

Hearing Date: June 12, 2026

ITEM 2
REQUEST FOR RECONSIDERATION OF AN ADOPTED DECISION
PROPOSED DECISION

25-RAD-01

Child Physical Abuse and Neglect Exams, 24-TC-05

Penal Code Section 11171(f)

Statutes 2023, Chapter 841 (AB 1402), Effective January 1, 2024

County of Santa Clara, Requester

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**OFFICE OF THE COUNTY COUNSEL
COUNTY OF SANTA CLARA**

**Tony LoPresti
COUNTY COUNSEL**



County Government Center
70 West Hedding Street
East Wing, 9th Floor
San José, California 95110-1770

**Kavita Narayan
CHIEF ASSISTANT COUNTY COUNSEL**

**Robert M. Coelho
Michaela L. Lewis
Steve Mitra
Elizabeth G. Pianca
Douglas M. Press
Relic Sun
Gita C. Suraj
ASSISTANT COUNTY COUNSEL**

(408) 299-5900
(408) 292-7240 (FAX)

March 9, 2026



Juliana F. Gmur
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Exhibit A

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: Request to Reconsider Adopted Decision
Child Physical Abuse and Neglect Exams, 24-TC-05
Statutes 2023, Chapter 841 (AB 1402); Penal Code Section 11171(f)
County of Santa Clara, Claimant

Dear Ms. Gmur:

The County of Santa Clara ("County") requests that the Commission on State Mandates ("Commission") reconsider the Adopted Decision on test claim 24-TC-05 ("Test Claim"), concerning child physical abuse and neglect exams ("child abuse exams"). (Gov. Code, § 17559, subd. (a).) While the Adopted Decision approves reimbursement for child abuse exams rendered to children whose costs would have been covered by Medi-Cal or the Victims Compensation Board, the Adopted Decision finds that there is no reimbursable mandate pursuant to article XIII B, section 6 of the California Constitution ("Section 6") where counties provide child abuse exams to child victims who have private medical insurance. The County is deeply concerned about this finding and strongly encourages the Commission to reconsider the Adopted Decision so that all victim examinations are treated the same, regardless of insurance status.

As requires by the Commission's regulations, this request includes a "detailed statement of the new or different facts, circumstances, or law supporting the request,"

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Re: Request for Reconsideration, 24-TC-05
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as well as documentation supporting the statement. (2 Cal. Code Regs. § 1187.15) This statement therefore discusses the application of case law concerning “a higher level of service” pursuant to Section 6; the legal errors in the Adopted Decision’s discussion of SB 580 (2002); and new facts regarding county budgetary pressures in light of the Adopted Decision. The Claimant requests that the Commission direct staff to amend the Adopted Decision so that it approves reimbursement for child abuse exams rendered to children covered by private medical insurance.

DISCUSSION

At bottom, there is no basis upon which the Adopted Decision rationally distinguishes between child abuse exam provided to child victims who are covered by private medical insurance and child victims who are covered by Medi-Cal, or whose costs would be covered by the Victims Compensation Board. That distinction does not exist in the Test Claim Statute, it exists nowhere else in the law and practical realities that compel the provision of child abuse exams, and it is not required by Section 6. Striking this distinction creates legal errors in the Adopted Decision and practical consequences for counties, which are detailed below.

1. *The Adopted Decision errs in concluding that the Test Claim Statute does not impose any new activities or a higher level of service on counties.*

The Adopted Decision notes that the Test Claim Statute does not constitute “a new program or higher level of service” because it fails to impose any new activities on counties. (Adopted Decision, at p. 2.) In response to the Claimant’s contention that paying for child abuse exams is the new reimbursable activity, the Adopted Decision finds that “counties have long been required to investigate all incoming child abuse reports,” so “the counties’ duties relating to the medical examination requirements for child physical abuse and neglect are not new.” (*Id.* at p. 34-35.)

The Adopted Decision errs because the mandated activity—providing child abuse exams free of charge—is new and increases the level of service provided to the public. As noted in the Test Claim, the intent of the Test Claim Statute is to make child abuse exams more accessible to child victims by eliminating the cost of those exams. Providing the same exam at no cost provides a higher level of service because child victims receive a greater service than what they did prior to the enactment of the Test Claim Statute, when providers had the authority to bill Medi-Cal or private medical insurance.

In this way, the Test Claim Statutes reflects the case law on the meaning of “higher level of service,” which is oriented to what the public receives, not what the local government undertakes. In *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, the test claim statute required school principals to

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suspend and recommend for expulsion students who brought a firearm to school. (*Id.* at pp. 867-871.) The statute also entitled the student to procedural protections, including a hearing. (*Id.* at p. 866.) The California Supreme Court determined that the costs associated with these procedural protections were reimbursable pursuant to Section 6 on the basis that “public schooling ... constitutes a governmental function” and because the requirement to suspend students who had firearms constituted “a ‘higher level of service’ to the public,” which here meant a safer schooling environment. (*Id.* at pp. 877-879.) That the “higher level of service” references what the public gets and not what the locality does is firmly rooted in the decisional law. (See *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 556-558 [collecting cases].)

2. *The Adopted Decision errs in speculating that an amended test claim pleading SB 580 (2022) would have addressed the Claimant’s concerns.*

The Adopted Decision suggests that the Claimant fumbled the opportunity to seek reimbursement for child abuse exams rendered to children with private medical insurance, writing that the Claimant’s “option was to plead Penal Code section 11171, as originally added by Statutes 2002, chapter 249 (SB 580) and the 2023 test claim statute.” (Adopted Decision, at pp. 40-41.) The Adopted Decision then explains that “the Commission could have taken jurisdiction on the activities required by 2002 statute and the costs incurred under the 2023 amendment. However, that did not occur and the time to amend the test claim has passed.” (*Id.* at p. 41.)

Setting aside the choice to articulate this point only after the time to amend lapsed, the suggestion is incorrect. The Adopted Decision itself says why: “Penal Code section 11171, which originally became effective on January 1, 2004, does not by its plain language require counties to perform child physical abuse and neglect exams.” (See *id.* at p. 5; see also at p. 50 [finding again that “nothing in the above statute directly states that these exams ‘shall’ be provided by counties”].) In other words, there are no legally compelled activities in SB 580 of which the Commission could have taken jurisdiction, if only the Claimant were to plead them. As the Adopted Decision goes on to find, the duty to provide child abuse exams is practically compelled by “[other child welfare and public safety] statutes and practical realities” that leave counties with “no true alternative.” (*Id.* at pp. 51-56.)

If it was the case that pleading SB 580 is the missing link that precluded the Adopted Decision from approving reimbursement for child abuse exams rendered to children who have private medical insurance, the Adopted Decision never explains how exactly it could approve reimbursement for *any* child abuse exams. If it was crucial for the Commission to take jurisdiction of Penal Code section 11171, on what basis could the Adopted Decision allow reimbursement for child abuse exams rendered only to children whose costs would have been covered by Medi-Cal or the Victims Compensation Board? The Adopted Decision is unable to address this question

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because Penal Code section 11171 does not draw such a distinction; on its face, the statute discusses child abuse exams for *all* children.

3. *The Adopted Decision will force counties to subsidize private medical insurance companies to further a State policy.*

The erroneous distinction drawn by the Adopted Decision will also adversely affect counties who are under tremendous financial strain. In essence, by relegating to county general funds the costs of providing child abuse exams to children covered by private medical insurance, the Adopted Decision requires counties to subsidize the costs of private medical insurers.

Counties are in no position to take on this burden. As noted by the California State Association of Counties, which wrote on behalf of all 58 counties in a letter to the Governor:

[C]ounties are facing mounting crises due to federal actions, such as H.R. 1, which will shift billions of dollars in new Medi-Cal, CalFresh, and indigent care costs to counties — without removing the mandates to deliver these services. Counties have no fund source to absorb these impacts. Without meaningful support from the state, California communities will suffer as the safety net crumbles.

(Declaration of Rajiv Narayan (“Narayan Decl.”), Exh. A, at p. 1.)

The Claimant stands as an unfortunate but poignant reference point for these mounting crises. Like all counties, the Claimant is currently responding to an urgent and unprecedented crisis caused by the federal bill H.R. 1, which was signed on July 4, 2025. H.R. 1 slashes funding for essential services that counties provide, such as Medi-Cal and CalFresh, resulting in massive ongoing revenue loss to the Claimant of \$223 million in this fiscal year that started July 1, 2025—a revenue loss that will more than double next year, and then double again the following year to reach over \$1 billion. (Narayan Decl., Exh. B, at p. 4.)

Forcing counties to absorb a greater financial burden at this time not only threatens the social safety net that county services keep intact, but it also contravenes the voters’ intent in enacting Section 6. As the California Supreme Court explained in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46:

The concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the

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public. In their ballot arguments, the proponents of article XIIB explained section 6 to the voters: "Additionally, this measure: (1) Will not allow the state government to *force programs* on local governments without the state paying for them." (Ballot Pamp., Proposed Amend. to Cal. Const. with arguments to voters, Spec. Statewide Elec. (Nov. 6, 1979) p. 18. Ital. added.)

(*Id.* at pp. 43-44.) Notwithstanding the clear intent behind Section 6, the Adopted Decision is contrary to that Constitutional requirement, and with negative financial consequences to counties.

CONCLUSION

Because the proffered distinction between child abuse exams rendered to victims with Medi-Cal and private medical insurance is contrary to legal requirements, the County strongly encourages the Commission to direct Staff to amend the Adopted Decision. The Decision the Commission ultimately adopts should treat all child abuse exams the same, regardless of insurance status.

Certification

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or based on information and belief and that I am authorized and competent to do so.


Very truly yours,
TONY LOPRESTI
County Counsel



RAJIV NARAYAN
Deputy County Counsel

DECLARATION OF RAJIV NARAYAN

1. I, Rajiv Narayan, declare:
2. I have been employed by the County of Santa Clara, the Claimant for Test Claim 24-TC-05, since September 2022 and currently hold the title of Deputy County Counsel for the Office of the County Counsel. I have been in this role since April 2023.
3. I have personal knowledge of the facts in this Declaration. On information and belief, I attest to the authenticity of the attached exhibits. If called to testify to the statements made herein, I could and would do so competently.
4. Attached as Exhibit A is a true and accurate copy of a January 16, 2026 letter from the California State Association of Counties to Governor Gavin Newsom regarding "2026-2027 Governor's Budget Proposal and County Partnership."
5. Attached as Exhibit B is a true and accurate copy of an August 6, 2025 public memo presented to the County of Santa Clara Board of Supervisors during its August 7, 2025 Special Meeting from the County Budget Director Ezequiel Vega regarding the "Fiscal Impacts of H.R. 1 on the County Organization."
6. Attached as Exhibit C is a true and accurate copy of the Adopted Decision, as required by 2 Cal. Code Regs., § 1187.15, subd. (b)(2).
7. Executed on 3/9/26 at San José, California.



Rajiv Narayan
Deputy County Counsel
Office of the County Counsel
County of Santa Clara
(408) 299-9040
Rajiv.Narayan@cco.sccgov.org

Exhibit A



January 16, 2026

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CEO

Graham Knaus

The Honorable Gavin Newsom
Governor, State of California
1021 O Street, Suite 9000
Sacramento CA, 95814

RE: 2026-2027 Governor's Budget Proposal and County Partnership

Dear Governor Newsom,

The California State Association of Counties (CSAC), proudly representing all 58 of the state's counties, remains ready to work with your Administration and the Legislature to develop a budget for 2026-27 and beyond that collectively addresses the needs of California's communities by safeguarding the services counties provide. The annual budget is a reflection of the state's priorities and includes critical investments necessary to provide communities with a wide array of services. In this time of grave uncertainty, the state and local governments must closely collaborate and form a strong partnership to protect residents from significant reductions to services.

We recognize that this year's state budget deliberations are shaped by ongoing state and federal tensions and recent federal policies that impact California's fiscal condition. Your budget proposal estimates billions of dollars in federal fund expenditures in 2026-27, which may change depending on unanticipated federal actions that have economic implications and the continued implementation of H.R. 1. However, even with the fiscal uncertainty, it is paramount that this budget takes meaningful action to address the onslaught that is coming, particularly in implementing H.R. 1. While the proposed budget minimizes the state deficit with additional revenue, it does not share the wealth with counties that deliver critical services on behalf of the state to millions of Californians every day. Recent state-level cuts and funding delays to core safety-net programs, like In-Home Supportive Services (IHSS), and to the Homeless Housing, Assistance and Prevention (HHAP) Program, along with the lack of implementation funding for Proposition 36 (2024), further erode counties' ability to meet the needs of Californians. Not to mention counties are facing mounting crises due to federal actions, such as H.R. 1, which will shift billions of dollars in new Medi-Cal, CalFresh, and indigent care costs to counties — without removing the mandates to deliver these services. Counties have no



fund source to absorb these impacts. Without meaningful support from the state, California communities will suffer as the safety net crumbles.

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To this end, CSAC submits the following comments regarding your 2026-27 budget proposal to inform budget conversations throughout the spring and summer:

County HHS H.R. 1 Impacts

The enactment of H.R. 1 fundamentally shifted significant fiscal responsibility for safety net programs from the federal government to states and counties. While your budget proposal includes funding to address the state's increased costs from H.R. 1 impacts, CSAC is deeply concerned that there is no funding to help counties respond to the massive new fiscal burden that has been placed upon them. Counties are facing billions of dollars in projected new costs to Medi-Cal, CalFresh, and indigent care as a result of H.R. 1. Some of the primary increased burdens include expanded demand for indigent care from individuals losing health coverage, direct cost shifts for CalFresh administration, and increased county workload to help individuals enroll and remain eligible for Medi-Cal and CalFresh, which are life-saving programs.

As you know, counties are the safety net providers in California performing the on-the-ground work to enroll and serve vulnerable families, children, and older adults. Absent state support to address these county budget impacts, the state's safety net will crumble as counties cannot backfill federal funding on our own. If the safety net crumbles, local and state economies will as well. When healthcare fails, individuals cannot work and children will miss school due to illness. CSAC stands at the ready to partner with the state to find workable policy and fiscal solutions, including investments and administrative relief, to meet our shared goal of preserving health care, public health, social services, and behavioral health services in our communities.

Homeless Housing, Assistance and Prevention (HHAP) Program

CSAC appreciates that last year's \$500 million commitment for the HHAP program in 2026-27 remains. However, CSAC continues to call for full funding of \$1 billion for Round 7. Through prior investments for the HHAP program and the demonstrated work of local government and our partners on the ground, as you stated in your state of the state address, California is making significant strides in reducing homelessness. The only way to sustain this progress is to fully fund the HHAP program and distribute Round 7



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funding by the enacted September 1, 2026 goal date, especially after a year in which no HHAP funding was provided. CSAC remains committed to working with you on timely adoption of legislation to enact Round 7 of the program, including provisions that allow applicants to prove their progress towards meeting the new requirements, ensuring the continued delivery of programs and services that meet the homelessness needs in our communities.

In-Home Supportive Services (IHSS)

CSAC is strongly opposed to the proposal to remove the state's share of costs for IHSS hours per case growth. This proposal appears to be a significant cost shift to counties that would result in state General Fund savings of \$233.6 million starting in 2027-28. IHSS costs are already outpacing Realignment revenues, the fund source intended to cover them. Any cost shift would undermine the existing fiscal structure of the county IHSS maintenance of effort (MOE) established in 2019 (Chapter 27, Statutes of 2019). Further, increased IHSS costs for counties would take away funding from other mandated critical health and human services programs such as Child Welfare and Mental Health at a time when counties are strained by the increased safety net program costs as a result of the implementation of H.R. 1.

Medi-Cal Mobile Crisis Services

Counties are also concerned about your budget proposal to make Medi-Cal Mobile Crisis Services an optional county benefit. This will shift tens of millions per year in costs from the state to the counties and undercut recent progress by the state and counties to bolster the community behavioral health system.

Proposition 36

The 2025 Budget Act appropriated \$50 million General Fund one-time to county behavioral health departments for Proposition 36 implementation, however this funding is only for one of multiple county departments impacted by the measure, and it has still not been allocated to counties to meet the demand for substance use disorder and mental health treatment. Your budget proposal does not include any new funding to address county costs to implement Proposition 36 in 2026-27 or thereafter. CSAC requests adequate, sustained funding for implementation of Proposition 36 to meet the expectations of voters who overwhelmingly approved the initiative in 2024. This includes associated costs for increased caseloads impacting



probation, behavioral health, indigent defense providers, district attorneys, and sheriff's offices.

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CSAC recognizes the difficult challenge in crafting a budget during these uncertain times. We are eager to partner with you and the Legislature to work toward equitable solutions that protect all Californians by offering the expertise and on-the-ground realities to help make informed decisions. California is at a critical stage where we cannot lose the economic progress and momentum we have achieved over the last several years. When H.R. 1 forces counties to backfill the full cost of indigent care, public and rural hospitals are pushed toward closure. Cuts to IHSS pull caregivers out of the workforce. Delays in homelessness and Proposition 36 funding drive up public safety risks and health costs. The result is a ripple effect that weakens local economies and harms communities across California. Counties can provide practical insights and local knowledge essential for shaping policies that work in real-world contexts.

CSAC looks forward to partnering with your Administration and the Legislature to craft a budget that safeguards core services and enables counties to continue supporting all Californians.

Respectfully,

A handwritten signature in blue ink, appearing to read 'GKnaus', written over a light blue horizontal line.

Graham Knaus
Chief Executive Officer, CSAC

CC : Nathan Barankin, Chief of Staff, Office of the Governor
Jamie Callahan, Deputy Chief of Staff, Office of the Governor
Christine Aurre, Legislative Affairs Secretary, Office of the Governor
Nani Coloretti, Cabinet Secretary, Office of the Governor
Joe Stephenshaw, Director, California Department of Finance
Erika Li, Chief Deputy Director of Budgets, California Department of Finance

Exhibit B

County of Santa Clara

Office of the County Executive

County Government Center, East Wing
 70 West Hedding Street
 San Jose, California 95110
 (408) 299-5105



DATE: August 6, 2025

TO: James R. Williams, County Executive

FROM: Ezequiel Vega, County Budget Director

Signed by:

 93470BBEDC8B4EB...

SUBJECT: Fiscal Impacts of H.R. 1 on the County Organization

Since the adoption of the Fiscal Year (FY) 2025-2026 Budget, the federal government has enacted legislation that will significantly impact the finances of the County organization and the critical services that we provide to the community. These impacts are compounded by recent state-level legislation that will also have direct impacts on the County. Unfortunately, the negative fiscal impact of these federal and state actions are *in addition* to the deficits that were already projected for the County's General Fund. That preexisting projected General Fund shortfall, which will on its own require significant budget reductions, is *not* the subject of this memorandum or included in any of the analyses herein. Instead, the analysis below is focused solely on the impact of recent federal legislation and associated state actions.

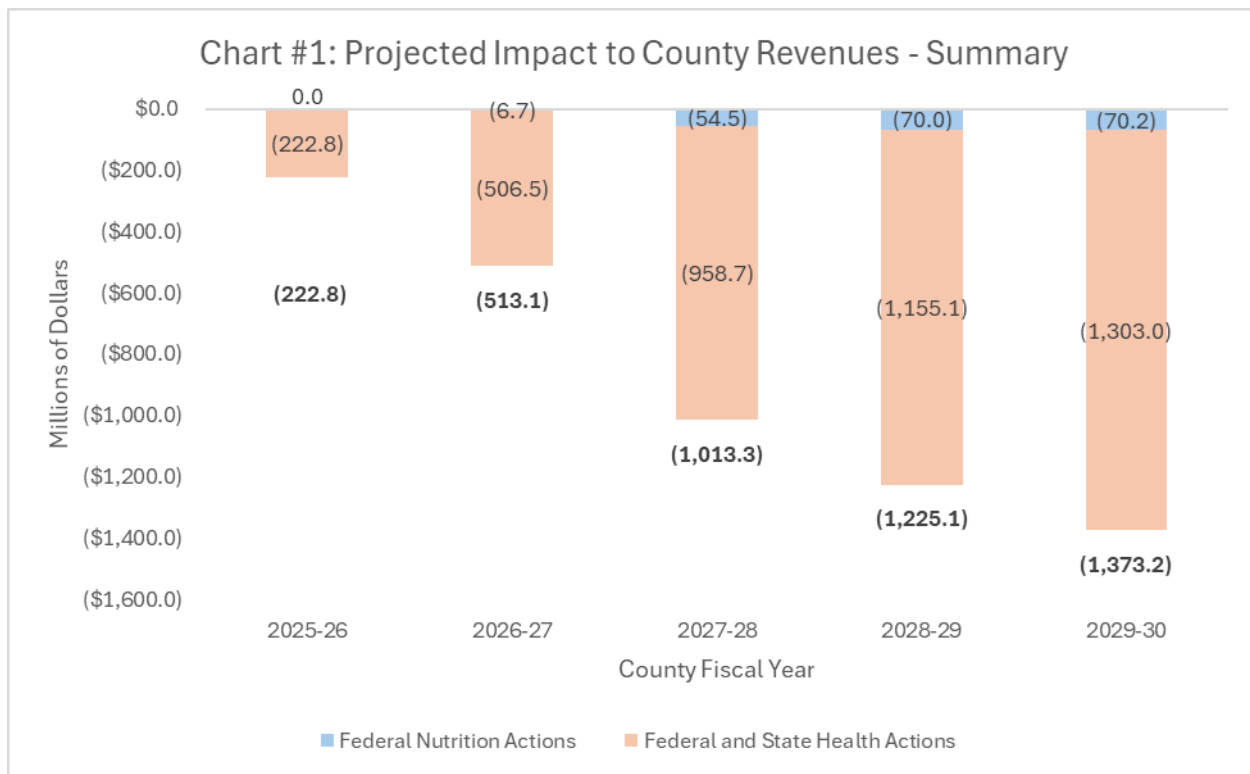
The federal (and state) impacts, along with the estimated deficits, indicate the County will face extraordinary and severe financial challenges in the next five years (see Chart #1). These federal and state challenges begin *immediately* with the current fiscal year (FY 2025-2026), will grow in FY 2026-2027 to an estimated \$513.1 million, and expand to nearly \$1.4 billion by FY 2029-2030, if no actions are taken to ameliorate these impacts. These estimates consider the staggered implementation dates of federal and state legislation.

Because the County's budget legally must be balanced each fiscal year and specific budgetary plans must be developed accordingly, the County must adjust its budget and associated expenditures each fiscal year to close these gaps. Put another way, extraordinary service reductions or identification of alternative revenues (or, more likely, a combination of both) will need to occur beginning in the current fiscal year. In addition, very substantial actions must be taken to achieve a balanced budget for the next

Memorandum to County Executive
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fiscal year, which begins on July 1, 2026, and any delays in implementing these actions will exacerbate and compound the magnitude of budget challenges in the coming years.

The estimates below are designed to capture the magnitude of the funding reductions imposed on the County by the federal and state government since adoption of the County’s FY 2025-2026 Budget in June 2025. They reflect the extraordinary gap in resources with which the County organization and our community will have to grapple. The federal portion of these revenue impacts—which account for the lion’s share—are primarily the result of the enactment of the “One Big Beautiful Bill Act” (H.R. 1). Other projected federal impacts include sunseting of the federal Disproportionate Share Hospital program and related cuts to the Global Payment Program (which are important sources of federal dollars for uncompensated healthcare), as well as cuts to the State-only Medi-Cal program enacted as part of the recently approved FY 2025-2026 California State Budget.



Memorandum to County Executive
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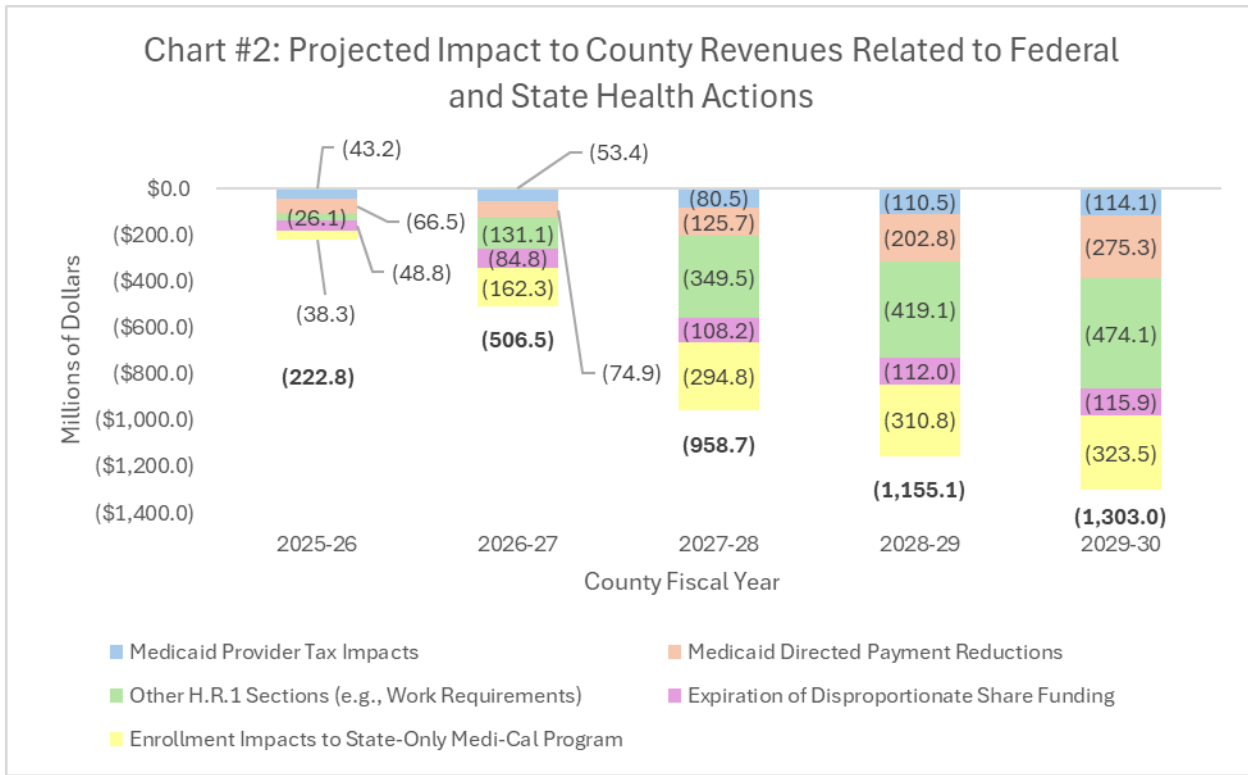
Impacts on Healthcare

The most significant revenue reduction impacts will come from changes to Medicaid (known as Medi-Cal in California) that were implemented by H.R. 1. Medicaid is the single largest revenue source for Santa Clara Valley Healthcare. H.R. 1 also contains cuts that impact individuals receiving their care through Covered California as well as some relatively modest reductions to Medicare. The fiscal impacts of healthcare reductions are estimated to reach \$1 billion by FY 2027-2028 and climb to nearly \$1.4 billion by FY 2029-2030. This figure is derived from the impact of several major categories of healthcare cuts as shown in Chart #2 and outlined below:

- Freeze and reduction in Medicaid provider taxes, estimated revenue loss of \$114.1 million
- Freeze and reduction in Medicaid Directed Payments, estimated revenue loss of \$275.3 million
- Other provisions of H.R. 1, primarily Medicaid work requirements, estimated revenue loss of \$474.1 million
- Expiration of federal disproportionate share funding and related cuts, estimated revenue loss of \$115.9 million
- Enrollment impacts to State-only Medi-Cal Program from both direct State changes and federal immigration enforcement, estimated revenue loss of \$323.5 million

These impacts will be felt throughout the County's health system, including services provided at the County's four acute care hospitals, behavioral health services, and other safety net programs dependent on Medicaid and Medicare revenues, such as critical services for supportive housing.

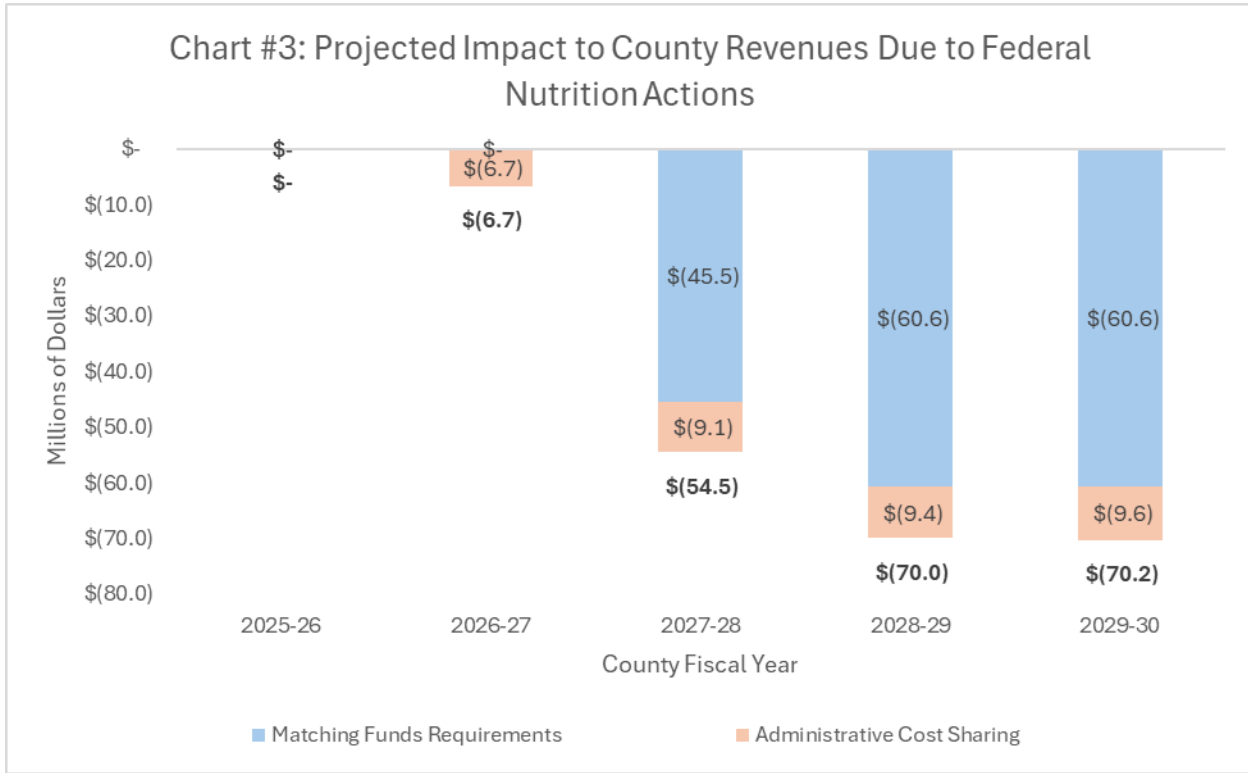
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Impacts to Supplemental Nutrition Assistance Program (SNAP)

In addition to extraordinary cuts to safety net healthcare programs, H.R. 1 enacts significant funding reductions to Supplemental Nutrition Assistance Program (SNAP), known as CalFresh in California. The revenue reduction is estimated at \$6.7 million in FY 2026-2027, and is estimated to grow to \$70.2 million by FY 2029-2030, as shown in Chart #3. The largest estimated impacts for this program result from changes to matching funds requirements. Under this new requirement, states must contribute toward the cost of food benefits provided to beneficiaries. The specific amount, or share of a state’s contribution, is tied to the payment error rate (a measure of the accuracy of each state’s eligibility and benefit determinations) from three fiscal years prior. In the past, states only contributed to administrative costs, while the federal government covered 100% of food benefits. This is the first time in history that states will be required to pay for food benefits. It is likely that these new costs will be passed on to counties as the State of California faces its own budgetary challenges. Thus, this estimate assumes counties will bear the impact of the increased costs.

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Analysis of Financial Impacts

This H.R. 1 impact analysis is, of course, subject to significant uncertainty. But it is based on reasonable assumptions regarding the impacts to each major provision of H.R. 1. Santa Clara Valley Healthcare is particularly vulnerable to several of the Medicaid funding reductions and related changes made in H.R. 1 because our community successfully maximized widespread access to healthcare offered by the expansion of Medicaid under the Affordable Care Act—allowing tens of thousands of families in our community to enroll in Medi-Cal and significantly reducing the burden of uninsured and uncompensated care. In addition, our County’s hospitals rely extensively on Medicaid directed payments and other supplemental Medicaid revenue streams that were targeted by the Senate version of H.R. 1 that was ultimately adopted into law and signed by President Trump. These on-the-ground realities make our system’s revenue impacts from H.R. 1 particularly acute.

This H.R. 1 impact analysis was developed by the Office of Budget and Analysis from the following sources:

- Projections from the Congressional Budget Office (CBO).
- Projections from County departments, including Santa Clara Valley Healthcare (SCVH), which analyzed each major provision of H.R. 1 to estimate its impact to particular aspects of Medicaid funding to the County.

Because Medicaid is a joint federal/state program, ongoing communication with the state and state-level advocacy will be an essential part of both assessing full impacts of H.R. 1 and associated state actions, as well as mitigating them to the extent possible.

Impacts to County Residents

In addition to the impacts to the County’s budget, it is also important to note that many County residents will be directly harmed because they are at risk of losing their health coverage and other benefits due to more stringent program requirements. The focus of this memorandum is on the impacts to the County budget, but the overall impacts to the community and individuals are substantial and highly concerning. Lost healthcare coverage—and the inability to timely access care, which is directly and inextricably related to the service delivery at Santa Clara Valley Healthcare—deeply impacts the lives and livelihoods of individuals, their families, their neighbors, their employers, and the entire community. Moreover, the loss in funding will have far-

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reaching impact on the County's ability to provide a broader set of safety net services that the most vulnerable individuals in the community rely upon.

Conclusion

Overall, the impacts from H.R. 1 will create major budgetary challenges for the County and its residents. And the County must have a balanced budget each fiscal year. It is therefore critical to start addressing these massive impacts immediately by developing a financial plan which preserves the most critical services for the community, and reflects prudent financial management of the County's resources.

In my professional experience spanning over 20 years in government finance, I have never seen financial impacts of this magnitude to local governments resulting from federal legislation. Accordingly, the County must take early and decisive steps to address the financial challenges resulting from H.R. 1 and related actions, including both rapid identification of all revenue opportunities and implementation of significant cost containment measures like the currently implemented hiring freeze and departmental expenditure controls that County Administration has already issued.

Exhibit C



February 18, 2026

Mr. Chris Hill
Department of Finance
915 L Street, 8th Floor
Sacramento, CA 95814

Mr. Rajiv Narayan
Office of the County Counsel
County of Santa Clara
70 West Hedding Street
San Jose, CA 95110

And Parties, Interested Parties, and Interested Persons (See Mailing List)

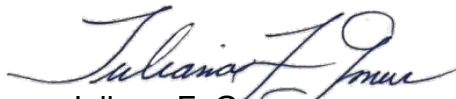
Re: Decision

Child Physical Abuse and Neglect Exams, 24-TC-05
Statutes 2023, Chapter 841 (AB 1402); Penal Code Section 11171(f)
County of Santa Clara, Claimant

Dear Mr. Hill and Mr. Narayan:

On February 13, 2026, the Commission on State Mandates adopted the Decision partially approving the Test Claim on the above-captioned matter.

Very truly yours,



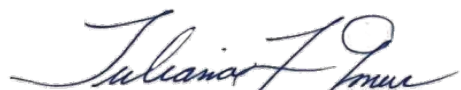
Juliana F. Gmur
Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

<p>IN RE TEST CLAIM Penal Code Section 11171(f) Statutes 2023, Chapter 841 (AB 1402), Effective January 1, 2024 Filed on December 31, 2024 County of Santa Clara, Claimant</p>	<p>Case No.: 24-TC-05 <i>Child Physical Abuse and Neglect Exams</i> DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (Adopted February 13, 2026) (Served February 18, 2026)</p>
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TEST CLAIM

The Commission on State Mandates adopted the attached Decision on February 13, 2026.



