prior to the termination of probation but no later than January 1, 2010.¹⁰
2. Include the results of the SARATSO assessment administered pursuant to sections 290.04 to 290.06 in the presentencing report made to the court pursuant to section 1203, if the person was convicted of an offense that requires him or her to register as a sex offender, or if the probation report recommends that registration be ordered at sentencing.¹¹

Preparing the presentencing report under section 1203 is not a new activity.

3. Include in the report prepared for the department pursuant to section 1203c the results of the SARATSO, administered pursuant to sections 290.04 to 290.06, inclusive, if applicable, whenever a person is committed to the jurisdiction of the Department of Corrections and Rehabilitation for a conviction of an offense that requires him or her to register as a sex offender.¹²

Preparing the report under section 1203c is not a new activity.

4. Beginning January 1, 2010:
 - (a) Compile a Facts of Offense Sheet for every person convicted of an offense that requires him or her to register as a sex offender and who is referred to the department pursuant to section 1203;
 - (b) Include in the Facts of Offense Sheet all of the information specified in section 1203e, including the results of the SARATSO, as set forth in section 290.04, if required;
 - (c) Include the Facts of Offense Sheet in the probation officer's report to the court made pursuant to section 1203; and
 - (d) Send a copy of the Facts of Offense Sheet to the Department of Justice Sex Offender Tracking Program within 30 days of the person's sex offense conviction.

¹⁰ Penal Code section 290.06 (Stats. 2006, ch. 337 (SB 1128)); 290.04 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)) [limiting duty to administer SARATSO to populations for whom an appropriate tool has been selected pursuant to Penal Code section 290.04]; SARATSO Review Committee Notification issued February 1, 2008 [selecting a SARATSO risk assessment tool for adult males and juvenile males only].

¹¹ Penal Code section 1203 (as amended, Stats. 2006, ch. 337 (SB 1128)).

¹² Penal Code section 1203c (as amended, Stats. 2006, ch. 337 (SB 1128)).

*Obtaining information required to complete the presentencing report pursuant to section 1203, as amended by Statutes 1996, chapter 719 (AB 893), or the report to the Department of Corrections and Rehabilitation under section 1203c if applicable, as amended by Statutes 1963, chapter 1785 is not new or reimbursable under this activity.*¹³

5. Ensure that all probationers under active supervision who are deemed to pose a high risk to the public of committing sex crimes as determined by the SARATSO are placed on intensive and specialized supervision and required to report frequently to designated officers.¹⁴
6. Beginning January 1, 2009, continuously electronically monitor probationers determined pursuant to the SARATSO to have a high risk of recidivism.¹⁵
7. Beginning January 1, 2009, and every two years thereafter, report to the Corrections Standards Authority all relevant statistics and relevant information regarding the effectiveness of continuous electronic monitoring of sex offenders, including the costs of monitoring and recidivism rates of those persons who have been monitored.¹⁶
8. Grant access to all relevant records pertaining to a registered sex offender to any person authorized by statute to administer the SARATSO.¹⁷

This activity is limited to granting access to records exempt from disclosure under the California Public Records Act (Government Code § 6250, et seq.).

C. Some of the New Required Activities Impose a Reimbursable State-Mandated Program Within the Meaning of Article XIII B, Section 6 and Government Code Section 17514.

Article XIII B, section 6 of the California Constitution states, in part, that the Legislature “may, but need not, provide a subvention of funds for...[l]egislation defining a new crime or changing an existing definition of a crime.” Section 17556(g) provides that the Commission “shall not find” costs mandated by the state if the test claim statute “created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.” The inclusion of subdivision (g) within the statutory exclusions (sometimes called “disclaimers”) of section 17556 constitutes the “exercise of the Legislative discretion authorized by article XIII B,

¹³ Penal Code section 1203e (added, Stats. 2006, ch. 337 (SB 1128)).

¹⁴ Penal Code section 1203f (added, Stats. 2006, ch. 337 (SB 1128)).

¹⁵ Penal Code section 1202.8 (amended, Stats. 2006, ch. 337 (SB 1128)).

¹⁶ Penal Code section 1202.8 (as amended, Stats. 2006, ch. 337 (SB 1128)).

¹⁷ Penal Code section 290.07 (added, Stats. 2006, ch. 337 (SB 1128)).

section 6” whether to provide a subvention of funds for statutes that create, eliminate, or change the penalty for a crime or infraction.¹⁸

The plain language and intent of section 17556(g), along with the statutory and case law determinations that probation is a form of criminal punishment, and a sentencing device,¹⁹ result in a working rule and analysis that required changes to the *duration or conditions of probation* that result in increased costs to local agencies are subject to the exclusion in Government Code section 17556(g), and therefore not reimbursable. However, administrative activities imposed on probation departments can constitute a reimbursable “program,” within the meaning of article XIII B, section 6, if those activities do not directly relate to the enforcement of a criminal law or a change in the duration or conditions of a criminal penalty.

1. Training requirements under section 290.05; reporting to Corrections Standards Authority under section 1202.8; and granting access to relevant records under section 290.07 are administrative functions performed by local agencies pursuant to the test claim statutes, and are not directly related to the creation, expansion, or elimination of crimes or penalties for crimes, and therefore are not barred from reimbursement by Government Code section 17556(g).

The plain language of section 17556(g) does not bar a finding of costs mandated by the state for training, reporting, and granting access to relevant records to other agencies and personnel, under sections 290.05, 1202.8, and 290.07. These activities are not related to the expansion or elimination of crime, or the enhancement or elimination of punishment and, thus, Government Code section 17556(g) does not apply. Staff finds that these activities constitute mandated new programs or higher levels of service and result in costs mandated by the state for local agencies, as specified.

2. Administering SARATSO assessments under section 290.06; including the results of the SARATSO assessments in presentencing reports prepared under section 1203; including the results of the SARATSO assessments in reports submitted to the Department of Corrections and Rehabilitation under section 1203c; and compiling a Facts of Offense Sheet under section 1203e, including the results of the SARATSO assessment, where applicable, and including the Facts of Offense Sheet in the presentencing report required by section 1203, are activities performed after conviction, and which may have an impact on the sentence given, but these activities are not *directly related* to the enforcement of crime or the expansion of the definition of crime or enhancement of penalties.

Activities related to administering the SARATSO under section 290.06, and including the SARATSO results in presentencing reports, reports made to CDCR, and the Facts of Offense Sheet included in a presentencing report are all *administrative functions* whose costs *do not result* from a statute altering the duration or conditions of the penalty. In addition, preparation of the Facts of Offense Sheet, which is new as of January 1, 2010, by the plain language of section 1203e, is an administrative activity, not directly related to the enforcement of crime or any change in penalties. Although the activities related to administering the SARATSO and

¹⁸ *County of Contra Costa v. State of California* (Cal. Ct. App. 3d Dist. 1986) 177 Cal.App.3d 62, at p. 67, Fn 1.

¹⁹ *County of Orange, supra*, 167 Cal.App.3d 660, at p. 667.

preparing these reports may result in an augmented or mitigated punishment (which may entail increased costs), and may result in changed conditions of probation, as discussed below, the activities for which reimbursement is sought under sections 290.06, 1203, 1203c, and 1203e are not directly related to these changed penalties.

Staff finds that these activities constitute mandated new programs or higher levels of service and result in costs mandated by the state for probation departments, as specified.

3. Continuously electronically monitoring high risk sex offenders under section 1202.8, and ensuring that high risk sex offenders are placed under intensive and specialized supervision under section 1203f, are activities directly related to the penalty for the sex crime, and are not reimbursable under section 17556(g).

Section 1202.8 requires local probation departments, beginning January 1, 2009, to continuously electronically monitor sex offenders while on probation who assess at a high risk level under the SARATSO. Electronic monitoring is thus a condition of probation, and facially presents a greater deprivation of liberty, and therefore constitutes a change in the penalty for the underlying crimes. Based on the plain language of section 17556(g), the costs of electronic monitoring under section 1202.8 are not costs mandated by the state, within the meaning of section 17514.

Likewise, section 1203f requires county probation departments to place sex offenders who are on probation and who pose a high risk to the public pursuant to the SARATSO on “intensive and specialized probation,” and to require such probationers “to report frequently to designated probation officers.” These requirements are conditions of probation placed on a subset of probationers, as specified, and therefore constitute a change in the penalty for the underlying crimes. Based on the plain language of section 17556(g), the costs of providing “intensive and specialized probation” services are not costs mandated by the state, within the meaning of section 17514.

Based on the foregoing, staff finds that sections 1202.8 and 1203f require county probation departments to perform activities, but that under Article XII B, section 6(a)(2) of the constitution and Government Code section 17556(g), the costs for continuous electronic monitoring of high risk sex offenders and placing high risk sex offenders on intensive and specialized probation supervision are exempt from the subvention requirement. Therefore, staff finds that sections 1202.8 and 1203f do not impose a reimbursable new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

Conclusion

Staff finds that the test claim statutes and executive order impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities:

For county probation departments and authorized local law enforcement agencies, beginning February 1, 2008, to:

1. Designate key persons within their organizations to attend training and, as authorized by the department, to train others within their organizations;²⁰ and,
2. Ensure that persons administering the SARATSO receive training no less frequently than every two years.²¹

For county probation departments to:

1. Assess, using the SARATSO, as set forth in section 290.04, every eligible person for whom the department prepares a presentencing report pursuant to section 1203 and every eligible person under the department's supervision who was not assessed pursuant to a presentencing report, prior to the termination of probation but no later than January 1, 2010.²²
2. Include the results of the SARATSO assessment administered pursuant to sections 290.04 to 290.06 in the presentencing report made to the court pursuant to section 1203, if the person was convicted of an offense that requires him or her to register as a sex offender, or if the probation report recommends that registration be ordered at sentencing.²³

Preparing the presentencing report under section 1203 is not a new activity and, thus, not eligible for reimbursement.

3. Include in the report prepared for the department pursuant to section 1203c the results of the SARATSO, administered pursuant to sections 290.04 to 290.06, inclusive, if applicable, whenever a person is committed to the jurisdiction of the Department of Corrections and Rehabilitation for a conviction of an offense that requires him or her to register as a sex offender.²⁴

Preparing the report under section 1203c is not a new activity and, thus, not eligible for reimbursement.

²⁰ Penal Code section 290.05 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)); SARATSO Review Committee Notification, issued February 1, 2008).

²¹ Penal Code section 290.05 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)); SARATSO Review Committee Notification, issued February 1, 2008).

²² Penal Code section 290.06 (Stats. 2006, ch. 337 (SB 1128)); 290.04 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)) [limiting duty to administer SARATSO to populations for whom an appropriate tool has been selected pursuant to section 290.04]; SARATSO Review Committee Notification issued February 1, 2008 [selecting a SARATSO risk assessment tool for adult males and juvenile males only].

²³ Penal Code section 1203 (as amended, Stats. 2006, ch. 337 (SB 1128)).

²⁴ Penal Code section 1203c (as amended, Stats. 2006, ch. 337 (SB 1128)).

4. Beginning January 1, 2010:
 - (a) Compile a Facts of Offense Sheet for every person convicted of an offense that requires him or her to register as a sex offender and who is referred to the department pursuant to section 1203;
 - (b) Include in the Facts of Offense Sheet all of the information specified in section 1203e, including the results of the SARATSO, as set forth in section 290.04, if required;
 - (c) Include the Facts of Offense Sheet in the probation officer's report to the court made pursuant to section 1203; and
 - (d) Send a copy of the Facts of Offense Sheet to the Department of Justice Sex Offender Tracking Program within 30 days of the person's sex offense conviction.

*Obtaining information required to complete the presentencing report pursuant to section 1203, as amended by Statutes 1996, chapter 719 (AB 893), or the report to the Department of Corrections and Rehabilitation under section 1203c if applicable, as amended by Statutes 1963, chapter 1785 is not new or reimbursable under this activity.*²⁵

5. Beginning January 1, 2009, and every two years thereafter, report to the Corrections Standards Authority all relevant statistics and relevant information regarding the effectiveness of continuous electronic monitoring of sex offenders, including the costs of monitoring and recidivism rates of those persons who have been monitored.²⁶
6. Grant access to all relevant records pertaining to a registered sex offender to any person authorized by statute to administer the SARATSO.²⁷

This activity is limited to granting access to records exempt from disclosure under the California Public Records Act (Government Code § 6250, et seq.).

All other statutes, regulations, and activities pled in this test claim do not constitute reimbursable state-mandated programs subject to article XIII B, section 6 of the California Constitution and are, therefore, denied.

Staff Recommendation

Staff recommends that the Commission adopt the attached proposed statement of decision as its test claim decision, partially approving reimbursement for the activities required by the test claim statutes and executive order, as specified.

Staff further recommends that the Commission authorize staff to make any non-substantive, technical changes to the proposed test claim decision following the hearing.

²⁵ Penal Code section 1203e (added, Stats. 2006, ch. 337 (SB 1128)).

²⁶ Penal Code section 1202.8 (as amended, Stats. 2006, ch. 337 (SB 1128)).

²⁷ Penal Code section 290.07 (added, Stats. 2006, ch. 337 (SB 1128)).

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Statutes 2006, Chapter 336 (SB 1178), amending Section 1202.8, and adding Sections 290.04, 290.05, and 290.06 of the Penal Code; Statutes 2006, Chapter 337 (SB 1128), amending Sections 290, 290.3, 290.46, 1203, 1203c, 1203.6, 1203.075, and adding Sections 290.03, 290.04, 290.05, 290.06, 290.07, 290.08, 1203e, 1203f of the Penal Code; Statutes 2006, Chapter 886 (SB 1849), amending Sections, 290.46, 1202.8, repealing Sections 290.04, 290.05, and 290.06 of the Penal Code; Statutes 2007, Chapter 579 (SB 172) amending Sections 290.04, 290.05, 290.3, and 1202.7, adding Sections 290.011, 290.012, and repealing and adding Section 290 to the Penal Code; and California Department of Mental Health's Executive Order, SARATSO (State Authorized Risk Assessment Tool for Sex Offenders) Review Committee Notification, issued on February 1, 2008

Filed on January 22, 2009

By County of Los Angeles, Claimant.

Case No.: 08-TC-03

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO)

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 January 24, 2014)

PROPOSED STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on January 24, 2014. [Witness list will be included in the final statement of decision.]

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

The Commission [adopted/modified] the proposed statement of decision to [approve/deny] the test claim at the hearing by a vote of [vote count will be included in the final statement of decision].

Summary of the Findings

This test claim alleges reimbursable state-mandated increased costs resulting from additions and amendments made to the Penal Code by the Sex Offender Punishment, Control, and Containment Act of 2006²⁸ and the Sex Offender Registration Act.^{29,30} In addition, the test claim alleges that the SARATSO Review Committee Notification, issued February 1, 2008, imposes a reimbursable state mandate.

The test claim statutes generally provide for the establishment of a statewide system of risk assessment to be applied to convicted sex offenders. The statutes provide for a committee to select an appropriate risk assessment tool for each population (adult males, adult females, juvenile males, and juvenile females), which will be known as the State Authorized Risk Assessment Tool for Sex Offenders, or SARATSO. The test claim statutes require a statewide committee to develop a training program for those who will administer the SARATSO assessments, and require those persons in turn to be trained at least every two years. Then, when a person is convicted of an offense requiring registration as a sex offender, the SARATSO is utilized to assess the risk of that person committing future sex crimes, so that the higher-risk offenders can be more adequately supervised while on probation or parole. The test claim statutes provide for electronic monitoring of the highest-risk offenders, as well as “intensive and specialized probation supervision.” And finally, the test claim statutes require probation departments to report to statewide authorities regarding the effectiveness of continuous monitoring, and the costs of monitoring weighed against the results in reducing recidivism, and require all relevant agencies to grant reciprocal access to records and information pertaining to a sex offender subject to SARATSO assessment.

The test claim was filed on January 22, 2009, alleging reimbursable state-mandated increased costs for statutes enacted as early as September 20, 2006. Normally, a statute with an effective date of September 20, 2006 would fall outside the period of reimbursement for a January 2009 test claim filing, pursuant to Government Code section 17551 and, thus, outside of the Commission’s jurisdiction. Some of the mandated activities, however, were not required to be performed until July 1, 2008, and certain others, primarily those related to training, could not have been performed until issuance of the alleged executive order on February 1, 2008. In addition, the claimant declares, under penalty of perjury, that the Los Angeles County *probation department* first incurred reimbursable state-mandated increased costs for State Authorized Risk Assessment Tool for Sex Offenders (SARATSO) related activities in February 2008. No such declaration was made on behalf of local law enforcement agencies or district attorneys, which are also affected by the test claim statutes. Therefore, the Commission may exercise jurisdiction over the 2006 test claim statutes, but jurisdiction is limited to consideration only of activities

²⁸ Statutes 2006, chapter 337 (SB 1128), and amendments made by Statutes 2006, chapter 886 (AB 1849).

²⁹ Statutes 2007, chapter 579 (SB 172).

³⁰ Statutes 2006, chapter 336 (SB 1178) is also pled, but three of the code sections addressed in that statute were repealed prior to this test claim being filed, and the other two were subsequently amended. Therefore, the requirements of Statutes 2006, chapter 336 (SB 1178) are addressed as amended.

imposed on county probation departments, and those activities that could not have been performed by other local agencies prior to issuance of the executive order. Section 290.08, as added, is denied on this ground, and jurisdiction over section 290.07 is limited to activities required of county probation departments, based on the claimant's declaration, as discussed.

In addition, many of the alleged requirements of the test claim statutes are imposed on state-level agencies and entities, such as the creation of the SARATSO Review Committee and the SARATSO Training Committee; these requirements do not impose any mandated activities or costs on local agencies. Other alleged requirements of the test claim statutes are not mandated by the plain language, such as the Legislature's expression of its "intent" that probation departments make efforts to engage transient persons who are required to register as sex offenders in treatment. And finally, some of the activities required of local agencies are excluded from reimbursement by operation of article XIII B, section 6(a)(2) and Government Code section 17556(g), which prohibits a finding of costs mandated by the state for statutes that create or eliminate a crime or infraction, or change the penalty for a crime or infraction.

Based on the analysis herein, the Commission finds that the test claim statutes and executive order impose a partially reimbursable state-mandated new program or higher level of service on local agencies within the meaning of article XIII B, section 6 of the California Constitution for the following activities:

For county probation departments and authorized local law enforcement agencies, beginning February 1, 2008, to:

1. Designate key persons within their organizations to attend training and, as authorized by the department, to train others within their organizations;³¹ and,
2. Ensure that persons administering the SARATSO receive training no less frequently than every two years.³²

For county probation departments to:

1. Assess, using the SARATSO, as set forth in section 290.04, every eligible person for whom the department prepares a presentencing report pursuant to section 1203 and every eligible person under the department's supervision who was not assessed pursuant to a presentencing report, prior to the termination of probation but no later than January 1, 2010.³³

³¹ Penal Code section 290.05 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)); SARATSO Review Committee Notification, issued February 1, 2008).

³² Penal Code section 290.05 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)); SARATSO Review Committee Notification, issued February 1, 2008).

³³ Penal Code section 290.06 (Stats. 2006, ch. 337 (SB 1128)); 290.04 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)) [limiting duty to administer SARATSO to populations for whom an appropriate tool has been selected as set forth in 290.04]; SARATSO Review Committee Notification issued February 1, 2008 [selecting a SARATSO risk assessment tool for adult males and juvenile males only].

2. Include the results of the SARATSO assessment administered pursuant to sections 290.04 to 290.06 in the presentencing report made to the court pursuant to section 1203, if the person was convicted of an offense that requires him or her to register as a sex offender, or if the probation report recommends that registration be ordered at sentencing.³⁴

Preparing the presentencing report under section 1203 is not a new activity and, thus, not eligible for reimbursement.

3. Include in the report prepared for the department pursuant to section 1203c the results of the SARATSO, administered pursuant to sections 290.04 to 290.06, inclusive, if applicable, whenever a person is committed to the jurisdiction of the Department of Corrections and Rehabilitation for a conviction of an offense that requires him or her to register as a sex offender.³⁵

Preparing the report under section 1203c is not a new activity and, thus, not eligible for reimbursement.

4. Beginning January 1, 2010:

- (a) Compile a Facts of Offense Sheet for every person convicted of an offense that requires him or her to register as a sex offender and who is referred to the department pursuant to section 1203;
- (b) Include in the Facts of Offense Sheet all of the information specified in section 1203e, including the results of the SARATSO, as set forth in section 290.04, if required;
- (c) Include the Facts of Offense Sheet in the probation officer's report to the court made pursuant to section 1203; and
- (d) Send a copy of the Facts of Offense Sheet to the Department of Justice Sex Offender Tracking Program within 30 days of the person's sex offense conviction.

Obtaining information required to complete the presentencing report pursuant to section 1203, as amended by Statutes 1996, chapter 719 (AB 893), or the report to the Department of Corrections and Rehabilitation under section 1203c if applicable, as amended by Statutes 1963, chapter 1785 is not new or reimbursable under this activity.³⁶

5. Beginning January 1, 2009, and every two years thereafter, report to the Corrections Standards Authority all relevant statistics and relevant information regarding the effectiveness of continuous electronic monitoring of

³⁴ Penal Code section 1203 (as amended, Stats. 2006, ch. 337 (SB 1128)).

³⁵ Penal Code section 1203c (as amended, Stats. 2006, ch. 337 (SB 1128)).

³⁶ Penal Code section 1203e (added, Stats. 2006, ch. 337 (SB 1128)).

sex offenders, including the costs of monitoring and recidivism rates of those persons who have been monitored.³⁷

6. Grant access to all relevant records pertaining to a registered sex offender to any person authorized by statute to administer the SARATSO.³⁸

This activity is limited to granting access to records exempt from disclosure under the California Public Records Act (Government Code § 6250, et seq.).

COMMISSION FINDINGS

I. Chronology

01/22/2009	Claimant, County of Los Angeles (County), filed test claim <i>State Authorized Risk Assessment Tool for Sex Offenders (SARATSO)</i> (08-TC-03) with the Commission on State Mandates (Commission). ³⁹
02/19/2009	Commission staff issued a completeness review letter for the test claim and requested comments from state agencies.
03/25/2009	Department of Finance (Finance) submitted comments on the test claim. ⁴⁰
06/01/2009	The County submitted comments in rebuttal to Finance's comments. ⁴¹
10/11/2013	Commission staff issued a draft staff analysis and proposed statement of decision on the test claim. ⁴²
10/25/2013	The County requested an extension of time to file comments and postponement of the hearing, which was granted for good cause.
12/02/2013	The Department of Finance submitted comments on the draft staff analysis. ⁴³

II. Introduction

This test claim alleges reimbursable state-mandated increased costs resulting from additions and amendments made to the Penal Code by the Sex Offender Punishment, Control, and Containment Act of 2006 (Stats. 2006, ch. 337 (SB 1128)); Statutes 2006, chapter 886 (AB 1849); and the Sex Offender Registration Act (Penal Code §§ 290 to 290.023, inclusive, as added by Stats. 2007, ch. 579 (SB 172)). In addition, the test claim alleges a reimbursable state mandate imposed by the SARATSO Review Committee Notification, issued February 1, 2008, via the Department of Mental Health (DMH) website.

³⁷ Penal Code section 1202.8 (as amended, Stats. 2006, ch. 337 (SB 1128)).

³⁸ Penal Code section 290.07 (added, Stats. 2006, ch. 337 (SB 1128)).

³⁹ Exhibits A-D, Test Claim, Volumes I-IV.

⁴⁰ Exhibit E, Department of Finance Comments on Test Claim.