Juliana F. Gmur, Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

<p>IN RE TEST CLAIM</p> <p>Penal Code Section 11171(f)</p> <p>Statutes 2023, Chapter 841 (AB 1402), Effective January 1, 2024</p> <p>Filed on December 31, 2024</p> <p>County of Santa Clara, Claimant</p>	<p>Case No.: 24-TC-05</p> <p><i>Child Physical Abuse and Neglect Exams</i></p> <p>DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7.</p> <p><i>(Adopted February 13, 2026)</i></p> <p><i>(Served February 18, 2026)</i></p>
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DECISION

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on February 13, 2026. Rajiv Narayan appeared on behalf of the County of Santa Clara (claimant). Chris Hill and Kaily Yap appeared on behalf of the Department of Finance (Finance).

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

The Commission adopted the Revised Proposed Decision to partially approve the Test Claim by a vote of 5-1, with one member abstaining as follows:

Member	Vote
Lee Adams, County Supervisor	No
Deborah Gallegos, Representative of the State Controller	Yes
Karen Greene Ross, Public Member	Yes
Monica Jimenez, Representative of the State Treasurer, Vice Chairperson	Abstain
Renee Nash, School District Board Member	Yes
Michele Perrault, Representative of the Director of the Department of Finance, Chairperson	Yes
Alexander Powell, Representative of the Director of the Governor’s Office of Land Use and Climate Innovation	Yes

Summary of the Findings

This Test Claim alleges new state-mandated activities and costs arising from Penal Code section 11171(f), which prohibits counties from billing the victim or the victim’s

insurance for child physical abuse and neglect exams, as of January 1, 2024. Instead of counties billing the victim or the victim's insurance for child physical abuse and neglect exams, a system of state funding was created by the test claim statute in Penal Code section 11171(g) ("The costs associated with these medical evidentiary exams shall be funded by the state, subject to appropriation by the Legislature"), but no appropriation has yet been made.¹ Formerly, from January 1, 2004, until December 31, 2023, the counties billed the child's private insurance, if available, and Medi-Cal or the State Victim Compensation Board (VCB).

The Commission finds the Test Claim is timely filed with a potential period of reimbursement beginning January 1, 2024.

The Commission finds that the test claim statute does not mandate a new program or higher level of service for the increased costs of child physical abuse and neglect evidentiary exams when the costs could have been recovered directly from the victim or from the victim's private medical insurance. There is no new activity required by the test claim statute, the state has not shifted any costs which were previously the responsibility of the state, and increased costs alone do not constitute a reimbursable mandate under article XIII B, section 6.²

However, absent an appropriation from the state sufficient to cover the costs of the child physical abuse and neglect evidentiary exams, and where the state, through Medi-Cal or the VCB, previously paid for the child physical abuse and neglect medical evidentiary exams, the test claim statute shifts those costs from the state to the counties under article XIII B, section 6(c), resulting in a mandated new program or higher level of service. The voters added article XIII B, section 6(c) to the California Constitution in 2004 (Proposition 1A), recognizing reimbursable mandates in the transfer "of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility."

From January 1, 2004, to December 31, 2023, funds from Medi-Cal and the VCB reimbursed counties for the cost of child physical abuse and neglect medical evidentiary exams. Both billing options have been acknowledged on the California Office of Emergency Services (Cal OES) exam instructions since 2001.³ Under Chapter IV, "Reimbursements for Examinations," the Cal OES

¹ Exhibit B, Finance's Comments on the Test Claim, page 1 ("AB 1402 also requires the costs of such exams to be funded by the state, subject to appropriation by the Legislature, and be submitted to Cal OES for reimbursement. However, no appropriation has been provided to Cal OES for this purpose.").

² California Constitution, article XIII B, section 6(a) and (c); *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816 ("Section 6 was not intended to entitle local entities to reimbursement for *all* increased costs resulting from Legislative enactments, but only those costs mandated by a new program or an increased level of service imposed upon them by the State.").

³ Exhibit A, Test Claim, page 235; Exhibit G (13), Medical Report: Suspected Child Physical Abuse and Neglect Instructions Cal OES 2-900, page 2,

Protocol stated before the test claim statute, attached to forms dated January 1, 2004:

In the majority of counties in California, charges for child physical abuse and neglect examinations **are billed to Medi-Cal** or to the patient's private insurance. Standard diagnostic and procedural coding manuals are used to generate charges. For patients without insurance, or who are underinsured, reimbursement of **charges may be obtained through California Victim Compensation and Government Claims Board.**⁴

Since at least 1982, Medi-Cal assumed financial responsibility for abused and neglected children. The State Department of Healthcare Services advised all county directors in 1982 that individuals receiving "Emergency Assistance," including "Abused, Neglected or Exploited Children (EA-ANEC)" were considered "public assistance recipients" and "will be eligible for Medi-Cal benefits and a Medi-Cal card."⁵ Social workers have since been applying on behalf of an abused or neglected child for "Retroactive Medi-Cal," using Form MC 250.⁶ Thus, if these children were not already enrolled in Medi-Cal,

<https://www.caloes.ca.gov/office-of-the-director/policy-administration/finance-administration/grants-management/victim-services/forms/> (accessed on June 20, 2025) ("**3. Payment methods have not been formally established. Options to pursue include: the patient's public (Medi-Cal) or private insurance, the California Victim Compensation Program (VCP), local law enforcement agencies or Child Protective Services (CPS). Follow local policy.**" Emphasis in original.).

⁴ Exhibit A, Test Claim, page 134; Exhibit G (6), California Medical Protocol for Examination of Child Physical Abuse and Neglect Victims, page 15, <https://www.caloes.ca.gov/office-of-the-director/policy-administration/finance-administration/grants-management/victim-services/forms/> (accessed on June 20, 2025), emphasis added.

⁵ Exhibit G (8), Department of Health Services Letter to All County Welfare Directors, August 17, 1982, Letter 82-44, page 1; Exhibit G (9), Department of Health Services Letter to All County Welfare Directors, December 22, 1982 Letter 82-72, pages 1-7; see also California Code of Regulations, title 22, section 50038.5 (defining "Emergency Assistance" as programs providing assistance for up to 30 days, including for "[t]hose children who are being, or are in immediate danger of being abused, neglected or exploited and to families of such children.").

⁶ Exhibit G (15), Retroactive Medi-Cal, page 1, https://stgenssa.sccgov.org/debs/program_handbooks/foster_care/assets/28medi-cal/retromedical.htm?agt=index (accessed on July 24, 2025); Exhibit G (10) Form MC 250, Application and Statement of Facts for Child Not Living with a Parent or Relative for Whom a Public Agency Is Assuming Some Financial Responsibility, <https://www.dhcs.ca.gov/formsandpubs/forms/Forms/mc250.pdf> (accessed on July 24, 2025); California Code of Regulations, title 22, section 50251 ("(e) Children specified in (a)(3) shall be eligible and certified for Medi-Cal: (1) On the basis of the

they would become enrolled by the social worker on an emergency basis.⁷ Under Continuing Eligibility for Children (CEC), coverage would then continue, uninterrupted at least until the next annual redetermination.⁸

Counties could also bill the VCB if a child was somehow uninsured or underinsured by Medi-Cal.⁹ If counties pursued this option, they, or their contracted providers, could bill the VCB directly as a service provider, but had to accept the limits of the VCB payment schedule.¹⁰

The payments to counties or their providers from Medi-Cal and the VCB have been the responsibility of the state. The California Supreme Court has found that Medi-Cal “has been the responsibility of various state departments and agencies.”¹¹ Likewise, the

information provided by the public agency on form MC 250. (2) Without considering the property or income of the child or the child's parents.”).

⁷ California Code of Regulations, title 22, section 50143(a)(3); see also Exhibit G (1), Aid Codes Master Chart, updated April 2022, pages 33 and 35, https://mcweb.apps.prd.cammis.medi-cal.ca.gov/assets/869D30AF-4BC7-4132-AF6A-AF75893E9221/aidcodes.pdf?access_token=6UyVkRRfByXTZEWIh8j8QaYyIPyP5ULO (accessed on July 24, 2025) (Aid Code 45 provides: “FC. Covers children supported by public funds other than AFDC-FC” with no share of costs.); see also Exhibit G (19), Short Doyle Medi-Cal Aid Code Chart, February 23, 2023, page 2, <https://www.dhcs.ca.gov/services/MH/Pages/medccc-library.aspx> (accessed on July 24, 2025) (Aid Code “5K” provides “Emergency Assistance (EA) Foster Care” with no share of costs).

⁸ Exhibit G (7), Continuous Eligibility for Children (CEC), page 1, https://stgenssa.sccgov.org/debs/program_handbooks/foster_care/assets/28medi-cal/contnuseigblty.htm (accessed on July 24, 2025); California Code of Regulations, title 22, section 50189.

⁹ Exhibit G (13), Medical Report: Suspected Child Physical Abuse and Neglect Instructions Cal OES 2-900, page 2, <https://www.caloes.ca.gov/office-of-the-director/policy-administration/finance-administration/grants-management/victim-services/forms/> (accessed on June 20, 2025) (“**3. Payment methods have not been formally established. Options to pursue include: the patient’s public (Medi-Cal) or private insurance, the California Victim Compensation Program (VCP), local law enforcement agencies or Child Protective Services (CPS). Follow local policy.**” Emphasis in original.).

¹⁰ Government Code sections 13957.7(c)(1) and 13957.2; California Code of Regulations, title 2, section 649.23.

¹¹ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 96.

VCB is a state agency.¹² The VCB has been in existence since 2002 under its current name and role.¹³

Accordingly, since the state, through Medi-Cal or the VCB, previously paid for the child physical abuse and neglect medical evidentiary exams, Penal Code section 11171(f), as amended by the test claim statute, which prohibits counties from billing the victim indirectly for the exams, shifts those costs from the state to the counties under article XIII B, section 6(c), resulting in a new program or higher level of service.

In addition, counties are practically compelled to provide child physical abuse and neglect exams and, thus, the cost of the exams, which has been shifted from the state to the counties with respect to previous Medi-Cal and VCB reimbursement for the exams, are a component of a mandated program. Penal Code section 11171, which originally became effective on January 1, 2004, does not by its plain language require counties to perform child physical abuse and neglect exams.¹⁴ Instead, it required what is now Cal OES to standardize child physical abuse and neglect exams by creating forms, protocols, and instructions to be used statewide.¹⁵ These forms, protocols, and instructions set the “minimum legal standards”¹⁶ for “adequate protection of victims of child physical abuse or neglect.”¹⁷ Thus, there is no legal compulsion to perform the exams under the test claim statute.

However, counties have no choice but are compelled as a practical matter to ensure that a physical abuse and neglect exam is provided when the facts present themselves.¹⁸ The Legislature declared in 1996 “that all children are entitled to be safe

¹² Government Code sections 11000 and 13950.

¹³ Government Code sections 13950-13951, as added by Statutes 2002, chapter 1141, section 2.

¹⁴ Penal Code section 11171(a)-(e), as added by Statutes 2002, chapter 249, section 4 (SB 580).

¹⁵ Penal Code section 11171, as added by Statutes 2002, chapter 249, section 4 (SB 580).

¹⁶ Exhibit G (6), California Medical Protocol for Examination of Child Physical Abuse and Neglect Victims, page 2, <https://www.caloes.ca.gov/office-of-the-director/policy-administration/finance-administration/grants-management/victim-services/forms/> (accessed on June 20, 2025);

Exhibit G (13), Medical Report: Suspected Child Physical Abuse and Neglect Instructions Cal OES 2-900, page 2, <https://www.caloes.ca.gov/office-of-the-director/policy-administration/finance-administration/grants-management/victim-services/forms/> (accessed on June 20, 2025).

¹⁷ Penal Code section 11171(a)(1).

¹⁸ *Coast Community College District v. Commission on State Mandates* (2022) 13 Cal.5th 800, 815-817.

and free from abuse and neglect.”¹⁹ In 2002, the Legislature set a floor of adequacy when it enacted the program of state standardized medical evidentiary exams. It declared that “adequate protection of victims of child physical abuse or neglect has been hampered by the lack of consistent and comprehensive medical examinations.”²⁰ In addition, the counties’ obligation to provide child physical abuse and neglect exams stems from an existing requirement to investigate all incoming child abuse reports, a duty that has been confirmed by the courts.²¹ Existing state law also requires counties to ensure that a child taken into protective custody undergo a physical examination performed by a medical practitioner who has specialized training in detecting and treating child abuse injuries and neglect, when appropriate and following allegations of physical abuse, and “whenever possible, shall ensure that this examination take place within 72 hours of the time the child was taken into protective custody, when there are allegations of physical abuse.”²² Where a child is not immediately taken into protective custody under Welfare and Institutions Code section 324.5, other statutory duties compel the physical abuse and neglect exams. If allegations of abuse or neglect are made in a family court child custody proceeding, for example, “the court may request that the local child welfare services agency conduct an investigation of the allegations pursuant to Section 328 of the Welfare and Institutions Code.”²³ Although this statute uses the word “may,” it is a court’s duty to protect the child, and thus the investigations prompted on this case by case basis are practically compelled.²⁴ And section 11171(g), as amended by the test claim statute, states that counties “shall” set up the reimbursement system with Cal OES and designate SART, SAFE, or other “qualified medical evidentiary examiners” to obtain reimbursement if the Legislature appropriates funds for this program.²⁵

Finally, the claimant submitted evidence that the test claim statute imposes costs mandated by the state and none of the exceptions to costs mandated by the state in Government Code section 17556 apply. The claimant has no fee authority to offset the increased costs. There is no appropriation offsetting the costs, which the Department of

¹⁹ Welfare and Institutions Code section 16500, as amended by Statutes 1996, chapter 1084, section 10.

²⁰ Penal Code section 11171(a)(1), as added by Statutes 2002, chapter 249.

²¹ Penal Code section 11166.3 (formerly 11166.1); see also *Alejo v. City of Alhambra* (1999) 75 Cal.App.4th 1180, 1185-1186.

²² Welfare and Institutions Code section 324.5.

²³ Family Code section 3027(b).

²⁴ *In re Joshua S.* (1988) 205 Cal.App.3d 119, 125.

²⁵ Penal Code section 11171(g).

Finance (Finance) presently confirms.²⁶ And there is no change to any crime or penalty for any crime of child abuse or neglect.

Accordingly, the Commission partially approves this test claim and finds that Penal Code section 11171(f), as amended by the test claim statute, imposes a reimbursable state-mandated program beginning January 1, 2024, on counties within the meaning of article XIII B, section 6(c) of the California Constitution and Government Code section 17514 only for the following costs:

- Costs incurred for child physical abuse and neglect exams conducted in accordance with Penal Code section 11171, by the county’s designated Sexual Assault Response Teams (SART), Sexual Assault Forensic Examiner (SAFE) teams, or other qualified medical evidentiary examiners, when the child is eligible for Medi-Cal or Victim Compensation Board coverage.

Reimbursement is **not** required to the extent the Legislature appropriates funds for child physical abuse and neglect exams under Penal Code section 11171(g).

COMMISSION FINDINGS

I. Chronology

01/01/2024	Penal Code section 11171(f), as added by Statutes 2023, chapter 841 (AB 1402), became effective.
12/31/2024	The claimant filed the Test Claim. ²⁷
04/10/2025	The Department of Finance (Finance) filed comments on the Test Claim. ²⁸
04/11/2025	Kern County Department of Human Services filed late comments on the Test Claim. ²⁹
05/07/2025	The claimant filed rebuttal comments. ³⁰
09/26/2025	Commission staff issued the Draft Proposed Decision. ³¹
10/07/2025	The claimant filed comments on the Draft Proposed Decision. ³²

²⁶ Exhibit A, Test Claim, page 33, paragraph 20 (Declaration of Serena Sy, Director of Primary Care Operations, Santa Clara Valley Healthcare, County of Santa Clara); Exhibit B, Finance’s Comments on the Test Claim, page 1.

²⁷ Exhibit A, Test Claim.

²⁸ Exhibit B, Finance’s Comments on the Test Claim.

²⁹ Exhibit D, Kern County Department of Human Services’ Late Comments on the Test Claim.

³⁰ Exhibit C, Claimant’s Rebuttal Comments.

³¹ Exhibit E, Draft Proposition Decision.

³² Exhibit F, Claimant’s Comments on the Draft Proposed Decision.

- 01/26/2026 Commission staff issued the Proposed Decision for the February 13, 2026, Commission hearing.³³
- 01/28/2026 The claimant filed comments on the Proposed Decision.³⁴
- 02/02/2026 Commission staff issued the Revised Proposed Decision for February 13, 2026, Commission hearing.

II. Background

A. Prior Law

Protecting children is a general county function subject to state law.³⁵ In 1968, the Legislature provided, under a chapter then entitled “State Protective Services for Children,” that the state, through itself and the counties, shall establish a statewide system of child protective services to be made available by all counties.³⁶ The counties’ responsibility for this statewide child welfare system exists in a principal-agent relationship with the state.³⁷

³³ Exhibit H, Proposed Decision.

³⁴ Exhibit I, Claimant’s Comments on the Proposed Decision.

³⁵ Welfare and Institutions Code sections 300, 10800 and 16500; *In re Social Services Payment Cases* (2008) 166 Cal.App.4th 1249, 1256 (“The Legislature has determined that the provision of public social services, including foster care, is a county function and responsibility subject to any applicable state and federal statutes and regulations. (§ 10800.) Counties are responsible for a public system of statewide child welfare services, which includes providing for the investigation of possible abuse or neglect of a child warranting removal from parental custody. (§§ 300 et seq. & 16500 et seq.)”).

³⁶ Welfare and Institutions Code section 16500, as added by Statutes 1968, chapter 69, section 1.

³⁷ Welfare and Institutions Code sections 16501(a)(1)(B), 16501(a)(2), and 16501(c) (“The county shall provide child welfare services as needed pursuant to an approved service plan and in accordance with regulations promulgated, in consultation with the counties, by the [state] department.”); *Ross v. Superior Court* (1977) 19 Cal.3d 899, 908; *Hassell v. Bird* (2018) 5 Cal.5th 522, 553, Kruger, J., concurring (“counties act on behalf of the state in administering welfare benefits”); *In re M.C.* (2011) 199 Cal.App.4th 784, 810 (county social service agency is an administrative agency of the executive branch when providing child welfare services, subject to supervision by Department of Social Services) citing Welfare and Institutions Code sections 202.5, 10000, 10051, 10800, 16500, 16500.1, and 16501, *Scott v. County of Los Angeles* (1994) 27 Cal.App.4th 125, 143-144, and *In re Danielle W.* (1989) 207 Cal.App.3d 1227, 1235-1236, n. 6.).

In 1996, the Legislature elaborated on its intent for the 1968 law directing the statewide system of protecting children. It declared “that all children are entitled to be safe and free from abuse and neglect.”³⁸

In addition to the general duty to protect, specific duties have been imposed on counties when receiving reports of suspected child abuse and neglect. These duties are to accept, to cross-report, and to investigate all such reports made to the counties. In 1980, the Legislature began requiring counties to cross-report “every instance of suspected child abuse.”³⁹ In 1985, the Legislature began requiring “investigation of suspected child abuse cases” through “cooperative arrangements” between “law enforcement agencies and the county welfare or social services department,” and it imposed reporting requirements on those agencies.⁴⁰ And in 2000, the Legislature required county welfare departments, along with police and other county departments, to accept *all* reports of suspected child abuse and neglect, stating in the legislation that counties “shall accept a report of suspected child abuse or neglect whether offered by a mandated reporter or another person.”⁴¹ In sum, counties must accept reports of suspected child abuse from any person, must cross-report, and must investigate those reports.

In 1999, the Court of Appeal clarified the difference between the general and specific duties of counties to protect children.⁴² The Court of Appeal found that while the police have a general duty of public protection, a duty to investigate *each* incoming report of suspected child abuse would require a specific statute. It found Penal Code section 11166 to be that statute.⁴³ The court thus found a specific statutory duty of investigation upon each individual report of suspected child abuse.⁴⁴

³⁸ Welfare and Institutions Code section 16500, as amended by Statutes 1996, chapter 1084, section 10.

³⁹ Penal Code section 11166(f), as added by Statutes 1980, chapter 1071, section 4 (subsequently renumbered as section 11166(j)).

⁴⁰ Penal Code section 11166.1(a), as added by Statutes 1985, chapter 1262, section 2 (subsequently renumbered as 11166.3, as amended by Statutes 1987, chapter 531, section 3.)

⁴¹ Penal Code section 11165.9, as added by Statutes 2000, chapter 1214, section 8.

⁴² *Alejo v. City of Alhambra* (1999) 75 Cal.App.4th 1180.

⁴³ *Alejo v. City of Alhambra* (1999) 75 Cal.App.4th 1180, 1185-1186 (“First, the statute imposes a duty to investigate.”), disapproved on another ground in *B.H. v. County of San Bernardino* (2015) 62 Cal.4th 168; see also *Holman v. County of Butte* (2021) 68 Cal.App.5th 189 (county negligence case for failure to investigate and cross-report); see also Welfare and Institutions Code section 328 and Family Code section 3027.

⁴⁴ The Commission, in *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, found a mandate to investigate reports of suspected child abuse in Penal code section 11169(a), California Code of Regulations, title 11, section 903, and “Child Abuse Investigation Report” Form SS 8583. The claim therein under Penal Code section

Overlapping with the growth of law regarding child abuse investigation, various laws were added regarding medical evidentiary exams. Such exams are provided in suspected cases of sexual assault (adult or child), domestic violence, or, as relevant here, child physical abuse and neglect.

In 1985, the Legislature began requiring specific protocols for sexual assault medical evidentiary exams, including child sexual abuse.⁴⁵ These laws required counties to designate one acute care hospital to provide such exams.⁴⁶ They further required forms and extensive specific protocols for conducting the exams, and they set “minimum standards” for examinations of sexual abuse victims.⁴⁷

In 1995, the Legislature passed Senate Bill 857, expanding the scope of medical evidentiary examinations from just sexual assault (adult or child) to the wider context of “domestic violence, child abuse, elder abuse, and sexual assault.”⁴⁸ It further sought to ensure proper medical training for such exams.

The Legislature declared that “to provide comprehensive, competent evidentiary examinations for use by law enforcement agencies, it is necessary to take immediate steps to ensure there are appropriately trained medical professionals throughout California.”⁴⁹ To that end, the Legislature then defined the phrase “perform a medical evidentiary examination” as meaning to “evaluate, collect, preserve, and document evidence, interpret findings, and document examination results.”⁵⁰ SB 857 required creation of two hospital-based training centers, one in northern California and one in southern California, which would teach medical professionals how to conduct the medical evidentiary examinations, and to make “use of advanced medical technology in

11166 was denied as not unique to local government, but this does not contravene *Alejo*’s holding that the counties have a duty to investigate incoming reports of suspected child abuse or neglect. See Commission on State Mandates, Decision and Parameters and Guidelines on *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, adopted December 6, 2013, https://www.csm.ca.gov/decisions/00-TC-22_adoptedSODandpsgs120613.pdf (accessed on September 23, 2025), pages 38-40.

⁴⁵ Statutes 1985, chapter 812.

⁴⁶ Penal Code section 13823.9(c) as added by Statutes 1985, chapter 812, section 7.

⁴⁷ Penal Code sections 13823.7 and 13823.11, as added by Statutes 1985, chapter 812, sections 7-8.

⁴⁸ Statutes 1995, chapter 860, section 1(c).

⁴⁹ Statutes 1995, chapter 860, section 1(c).

⁵⁰ Penal Code section 13823.93(a)(2), as added by Statutes 1995, chapter 860, section 2.

the evaluation of child victims of sexual or physical abuse or neglect, or of sexual assault, elder abuse, and domestic violence victims, or both.”⁵¹

In 2002, the Legislature changed its requirement of two training centers to one. The single training center is now known as the California Clinical Forensic Medical Training Center (CCFMTC).⁵²

In 1999, the Legislature began requiring medical evidentiary exams for children taken into protective custody where abuse is suspected and where it is determined appropriate by a specialized medical practitioner.⁵³ This law also provides that where additional medical evidentiary exams may be needed, the same practitioner should provide them, and if not available, then another practitioner with the same specialized training should do so.⁵⁴

In 2002, the program regarding child physical abuse and neglect exams began. By adding Penal Code section 11171, the Legislature declared that “adequate protection of victims of child physical abuse or neglect has been hampered by the lack of consistent and comprehensive medical examinations.”⁵⁵ To ensure adequate protection against child physical abuse and neglect, the Legislature created a statewide program requiring creation and use of a standardized form, instructions and protocols for child physical abuse and neglect medical evidentiary exams.⁵⁶ The law required the following:

On or before January 1, 2004, the Office of Criminal Justice Planning⁵⁷ shall, in cooperation with the State Department of Social Services, the Department of Justice, the California Association of Crime Lab Directors, the California State District Attorneys Association, the California State Sheriffs Association, the California Peace Officers Association, the

⁵¹ Penal Code section 13823.93(c)(4), as added by Statutes 1995, chapter 860, section 2.

⁵² Penal Code section 13823.93(b)-(d), as amended by Statutes 2002, chapter 256, section 1; Penal Code section 13823.93(b).

⁵³ Welfare and Institutions Code section 324.5.

⁵⁴ Welfare and Institutions Code section 324.5(b).

⁵⁵ Penal Code section 11171(a)(1).

⁵⁶ Penal Code section 11171, as added by Statutes 2002, chapter 249, section 4 (SB 580).

⁵⁷ The Office of Criminal Justice Planning was abolished on January 1, 2004. Its duties were largely transferred to Cal OES that same year. See Penal Code section 13820, as added by Statutes 2003, chapter 229, section 26, and as amended by Statutes 2013, chapter 352, section 428; Exhibit G (20), The history of Cal OES, page 2, <https://www.caloes.ca.gov/cal-oes/history/> (accessed on September 23, 2024) (“In 2004, the California Legislature merged OES and the Governor’s Office of Criminal Justice Planning, which was responsible for providing state and federal grant funds to local communities to prevent crime and help crime victims.”).

California Medical Association, the California Police Chiefs' Association, child advocates, the California Medical Training Center, child protective services, and other appropriate experts, establish medical forensic forms, instructions, and examination protocol for victims of child physical abuse or neglect using as a model the form and guidelines developed pursuant to Section 19823.5.⁵⁸

The state standardized form was required to include:

- (1) Any notification of injuries or any report of suspected child physical abuse or neglect to law enforcement authorities or children's protective services, in accordance with existing reporting procedures.
- (2) Addressing relevant consent issues, if indicated.
- (3) The taking of a patient history of child physical abuse or neglect that includes other relevant medical history.
- (4) The performance of a physical examination for evidence of child physical abuse or neglect.
- (5) The collection or documentation of any physical evidence of child physical abuse or neglect, including any recommended photographic procedures.
- (6) The collection of other medical or forensic specimens, including drug ingestion or toxication, as indicated.
- (7) Procedures for the preservation and disposition of evidence.
- (8) Complete documentation of medical forensic exam findings with recommendations for diagnostic studies, including blood tests and X-rays.
- (9) An assessment as to whether there are findings that indicate physical abuse or neglect.⁵⁹

The form created as required by Penal Code section 11171 is called Medical Report: Suspected Child Physical Abuse and Neglect Examination OES 2-900.⁶⁰ It is downloadable from the Cal OES website as well as the CCFMTC website.⁶¹

⁵⁸ Penal Code section 11171(b), as added by Statutes 2001, chapter 249, section 4.

⁵⁹ Penal Code section 11171(c).

⁶⁰ Exhibit A, Test Claim, pages 226-233; Exhibit G (12), Medical Report: Suspected Child Physical Abuse and Neglect Examination Cal OES 2-900, <https://www.caloes.ca.gov/office-of-the-director/policy-administration/finance-administration/grants-management/victim-services/forms/> (accessed on June 20, 2025).

⁶¹ Exhibit A, Test Claim, page 225; Exhibit G (6), California Medical Protocol for Examination of Child Physical Abuse and Neglect Victims, page 106, <https://www.caloes.ca.gov/office-of-the-director/policy-administration/finance->

Instructions and Protocol were also issued as required. The Instructions state:

Required Use of Standard State Form: Penal Code § 11171 established the use of a standard form to record findings from examinations performed for suspected child physical abuse and neglect. This form is intended to facilitate identification of child physical abuse and neglect, and as such, is not a complete medical treatment record.⁶²

The protocol is entitled California Medical Protocol for Examination of Child Physical Abuse and Neglect Victims Medical Protocol for Examination of Child Physical Abuse and Neglect Victims.⁶³ Its preface by Cal OES represents Penal Code section 11171 as setting the “minimum legal standards” for performing the medical evidentiary examination, and then briefly summarizes the protocols:

Pioneers in the field of child physical abuse and neglect began in the field of medicine. They were subsequently joined by the disciplines of social work, nursing, law enforcement, psychology, psychiatry, and child development.

The history of this intervention movement is characterized by peaks and plateaus as the larger community assimilated new developments lead by the pioneering disciplines. Medicine began the movement with published observations by a pediatric radiologist, Dr. John Caffey, in the 1940’s. Dr. Henry Kempe, a pediatrician, galvanized the movement by establishing the concept of the “battered child syndrome” in 1962. He took his concerns to Congress and by 1965, most states had enacted child abuse reporting laws.

Issuance of the CalOES 2-900 Medical Report for Suspected Child Physical Abuse and Neglect Examinations and Protocol takes the field to a new level. In 2002, the California Legislature and Governor declared that adequate protection of victims of child physical abuse and neglect has been hampered by the lack of consistent and comprehensive medical examinations. The Legislature enacted and the Governor signed SB 580, Statutes of 2002 (Figueroa), into law to address this need by establishing a standardized medical report form and protocol.

[administration/grants-management/victim-services/forms/](#) (accessed on June 20, 2025); Penal Code section 11171(e).

⁶² Exhibit A, Test Claim, pages 234-241; Exhibit G (13), Medical Report: Suspected Child Physical Abuse and Neglect Instructions Cal OES 2-900, <https://www.caloes.ca.gov/office-of-the-director/policy-administration/finance-administration/grants-management/victim-services/forms/> (accessed on June 20, 2025).

⁶³ Exhibit A, Test Claim, pages 120-233; Exhibit G (6), California Medical Protocol for Examination of Child Physical Abuse and Neglect Victims, <https://www.caloes.ca.gov/office-of-the-director/policy-administration/finance-administration/grants-management/victim-services/forms/> (accessed on June 20, 2025).

Many deserve recognition for the vision captured in these documents. The Children’s Justice Act Task Force recommended the allocation of funds to accomplish this project; the Child Physical Abuse and Neglect Advisory Committee contributed wisdom, consultation, and guidance; and, the California Clinical Forensic Medical Training Center is commended for strong work, expertise, and dedication to the production of the form, instructions, and protocol. This collective effort moves the field forward on behalf of children.

The California Medical Protocol for Examination of Suspected Child Physical Abuse and Neglect Victims provides recommended methods for meeting the minimum legal standards established by Penal Code Section 11171 for performing medical examinations of physically abused and neglected children. This protocol contains the following information:

- Standard medical report form (CalOES 2-900) for documentation of findings from suspected child physical abuse and neglect examinations;
- Step-by-step procedures for conducting examinations opposite each page of the standard forms;
- Examination protocol for child physical abuse and neglect;
- Contextual information for performing examinations and implementing a multidisciplinary team approach; and
- Relevant and expanded information on patient consent, mandatory reporting laws, financial compensation for examinations, crime victim compensation, and evidence collection and preservation.⁶⁴

Until the test claim statute, only minor and clarifying amendments were made to Penal Code section 11171. The examination requirements imposed on counties have continued, as has use of the Cal OES documents.

Also, according to the Cal OES Protocol, counties could bill Medi-Cal and, alternatively, the Victims Compensation Board (VCB) for the examination costs. Under Chapter IV, “Reimbursements for Examinations,” the Protocol stated:

In the majority of counties in California, charges for child physical abuse and neglect examinations are billed to Medi-Cal or to the patient’s private insurance. Standard diagnostic and procedural coding manuals are used to generate charges. For patients without insurance, or who are

⁶⁴ Exhibit A, Test Claim, page 121; Exhibit G (6), California Medical Protocol for Examination of Child Physical Abuse and Neglect Victims, page 2, <https://www.caloes.ca.gov/office-of-the-director/policy-administration/finance-administration/grants-management/victim-services/forms/> (accessed on June 20, 2025).

underinsured, reimbursement of charges may be obtained through California Victim Compensation and Government Claims Board.⁶⁵

Also until the test claim statute, counties could seek Medi-Cal coverage on a child's behalf.⁶⁶ Children in danger of abuse, neglect, or exploitation (ANEC) had been eligible for Medi-Cal since at least 1982 as a matter of emergency assistance (EA).⁶⁷ Many had also been eligible under other programs, such as Aid to Families with Dependent Children (AFDC),⁶⁸ as "categorically needy persons,"⁶⁹ or under the Medically Needy Program.⁷⁰

Counties could alternatively recover costs directly from the VCB if the child were somehow uninsured or underinsured. In that case, their compensation would be capped by the VCB provider payment schedule.⁷¹

⁶⁵ Exhibit A, Test Claim, page 134; Exhibit G (6), California Medical Protocol for Examination of Child Physical Abuse and Neglect Victims, page 15, <https://www.caloes.ca.gov/office-of-the-director/policy-administration/finance-administration/grants-management/victim-services/forms/> (accessed on June 20, 2025).

⁶⁶ Exhibit A, Test Claim, pages 32-33, paragraphs 12, 15, and 17 (Declaration of Serena Sy, Director of Primary Care Operations, Santa Clara Valley Healthcare, County of Santa Clara); Exhibit A, Test Claim, page 134; Exhibit G (6), California Medical Protocol for Examination of Child Physical Abuse and Neglect Victims, page 15, <https://www.caloes.ca.gov/office-of-the-director/policy-administration/finance-administration/grants-management/victim-services/forms/> (accessed on June 20, 2025); California Code of Regulations, title 22, section 50143(a)(3).

⁶⁷ California Code of Regulations, title 22, section 50038.5; Exhibit G (8), Department of Health Services Letter to All County Welfare Directors, August 17, 1982, Letter 82-44, page 1; Exhibit G (9), Department of Health Services Letter to All County Welfare Directors, December 22, 1982, Letter 82-72, pages 1-7.

⁶⁸ California Code of Regulations, title 22, section 50201(a).

⁶⁹ Welfare and Institutions Code sections 14005.1, 14050.1 and 14005.

⁷⁰ California Code of Regulations, title 22, sections 50203 and 50205.

⁷¹ Government Code section 13957.7(c)(1) ("The board may authorize direct payment to a provider of services that are reimbursable pursuant to this chapter and may make those payments prior to verification. However, the board may not, without good cause, authorize a direct payment to a provider over the objection of the victim or derivative victim.").

Government Code section 13957.2 ("A provider who accepts payment from the program for a service shall accept the program's rates as payment in full and shall not accept any payment on account of the service from any other source if the total of payments accepted would exceed the maximum rate set by the board for that service. A provider shall not charge a victim or derivative victim for any difference between the cost of a

To cover medical expenses when a child is removed from the home by a social worker and taken for a medical evidentiary exam, the child is presumptively eligible for Medi-Cal. A Foster Care Eligibility Worker (FC EW) applies for Retroactive Medi-Cal on the child's behalf, resulting in three months retroactive coverage.⁷² To do so, the FC EW completes a State of California Department of Health Care Services (DHCS) Form MC 250, which is entitled "Application and Statement of Facts For Child Not Living with a Parent or Relative For Whom A Public Agency is Assuming Some Financial Responsibility," using Medi-Cal Aid Code 45.⁷³ Aid Codes allow health care providers to confirm eligibility for Medi-Cal recipients through Medi-Cal's "automated eligibility verification system."⁷⁴ Aid Code 45 as well as Aid Code 5K confirm Medi-Cal eligibility for such children, with no share of cost.⁷⁵

service provided to a victim or derivative victim and the program's payment for that service.").