⁴¹ Exhibit F, County of Los Angeles Rebuttal Comments.

⁴² Exhibit G, Draft Staff Analysis.

⁴³ Exhibit H, Department of Finance Comments on Draft Staff Analysis.

The test claim statutes provide that every person who is required to register as a sex offender, based on conviction for one of several enumerated offenses, shall be subject to an assessment of the person's risk of recidivism using the State Authorized Risk Assessment Tool for Sex Offenders, or SARATSO. The statutes require the creation of a Review Committee to select an appropriate SARATSO for each population of offenders (adults, juveniles, males, females), and provide that if a SARATSO is not selected for a given population by the Review Committee, "no duty to administer the SARATSO elsewhere in this code shall apply with respect to that population."⁴⁴ The statutes provide for a SARATSO Training Committee to develop a training program for persons authorized to administer the SARATSO, and require any person who administers the SARATSO to receive training no less frequently than every two years.⁴⁵ The statutes require DMH, CDCR, and local probation departments to administer the SARATSO to persons under their charge, as specified.⁴⁶ In addition, the statutes require that probation officers:

1. Include the results of the SARATSO evaluation in the presentencing report required pursuant to section 1203, and the report made to CDCR pursuant to section 1203c, if applicable,⁴⁷ and,
2. Compile a Facts of Offense Sheet for every person convicted of a registerable sex offense, and include that document in the presentencing report.⁴⁸

The statutes provide that any person authorized by statute to administer the SARATSO shall be granted access to all relevant records pertaining to a registered sex offender, and that a district attorney shall retain records relating to a person convicted of a registerable offense for 75 years.⁴⁹ The statutes require probation departments to place probationers at high risk of recidivism on intensive and specialized probation, including more frequent reporting to designated officers,⁵⁰ and provide for continuous electronic monitoring of those high risk probationers.⁵¹ In addition, the statutes require each probation department to report to the Corrections Standard Authority all relevant statistics regarding the effectiveness of continuous electronic monitoring.⁵² And, the statutes provide that it is the Legislature's intent that probation departments make efforts to engage in treatment transient persons who are required to register

⁴⁴ Penal Code section 290.04 (added, Stats. 2006, ch. 337 (SB 1128); amended, Stats. 2007, ch. 579 (SB 172)).

⁴⁵ Penal Code section 290.05 (added, Stats. 2006, ch. 337 (SB 1128); amended, Stats. 2007, ch. 579 (SB 172)).

⁴⁶ Penal Code section 290.06 (added, Stats. 2006, ch. 337 (SB 1128)).

⁴⁷ Penal Code sections 290.06; 1203; 1203c (added or amended, Stats. 2006, ch. 337 (SB 1128)).

⁴⁸ Penal Code section 1203e (added, Stats. 2006, ch. 337 (SB 1128)).

⁴⁹ Penal Code sections 290.07; 290.08 (added, Stats. 2006, ch. 337 (SB 1128)).

⁵⁰ Penal Code section 1203f (added, Stats. 2006, ch. 337 (SB 1128)).

⁵¹ Penal Code section 1202.8 (amended, Stats. 2006, ch. 337 (SB 1128)).

⁵² *Ibid.*

under section 290.⁵³ Finally, the alleged executive order notifies the relevant departments of the SARATSO Review Committee's selection of an appropriate risk assessment tool for adult males and juvenile males, and thereby triggers the requirement to conduct assessments. The executive order also invites the relevant agencies and departments to designate persons to attend training-for-trainers in winter or spring of 2008, so that they may train the necessary personnel in their respective agencies.

III. Positions of the Parties

Claimant's Position

The County alleges that the test claim statutes and SARATSO Review Committee Notification constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution. The County is seeking reimbursement for the following activities:

- Training to administer the SARATSO in accordance with section 290.05.
- Administering the SARATSO in accordance with section 290.06.
- Including the SARATSO in presentencing reports and reports to the Department of Corrections and Rehabilitation pursuant to sections 1203 and 1203c.
- Compiling a Facts of Offense Sheet, including the results of the SARATSO evaluation.
- Continuously electronically monitoring high risk sex offenders, as determined by the SARATSO, pursuant to section 1202.8.
- Providing access to relevant records to any person authorized to administer the SARATSO pursuant to section 290.07.
- Retaining records of all convictions for registerable sex offenses for 75 years pursuant to section 290.08.
- Engaging transient sex offenders in treatment pursuant to section 1202.7.⁵⁴

The County alleges that their costs "for Los Angeles County's SARATSO program...are far in excess of \$1,000 per annum."⁵⁵ Specifically, the County alleges a "total cost for initial training" of \$80,884 for the County and \$635,926 statewide.⁵⁶ In addition, the County alleges total costs for investigation and researching records of \$80,974 for the County and \$304,239 statewide.⁵⁷ The County also alleges the total cost for performing SARATSO assessments of \$213,039 for the County and \$361,302 statewide.⁵⁸ The County further alleges total costs for supervision (including intensive and specialized probation supervision and continuous electronic monitoring)

⁵³ Penal Code section 1202.7 (amended, Stats. 2007, ch. 579 (SB 172)).

⁵⁴ Exhibit A, Test Claim, at pp. 11; 13; 23-24; 26-27; and 30-32.

⁵⁵ Exhibit A, Test Claim, at p. 43.

⁵⁶ Exhibit A, Test Claim, at p. 34.

⁵⁷ Exhibit A, Test Claim, at p. 35.

⁵⁸ Exhibit A, Test Claim, at p. 36.

of \$842,582 for the County and \$4,124,906 statewide.⁵⁹ Finally, the County alleges that “[c]ounty probation officers began incurring SARATSO costs during February 2008 and, so this test claim, filed on January 9, 2009, within one year of the date the County began incurring such costs is timely filed in accordance with Government Code Section 17553.”⁶⁰

Department of Finance Position

Finance states that the statutes and the executive order “could result in a reimbursable state mandate; however, the reimbursement may be limited based on the statutory exception specified in subdivision (g) of Government Code Section 17556 and pending litigation.”⁶¹ Finance contends that the results of the SARATSO evaluation are “required for the court to make a determination on the probation conditions of a convicted sex offender,” and therefore “the results affect the sex offender’s penalty after he/she has been convicted of the crime,” and, thus, this activity is not eligible for reimbursement under Government Code section 17556(g).⁶² Finance further contends that “prior law required county probation offices to perform investigative duties to complete reporting requirements under the Penal Code Section 1203,” and that therefore these activities are not new.⁶³ In addition, Finance argues that engaging transient sex offenders in treatment is not a new activity imposed on the county probation offices.⁶⁴ Finance concludes that “the Act and the executive order may have resulted in a partial reimbursable state mandate for some of the activities identified by the claimant.”⁶⁵

In comments on the draft staff analysis, Finance concurs with the draft staff analysis recommending partial approval of the test claim.⁶⁶

IV. Discussion

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

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service, 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.

⁵⁹ Exhibit A, Test Claim, at p. 38.

⁶⁰ Exhibit A, Test Claim, at p. 42.

⁶¹ Exhibit E, Department of Finance Comments, at p. 1.

⁶² *Ibid.*

⁶³ *Id.*, at p. 2.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ Exhibit H, Department of Finance Comments on Draft Staff Analysis.

- (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.⁶⁷

The purpose of article XIII B, section 6 is to “preclude the state from shifting financial responsibility for carrying out governmental functions to local governments, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”⁶⁸ Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”⁶⁹ Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.⁷⁰
2. The mandated activity either:
 - a. Carries out the governmental function of providing a service to the public; or
 - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.⁷¹
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.⁷²
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.⁷³

The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.⁷⁴ The Commission is vested with exclusive authority to adjudicate

⁶⁷ California Constitution, article XIII B, section 6 (adopted November 4, 1979).

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

⁶⁹ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

⁷⁰ *San Diego Unified School Dist. v. Commission on State Mandates (San Diego Unified School Dist.)* (2004) 33 Cal.4th 859, 874.

⁷¹ *Id.* at 874-875 (reaffirming the test set out in *County of Los Angeles, supra*, 43 Cal.3d 46, 56.)

⁷² *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

⁷³ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (Cal. Ct. App. 1st Dist. 2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

⁷⁴ *County of San Diego, supra*, 15 Cal.4th 68, 109.

disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.⁷⁵ 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.”⁷⁶

A. The Commission Has Jurisdiction Over the 2006 Test Claim Statutes, as Specified, Because Claimant First Incurred Costs In February 2008.

Government Code section 17551(c) establishes the statute of limitations for the filing of test claims as follows:

Local agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.

Section 1183(c) of the Commission’s regulations provides, accordingly, that “‘within 12 months’ means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant.”⁷⁷

The effective date of Statutes 2006, chapter 336 (SB 1178), and Statutes 2006, chapter 337 (SB 1128), both enacted as urgency measures, is September 20, 2006. Statutes 2006, chapter 886 (AB 1849) was enacted as urgency legislation September 30, 2006. Therefore, “within 12 months,” as defined in the Commission’s regulations would be by June 30, 2008. This test claim was filed on January 22, 2009, several months beyond the statute of limitations provided in section 17551 and section 1183 of the Commission’s regulations, based on the effective date of the test claim statutes.

However, some activities required by the test claim statutes, including conducting SARATSO assessments, were not required to be performed until July 1, 2008, and the claimant has, accordingly, declared under penalty of perjury that “[c]ounty probation officers began incurring SARATSO costs during February 2008 and, [sic] so this test claim, filed on January 9, 2009, within one year of the date the County began incurring such costs is timely filed in accordance with Government Code Section 17553.”⁷⁸ There is no evidence in the record to rebut the County’s declaration with regard to costs first incurred by the probation department in February 2008.

Moreover, training activities, and any activities that rely on being first trained, could not have been performed by any local agency prior to February 1, 2008, when the alleged executive order was issued. The SARATSO Review Committee Notification identified the SARATSO for certain populations and invited local agencies to designate personnel to receive training and begin to train others to meet the July 1, 2008 implementation date. The plain language of the statutes requires that local agency personnel administering the SARATSO receive training to

⁷⁵ *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

⁷⁶ *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280 [citing *City of San Jose, supra*].

⁷⁷ Code of Regulations, title 2, section 1183 (Register 2003, No. 17).

⁷⁸ Exhibit A, Test Claim, at p. 42.

administer the SARATSO, and the plain language of the alleged executive order makes clear that probation departments and authorized local law enforcement agencies were expected to begin training activities on or after February 1, 2008. Therefore, the statute of limitations is satisfied as to activities imposed by the test claim statutes on probation departments, and for the training activities of probation departments and authorized local law enforcement agencies that could not have been performed prior to the issuance of the executive order inviting the local agencies to attend training on the identified SARATSO. Section 290.08, as added by Statutes 2006, chapter 337, does not impose any requirements on probation departments, and does not rely on the issuance of the alleged executive order, and therefore the Commission declines to take jurisdiction. Section 290.07 is addressed below only with respect to probation departments.

Based on the foregoing, the Commission does not have jurisdiction over Statutes 2006, chapters 336, 337, and 886 (SB 1178; SB 1128; AB 1849), except those activities required of county probation departments, and those activities that could not be performed prior to the issuance of the alleged executive order on February 1, 2008.

B. Some of the Test Claim Statutes, Triggered by the Executive Order, Impose New Required Activities on Local Agencies.

The alleged executive order, and each code section alleged in the test claim, as added or amended by Statutes 2006, chapters 336, 337, and 886; and Statutes 2007, chapter 579, is addressed in turn, below.

1. Penal Code sections 290.3, 290.46, 1203.6, and 1203.075 do not impose any requirements on local agencies.

Penal Code sections 290.3, 290.46, 1203.6, and 1203.075 are included in the caption in Box 4 of the test claim form, but are not addressed in the claimant's narrative. Moreover, staff finds that the plain language of these sections does not impose any new activities on local government, and therefore recommends these sections be denied.