See also California Code of Regulations, title 2, section 649.23 referring to "all cash payments or reimbursement for medical-related services of the victim," emphasis added; See also Exhibit G (11), Medical Providers New! CALVCB Online, pages 1-2, <https://victims.ca.gov/uploads/2022/08/Medical-and-Dental-Factsheet-3-17-20.pdf> (accessed on July 24, 2025).

⁷² Exhibit G (15), Retroactive Medi-Cal, page 1, https://stgenssa.sccgov.org/debs/program_handbooks/foster_care/assets/28medi-cal/retromedical.htm?agt=index (accessed July on 24, 2025).

⁷³ Exhibit G (15), Retroactive Medi-Cal, page 1, https://stgenssa.sccgov.org/debs/program_handbooks/foster_care/assets/28medi-cal/retromedical.htm?agt=index (accessed on July 24, 2025); Exhibit G (10), Form MC 250, Application and Statement of Facts for Child Not Living with a Parent or Relative for Whom a Public Agency Is Assuming Some Financial Responsibility, pages 1-2, <https://www.dhcs.ca.gov/formsandpubs/forms/Forms/mc250.pdf> (accessed on July 24, 2025).

⁷⁴ Welfare and Institutions Code section 14042.

⁷⁵ Exhibit G (1), Aid Codes Master Chart, updated April 2022, pages 33 and 35, https://mcweb.apps.prd.cammis.medi-cal.ca.gov/assets/869D30AF-4BC7-4132-AF6A-AF75893E9221/aidcodes.pdf?access_token=6UyVkkRRfByXTZEWIh8j8QaYyIPyP5ULO (accessed on July 24, 2025); Exhibit G (19), Short Doyle Medi-Cal Aid Code Chart, page 2, February 23, 2023, <https://www.dhcs.ca.gov/services/MH/Pages/medccc-library.aspx> (accessed on July 24, 2025).

Coverage is designed to continue seamlessly. These children remain continuously eligible for Medi-Cal until at least the next annual redetermination.⁷⁶ Their health records become part of what is known as the child’s “health and education passport.”⁷⁷

To ensure continuing coverage and care, DHCS has been expanding programming and comprehensive Medi-Cal coverage for children in the child welfare system. Per an Executive Summary in November of 2022, DHCS intends that “the child welfare system have streamlined access to reliable, high-quality, integrated, trauma-informed, strength-based, patient-centered, and family-centered care.”⁷⁸

Until the test claim statute became effective and impacted the medical evidentiary exam process, Cal OES billing instructions on the Form 2-900 advised counties generally: “Payment methods have not been formally established. Options to pursue include: the patient’s public (Medi-Cal) or private insurance, the California Victim Compensation Program (VCP), local law enforcement agencies or Child Protective Services (CPS). Follow local policy.”⁷⁹

B. The Test Claim Statute

In 2023, the Legislature passed Statutes 2023, chapter 841 (AB 1402), amending Penal code section 11171. AB 1402 added the following three provisions regarding child physical abuse and neglect medical evidentiary exams, the first of which prohibited billing the child’s Medi-Cal or other insurance as of January 1, 2024:

(f) The costs associated with the medical evidentiary examination of a victim of child physical abuse or neglect shall be separate from diagnostic treatment and procedure costs associated with medical treatment. ***Costs for the medical evidentiary portion of the examination shall not be charged directly or indirectly to the victim of child physical abuse or neglect.***

(g) Each county’s board of supervisors shall authorize a designee to approve the Sexual Assault Response Teams (SART), Sexual Assault Forensic Examiner (SAFE) teams, or other qualified medical evidentiary examiners to receive reimbursement through the Office of Emergency

⁷⁶ Exhibit G (7), Continuous Eligibility for Children (CEC), page 1, https://stgenssa.sccgov.org/debs/program_handbooks/foster_care/assets/28medi-cal/contnuseelgblty.htm (accessed on July 24, 2025); California Code of Regulations, title 22, section 50189.

⁷⁷ Welfare and Institutions Code section 16010.

⁷⁸ Exhibit G (14), Medi-Cal’s Foster Care Strategies, November 2022, page 1, <https://www.dhcs.ca.gov/Documents/DHCS-Medi-Cal-Foster-Care-Strategies-11-22-2022.pdf> (accessed on July 24, 2025).

⁷⁹ Exhibit A, Test Claim, page 235; Exhibit G (13), Medical Report: Suspected Child Physical Abuse and Neglect Instructions Cal OES 2-900, page 2, <https://www.caloes.ca.gov/office-of-the-director/policy-administration/finance-administration/grants-management/victim-services/forms/> (accessed on June 20, 2025).

Services for the performance of medical evidentiary examinations for victims of child physical abuse or neglect and shall notify the Office of Emergency Services of this designation. ***The costs associated with these medical evidentiary exams shall be funded by the state, subject to appropriation by the Legislature.*** Each county's designated SART, SAFE, or other qualified medical evidentiary examiners shall submit invoices to the Office of Emergency Service, who shall administer the program. A flat reimbursement rate shall be established. Within one year upon initial appropriation, the Office of Emergency Service shall establish a 60-day reimbursement process. The Office of Emergency Service shall assess and determine a fair and reasonable reimbursement rate to be reviewed every five years.

(h) Reimbursement shall not be subject to reduced reimbursement rates based on patient history or other reasons. Victims of child physical abuse or neglect may receive a medical evidentiary exam outside of the jurisdiction where the crime occurred and that county's approved SART, SAFE teams, or qualified medical evidentiary examiners shall be reimbursed for the performance of these exams.⁸⁰

The claimant has expressly pled only subsection (f).⁸¹ In short, subsection (f) prohibits counties from billing the victim directly or indirectly (i.e., billing their insurance, including Medi-Cal) for the medical evidentiary portion of a child abuse or neglect exam. By not allowing the victim or the victim's insurance to pay, only an unrelated volunteer or a government entity (but not through an insurance system for the child, such as Medi-Cal) could legally pay for the child physical abuse or neglect medical evidentiary exams.

State funding is intended to replace insurance billing. Subsection (g) states that "[t]he costs associated with these medical evidentiary exams shall be funded by the state, subject to appropriation by the Legislature." To date, however, the Legislature has not made an appropriation as provided for in subsection (g).⁸²

C. Related Background Laws

Similar medical evidentiary exam laws exist for victims of sexual assault and domestic violence, each likewise requiring standardized forms, instructions, and protocols for the medical evidentiary exams.⁸³ These laws have also been recently amended to prohibit billing the victim or their insurance and to replace that system with state funding.

⁸⁰ Penal Code section 11171, as amended by Statutes 2023, chapter 841, section 1, emphasis added.

⁸¹ Exhibit A, Test Claim, page 13. The claimant is therefore not seeking reimbursement under subsection (g) for the costs of designating SART, SAFE, or other qualified medical examiners, or for submitting invoices to Cal OES.

⁸² Exhibit B, Finance's Comments on the Test Claim, page 1 ("However, no appropriation has been provided to Cal OES for this purpose.").

⁸³ Penal Code sections 13823.95 and 11161.2.

In 2021, AB 145 directed Cal OES to determine reimbursement amounts to counties for the cost of sexual assault exams. These reimbursements were to be made from funds “available upon appropriation for this purpose.”⁸⁴ They are now reimbursed at \$911 per exam.⁸⁵

In 2022, AB 2185 directed Cal OES to determine reimbursement amounts to counties for the cost of domestic violence exams. Like the test claim statute, AB 2185 stated “[t]he costs associated with these medical evidentiary exams shall be funded by the state, subject to appropriation by the Legislature.”⁸⁶ To date, no appropriation or reimbursement appears to have been made for the domestic violence exams. The only form available for reimbursement of a medical evidentiary exam on the Cal OES website is for the sexual assault examinations.⁸⁷

Per legislative history, the test claim statute “mirrors the process set forth by AB 2185, to provide free medical evidentiary examinations for a victim of child physical abuse or neglect.”⁸⁸ That is, the test claim statute “mirrors” the domestic violence medical evidentiary exam law.

⁸⁴ Penal Code section 13823.95(e), as added by Statutes 2021, chapter 80, section 25.

⁸⁵ Exhibit G (16), Senate Committee on Appropriations, August 21, 2023, on AB 1402, as amended March 30, 2023, page 3; Exhibit G (2), Assembly Committee on Appropriations, May 10, 2023, on AB 1402, as amended March 30, 2023, page 1; Exhibit G (5), Cal OES Invoice for Reimbursement for Medical Evidentiary Examination, 2021, page 1, https://www.safeta.org/wp-content/uploads/2022/03/invoice_for_reimbursement_fo.pdf (accessed on July 31, 2025); Exhibit G (4), Cal OES Informational Bulletin Sexual Assault Medical Evidentiary Examination Reimbursement, May 2022, pages 1-2, <https://www.ccfmtc.org/wp-content/uploads/Informational-Bulletin-Medical-Evidentiary-Examination-Reimbursement-Rev.-5-22.pdf> (accessed on July 31, 2025).

⁸⁶ Penal Code section 11161.2(g), as added by Statutes 2022, chapter 557, section 1; Penal Code section 11171(g), as added by Statutes 2023, chapter 841.

⁸⁷ Exhibit G (4), Cal OES Informational Bulletin Sexual Assault Medical Evidentiary Examination Reimbursement, May 2022, pages 1-2, <https://www.ccfmtc.org/wp-content/uploads/Informational-Bulletin-Medical-Evidentiary-Examination-Reimbursement-Rev.-5-22.pdf> (accessed on July 31, 2025); Exhibit G (5) Cal OES Invoice for Reimbursement for Medical Evidentiary Examination, 2021, page 1, https://www.safeta.org/wp-content/uploads/2022/03/invoice_for_reimbursement_fo.pdf (accessed on July 31, 2025).

⁸⁸ Exhibit G (17), Senate Committee on Public Safety, June 27, 2023, on AB 1402, as amended March 30, 2023, page 3; Exhibit G (18), Senate Rules Committee, Office of Senate Floor Analyses, September 2, 2023, on AB 1402, as amended March 30, 2023, page 4; Exhibit G (3), Assembly Committee on Public Safety, April 25, 2023, on AB 1402, as amended March 30, 2023, page 4.

III. Positions of the Parties and Interested Parties

A. County of Santa Clara

The claimant asserts the test claim statute imposes a reimbursable state-mandated program. The claimant states in the Test Claim:

As a result of [Penal Code section 11711] [s]ubdivision (f), county providers can no longer bill Medi-Cal or private insurance for physical abuse and neglect exams administered to children. Rather than charge Medi-Cal or private insurance for physical abuse and neglect exams, counties are now required to authorize a designee to approve providers who can perform these exams and send invoices to CalOES. (*Id.*, subd. (g).) CalOES, who administers the reimbursement program under Section 11171, must reimburse counties within 60 days and adjust reimbursement rates every five years. (*Ibid.*)

Notwithstanding the mandatory reimbursement provision of AB 1402, the Legislature has failed to appropriate any funding for child physical abuse and neglect exams. (See Stats. 2024, ch. 22, § 2.00; Stats. 2023, ch. 38; see also Sen. Comm. On Approps., Analysis of Assem. Bill No. 1402 (2023-2024 Reg. Sess.), p. 3 [“Staff notes that no funding has been included in the 2023-2024 budget for these purposes.”].) Nor has CalOES issued any guidance or form for AB 1402 reimbursements. (Declaration of Serena Sy, at p. 3 (“Sy Decl.”)) As a result, counties are now forced to absorb the costs of physical abuse or neglect exams for children.⁸⁹

The claimant states that paying for the exams is a new reimbursable activity:

In other words, the new activity mandated by Subdivision (f) – and the corresponding new program or higher level of service – is the new requirement that the County assume the full cost of providing child abuse and neglect exams free of charge whenever the State declines to reimburse these costs.⁹⁰

The claimant states that before the test claim statute, “counties [had] long provided child physical abuse and neglect exams under the State’s supervision,” but “were never responsible for funding these exams.”⁹¹ Following the test claim statute, and without state reimbursement thereunder, “the County must now perform its existing duties – provide these exams consistent with the State’s guidance, protocols, and forms – *and* assume financial responsibility for these exams.”⁹²

The claimant analogizes this claim to *County of San Diego v. State of California*, a California Supreme Court decision where the court found a new reimbursable program

⁸⁹ Exhibit A, Test Claim, pages 13-14.

⁹⁰ Exhibit A, Test Claim, page 16.

⁹¹ Exhibit A, Test Claim, page 16.

⁹² Exhibit A, Test, Claim, pages 16-17.

after the state had shifted costs for a class of Medi-Cal beneficiaries from itself to the counties.⁹³ The claimant argues that, as in *County of San Diego*, “[s]ubdivision (f) compels local governments to assume the full financial responsibility for these crucial exams whenever the State declines to provide reimbursement. Section 6 requires the State to reimburse these costs.”⁹⁴

The claimant also argues that practical compulsion results in a new state-mandated program or higher level of service.⁹⁵ For example, the claimant analogizes child physical abuse and neglect exams to stormwater drainage systems as a matter of public health and safety, in that not providing them is “no alternative at all.”⁹⁶ Further, the claimant asserts that relying on non-expert exams would be inadequate:

Standard physical exams, such as well child visits and emergency room encounters, are not a reasonable substitute for child physical abuse and neglect exams. (Sturm Decl., at p. 5.) Child abuse pediatrics is a medical specialty within pediatrics, like pediatric cardiology or pediatric neurology. (*Id.* at p. 3.) Without specific and continuing education in child abuse pediatrics, general practitioners are not qualified to provide expert medical opinions about whether a child has endured and survived maltreatment or determine the best course of treatment. (*Ibid.*) Medical professionals who are not trained to identify child abuse and neglect miss opportunities for diagnosis and intervention. (*Id.* at p. 5.)⁹⁷

The claimant asserts that child physical abuse and neglect exams, in many cases, are “necessary to uncover abuse and neglect.”⁹⁸ The claimant states that “counties – and more importantly, the infants and children they serve – face severe and certain consequences were counties to cease using child physical abuse and neglect exams as a tool in their child welfare investigations.”⁹⁹ The claimant also points to specific statutory law requiring such an exam within 72 hours when a medical specialist determines it necessary for a child in protective custody.¹⁰⁰ It concludes that not consulting the medical specialists upon a report of suspected child abuse is “not an

⁹³ Exhibit A, Test Claim, page 17 citing *County of San Diego v. State of California* (1997) 15 Cal.4th 68.

⁹⁴ Exhibit A, Test Claim, page 17.

⁹⁵ Exhibit A, Test Claim, page 20.

⁹⁶ Exhibit A, Test Claim, pages 20-21.

⁹⁷ Exhibit A, Test Claim, page 24.

⁹⁸ Exhibit A, Test Claim, page 23 citing page 47, paragraphs 18-19 and 21-22 (Declaration of Marlene Sturm, MD, Medical Director, Medical Clinic at the Children’s Advocacy Center, Children’s Advocacy Center of Santa Clara County).

⁹⁹ Exhibit A, Test Claim, page 21.

¹⁰⁰ Exhibit A, Test Claim, page 21 citing Welfare and Institutions Code section 324.5.

acceptable alternative.”¹⁰¹ The claimant then argues that the duty to investigate child abuse reports also requires these medical exams.¹⁰²

Attached to the Test Claim are four declarations of County of Santa Clara employees:

1. Declarant Serena Sy is the Director of Primary Care Operations for Santa Clara Valley Healthcare (“SCVH”).¹⁰³ Ms. Sy oversees SCVH operations over primary care clinics and programs throughout the County of Santa Clara, including child physical abuse and neglect exams.¹⁰⁴

Explaining the claimant’s work in child physical abuse and neglect exams, Ms. Sy declares that the “County conducts the vast majority of physical abuse and neglect exams to comply with child welfare investigations.”¹⁰⁵ Ms. Sy adds: “Physical abuse and neglect exams are also conducted pursuant to law enforcement investigations into potential crimes against children.”¹⁰⁶ As to the population of children served, Ms. Sy declares that the “County is one of [the] only providers of physical abuse and neglect exams in its region. SCVH and CAC frequently receive referrals from other agencies and hospitals to perform these exams for children.”¹⁰⁷

Regarding billing, Ms. Sy declares “there is no entity the County can bill for child physical abuse and neglect exams.”¹⁰⁸ “To comply with Subdivision (f), the County can no longer bill Medi-Cal or private insurance.”¹⁰⁹

¹⁰¹ Exhibit A, Test Claim, page 22.

¹⁰² Exhibit A, Test Claim, page 22.

¹⁰³ Exhibit A, Test Claim, page 31, paragraph 2 (Declaration of Serena Sy, Director of Primary Care Operations, Santa Clara Valley Healthcare, County of Santa Clara).

¹⁰⁴ Exhibit A, Test Claim, page 31, paragraph 3 (Declaration of Serena Sy, Director of Primary Care Operations, Santa Clara Valley Healthcare, County of Santa Clara).

¹⁰⁵ Exhibit A, Test Claim, page 31, paragraph 7 (Declaration of Serena Sy, Director of Primary Care Operations, Santa Clara Valley Healthcare, County of Santa Clara).

¹⁰⁶ Exhibit A, Test Claim, page 31, paragraph 9 (Declaration of Serena Sy, Director of Primary Care Operations, Santa Clara Valley Healthcare, County of Santa Clara).

¹⁰⁷ Exhibit A, Test Claim, page 32, paragraph 11 (Declaration of Serena Sy, Director of Primary Care Operations, Santa Clara Valley Healthcare, County of Santa Clara).

¹⁰⁸ Exhibit A, Test Claim, page 33, paragraph 17 (Declaration of Serena Sy, Director of Primary Care Operations, Santa Clara Valley Healthcare, County of Santa Clara).

¹⁰⁹ Exhibit A, Test Claim, pages 33-34, paragraph 15 (Declaration of Serena Sy, Director of Primary Care Operations, Santa Clara Valley Healthcare, County of Santa Clara).

2. Declarant Kiyomi Ross is the Director of Financial Planning and Performance for the County of Santa Clara.¹¹⁰ Ms. Ross oversees the County's cost accounting system, including for the county's health system, which includes all its hospitals and clinics.¹¹¹ Ms. Ross provides cost data for the child physical abuse and neglect exams performed in the County of Santa Clara.¹¹²

Ms. Ross attests to "the costs of providing child physical abuse and neglect exams free of charge to patients and without reimbursement from the State."¹¹³ With explanations and exhibits, Ms. Ross declares that "the average cost of each exam is \$3,455" and that "the County provides an average of 15 such exams each month," working out to an "expected annual average cost to the County of \$621,927."¹¹⁴ The County first incurred costs for performing a medical exam on January 3, 2024, and in fiscal year 2023-2024 performed a total of 83 exams.¹¹⁵ Costs are expected to reach \$717,496 for fiscal year 2024-2025.¹¹⁶

3. Declarant Melissa Suarez is a Social Services Program Manager III ("Bureau Manager") for the Department of Family and Children's Services ("DFCS") for the County of Santa Clara.¹¹⁷ Ms. Suarez oversees emergency social workers from South San Jose to the southernmost boundary of the County's jurisdiction, and

¹¹⁰ Exhibit A, Test Claim, page 35, paragraph 2 (Declaration of Kiyomi Ross, Director of Financial Planning and Performance, Santa Clara Valley Healthcare, County of Santa Clara).

¹¹¹ Exhibit A, Test Claim, page 35, paragraph 3 (Declaration of Kiyomi Ross, Director of Financial Planning and Performance, Santa Clara Valley Healthcare, County of Santa Clara).

¹¹² Exhibit A, Test Claim, pages 35-36, paragraphs 5-13 (Declaration of Kiyomi Ross, Director of Financial Planning and Performance, Santa Clara Valley Healthcare, County of Santa Clara).

¹¹³ Exhibit A, Test Claim, page 35, paragraph 5 (Declaration of Kiyomi Ross, Director of Financial Planning and Performance, Santa Clara Valley Healthcare, County of Santa Clara).

¹¹⁴ Exhibit A, Test Claim, pages 35-36, paragraph 9 (Declaration of Kiyomi Ross, Director of Financial Planning and Performance, Santa Clara Valley Healthcare, County of Santa Clara).

¹¹⁵ Exhibit A, Test Claim, page 36, paragraphs 10 and 12 (Declaration of Kiyomi Ross, Director of Financial Planning and Performance, Santa Clara Valley Healthcare, County of Santa Clara).

¹¹⁶ Exhibit A, Test Claim, page 36, paragraph 13 (Declaration of Kiyomi Ross, Director of Financial Planning and Performance, Santa Clara Valley Healthcare, County of Santa Clara).

¹¹⁷ Exhibit A, Test Claim, page 40, paragraphs 2-3 (Declaration of Melissa Suarez, Bureau Manager, Department of Family and Children's Services, County of Santa Clara).

supports DFCS division managers in emergency response, court, and non-court services for the county's welfare system.¹¹⁸

Ms. Suarez declares that "laws, rules, and regulations impose upon County social workers a duty to investigate allegations of child physical abuse so that they may determine whether child welfare services should be offered to the family and whether proceedings in the juvenile court should be commenced."¹¹⁹

Ms. Suarez details many circumstances under which a child physical abuse and neglect exam may be prompted (i.e., reports from child, witness, daycare, school, community member, law enforcement, healthcare providers) and what indicia county social workers look for (i.e., disclosures, bruising, burns, fractures, unexplained injury, domestic violence, drug use) when considering requesting an exam.¹²⁰ She notes that "time is of the essence" because "[i]njuries may fade and heal, invisible injuries may worsen without treatment (e.g., brain bleeds), and the child may be at grave risk of harm the longer they remain in an unsafe environment."¹²¹

Ms. Suarez declares that the exams are "indispensable in the child welfare system," stating that they allow assessments to be made "without having to depend on the observations of witnesses or the disclosure of children. Witnesses to child abuse and neglect are rare, the adults who perpetrate abuse and neglect rarely admit to their crimes, and children may be too traumatized to disclose their injuries (or may be retraumatized by having to disclose their injuries)."¹²² Ms. Suarez speaks to the use of exams when "the victim or potential victim is an infant, pre-verbal, nonverbal, developmentally delayed, or otherwise unable to communicate their abuse or neglect" and conveys concern that without the exams as presently performed, "cases of actual abuse and neglect would be missed," and "more children would be at risk of additional injury

¹¹⁸ Exhibit A, Test Claim, page 40, paragraph 4 (Declaration of Melissa Suarez, Bureau Manager, Department of Family and Children's Services, County of Santa Clara).

¹¹⁹ Exhibit A, Test Claim, page 40, paragraph 6 (Declaration of Melissa Suarez, Bureau Manager, Department of Family and Children's Services, County of Santa Clara).

¹²⁰ Exhibit A, Test Claim, pages 41-42, paragraphs 15-16 (Declaration of Melissa Suarez, Bureau Manager, Department of Family and Children's Services, County of Santa Clara).

¹²¹ Exhibit A, Test Claim, page 42, paragraph 17 (Declaration of Melissa Suarez, Bureau Manager, Department of Family and Children's Services, County of Santa Clara).

¹²² Exhibit A, Test Claim, pages 40-41, paragraph 9 (Declaration of Melissa Suarez, Bureau Manager, Department of Family and Children's Services, County of Santa Clara).

or death.”¹²³ She later adds: “Where social workers are unable to substantiate a report of child physical abuse or neglect, they risk returning the child to an unsafe environment, where the siblings may also be unsafe.”¹²⁴ Ms. Suarez declares the following severe consequences she is “certain based on [her] own experience and that of the County’s child welfare agency” would occur if the County were to cease providing the physical abuse and neglect exams:

- a. Law enforcement officials’ investigation into child abuse and neglect crimes would be severely limited;
- b. Social workers would be unable to substantiate suspected cases of child physical abuse or neglect, particularly for nonverbal, pre-verbal, disabled, and developmentally delayed children;
- c. Children and families who would otherwise receive support services following medical findings of abuse or neglect would not be assisted; and
- d. Children whose abuse or neglect would be uncovered by a physical abuse and neglect exam would remain in dangerous situations, and in some cases, would be severely harmed or killed.¹²⁵

Ms. Suarez also declares that “[s]tandard physical exams, such as well child visits, are not a substitute for physical abuse and neglect exams. County social workers seek physical abuse and neglect exams from the County’s Child Advocacy Center (“CAC”) because the examiners there are trained to identify and assess the presence of child abuse and neglect. Our social workers’ experience is that standard physical exams do not reliably capture child abuse and neglect.”¹²⁶

¹²³ Exhibit A, Test Claim, page 41, paragraphs 10-12 (Declaration of Melissa Suarez, Bureau Manager, Department of Family and Children’s Services, County of Santa Clara).

¹²⁴ Exhibit A, Test Claim, page 41, paragraph 14 (Declaration of Melissa Suarez, Bureau Manager, Department of Family and Children’s Services, County of Santa Clara).

¹²⁵ Exhibit A, Test Claim, pages 42-43, paragraph 18 (Declaration of Melissa Suarez, Bureau Manager, Department of Family and Children’s Services, County of Santa Clara).

¹²⁶ Exhibit A, Test Claim, page 41, paragraph 13 (Declaration of Melissa Suarez, Bureau Manager, Department of Family and Children’s Services, County of Santa Clara).

4. Declarant Marlene Sturm, MD is the Medical Director of the Children’s Advocacy Center (‘CAC’) at the Santa Clara Valley Medical Center (“SCVMC”).¹²⁷ Dr. Sturm has “supervised the County’s child abuse pediatrics program since 2017.”¹²⁸ Dr. Sturm directly supervises or herself provides child abuse medical examinations, consults with numerous hospital units, provides exams for adjacent counties, and works with social workers and law enforcement on investigations of child abuse and neglect.¹²⁹

Dr. Sturm declares that the County receives over 20,000 child abuse reports annually, and that, “in many cases, expert medical evaluation for child physical abuse and neglect exams are *required* to diagnose missed cases of child abuse and neglect.”¹³⁰ Dr. Sturm explains, “a general pediatric examination may miss subtle fractures, injuries to internal organs, or retinal hemorrhages inside the eye. Of greatest concern, a child can have a relatively normal neurologic exam and ‘appear normal,’ yet have an evolving brain hemorrhage.”¹³¹

Echoing the Declaration of Melissa Suarez, Dr. Sturm extensively details medical literature and cites statistics of child abuse and neglect being missed through “standard physical exams.”¹³² Dr. Sturm adds that, “without expert medical evaluations for child physical abuse and neglect, the County risks *underinclusive and overinclusive* child protection actions.”¹³³ In an underinclusive action, “social services may not have enough evidence to place the child in protective custody”

¹²⁷ Exhibit A, Test Claim, page 44, paragraphs 2 and 5 (Declaration of Marlene Sturm, MD, Medical Director, Medical Clinic at the Children’s Advocacy Center, Children’s Advocacy Center of Santa Clara County).

¹²⁸ Exhibit A, Test Claim, page 44, paragraph 2 (Declaration of Marlene Sturm, MD, Medical Director, Medical Clinic at the Children’s Advocacy Center, Children’s Advocacy Center of Santa Clara County).

¹²⁹ Exhibit A, Test Claim, page 44, paragraphs 5-6 (Declaration of Marlene Sturm, MD, Medical Director, Medical Clinic at the Children’s Advocacy Center, Children’s Advocacy Center of Santa Clara County).

¹³⁰ Exhibit A, Test Claim, pages 46-47, paragraphs 14 and 21 (Declaration of Marlene Sturm, MD, Medical Director, Medical Clinic at the Children’s Advocacy Center, Children’s Advocacy Center of Santa Clara County).

¹³¹ Exhibit A, Test Claim, page 47, paragraph 21 (Declaration of Marlene Sturm, MD, Medical Director, Medical Clinic at the Children’s Advocacy Center, Children’s Advocacy Center of Santa Clara County).

¹³² Exhibit A, Test Claim, pages 48-49, paragraph 24 (Declaration of Marlene Sturm, MD, Medical Director, Medical Clinic at the Children’s Advocacy Center, Children’s Advocacy Center of Santa Clara County).

¹³³ Exhibit A, Test Claim, page 48, paragraph 23 (Declaration of Marlene Sturm, MD, Medical Director, Medical Clinic at the Children’s Advocacy Center, Children’s Advocacy Center of Santa Clara County).

when needed, and an overinclusive action could mean that a child is placed “in protective custody because of incomplete or inaccurate information,” which may “break apart families and treat innocent adults as perpetrators.”¹³⁴ In short, in Dr. Sturm’s “professional experience, expert medical evaluations for child physical abuse and neglect exams are necessary to ensure the safety of the child, to support effective collaboration with social services, and when appropriate, to file criminal charges.”¹³⁵

The claimant declares it first incurred costs under the test claim statute on January 3, 2024.¹³⁶ It declares incurring \$221,046 for FY 2023-2024¹³⁷ and estimates costs of \$717,496 for FY 2024-2025.¹³⁸ It estimates a statewide cost of \$11,800,000 for FY 2024-2025.¹³⁹ The claimant declares this estimate is based on the Senate Committee on Appropriations analysis of the test claim statute, multiplying the average number of child abuse cases by the reimbursement amount that Cal OES currently provides for each sexual assault medical evidentiary exam, which is \$911 per exam.¹⁴⁰ However, the claimant also declares that each exam costs \$3,455.¹⁴¹ The claimant

¹³⁴ Exhibit A, Test Claim, page 48, paragraph 23 (Declaration of Marlene Sturm, MD, Medical Director, Medical Clinic at the Children’s Advocacy Center, Children’s Advocacy Center of Santa Clara County).

¹³⁵ Exhibit A, Test Claim, page 47, paragraph 19 (Declaration of Marlene Sturm, MD, Medical Director, Medical Clinic at the Children’s Advocacy Center, Children’s Advocacy Center of Santa Clara County).

¹³⁶ Exhibit A, Test Claim, pages 11 and 36, paragraph 10 (Declaration of Kiyomi Ross, Director of Financial Planning and Performance, Santa Clara Valley Healthcare, County of Santa Clara).

¹³⁷ Exhibit A, Test Claim, page 36, paragraph 12 (Declaration of Kiyomi Ross, Director of Financial Planning and Performance, Santa Clara Valley Healthcare, County of Santa Clara).

¹³⁸ Exhibit A, Test Claim, page 36, paragraph 13 (Declaration of Kiyomi Ross, Director of Financial Planning and Performance, Santa Clara Valley Healthcare, County of Santa Clara).

¹³⁹ Exhibit A, Test Claim, pages 11 and 33-34, paragraph 24 (Declaration of Serena Sy, Director of Primary Care Operations, Santa Clara Valley Healthcare, County of Santa Clara).

¹⁴⁰ Exhibit A, Test Claim, pages 33-34, paragraph 24 (Declaration of Serena Sy, Director of Primary Care Operations, Santa Clara Valley Healthcare, County of Santa Clara citing Senate Committee on Appropriations, August 21, 2023, on AB 1402, as amended March 30, 2023, page 3).

¹⁴¹ Exhibit A, Test Claim, pages 35-36, paragraph 9 (Declaration of Kiyomi Ross, Director of Financial Planning and Performance, Santa Clara Valley Healthcare, County of Santa Clara).

declares it has received no funds from any state, federal, or other non-local agency for the program, and that its general funds must be used.¹⁴²

The claimant asserts that the test claim statute imposes requirements unique to local government because the services to the public are provided by the counties.¹⁴³ It additionally asserts that the test claim statute carries out state policy of “public safety, child welfare, and guardianship” through the “free provision of child abuse and neglect exams” because the exams are the county’s responsibility whether performed in-house or through contractors.¹⁴⁴

The claimant finally asserts that no condition exists creating an exception to reimbursement under Government Code section 17556.¹⁴⁵

The claimant filed rebuttal comments on May 7, 2025.¹⁴⁶ In response to Finance’s comment that there is no increased level of governmental service being provided to the public, the claimant newly argues that the test claim statute does increase the quality of service to the public.¹⁴⁷ The claimant argues there is an enhanced quality of service because “the Test Claim statute makes these exams free of charge to make them more accessible to the public.”¹⁴⁸

Further, the claimant disagrees with Finance’s comment that *Workers’ Compensation Disability Benefits for Government Employees*, 00-TC-20/02-TC-02 applies. The claimant summarizes the *Workers’ Compensation Disability Benefits* test claim statute as having “expanded a preexisting leave benefit to additional categories of employees.”¹⁴⁹ Here instead, the claimant states: “By shifting full financial responsibility from the State to counties, the Test Claim Statute and legislative action use county resources to finance this enhanced public service.”¹⁵⁰

¹⁴² Exhibit A, Test Claim, pages 12, 15 and 33, paragraphs 17 and 20 (Declaration of Serena Sy, Director of Primary Care Operations, Santa Clara Valley Healthcare, County of Santa Clara); pages 35-36, paragraphs 5 and 10-11 (Declaration of Kiyomi Ross, Director of Financial Planning and Performance, Santa Clara Valley Healthcare, County of Santa Clara).

¹⁴³ Exhibit A, Test Claim, pages 26-27.

¹⁴⁴ Exhibit A, Test Claim, page 27.

¹⁴⁵ Exhibit A, Test Claim, pages 28-29.

¹⁴⁶ Exhibit C, Claimant’s Rebuttal Comments.

¹⁴⁷ Exhibit C, Claimant’s Rebuttal Comments, page 2.

¹⁴⁸ Exhibit C, Claimant’s Rebuttal Comments, page 2.

¹⁴⁹ Exhibit C, Claimant’s Rebuttal Comments, page 4.

¹⁵⁰ Exhibit C, Claimant’s Rebuttal Comments, page 4.

The claimant also filed comments on the Draft Proposed Decision on October 7, 2025.¹⁵¹ The claimant makes two additional arguments for finding a mandate where the victim or the victim’s private medical insurance would be available to pay for the medical evidentiary exam but for the test claim statute:

- (1) By transferring full financial responsibility from the State to counties, the Test Claim Statute mandates a new activity as to those exams which were previously chargeable to private medical insurance.
- (2) [T]he rationale offered by the Draft Proposed Decision regarding its finding as to private medical insurance would contravene the voters’ intent behind Section 6.¹⁵²

The claimant elaborates on the second argument as follows:

If adopted as final, the Draft Proposed Decision would approve an unlawful basis for the State to evade its obligations under Section 6—namely, the State could impose a mandate for which there is fee authority and subsequently eliminate that fee authority without having to provide reimbursement under Section 6.¹⁵³

On January 28, 2026, the claimant filed comments on the Proposed Decision arguing that the denial of reimbursement for costs of the exam previously recoverable from the victim’s private insurance or from the victim directly is not correct, stating the following:

- Distinguishing between Medi-Cal and private medical insurance creates an untenable contradiction in the Proposed Decision.
- The Proposed Decision is incorrect that providing child abuse exams free of charge to victims with private medical insurance does not constitute a new state-mandated program.
- The Proposed Decision threatens to create uncertainty about counties’ compliance with Medi-Cal discriminatory billing regulations.¹⁵⁴

B. Department of Finance

Finance contends that the test claim statute does not impose a reimbursable state-mandated program. Citing *Workers’ Compensation Disability Benefits for Government Employees*, 00-TC-20/02-TC-02, Finance asserts:

[T]here is not an increase in the actual level or quality of governmental service provided to the public. Penal Code section 11171(f) simply requires the county to absorb the cost of medical evidentiary exams that

¹⁵¹ Exhibit F, Claimant’s Comments on the Draft Proposed Decision.

¹⁵² Exhibit F, Claimant’s Comments on the Draft Proposed Decision, page 2.

¹⁵³ Exhibit F, Claimant’s Comments on the Draft Proposed Decision, page 4.

¹⁵⁴ Exhibit I, Claimant’s Comments on the Proposed Decision, pages 1-4.

the county was already required to perform under existing law, instead of passing those costs along to a third party.¹⁵⁵

Finance did not file comments on the Draft Proposed Decision.

C. Kern County Department of Human Services

The Kern County Department of Human Services (KCDHS) is an interested person under section 1181.2(j) of the Commission’s regulations. KCDHS filed late comments on the Test Claim on April 11, 2025.¹⁵⁶

KCDHS is “deeply concerned about the bill’s misalignment with child welfare’s legal mandate and the significant hidden operational and administrative burden it imposes on counties.”¹⁵⁷ As to the asserted misalignment with child welfare’s legal mandate, it states: “Requiring child welfare agencies to coordinate, oversee, and ensure reimbursement for medical evidentiary exams blurs a critical boundary between the civil and criminal systems.”¹⁵⁸ As to the operational and administrative burden, it states: “While AB 1402 outlines a reimbursement pathway through Cal OES, it does not account for the substantial non-reimbursable infrastructure counties must build to comply with this mandate, including designating and managing a pool of approved medical evidentiary examiners, training staff and community partners in evidentiary protocols and documentation and ensuring compliance and audit readiness for Cal OES reimbursement.”¹⁵⁹ KCDHS “strongly urge[s] the Commission to recognize the administrative burden and legal misalignment that AB 1402 imposes on counties.”¹⁶⁰

That said, KCDHS “support[s] Santa Clara County’s test claim (24-TC-05) and respectfully request[s] that the Commission determine that AB 1402 constitutes an unfunded mandate under the California Constitution.”¹⁶¹

¹⁵⁵ Exhibit B, Finance’s Comments on the Test Claim, page 1.

¹⁵⁶ Exhibit D, Kern County Department of Human Services’ Late Comments on the Test Claim, page 1.

¹⁵⁷ Exhibit D, Kern County Department of Human Services’ Late Comments on the Test Claim, page 1.

¹⁵⁸ Exhibit D, Kern County Department of Human Services’ Late Comments on the Test Claim, page 1.

¹⁵⁹ Exhibit D, Kern County Department of Human Services’ Late Comments on the Test Claim, page 1.

¹⁶⁰ Exhibit D, Kern County Department of Human Services’ Late Comments on the Test Claim, page 1.

¹⁶¹ Exhibit D, Kern County Department of Human Services’ Late Comments on the Test Claim, page 1.

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...

The purpose of article XIII B, section 6 is to “preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”¹⁶² Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government]”¹⁶³

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.¹⁶⁴
2. The mandated activity constitutes a “program” that 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.¹⁶⁵
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.¹⁶⁶
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased

¹⁶² *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

¹⁶³ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

¹⁶⁴ *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

¹⁶⁵ *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles* (1987) 43 Cal.3d 46, 56).

¹⁶⁶ *San Diego Unified School District* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.¹⁶⁷

In 2004, article XIII B, section 6 was amended by the voters' approval of Proposition 1A, which added subdivision (c) to define a mandated new program or higher level of service to also include:

a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility.¹⁶⁸

The Commission is vested with the exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.¹⁶⁹ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.¹⁷⁰ In making its decisions, the Commission must strictly construe article XIII B, section 6 of the California Constitution, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."¹⁷¹

A. The Test Claim Is Timely Filed with a Potential Period of Reimbursement Beginning January 1, 2024.

A test claim must be filed within 12 months of the effective date of a statute or an executive order, or within 12 months of incurring increased costs as a result of the statute or executive order, whichever is later.¹⁷² The Commission's regulations clarify that "within 12 months of incurring costs" means "within 12 months (365 days) of *first* incurring costs as a result of a statute or executive order."¹⁷³

The effective date of the test claim statute is January 1, 2024.¹⁷⁴ The claimant filed the Test Claim on December 31, 2024.¹⁷⁵ As this is within 12 months of the effective date of the statute, the Test Claim is timely filed.

¹⁶⁷ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

¹⁶⁸ Proposition 1A, November 2004.

¹⁶⁹ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 335.

¹⁷⁰ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

¹⁷¹ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1280 citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

¹⁷² Government Code section 17551(c).

¹⁷³ California Code of Regulations, title 2, section 1183.1(c), emphasis added.

¹⁷⁴ California Constitution, article IV, section 8(c)(1); Government Code section 9600.

¹⁷⁵ Exhibit A, Test Claim.

Government Code section 17557(e) provides that a Test Claim “shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.” Because the claimant filed the Test Claim on December 31, 2024 (during FY 2024-2025), the potential period of reimbursement under Government Code section 17557(e) would begin at the start of the prior fiscal year, which is July 1, 2023. However, since the test claim statute has a later effective date, the potential period of reimbursement begins on the statute’s effective date, or January 1, 2024.¹⁷⁶

B. The Test Claim Statute Mandates a New Program or Higher Level of Service Pursuant to Article XIII B, Section 6(c) of the California Constitution, Only in Fiscal Years the State Does Not appropriate Funds to Counties Sufficient to Cover the Costs of Child Physical Abuse and Neglect Exams and Instead Shifts those Costs to Counties by Prohibiting Them from Billing State-Funded Medi-Cal or the Victims Compensation Board for the Costs of the Exams.

Reimbursement under article XIII B, section 6, of the California Constitution is required only when:

- The state mandates local agencies to perform new activities, which impose a new program or higher level of service and result in costs mandated by the state;¹⁷⁷
- or
- The state transfers from itself to local agencies the complete or partial financial responsibility for a required program for which the state previously had complete or partial financial responsibility and results in costs mandated by the state.¹⁷⁸

As explained below, the test claim statute does not require the counties to perform any new activities. However, the test claim statute prohibits counties from charging the victim of physical abuse or neglect, either directly or indirectly, for the costs of the medical evidentiary portion of the examination.¹⁷⁹

The Commission finds that the test claim statute does not mandate a new program or higher level of service for the increased costs of child physical abuse and neglect evidentiary exams when the costs could have been recovered directly from the victim or from the victim’s private medical insurance.

However, absent an appropriation from the state sufficient to cover the costs of the child physical abuse and neglect evidentiary exams, and where the state, through Medi-Cal or the VCB, previously paid for the child physical abuse and neglect medical evidentiary

¹⁷⁶ *Southern California Gas Co. v. Public Utilities Commission* (1985) 38 Cal.3d 64, 67 (“It is well settled that a statute has no force whatsoever until its effective date.”).

¹⁷⁷ California Constitution, article XIII B, section 6(a).

¹⁷⁸ California Constitution, article XIII B, section 6(c).

¹⁷⁹ Penal Code section 11171(f), as added by Statutes 2023, chapter 841.

exams, the test claim statute shifts those costs from the state to the counties under article XIII B, section 6(c), resulting in a mandated new program or higher level of service.

1. Penal Code Section 11171(f), as Amended by the Test Claim Statute, Does Not Require the Counties to Perform Any New Activities And Does Not Shift Costs from the State to the Counties Under Article XIII B, Section 6(c) for the Costs of the Exam Previously Recoverable From the Victim’s Private Insurance or from the Victim Directly and, Thus, Does Not Impose a State-Mandated New Program or Higher Level of Service Under These Circumstances.

Penal Code section 11171(f), as amended by the test claim statute, does not require the counties to perform any new activities and does not shift costs from the state to the counties under article XIII B, section 6(c) for the costs of the exam previously recoverable from the victim’s private insurance or from the victim directly.

As explained in the Background, counties have long been required to investigate all incoming child abuse reports, a duty that has been confirmed by the courts.¹⁸⁰ Existing state law also requires counties to ensure that a child taken into protective custody undergo a physical examination performed by a medical practitioner who has specialized training in detecting and treating child abuse injuries and neglect, when appropriate and following allegations of physical abuse, and “whenever possible, shall ensure that this examination take place within 72 hours of the time the child was taken into protective custody, when there are allegations of physical abuse.”¹⁸¹ In 2002, Penal Code section 11171 was added, and it has applied to all children in the state since January 1, 2004.¹⁸²

With the exception of amendments to the name of the office directed to lead the creation of the form, instructions, and examination protocols as the California Office of Emergency Services (Cal OES) after the Office of Criminal Justice Planning was dissolved,¹⁸³ the requirements for the medical evidentiary exams ensured by the

¹⁸⁰ Penal Code section 11166.3 (formerly 11166.1); see also *Alejo v. City of Alhambra* (1999) 75 Cal.App.4th 1180, 1185-1186.

¹⁸¹ Welfare and Institutions Code section 324.5.

¹⁸² Penal Code section 11171(a)-(e), as added by Statutes 2002, chapter 249, section 4 (SB 580).

¹⁸³ The Office of Criminal Justice Planning was abolished on January 1, 2004. Its duties were largely transferred to Cal OES that same year. See Penal Code section 13820, as added by Statutes 2003, chapter 229, section 26, and as amended by Statutes 2013, chapter 352, section 428; Exhibit G (20), The history of Cal OES, page 2, <https://www.caloes.ca.gov/cal-oes/history/> (accessed on September 23, 2024) (“In 2004, the California Legislature merged OES and the Governor’s Office of Criminal Justice Planning, which was responsible for providing state and federal grant funds to local communities to prevent crime and help crime victims.”).

counties have been the same for two decades. At all times, the same standard nine components of the exam have been required:

- (1) Any notification of injuries or any report of suspected child physical abuse or neglect to law enforcement authorities or children's protective services, in accordance with existing reporting procedures.
- (2) Addressing relevant consent issues, if indicated.
- (3) The taking of a patient history of child physical abuse or neglect that includes other relevant medical history.
- (4) The performance of a physical examination for evidence of child physical abuse or neglect.
- (5) The collection or documentation of any physical evidence of child physical abuse or neglect, including any recommended photographic procedures.
- (6) The collection of other medical or forensic specimens, including drug ingestion or toxication, as indicated.
- (7) Procedures for the preservation and disposition of evidence.
- (8) Complete documentation of medical forensic exam findings with recommendations for diagnostic studies, including blood tests and X-rays.
- (9) An assessment as to whether there are findings that indicate physical abuse or neglect.¹⁸⁴

Cal OES issued the state standardized exam form on January 1, 2004.¹⁸⁵ This form, its protocols, and its instructions remain dated January 1, 2004.¹⁸⁶

Thus, contrary to the claimant's arguments,¹⁸⁷ the counties' duties relating to the medical examination requirements for child physical abuse and neglect are not new.

What is new under the test claim statute is subdivisions (f) – (h) of Penal Code section 11171.¹⁸⁸ Subdivision (f), the only provision pled by the claimant, prohibits the counties

¹⁸⁴ Penal Code section 11171(c); See Penal Code section 11171, as added by Statutes 2002, chapter 249, section 4 (SB 580).

¹⁸⁵ Exhibit G (6), California Medical Protocol for Examination of Child Physical Abuse and Neglect Victims, page 7, <https://www.caloes.ca.gov/office-of-the-director/policy-administration/finance-administration/grants-management/victim-services/forms/> (accessed on June 20, 2025).

¹⁸⁶ Exhibit G (6), California Medical Protocol for Examination of Child Physical Abuse and Neglect Victims, pages 7; 108-114; 116-122, <https://www.caloes.ca.gov/office-of-the-director/policy-administration/finance-administration/grants-management/victim-services/forms/> (accessed on June 20, 2025).

¹⁸⁷ Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 2.

¹⁸⁸ Penal Code section 11171, as amended by Statutes 2023, chapter 841, section 1.

from billing the victim directly or indirectly for the medical examination.¹⁸⁹ Before the enactment of the test claim statute, counties or their contracted providers could bill the victim or the victim’s private insurance, Medi-Cal, or the VCB for child physical abuse and neglect exams. This was specified directly on the Cal OES Form 2-900 Instructions.¹⁹⁰ The Cal OES Protocol states that the “the majority of counties” billed Medi-Cal or private insurance, and occasionally the VCB.¹⁹¹ While subdivision (f) prohibits counties from billing the victim directly or indirectly, subdivision (g) now states that the costs associated with the medical evidentiary exams “shall be funded by the state, subject to appropriation by the Legislature” and requires the county’s designated SART, SAFE, or other qualified medical examiners to bill Cal OES for reimbursement.¹⁹² And subdivision (h) requires that reimbursement not be reduced based on patient history; and that victims may receive exams outside of the jurisdiction where the crime occurred, and that the county’s SART, SAFE, or other qualified examiners will be reimbursed by Cal OES under those circumstances.¹⁹³ The Test Claim does not request reimbursement to designate a SART, SAFE, or other medical examiner to bill Cal OES for reimbursement and, thus, no mandate findings are made on that provision.

Accordingly, the test claim statute does not mandate counties to perform new activities and, thus, there is not a new program or higher level of service pursuant to article XIII B, section 6(a).

Moreover, Penal Code section 11171(f), as amended by the test claim statute, does not impose a state-mandated new program or higher level of service under article XIII B, section 6(c) for the costs of the child physical abuse and neglect evidentiary exams that were previously recoverable from the victim’s private insurance or from the victim

¹⁸⁹ Penal Code section 11171(f).

¹⁹⁰ Exhibit G (13), Medical Report: Suspected Child Physical Abuse and Neglect Instructions Cal OES 2-900, page 2, <https://www.caloes.ca.gov/office-of-the-director/policy-administration/finance-administration/grants-management/victim-services/forms/> (accessed on June 20, 2025) (“**3. Payment methods have not been formally established. Options to pursue include: the patient’s public (Medi-Cal) or private insurance, the California Victim Compensation Program (VCP), local law enforcement agencies or Child Protective Services (CPS). Follow local policy.**” Emphasis in original.).

¹⁹¹ Exhibit G (6), California Medical Protocol for Examination of Child Physical Abuse and Neglect Victims, page 15 <https://www.caloes.ca.gov/office-of-the-director/policy-administration/finance-administration/grants-management/victim-services/forms/> (accessed on June 20, 2025).

¹⁹² Penal Code section 11171(g).

¹⁹³ Penal Code section 11171(h). Because the claimant has pled only subsection (f), the Commission need not determine whether this subsection’s statement that victims of child physical abuse or neglect “may receive a medical evidentiary exam outside of the jurisdiction where the crime occurred” is new.

directly because the state did not “previously [have] complete or partial financial responsibility” for those costs, as required by article XIII B, section 6(c). Since 1971, Welfare and Institutions Code section 10025 has provided that the “state shall not reimburse any local government or any facility thereof, under Medi-Cal or under any other health program . . . , for care provided to a person covered under any disability insurance, health insurance, or prepaid health plan.”¹⁹⁴ Thus, victims who were not eligible for Medi-Cal were responsible for those costs under prior law. Now that the test claim statute in subdivision (f) prohibits counties from recovering the costs from the victim directly or indirectly through private insurance as of January 1, 2024, the counties do experience increased costs, but are not required to comply with a *new* state-mandated program. The courts have been clear that increased costs alone do not create a reimbursable state-mandated program.¹⁹⁵

The claimant argues, however, that the state did assume full financial responsibility for costs that could be recovered from the victim or their private insurance when the Legislature passed the test claim statute, and that it then immediately transferred that responsibility to the counties by not appropriating funds.¹⁹⁶ This argument is unsound for two reasons. First, to mandate a new program or higher level of service under article XIII B, section 6(c), the financial responsibility of the state is assessed according to the law “prior to the enactment of the statute in question,” not under the test claim statute itself.¹⁹⁷ Second, the state did not assume financial responsibility in the test claim statute because the anticipated state payments are “subject to appropriation by the Legislature” and require Cal OES to establish reimbursement procedures and rates within one year of “initial appropriation.”¹⁹⁸ The determination as to how and whether to spend public funds is within the Legislature’s broad discretion, which has not yet been

¹⁹⁴ Welfare and Institutions Code section 10025 (Stats. 1971, ch. 812).

¹⁹⁵ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816 (“Section 6 was not intended to entitle local entities to reimbursement for *all* increased costs resulting from Legislative enactments, but only those costs mandated by a new program or an increased level of service imposed upon them by the State.”).

¹⁹⁶ Exhibit F, Claimant’s Comments on the Draft Proposed Decision, pages 2-3.

¹⁹⁷ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1812 (“In *Lucia Mar*, prior to the enactment of the statute in question, the program was funded and operated entirely by the State.”); *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (“...the requirements are new in comparison with the preexisting scheme in view of the circumstance that they did not exist prior to the enactment of Statutes of 1993, chapters 1255 (Assem. Bill No. 342 (1993-1994 Reg. Sess.) (Assembly Bill No. 342)) and 1256 (Senate Bill No. 1198 (1993-1994 Reg. Sess.) (Senate Bill No. 1198)).;” *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 559 (“To determine whether a program imposed by the permit is new, we compare the legal requirements imposed by the new permit with those in effect before the new permit became effective.”)

¹⁹⁸ Penal Code section 11171(g), as added by Statutes 2023, chapter 841, section 1,

exercised.¹⁹⁹ Per state law, an appropriation is an independent second step taken as its own act of law, one which requires a two-thirds vote (except regarding public education) rather than the simple majority that was necessary to pass the test claim statute.²⁰⁰ Thus, where the state's commitment to funding is "subject to appropriation by the Legislature," as here, there can be no financial commitment unless and until the second step of an appropriation is taken. The Legislature can later "decide *whether* and how to prescribe the funding."²⁰¹

A similar sequence occurred beginning in 1981 when the Legislature expanded the courts of appeal and declared that some of the funding would be "provided in the Budget Act."²⁰² Taxpayers argued in court that the act expanding the courts without simultaneous funding was unconstitutional and thereby void.²⁰³ But while the original statute might not have been "fully operative" until the 1982 Budget Act cured the alleged deficiency,²⁰⁴ the Supreme Court did not find the original statute void.²⁰⁵ Nor did it read the original act as being contemporaneously an appropriations measure, as the claimant suggests should be done here.

Also per state law, the "appropriations doctrine" for constitutional debt limits demonstrates that the state did not instantly assume financial responsibility for the medical evidentiary exams previously paid for by private insurance. The "appropriations doctrine" helps courts determine if the state or local constitutional debt limitation²⁰⁶ was violated by any new government debt instrument inadequately matched to an appropriations provision, and if "the statute in question does not prescribe *when* [the new debt instruments] are to be paid," then no legislative commitment to appropriate funds for such payments within the same fiscal year of the statute is presumed.²⁰⁷ Because the statute in question here says only, "subject to appropriation," and not

¹⁹⁹ *California School Boards' Association v. State of California* (2011) 192 Cal.App.4th 770, 797.

²⁰⁰ California Constitution, article XVI, section 7 ("Money may be drawn from the Treasury only through an appropriation made by law and upon a Controller's duly drawn warrant.") and article IV, section 12(d).

²⁰¹ *Brown v. Superior Court* (1982) 33 Cal. 3d 242, 248, emphasis added.

²⁰² Statutes 1981, chapter 959, section 6.

²⁰³ *Brown v. Superior Court* (1982) 33 Cal. 3d 242, 248.

²⁰⁴ *Brown v. Superior Court* (1982) 33 Cal. 3d 242, 252.

²⁰⁵ *Brown v. Superior Court* (1982) 33 Cal. 3d 242, 248.

²⁰⁶ California Constitution, article XVI, sections 1 and 18.

²⁰⁷ *Pooled Money Investment Board v. Unruh* (1984) 153 Cal. App. 3d 155, 165, emphasis added.

when,²⁰⁸ a legislative commitment to appropriate cannot be presumed to have occurred simultaneously with the test claim statute or even within one year of it.

The claimant further argues that article XIII B, section 6, cannot allow the state to repeal fee authority without providing reimbursement.²⁰⁹ This argument is misplaced. Fee authority to pay for costs is relevant only to the last mandates element of whether there are costs mandated by the state.²¹⁰ A claimant, however, has to prove the first two elements of a state mandate and new program or higher level of service before the issue of whether there are increased costs mandated by the state to pay for the mandated new program or higher level of service can be resolved. This Decision does not reach the costs mandated by the state issue for the costs previously recoverable from the victim's private insurance or from the victim directly because, as explained above, there is no mandated new program or higher level of service under these circumstances. Reimbursement under article XIII B, section 6, is required only when *all elements*, including that the statute mandates a new program or higher level of service *and* imposes costs mandated by the state, are satisfied.²¹¹ "Section 6 was not intended to entitle local entities to reimbursement for *all* increased costs resulting from Legislative enactments, but only those costs mandated by a new program or an increased level of service imposed upon them by the State."²¹²

On January 28, 2026, the claimant filed additional comments in response to the Proposed Decision, arguing that the denial of reimbursement for costs of the exam previously recoverable from the victim's private insurance or from the victim directly is not correct, stating the following:

- Distinguishing between Medi-Cal and private medical insurance creates an untenable contradiction in the Proposed Decision.
- The Proposed Decision is incorrect that providing child abuse exams free of charge to victims with private medical insurance does not constitute a new state-mandated program.

²⁰⁸ Penal Code section 11171(g).

²⁰⁹ Exhibit F, Claimant's Comments on the Draft Proposed Decision, pages 2 and 4.

²¹⁰ Government Code section 17556(d), which states: "The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds any one of the following: . . . (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service."

²¹¹ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875.

²¹² *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816.

- The Proposed Decision threatens to create uncertainty about counties' compliance with Medi-Cal discriminatory billing regulations.²¹³

The claimant's position is not legally correct. As stated above, reimbursement under article XIII B, section 6, of the California Constitution is required only when:

- The state mandates local agencies to perform new activities, which impose a new program or higher level of service and result in costs mandated by the state pursuant to article XIII B, section 6(a); or
- The state transfers from itself to local agencies the complete or partial financial responsibility for a required program for which the state previously had complete or partial financial responsibility and results in costs mandated by the state pursuant to article XIII B, section 6(c).

With respect to child abuse and neglect exams that previously were paid from the victim's private insurance or from the victim directly, the 2023 test claim statute did not impose any new requirements on the counties pursuant to article XIII B, section 6(a) and the state has not shifted those costs from itself to the counties pursuant to article XIII B, section 6(c), as explained above. All that section 11171(f) did was to prohibit counties from billing the victim or the victim's insurance for child physical abuse and neglect exams (costs which were not previously borne by the state).

The claimant specifically pled only Penal Code section 11171(f), as amended in 2023.²¹⁴ The claimant further represented that its claim was for cost-shifting only.²¹⁵ The claimant has also characterized payment for the exams as an "activity,"²¹⁶ but payment is not an activity for purposes of article XIII B, section 6(a). The courts are clear that increased costs (i.e., payments) alone do not constitute a new program or higher level of service under article XIII B, section 6(a).²¹⁷

Had the claimant been seeking reimbursement for the costs of the exams that previously were paid from the victim's private insurance or from the victim directly, its option was to plead Penal Code section 11171, as originally added by Statutes 2002, chapter 249 (SB 580) and the 2023 test claim statute, based on the date the claimant

²¹³ Exhibit I, Claimant's Comments on the Proposed Decision, pages 1-4.

²¹⁴ Exhibit A, Test Claim, page 13 ("[T]he County pleads only Subdivision (f) as reimbursable pursuant to Section 6.").

²¹⁵ Exhibit A, Test Claim, page 17 ("Because the State has declined to provide any reimbursement, the County must now perform its existing duties—provide these exams consistent with the State's guidance, protocols, and forms—and assume financial responsibility for these exams.").

²¹⁶ Exhibit A, Test Claim, page 16 ("In other words, the new activity mandated by Subdivision (f)—and the corresponding new program or higher level of service—is the new requirement that the County assume the full cost of providing child abuse and neglect exams free of charge whenever the State declines to reimburse these costs.").

²¹⁷ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816.

first incurred increased costs in 2024 as a result of the 2023 test claim statute. Government Code section 17551(c) and section 1183.1(d) of the Commission’s regulations allow the filing of a test claim on an older statute or executive order, if filed within 12 months of first incurring increased costs as a result of a statute or executive order. If that had occurred, the Commission could have taken jurisdiction and made findings on the activities required by 2002 statute and the costs incurred under the 2023 amendment. However, that did not occur and the time to amend the test claim has passed.²¹⁸ Thus, the Commission has no jurisdiction to make any findings on the 2002 statute.

The claimant also argues that the Proposed Decision “threatens to create uncertainty about counties’ compliance with Medi-Cal discriminatory billing regulations.”²¹⁹ The Commission does not have jurisdiction over Medi-Cal billing regulations, and such discussion is irrelevant given that the test claim statute prohibits billing for the exams. The Commission’s role on this issue is to determine whether the costs of the exams that previously were paid from the victim’s private insurance or from the victim directly mandates a new program or higher level of service under article XIII B, section 6. The Commission has done so here.

Accordingly, the test claim statute does not impose a state-mandated new program or higher level of service under article XIII B, section 6 of the California Constitution for the costs of the child physical abuse and neglect evidentiary exams that were previously recoverable from the victim’s private insurance or from the victim directly.

2. Absent an Appropriation from the State, and Where the State, Through Medi-Cal or the VCB, Previously Paid for the Child Physical Abuse and Neglect Medical Evidentiary Exams, Penal Code Section 11171(f), as Amended by the Test Claim Statute, Shifts Those Costs from the State to the Counties Under Article XIII B, Section 6(c), Resulting in a Mandated New Program or Higher Level of Service.

Absent an appropriation from the state, and where the state’s Medi-Cal or the VCB programs previously paid for the child physical abuse and neglect medical evidentiary exams, the test claim statute shifts those costs from the state to the counties under article XIII B, section 6(c), resulting in a “mandated new program or higher level of service.”²²⁰ Article XIII B, section 6(c), added to the California Constitution by the voters in 2004 as Proposition 1A, states:

²¹⁸ Government Code section 17557(e) states that a test claim may be amended “at any time, *but before the test claim is set for a hearing*, without affecting the original filing date as long as the amendment substantially relates to the original test claim.” The matter is set for hearing when the Draft Proposed Decision is issued. (California Code of Regulations, title 2, section 1187.1.)

²¹⁹ Exhibit I, Claimant’s Comments on the Proposed Decision, page 3.

²²⁰ Penal Code section 11171(f)–(h).

A mandated new program or higher level of service includes a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility.

Proposition 1A was a constitutional amendment placed on the ballot by the Legislature (SCA 4) as part of the 2004-2005 budget agreement to protect property tax revenues of local agencies. It was proposed, in part, to address the court's ruling in *County of Sonoma v. Commission on State Mandates*, which denied reimbursement under article XIII B, section 6 for the reduction of county property tax revenue and allocation of that revenue into the Educational Revenue Augmentation Fund (ERAF) to fund K-14 schools, on the ground that the state had not assumed complete financial responsibility for K-14 education before adoption of section 6.²²¹ The court in *County of Sonoma* held that article XIII B, section 6 only "prohibits the state from shifting to counties the cost of state programs for which the state assumed *complete financial responsibility before adoption of section 6*."²²² Thus, Proposition 1A added section 6(c) to article XIII B, to expand the definition of a new program or higher level of service to include situations when the Legislature transfers from the state to a local agency "complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility."

- a. The test claim statute shifts the Medi-Cal and VCB costs, which were previously used to pay for the child physical abuse and neglect evidentiary exams, from the state to the counties and, thus, the test claim statute imposes a new program or higher level of service within the meaning of article XIII B, section 6(c).

From January 1, 2004, to December 31, 2023, funds from Medi-Cal and the VCB reimbursed counties for the cost of child physical abuse and neglect medical evidentiary exams. Both billing options have been acknowledged on the Cal OES exam instructions since 2001.²²³ Under Chapter IV, "Reimbursements for Examinations," the Cal OES Protocol stated before the test claim statute, attached to forms dated January 1, 2004:

In the majority of counties in California, charges for child physical abuse and neglect examinations **are billed to Medi-Cal** or to the patient's private insurance. Standard diagnostic and procedural coding manuals are used

²²¹ Exhibit G (21) Assembly Floor Analysis, July 27, 2004, on SCA 4, as amended July 27, 2004, page 5.

²²² *County of Sonoma v. Commission on State Mandates* (2000), 84 Cal.App.4th 1264, 1286 citing *County of San Diego v. State of California* (1997), 15 Cal.4th 68, 99, fn. 20.

²²³ Exhibit A, Test Claim, page 235; Exhibit G (13), Medical Report: Suspected Child Physical Abuse and Neglect Instructions Cal OES 2-900, page 2, <https://www.caloes.ca.gov/office-of-the-director/policy-administration/finance-administration/grants-management/victim-services/forms/> (accessed on June 20, 2025).

to generate charges. For patients without insurance, or who are underinsured, reimbursement of **charges may be obtained through California Victim Compensation and Government Claims Board.**

Some counties have contracts with private hospitals for various medical services (e.g., indigent care) and include a provision for payment of these examinations **if there is no public or private insurance reimbursement.** Follow local policy.²²⁴

This information was also specified directly on the Cal OES Form 2-900 Instructions.²²⁵ The Cal OES Protocol states that the “the majority of counties” billed Medi-Cal or private insurance, and occasionally the VCB.²²⁶ The evidence corroborates that Medi-Cal was billed until January 1, 2024.²²⁷

As set forth in the Background, Medi-Cal had assumed financial responsibility for abused and neglected children since at least 1982. The State Department of Healthcare Services advised all county directors at that time that individuals receiving “Emergency Assistance,” including “Abused, Neglected or Exploited Children (EA-ANEC)” were considered “public assistance recipients” and “will be eligible for Medi-Cal

²²⁴ Exhibit A, Test Claim, page 134; Exhibit G (6), California Medical Protocol for Examination of Child Physical Abuse and Neglect Victims, page 15, <https://www.caloes.ca.gov/office-of-the-director/policy-administration/finance-administration/grants-management/victim-services/forms/> (accessed on June 20, 2025), emphasis added.

²²⁵ Exhibit G (13), Medical Report: Suspected Child Physical Abuse and Neglect Instructions Cal OES 2-900, page 2, <https://www.caloes.ca.gov/office-of-the-director/policy-administration/finance-administration/grants-management/victim-services/forms/> (accessed on June 20, 2025) (“**3. Payment methods have not been formally established. Options to pursue include: the patient’s public (Medi-Cal) or private insurance, the California Victim Compensation Program (VCP), local law enforcement agencies or Child Protective Services (CPS). Follow local policy.**” Emphasis in original.).

²²⁶ Exhibit G (6), California Medical Protocol for Examination of Child Physical Abuse and Neglect Victims, page 15, <https://www.caloes.ca.gov/office-of-the-director/policy-administration/finance-administration/grants-management/victim-services/forms/> (accessed on June 20, 2025).

²²⁷ Exhibit A, Test Claim, pages 32-33, paragraphs 12, 15, and 17 (Declaration of Serena Sy, Director of Primary Care Operations, Santa Clara Valley Healthcare, County of Santa Clara); Exhibit A, Test Claim, page 134; Exhibit G (6), California Medical Protocol for Examination of Child Physical Abuse and Neglect Victims, page 15, <https://www.caloes.ca.gov/office-of-the-director/policy-administration/finance-administration/grants-management/victim-services/forms/> (accessed on June 20, 2025); California Code of Regulations, title 22, section 50143(a)(3).

benefits and a Medi-Cal card.”²²⁸ Social workers have since been applying on behalf of an abused or neglected child for “Retroactive Medi-Cal,” using Form MC 250.²²⁹ Thus, if these children were not already enrolled in Medi-Cal, they would become enrolled by the social worker on an emergency basis.²³⁰ Under Continuing Eligibility for Children (CEC), coverage would then continue, uninterrupted at least until the next annual redetermination.²³¹

Counties could also bill the VCB if a child was somehow uninsured or underinsured by Medi-Cal.²³² If counties pursued this option, they, or their contracted providers, could

²²⁸ Exhibit G (8), Department of Health Services Letter to All County Welfare Directors, August 17, 1982, Letter 82-44, page 1; Exhibit G (9), Department of Health Services Letter to All County Welfare Directors, December 22, 1982 Letter 82-72, pages 1-7; see also California Code of Regulations, title 22, section 50038.5 (defining “Emergency Assistance” as programs providing assistance for up to 30 days, including for “[t]hose children who are being, or are in immediate danger of being abused, neglected or exploited and to families of such children.”).

²²⁹ Exhibit G (15), Retroactive Medi-Cal, page 1, https://stgenssa.sccgov.org/debs/program_handbooks/foster_care/assets/28medical/retromedical.htm?agt=index (accessed on July 24, 2025); Exhibit G (10) Form MC 250, Application and Statement of Facts for Child Not Living with a Parent or Relative for Whom a Public Agency Is Assuming Some Financial Responsibility, pages 1-2, <https://www.dhcs.ca.gov/formsandpubs/forms/Forms/mc250.pdf> (accessed on July 24, 2025); California Code of Regulations, title 22, section 50251 (“(e) Children specified in (a)(3) shall be eligible and certified for Medi-Cal: (1) On the basis of the information provided by the public agency on form MC 250. (2) Without considering the property or income of the child or the child's parents.”).

²³⁰ California Code of Regulations, title 22, section 50143(a)(3); see also Exhibit G (1), Aid Codes Master Chart, updated April 2022, pages 33 and 35, https://mcweb.apps.prd.cammiis.medi-cal.ca.gov/assets/869D30AF-4BC7-4132-AF6A-AF75893E9221/aidcodes.pdf?access_token=6UyVkrRRfByXTZEWIh8j8QaYyIPyP5ULO (accessed on July 24, 2025) (Aid Code 45 provides: “FC. Covers children supported by public funds other than AFDC-FC” with no share of costs.); see also Exhibit G (19), Short Doyle Medi-Cal Aid Code Chart, February 23, 2023, page 2, <https://www.dhcs.ca.gov/services/MH/Pages/medccc-library.aspx> (accessed on July 24, 2025) (Aid Code “5K” provides “Emergency Assistance (EA) Foster Care” with no share of costs).

²³¹ Exhibit G (7), Continuous Eligibility for Children (CEC), page 1, https://stgenssa.sccgov.org/debs/program_handbooks/foster_care/assets/28medical/contnuselqblty.htm (accessed on July 24, 2025); California Code of Regulations, title 22, section 50189.

²³² Exhibit G (13), Medical Report: Suspected Child Physical Abuse and Neglect Instructions Cal OES 2-900, page 2, <https://www.caloes.ca.gov/office-of-the-director/policy-administration/finance-administration/grants-management/victim-services/forms/> (accessed on June 20, 2025) (“**3. Payment methods have not been**

bill the VCB directly as a service provider, but had to accept the limits of the VCB payment schedule.²³³

The payments to counties or their providers from Medi-Cal and the VCB have been the responsibility of the state. The California Supreme Court has found that Medi-Cal “has been the responsibility of various state departments and agencies.”²³⁴ Likewise, the VCB is a state agency.²³⁵ The VCB has been in existence since 2002 under its current name and role.²³⁶

Accordingly, since the state, through Medi-Cal or the VCB, previously paid for the child physical abuse and neglect medical evidentiary exams, Penal Code Section 11171(f), as amended by the test claim statute, shifts those costs from the state to the counties under article XIII B, section 6(c), resulting in a new program or higher level of service.

The Commission has made one previous decision under article XIII B, section 6(c), which is analogous here. In *Sheriff Court-Security Services*, 09-TC-02, the state had accepted responsibility for funding security services to trial courts but later shifted back to the counties the costs of retiree health benefits for those security employees.²³⁷ In that claim, the state had formally assumed responsibility on January 1, 1998, through the 1997 Trial Court Funding Act.²³⁸ Thus, the state had financial responsibility when, in 2009, it legislated part of that responsibility back to the counties by excluding retiree health benefits from the statutorily defined cost of “court operations.”²³⁹ As here, the Commission found that the state had financial responsibility for what was “billed to the

formally established. Options to pursue include: the patient’s public (Medi-Cal) or private insurance, the California Victim Compensation Program (VCP), local law enforcement agencies or Child Protective Services (CPS). Follow local policy.” Emphasis in original.).