2. Penal Code section 290.03, as added by Statutes 2006, chapter 337 (SB 1128) is a statement of legislative intent, and does not impose any state-mandated activities on local agencies.

Section 290.03 was added to the Penal Code by Statutes 2006, chapter 337 (SB 1128), and provides the Legislature's findings and declarations regarding the SARATSO program. The County asserts, however, that section 290.03 provides for the duties of county probation officers to "identify, assess, monitor and contain known sex offenders."⁷⁹ Section 290.03 states the following:

- (a) The Legislature finds and declares that a comprehensive system of risk assessment, supervision, monitoring and containment for registered sex offenders residing in California communities is necessary to enhance public safety and reduce the risk of recidivism posed by these offenders. The Legislature further affirms and incorporates the following findings and declarations, previously reflected in its enactment of "Megan's Law":

⁷⁹ Exhibit A, Test Claim, at p. 13.

¶...¶

- (b) In enacting the Sex Offender Punishment, Control, and Containment Act of 2006, the Legislature hereby creates a standardized, statewide system to identify, assess, monitor and contain known sex offenders for the purpose of reducing the risk of recidivism posed by these offenders, thereby protecting victims and potential victims from future harm.⁸⁰

The plain language of section 290.03 does not impose any requirements on local agencies; it merely expresses the Legislature's findings and intent. There is nothing in section 290.03 that expressly directs or requires local agencies to perform any activities. Moreover, the County acknowledges that the activities required are "explicitly defined under other penal code sections included herein as the test claim legislation."⁸¹

Based on the foregoing, the Commission finds that section 290.03 does not impose any state-mandated activities on local agencies.

3. Penal Code section 290.04, as added by Statutes 2006, chapter 337 (SB 1128), and amended by Statutes 2007, chapter 579 (SB 172) establishes the SARATSO Review Committee, and identifies the default SARATSO to be used for adult males, but does not impose any state-mandated activities on local agencies.

Section 290.04 was added to the Penal Code by Statutes 2006, chapter 337 (SB 1128), and amended by Statutes 2007, chapter 579 (SB 172).⁸² Section 290.04 provides that the "sex offender risk assessment tools authorized by this section...shall be known, with respect to each population, as the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO)."⁸³ The section provides that "[i]f a SARATSO has not been selected for a given population pursuant to this section, *no duty to administer the SARATSO elsewhere in this code shall apply with respect to that population.*"⁸⁴ The section further provides that every person required to register as a sex offender "shall be subject to assessment with the SARATSO." The section provides that a SARATSO Review Committee shall be established to ensure that the SARATSO for each population reflects reliable, objective and well-established protocols for predicting risk of recidivism. The SARATSO Review Committee, pursuant to section 290.04, shall be comprised of a representative of DMH, "in consultation with a representative of the Department of Corrections and Rehabilitation and a representative of the Attorney General's office." The section provides that "[c]ommencing January 1, 2007, the SARATSO for adult males required to register as sex offenders shall be the STATIC-99 risk assessment scale," and that "[o]n or before January 1, 2008, the SARATSO Review Committee shall determine whether the STATIC-99

⁸⁰ Statutes 2006, chapter 337, section 12.

⁸¹ *Ibid.*

⁸² An alternate version of sections 290.04 through 290.06 was added to the Penal Code by Statutes 2006, chapter 336 (SB 1178), and repealed by Statutes 2006, chapter 886 (AB 1849); the version added by Statutes 2006, chapter 337 (SB 1128) therefore prevails.

⁸³ Penal Code section 290.04 (added, Stats. 2006, ch. 337, § 13 (SB 1128)).

⁸⁴ *Ibid* [emphasis added].

should be supplemented with an actuarial instrument...or whether the STATIC-99 should be replaced as the SARATSO with a different risk assessment tool [for adult male sex offenders].” The section further provides that the Review Committee shall research risk assessment tools for adult females, and for male and female juveniles, to determine if there is an appropriate risk assessment tool available. And finally, the section provides that the Review Committee “shall periodically evaluate the SARATSO for each specified population,” and may change the selected tool by unanimous agreement.⁸⁵

The plain language of this section establishes the SARATSO Review Committee, and then defines the SARATSO for adult males, and directs the SARATSO Review Committee to examine whether a SARATSO can be adopted for other populations. The section states that persons required to register “shall be subject to” assessment, but does not impose an express requirement on local agencies to perform those assessments. Importantly, the section provides that if a SARATSO has not been selected for a given population under this section, no duty to administer the SARATSO elsewhere in the code shall apply with respect to that population.

Based on the foregoing, the Commission finds that Penal Code section 290.04, as added and amended in 2006 and 2007, does not impose any state-mandated activities on local agencies.

4. Penal Code section 290.05, as added by Statutes 2006, chapter 337 (SB 1128) and amended by Statutes 2007, chapter 579 (SB 172) imposes new training requirements for probation departments and authorized local law enforcement agencies required to conduct SARATSO evaluations.

Section 290.05 provides as follows:

(a) The SARATSO Training Committee shall be comprised of a representative of the State Department of Mental Health, a representative of the Department of Corrections and Rehabilitation, a representative of the Attorney General’s Office, and a representative of the Chief Probation Officers of California.

(b) On or before January 1, 2008, the SARATSO Training Committee, in consultation with the Corrections Standards Authority and the Commission on Peace Officer Standards and Training, shall develop a training program for persons authorized by this code to administer the SARATSO, as set forth in Section 290.04.

¶...¶

(d) The training shall be conducted by experts in the field of risk assessment and the use of actuarial instruments in predicting sex offender risk. Subject to requirements established by the committee, the Department of Corrections and Rehabilitation, the State Department of Mental Health, probation departments, and authorized local law enforcement agencies shall designate key persons within their organizations to attend training and, as authorized by the department, to train others within their organizations designated to perform risk assessments as

⁸⁵ Penal Code section 290.04 (as added, Stats. 2006, ch. 337 (SB 1128); amended, Stats. 2007, ch. 579 (SB 172)).

required or authorized by law. Any person who administers the SARATSO shall receive training no less frequently than every two years.

(e) The SARATSO may be performed for purposes authorized by statute only by persons trained pursuant to this section.⁸⁶

This section primarily addresses responsibilities of state-level agencies to participate in the SARATSO Training Committee and develop a training program and standards for training of probation and law enforcement personnel. But in addition, activities required of county probation departments and authorized local law enforcement agencies include designating persons to attend training and to train others within the organization, and ensuring that all persons administering the SARATSO within the organization receive training no less frequently than every two years in accordance with section 290.05.

The alleged executive order, the SARATSO Review Committee Notification, *issued February 1, 2008*, provides, in pertinent part:

Implementation and Training:

On July 1, 2008, the Static-99 is mandated for use by the DMH, CDCR Parole and County Probation. Training-for-Trainers sessions will take place in Winter/Spring of 2008.

This training shall be conducted by experts in the field of risk assessment and the use of actuarial instruments in predicting sex offender risk. Subject to requirements established by the committee, CDCR, DMH, County Probation Departments, and authorized local law enforcement agencies shall designate the appropriate persons within their organizations to attend training and, as authorized by the department, to train others within their organizations. Any person who administers the SARATSO shall receive training no less frequently than every two years.

The time factor is immediate. All agencies need to be fully trained for the July 1, 2008 implementation date.⁸⁷

These activities are new, with respect to prior law: because no SARATSO previously existed, there was no need to train to administer the SARATSO. Moreover, training activities could not be implemented prior to 2008 because the training program was not prepared until that time.

Based on the foregoing, the Commission finds that Penal Code section 290.05, as added by Statutes 2006, chapter 337 (SB 1128) and amended by Statutes 2007, chapter 579 (SB 172) requires probation departments and authorized local law enforcement agencies, beginning February 1, 2008 to (1) designate key persons within their organizations to attend training and, as authorized by the department, to train others within their organizations; and (2) ensure that persons administering the SARATSO receive training no less frequently than every two years.

⁸⁶ Penal Code section 290.05 (as added, Stats. 2006, ch. 337, section 14; amended, Stats. 2007, ch. 579 (SB 172)).

⁸⁷ Exhibit D, Test Claim, Volume IV, at pp. 839-840.

5. Penal Code sections 290.06 and 1203, as added or amended by Statutes 2006, chapter 337 (SB 1128), and triggered by the alleged Executive Order, SARATSO Review Committee Notification, February 1, 2008, impose new required activities on local agencies to administer the SARATSO, as set forth under 290.04, and to include the results in presentencing reports, as specified.

Section 290.06 provides that, “[e]ffective on or before July 1, 2008, the SARATSO, as set forth in section 290.04, shall be administered as follows:”

- (a) (1) The Department of Corrections and Rehabilitation shall assess every eligible person who is incarcerated in state prison. Whenever possible, the assessment shall take place at least four months, but no sooner than 10 months, prior to release from incarceration.
- (2) The department shall assess every eligible person who is on parole. Whenever possible, the assessment shall take place at least four months, but no sooner than 10 months, prior to termination of parole.
- (3) The Department of Mental Health shall assess every eligible person who is committed to that department. Whenever possible, the assessment shall take place at least four months, but no sooner than 10 months, prior to release from commitment.
- (4) Each probation department shall assess every eligible person for whom it prepares a report pursuant to Section 1203.
- (5) Each probation department shall assess every eligible person under its supervision who was not assessed pursuant to paragraph (4). The assessment shall take place prior to the termination of probation, but no later than January 1, 2010.
- (b) If a person required to be assessed pursuant to subdivision (a) was assessed pursuant to that subdivision within the previous five years, a reassessment is permissible but not required.
- (c) The SARATSO Review Committee established pursuant to Section 290.04, in consultation with local law enforcement agencies, shall establish a plan and a schedule for assessing eligible persons not assessed pursuant to subdivision (a). The plan shall provide for adult males to be assessed on or before January 1, 2012, and for females and juveniles to be assessed on or before January 1, 2013, and it shall give priority to assessing those persons most recently convicted of an offense requiring registration as a sex offender. On or before January 15, 2008, the committee shall introduce legislation to implement the plan.
- (d) On or before January 1, 2008, the SARATSO Review Committee shall research the appropriateness and feasibility of providing a means by which an eligible person subject to assessment may, at his or her own expense, be assessed with the SARATSO by a governmental entity prior to his or her scheduled assessment. If the committee unanimously agrees that such a process is appropriate and feasible, it shall advise the Governor and the Legislature of the selected tool, and it shall post its decision on the Department of Corrections and

Rehabilitation's Internet Web site. Sixty days after the decision is posted, the established process shall become effective.

(e) For purposes of this section, "eligible person" means a person who was convicted of an offense that requires him or her to register as a sex offender pursuant to Section 290 and who has not been assessed with the SARATSO within the previous five years.

The alleged executive order, the SARATSO Review Committee Notification, issued February 1, 2008, identifies the appropriate SARATSO for adult male offenders and juvenile male offenders only, as follows:

For adults, the Committee has selected the Static-99 designed and cross-validated by Dr. Karl Hanson and Dr. David Thornton. This instrument is currently in use by CDCR as a tool to designate a parolee as a High Risk Sex Offender (HRSO). This instrument will become the only statewide risk assessment tool for adult males, which is mandated to be used by CDCR to assess every eligible inmate prior to parole and every eligible inmate on parole. This tool is further mandated for use by DMH to assess every eligible individual prior to release and by Probation for every eligible individual for whom there is a probation report. (Pen. Code, § 290.06)

For juveniles the Committee has selected the J-SORAT II [*sic*] designed and cross-validated by Dr. Douglas Epperson. This instrument will become the only state-authorized risk assessment tool for juveniles, which is mandated to be used by probation; when assessing a juvenile sex offender at adjudication, and by CDCR/DJJ both prior to release from DJJ and while on supervision. (Pen. Code, § 290.06.)

For female offenders the Committee has found that there currently is no risk assessment tool for this population that has been scientifically researched and validated. Therefore, the Committee does not have a recommendation.⁸⁸

The Commission notes that section 290.04, as discussed above, provides that "[i]f a SARATSO has not been selected for a given population pursuant to this section, *no duty to administer the SARATSO elsewhere in this code shall apply* with respect to that population."⁸⁹ Therefore, because the SARATSO Review Committee Notification issued February 1, 2008 does not identify an appropriate risk assessment tool for adult female sex offenders or juvenile female sex offenders, the duty to administer the SARATSO arising from section 290.06 and the alleged executive order is limited to adult male offenders and juvenile male offenders. Consequently, all other requirements of reporting the SARATSO results, as described below (e.g., section 1203 presentencing reports) are *limited to* adult male offenders and juvenile male offenders, until or unless a SARATSO risk assessment device is identified by the SARATSO Review Committee pursuant to section 290.04.

⁸⁸ Exhibit D, Test Claim Volume IV, at p. 839.

⁸⁹ Penal Code section 290.04 (added by Stats. 2006, ch. 337 (SB 1128); amended by Stats. 2007, ch. 579 (SB 172)) [emphasis added].

In addition, as discussed above, section 290.04 provides that the Review Committee “shall periodically review the SARATSO,” and may change its selection of the tool for a given population. Accordingly, the Review Committee has, since February 1, 2008, revised its findings regarding the appropriate risk assessment tool at least twice: in spring 2011 the Committee added two additional dynamic assessment tools to be used in conjunction with the STATIC-99; and in September 2013 the Committee adopted a new dynamic assessment tool, “the Stable-2007/Acute-2007.”⁹⁰ Therefore, all requirements of administering SARATSO evaluations and reporting results describe the SARATSO, “as set forth in Section 290.04,” which necessarily includes any later action of the SARATSO Review Committee to add to or change the risk assessment tools selected for a given population.

Section 1203, referenced in section 290.06, above, requires that the results of the SARATSO evaluation be included in the report made to the court under section 1203. *Prior to the amendments made by Statutes 2006, chapter 337* (SB 1128), section 1203(b)(1) provided:

Except as provided in subdivision (j), if a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to a probation officer to *investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person*, which may be considered either in aggravation or mitigation of the punishment.⁹¹

Prior law further provided that once the matter is referred to a probation officer, that officer is required to “immediately investigate and make a written report to the court of his or her findings and recommendations, including his or her recommendations as to the granting or denying of probation and the conditions of probation, if granted.”⁹² Statutes 2006, chapter 337 (SB 1128) *added to section 1203 the following*:

If the person was convicted of an offense that requires him or her to register as a sex offender pursuant to Section 290, the probation officer’s report *shall include the results of the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) administered pursuant to Sections 290.04 to 290.06, inclusive*, if applicable.⁹³

Section 290.06, above, thus provides that each probation department shall assess every eligible person for whom it prepares a presentencing report pursuant to section 1203, and every eligible person under its supervision prior to the termination of probation.⁹⁴ Section 1203, in turn, provides that the results of that assessment shall be included in the presentencing report prepared

⁹⁰ Exhibit X, SARATSO Review and Training Committees Official Publication, “Sex Offender Risk Assessment in California.” See also, Exhibit X, SARATSO Review and Training Committees’ website main page: <http://www.saratso.org/>.

⁹¹ Penal Code section 1203(b)(1) (as amended, Stats. 1996, ch. 719 (AB 893)) [emphasis added].

⁹² Penal Code section 1203(b)(2) (as amended, Stats. 1996, ch. 719 (AB 893)).

⁹³ Penal Code section 1203(b)(2)(C) (Stats. 2006, ch. 337 (SB 1128)) [emphasis added].

⁹⁴ Statutes 2006, chapter 337, section 15 (SB 1128).

for the court. And the SARATSO Review Committee Notification, issued February 1, 2008, coupled with the statement in section 290.04 that no duty to administer the SARATSO elsewhere in the code shall apply unless a SARATSO is selected as set forth in section 290.04, limits the requirement to assess to adult male and juvenile male offenders only.

The County argues that identification of the STATIC-99 and the J-SORRAT II as the appropriate risk assessment tools for adult male and juvenile male populations, respectively, triggers certain investigative requirements necessary to score the SARATSO and thereby assess risk. The specific information necessary to complete the SARATSO is not found in any of the statutes pled, or the executive order; the information necessary to complete and score the SARATSO can only be determined by reference to the SARATSO risk assessment tool selected for a given population by the Review Committee. In addition, a new or alternative SARATSO may be selected by the Review Committee when, in its discretion, the Committee finds it appropriate to do so, and therefore the scope of investigation necessary may change as the selected risk assessment tool changes. Moreover, some investigative activities that might be required to prepare a SARATSO are not new: section 1203 previously required a presentencing report for all felony convictions, and some of the same information is required to score the SARATSO. For example, the activities required under prior law in section 1203 to “investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person” are not new, and the prior history and record of the person comes into play in scoring the SARATSO.⁹⁵

The County, however, cites to the SARATSO training manual, published by DMH, at page 714 of the test claim, to demonstrate that some of the information required to score the STATIC-99 would not be immediately available to law enforcement, and possibly not available to the courts and, thus, an investigation is necessary to complete the assessment. To illustrate: the Manual states that one of the items required to score the STATIC-99 is whether the individual ever lived with an intimate partner “continuously, for at least two years.” In addition, the manual suggests that “self-reporting” may be sufficient for some of the information required, which presumes that an interview with the defendant is expected, prior to or in lieu of an exhaustive search of law enforcement and court records. The requirement in statute is that the probation departments assess eligible individuals using the SARATSO and report the results in a pre-sentencing report to the court, and those required activities are new. The plain language of the statute does not require probation departments to conduct an investigation to complete the assessment. Therefore, the scope of investigation necessary to complete and score the SARATSO, as addressed in the training manual, may be considered reasonably necessary to comply with the mandated activity to complete the assessment and provide a report to the court.⁹⁶ That argument, however, may be made when adopting parameters and guidelines and will necessitate substantial evidence in the record demonstrating that the information required to complete the SARATSO is not readily available to the probation officer in other, previously required reports. Eligible claimants will be required to establish that the alleged activities are “reasonably necessary for the performance of the state-mandated program,” within the meaning of section 17557, based on

⁹⁵ See Exhibit D, Test Claim, Vol. IV at pp. 709-714.

⁹⁶ See Exhibit D, Test Claim, Vol. IV at pp. 709-714.

substantial evidence in the record, to have them included as reasonably necessary activities in the parameters and guidelines.

Based on the foregoing analysis, the Commission finds that sections 290.06 and 1203, and the SARATSO Review Committee Notification issued February 1, 2008 impose new required activities on probation departments to (1) assess, using the SARATSO, as set forth in section 290.04, every eligible person for whom the department prepares a presentencing report pursuant to section 1203; (2) assess, using the SARATSO, as set forth in section 290.04, every eligible person under the department's supervision who was not assessed pursuant to a presentencing report prior to the termination of probation but no later than January 1, 2010; and (3) if the person was convicted of an offense that requires him or her to register as a sex offender, or if the probation report recommends that registration be ordered at sentencing, include the results of the SARATSO assessment in the presentencing report made to the court.⁹⁷ The activity of preparing the presentencing report under section 1203 is not new or reimbursable; only the *incremental increase in service* to include the results of the SARATSO in the presentencing report required under section 1203 is new.

6. Penal Code section 1203c, as amended by Statutes 2006, chapter 337 (SB 1128) imposes new required activities on county probation departments to include the results of the SARATSO, if applicable, in the report required pursuant to section 1203c.

Prior section 1203c provided that “whenever a person is committed to an institution under the jurisdiction of the Department of Corrections, whether probation has been applied for or not, or granted and revoked,” a probation officer of the county in which the person was convicted is required to send to the Department of Corrections [and Rehabilitation] a report on the “circumstances surrounding the offense and the prior record and history of the defendant.”⁹⁸ As amended by Statutes 2006, chapter 337 (SB 1128), section 1203c now also requires:

If the person is being committed to the jurisdiction of the department for a conviction of an offense that requires him or her to register as a sex offender pursuant to Section 290, the probation officer shall include in the report the results of the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) administered pursuant to Sections 290.04 to 290.06, inclusive, if applicable.⁹⁹

The plain language of section 1203c thus requires that the results of the SARATSO evaluation be included in the report made for CDCR at the time the person is committed to the jurisdiction of the department. The report was required under prior law, as explained above, but inclusion of the SARATSO evaluation is a new mandated activity. However, as discussed above, section 290.04 provides that if a SARATSO has not been selected by the Review Committee for a given population, “no duty to administer the SARATSO elsewhere in this code shall apply with respect to that population.” Therefore, because the SARATSO Review Committee Notification did not identify a SARATSO for female offenders, the requirements of section 1203c are limited to adult male and juvenile male offenders.

⁹⁷ Penal Code section 1203 (as amended by Stats. 2006, ch. 337 (SB 1128)).

⁹⁸ Penal Code section 1203c (as amended by Statutes 1963, chapter 1785).

⁹⁹ Penal Code section 1203c (as amended by Stats. 2006, ch. 337 (SB 1128)).

Based on the foregoing, the Commission finds that section 1203c imposes a new required activity on local probation departments, whenever a person is committed to the jurisdiction of CDCR for a conviction of an offense that requires him or her to register as a sex offender, to include in the report prepared for the department pursuant to section 1203c the results of the SARATSO, administered pursuant to sections 290.04 to 290.06, inclusive, if applicable.¹⁰⁰ This activity does not include preparing the report under section 1203c.

7. Penal Code section 1203e, added by Statutes 2006, chapter 337 (SB 1128), imposes new required activities on local agencies to compile a Facts of Offense Sheet, to be included in the presentencing report, for every person convicted of an offense requiring registration under Penal Code section 290, and to include the results of the SARATSO in the Facts of Offense Sheet.

Section 1203e was added to the Penal Code by Statutes 2006, chapter 337 (SB 1128), and provides as follows:

(a) Commencing June 1, 2010, the probation department shall compile a Facts of Offense Sheet for every person convicted of an offense that requires him or her to register as a sex offender pursuant to Section 290 who is referred to the department pursuant to Section 1203. The Facts of Offense Sheet shall contain the following information concerning the offender: name; CII number; criminal history, including all arrests and convictions for any registerable sex offenses or any violent offense; circumstances of the offense for which registration is required, including, but not limited to, weapons used and victim pattern; and results of the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO), as set forth in Section 290.04, if required. The Facts of Offense Sheet shall be included in the probation officer's report.

(b) The defendant may move the court to correct the Facts of Offense Sheet. Any corrections to that sheet shall be made consistent with procedures set forth in Section 1204.

(c) The probation officer shall send a copy of the Facts of Offense Sheet to the Department of Justice Sex Offender Tracking Program within 30 days of the person's sex offense conviction, and it shall be made part of the registered sex offender's file maintained by the Sex Offender Tracking Program. The Facts of Offense Sheet shall thereafter be made available to law enforcement by the Department of Justice, which shall post it with the offender's record on the Department of Justice Internet Web site maintained pursuant to Section 290.46, and shall be accessible only to law enforcement.

(d) If the registered sex offender is sentenced to a period of incarceration, at either the state prison or a county jail, the Facts of Offense Sheet shall be sent by the Department of Corrections and Rehabilitation or the county sheriff to the registering law enforcement agency in the jurisdiction where the registered sex offender will be paroled or will live on release, within three days of the person's release. If the registered sex offender is committed to the Department of Mental

¹⁰⁰ Penal Code section 1203c (as amended by Stats. 2006, ch. 337 (SB 1128)).