²³³ Government Code sections 13957.7(c)(1) and 13957.2; California Code of Regulations, title 2, section 649.23.

²³⁴ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 96.

²³⁵ Government Code sections 11000 and 13950.

²³⁶ Government Code sections 13950-13951, as added by Statutes 2002, chapter 1141, section 2.

²³⁷ Commission on State Mandates, Test Claim Decision on *Sheriff Court-Security Services*, 09-TC-02, adopted December 5, 2014, <https://csm.ca.gov/decisions/121214a.pdf> (accessed on September 23, 2025).

²³⁸ Commission on State Mandates, Test Claim Decision on *Sheriff Court-Security Services*, 09-TC-02, adopted December 5, 2014 <https://csm.ca.gov/decisions/121214a.pdf> (accessed on September 23, 2025), page 6.

²³⁹ Commission on State Mandates, Test Claim Decision on *Sheriff Court-Security Services*, 09-TC-02, adopted December 5, 2014, <https://csm.ca.gov/decisions/121214a.pdf> (accessed on September 23, 2025), page 17.

state” and partially shifted it to the counties under article XIII B, section 6(c), thus causing a “new program” under that section.²⁴⁰

Finance’s conclusion that the claimant has merely experienced increased costs and should accordingly have its claim denied ignores Proposition 1A and is therefore incorrect. It cites the Commission’s Decision in *Workers’ Compensation Disability Benefits for Government Employees*, 00-TC-20/02-TC-02 for support.²⁴¹ Its reliance on that Test Claim is misplaced because there was no cost-shift at issue. In *Workers Compensation Disability Benefits for Government Employees*, 00-TC-20/02-TC-02, costs were increased for local government when workers’ compensation benefits were expanded, resulting in some disabled government employees receiving a paid year off.²⁴² While this did increase local government costs without constituting enhanced service to the public, it was not shifting an expense of a program required by state law to local government that was previously paid for by the state.²⁴³ The voters added article XIII B, section 6(c) by Proposition 1A to address that situation, which has occurred in the Test Claim as it did in *Sheriff Court-Security Services*, 09-TC-02.²⁴⁴

The claimant asserts that the Legislature drafted Penal Code section 11171(g) in a manner that it was “knowing and intending” to trigger county responsibility to pay for the child physical abuse and neglect exams.²⁴⁵ That section provides, in part, “[t]he costs associated with these medical evidentiary exams shall be funded by the state, subject to appropriation by the Legislature.”²⁴⁶ The clause “subject to appropriation by the Legislature,” the claimant asserts, in combination with the Legislature’s lack of

²⁴⁰ Commission on State Mandates, Test Claim Decision on *Sheriff Court-Security Services*, 09-TC-02, adopted December 5, 2014, <https://csm.ca.gov/decisions/121214a.pdf> (accessed on September 23, 2025), page 38.

²⁴¹ Exhibit B, Finance’s Comments on the Test Claim, page 2.

²⁴² Commission on State Mandates, Test Claim Decision on *Workers’ Compensation Disability Benefits for Government Employees*, 00-TC-20/02-TC-02, adopted May 31, 2007, <https://csm.ca.gov/decisions/154.pdf> (accessed on September 23, 2025), page 1.

²⁴³ Commission on State Mandates, Test Claim Decision on *Workers’ Compensation Disability Benefits for Government Employees*, 00-TC-20/02-TC-02, adopted May 31, 2007, <https://csm.ca.gov/decisions/154.pdf> (accessed on September 23, 2025), pages 1-2.

²⁴⁴ Commission on State Mandates, Test Claim Decision on *Sheriff Court-Security Services*, 09-TC-02, adopted December 5, 2014, <https://csm.ca.gov/decisions/121214a.pdf> (accessed on September 23, 2025), page 22.

²⁴⁵ Exhibit C, Claimant’s Rebuttal Comments, page 3 citing *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 98.

²⁴⁶ Penal Code section 11171(g).

appropriation, means that the Legislature was “knowing and intending” to transfer financial responsibility to the counties.²⁴⁷

It is not clear and the Commission need not decide whether the state is “attempting to divest itself of responsibility to provide fiscal support for a program”²⁴⁸ it created in 2002 to standardize child physical abuse and neglect exams. Legislative history only forewarned: “Staff notes that no funding has been included in the 2023-2024 budget for these purposes.”²⁴⁹

Nonetheless, by having assumed financial responsibility for this program for two decades through Medi-Cal and the VCB and then not appropriating funding as provided for in the test claim statute, the state has shifted costs from itself to the counties under article XIII B, section 6(c). This indefinite cost-shift to the counties is further apparent in the legislative intent that the exams be “free” or “no-cost” to all victims.²⁵⁰ The bill was said to “require counties to set up systems to provide examinations at no cost to the victim” and then to submit invoices to Cal OES.²⁵¹ Without reimbursement from Cal OES, the counties are now required to assume the financial responsibility previously carried by the state.

In addition, the test claim statute resembles that of the 1997 California Supreme Court case on which the claimant relies regarding the Legislature’s exclusion of medically-indigent-persons from Medi-Cal. There, the Court found that “the Legislature excluded adult MIP’s from Medi-Cal *knowing* and *intending* that the 1982 legislation would trigger the counties’ responsibility to provide medical care as providers of last resort under section 17000.”²⁵² Here, while the Commission makes no finding as to the Legislature’s intent, the effect is the same. As in the 1997 case, the counties are providers of last resort, here for abused and neglected children, as well as the agents of the state’s child

²⁴⁷ Exhibit A, Test Claim, page 17.

²⁴⁸ *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1194; Penal Code section 11171, as added by Statutes 2002, chapter 249.

²⁴⁹ Exhibit G (16), Senate Committee on Appropriations, August 21, 2023, on AB 1402, as amended March 30, 2023, page 3.

²⁵⁰ Exhibit G (3), Assembly Committee on Public Safety, April 25, 2023, on AB 1402, as amended March 30, 2023, pages 3-4; Exhibit G (16), Senate Committee on Appropriations, August 21, 2023, on AB 1402, as amended March 30, 2023, page 2; Exhibit G (17), Senate Committee on Public Safety, June 27, 2023, on AB 1402, as amended March 30, 2023, page 3; Exhibit G (18), Senate Rules Committee, Office of Senate Floor Analyses, September 2, 2023, on AB 1402, as amended March 30, 2023, pages 4-5.

²⁵¹ Exhibit G (16), Senate Committee on Appropriations, August 21, 2023, on AB 1402, as amended March 30, 2023, page 2.

²⁵² *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 98.

welfare system.²⁵³ Inevitably, the state has shifted these costs to the counties to the extent it does not appropriate the funding as declared intended. As Finance partially states, “Penal Code section 11171(f) simply requires the county to absorb the costs of medical evidentiary exams that the county was already required to perform under existing law, instead of passing those costs along to a third party.”²⁵⁴ What follows, however, is that because the state was a responsible third party through Medi-Cal and VCB payments for the costs of the exams, the state has shifted those costs to the counties with the passage of the test claim statute to the extent the corresponding appropriation from the Legislature is lacking.

Finally, the test claim statute imposes unique requirements on counties which do not apply generally to all residents and entities in the state and carries out the governmental function of providing services to the public and, thus, imposes a new program or higher level of service.²⁵⁵ If the Legislature does not appropriate funds, the new requirement to pay for child physical abuse and neglect exams once paid by the state through Medi-Cal and VCB is uniquely imposed on county government. Counties uniquely provide child welfare services, including emergency response to abused and neglected children.²⁵⁶ The new requirement to pay for child physical abuse and neglect exams also furthers the state policy that all children are entitled to be free from abuse and neglect.²⁵⁷

²⁵³ Welfare and Institutions Code sections 300, 10800, 16500, and 17000; *In re Social Services Payment Cases* (2008) 166 Cal.App.4th 1249, 1256; Welfare and Institutions Code sections 16501(a)(1)(B), 16501(a)(2), and 16501(c) (“The county shall provide child welfare services as needed pursuant to an approved service plan and in accordance with regulations promulgated, in consultation with the counties, by the [state] department.”); *Ross v. Superior Court* (1977) 19 Cal.3d 899, 908; *Hassell v. Bird* (2018) 5 Cal.5th 522, 553, Kruger, J., concurring (“counties act on behalf of the state in administering welfare benefits”); *In re M.C.* (2011) 199 Cal.App.4th 784, 810 (county social service agency is an administrative agency of the executive branch when providing child welfare services, subject to supervision by Department of Social Services citing Welfare and Institutions Code sections 202.5, 10000, 10051, 10800, 16500, 16500.1, and 16501, *Scott v. County of Los Angeles* (1994) 27 Cal.App.4th 125, 143-144, and *In re Danielle W.* (1989) 207 Cal.App.3d 1227, 1235-1236, n. 6.).

²⁵⁴ Exhibit B, Finance’s Comments on the Test Claim, page 1.

²⁵⁵ *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 537 citing *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56, emphasis in original.

²⁵⁶ Welfare and Institutions Code section 16500 (“All counties shall establish and maintain specialized organizational entities within the county welfare department which shall have sole responsibility for the operation of the child welfare services program.”); Welfare and Institutions Code section 16206.

²⁵⁷ Welfare and Institutions Code section 16500, as amended by Statutes 1996, chapter 1084, section 10.

Thus, absent an appropriation from the state pursuant to 11171(g), the Commission finds that Penal Code section 11171(f), as amended by the test claim statute, imposes a new program or higher level of service on counties pursuant to article XIII B, section 6(c), for those costs previously paid through Medi-Cal and the VCB.

- b. Providing child physical abuse and neglect exams is mandated by state law and, thus, the cost of the exams, which has been shifted from the state to the counties with respect to previous Medi-Cal and VCB reimbursement for the exams, are a component of the mandated program.

To find a mandated new program or higher level of service, the counties' obligation to provide child physical abuse and neglect exams must also be legally or practically compelled. "Legal compulsion occurs when a statute or executive action uses mandatory language that " 'require[s]' or 'command[s]' " a local entity to participate in a program or service."²⁵⁸ Practical compulsion occurs when a local entity has "no true choice but to comply."²⁵⁹

The required program that began operating on January 1, 2004, does not have language using the term "shall," to command the provision of the child physical abuse and neglect exams. Using the word "shall," it commanded what is now Cal OES to create the program, including the forms, instructions, content, protocols, and to make the forms electronically accessible as follows:

(a)(1) The Legislature hereby finds and declares that adequate protection of victims of child physical abuse or neglect has been hampered by the lack of consistent and comprehensive medical examinations.

(2) Enhancing examination procedures, documentation, and evidence collection relating to child abuse or neglect will improve the investigation and prosecution of child abuse or neglect as well as other child protection efforts.

(b) The Office of Emergency Services shall, in cooperation with the State Department of Social Services, the Department of Justice, the California Association of Crime Lab Directors, the California District Attorneys Association, the California State Sheriffs' Association, the California Peace Officers Association, the California Medical Association, the California Police Chiefs' Association, child advocates, the California Medical Training Center, child protective services, and other appropriate experts, establish medical forensic forms, instructions, and examination protocols for victims of child physical abuse or neglect using as a model the form and guidelines developed pursuant to Section 13823.5.

²⁵⁸ *Coast Community College District v. Commission on State Mandates* (2022) 13 Cal.5th 800, 815.

²⁵⁹ *Coast Community College District v. Commission on State Mandates* (2022) 13 Cal.5th 800, 821.

- (c) The forms shall include, but not be limited to, a place for notation concerning each of the following:
- (1) Any notification of injuries or any report of suspected child physical abuse or neglect to law enforcement authorities or children’s protective services, in accordance with existing reporting procedures.
 - (2) Addressing relevant consent issues, if indicated.
 - (3) The taking of a patient history of child physical abuse or neglect that includes other relevant medical history.
 - (4) The performance of a physical examination for evidence of child physical abuse or neglect.
 - (5) The collection or documentation of any physical evidence of child physical abuse or neglect, including any recommended photographic procedures.
 - (6) The collection of other medical or forensic specimens, including drug ingestion or toxication, as indicated.
 - (7) Procedures for the preservation and disposition of evidence.
 - (8) Complete documentation of medical forensic exam findings with recommendations for diagnostic studies, including blood tests and X-rays.
 - (9) An assessment as to whether there are findings that indicate physical abuse or neglect.
- (d) The forms shall become part of the patient’s medical record pursuant to guidelines established by the advisory committee of the Office of Emergency Services and subject to the confidentiality laws pertaining to the release of medical forensic examination records.
- (e) The forms shall be made accessible for use in an electronic format.²⁶⁰

Although the legislative finding asserts that the program is necessary for “adequate protection” of child victims of abuse and neglect, nothing in the above statute directly states that these exams “shall” be provided by counties. By comparison, one of two related statutes, the sexual assault exam statute, does have direct language commanding similar exams. Using the word, “shall,” the sexual assault exam statute directly provides that a victim “shall be provided with a standardized medical evidentiary examination, using the medical evidentiary examination report forms and protocols for victims of sexual assault developed pursuant to Section 13823.5.”²⁶¹

And even so, the words “shall” and “may” are not specifically defined as “mandatory” or “permissive” in the Penal Code nor in the Welfare and Institutions Code. Thus, even if there were statutory language similar to that for sexual assault examinations saying

²⁶⁰ Penal Code section 11171 (a)–(e).

²⁶¹ Penal Code section 13923.95(b)(1).

they “shall” be provided to child physical abuse and neglect victims, clarity on the exact nature of that directive would remain lacking.²⁶²

Given this omission of a direct command in the child physical abuse and neglect statutes similar to the one in the sexual assault examination statute, the Commission finds that the child physical abuse and neglect exams are not legally compelled by state law. However, the Commission finds the exams practically compelled and, thus, mandated by the state.

Practical compulsion, appropriate here, may be found as a substitute for legal compulsion in special circumstances. As an example, in cities where “deciding not to provide a stormwater drainage system is no alternative at all,” those cities are “compelled as a practical matter to obtain an NPDES [stormwater] permit and fulfill the permit’s conditions.”²⁶³ Like these cities that must apply for stormwater permits to continue providing regular water service, the claimant must provide child physical abuse and neglect examinations regardless of there being no statute clearly mandating that they “shall” provide them.

The California Supreme Court recently considered a test claim where a statute fell short of satisfying the legal compulsion standard and remanded it for consideration of practical compulsion and held that practical compulsion requires showing that failing to perform the activity will result in certain and severe penalties or other draconian consequences.²⁶⁴ Any alternative to performing the activity according to standards set by the higher government entity must be “so far beyond the realm of practical reality” as to leave the responsible government entity without any real discretion.²⁶⁵ Factors courts require considering include the nature and purpose of the program, whether the design of the program suggests an intent to coerce, when the respective governments’ participation began, the penalties for refusal to comply, and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal.²⁶⁶ An early example of practical compulsion (there, by the federal government upon the state government) was found where California employers would have faced double taxation had the State of California not complied with federal legislation to provide unemployment insurance to public employees.²⁶⁷

²⁶² See *People v. Lara* (2010) 48 Cal.4th 216, 227 (In determining whether a statute is mandatory where no definition exists in the relevant code, “[n]either the word ‘may,’ nor the word ‘shall,’ is dispositive.”).

²⁶³ *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 558.

²⁶⁴ *Coast Community College District v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816, 822 citing *Department of Finance v. Commission on State Mandates (Kern)* (2003) 30 Cal.4th 727, 748-752.

²⁶⁵ *City of Sacramento v. State of California* (1990) 50 Cal. 3d 51, 74.

²⁶⁶ *City of Sacramento v. State of California* (1990) 50 Cal. 3d 51, 76.

²⁶⁷ *City of Sacramento v. State of California* (1990) 50 Cal. 3d 51, 74.

The Test Claim involves a combination of statutes and practical realities inducing the counties to provide the child physical abuse and neglect exams. These statutes and practical realities compel the counties into being mandated to perform child physical abuse and neglect exams. The counties have “no true alternative.”²⁶⁸

Fundamentally, the rights of children come first. As set forth in the Background, the Legislature declared in 1996 “that all children are entitled to be safe and free from abuse and neglect.”²⁶⁹ And in 2002, the Legislature set a floor of adequacy when it enacted the program of state standardized medical evidentiary exams. It declared that “adequate protection of victims of child physical abuse or neglect has been hampered by the lack of consistent and comprehensive medical examinations.”²⁷⁰

In addition, counties “shall” investigate all incoming child abuse reports, a duty that has been confirmed by the courts.²⁷¹ Such investigation naturally includes examining the child and doing so adequately. Further, the counties, as “child protective services” were to be consulted as part of the Cal OES team that was required to create the state standardized form, instructions, and protocols, and so presumably are required to be using them.²⁷² As mentioned, Cal OES proclaims that the form, protocols, and instructions are the “minimum legal standards” created in the same statute.²⁷³ Counties “shall” set up the reimbursement system with Cal OES and designate SART, SAFE, or other “qualified medical evidentiary examiners.”²⁷⁴ Victims “may” have an exam in another county, indicating that counties must be available to provide exams to children whose abuse occurred in a different county.²⁷⁵ If the counties must acknowledge an

²⁶⁸ *Coast Community College District v. Commission on State Mandates* (2022) 13 Cal. 5th 800, 820 citing *Department of Finance v. Commission on State Mandates (Kern)* (2003) 30 Cal.4th 727, 731, 751 and *City of Sacramento v. State of California* (1990) 50 Cal. 3d 51, 74.

²⁶⁹ Welfare and Institutions Code section 16500, as amended by Statutes 1996, chapter 1084, section 10.

²⁷⁰ Penal Code section 11171(a)(1).

²⁷¹ Penal Code section 11166.3 (formerly 11166.1); see also *Alejo v. City of Alhambra* (1999) 75 Cal.App.4th 1180, 1185-1186.

²⁷² Penal Code section 11171(b).

²⁷³ Exhibit G (6), California Medical Protocol for Examination of Child Physical Abuse and Neglect Victims, page 2, <https://www.caloes.ca.gov/office-of-the-director/policy-administration/finance-administration/grants-management/victim-services/forms/> (accessed on June 20, 2025); Exhibit G (13), Medical Report: Suspected Child Physical Abuse and Neglect Instructions Cal OES 2-900, page 2, <https://www.caloes.ca.gov/office-of-the-director/policy-administration/finance-administration/grants-management/victim-services/forms/> (accessed on June 20, 2025).

²⁷⁴ Penal Code section 11171(g).

²⁷⁵ Penal Code section 11171(h).

out-of-county child's entitlement to a medical evidentiary exam, they must certainly provide them to their own residents as needed.

Welfare and Institutions Code section 324.5 compels the medical exams where a child is taken into protective custody and a physical examination of the child is "appropriate," acknowledging the initial discretionary decision of local government and medical practitioners as follows:

(a) Whenever allegations of physical or sexual abuse of a child come to the attention of a local law enforcement agency or the local child welfare department and the child is taken into protective custody, the local law enforcement agency, or child welfare department may, as soon as practically possible, consult with a medical practitioner, who has specialized training in detecting and treating child abuse injuries and neglect, to determine whether a physical examination of the child is appropriate. If deemed appropriate, the local law enforcement agency, or the child welfare department, shall cause the child to undergo a physical examination performed by a medical practitioner who has specialized training in detecting and treating child abuse injuries and neglect, and, whenever possible, shall ensure that this examination take place within 72 hours of the time the child was taken into protective custody. In the event the allegations are made while the child is in custody, the physical examination shall be performed within 72 hours of the time the allegations were made.

In the case of a petition filed pursuant to Section 319, the department shall provide the results of the physical examination to the court and to any counsel for the minor, and counsel for the parent or guardian of the minor. Failure to obtain this physical examination shall not be grounds to deny a petition under this section.

(b) The local child welfare agency shall, whenever possible, request that additional medical examinations to determine child abuse injuries or neglect, be performed by the same medical practitioner who performed the examinations described in subdivision (a). If it is not possible to obtain additional medical examinations, the local child welfare agency shall ensure that future medical practitioners to whom the child has been referred for ongoing diagnosis and treatment have specialized training in detecting and treating child abuse injuries and neglect and have access to the child's medical records covering the current and previous incidents of child abuse.²⁷⁶

The above statute initially uses the word "may" to say whether county employees will consult a medical practitioner, and then uses "shall" to say that an exam will be performed once the medical practitioner deems it appropriate. But there is a duty to

²⁷⁶ Welfare and Institutions Code section 324.5.

protect the child.²⁷⁷ While it is thus technically within the law enforcement or county welfare employee's initial discretion to consult a medical practitioner, the county's obligation is nonetheless going to be compelled by any reasonably-formed suspicion indicating that the child should be examined and protected. Accordingly, the Commission finds the child physical abuse and neglect exams for children taken into protective custody practically compelled.

An exam may also be necessary for a child *not* taken into protective custody under Welfare and Institutions Code section 324.5. According to Cal OES instructions, some children receive exams with parental consent and without being taken into protective custody:

Suspected child abuse: non-consenting parents

Parental consent is not required to examine, treat or collect evidence for suspected child abuse. In the absence of parental consent or in the case of parental refusal, children must be taken into protective custody by a child protective agency (e.g. law enforcement agency or county child protective services agency) in order to perform the examination. Follow local policy regarding placement of children in protective custody.²⁷⁸

Where a child is not immediately taken into protective custody under Welfare and Institutions Code section 324.5, other statutory duties practically compel the exams. If allegations of abuse or neglect are made in a family court child custody proceeding, for example, "the court may request that the local child welfare services agency conduct an investigation of the allegations pursuant to Section 328 of the Welfare and Institutions Code."²⁷⁹ Although this statute uses the word "may," it is a court's duty to protect the child, and thus the investigations prompted on this case by case basis are practically compelled.²⁸⁰

A social worker receiving a child abuse or neglect referral has a duty to investigate as needed.²⁸¹ If not requested through a family court proceeding, this begins with a social worker's belief from any other referral, which triggers the duty to investigate, which proceeds under the social worker's discretion and duty:

If the social worker has cause to believe that there was or is within the county, or residing in the county, a person described in Section 300, the

²⁷⁷ Welfare and Institutions Code sections 328, 16500, 16500.1, and 16501; Family Code section 3027; *In re Joshua S.* (1988) 205 Cal.App.3d 119, 125.

²⁷⁸ Exhibit G (13), Medical Report: Suspected Child Physical Abuse and Neglect Instructions Cal OES 2-900, page 3, <https://www.caloes.ca.gov/office-of-the-director/policy-administration/finance-administration/grants-management/victim-services/forms/> (accessed on June 20, 2025).

²⁷⁹ Family Code section 3027(b).

²⁸⁰ *In re Joshua S.* (1988) 205 Cal.App.3d 119, 125.

²⁸¹ Welfare and Institutions Code section 328(a).

social worker shall immediately make any investigation the social worker deems necessary to determine whether child welfare services should be offered to the family and whether proceedings in the juvenile court should be commenced.²⁸²

The social worker is constrained by duty to perform investigations that are the least disruptive, but most thorough as necessary. The Legislature has declared: "It is the intent of the Legislature that this section not disrupt the family unnecessarily or intrude inappropriately into family life."²⁸³

Because the social worker performs "any investigation the social worker deems necessary," the social worker is bound by duty to seek a child physical abuse or neglect exam when called for in his or her professional judgment.²⁸⁴ Accordingly, the Commission finds the exams are practically compelled when the social worker "deems necessary."²⁸⁵

In addition, numerous practical realities have been explained by the claimant to support a finding of practical compulsion. Two of the claimant's four declarations provide significant information on these realities. Per a declaration by Dr. Marlene Sturm, Medical Director of the Medical Clinic at the Children's Advocacy Center of Santa Clara County, child abuse pediatrics is a necessary medical specialty which goes beyond general medicine, general pediatrics and general emergency medicine.²⁸⁶ Without training in child abuse pediatrics, such as that provided by the statutorily-created training hospital, the CCFMTC,²⁸⁷ abused and neglected children will be misdiagnosed and there will be overinclusive and underinclusive findings, causing both avoidable danger to children and unnecessary disruption to families.²⁸⁸

Per a declaration by Melissa Suarez, Bureau Manager of the Department of Family and Children's Services, "time is of the essence" because "[i]njuries may fade and heal, invisible injuries may worsen without treatment (e.g., brain bleeds), and the child may

²⁸² Welfare and Institutions Code section 328(a).

²⁸³ Welfare and Institutions Code section 300.

²⁸⁴ Welfare and Institutions Code section 328(a).

²⁸⁵ Welfare and Institutions Code section 328(a).

²⁸⁶ Exhibit A, Test Claim, pages 46-48, paragraphs 17, 19, and 24 (Declaration of Marlene Sturm, MD, Medical Director, Medical Clinic at the Children's Advocacy Center, Children's Advocacy Center of Santa Clara County).

²⁸⁷ Penal Code section 13823.93(b)-(d), as amended by Statutes 2002, chapter 256, section 1; Penal Code section 13823.93(b).

²⁸⁸ Exhibit A, Test Claim, pages 47-49, paragraphs 21, 23, and 24 (Declaration of Marlene Sturm, MD, Medical Director, Medical Clinic at the Children's Advocacy Center, Children's Advocacy Center of Santa Clara County); See also Exhibit A, Test Claim, page 30-31, paragraph 13 (Declaration of Melissa Suarez, Bureau Manager, Department of Family and Children's Services, County of Santa Clara).

be at grave risk of harm the longer they remain in an unsafe environment.”²⁸⁹ Also, the following are potential consequences of not providing the child physical abuse and neglect exams as prescribed by the state:

- a. Law enforcement officials’ investigation into child abuse and neglect crimes would be severely limited;
- b. Social workers would be unable to substantiate suspected cases of child physical abuse or neglect, particularly for nonverbal, pre-verbal, disabled, and developmentally delayed children;
- c. Children and families who would otherwise receive support services following medical findings of abuse or neglect would not be assisted; and
- d. Children whose abuse or neglect would be uncovered by a physical abuse and neglect exam would remain in dangerous situations, and in some cases, would be severely harmed or killed.²⁹⁰

The Commission finds that, taken together, the above statutes and practical realities would result in “severe consequences that leave the local entity no reasonable alternative but to comply” with the program of providing the child physical abuse and neglect exams as prescribed by the state.²⁹¹

Accordingly, the Commission finds that the counties’ obligation to provide child abuse and neglect exams is practically compelled by the state and, thus, the cost of the exams, which has been shifted from the state to the counties with respect to previous Medi-Cal and VCB reimbursement for the exams, is a component of the state-mandated program.

C. The Test Claim Statute Results in Costs Mandated by the State.

Finally, Government Code section 17514 defines “costs mandated by the state” as any increased costs which a local agency or school district is required to incur as a result of any statute or executive order that mandates a new program or higher level of service. Government Code section 17564(a) specifically requires that no claim or payment shall be made unless the claim exceeds \$1,000.

²⁸⁹ Exhibit A, Test Claim, page 42, paragraph 17 (Declaration of Melissa Suarez, Bureau Manager, Department of Family and Children’s Services, County of Santa Clara).

²⁹⁰ Exhibit A, Test Claim, pages 42-43, paragraph 18 (Declaration of Melissa Suarez, Bureau Manager, Department of Family and Children’s Services, County of Santa Clara).

²⁹¹ *Coast Community College District v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816 citing *Department of Finance v. Commission on State Mandates (Kern High School District)* (2003) 30 Cal.4th 727, 748-752.

A finding of such costs mandated by the state also means that no exception in Government Code section 17556 applies.

The claimant has filed declarations signed under penalty of perjury identifying the following increased costs exceeding \$1,000 to comply with the test claim statute:

	FY 2023-2024	FY 2024-2025	Ongoing Estimates
Serena Sy, Director of Primary Care Operations, Santa Clara Valley Healthcare			\$11,800,000 estimated statewide annually ²⁹²
Kiyomi Ross, Director of Financial Planning and Performance, Santa Clara Valley Healthcare	\$221,046 ²⁹³	\$717,496 estimated ²⁹⁴	\$621,927 estimated annually for the claimant ²⁹⁵

There is no evidence rebutting these declarations.

Moreover, none of the exceptions to costs mandated by the state in Government Code section 17556 apply to this Test Claim. The claimant has no fee authority per Government Code section 17556(d) to offset the increased costs, which the claimant confirms.²⁹⁶ There is no appropriation offsetting the costs per Government Code section 17556(e), which Finance confirms.²⁹⁷ And there is no change to any crime or

²⁹² Exhibit A, Test Claim, pages 33-34, paragraph 24 (Declaration of Serena Sy, Director of Primary Care Operations, Santa Clara Valley Healthcare, County of Santa Clara).

²⁹³ Exhibit A, Test Claim, page 36, paragraph 12 (Declaration of Kiyomi Ross, Director of Financial Planning and Performance, Santa Clara Valley Healthcare, County of Santa Clara).

²⁹⁴ Exhibit A, Test Claim, page 36, paragraph 13 (Declaration of Kiyomi Ross, Director of Financial Planning and Performance, Santa Clara Valley Healthcare, County of Santa Clara).

²⁹⁵ Exhibit A, Test Claim, pages 35-36, paragraph 9 (Declaration of Kiyomi Ross, Director of Financial Planning and Performance, Santa Clara Valley Healthcare, County of Santa Clara).

²⁹⁶ Exhibit A, Test Claim, page 33, paragraph 20 (Declaration of Serena Sy, Director of Primary Care Operations, Santa Clara Valley Healthcare, County of Santa Clara).

²⁹⁷ Exhibit A, Test Claim, page 33, paragraph 20 (Declaration of Serena Sy, Director of Primary Care Operations, Santa Clara Valley Healthcare, County of Santa Clara); Exhibit B, Finance’s Comments on the Test Claim, page 1.

penalty for any crime of child abuse or neglect per Government Code section 17556(g). The test claim statute only concerns a process of gathering evidence, which may be used for criminal and non-criminal purposes.

Given the substantial evidence in the record, the Commission finds that the test claim statute imposes increased costs mandated by the state under article XIII B, section 6(c) and Government Code section 17514.

V. Conclusion

Based on the foregoing analysis, the Commission partially approves this Test Claim and finds that Penal Code section 11171(f), as amended by test claim statute, imposes a reimbursable state-mandated program beginning January 1, 2024, on counties within the meaning of article XIII B, section 6(c) of the California Constitution for only the following costs:

- Costs incurred for child physical abuse and neglect exams conducted in accordance with Penal Code section 11171, by the county's designated Sexual Assault Response Teams (SART), Sexual Assault Forensic Examiner (SAFE) teams, or other qualified medical evidentiary examiners, when the child is eligible for Medi-Cal or Victim Compensation Board coverage.

Reimbursement is **not** required to the extent the Legislature appropriates funds for child physical abuse and neglect exams under Penal Code section 11171(g).

All other claims for reimbursement are denied.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On February 18, 2026, I served the:

- **Current Mailing List dated February 18, 2026**
- **Draft Expedited Parameters and Guidelines, Schedule for Comments, and Notice of Tentative Hearing Date issued February 18, 2026**
- **Decision adopted February 13, 2026**

Child Physical Abuse and Neglect Exams, 24-TC-05
Statutes 2023, Chapter 841, (AB 1402); Penal Code Section 11171(f), effective January 1, 2024
County of Santa Clara, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 18, 2026 at Sacramento, California.