Health, the Facts of Offense Sheet shall be sent by the Department of Mental Health to the registering law enforcement agency in the jurisdiction where the person will live on release, within three days of release.¹⁰¹

Section 1203e is new: the requirement to “compile a Facts of Offense Sheet for every person convicted of an offense that requires him or her to register as a sex offender...who is referred to the department pursuant to Section 1203” was not found in prior law. However, some of the information required to complete the Facts of Offense Sheet would have been required to complete the reports required under sections 1203 and 1203c. For example, the name and criminal history of the individual are items required by sections 1203 and 1203c, and would not be an item of information that a probation officer would be required to independently investigate for purposes of section 1203e. Therefore the new activity of compiling the Facts of Offense Sheet is limited to completing the form, which the statute refers to as compiling the document, and gathering only information not collected pursuant to section 1203 or 1203c (i.e., information not required to be collected under prior law). Finally, the plain language of section 1203e also requires a probation department to send a copy of the Facts of Offense Sheet to the Department of Justice Sex Offender Tracking Program within 30 days of the person’s conviction.

Based on the foregoing, the Commission finds that section 1203e, as added by Statutes 2006, chapter 337 (SB 1128) imposes new required activities on probation departments, beginning January 1, 2010, to (1) compile a Facts of Offense Sheet for every person convicted of an offense that requires him or her to register as a sex offender who is referred to the department pursuant to section 1203; (2) include in the Facts of Offense Sheet all of the information specified in section 1203e, including the results of the SARATSO, as set forth in section 290.04, if required; (3) include the Facts of Offense Sheet in the probation officer’s report to the court made pursuant to section 1203; and (4) send a copy of the Facts of Offense Sheet to the Department of Justice Sex Offender Tracking Program within 30 days of the person’s sex offense conviction. Obtaining information that is already required to complete the presentencing report pursuant to section 1203, as amended by Statutes 1996, chapter 719 (AB 893), or the report to CDCR under section 1203c if applicable, as amended by Statutes 1963, chapter 1785 is not part of this new activity.¹⁰²

8. Penal Code section 1203f, as added by Statutes 2006, chapter 337 (SB 1128), imposes new required activities on local probation departments to ensure that high risk sex offenders are placed on intensive and specialized supervision.

Section 1203f was added by Statutes 2006, chapter 337, to provide:

Every probation department shall ensure that all probationers under active supervision who are deemed to pose a high risk to the public of committing sex crimes, as determined by the State-Authorized Risk Assessment Tool for Sex Offenders, as set forth in Sections 290.04 to 290.06, inclusive, are placed on

¹⁰¹ Penal Code section 1203e (added, Stats. 2006, ch. 337, § 40 (SB 1128)).

¹⁰² Penal Code section 1203e (Stats. 2006, ch. 337 (SB 1128)); 290.04 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)) [limiting duty to administer SARATSO to populations for whom an appropriate tool has been selected pursuant to section 290.04]; SARATSO Review Committee Notification issued February 1, 2008 [selecting a SARATSO risk assessment tool for adult males and juvenile males only].

intensive and specialized probation supervision and are required to report frequently to designated probation officers. The probation department may place any other probationer convicted of an offense that requires him or her to register as a sex offender who is on active supervision to be placed on intensive and specialized supervision and require him or her to report frequently to designated probation officers.¹⁰³

This section is new, and the requirement to place high risk offenders on intensive and specialized probation is not found in prior law; prior law stated that “[p]ersons placed on probation by a court shall be under the supervision of the county probation officer who *shall determine both the level and type of supervision* consistent with the court-ordered conditions of probation.”¹⁰⁴ The added section requires an additional “level and type of supervision,” and does not permit the local probation officer to exercise the discretion available under prior law in the case of sex offenders who are determined to pose a high risk of recidivism.

Based on the foregoing, the Commission finds that section 1203f, as added by Statutes 2006, chapter 337 (SB 1128) imposes a new required activity on local probation departments to ensure that all probationers under active supervision who are deemed to pose a high risk to the public of committing sex crimes, as determined by the SARATSO, as set forth in Sections 290.04 to 290.06, inclusive, are placed on intensive and specialized probation supervision and are required to report frequently to designated probation officers.

9. Penal Code section 1202.8, as amended by Statutes 2006, chapter 886 (AB 1849), imposes a new required activity on local agencies to continuously electronically monitor high risk sex offenders, as determined by the SARATSO.

Prior section 1202.8, as amended by Statutes 1996, chapter 6299 (SB 1685) provided that “[p]ersons placed on probation by a court shall be under the supervision of the county probation officer who shall determine both the level and type of supervision consistent with the court-ordered conditions of probation.” As amended by Statutes 2006, chapter 886 (AB 1849), section 1202.8 now provides as follows:

(b) Commencing January 1, 2009, every person who has been assessed with the State Authorized Risk Assessment Tool for Sex Offenders (SARATSO) pursuant to Sections 290.04 to 290.06, inclusive, and who has a SARATSO risk level of high shall be continuously electronically monitored while on probation, unless the court determines that such monitoring is unnecessary for a particular person...

¶...¶

(d) Beginning January 1, 2009, and every two years thereafter, each probation department shall report to the Corrections Standards Authority all relevant statistics and relevant information regarding the effectiveness of continuous electronic monitoring of offenders pursuant to subdivision (b). The report shall include the costs of monitoring and the recidivism rates of those persons who have been monitored. The Corrections Standards Authority shall compile the

¹⁰³ Penal Code section 1203f (added, Stats. 2006, ch. 337, § 41 (SB 1128)).

¹⁰⁴ Penal Code section 1202.8 (as amended by Stats. 1996, ch. 629 (SB 1685)).

reports and submit a single report to the Legislature and the Governor every two years through 2017.

Both continuously electronically monitoring high risk sex offenders, and reporting to the Corrections Standards Authority on the effectiveness of continuous electronic monitoring, are new activities, not required under prior law. The prior law left the level and type of supervision to the probation officer's discretion, while amended section 1202.8 does not.

Based on the foregoing, the Commission finds that section 1202.8, as amended by Statutes 2006, chapter 886 (AB 1849), imposes new required activities on probation departments to (1) continuously electronically monitored while on probation, every person who has been assessed with the SARATSO pursuant to Sections 290.04 to 290.06, inclusive, and who has a SARATSO risk level of high; and (2) beginning January 1, 2009, and every two years thereafter, report to the Corrections Standards Authority all relevant statistics and relevant information regarding the effectiveness of continuous electronic monitoring of offenders, including the costs of monitoring and the recidivism rates of those persons who have been monitored.

10. Penal Code sections 290, 290.011, 290.012 and 1202.7, as added or amended by Statutes 2007, chapter 579 (SB 172), do not impose mandated activities on local agencies.

The County alleges that sections 290, 290.011, 290.012, and 1202.7 impose a reimbursable state mandate for probation departments to engage sex offenders who are identified as transient in specialized treatment. The Commission disagrees.

Penal Code section 290 requires every person who “since July 1, 1944 has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of [specified sex crimes and violent sexual offenses]” to register with the chief of police or the sheriff of the county in which he or she is residing. Section 290.011 requires a person required to register pursuant to section 290 who is living as a transient to register within five days of release from incarceration, placement or commitment, and to re-register every thirty days thereafter. The section also provides that a transient who moves to a residence shall have five working days to register at that address, and a person registered at a residence who becomes transient shall have five working days within which to register as a transient. Section 290.012 requires a person to register annually beginning on his or her first birthday following registration or change of address. Section 290.012 also requires a person adjudicated to be a sexually violent predator to update his or her registration every 90 days, and a person subject to registration living as a transient to update his or her registration every 30 days. In addition, section 290.012 provides that no person shall be made to pay a fee to register or update his or her registration, and the agency shall submit registrations, including updates, directly to the Department of Justice Violent Crime Information Network (VCIN).

The test claimant alleges that these sections, in conjunction with section 1202.7, require local agencies to engage in efforts to treat transient sex offenders. Specifically, section 1202.7 provides that “[i]t is the intent of the Legislature that efforts be made with respect to persons who are subject to Section 290.011 who are on probation to engage them in treatment.”¹⁰⁵

¹⁰⁵ Penal Code section 1202.7 (as amended by Statutes 2007, chapter 579 (SB 172)).

However, a statement of Legislative intent does not constitute a mandate, within the meaning of article XIII B, section 6. Moreover, the amendments made to section 1202.7 are made only to ensure that the section is consistent with the amendments made to section 290 et seq, and are not new. The substance of section 290.011, addressing transient sex offenders on probation who are required to register and update their registration with local officials, was previously found in section 290(a)(1)(C). And, accordingly, the prior version of section 1202.7 provided that “[i]t is the intent of the Legislature that efforts be made with respect to persons who are subject to subparagraph (C) of paragraph (1) of subdivision (a) of section 290 who are on probation to engage them in treatment.”¹⁰⁶ Section 290 was repealed and added by Statutes 2007, chapter 579 (SB 172), and the substantive provisions of section 290 were restructured in the Penal Code as sections 290-290.023; section 1202.7 was amended to ensure consistency with the enumeration of the repealed and added language, and did not impose any new requirements.

Therefore, the requirement alleged by the test claimant, to make efforts to provide treatment for transient sex offenders, is not mandated by the state and is not new. The Commission finds that sections 290.011, 290.012, and 1202.7, as added or amended by Statutes 2007, chapter 579 (SB 172), do not impose any state-mandated activities on local agencies.

11. Penal Code section 290.07, as added by Statutes 2006, chapter 337 (SB 1128), imposes new required activities on local agencies to provide access to all relevant records pertaining to a sex offender to persons authorized to administer the SARATSO.

Section 290.07, as added, provides:

Notwithstanding any other provision of law, *any person authorized by statute to administer the State Authorized Risk Assessment Tool for Sex Offenders and trained pursuant to Section 290.06 shall be granted access to all relevant records pertaining to a registered sex offender*, including, but not limited to, criminal histories, sex offender registration records, police reports, probation and presentencing reports, judicial records and case files, juvenile records, psychological evaluations and psychiatric hospital reports, sexually violent predator treatment program reports, and records that have been sealed by the courts or the Department of Justice. Records and information obtained under this section shall not be subject to the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.¹⁰⁷

Prior to the enactment of section 290.07, the CPRA provided for access to the public generally to some of the categories of records named above. Government Code section 6253 provides that “[p]ublic records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided.”¹⁰⁸ And specifically, section 6254 provides that “state and local law enforcement

¹⁰⁶ Penal Code section 1202.7 (as amended, Stats. 2001, ch. 485 (AB 1004)).

¹⁰⁷ Statutes 2006, chapter 337, section 16 (SB 1128) [emphasis added].

¹⁰⁸ Government Code section 6253 (Stats. 1998, ch. 620 (SB 143); Stats. 1999, ch. 83 (SB 966); Stats. 2000, ch. 982 (AB 2799); Stats. 2001, ch. 355 (AB 1014)).

agencies shall make public” the names and occupations of persons arrested, including physical description and the factual circumstances surrounding the arrest.¹⁰⁹ And since every person convicted of a registerable sex offense must first be arrested, the name and occupation of each person eventually assessed under sections 290.04 to 290.06, as well as the factual circumstances surrounding their arrest, must be made public under CPRA.

Therefore, some of the records that a probation department “shall be granted access to” under section 290.07 to complete a SARATSO evaluation are already accessible under CPRA. However, section 290.07 provides for broader access than the CPRA: the court in *Wescott v. County of Yuba* held that the CPRA “is considered to be general legislation and is consequently subordinate to specific legislation on the same subject.”¹¹⁰ The court concluded that “Section 827 of the Welfare and Institutions Code expressly covers the confidentiality of juvenile court records and their release to third parties, and is controlling over the Public Records Act to the extent of any conflict.”¹¹¹ But section 290.07 expressly states: “[n]otwithstanding any other provision of law, any person authorized by statute to administer the [SARATSO] shall be granted access to all relevant records pertaining to a registered sex offender, including, but not limited to...juvenile records.”¹¹² Therefore, as in *Wescott, supra*, the more specific provision controls,¹¹³ and section 290.07 imposes a higher level of service on local agencies to provide access to relevant records, including juvenile records, for which disclosure is not otherwise required.

The plain language of section 290.07 does not limit itself to *probation departments* granting access to other agencies and persons, but this test claim must be so limited. As discussed above, the Commission does not have jurisdiction, based on the filing date of this test claim, over activities required by statutes effective prior to July 1, 2007, unless there is evidence that the claimant first incurred costs under a particular statute at a later time. Here, section 290.07, as added by Statutes 2006, chapter 337 (SB 1128), has an effective date of September 20, 2006, and while the County stated in the test claim that the probation department began incurring SARATSO costs in February 2008, there is no such assertion made with respect to any other local agencies. There is no evidence to rebut the County’s declaration, made under penalty of perjury, and therefore costs incurred by probation departments, but not any other local agency, are within the Commission’s jurisdiction for this test claim.

Based on the foregoing, the Commission finds that section 290.07 imposes a higher level of service on county probation departments to grant access to all relevant records pertaining to a registered sex offender to any person authorized by statute to administer the SARATSO. This activity is restricted to providing access to records that are exempt from disclosure under the California Public Records Act (Government Code § 6250, et seq.).

¹⁰⁹ Government Code section 6254(f) (as amended, Stats. 2005, ch. 620 (SB 922)).

¹¹⁰ (Cal. Ct. App. 3d Dist. 1980) 104 Cal.App.3d 103, at p. 106 [citations omitted].

¹¹¹ *Ibid.*

¹¹² Penal Code section 290.07 (added, Stats. 2006, ch. 337 (SB 1128)).

¹¹³ 104 Cal.App.3d at p. 106.

C. Some of the Newly Required Activities Impose a Reimbursable State-Mandated New Program or Higher Level of Service Within the Meaning of Article XIII B, Section 6 and Government Code Section 17514.

The requirements imposed on county probation departments are reimbursable only if all elements of article XIII B, section 6 and Government Code section 17514 are satisfied; the requirements must be mandated by the state, must impose a new program or higher level of service within the meaning of article XIII B, section 6, and must impose costs mandated by the state. Government Code section 17514 provides that “[c]osts 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.” In this respect, Government Code section 17564 provides that “[n]o claim shall be made pursuant to Sections 17551, 17561, or 17573, nor shall any payment be made on claims submitted pursuant to Sections 17551, or 17561, or pursuant to a legislative determination under Section 17573, unless these claims exceed one thousand dollars.” The County alleges that the activities alleged in this test claim related to the SARATSO program result in state-mandated increased costs “far in excess of [one thousand dollars] per annum,” and that those costs are not subject to any “funding disclaimers” specified in section 17556.¹¹⁴

Finance argues, however, that “the activities related to completing the SARATSO are subject to subdivision (g) of Government Code section 17556,” and therefore barred from reimbursement. Specifically, Finance argues that “[t]he results of the SARATSO are required for the court to make a determination on the probation conditions of a convicted sex offender,” and that therefore the SARATSO evaluation necessarily affects “the sex offender’s penalty after he/she has been convicted of the crime.”¹¹⁵

The County responds, in rebuttal comments, that “[c]hapter 337, Statutes of 2006, mandates SARATSO on every registered sex offender who is required to register as a sex offender [sic].” The County argues that persons subject to the SARATSO “do not have to be on probation and SARATSO is not a part of the offender’s sentencing.” The County argues that “SARATSO is a device to eliminate future victimization” and therefore not subject to the “disclaimer” of section 17556(g).¹¹⁶

Article XIII B, section 6 of the California Constitution that states that the Legislature “may, but need not, provide a subvention of funds for...[l]egislation defining a new crime or changing an existing definition of a crime.” Government Code section 17556 provides, in pertinent part, that the Commission “shall not find costs mandated by the state,” if the test claim 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.”¹¹⁷ The inclusion of subdivision (g) within the statutory exclusions (sometimes

¹¹⁴ Exhibit A, Test Claim, at p. 43.

¹¹⁵ Exhibit E, Department of Finance Comments, at p. 1.

¹¹⁶ Exhibit F, County of Los Angeles Rebuttal Comments, at p. 3.

¹¹⁷ Government Code section 17556(g) (Stats. 2010, ch. 719 (SB 856)).

called “disclaimers”) of section 17556 constitutes the “exercise of the Legislative discretion authorized by article XIII B, section 6” whether to provide a subvention of funds for statutes that create, eliminate, or change the penalty for a crime or infraction.¹¹⁸

Section 17556(g) prohibits reimbursement for test claim statutes that create or eliminate a crime, or change the penalty for a crime, “*but only* for that portion of the statute *relating directly to the enforcement of the crime or infraction.*” Probation is “the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer.”¹¹⁹ In addition, Penal Code section 1202.7 includes punishment as one of the primary considerations in granting probation:

“The Legislature finds and declares that the provision of probation services is an essential element in administration of criminal justice. The safety of the public, which shall be a primary goal through enforcement of court-ordered conditions of probation; the nature of the offense, the interests of justice, *including punishment*, reintegration of the offender into the community, and enforcement of conditions of probation; the loss to the victim; and the needs of the defendant shall be the primary considerations in the granting of probation.” (Emphasis added.)

Furthermore, the successful completion of probation is required before the unconditional release of the defendant. If the convicted defendant does not successfully complete probation, the defendant is subject to further sentencing and incarceration.¹²⁰ Finally, *County of Orange v. State Board of Control* concluded that “probation is an *alternative sentencing device imposed*

¹¹⁸ See *County of Contra Costa v. State of California* (Cal. Ct. App. 3d Dist. 1986) 177 Cal.App.3d 62, at p. 67, Fn 1 [“After the adoption of article XIII B, section 6, the Legislature in 1980 amended Revenue and Taxation Code sections 2207 and 2231, and expanded the definition of ‘costs mandated by the State’ by including certain specified statutes enacted after January 1, 1973. (Stats. 1980, ch. 1256, § 5, p. 4248.) In *County of Los Angeles v. State of California* (1984) 153 Cal.App.3d 568, 573, the court concluded that ‘this reaffirmance constituted the exercise of the Legislative discretion authorized by article XIII B, section 6, subdivision (c), of the California Constitution [to provide subvention of funds for mandates enacted prior to January 1, 1975].’”].

¹¹⁹ Penal Code section 1203(a) (Stats. 2006, ch. 337 (SB 1128)).

¹²⁰ Penal Code section 1203.2 provides authority to revoke probation and impose further sentencing, including incarceration, if the defendant violates *any* term of probation. [“At any time during the probationary period...if any probation officer or peace officer has probable cause to believe that the probationer is violating any term or condition of his or her probation or conditional sentence, the officer may, without warrant or other process and at any time until the final disposition of the case, rearrest the person and bring him or her before the court or the court may, in its discretion, issue a warrant for his or her rearrest. Upon such rearrest, or upon the issuance of a warrant for rearrest the court may revoke and terminate such probation if the interests of justice so require and the court, in its judgment, has reason to believe from the report of the probation officer or otherwise that the person has violated any of the conditions of his or her probation...”].

after conviction,” unlike the pretrial diversion program added by statute, which the court held did not change the penalty for a crime.¹²¹

Therefore the implication of *County of Orange*, and the logical conclusion from the plain language of section 17556(g) is that probation is a penalty for the conviction of certain sex offenses and that changes to the duration or conditions of probation that result in increased costs to local agencies are subject to the exclusion from reimbursement stated in Government Code section 17556(g). Changes to the administrative activities *leading up to probation*, or additional functions resulting in increased costs *not directly related to the duration or conditions of punishment* and that are *administrative* in nature generally are not subject to exclusion from reimbursement under Government Code section 17556(g), because they are not directly related to the definition of or the penalty for a crime.

The following analysis addresses the required new activities identified in the test claim statutes and executive order, and determines whether any or all are barred from reimbursement by section 17556(g).

1. Training requirements under section 290.05; reporting to Corrections Standards Authority under section 1202.8; and granting access to relevant records under section 290.07 are administrative functions performed by local agencies pursuant to the test claim statute, and are not directly related to the creation, expansion, or elimination of crimes or penalties for crimes, and therefore are not barred from reimbursement by Government Code section 17556(g).

The plain language of section 17556(g) does not bar a finding of costs mandated by the state for training, reporting, granting access to other agencies and personnel, and record keeping activities under sections 290.05, 1202.8, 290.07, and 290.08. These activities are not related to the expansion or elimination of crime, or the enhancement or elimination of punishment.

Specifically, section 290.05 requires county probation departments and authorized law enforcement agencies to designate personnel to attend training and to train others within the organization, and to ensure that persons administering the SARATSO receive training no less frequently than every two years. These training activities are not related to the expansion of crime or the execution of punishments for crime.

Likewise, section 1202.8 requires a county probation department to report, beginning January 1, 2009, and every two years thereafter, to the Corrections Standards Authority “all relevant statistics and relevant information” regarding the effectiveness of continuous electronic monitoring of offenders required to register pursuant to section 290, including the costs of the program and recidivism rates of those monitored. While electronic monitoring itself is incident to the punishment and a condition of probation, and therefore not reimbursable in itself under section 17556(g), as discussed below, this reporting requirement is administrative in nature, and does not relate directly to the punishment or enforcement of crime. Section 17556(g) states that the Commission shall not find costs mandated by the state when a statute changes 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.” This activity does not relate directly to enforcement, and is therefore not barred from a finding of costs mandated by the state.

¹²¹ (Cal. Ct. App. 4th Dist. 1985) 167 Cal.App.3d 660, at p. 667.

In addition, granting access to relevant records pertaining to a person required to register as a sex offender to any person authorized to administer the SARATSO, as required by section 290.07, is an administrative function, and has little relation to the enforcement of the underlying crimes that trigger the duty of county probation departments to provide access. Therefore these activities and costs are not barred from reimbursement by section 17556(g).

These requirements constitute new programs or higher levels of service that are administrative in nature and not related to the punishment for or enforcement of crime, and that result in local agencies incurring increased costs mandated by the state.

Based on the foregoing, the Commission finds that the following activities constitute reimbursable state-mandated new programs or higher levels of service:

For county probation departments and authorized local law enforcement agencies:

1. Designate key persons within their organizations to attend training and, as authorized by the department, train others within their organizations.¹²²
2. Ensure that persons administering the SARATSO receive training no less frequently than every two years.¹²³

For county probation departments:

1. Beginning January 1, 2009, and every two years thereafter, report to the Corrections Standards Authority all relevant statistics and relevant information regarding the effectiveness of continuous electronic monitoring of sex offenders, including the costs of monitoring and recidivism rates of those persons who have been monitored.¹²⁴
2. Grant access to all relevant records pertaining to a registered sex offender to any person authorized by statute to administer the SARATSO.

This activity is not new to the extent of records required to be disclosed under the California Public Records Act (Government Code § 6250, et seq.).¹²⁵

2. Administering SARATSO assessments under section 290.06; including the results of the SARATSO assessments in presentencing reports prepared under section 1203; including the results of the SARATSO assessments in reports submitted to the Department of Corrections and Rehabilitation under section 1203c; and compiling a Facts of Offense Sheet including the results of the SARATSO assessment, where applicable, and including

¹²² Penal Code section 290.05 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)); SARATSO Review Committee Notification, issued February 1, 2008).

¹²³ Penal Code section 290.05 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)); SARATSO Review Committee Notification, issued February 1, 2008).

¹²⁴ Penal Code section 1202.8 (Stats. 2006, ch. 336 (SB 1178); Stats. 2006, ch. 886 (AB 1849)).

¹²⁵ Penal Code section 290.07 (Stats. 2006, ch. 337 (SB 1128)).

the Facts of Offense Sheet in the presentencing report required by section 1203 impose a reimbursable new program or higher level of service on county probation departments.