Jill Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 2/18/26

Claim Number: 24-TC-05

Matter: Child Physical Abuse and Neglect Exams

Claimant: County of Santa Clara

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

Adaoha Agu, *County of San Diego Auditor & Controller Department*

Projects, Revenue and Grants Accounting, 5530 Overland Avenue, Ste. 410 , MS:O-53, San Diego, CA 92123

Phone: (858) 694-2129

Adaoha.Agu@sdcounty.ca.gov

Karina Alvarez, *Auditor-Controller, County of Imperial*

940 W. Main Street, Suite 108, El Centro, CA 92243

Phone: (442) 265-1299

karinabalvarez@co.imperial.ca.us

Rachelle Anema, *Assistant Auditor-Controller, County of Los Angeles*

Accounting Division, 500 W. Temple Street, Los Angeles, CA 90012

Phone: (213) 974-8321

RANEMA@auditor.lacounty.gov

Lili Apgar, *Specialist, State Controller's Office*

Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816

Phone: (916) 324-0254

lapgar@sco.ca.gov

Socorro Aquino, *State Controller's Office*

Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-7522

SAquino@sco.ca.gov

Aaron Avery, *Legislative Representative, California Special Districts Association*

1112 I Street Bridge, Suite 200, Sacramento, CA 95814

Phone: (916) 442-7887

Aarona@csda.net

David Bass, Vice Mayor, *City of Rocklin*
3970 Rocklin Road, Rocklin, CA 95677
Phone: (916) 663-8504
David.Bass@rocklin.ca.us

Deborah Bautista, *County of Tuolumne*
El Dorado Hills Community Services District, 2 South Green St. , Sonora, CA 95370
Phone: (209) 533-5551
dbautista@co.tuolumne.ca.us

Mary Bedard, Auditor-Controller, *County of Kern*
1115 Truxtun Avenue, 2nd Floor, Bakersfield, CA 93301
Phone: (805) 868-3599
bedardm@co.kern.ca.us

Ginni Bella Navarre, Deputy Legislative Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8342
Ginni.Bella@lao.ca.gov

Ben Benoit, Auditor-Controller, *County of Riverside*
4080 Lemon Street, 11th Floor, Riverside, CA 92502
Phone: (951) 955-3800
bbenoit@rivco.org

Angela Bickle, Interim Auditor-Controller, *County of Trinity*
11 Court Street, P.O. Box 1230, Weaverville, CA 96093
Phone: (530) 623-1317
abickle@trinitycounty.org

Nathan Black, Auditor-Controller, *County of Sutter*
1160 Civic Center Blvd., Suite D, Yuba City, CA 95993
Phone: (530) 822-7127
nblack@co.sutter.ca.us

Lowell Black, Director of Finance, *County of Alpine*
P.O. Box 266, Markleeville, CA 96120
Phone: (530) 694-2284
nwilliamson@alpinecountyca.gov

Joanne Bohren, Auditor/Controller, *County of Contra Costa*
1025 Escobar Street, Martinez, CA 94553
Phone: (925) 608-9300
info@ac.cccounty.us

Laura Bowers, Interim Auditor-Controller/Treasurer-Tax Collector, *County of Santa Cruz*
Auditor-Controller's Office, 701 Ocean Street, Room 100, Santa Cruz, CA 95060-4073
Phone: (831) 454-2500
laura.bowers@santacruzcounty.us

Allan Burdick,
7525 Myrtle Vista Avenue, Sacramento, CA 95831
Phone: (916) 203-3608
allanburdick@gmail.com

Guy Burdick, Consultant, *MGT Consulting*
2251 Harvard Street, Suite 134, Sacramento, CA 95815

Phone: (916) 833-7775
gburdick@mgtconsulting.com

Jeffrey Burgh, Auditor Controller, *County of Ventura*
800 S. Victoria Avenue, Ventura, CA 93009-1540
Phone: (805) 654-3151
Jeff.Burgh@venturacounty.gov

Stephanie Butters, Assistant Director of Finance, Auditor-Controller, *County of Mono*
25 Bryant Street, PO Box 556, Bridgeport, CA 93517
Phone: (760) 932-5496
sbutters@mono.ca.gov

Rica Mae Cabigas, Chief Accountant, *Auditor-Controller*
Accounting Division, 500 West Temple Street, Los Angeles, CA 90012
Phone: (213) 974-8309
rcabigas@auditor.lacounty.gov

Evelyn Calderon-Yee, Bureau Chief, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,
Sacramento, CA 95816
Phone: (916) 324-5919
ECalderonYee@sco.ca.gov

Lisa Cardella-Presto, *County of Merced*
2222 M Street, Merced, CA 95340
Phone: (209) 385-7511
LCardella-presto@co.merced.ca.us

Nancy Cardenas, Auditor-Controller, Treasurer, Tax Collector, *County of Lassen*
221 South Roop Street, Ste. 1, Susanville, CA 96130
Phone: (530) 251-8220
ncardenas@co.lassen.ca.us

Julissa Ceja Cardenas, *California State Association of Counties*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
jcejacardenas@counties.org

Ali Chemkhi, Senior Supervising Accountant/Auditor, *County of San Bernardino*
Office of Auditor-Controller, 268 West Hospitality Lane, Fourth Floor, San Bernardino, CA 92415-0018
Phone: (909) 382-7035
ali.chemkhi@sbcountyatc.gov

Annette Chinn, *Cost Recovery Systems, Inc.*
705-2 East Bidwell Street, #294, Folsom, CA 95630
Phone: (916) 939-7901
achinnrcrs@aol.com

David Chiu, City Attorney, *City and County of San Francisco*
Office of the City Attorney, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102
Phone: (415) 554-4700
cityattorney@sfcityatty.org

Carmen Chu, Assessor-Recorder, *City and County of San Francisco*
1 Dr. Carlton B. Goodlett Place, City Hall, Room 190, San Francisco, CA 94102-4698

Phone: (415) 554-5596
assessor@sfgov.org

Carolyn Chu, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8326
Carolyn.Chu@lao.ca.gov

Cass Cook, Auditor-Controller/Treasurer-Tax Collector, *County of Tulare*
221 South Mooney Blvd, Room 101 E, Visalia, CA 93291
Phone: (559) 636-5200
tulareauditor@co.tulare.ca.us

Adam Cripps, Interim Finance Manager, *Town of Apple Valley*
14955 Dale Evans Parkway, Apple Valley, CA 92307
Phone: (760) 240-7000
acripps@applevalley.org

Chamise Cubbison, Auditor-Controller-Tax Collector, *County of Mendocino*
501 Low Gap Road, Rm 1080, Ukiah, CA 95482
Phone: (707) 234-6860
cubbisonc@mendocinocounty.gov

Thomas Deak, Senior Deputy, *County of San Diego*
Office of County Counsel, 1600 Pacific Highway, Room 355, San Diego, CA 92101
Phone: (619) 531-4810
Thomas.Deak@sdcounty.ca.gov

Mandip Dhillon, Auditor Controller, *County of Stanislaus*
1010 10th Street, Modesto, CA 95354
Phone: (209) 525-6398
auditor@stancounty.com

Cheryl Dillingham, Auditor-Controller, *County of Humboldt*
825 Fifth Street, Room 126, Eureka, CA 95501
Phone: (707) 476-2452
ctyauditor@co.humboldt.ca.us

Executive Director, *California Peace Officers' Association*
555 Capitol Mall, Suite 1495, Sacramento, CA 95814
Phone: (916) 263-0541
cpoa@cpoa.org

Laura Dougherty, Attorney, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Laura.Dougherty@csm.ca.gov

Tracy Drager, Auditor and Controller, *County of San Diego*
1600 Pacific Highway, Room 166, San Diego, CA 92101
Phone: (619) 531-5413
tracy.drager@sdcounty.ca.gov

Janet Dutcher, Finance Director, *County of Mono*
25 Bryant Street, PO Box 556, Bridgeport, CA 93517
Phone: (760) 932-5496
jdutcher@mono.ca.gov

Richard Eberle, Auditor-Controller, *County of Yuba*
915 8th Street, Suite 105, Marysville, CA 95901
Phone: (530) 749-7810
reberle@co.yuba.ca.us

Kevin Fisher, Assistant City Attorney, *City of San Jose*
Environmental Services, 200 East Santa Clara Street, 16th Floor, San Jose, CA 95113
Phone: (408) 535-1987
kevin.fisher@sanjoseca.gov

Tim Flanagan, Office Coordinator, *County of Solano*
Register of Voters, 678 Texas Street, Suite 2600, Fairfield, CA 94533
Phone: (707) 784-3359
Elections@solanocounty.com

Rose Gallo-Vasquez, County Clerk and Recorder, *County of Colusa*
546 Jay Street, Ste. 200, Colusa, CA 95932
Phone: (530) 458-0500
clerkinfo@countyofcolusa.org

Oscar Garcia, Auditor-Controller/Treasurer-Tax Collector, *County of Fresno*
2281 Tulare Street, Room 105, Fresno, CA 93721
Phone: (559) 600-3496
ogarcia@fresnocountyca.gov

Juliana Gmur, Executive Director, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
juliana.gmur@csm.ca.gov

Joe Gonzalez, *County of San Benito*
440 Fifth Street Room 206, Hollister, CA 95023
Phone: (831) 636-4090
jgonzalez@auditor.co.san-benito.ca.us

M. Green, *California State Sheriffs' Association*
1231 I Street, Suite 200, Sacramento, CA 95814
Phone: (916) 375-8000
cgreen@calsheriffs.org

Graciela Gutierrez, Auditor-Controller, *County of Butte*
25 County Center Drive, Suite 120, Oroville, CA 95965
Phone: (530) 552-3599
GGutierrez@ButteCounty.net

Andrew Hamilton, Auditor-Controller, *County of Orange*
1770 North Broadway, Santa Ana, CA 92706
Phone: (714) 834-2450
Andrew.Hamilton@ac.ocgov.com

James Hamilton, Auditor-Controller/Treasurer-Tax Collector/Public Administrator, *County of San Luis Obispo*
1055 Monterey Street, San Luis Obispo, CA 93408
Phone: (805) 781-5040
jhamilton@co.slo.ca.us

Joe Harn, *County of El Dorado*
360 Fair Lane, Placerville, CA 95667

Phone: (530) 621-5633
joe.harn@edcgov.us

Janine Harris, Auditor-Controller, *County of Solano*
675 Texas Street, Suite 2800, Fairfield, CA 94533
Phone: (707) 784-6280
auditorcontroller@solanocounty.gov

Tom Haynes, Chief Financial Officer, *County of Yolo*
Financial Services, 625 Court Street, Room 102, Woodland, CA 95695
Phone: (530) 666-8190
Tom.Haynes@yolocounty.gov

Jenavive Herrington, Auditor-Controller/County Clerk, *County of Lake*
255 N. Forbes Street, Lakeport, CA 95453
Phone: (707) 263-2311
jenavive.herrington@lakecountyca.gov

Chris Hill, Principal Program Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, 8th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
Chris.Hill@dof.ca.gov

Tiffany Hoang, Associate Accounting Analyst, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,
Sacramento, CA 95816
Phone: (916) 323-1127
THoang@sco.ca.gov

Ken Howell, Senior Management Auditor, *State Controller's Office*
Audits, Compliance Audits Bureau, 3301 C Street, Suite 725A, Sacramento, CA 95816
Phone: (916) 323-2368
KHowell@sco.ca.gov

Jason Jennings, Director, *Maximus Consulting*
Financial Services, 808 Moorefield Park Drive, Suite 205, Richmond, VA 23236
Phone: (804) 323-3535
SB90@maximus.com

Angelo Joseph, Supervisor, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,
Sacramento, CA 95816
Phone: (916) 323-0706
AJoseph@sco.ca.gov

Emma Jungwirth, Senior Legislative Advocate, *California State Association of Counties (CSAC)*
1100 K Street, Ste 101, Sacramento, CA 95814
Phone: (916) 650-8115
ejungwirth@counties.org

Harshil Kanakia, Administrative Services Manager, *County of San Mateo*
Controller's Office, 555 County Center, 4th Floor, Redwood City, CA 94063
Phone: (650) 599-1080
hkanakia@smcgov.org

Anne Kato, Acting Chief, *State Controller's Office*
Local Government Programs and Services Division, 3301 C Street, Suite 740, Sacramento, CA
95816

Phone: (916) 322-9891
akato@sco.ca.gov

Anita Kerezsi, *AK & Company*
2425 Golden Hill Road, Suite 106, Paso Robles, CA 93446
Phone: (805) 239-7994
akcompanysb90@gmail.com

Joanne Kessler, Fiscal Specialist, *City of Newport Beach*
Revenue Division, 100 Civic Center Drive , Newport Beach, CA 90266
Phone: (949) 644-3199
jkessler@newportbeachca.gov

Rob Knudson, Assistant Director of Finance, *County of Kings*
1400 W. Lacey Blvd, Hanford, CA 93230
Phone: (559) 852-2712
Robert.Knudson@co.kings.ca.us

Lisa Kurokawa, Bureau Chief for Audits, *State Controller's Office*
Compliance Audits Bureau, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 327-3138
lkurokawa@sco.ca.gov

Edward Lamb, Director of Finance, *County of Glenn*
516 West Sycamore Street, Willows, CA 95988
Phone: (530) 934-6421
ttc@countyofglenn.net

Government Law Intake, *Department of Justice*
Attorney General's Office, 1300 I Street, Suite 125, PO Box 944255, Sacramento, CA 94244-2550
Phone: (916) 210-6046
governmentlawintake@doj.ca.gov

Eric Lawyer, Legislative Advocate, *California State Association of Counties (CSAC)*
Government Finance and Administration, 1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 650-8112
elawyer@counties.org

Kim-Anh Le, Deputy Controller, *County of San Mateo*
555 County Center, 4th Floor, Redwood City, CA 94063
Phone: (650) 599-1104
kle@smcgov.org

William Lee, Chief Deputy District Attorney, *County of San Bernardino District Attorney's Office*
303 W. 3rd Street, San Bernardino, CA 92415-0502
Phone: (909) 382-3800
WLee@sbcda.org

Fernando Lemus, Principal Accountant - Auditor, *County of Los Angeles*
Auditor-Controller's Office, 500 West Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-0324
flemus@auditor.lacounty.gov

Erika Li, Chief Deputy Director, *Department of Finance*
915 L Street, 10th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
erika.li@dof.ca.gov

Kenneth Louie, Chief Counsel , *Department of Finance*

1021 O. Street, Suite 3110, Sacramento, CA 95814

Phone: (916) 322-0971

Kenny.Louie@dof.ca.gov

Everett Luc, Accounting Administrator I, Specialist, *State Controller's Office*

3301 C Street, Suite 740, Sacramento, CA 95816

Phone: (916) 323-0766

ELuc@sco.ca.gov

Van Maddox, Auditor/Treasurer/Tax Collector, *County of Sierra*

211 Nevada Street, 2nd Floor, P.O. Box 425, Downieville, CA 95936

Phone: (530) 289-3273

auttc@sierracounty.ca.gov

Jill Magee, Program Analyst, *Commission on State Mandates*

980 9th Street, Suite 300, Sacramento, CA 95814

Phone: (916) 323-3562

Jill.Magee@csm.ca.gov

Darryl Mar, Manager, *State Controller's Office*

Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816

Phone: (916) 323-0706

DMar@sco.ca.gov

Ensen Mason, Auditor-Controller/Treasurer/Tax Collector, *County of San Bernardino*

268 West Hospitality Lane, San Bernardino, CA 92415-0018

Phone: (909) 387-8322

webinfo@sbcountyatc.gov

Michelle Mendoza, *MAXIMUS*

17310 Red Hill Avenue, Suite 340, Irvine, CA 95403

Phone: (949) 440-0845

michellemendoza@maximus.com

Luis Mercado, Auditor, *County of Mariposa*

4982 10th Street, PO Box 729, Mariposa, CA 95338

Phone: (209) 966-7606

lmercado@mariposacounty.org

Marilyn Munoz, Senior Staff Counsel, *Department of Finance*

915 L Street, Sacramento, CA 95814

Phone: (916) 445-8918

Marilyn.Munoz@dof.ca.gov

Rajiv Narayan, Deputy County Counsel, *County of Santa Clara***Claimant Representative**

Office of the County Counsel, 70 West Hedding Street, East Wing, 9th Floor, San Jose, CA 95110

Phone: (669) 786-4287

rajiv.narayan@cco.sccgov.org

David Neill, Chief Counsel, *Office of Emergency Services*

3650 Schriever Ave, Mather, CA 95655

Phone: (916) 845-8510

David.Neill@caloes.ca.gov

John Nibbelin, County Attorney, *County of San Mateo*

500 County Center, Redwood City, CA 94063

Phone: (650) 363-4757
 jnibbelin@smcgov.org

Andy Nichols, *Nichols Consulting*
 1857 44th Street, Sacramento, CA 95819
 Phone: (916) 455-3939
 andy@nichols-consulting.com

Martee Nieman, Auditor-Controller, *County of Plumas*
 520 Main Street, Room 205, Quincy, CA 95971
 Phone: (530) 283-6246
 marteenieman@countyofplumas.com

Patrick O'Connell, County Clerk Recorder, *County of Alameda*
 1221 Oak Street, Room 249, Oakland, CA 94512
 Phone: (510) 272-6565
 pat.oconnell@acgov.org

Margaret Olaiya, Director of Finance, *County of Santa Clara*
Claimant Contact
 70 West Hedding Street, East Wing, 2nd Floor, San Jose, CA 95110
 Phone: (408) 299-5201
 Margaret.Olaiya@fin.sccgov.org

Diane Olson, Auditor-Controller, *County of Siskiyou*
 311 Fourth Street, Room 101, Yreka, CA 96097
 Phone: (530) 842-8078
 dlolson@co.siskiyou.ca.us

Jamie Ostroff, *California Medical Association*
 1201 K Street, Suite #800, Sacramento, CA 95814
 Phone: (800) 786-4262
 memberservice@cmadocs.org

Patricia Pacot, Accountant Auditor I, *County of Colusa*
 Office of Auditor-Controller, 546 Jay Street, Suite #202, Colusa, CA 95932
 Phone: (530) 458-0424
 ppacot@countyofcolusa.org

Arthur Palkowitz, *Law Offices of Arthur M. Palkowitz*
 12807 Calle de la Siena, San Diego, CA 92130
 Phone: (858) 259-1055
 law@artpalk.onmicrosoft.com

Kirsten Pangilinan, Specialist, *State Controller's Office*
 Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816
 Phone: (916) 322-2446
 KPangilinan@sco.ca.gov

Deborah Paolinelli, Assistant County Administrative Officer, *County of Fresno*
 2281 Tulare, Suite 304, Fresno, CA 93271
 Phone: (559) 600-1710
 dpaolinelli@fresnocountyca.gov

Alice Park-Renzie, *County of Alameda*
 CAO, 1221 Oak Street, Oakland, CA 94612
 Phone: (510) 272-3873
 Alice.Park@acgov.org

Krista Peterson, Auditor-Controller, *County of Tehama*

444 Oak Street, Room J, Red Bluff, CA 96080

Phone: (530) 527-3474

kpeterson@tehama.gov

Trevor Power, Accounting Manager, *City of Newport Beach*

100 Civic Center Drive, Newport Beach, CA 92660

Phone: (949) 644-3085

tpower@newportbeachca.gov

Jonathan Quan, Associate Accountant, *County of San Diego*

Projects, Revenue, and Grants Accounting, 5530 Overland Ave, Suite 410, San Diego, CA 92123

Phone: 6198768518

Jonathan.Quan@sdcountry.ca.gov

Juan Raigoza, Auditor-Controller, *County of San Mateo*

555 County Center, 4th Floor, Redwood City, CA 94063

Phone: (650) 363-4777

jraigoza@smcgov.org

Roberta Raper, Director of Finance, *City of West Sacramento*

1110 West Capitol Ave, West Sacramento, CA 95691

Phone: (916) 617-4509

robertar@cityofwestsacramento.org

Jonathon Raven, Executive Assistant, *California District Attorneys Association (CDA)*

2495 Natomas Park Drive, Suite 575, Sacramento, CA 95833

Phone: (916) 443-2017

jraven@cdaa.org

David Richstone, Auditor-Controller, *County of Madera*

200 W. 4th Street, Madera, CA 93637

Phone: (559) 675-7707

David.Richstone@maderacounty.com

Chad Rinde, Director of Finance, *County of Sacramento*

700 H Street, Room 3650, Sacramento, CA 95814

Phone: (916) 874-7248

RindeC@SacCounty.gov

Monica Rocha, *County of Santa Cruz*

701 Ocean Street, Room 340, Santa Cruz, CA 95060

Phone: (831) 454-2440

monica.rocha@santacruzcountyca.gov

Erick Roeser, Auditor-Controller-Treasurer-Tax Collector, *County of Sonoma*

585 Fiscal Drive, Suite 100, Santa Rosa, CA 95403

Phone: (707) 565-3285

Erick.Roeser@sonoma-county.org

Benjamin Rosenfield, City Controller, *City and County of San Francisco*

1 Dr. Carlton B. Goodlett Place, Room 316, San Francisco, CA 94102

Phone: (415) 554-7500

ben.rosenfield@sfgov.org

Tacy Oneto Rouen, Auditor, *County of Amador*

810 Court Street, Jackson, CA 95642-2131

Phone: (209) 223-6357
trouen@amadorgov.org

Jessica Sankus, Senior Legislative Analyst, *California State Association of Counties (CSAC)*
Government Finance and Administration, 1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
jsankus@counties.org

Clinton Schaad, *County of Del Norte*
981 H Street, Suite 140, Crescent City, CA 95531
Phone: (707) 464-7202
cschaad@co.del-norte.ca.us

Betsy Schaffer, Auditor-Controller, *County of Santa Barbara*
105 East Anapamu Street, Room 303, Santa Barbara, CA 93101
Phone: (805) 568-2101
bschaffer@co.santa-barbara.ca.us

Tracy Schulze, Auditor-Controller, *County of Napa*
1195 Third Street, Suite B-10, Napa, CA 94559
Phone: (707) 299-1733
tracy.schulze@countyofnapa.org

Angie Schwartz, Deputy Director, *Department of Social Services*
Children and Family Services, 744 P Street, MS 8-17-18, Sacramento, CA 95814
Phone: (916) 657-2614
Angie.Schwartz@dss.ca.gov

Cindy Sconce, Director, *Government Consulting Partners*
5016 Brower Court, Granite Bay, CA 95746
Phone: (916) 276-8807
cindysconcegcp@gmail.com

Shelly Scott, Assessor-Recorder-County Clerk, *County of Marin*
3501 Civic Center Drive, Suite 208, San Rafael, CA 94903
Phone: (415) 473-7215
Assessor@marincounty.org

Peggy Scroggins, *County of Colusa*
546 Jay Street, Ste 202, Colusa, CA 95932
Phone: (530) 458-0400
pscroggins@countyofcolusa.org

Greg Sessions, Interim Auditor Controller, *County of Calaveras*
891 Mountain Ranch Road, San Andreas, CA 95249
Phone: (209) 754-6343
gsessions@calaverascounty.gov

Rupa Shah, Auditor-Controller, *County of Monterey*
168 West Alisal Street, 3rd Floor, Salinas, CA 93901
Phone: (831) 755-5040
shahr@co.monterey.ca.us

Camille Shelton, Chief Legal Counsel, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
camille.shelton@csm.ca.gov

Carla Shelton, Senior Legal Analyst, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
carla.shelton@csm.ca.gov

Amy Shepherd, Auditor-Controller, *County of Inyo*
Auditor-Controller, 168 N. Edwards Street, Independence, CA 93526
Phone: (760) 878-0343
ashepherd@inyocounty.us

Nolda Short, Auditor-Controller, *County of Shasta*
1450 Court Street, Suite 238, Redding, CA 96001
Phone: (530) 245-6657
nshort@co.shasta.ca.us

Andrew Sisk, *County of Placer*
2970 Richardson Drive, Auburn, CA 95603
Phone: (530) 889-4026
asisk@placer.ca.gov

Paul Steenhausen, Principal Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, , Sacramento, CA 95814
Phone: (916) 319-8303
Paul.Steenhausen@lao.ca.gov

David Swanson Hollinger, Chief Deputy Director, *Department of Social Services*
Executive , 744 P Street MS 8-17-11, Sacramento, CA 95814
Phone: (916) 657-2598
David.Swansonhollinger@dss.ca.gov

Jolene Tollenaar, *MGT Consulting Group*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 243-8913
jolenetollenaar@gmail.com

James Touchstone, General Counsel, *California State Sheriffs' Association*
3777 North Harbor Boulevard, Fullerton, CA 92835
Phone: (714) 446-1400
jrt@jones-mayer.com

Jessica Uzarski, Consultant, *Senate Budget and Fiscal Review Committee*
1020 N Street, Room 502, Sacramento, CA 95814
Phone: (916) 651-4103
Jessica.Uzarski@sen.ca.gov

Alejandra Villalobos, Management Services Manager, *County of San Bernardino*
Office of Auditor-Controller, 222 West Hospitality Lane, Forth Floor, San Bernardino, CA 92415
Phone: (909) 382-3191
alejandra.villalobos@sbcountyatc.gov

Stephanie Wellemeyer, Auditor/County Clerk, *County of Modoc*
108 E. Modoc Street, Alturas, CA 96101
Phone: (530) 233-6231
auditor@co.modoc.ca.us

Renee Wellhouse, *David Wellhouse & Associates, Inc.*
3609 Bradshaw Road, H-382, Sacramento, CA 95927

Phone: (916) 797-4883
dwa-renee@surewest.net

Adam Whelen, Director of Public Works, *City of Anderson*
1887 Howard St., Anderson, CA 96007
Phone: (530) 378-6640
awhelen@ci.anderson.ca.us

Gina Will, Auditor-Controller, *County of Nevada*
950 Maidu Avenue, Suite 230, Nevada City, CA 95959
Phone: (530) 265-1244
auditor.controller@nevadacountyca.gov

Kelly Winston, Bureau Chief, *Child Welfare Policy & Program Development Bureau*
744 P Street, MS 8-11-87, Sacramento, CA 95814
Phone: (916) 651-6100
kelly.winston@dss.ca.gov

Jeff Woltkamp, *County of San Joaquin*
44 N San Joaquin St. Suite 550, Stockton, CA 95202
Phone: (209) 468-3925
jwoltkamp@sjgov.org

Arthur Wylene, General Counsel, *Rural County Representatives of California (RCRC)*
1215 K Street, Suite 1650, Sacramento, CA 95814
Phone: (916) 447-4806
awylene@rcrcnet.org

Elisa Wynne, Staff Director, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
elisa.wynne@sen.ca.gov

Kaily Yap, Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Kaily.Yap@dof.ca.gov

Siew-Chin Yeong, Director of Public Works, *City of Pleasanton*
3333 Busch Road, Pleasanton, CA 94566
Phone: (925) 931-5506
syeong@cityofpleasantonca.gov

Traci Young, IS Project Director, *City and County of San Francisco*
San Francisco Public Utilities Commission (SFPUC), 525 Golden Gate Ave, San Francisco, CA 94102
Phone: (415) 653-2583
tmyoung@sfwater.org

Luis Zamora, Confidential Executive Assistant to the City Attorney, *City and County of San Francisco*
Office of the City Attorney, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102
Phone: (415) 554-4748
Luis.A.Zamora@sfcityatty.org

Jess Zayas, Bureau Manager, *Department of Social Services*
Finance & Accounting, 744 P Street MS 17-27, Sacramento, CA 95814

Phone: (916) 654-0958
Jess.Zayas@dss.ca.gov

Helmholt Zinser-Watkins, Associate Governmental Program Analyst, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 700,
Sacramento, CA 95816
Phone: (916) 324-7876
HZinser-watkins@sco.ca.gov

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On March 10, 2026, I served the:

- **Current Mailing List dated March 3, 2026**
- **Request for Reconsideration of an Adopted Decision (Gov. Code § 17559(a); Cal. Code Regs., tit. 2, § 1187.15) and Notice of Hearing issued March 10, 2026**
- **Request for Reconsideration of an Adopted Test Claim Decision filed March 9, 2026**

Child Physical Abuse and Neglect Exams, 25-RAD-01 (24-TC-05)
Statutes 2023, Chapter 841, (AB 1402); Penal Code Section 11171(f)
County of Santa Clara, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 10, 2026 at Sacramento, California.



Jill Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 3/3/26

Claim Number: 24-TC-05

Matter: Child Physical Abuse and Neglect Exams

Claimant: County of Santa Clara

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

Adaoha Agu, *County of San Diego Auditor & Controller Department*

Projects, Revenue and Grants Accounting, 5530 Overland Avenue, Ste. 410 , MS:O-53, San Diego, CA 92123

Phone: (858) 694-2129

Adaoha.Agu@sdcounty.ca.gov

Karina Alvarez, *Auditor-Controller, County of Imperial*

940 W. Main Street, Suite 108, El Centro, CA 92243

Phone: (442) 265-1299

karinabalvarez@co.imperial.ca.us

Rachelle Anema, *Assistant Auditor-Controller, County of Los Angeles*

Accounting Division, 500 W. Temple Street, Los Angeles, CA 90012

Phone: (213) 974-8321

RANEMA@auditor.lacounty.gov

Lili Apgar, *Specialist, State Controller's Office*

Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816

Phone: (916) 324-0254

lapgar@sco.ca.gov

Socorro Aquino, *State Controller's Office*

Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-7522

SAquino@sco.ca.gov

Aaron Avery, *Legislative Representative, California Special Districts Association*

1112 I Street Bridge, Suite 200, Sacramento, CA 95814

Phone: (916) 442-7887

Aarona@csda.net

David Bass, Vice Mayor, *City of Rocklin*
3970 Rocklin Road, Rocklin, CA 95677
Phone: (916) 663-8504
David.Bass@rocklin.ca.us

Deborah Bautista, *County of Tuolumne*
El Dorado Hills Community Services District, 2 South Green St. , Sonora, CA 95370
Phone: (209) 533-5551
dbautista@co.tuolumne.ca.us

Mary Bedard, Auditor-Controller, *County of Kern*
1115 Truxtun Avenue, 2nd Floor, Bakersfield, CA 93301
Phone: (805) 868-3599
bedardm@co.kern.ca.us

Ginni Bella Navarre, Deputy Legislative Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8342
Ginni.Bella@lao.ca.gov

Ben Benoit, Auditor-Controller, *County of Riverside*
4080 Lemon Street, 11th Floor, Riverside, CA 92502
Phone: (951) 955-3800
bbenoit@rivco.org

Angela Bickle, Interim Auditor-Controller, *County of Trinity*
11 Court Street, P.O. Box 1230, Weaverville, CA 96093
Phone: (530) 623-1317
abickle@trinitycounty.org

Lowell Black, Director of Finance, *County of Alpine*
P.O. Box 266, Markleeville, CA 96120
Phone: (530) 694-2284
nwilliamson@alpinecountyca.gov

Nathan Black, Auditor-Controller, *County of Sutter*
1160 Civic Center Blvd., Suite D, Yuba City, CA 95993
Phone: (530) 822-7127
nblack@co.sutter.ca.us

Joanne Bohren, Auditor/Controller, *County of Contra Costa*
1025 Escobar Street, Martinez, CA 94553
Phone: (925) 608-9300
info@ac.cccounty.us

Laura Bowers, Interim Auditor-Controller/Treasurer-Tax Collector, *County of Santa Cruz*
Auditor-Controller's Office, 701 Ocean Street, Room 100, Santa Cruz, CA 95060-4073
Phone: (831) 454-2500
laura.bowers@santacruzcounty.us

Allan Burdick,
7525 Myrtle Vista Avenue, Sacramento, CA 95831
Phone: (916) 203-3608
allanburdick@gmail.com

Guy Burdick, Consultant, *MGT Consulting*
2251 Harvard Street, Suite 134, Sacramento, CA 95815

Phone: (916) 833-7775
gburdick@mgtconsulting.com

Jeffrey Burgh, Auditor Controller, *County of Ventura*
800 S. Victoria Avenue, Ventura, CA 93009-1540
Phone: (805) 654-3151
Jeff.Burgh@venturacounty.gov

Stephanie Butters, Assistant Director of Finance, Auditor-Controller, *County of Mono*
25 Bryant Street, PO Box 556, Bridgeport, CA 93517
Phone: (760) 932-5496
sbutters@mono.ca.gov

Rica Mae Cabigas, Chief Accountant, *Auditor-Controller*
Accounting Division, 500 West Temple Street, Los Angeles, CA 90012
Phone: (213) 974-8309
rcabigas@auditor.lacounty.gov

Evelyn Calderon-Yee, Bureau Chief, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,
Sacramento, CA 95816
Phone: (916) 324-5919
ECalderonYee@sco.ca.gov

Lisa Cardella-Presto, *County of Merced*
2222 M Street, Merced, CA 95340
Phone: (209) 385-7511
LCardella-presto@co.merced.ca.us

Nancy Cardenas, Auditor-Controller, Treasurer, Tax Collector, *County of Lassen*
221 South Roop Street, Ste. 1, Susanville, CA 96130
Phone: (530) 251-8220
ncardenas@co.lassen.ca.us

Julissa Ceja Cardenas, *California State Association of Counties*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
jcejacardenas@counties.org

Ali Chemkhi, Senior Supervising Accountant/Auditor, *County of San Bernardino*
Office of Auditor-Controller, 268 West Hospitality Lane, Fourth Floor, San Bernardino, CA 92415-0018
Phone: (909) 382-7035
ali.chemkhi@sbccountyatc.gov

Annette Chinn, *Cost Recovery Systems, Inc.*
705-2 East Bidwell Street, #294, Folsom, CA 95630
Phone: (916) 939-7901
achinnrcrs@aol.com

David Chiu, City Attorney, *City and County of San Francisco*
Office of the City Attorney, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102
Phone: (415) 554-4700
cityattorney@sfcityatty.org

Carmen Chu, Assessor-Recorder, *City and County of San Francisco*
1 Dr. Carlton B. Goodlett Place, City Hall, Room 190, San Francisco, CA 94102-4698

Phone: (415) 554-5596
assessor@sfgov.org

Carolyn Chu, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8326
Carolyn.Chu@lao.ca.gov

Nicole Coburn, Assistant County Executive Officer, *County of Santa Cruz*
809 Center Street, Rm 101, Santa Cruz, CA 95060
Phone: (831) 454-2100
nicole.coburn@santacruzcountyca.gov

Cass Cook, Auditor-Controller/Treasurer-Tax Collector, *County of Tulare*
221 South Mooney Blvd, Room 101 E, Visalia, CA 93291
Phone: (559) 636-5200
tulareauditor@co.tulare.ca.us

Adam Cripps, Interim Finance Manager, *Town of Apple Valley*
14955 Dale Evans Parkway, Apple Valley, CA 92307
Phone: (760) 240-7000
acripps@applevalley.org

Chamise Cubbison, Auditor-Controller-Tax Collector, *County of Mendocino*
501 Low Gap Road, Rm 1080, Ukiah, CA 95482
Phone: (707) 234-6860
cubbisonc@mendocinocounty.gov

Thomas Deak, Senior Deputy, *County of San Diego*
Office of County Counsel, 1600 Pacific Highway, Room 355, San Diego, CA 92101
Phone: (619) 531-4810
Thomas.Deak@sdcounty.ca.gov

Mandip Dhillon, Auditor Controller, *County of Stanislaus*
1010 10th Street, Modesto, CA 95354
Phone: (209) 525-6398
auditor@stancounty.com

Cheryl Dillingham, Auditor-Controller, *County of Humboldt*
825 Fifth Street, Room 126, Eureka, CA 95501
Phone: (707) 476-2452
ctyauditor@co.humboldt.ca.us

Executive Director, *California Peace Officers' Association*
555 Capitol Mall, Suite 1495, Sacramento, CA 95814
Phone: (916) 263-0541
cpoa@cpoa.org

Laura Dougherty, Attorney, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Laura.Dougherty@csm.ca.gov

Tracy Drager, Auditor and Controller, *County of San Diego*
1600 Pacific Highway, Room 166, San Diego, CA 92101
Phone: (619) 531-5413
tracy.drager@sdcounty.ca.gov

Janet Dutcher, Finance Director, *County of Mono*
25 Bryant Street, PO Box 556, Bridgeport, CA 93517
Phone: (760) 932-5496
jdutcher@mono.ca.gov

Richard Eberle, Auditor-Controller, *County of Yuba*
915 8th Street, Suite 105, Marysville, CA 95901
Phone: (530) 749-7810
reberle@co.yuba.ca.us

Kevin Fisher, Assistant City Attorney, *City of San Jose*
Environmental Services, 200 East Santa Clara Street, 16th Floor, San Jose, CA 95113
Phone: (408) 535-1987
kevin.fisher@sanjoseca.gov

Tim Flanagan, Office Coordinator, *County of Solano*
Register of Voters, 678 Texas Street, Suite 2600, Fairfield, CA 94533
Phone: (707) 784-3359
Elections@solanocounty.com

Rose Gallo-Vasquez, County Clerk and Recorder, *County of Colusa*
546 Jay Street, Ste. 200, Colusa, CA 95932
Phone: (530) 458-0500
clerkinfo@countyofcolusa.org

Oscar Garcia, Auditor-Controller/Treasurer-Tax Collector, *County of Fresno*
2281 Tulare Street, Room 105, Fresno, CA 93721
Phone: (559) 600-3496
ogarcia@fresnocountyca.gov

Juliana Gmur, Executive Director, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
juliana.gmur@csm.ca.gov

Joe Gonzalez, *County of San Benito*
440 Fifth Street Room 206, Hollister, CA 95023
Phone: (831) 636-4090
jgonzalez@auditor.co.san-benito.ca.us

M. Green, *California State Sheriffs' Association*
1231 I Street, Suite 200, Sacramento, CA 95814
Phone: (916) 375-8000
cgreen@calsheriffs.org

Graciela Gutierrez, Auditor-Controller, *County of Butte*
25 County Center Drive, Suite 120, Oroville, CA 95965
Phone: (530) 552-3599
GGutierrez@ButteCounty.net

James Hamilton, Auditor-Controller/Treasurer-Tax Collector/Public Administrator, *County of San Luis Obispo*
1055 Monterey Street, San Luis Obispo, CA 93408
Phone: (805) 781-5040
jhamilton@co.slo.ca.us

Andrew Hamilton, Auditor-Controller, *County of Orange*
1770 North Broadway, Santa Ana, CA 92706

Phone: (714) 834-2450
Andrew.Hamilton@ac.ocgov.com

Joe Harn, *County of El Dorado*
360 Fair Lane, Placerville, CA 95667
Phone: (530) 621-5633
joe.harn@edcgov.us

Janine Harris, Auditor-Controller, *County of Solano*
675 Texas Street, Suite 2800, Fairfield, CA 94533
Phone: (707) 784-6280
auditorcontroller@solanocounty.gov

Tom Haynes, Chief Financial Officer, *County of Yolo*
Financial Services, 625 Court Street, Room 102, Woodland, CA 95695
Phone: (530) 666-8190
Tom.Haynes@yolocounty.gov

Jenavive Herrington, Auditor-Controller/County Clerk, *County of Lake*
255 N. Forbes Street, Lakeport, CA 95453
Phone: (707) 263-2311
jenavive.herrington@lakecountyca.gov

Chris Hill, Principal Program Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, 8th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
Chris.Hill@dof.ca.gov

Tiffany Hoang, Associate Accounting Analyst, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,
Sacramento, CA 95816
Phone: (916) 323-1127
THoang@sco.ca.gov

Ken Howell, Senior Management Auditor, *State Controller's Office*
Audits, Compliance Audits Bureau, 3301 C Street, Suite 725A, Sacramento, CA 95816
Phone: (916) 323-2368
KHowell@sco.ca.gov

Jason Jennings, Director, *Maximus Consulting*
Financial Services, 808 Moorefield Park Drive, Suite 205, Richmond, VA 23236
Phone: (804) 323-3535
SB90@maximus.com