The activities related to administering the SARATSO under section 290.06, and including the SARATSO results in presentencing reports, reports made to CDCR, and in the Facts of Offense Sheet included in a presentencing report, are all *administrative functions* whose costs *do not result* from a statute altering the duration or conditions of the penalty. Although the activities related to administering the SARATSO may result in an augmented or mitigated punishment (which may entail increased costs), and may result in changed conditions of probation, as discussed below, the activities for which reimbursement is sought relating to administering the SARATSO are not directly related to these changed penalties.

Specifically, section 290.06(a)(4), as discussed above, requires a probation department to assess, using the SARATSO, the risk of reoffending for every sex offender “for whom it prepares a report pursuant to Section 1203.” Section 290.06(a)(5) requires a probation department to also assess every “eligible person,” meaning every sex offender required to register under section 290, currently under supervision and prior to the termination of probation. Section 1203, as discussed above, requires a report to the court, after conviction but before sentencing, “which may be considered either in aggravation or mitigation of the punishment.” Therefore the SARATSO administered pursuant to section 290.06(a)(4) may have an impact on the duration or conditions of probation, based on the plain language of sections 290.06 and 1203. However, the activity for which reimbursement is sought is the assessment itself; this activity is administrative in nature, and is not a penalty in itself, even though it may lead to an increased penalty imposed by the court.

Likewise, section 1203 requires a probation officer to include the results of the SARATSO evaluation in the presentencing report, and requires preparation of a presentencing report for all sex offenses that require a person to register as a sex offender under section 290. The report, when received by the court, may have an effect on the punishment imposed for the underlying crime, but the requirement to prepare the report, and the requirement to include the SARATSO evaluation in the report are administrative functions that are not alleged to result in costs related to the penalty for the underlying offense. As discussed above, the changed penalty is not the subject of reimbursement; the required activity for which reimbursement is sought is preparing the report and ensuring that a SARATSO evaluation, where applicable, is included in the report.

In addition, section 1203c requires a probation officer to include the results of the SARATSO evaluation in the report prepared for CDCR, if applicable. This is an administrative reporting requirement and is not directly related to law enforcement or the penalty for a crime.

And finally, section 1203e requires a county probation department, beginning January 1, 2010, to prepare a Facts of Offense Sheet for inclusion in the presentencing report prepared pursuant to section 1203, and also to be sent to the Department of Justice Sex Offender Tracking Program within 30 days of conviction. The Facts of Offense Sheet is also required, for all offenses requiring registration under section 290, to include the results of the SARATSO evaluation, if applicable. Like sections 290.06 and 1203, above, the requirements of section 1203e are administrative in nature, and do not of themselves change the penalty for the underlying crime.

Based on the foregoing, the Commission finds that the following activities are not barred from reimbursement by section 17556(g), and therefore constitute reimbursable state-mandated new programs or higher levels of service:

For county probation departments to:

1. Assess, using the SARATSO, as set forth in section 290.04, every eligible person for whom the department prepares a presentencing report pursuant to section 1203 and every eligible person under the department's supervision who was not assessed pursuant to a presentencing report, prior to the termination of probation but no later than January 1, 2010.¹²⁶
2. Include the results of the SARATSO assessment administered pursuant to sections 290.04 to 290.06 in the presentencing report made to the court pursuant to section 1203, if the person was convicted of an offense that requires him or her to register as a sex offender, or if the probation report recommends that registration be ordered at sentencing.¹²⁷

Preparing the presentencing report under section 1203 is not a new activity and, thus, is not eligible for reimbursement.

3. Include in the report prepared for the department pursuant to section 1203c the results of the SARATSO, administered pursuant to sections 290.04 to 290.06, inclusive, if applicable, whenever a person is committed to the jurisdiction of the Department of Corrections and Rehabilitation for a conviction of an offense that requires him or her to register as a sex offender.¹²⁸

Preparing the report under section 1203c is not a new activity and, thus, is not eligible for reimbursement.

¹²⁶ Penal Code section 290.06 (Stats. 2006, ch. 337 (SB 1128)); 290.04 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)) [limiting duty to administer SARATSO to populations for whom an appropriate tool has been selected pursuant to section 290.04]; SARATSO Review Committee Notification issued February 1, 2008 [selecting a SARATSO risk assessment tool for adult males and juvenile males only].

¹²⁷ Penal Code section 1203 (Stats. 2006, ch. 337 (SB 1128)); 290.04 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)) [limiting duty to administer SARATSO to populations for whom an appropriate tool has been selected pursuant to section 290.04]; SARATSO Review Committee Notification issued February 1, 2008 [selecting a SARATSO risk assessment tool for adult males and juvenile males only].

¹²⁸ Penal Code section 1203c (as amended by Stats. 2006, ch. 337 (SB 1128)). See also Penal Code section 290.0404 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)) [limiting duty to administer SARATSO to populations for whom an appropriate tool has been selected pursuant to section 290.04]; SARATSO Review Committee Notification issued February 1, 2008 [selecting a SARATSO risk assessment tool for adult males and juvenile males only].

4. Beginning January 1, 2010:
 - (a) Compile a Facts of Offense Sheet for every person convicted of an offense that requires him or her to register as a sex offender and who is referred to the department pursuant to section 1203;
 - (b) Include in the Facts of Offense Sheet all of the information specified in section 1203e, including the results of the SARATSO, as set forth in section 290.04, if required;
 - (c) Include the Facts of Offense Sheet in the probation officer's report to the court made pursuant to section 1203; and
 - (d) Send a copy of the Facts of Offense Sheet to the Department of Justice Sex Offender Tracking Program within 30 days of the person's sex offense conviction.

*Obtaining information that is already required to complete the presentencing report pursuant to section 1203, as amended by Statutes 1996, chapter 719 (AB 893), or the report to the Department of Corrections and Rehabilitation under section 1203c, as amended by Statutes 1963, chapter 1785 is not new or subject to reimbursement under this activity.*¹²⁹

3. Continuously electronically monitoring high risk sex offenders under section 1202.8, and ensuring that high risk sex offenders are placed under intensive and specialized supervision under section 1203f, are activities directly related to the penalty for the sex crime, and are not reimbursable under section 17556(g).

As discussed above, the plain language of article XIII B, section 6(a)(2) and section 17556(g), along with the statutory and case law determinations that probation is a form of criminal punishment, and a sentencing device,¹³⁰ results in a working rule and analysis that required changes to the duration or conditions of probation that result in increased costs to local agencies are subject to the exclusion in Government Code section 17556(g), and therefore not reimbursable.

Here, section 1202.8 requires county probation departments, beginning January 1, 2009, to continuously electronically monitor sex offenders while on probation who assess at a high risk level under the SARATSO. Electronic monitoring is thus a condition of probation that facially constitutes a greater deprivation of liberty, and therefore constitutes a change in the penalty for the underlying crimes. Based on the plain language of section 17556(g), the costs of electronic monitoring under section 1202.8 are not costs mandated by the state, within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

¹²⁹ Penal Code section 1203e (Stats. 2006, ch. 337 (SB 1128)); 290.04 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)) [limiting duty to administer SARATSO to populations for whom an appropriate tool has been selected pursuant to section 290.04]; SARATSO Review Committee Notification issued February 1, 2008 [selecting a SARATSO risk assessment tool for adult males and juvenile males only].

¹³⁰ *County of Orange, supra*, 167 Cal.App.3d 660, at p. 667.

Likewise, section 1203f requires county probation departments to place sex offenders who are on probation and who assess at a high risk level under the SARATSO on “intensive and specialized probation,” and to require such probationers “to report frequently to designated probation officers.” These requirements are conditions of probation placed on a subset of probationers, as specified, and therefore constitute a change in the penalty for the underlying crimes. Based on the plain language of section 17556(g), the costs of providing “intensive and specialized probation” services are not costs mandated by the state, within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Based on the foregoing, section 1202.8, as amended by Statutes 2006, chapter 336 (SB 1178), and Statutes 2006, chapter 886 (AB 1849), and section 1203f, as added by Statutes 2006, chapter 337 (SB 1128), are denied.

V. Conclusion

Based on the foregoing, the Commission finds that the test claim statutes and executive order constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities only:

For county probation departments and authorized local law enforcement agencies to:

1. Designate key persons within their organizations to attend training and, as authorized by the department, to train others within their organizations;¹³¹ and,
2. Ensure that persons administering the SARATSO receive training no less frequently than every two years.¹³²

For county probation departments to:

1. Assess, using the SARATSO, as set forth in section 290.04, every eligible person for whom the department prepares a presentencing report pursuant to section 1203 and every eligible person under the department’s supervision who was not assessed pursuant to a presentencing report, prior to the termination of probation but no later than January 1, 2010.¹³³

¹³¹ Penal Code section 290.05 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)); SARATSO Review Committee Notification, issued February 1, 2008).

¹³² Penal Code section 290.05 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)); SARATSO Review Committee Notification, issued February 1, 2008).

¹³³ Penal Code section 290.06 (Stats. 2006, ch. 337 (SB 1128)); 290.04 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)) [limiting duty to administer SARATSO to populations for whom an appropriate tool has been selected pursuant to section 290.04]; SARATSO Review Committee Notification issued February 1, 2008 [selecting a SARATSO risk assessment tool for adult males and juvenile males only].

2. Include the results of the SARATSO assessment administered pursuant to sections 290.04 to 290.06 in the presentencing report made to the court pursuant to section 1203, if the person was convicted of an offense that requires him or her to register as a sex offender, or if the probation report recommends that registration be ordered at sentencing.¹³⁴

Preparing the presentencing report under section 1203 is not a new activity and, thus, not eligible for reimbursement.

3. Include in the report prepared for the department pursuant to section 1203c the results of the SARATSO, administered pursuant to sections 290.04 to 290.06, inclusive, if applicable, whenever a person is committed to the jurisdiction of the Department of Corrections and Rehabilitation for a conviction of an offense that requires him or her to register as a sex offender.¹³⁵

Preparing the report under section 1203c is not a new activity and, thus, not eligible for reimbursement.

4. Beginning January 1, 2010:

- (a) Compile a Facts of Offense Sheet for every person convicted of an offense that requires him or her to register as a sex offender and who is referred to the department pursuant to section 1203;
- (b) Include in the Facts of Offense Sheet all of the information specified in section 1203e, including the results of the SARATSO, as set forth in section 290.04, if required;
- (c) Include the Facts of Offense Sheet in the probation officer's report to the court made pursuant to section 1203; and
- (d) Send a copy of the Facts of Offense Sheet to the Department of Justice Sex Offender Tracking Program within 30 days of the person's sex offense conviction.

Obtaining information required to complete the presentencing report pursuant to section 1203, as amended by Statutes 1996, chapter 719 (AB 893), or the report to the Department of Corrections and Rehabilitation under section 1203c if applicable, as amended by Statutes 1963, chapter 1785 is not new or reimbursable under this activity.¹³⁶

5. Beginning January 1, 2009, and every two years thereafter, report to the Corrections Standards Authority all relevant statistics and relevant information regarding the effectiveness of continuous electronic monitoring of

¹³⁴ Penal Code section 1203 (as amended, Stats. 2006, ch. 337 (SB 1128)).

¹³⁵ Penal Code section 1203c (as amended, Stats. 2006, ch. 337 (SB 1128)).

¹³⁶ Penal Code section 1203e (added, Stats. 2006, ch. 337 (SB 1128)).

sex offenders, including the costs of monitoring and recidivism rates of those persons who have been monitored.¹³⁷

6. Grant access to all relevant records pertaining to a registered sex offender to any person authorized by statute to administer the SARATSO.¹³⁸

This activity is limited to granting access to records exempt from disclosure under the California Public Records Act (Government Code § 6250, et seq.).

All other statutes, regulations, and activities pled in this test claim do not constitute reimbursable state-mandated programs subject to article XIII B, section 6 of the California Constitution and are, therefore, denied.

¹³⁷ Penal Code section 1202.8 (as amended, Stats. 2006, ch. 337 (SB 1128)).

¹³⁸ Penal Code section 290.07 (added, Stats. 2006, ch. 337 (SB 1128)).