Angelo Joseph, Supervisor, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,
Sacramento, CA 95816
Phone: (916) 323-0706
AJoseph@sco.ca.gov

Emma Jungwirth, Senior Legislative Advocate, *California State Association of Counties (CSAC)*
1100 K Street, Ste 101, Sacramento, CA 95814
Phone: (916) 650-8115
ejungwirth@counties.org

Harshil Kanakia, Administrative Services Manager, *County of San Mateo*
Controller's Office, 555 County Center, 4th Floor, Redwood City, CA 94063

Phone: (650) 599-1080
hkanakia@smcgov.org

Anne Kato, Acting Chief, *State Controller's Office*

Local Government Programs and Services Division, 3301 C Street, Suite 740, Sacramento, CA 95816

Phone: (916) 322-9891
akato@sco.ca.gov

Anita Kerezsi, *AK & Company*

2425 Golden Hill Road, Suite 106, Paso Robles, CA 93446

Phone: (805) 239-7994
akcompanysb90@gmail.com

Joanne Kessler, Fiscal Specialist, *City of Newport Beach*

Revenue Division, 100 Civic Center Drive, Newport Beach, CA 90266

Phone: (949) 644-3199
jkessler@newportbeachca.gov

Rob Knudson, Assistant Director of Finance, *County of Kings*

1400 W. Lacey Blvd, Hanford, CA 93230

Phone: (559) 852-2712
Robert.Knudson@co.kings.ca.us

Lisa Kurokawa, Bureau Chief for Audits, *State Controller's Office*

Compliance Audits Bureau, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 327-3138
lkurokawa@sco.ca.gov

Edward Lamb, Director of Finance, *County of Glenn*

516 West Sycamore Street, Willows, CA 95988

Phone: (530) 934-6421
ttc@countyofglenn.net

Government Law Intake, *Department of Justice*

Attorney General's Office, 1300 I Street, Suite 125, PO Box 944255, Sacramento, CA 94244-2550

Phone: (916) 210-6046
governmentlawintake@doj.ca.gov

Eric Lawyer, Legislative Advocate, *California State Association of Counties (CSAC)*

Government Finance and Administration, 1100 K Street, Suite 101, Sacramento, CA 95814

Phone: (916) 650-8112
elawyer@counties.org

Kim-Anh Le, Deputy Controller, *County of San Mateo*

555 County Center, 4th Floor, Redwood City, CA 94063

Phone: (650) 599-1104
kle@smcgov.org

William Lee, Chief Deputy District Attorney, *County of San Bernardino District Attorney's Office*

303 W. 3rd Street, San Bernardino, CA 92415-0502

Phone: (909) 382-3800
WLee@sbcda.org

Fernando Lemus, Principal Accountant - Auditor, *County of Los Angeles*

Auditor-Controller's Office, 500 West Temple Street, Room 603, Los Angeles, CA 90012

Phone: (213) 974-0324
flemus@auditor.lacounty.gov

Erika Li, Chief Deputy Director, *Department of Finance*
915 L Street, 10th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
erika.li@dof.ca.gov

Kenneth Louie, Chief Counsel, *Department of Finance*
1021 O. Street, Suite 3110, Sacramento, CA 95814
Phone: (916) 322-0971
Kenny.Louie@dof.ca.gov

Everett Luc, Accounting Administrator I, Specialist, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0766
ELuc@sco.ca.gov

Van Maddox, Auditor/Treasurer/Tax Collector, *County of Sierra*
211 Nevada Street, 2nd Floor, P.O. Box 425, Downieville, CA 95936
Phone: (530) 289-3273
auttc@sierracounty.ca.gov

Jill Magee, Program Analyst, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Jill.Magee@csm.ca.gov

Darryl Mar, Manager, *State Controller's Office*
Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0706
DMar@sco.ca.gov

Ensen Mason, Auditor-Controller/Treasurer/Tax Collector, *County of San Bernardino*
268 West Hospitality Lane, San Bernardino, CA 92415-0018
Phone: (909) 387-8322
webinfo@sbcountyatc.gov

Michelle Mendoza, *MAXIMUS*
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemendoza@maximus.com

Luis Mercado, Auditor, *County of Mariposa*
4982 10th Street, PO Box 729, Mariposa, CA 95338
Phone: (209) 966-7606
lmercado@mariposacounty.org

Marilyn Munoz, Senior Staff Counsel, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-8918
Marilyn.Munoz@dof.ca.gov

Rajiv Narayan, Deputy County Counsel, *County of Santa Clara*
Claimant Representative
Office of the County Counsel, 70 West Hedding Street, East Wing, 9th Floor, San Jose, CA 95110
Phone: (669) 786-4287
rajiv.narayan@cco.sccgov.org

David Neill, Chief Counsel, *Office of Emergency Services*
3650 Schriever Ave, Mather, CA 95655

Phone: (916) 845-8510
David.Neill@caloes.ca.gov

John Nibbelin, County Attorney, *County of San Mateo*
500 County Center, Redwood City, CA 94063
Phone: (650) 363-4757
jnibbelin@smcgov.org

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Martee Nieman, Auditor-Controller, *County of Plumas*
520 Main Street, Room 205, Quincy, CA 95971
Phone: (530) 283-6246
marteenieman@countyofplumas.com

Patrick O'Connell, County Clerk Recorder, *County of Alameda*
1221 Oak Street, Room 249, Oakland, CA 94512
Phone: (510) 272-6565
pat.oconnell@acgov.org

Margaret Olaiya, Director of Finance, *County of Santa Clara*
Claimant Contact
70 West Hedding Street, East Wing, 2nd Floor, San Jose, CA 95110
Phone: (408) 299-5201
Margaret.Olaiya@fin.sccgov.org

Diane Olson, Auditor-Controller, *County of Siskiyou*
311 Fourth Street, Room 101, Yreka, CA 96097
Phone: (530) 842-8078
dlolson@co.siskiyou.ca.us

Jamie Ostroff, *California Medical Association*
1201 K Street, Suite #800, Sacramento, CA 95814
Phone: (800) 786-4262
memberservice@cmadocs.org

Patricia Pacot, Accountant Auditor I, *County of Colusa*
Office of Auditor-Controller, 546 Jay Street, Suite #202, Colusa, CA 95932
Phone: (530) 458-0424
ppacot@countyofcolusa.org

Arthur Palkowitz, *Law Offices of Arthur M. Palkowitz*
12807 Calle de la Siena, San Diego, CA 92130
Phone: (858) 259-1055
law@artpalk.onmicrosoft.com

Kirsten Pangilinan, Specialist, *State Controller's Office*
Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 322-2446
KPangilinan@sco.ca.gov

Deborah Paolinelli, Assistant County Administrative Officer, *County of Fresno*
2281 Tulare, Suite 304, Fresno, CA 93271
Phone: (559) 600-1710
dpaolinelli@fresnocountyca.gov

Alice Park-Renzie, *County of Alameda*
CAO, 1221 Oak Street, Oakland, CA 94612
Phone: (510) 272-3873
Alice.Park@acgov.org

Krista Peterson, Auditor-Controller, *County of Tehama*
444 Oak Street, Room J, Red Bluff, CA 96080
Phone: (530) 527-3474
kpeterson@tehama.gov

Trevor Power, Accounting Manager, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3085
tpower@newportbeachca.gov

Jonathan Quan, Associate Accountant, *County of San Diego*
Projects, Revenue, and Grants Accounting, 5530 Overland Ave, Suite 410, San Diego, CA 92123
Phone: 6198768518
Jonathan.Quan@sdcountry.ca.gov

Juan Raigoza, Auditor-Controller, *County of San Mateo*
555 County Center, 4th Floor, Redwood City, CA 94063
Phone: (650) 363-4777
jraigoza@smcgov.org

Roberta Raper, Director of Finance, *City of West Sacramento*
1110 West Capitol Ave, West Sacramento, CA 95691
Phone: (916) 617-4509
robertar@cityofwestsacramento.org

Jonathan Raven, Executive Assistant, *California District Attorneys Association (CDA)*
2495 Natomas Park Drive, Suite 575, Sacramento, CA 95833
Phone: (916) 443-2017
jraven@cdaa.org

David Richstone, Auditor-Controller, *County of Madera*
200 W. 4th Street, Madera, CA 93637
Phone: (559) 675-7707
David.Richstone@maderacounty.com

Chad Rinde, Director of Finance, *County of Sacramento*
700 H Street, Room 3650, Sacramento, CA 95814
Phone: (916) 874-7248
RindeC@SacCounty.gov

Monica Rocha, *County of Santa Cruz*
701 Ocean Street, Room 340, Santa Cruz, CA 95060
Phone: (831) 454-2440
monica.rocha@santacruzcountyca.gov

Erick Roeser, Auditor-Controller-Treasurer-Tax Collector, *County of Sonoma*
585 Fiscal Drive, Suite 100, Santa Rosa, CA 95403
Phone: (707) 565-3285
Erick.Roeser@SonomaCounty.gov

Benjamin Rosenfield, City Controller, *City and County of San Francisco*
1 Dr. Carlton B. Goodlett Place, Room 316, San Francisco, CA 94102

Phone: (415) 554-7500
ben.rosenfield@sfgov.org

Tacy Oneto Rouen, Auditor, *County of Amador*
810 Court Street, Jackson, CA 95642-2131
Phone: (209) 223-6357
trouen@amadorgov.org

Jessica Sankus, Senior Legislative Analyst, *California State Association of Counties (CSAC)*
Government Finance and Administration, 1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
jsankus@counties.org

Clinton Schaad, *County of Del Norte*
981 H Street, Suite 140, Crescent City, CA 95531
Phone: (707) 464-7202
cschaad@co.del-norte.ca.us

Betsy Schaffer, Auditor-Controller, *County of Santa Barbara*
105 East Anapamu Street, Room 303, Santa Barbara, CA 93101
Phone: (805) 568-2101
bschaffer@co.santa-barbara.ca.us

Tracy Schulze, Auditor-Controller, *County of Napa*
1195 Third Street, Suite B-10, Napa, CA 94559
Phone: (707) 299-1733
tracy.schulze@countyofnapa.org

Angie Schwartz, Deputy Director, *Department of Social Services*
Children and Family Services, 744 P Street, MS 8-17-18, Sacramento, CA 95814
Phone: (916) 657-2614
Angie.Schwartz@dss.ca.gov

Cindy Sconce, Director, *Government Consulting Partners*
5016 Brower Court, Granite Bay, CA 95746
Phone: (916) 276-8807
cindysconcecp@gmail.com

Shelly Scott, Assessor-Recorder-County Clerk, *County of Marin*
3501 Civic Center Drive, Suite 208, San Rafael, CA 94903
Phone: (415) 473-7215
Assessor@marincounty.org

Peggy Scroggins, *County of Colusa*
546 Jay Street, Ste 202, Colusa, CA 95932
Phone: (530) 458-0400
pscroggins@countyofcolusa.org

Greg Sessions, Interim Auditor Controller, *County of Calaveras*
891 Mountain Ranch Road, San Andreas, CA 95249
Phone: (209) 754-6343
gsessions@calaverascounty.gov

Rupa Shah, Auditor-Controller, *County of Monterey*
168 West Alisal Street, 3rd Floor, Salinas, CA 93901
Phone: (831) 755-5040
shahr@co.monterey.ca.us

Camille Shelton, Chief Legal Counsel, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
camille.shelton@csm.ca.gov

Carla Shelton, Senior Legal Analyst, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
carla.shelton@csm.ca.gov

Amy Shepherd, Auditor-Controller, *County of Inyo*
Auditor-Controller, 168 N. Edwards Street, Independence, CA 93526
Phone: (760) 878-0343
ashepherd@inyocounty.us

Nolda Short, Auditor-Controller, *County of Shasta*
1450 Court Street, Suite 238, Redding, CA 96001
Phone: (530) 245-6657
nshort@co.shasta.ca.us

Andrew Sisk, *County of Placer*
2970 Richardson Drive, Auburn, CA 95603
Phone: (530) 889-4026
asisk@placer.ca.gov

Paul Steenhausen, Principal Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, , Sacramento, CA 95814
Phone: (916) 319-8303
Paul.Steenhausen@lao.ca.gov

David Swanson Hollinger, Chief Deputy Director, *Department of Social Services*
Executive , 744 P Street MS 8-17-11, Sacramento, CA 95814
Phone: (916) 657-2598
David.Swansonhollinger@dss.ca.gov

Jolene Tollenaar, *MGT Consulting Group*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 243-8913
jolenetollenaar@gmail.com

James Touchstone, General Counsel, *California State Sheriffs' Association*
3777 North Harbor Boulevard, Fullerton, CA 92835
Phone: (714) 446-1400
jrt@jones-mayer.com

Jessica Uzarski, Consultant, *Senate Budget and Fiscal Review Committee*
1020 N Street, Room 502, Sacramento, CA 95814
Phone: (916) 651-4103
Jessica.Uzarski@sen.ca.gov

Alejandra Villalobos, Management Services Manager, *County of San Bernardino*
Office of Auditor-Controller, 222 West Hospitality Lane, Forth Floor, San Bernardino, CA 92415
Phone: (909) 382-3191
alejandra.villalobos@sbcountyatc.gov

Stephanie Wellemeyer, Auditor/County Clerk, *County of Modoc*
108 E. Modoc Street, Alturas, CA 96101

Phone: (530) 233-6231
auditor@co.modoc.ca.us

Renee Wellhouse, *David Wellhouse & Associates, Inc.*
3609 Bradshaw Road, H-382, Sacramento, CA 95927
Phone: (916) 797-4883
dwa-renee@surewest.net

Adam Whelen, Director of Public Works, *City of Anderson*
1887 Howard St., Anderson, CA 96007
Phone: (530) 378-6640
awhelen@ci.anderson.ca.us

Gina Will, Auditor-Controller, *County of Nevada*
950 Maidu Avenue, Suite 230, Nevada City, CA 95959
Phone: (530) 265-1244
auditor.controller@nevadacountyca.gov

Kelly Winston, Bureau Chief, *Child Welfare Policy & Program Development Bureau*
744 P Street, MS 8-11-87, Sacramento, CA 95814
Phone: (916) 651-6100
kelly.winston@dss.ca.gov

Jeff Woltkamp, *County of San Joaquin*
44 N San Joaquin St. Suite 550, Stockton, CA 95202
Phone: (209) 468-3925
jwoltkamp@sjgov.org

Arthur Wylene, General Counsel, *Rural County Representatives of California (RCRC)*
1215 K Street, Suite 1650, Sacramento, CA 95814
Phone: (916) 447-4806
awylene@rcrcnet.org

Elisa Wynne, Staff Director, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
elisa.wynne@sen.ca.gov

Kaily Yap, Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Kaily.Yap@dof.ca.gov

Siew-Chin Yeong, Director of Public Works, *City of Pleasonton*
3333 Busch Road, Pleasonton, CA 94566
Phone: (925) 931-5506
syeong@cityofpleasontonca.gov

Traci Young, IS Project Director, *City and County of San Francisco*
San Francisco Public Utilities Commission (SFPUC), 525 Golden Gate Ave, San Francisco, CA 94102
Phone: (415) 653-2583
tmyoung@sfgwater.org

Luis Zamora, Confidential Executive Assistant to the City Attorney, *City and County of San Francisco*
Office of the City Attorney, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102

Phone: (415) 554-4748
Luis.A.Zamora@sfcityatty.org

Jess Zayas, Bureau Manager, *Department of Social Services*
Finance & Accounting, 744 P Street MS 17-27, Sacramento, CA 95814
Phone: (916) 654-0958
Jess.Zayas@dss.ca.gov

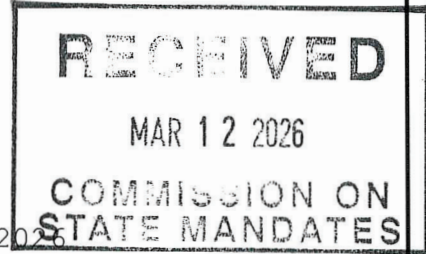
Helmholt Zinser-Watkins, Associate Governmental Program Analyst, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 700,
Sacramento, CA 95816
Phone: (916) 324-7876
HZinser-watkins@sco.ca.gov

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES

PUBLIC MEETING

FRIDAY, FEBRUARY 13, 2026

10:00 A.M.



ORIGINAL

MEETING HELD

AT 1220 N STREET

AUDITORIUM

SACRAMENTO, CALIFORNIA

AND

VIA ZOOM

VIDEO COMMUNICATIONS PLATFORM

REPORTER'S TRANSCRIPT OF PROCEEDINGS

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ALYSSA PACHECO
Certified Shorthand Reporter No. 13391

SWANK REPORTING INC.
Telephone (916) 390-7731
KathrynSwankCSR@sbcglobal.net

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A P P E A R A N C E S

COMMISSIONERS PRESENT

MICHELE PERRAULT
Representative for JOE STEPHENSHAW
Department of Finance
(Chairperson of the Commission)

MONICA JIMENEZ
Representative for FIONA MA
State Treasurer
(Vice Chairperson of the Commission)

ALEXANDER POWELL
Representative for SAMUEL ASSEFA, Director
Office of Land Use and Climate Innovation

LEE ADAMS III
Sierra County Supervisor
Local Agency Member

RENEE NASH
Eureka Union School District
School District Board Member

DEBORAH GALLEGOS
Representative for MALIA COHEN
State Controller

KAREN GREENE ROSS
Public Member

---oOo---

COMMISSION STAFF

JULIANA GMUR
Executive Director

DENNIS SUPACHANA
Assistant Executive Director

CAMILLE N. SHELTON
Chief Legal Counsel

ANNA BARICH
Commission Counsel

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A P P E A R A N C E S C O N T I N U E D

COMMISSION STAFF
(Continued)

LAURA DOUGHERTY
Senior Commission Counsel

DAVID CHAVEZ
Office Technician

JASON ROGERS
Information Technology Specialist

HUSHAM HAROUN
Information Technology Specialist

---oOo---

PUBLIC PARTICIPANTS

FERNANDO LEMUS
County of Los Angeles
(Items 3 and 6)

TIFFANY WALSTON
County of Los Angeles
(Items 3 and 6)

KAILY YAP
Department of Finance
(Items 3, 4, 5, 6 and 7)

CHRIS HILL
Department of Finance
(Items 3, 4, 5, 6 and 7)

RAJIV NARAYAN
County of Santa Clara
(Item 4)

HOWARD GEST
County of Los Angeles
(Item 5)

JOSHUA WALDEN
County of Santa Clara
(Item 7)

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24	20	Before engaging the <u>in</u> questioning
28	17	THE COURT: <u>CHAIRPERSON PERRAULT:</u>
28	19	CHAIRPERSON PERRAULT: <u>MS. GMUR:</u>
50	25	new <u>no</u> shift of cost from the state
54	24	claimant to amended ed their claim
65	1	Yes. Six <u>Five</u> , one.
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1 FRIDAY, FEBRUARY 13, 2026, 10:03 a.m.

2 ---oOo---

3 CHAIRPERSON PERRAULT: Good morning. I'm going to
4 go ahead and call the meeting of the Commission on State
5 Mandates to order at 10:03.

6 Welcome to our hybrid meeting. For those
7 participating in person, I have some housekeeping
8 information. On the table -- excuse me -- on the table
9 at the back of the room are paper copies of the meetings
10 revised notice, agenda, new filings, and witness list.
11 The electronic public hearing binder's also located there
12 on the laptop.

13 Please note that the room is microphoned, so
14 speakers and microphones on all devices must stay muted
15 for the duration of the meeting to eliminate feedback
16 noise.

17 When called up for an item, the parties and the
18 witnesses will please come to the table and sit at the
19 designated laptop.

20 The restrooms are located out the entrance door
21 and through -- and through the door on the left. The
22 men's restroom is located on the right, and the women's
23 restroom is at the end of the hallway to the right.

24 Finally, please take note of the emergency exits
25 in the room. In the event of an emergency, please exit 8

1 the door to my left, turn left, and go down the stairs.

2 For those participating remotely, the materials
3 for today's meeting, including the revised notice,
4 agenda, new filings and witness list are all available on
5 the Commission's website, www.csm.ca.gov, under the
6 "Hearings" tab.

7 When being sworn in at the beginning of the
8 hearing and when called for an item, the parties and
9 witnesses will please turn on their video and unmute
10 their microphone. At the conclusion of the item, please
11 turn off the video and mute the microphone.

12 In the event we experience technical difficulties
13 or the meeting is bumped offline, we will restart and
14 allow people to rejoin before commencing the meeting. If
15 we are unable to restart, a notice will be posted on the
16 commission's website listing items to be heard at the
17 next meeting.

18 Please remember to speak slowly and accurately for
19 the benefit of the court reporter and an accurate
20 transcript of the hearing.

21 Finally, before we begin, it is my pleasure to
22 introduce Monica Jimenez, counsel for the State
23 Treasurer's Office.

24 Juliana, will you please call the roll?

25 MS. GMUR: Mr. Adams.

9

1 MEMBER ADAMS: Here.

2 MS. GMUR: Ms. Gallegos.

3 MEMBER GALLEGOS: Here.

4 MS. GMUR: Ms. Greene Ross.

5 MEMBER GREENE ROSS: Here.

6 MS. GMUR: Ms. Jimenez.

7 MEMBER JIMENEZ: Here.

8 MS. GMUR: Ms. Nash.

9 MEMBER NASH: Here.

10 MS. GMUR: Ms. Perrault.

11 CHAIRPERSON PERRAULT: Here.

12 MS. GMUR: Mr. Powell.

13 MEMBER POWELL: Here.

14 MS. GMUR: Madam Chair, we have a quorum.

15 CHAIRPERSON PERRAULT: Thank you so much.

16 All right. Our next item is Item 1, election of

17 officers of Personnel, Legislation, Litigation

18 Subcommittee appointments.

19 MS. GMUR: Thank you.

20 CHAIRPERSON PERRAULT: Oh, I said your -- I said

21 your line.

22 MS. GMUR: That's fine. Thank you, Madam Chair.

23 CHAIRPERSON PERRAULT: Okay. Let's move right

24 into nominations, shall we? I'm going to be smooth about

25 this.

10

1 Are there nominations for chairperson, and is
2 there motion for election of the new chairperson?

3 MEMBER ADAMS: Madam Chair, I would make a motion
4 to nominate the Director of Finance, Joe Stephenshaw, as
5 our chair.

6 CHAIRPERSON PERRAULT: Okay. There's been a
7 nomination by Mr. Adams for Director Stephenshaw,
8 Department of Finance, to remain as chair.

9 Are there any other alternate nominations?

10 Okay. Seeing none, then, is there a motion for --
11 oh, do I need to go -- oh, yeah. But do I need a motion
12 first? He did a nomination.

13 MEMBER ADAMS: That's a motion, yeah.

14 MS. GMUR: A nomination goes directly to vote.

15 CHAIRPERSON PERRAULT: I didn't know that. I
16 thought we had to do two -- I thought we did two last
17 year, two -- two things. Okay. Just covering our basis.

18 We have a nomination, which is also a motion. Do
19 we have a second?

20 MEMBER GREENE ROSS: Second.

21 CHAIRPERSON PERRAULT: Okay. Second by Ms. Greene
22 Ross. Can we please have a roll call.

23 MS. GMUR: Mr. Adams.

24 MEMBER ADAMS: Aye.

25 MS. GMUR: Ms. Gallegos.

11

1 MEMBER GALLEGOS: Aye.

2 MS. GMUR: Ms. Greene Ross.

3 MEMBER GREENE ROSS: Aye.

4 MS. GMUR: Ms. Jimenez.

5 MEMBER JIMENEZ: Aye.

6 MS. GMUR: Ms. Nash.

7 MEMBER NASH: Aye.

8 MS. GMUR: Ms. Perrault.

9 CHAIRPERSON PERRAULT: Aye.

10 MS. GMUR: Mr. Powell.

11 MEMBER POWELL: Aye.

12 CHAIRPERSON PERRAULT: Okay. That motion carries.

13 Okay. Let's move now onto vice chairperson. Are

14 there nominations for vice chairperson, and is there a

15 motion for election of the new vice chairperson?

16 MEMBER ADAMS: Madam Chair, I make a motion to

17 nominate Fiona Ma, the State Treasurer, as vice chair.

18 CHAIRPERSON PERRAULT: Okay. We have a motion by

19 Mr. Adams for Treasurer Fiona Ma to be the vice

20 chairperson.

21 Are there any other alternate -- alternate

22 nominations?

23 Okay. Seeing none, then that will act as the

24 motion. Is there a second?

25 MEMBER GREENE ROSS: Second.

12

1 MEMBER GALLEGOS: I second.

2 MEMBER GREENE ROSS: Oh.

3 CHAIRPERSON PERRAULT: Oh, okay. Well, second by
4 Ms. Gallegos.

5 If we could please have a roll call.

6 MS. GMUR: Mr. Adams.

7 MEMBER ADAMS: Aye.

8 MS. GMUR: Ms. Gallegos.

9 MEMBER GALLEGOS: Aye.

10 MS. GMUR: Ms. Greene Ross.

11 MEMBER GREENE ROSS: Aye.

12 MS. GMUR: Ms. Jimenez.

13 MEMBER JIMENEZ: Aye.

14 MS. GMUR: Ms. Nash.

15 MEMBER NASH: Aye.

16 MS. GMUR: Ms. Perrault.

17 CHAIRPERSON PERRAULT: Aye.

18 MS. GMUR: Mr. Powell.

19 MEMBER POWELL: Aye.

20 CHAIRPERSON PERRAULT: All right. That motion
21 carries and --

22 MS. GMUR: That brings us to the subcommittee
23 appointments, Madam Chair..

24 CHAIRPERSON PERRAULT: Okay.

25 MS. GMUR: Last year, the subcommittee members as 13

1 elected were, for the Personnel Subcommittee, Joe
2 Stephenshaw, Director of Finance, and Fiona Ma, State
3 Treasurer.

4 For the Legislation Subcommittee, Malia Cohen,
5 State Controller, and Lee Adams, County Supervisor,
6 Samuel Assefa, Office of the -- of Land Use and Climate
7 Innovation, Alternate.

8 And for the Litigation Subcommittee, Fiona Ma,
9 State Treasurer, Renee Nash, school board -- School
10 District Board Member, and Malia Cohen, State Controller,
11 Alternate.

12 CHAIRPERSON PERRAULT: Thank you. We may need a
13 reminder as we move through but --

14 MS. GMUR: My pleasure.

15 CHAIRPERSON PERRAULT: -- appreciate that.

16 All right. So let's go ahead and take up the
17 Personnel Subcommittee appointment first.

18 So are there nominations to the Personnel
19 Subcommittee, and is there a motion for appointment of
20 the Personnel Subcommittee members?

21 Remind me. That is -- currently it is Director of
22 Finance and --

23 MS. GMUR: State --

24 CHAIRPERSON PERRAULT: -- straight --

25 MS. GMUR: -- Treasurer.

14

1 CHAIRPERSON PERRAULT: -- State Treasurer.
2 Okay. I'll go ahead and nominate both of those
3 individuals to remain on the Personnel Subcommittee.
4 Are there any alternate nominations?
5 Seeing none, we'll take that as a motion.
6 Is there a second?
7 MEMBER ADAMS: I will second.
8 CHAIRPERSON PERRAULT: Okay. Seconded by
9 Mr. Adams.
10 So if we could please have a vote.
11 MS. GMUR: Mr. Adams.
12 MEMBER ADAMS: Aye.
13 MS. GMUR: Ms. Gallegos.
14 MEMBER GALLEGOS: Aye.
15 MS. GMUR: Ms. Greene Ross.
16 MEMBER GREENE ROSS: Aye.
17 MS. GMUR: Ms. Jimenez.
18 MEMBER JIMENEZ: Aye.
19 MS. GMUR: Ms. Nash.
20 MEMBER NASH: Aye.
21 MS. GMUR: Ms. Perrault.
22 CHAIRPERSON PERRAULT: Aye.
23 MS. GMUR: Mr. Powell.
24 MEMBER POWELL: Aye.
25 CHAIRPERSON PERRAULT: Okay. That motion carries. 15

1 Let's go ahead and now and take up -- oh, sorry.

2 MS. GMUR: It is the Legislation Subcommittee
3 next. Those members, just as a reminder, are the State
4 Controller and Lee Adams, County Supervisor, Office of
5 Land Use and Climate Innovation as the alternate.

6 CHAIRPERSON PERRAULT: As the alternate. Okay.

7 Okay. Are there any nominations to the
8 Legislation Subcommittee? Is there a motion for
9 appointment of the Legislative Subcommittee members?

10 MEMBER NASH: I'll move that the committee remain
11 the same as it is.

12 CHAIRPERSON PERRAULT: Okay. Is there any
13 alternate nominations to that?

14 Seeing none, we'll take that up as a motion. Is
15 there any questions?

16 Okay. Is there a second?

17 MEMBER GREENE ROSS: Second.

18 CHAIRPERSON PERRAULT: Second by Ms. Greene Ross.

19 If we could please have a roll call.

20 MS. GMUR: Mr. Adams.

21 MEMBER ADAMS: Aye.

22 MS. GMUR: Ms. Gallegos.

23 MEMBER GALLEGOS: Aye.

24 MS. GMUR: Ms. Greene Ross.

25 MEMBER GREENE ROSS: Aye.

16

1 MS. GMUR: Ms. Jimenez.
2 MEMBER JIMENEZ: Aye.
3 MS. GMUR: Ms. Nash.
4 MEMBER NASH: Aye.
5 MS. GMUR: Ms. Perrault.
6 CHAIRPERSON PERRAULT: Aye.
7 MS. GMUR: Mr. Powell.
8 MEMBER POWELL: Aye.
9 CHAIRPERSON PERRAULT: Okay. That motion carries.
10 MS. GMUR: And finally, the Litigation
11 Subcommittee. Currently it is the State Treasurer,
12 Ms. Nash, School District Board Member, and the State
13 Controller, alternate.
14 CHAIRPERSON PERRAULT: Okay. Thank you so much.
15 Are there any nominations to the Litigation
16 Subcommittee, and is there a motion for the appointment
17 of the Litigation Subcommittee members?
18 MEMBER GREENE ROSS: I move to reelect the same
19 committee members.
20 CHAIRPERSON PERRAULT: Okay. Is there any
21 alternate nominations or objections?
22 Okay.
23 MR. SUPACHANA: Madam Chair, I --
24 CHAIRPERSON PERRAULT: Yes, Dennis.
25 MR. SUPACHANA: I hate to interrupt, but I noticed 17

1 that Member Ross's microphone may not be on on the --

2 CHAIRPERSON PERRAULT: Oh.

3 MR. SUPACHANA: -- desk, and we can't hear her --

4 CHAIRPERSON PERRAULT: Oh.

5 MR. SUPACHANA: -- properly.

6 CHAIRPERSON PERRAULT: Thank you.

7 Would you go ahead and just repeat that motion,
8 then, please --

9 MEMBER GREENE ROSS: Yes. I move to reelect the
10 committee -- subcommittee members.

11 CHAIRPERSON PERRAULT: Okay. Is that better? Can
12 everybody hear now? Yes? Okay. Great.

13 So we have a motion to continue with the current
14 committee members. Seeing no alternate nominations and
15 no objections, is there any comments?

16 Okay. Is there a second to that motion?

17 MEMBER POWELL: Second.

18 CHAIRPERSON PERRAULT: Okay. We have a second.

19 If we could please have a roll call.

20 MS. GMUR: Mr. Adams.

21 MEMBER ADAMS: Aye.

22 MS. GMUR: Ms. Gallegos.

23 MEMBER GALLEGOS: Aye.

24 MS. GMUR: Ms. Greene Ross.

25 MEMBER GREENE ROSS: Aye.

18

1 MS. GMUR: Ms. Jimenez.
2 MEMBER JIMENEZ: Aye.
3 MS. GMUR: Ms. Nash.
4 MEMBER NASH: Aye.
5 MS. GMUR: Ms. Perrault.
6 CHAIRPERSON PERRAULT: Aye.
7 MS. GMUR: Mr. Powell.
8 MEMBER POWELL: Aye.
9 CHAIRPERSON PERRAULT: All right. That motion
10 carries. Thank you so much. We are now moving on, I
11 believe, to Item 2.
12 So are there any objections or addition -- this is
13 the minutes. Are there any objections to or additional
14 corrections to the December 5th, 2025, minutes?
15 Okay. Seeing none, are there any public comments
16 on this item?
17 MR. SUPACHANA: Madam Chair, there are no online
18 public comments.
19 CHAIRPERSON PERRAULT: And we have none here in
20 the room.
21 Is there any further discussion?
22 Okay. Seeing none, is there a motion to approve
23 the minutes?
24 MEMBER POWELL: I will so move to approve the
25 minutes.

19

1 CHAIRPERSON PERRAULT: Okay. It has been moved.
2 Is there a seconded -- second? Excuse me.
3 I'll go ahead and second.
4 If we could please have a roll call.
5 MS. GMUR: Mr. Adams.
6 MEMBER ADAMS: Aye.
7 MS. GMUR: Ms. Gallegos.
8 MEMBER GALLEGOS: Aye.
9 MS. GMUR: Ms. Greene Ross.
10 MEMBER GREENE ROSS: Aye.
11 MS. GMUR: Ms. Jimenez.
12 MEMBER JIMENEZ: Aye.
13 MS. GMUR: Ms. Nash.
14 MEMBER NASH: Abstain.
15 MS. GMUR: Ms. Perrault.
16 CHAIRPERSON PERRAULT: Aye.
17 MS. GMUR: Mr. Powell.
18 MEMBER POWELL: Aye.
19 CHAIRPERSON PERRAULT: That motion carries.
20 And we will now go ahead and take up public
21 comments for those matters not on the agenda.
22 Is there anybody that would like to speak and
23 provide public comment on items not agendised (phonetic)
24 today?
25 I see none in the room. Is there any online? 20

1 MR. SUPACHANA: Madam Chair, there are no public
2 comments online.

3 CHAIRPERSON PERRAULT: Okay. Okay. Hearing none,
4 we'll go ahead now and move on to our next item.

5 MS. GMUR: The swearing-in. There are no items
6 proposed for consent of this meeting, so we're moving
7 directly to swearing-in.

8 Will the parties and witnesses for Items 3, 4, 5,
9 6, and 7, participating remotely, please be sure that
10 both your first and last names are listed on your Zoom
11 window for the benefit of the court reporter; turn on
12 your video, and unmute your microphone.

13 And the parties and witnesses participating in
14 person for Item 4 please approach the witness table.

15 And all parties and witnesses please rise.

16 Beginning with Item 3, on behalf of the claimant,
17 the County of Los Angeles, participating remotely, please
18 state your names for the record.

19 MR. LEMUS: Hi. My name is Fernando Lemus. I am
20 the claimant representative for the County of Los
21 Angeles.

22 MS. WALSTON: Hi. My name is Tiffany Walston,
23 Deputy County Counsel. I am the claimant.

24 MS. GMUR: And now for the Department of Finance,
25 participating remotely, please state your name for the

21

1 record.

2 MR. HILL: Chris Hill, Department of Finance.

3 MS. YAP: Kaily Yap, Department of Finance.

4 MS. GMUR: Thank you.

5 Item 4, on behalf of the claimant, the County of
6 Santa Clara, participating in person, please state your
7 name for the record.

8 MR. NARAYAN: Good morning. My name is Rajiv
9 Narayan, Deputy County Counsel for the County of Santa
10 Clara, and I will be the claimant representative.

11 MS. GMUR: And now for the Department of Finance,
12 participating remotely, please state your names for the
13 record.

14 MR. HILL: Chris Hill, Department of Finance.

15 MS. YAP: Kaily Yap, Department of Finance.

16 MS. GMUR: Item 5, on behalf of the claimants,
17 participating remotely, please state your names for the
18 record.

19 MR. GEST: Howard Gest on behalf of the claimants.

20 MS. GMUR: And now for the Department of Finance,
21 participating remotely, please state your names for the
22 record.

23 MR. HILL: Chris Hill, Department of Finance.

24 MS. YAP: Kaily Yap, Department of Finance.

25 MS. GMUR: Item 6, on behalf of the claimant,

22

1 County of Los Angeles, participating remotely, please
2 state your names for the record.

3 MR. LEMUS: My name is Fernando Lemus. I am the
4 claimant representative for the County of Los Angeles.

5 MS. WALSTON: Tiffany Walston, Deputy County
6 Counsel for the County of Los Angeles. I am the claimant
7 representative.

8 MS. GMUR: And now for the Department of Finance,
9 participating remotely, please state your names for the
10 record.

11 MR. HILL: Chris Hill, Department of Finance.

12 MS. YAP: Kaily Yap, Department of Finance.

13 MS. GMUR: Item 7, on behalf of the claimant,
14 County of Santa Clara, participating remotely, please
15 state your names for the record.

16 MR. WALDEN: Good morning. I'm Joshua Walden,
17 Deputy County Counsel of County of Santa Clara. I'm
18 representing the claimant for Item 7.

19 MS. GMUR: And now the Department of Finance,
20 participating remotely, please state your name for the
21 record.

22 MR. HILL: Chris Hill, Department of Finance.

23 MS. YAP: Kaily Yap, Department of Finance.

24 MS. GMUR: Thank you.

25 Do you solemnly swear or affirm that the testimony 23

1 which you are about to give is true and correct, based on
2 your personal knowledge, information, or belief?

3 (Affirmative responses.)

4 MS. GMUR: Thank you. We now ask the presenters
5 participating remotely for Items 4, 5, 6, and 7 to please
6 turn off their video and mute their microphones.

7 And those presenting in person, please return to
8 your seat.

9 Next is Item 3.

10 Senior Commission Counsel Laura Dougherty will
11 please present a proposed decision on Stops:
12 Notification By Peace Officers, 24-TC-03.

13 MS. DOUGHERTY: Good morning.

14 Item 3 is a test claim alleging new state-mandated
15 activities and costs resulting from Vehicle Code
16 Section 2806.5 as amended in 2022. This code section
17 makes new requirements of peace officers who make a
18 traffic or pedestrian stop and intend to question a
19 detained driver, passenger or pedestrian.

20 Before engaging the questioning about a criminal
21 investigation or traffic violation, the officer must
22 state the reason for the stop. The officer must also
23 document the reason for the stop on any resulting
24 citation or police report. Exception exists when the
25 officer reasonably believes that withholding the reason 24

1 for the stop is necessary to protect life or property
2 from imminent threat such as in cases of terrorism and
3 kidnapping. Prior law required documenting the reason
4 for the stop under code sections concerning DUIs, which
5 are specified in proposed decision, but the test claim
6 statutes requirements are otherwise newly required.

7 Commission staff finds the test claim statute
8 imposes a reimbursable state-mandated program within the
9 meaning of Article XIII B, Section 6 of the California
10 Constitution and Government Code Section 17514 and
11 recommends the Commission approve this test claim
12 beginning July 1st, 2023, and authorize staff to make any
13 technical non-substantive changes to the proposed
14 decision following the hearing.

15 Thank you.

16 CHAIRPERSON PERRAULT: Thank you.

17 If the parties and witnesses would please state
18 your name for the record on this item.

19 MR. LEMUS: Sure. My name's Fernando Lemus, and
20 I'm the claimant representative for the County of Los
21 Angeles. And I'm here to say that we -- the County of
22 Los Angeles agrees with the Commission's decision.

23 CHAIRPERSON PERRAULT: Okay. Hold on. Hold on
24 one second --

25 MR. LEMUS: Oh.

25

1 CHAIRPERSON PERRAULT: -- Mr. --
2 MR. LEMUS: Sorry.
3 CHAIRPERSON PERRAULT: -- Lemus. No, no --
4 MR. LEMUS: Didn't mean --
5 CHAIRPERSON PERRAULT: -- that's okay.
6 MR. LEMUS: -- to get ahead of you.
7 CHAIRPERSON PERRAULT: I --
8 MR. LEMUS: I apologize.
9 CHAIRPERSON PERRAULT: I appreciate your
10 efficiency.
11 Do I also have a Ms. Walston also on -- online?
12 MS. WALSTON: Yes. Tiffany Walston, Deputy County
13 Counsel for the County of Los Angeles, and I am the
14 claimant representative.
15 CHAIRPERSON PERRAULT: Thank you so much.
16 All right. Now I will go back to whoever would
17 like to -- to start.
18 Mr. Lemus, if you have comments, or Ms. Walston,
19 go right ahead.
20 MR. LEMUS: Sure. I -- I was just stating that
21 the County of Los Angeles, we agree with the Commission's
22 decision.
23 CHAIRPERSON PERRAULT: Thank you.
24 Ms. Walston?
25 MS. WALSTON: Thank you. Thank you. Yes, I also 26

1 agree with the Commission's decision finding that the
2 test claim legislation is a new requirement and does
3 mandate additional costs for the -- this county.

4 CHAIRPERSON PERRAULT: Thank you so much.

5 Okay. Let me go ahead and turn -- Mr. Hill or
6 Ms. Yap from the Department of Finance, do you have any
7 additional comments?

8 MS. YAP: Kaily Yap, Department of Finance.
9 Finance has no comments on this matter. Thank you.

10 CHAIRPERSON PERRAULT: Okay. Thank you so much.

11 This, again, is Item Number 3. Is there any
12 public comment on this item?

13 Seeing none in the room, is there any online?

14 MR. SUPACHANA: Madam Chair, there is no public
15 comments online.

16 CHAIRPERSON PERRAULT: All right. Let me bring it
17 back to the Commission.

18 Are there any comments from commissioners or
19 questions?

20 Okay. Seeing none, is there a motion?

21 MEMBER POWELL: I will move to adopt the proposed
22 decision.

23 CHAIRPERSON PERRAULT: Okay. Move by Mr. Powell.

24 Is there a second?

25 MEMBER ADAMS: I will second.

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1 CHAIRPERSON PERRAULT: Seconded by Mr. Adams. If
2 we could please have a roll call.

3 MS. GMUR: Mr. Adams.

4 MEMBER ADAMS: Aye.

5 MS. GMUR: Ms. Gallegos.

6 MEMBER GALLEGOS: Aye.

7 MS. GMUR: Ms. Greene Ross.

8 MEMBER GREENE ROSS: Aye.

9 MS. GMUR: Ms. Jimenez.

10 MEMBER JIMENEZ: Aye.

11 MS. GMUR: Ms. Nash.

12 MEMBER NASH: Aye.

13 MS. GMUR: Ms. Perrault.

14 CHAIRPERSON PERRAULT: Aye.

15 MS. GMUR: Mr. Powell.

16 MEMBER POWELL: Aye.

17 THE COURT: All right. Thank you. That motion
18 carries.

19 CHAIRPERSON PERRAULT: We now ask the presenters
20 participating remotely for Item 3 to please turn off
21 their video, mute their microphones.

22 Next is Item 4. We now ask the presenters
23 participating remotely for Item 4 to please turn on their
24 video and unmute their microphones.

25 And those presenting in person, please come to the 28

1 table.

2 Senior Commission Counsel Laura Dougherty will
3 please present a revised proposed decision on child
4 physical abuse and neglect exams, 24-TC-05.

5 MS. DOUGHERTY: Good morning again.

6 Item 4 is a test claim alleging new state-mandated
7 activities and costs resulting from Penal Code
8 Section 11171(f), as amended in 2023. As of January 1st,
9 2024, this code section prohibits counties from billing a
10 child or the child's insurance for a child's physical
11 abuse or neglect medical exam.

12 An adjacent code section, Penal Code
13 Section 11171(g) created a system of state funding under
14 which county medical examiners are to submit invoices to
15 the California Office of Emergency Services; however, no
16 appropriation has been made. Prior to January 1st, 2024,
17 the counties billed the child's private insurance, if
18 available, and Medi-Cal or the state Victim Compensation
19 Board.

20 Commission staff recommends a partial approval of
21 this test claim, finding that Penal Code
22 Section 11171(f), as amended by the test claim statute,
23 imposes a reimbursable state-mandated program beginning
24 January 1st, 2024, on counties within the meaning of
25 Article XIII B, Section 6(c) of the California

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1 Constitution only for the costs incurred for child
2 physical abuse and neglect exams when the child is
3 eligible for Medi-Cal or Victim Compensation Board
4 coverage. These costs were previously borne by the state
5 and have been shifted to the counties under Article XIII
6 B, Section 6(c). Reimbursement is not required to the
7 extent the legislature appropriates funds for child
8 physical abuse and neglect exams under Penal Code Section
9 11171(g).

10 All other costs alleged are recommended for
11 denial.

12 Staff recommends the Commission partially approve
13 this test claim and authorize staff to make any technical
14 non-substantive changes to proposed decision following
15 the hearing.

16 Thank you.

17 CHAIRPERSON PERRAULT: Thank you so much.

18 If the parties and witnesses for Item 4 would
19 please state your name for the record.

20 MR. NARAYAN: Good morning. My name is Rajiv
21 Narayan. I am here representing the County of Santa
22 Clara, claimant in this action.

23 CHAIRPERSON PERRAULT: I apologize. I was looking
24 on the screen and didn't realize you were right in front
25 of me.

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1 Okay. Mr. Narayan, for the claimant, would you
2 like to begin?

3 MR. NARAYAN: Yes, I'd like to.

4 So I have some prepared remarks today, but before
5 that, I think it's important to express a deep amount of
6 gratitude to the Commission's staff and the Commission
7 for both putting together a very comprehensive proposed
8 decision and revised proposed decision that engages with
9 the issues. We submitted a number of comments, and we're
10 really grateful to the Commission staff for meeting us at
11 every stage to explain their reasoning. Of course, we
12 have some agreements that we'll go through today, but I
13 also want to express gratitude to the Commission for
14 wading through the many hundreds of pages and comments
15 and analyses that comprise the -- the test claim
16 decision.

17 So what I would like to do is provide a little bit
18 of background for the Commission about what the -- the
19 law does that will be helpful to understanding the scope
20 of my comments, and then I'll discuss what we believe to
21 be the key dispute between the claimant, County of Santa
22 Clara, and the Commission staff as to the revised
23 proposed decision.

24 So with that, let me first talk a little bit about
25 AB 1402. Counties provide child abuse exams to all child 31

1 victims who need them. That's a really important
2 function that we play. It's one that we take extremely
3 seriously. To that end, we agree with the proposed
4 decision where it states that fundamentally the rights of
5 children come first.

6 The duty that counties have across the state to
7 investigate and potentially prosecute or exercise child
8 welfare functions when there is a suspicion of child
9 abuse and neglect is one that we take extremely
10 seriously. That duty, as the test claim decision points
11 out, is mandated by a set of statutes that obligate
12 county public safety and child welfare agencies to act on
13 potential instances of child abuse and neglect.

14 So under the previous law, by which I mean before
15 AB 1402, counties were reimbursed for this important
16 duty, providing child abuse exams, through their fee
17 authority. We had the ability to bill Medi-Cal. We had
18 the ability to bill the Victims Compensation Board, and
19 we had the ability to bill private insurance. That's
20 part of what made our ability to provide the child abuse
21 exams a sustainable activity for counties across the
22 state.

23 So what did AB 1402 change? What AB 1402 does
24 principally is it prohibits counties from charging fees
25 for child abuse exams. Counties must now provide those

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1 exams free of charge. We can't charge Medi-Cal. We
2 cannot charge the Victims Compensation Board, and we
3 can't charge private medical insurance. There's no more
4 fee authority. By removing the fee authority, this --
5 the AB 1402 bill furthers an important state policy by
6 making these exams more accessible to child victims by
7 which I mean that there's one less barrier to child
8 victims for getting these exams.

9 So AB 1402 didn't initially saddle counties with
10 the bill for these exams, at least not in design.
11 Rather, it stated that these exams would be reimbursed by
12 the state subject to appropriation by the legislature.
13 Altogether, AB 140 [sic] said the counties can't charge a
14 fee, that the state, in turn, would step in and take the
15 bill, and that it would be easier, more accessible for
16 children to get these incredibly important exams.

17 So what did the legislature do after AB 1402?
18 What happened is that when AB 1402 went into effect
19 starting on January 1st, counties stopped charging a fee,
20 pursuant to law, and continued providing these child
21 abuse exams, but then, unfortunately, the legislature
22 declined to appropriate funding to reimburse the cost of
23 child abuse exams. So counties still provide these
24 exams, but we absorb the cost of AB 1402 because there's
25 no reimbursement from the state. We deem that to be an 33

1 unfunded mandate under the State Constitution, and,
2 accordingly, we filed the test claim that is now before
3 the Commission.

4 So what's our dispute today? In large part we
5 think that the proposed decision gets most everything
6 right. We have one gripe which is that it recommends
7 partial approval and it narrows approval to child abuse
8 exams rendered to children who are covered by Medi-Cal or
9 whose costs would otherwise have been compensated by the
10 Victims Compensation Board. In other words, the test
11 claim decision says that there is no reimbursement under
12 the law for child abuse exams rendered to children who
13 are covered by private medical insurance. That's the
14 part that we disagree with. We disagree with it
15 strenuously, and it's important to us to explain why.

16 So the claimants, of course -- the County of Santa
17 Clara and counties across the state -- treat every child
18 the same. That's our ethical commitment and what the law
19 demands. The law mandates providing these exams to all
20 children regardless of insurance. This distinction
21 between insurance status does not appear anywhere in the
22 law. It doesn't appear in the duties that are imposed
23 upon public safety operators and child welfare agencies
24 to investigate and prosecute instances of child abuse.
25 It doesn't appear in Penal Code Section 11171 that

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1 outlines the scope of these exams, doesn't appear
2 anywhere. Rather, it's the revised proposed decision
3 that distinguishes, discriminates, on the basis of
4 insurance status when it comes to recommending
5 reimbursement for one set of exams, you know, those who
6 would otherwise have been compensated by Medi-Cal and the
7 Victims Compensation Board, and not for another set of
8 exams, those that would have been compensated by private
9 insurance.

10 So what are we asking for? What we request is for
11 the Commission to direct staff to amend the revised
12 proposed decision to treat all child abuse exams equally
13 regardless of insurance status. In other words, what we
14 are asking for is for the amended proposed decision to be
15 a full approval rather than a partial approval.

16 I think what would be helpful is to zero in on
17 exactly what that legal dispute is between the county and
18 the revised proposed decision. What the proposed
19 decision says is that child abuse exams rendered to child
20 victims covered by private medical insurance do not
21 constitute a new program or higher level of service.
22 That's a phrase I'm sure the Commission has heard a lot,
23 so let me unpack that.

24 The revised proposed decision makes three claims
25 to support that determination.

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1 First, it says that no new activity is required by
2 the test claim statute as to those exams rendered to kids
3 with private medical insurance.

4 Two, the state has not shifted costs which were
5 previously its responsibility.

6 And three, increased costs alone do not constitute
7 a reimbursable mandate.

8 We disagree with each of these, and it's important
9 for us to explain why.

10 So claim one, no new activity required by the test
11 claim statute as to exams rendered to kids with private
12 medical insurance.

13 The County of Santa Clara continues to argue that
14 the new activity in this test claim is providing these
15 exams free of charge. Plain and simple. This is the
16 same new activity, the same new program that the proposed
17 decision reimburses for child victims who do have
18 Medi-Cal coverage and whose costs would have been covered
19 by the Victims Compensation Board. It's difficult for us
20 to understand how one test claim statute can impose two
21 programs, one that is new and one that is not new. So we
22 believe that there is a new activity. It's one that
23 covers all child abuse exams regardless of insurance
24 status.

25 So claim number two, the state has not shifted

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1 costs which were previously its responsibility.

2 Again, the county would argue that the state has
3 shifted costs by declining to reimburse these exams after
4 acting -- after enacting, rather, AB 1402. The proposed
5 decision seems to argue that the fact that there -- there
6 was reimbursement prior to AB 1402 means that the state
7 previously took responsibility only for one set of exams,
8 those that were reimbursed by Medi-Cal and those that
9 were reimbursed by the Victims Compensation Board. We
10 disagree with that.

11 As the proposed decision itself states, child
12 abuse exams are mandated regardless of the child's
13 insurance status. The state didn't mandate these exams
14 and take responsibility for only one set of them. What
15 happened, instead, is that the state mandated all of
16 these exams and provided fee authority to counties so
17 that counties could recoup their costs under this mandate
18 from various sources: Medi-Cal, the Victims Compensation
19 Board, and private medical insurance. Where the state
20 actually assumed responsibility for these exams is with
21 the passage of AB 1402, the test claim statute, when it
22 declared that exams would be free and that the state
23 would reimburse them, subject to appropriation. That
24 assumption of responsibility itself does not discriminate
25 by a child's insurance status either.

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1 Claim number three, the cost of child abuse exams
2 rendered to kids with private insurance alone are only
3 increase costs and don't constitute a reimbursable
4 mandate.

5 Here, again, it's unclear to the county how this
6 logic applies to exams rendered to child victims who have
7 private medical insurance and does not apply to exams
8 rendered to child victims who are covered by Medi-Cal or
9 the Victims Compensation Board. So in this case we would
10 ask why is it that AB 1402 only creates increased costs
11 for one set of exams and a fully reimbursable mandate for
12 another set of exams? Both exam sets, regardless of
13 insurance status, constitute the same new program, and,
14 moreover, they're not increased costs, but they all
15 constitute a higher level of service.

16 So to drill down even further on this point, the
17 county disagrees with how the proposed decision purports
18 to apply case law on this point. The proposed decision
19 cites the City of San Jose case which says, for the
20 record, at page 1816 -- and here I'm quoting --
21 Section 6, the State Constitutional provision, was not
22 intended to entitled local entities to reimbursement for
23 all increased costs resulting from legislative
24 enactments, but only those costs mandated by a new
25 program or an increased level of service imposed upon

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1 them by the state, end quote. So far, so good. That's
2 what the revised proposed decision quotes.

3 However, that analysis in the City of San Jose
4 case goes further. The very next sentence states -- and
5 I'm quoting again -- Section 6 cannot be interpreted to
6 apply to general legislation which has an incidental
7 impact on local agency costs, end quote. For that
8 statement, the City of San Jose case relies on two other
9 cases, Lucia Mar Unified School District versus Honig in
10 1988 and the County of Los Angeles versus the State of
11 California from 1987. The relevant section of Lucia Mar
12 explains this principle by reference to the County of Los
13 Angeles decision. So to save time, I'm just going to
14 quote Lucia Mar at page 835. And, again, I'm quoting
15 here. In keeping with this principle, we recently held
16 in the County of Los Angeles that legislation requiring
17 local governments and other employers to increase certain
18 Workers' Compensation benefits did not invoke this
19 subvention requirement because the state mandate did not
20 provide for a program. We reasoned that the additional
21 expense to the local agency mandated by the legislation
22 arose as an incidental impact of a law which applied
23 generally to all state residents and entities, and this
24 type of expense was not what the voters had in mind when
25 they adopted Section 6 of Article XIII B, end quote.

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1 So that principle, we would say, doesn't fit the
2 facts here. As we pled in the test claim, the increased
3 level of service is clear, providing exams that were
4 formerly billed free of charge to enhance access to child
5 abuse exams. The fact that these exams are free is not
6 incidental. That is the whole point of the test claim
7 statute. The fact that these exams are free is also not
8 general legislation. It doesn't apply to every entity in
9 the state. It applies particularly to counties that
10 provide these exams, that are mandated to provide these
11 exams.

12 The reason why the court of appeal in these
13 decisions focus on incidental impacts is found in the
14 text of the Constitution. So reimbursement is proper not
15 just for new programs, but also for an increased level of
16 service. What that means is that increased costs can and
17 often do constitute reimbursable mandates as long as they
18 come with an increased level of service. We have here an
19 increased level of service and increased level of service
20 for providing these child abuse exams in a way that
21 enhances access by removing the costs. That is not an
22 increased cost alone; it is an enhanced level of service.

23 So those are the brief points that underlie the
24 dispute that we have with the revised proposed decision
25 as to its findings on child abuse exams that are rendered 40

1 to kids with private medical insurance.

2 I do want to make two other points briefly, that
3 the revised proposed decision adds to the record.

4 The first is that in the revised proposed decision
5 there's a new argument that we saw for the first time
6 since we filed this test claim in December 2024. The
7 Commission staff argues that its hands are tied because
8 the counties test claim pled subdivision (f) of Penal
9 Code Section 11171 rather than all of Penal Code
10 Section 11171, as mandated by AB 1402. Just to be clear,
11 subdivision (f) is that subdivision that says you can no
12 longer charge for child abuse exams. So what the revised
13 proposed decision basically says is that if only the
14 county had pled the right test claim statute, the
15 Commission could have taken jurisdiction and made
16 findings on the activities required by the 2002 statute
17 and the costs incurred under the 2023 amendment. Because
18 the county didn't do this, the deadline for amending the
19 test claim has passed and the -- we can no longer
20 consider all of Section 11171. So we have some concerns
21 about that finding.

22 First, this argument, we believe, is inconsistent
23 with the proposed decision's findings about the
24 reimbursable mandate. The proposed decision says, and,
25 of course, the county agrees, that the underlying duty to 41

1 provide child abuse exams is not compelled by Penal Code
2 Section 11171 itself, but the full panoply of public
3 safety and child welfare laws that practically compel
4 counties to investigate claims of child abuse. The set
5 of laws the proposed decision references actually does
6 include Section 11171, so it appears that the proposed
7 decision does analyze the statute notwithstanding its
8 claim that the county failed to plead the entirety of
9 Section 11171.

10 In any case, the duty to investigate child abuse
11 and neglect extends to all cases of child abuse and
12 neglect. It does not discriminate on the basis of
13 insurance status. In other words, this new claim in the
14 revised proposed decision is one that we disagree with.
15 The Commission doesn't need to take jurisdiction of Penal
16 Code 11171 as a whole to find a reimbursable mandate for
17 child abuse exams rendered to kids covered by private
18 medical insurance. I mean, by the proposed decision's
19 logic, taking jurisdiction of Section 11171 would not
20 actually change the analysis here.

21 We have another more procedural concern about this
22 argument. The revised proposed decision seems to suggest
23 that the county should have pled the full statute when we
24 only pled a subdivision. We're a little disappointed by
25 that finding in the administrative record because the

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1 county did, in fact, plead all of Penal Code
2 Section 11171 when we first filed the test claim in
3 December of 2024. We thought this was the best way to
4 capture the full effect of the statute as it was amended
5 by AB 1402.

6 On January 17, 2025, the Commission issued a
7 notice of incomplete test claim, informing the county
8 that its decision to plead the entirety of Section 11171
9 was inconsistent with the argument that we make in the
10 test claim narrative and where we describe costs of the
11 test claim statute. So relying on the good faith of the
12 Commission, we thought that the best way to revise the
13 test claim statute is just to narrow the focus to
14 subdivision (f) to clean up the issues, and more than a
15 year later, the revised proposed decision essentially
16 says that we chose to plead the wrong test claim statute,
17 which we find a little puzzling. And the reason why I'm
18 mentioning this isn't just to, you know, present a
19 procedural gripe; it's because that notice of incomplete
20 test claim doesn't actually appear on the public docket,
21 so it's important for us to -- to note this for the
22 record to acknowledge that there was a change in what the
23 test claim pleaded from its initial filing to its
24 revision.

25 Last point because I've held you here long enough: 43

1 We informed the Commission in our -- our final
2 comment to the proposed decision that the distinction
3 between Medi-Cal and private medical insurance creates
4 uncertainty about Medi-Cal regulations, and this is
5 because Medi-Cal regulations include what folks call a
6 discriminatory billing provision which states that
7 providers like the county cannot -- quoting again here,
8 for the record -- We cannot submit a claim for
9 reimbursement for the rendering of health care services
10 to a Medi-Cal beneficiary in any amount greater or higher
11 than the usual fee charged by a provider to the general
12 public for the same service, end quote.

13 AB 1402 prohibits the county for charging the
14 general public anything for child abuse exams, so the
15 charge to private medical insurance is \$0. If the charge
16 to private medical insurance is \$0 and the proposed
17 decision approves reimbursement for exams rendered to
18 Medi-Cal beneficiaries, the Commission would
19 inadvertently put counties in the position of charging
20 private medical insurance nothing while seeking
21 reimbursement for services rendered to Medi-Cal
22 beneficiaries. We are concerned that this would seem to
23 violate the discriminatory billing provision which is to
24 say that it's unclear that we could even seek
25 reimbursement for any exams, period, with this poisoned 44

1 pill in the proposed decision that distinguishes
2 reimbursement on insurance status.

3 The revised proposed decision does deal with this
4 issue, but it says that the Commission doesn't have
5 jurisdiction to address Medi-Cal billing regulations,
6 and, quote, Such discussion is irrelevant given that the
7 test claim statute prohibits billing for exams. We are
8 concerned about that finding because this is a problem
9 created by the revised proposed decision by the proposed
10 decision itself. I want to be clear on this, that no
11 party has called for the distinction on the basis of
12 insurance status, certainly not the claimant, not the
13 Department of Finance, no other county, and no other
14 interested party. It -- it's a distinction that appears
15 for the first time in the proposed decision itself.

16 So to conclude, the county believes that the
17 proposed decision gets most everything right. We don't
18 want to take that away from the proposed decision, but we
19 do believe that it errs deeply as to the distinction
20 between Medi-Cal and private medical insurance. That
21 distinction, we believe, is unnecessary and inconsistent
22 with the remainder of the proposed decision, and it
23 creates legal uncertainties that threaten to jeopardize
24 all reimbursements across the board.

25 We respectfully request that the Commission direct 45

1 staff to amend the proposed decision so that it treats
2 all child abuse exams the same. Thank you.

3 CHAIRPERSON PERRAULT: Thank you so much.

4 Before I go to Department of Finance, let me bring
5 it back to Commission staff, or do you want to hold until
6 after -- until after Finance?

7 MS. DOUGHERTY: I -- I can comment at least
8 briefly to give some perspective --

9 CHAIRPERSON PERRAULT: Okay.

10 MS. DOUGHERTY: -- here.

11 CHAIRPERSON PERRAULT: Thank you. That would be
12 helpful.

13 MS. DOUGHERTY: This is -- this is an unusual test
14 claim. It's -- it's under Section 6(c) of Article XIII B
15 and we're almost always under Section 6(a). So there is
16 no finding of a new activity necessary to be under 6(c),
17 and there is no new activity here. The exams are the
18 same. They've been going on for over 20 years. We're
19 under 6(c) because we can now use that to recognize a
20 shift in costs in financial responsibility from the state
21 to the local governments, and the plain summary of this
22 test claim would be that there has been a shift from
23 where the state used to pay under Medi-Cal and the Victim
24 Compensation Board, but there is no shift from private
25 insurance to the counties that can be recognized under

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1 the State Constitution because private insurance is not
2 the state.

3 So that's -- that's a summary of -- of the key
4 distinction of this entire claim.

5 I could comment on other specifics right now, if
6 you like, or we could get back to that after Finance.

7 MS. SHELTON: Can I also just --

8 CHAIRPERSON PERRAULT: Yes.

9 MS. SHELTON: -- clarify the state of the law?
10 You know, before Section 6(c) was even added by the
11 voters in 2004, the only way the courts have found a
12 reimbursable state-mandated program is, one, if the state
13 is imposing new activities that constitute a new program
14 or a higher level of service. And, as Laura said, there
15 are no new activities here. Child abuse exams have been
16 the same since 2002.

17 The other way that they did allow for
18 reimbursement even before Prop 1A was if the state had
19 full administrative control of the program, meaning that
20 they fully implemented the program and also fully paid
21 for the program, and shifted that whole thing over to
22 local government. That was the case in Lucia Mar,
23 dealing with special ed -- certain class of special ed
24 cases, and then also with County of San Diego, dealing
25 with the medically indigent adult cases.

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1 There was a case dealing with the educational
2 Revenue Augmentation Fund, County of Sonoma, where the
3 counties were trying to raise the same shift argument
4 where in that case the legislation reduced certain tax
5 revenues of counties and shifted that portion of tax
6 revenues to satisfy the state's Prop 98 requirement.
7 There, the Court found, well, that's not a shift because
8 schools are paid for by both the state and school
9 district local money. So the decisions of Lucia Mar and
10 County of San Diego don't work.

11 So, at that point, there's when there was a
12 negotiated agreement for a resolution that went before
13 the voters to add Section 6(c) which says there is now a
14 new program or higher level of service for counties and
15 cities only whenever the state shifts partial costs over
16 to the -- to the counties. So you don't have to have new
17 activities, but if the state, before the enactment of the
18 test claim statute, passed the responsibility for a
19 partial -- a portion of those costs and they shifted over
20 to local government, then that portion would be eligible
21 for reimbursement.

22 So you can't -- there -- it's clear here there are
23 no new activities so -- and it's clear that the state did
24 not pay for private insurance before, so there's no way
25 for us to get to that point. And we can't do equity. If 48

1 there is an issue with Medi-Cal billing, that would have
2 to be something for legislation. It's not how Article
3 XIII, Section 6 works.

4 CHAIRPERSON PERRAULT: Thank you.

5 Ms. Greene Ross, you had a comment. Do you want
6 to make your comment now, or shall I have Department of
7 Finance do theirs first?

8 MEMBER GREENE ROSS: I just had a question.

9 CHAIRPERSON PERRAULT: Okay. Go right ahead.
10 Yes.

11 MEMBER GREENE ROSS: I guess I'm trying to under
12 -- wrap my head around everything you're saying but
13 getting back up to the actual statute and the history and
14 the reason for it, and it sounded to me like it was
15 requiring what claimant alleges, that they're not
16 supposed to bill for anything because the state's going
17 to pay. So, first of all, I don't understand why the
18 legislature, when they did that, didn't appropriate.

19 MS. SHELTON: It happens.

20 MEMBER GREENE ROSS: More finance? Yeah. I'd
21 like that answer, but I know it's not really relevant but
22 -- because here we are, but, again, I'm just trying to --
23 taking what you're saying, I still want to understand the
24 plain language of the statute, seems to have required
25 them not to bill for whoever was paying.

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1 MS. SHELTON: So the services are exactly the same
2 before and after. The only change was that they can't
3 bill directly or indirectly the victim, meaning they
4 can't bill the insurance anymore because the state was
5 supposed to pick up the tab. The state has not yet
6 picked up the tab. So the County of Los Angeles case
7 that the county was just mentioning, the 1987 case, you
8 know, in that case the Court made it a big deal that we
9 can no longer, with the enactment of Article XIII B,
10 Section 6 into the California Constitution, compared to
11 prior Revenue and Taxation Code statutes that addressed a
12 mandate scheme. The old Rev and Tax Code statutes did
13 equate increased costs with reimbursement under those
14 statutes, and the Supreme Court said, "No, they're not
15 the same. You cannot, you know, equate increased costs
16 with what a new program or higher level of service is --
17 is."

18 So here, we have no new activities. There's
19 nothing new that they're doing. The only -- we agree
20 they have increased costs, but increased costs alone, as
21 the courts have repeatedly said, does not mean that you
22 get reimbursement. You have to satisfy all the elements.
23 Here, under the portion that used to be paid for by
24 private insurance, there's no new activity, and there's
25 new shift of cost from the state because the state didn't 50

1 pay that before.

2 MS. GREENE ROSS: But they're legally prohibited
3 by the statute from billing private insurance?

4 MS. SHELTON: Correct.

5 MEMBER GREENE ROSS: So it sounds like a
6 legislative fix might be required.

7 MS. DOUGHERTY: That's exactly right. The -- the
8 solution that the claimant is seeking here is in the
9 legislature's hands or in the -- in the citizens' hands
10 to call their representatives and say, "Hey, this is
11 upsetting. Please -- please finish what you started."
12 That's where we are. Exactly.

13 MS. SHELTON: Yeah. Just -- Article XIII B,
14 Section 6 has to be applied as a question of law and not
15 a question of equity, and so we can't fix it as a matter
16 of equity.

17 CHAIRPERSON PERRAULT: Additional questions?
18 Okay.

19 Mr. Adams?

20 MEMBER ADAMS: I don't know if we're going to have
21 anymore staff --

22 CHAIRPERSON PERRAULT: Well --

23 MEMBER ADAMS: -- input before we --

24 CHAIRPERSON PERRAULT: Well, and I also still need
25 to go to the Department of Finance --

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1 MEMBER ADAMS: Yeah. So -

2 CHAIRPERSON PERRAULT: -- so --

3 MEMBER ADAMS: -- I'll wait.

4 CHAIRPERSON PERRAULT: Oh, you want to -- okay.

5 Let -- let -- let's do that. Let's -- and then -- and

6 then we can bring it back to the Commission for

7 additional questions.

8 Okay. Mr. Hill and Ms. Yap from Department of
9 Finance, do you have any comments?

10 MS. YAP: Finance has no comments on this matter.

11 Thank you.

12 CHAIRPERSON PERRAULT: Okay. Thank you so much.

13 Okay. Thank you. I just wanted to make sure we

14 got through all of our witnesses first. Now let me go

15 ahead and -- and bring it back to the Commission.

16 Mr. Adams, go ahead.

17 MEMBER ADAMS: Thank you.

18 First I want to say I am absolutely embarrassed

19 that we ever charged victims' insurance. I find that

20 just unbelievably outrageous that -- what victims go

21 through and then their private insurance was hit.

22 Unbelievable.

23 As I sit here as a county rep, what's frustrating

24 to me is that counties cannot escape these new costs

25 shift. I understand that these are not costs shift from 52

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The state, but this legislation has closed a road for the counties to get reimbursement, and I agree that road should have never been opened. They should have never been able.

I'm also, once again, frustrated that I understand our sideboards, and as I've sat here for a number of years, I don't know how to get somebody's attention that these sideboards are awful. We're not the Commission on State Mandates; we're the Commission on Sometimes State Mandates. This is obviously something the state has put in. The counties cannot escape it. They're getting the costs, and then, again, it takes a legislative fix, and I don't know at what point do I do a protest vote just to try and get somebody's attention that this is not right. This has to be changed.

MS. SHELTON: Can I also just mention -- because I think that the county was maybe misunderstanding our point in the revised proposed decision -- there is a remedy here, and it's in Government Code Section 17551 which allows you to plead older statutes as long as you're first incurring costs within one year of filing a test claim.

So this would have changed had the county pled the 2002 statute as a whole because that's when 11171 was

1 added. Then we would have -- all of those activities
2 would be new. The child abuse activities would be new,
3 and we would be able to, you know, propose a decision
4 recommending reimbursement for all of it.

5 MEMBER ADAMS: Is the response to the comment that
6 they did plead it a certain way and it was suggested do
7 it a different way?

8 MS. SHELTON: No. They never pled the 2002
9 statute. That's the point we're making here. You know,
10 if -- I don't know what -- when our back-and-forth
11 between the completeness review -- that sounded like the
12 whole section, the whole code section, versus
13 subdivisions on the 2023 or 2024 statute. I'm talking
14 about pleading the 20 -- 2002 statute. They could have
15 done that, and that's the whole point when the
16 legislature amended 17551, to allow you to do that.
17 Whenever the legislature takes away money from you, you
18 can, you know, plead the old statute and, you know, say
19 that I -- "We just first incurred costs because of this
20 2023 statute." That was the whole point of that
21 amendment.

22 So there was a remedy, but there's nothing that we
23 can do about it anymore because the last chance for a
24 claimant to amended their claim was before the matter is
25 set for hearing, and the matter is set for hearing when 54

1 the draft goes out.

2 CHAIRPERSON PERRAULT: All right. Thank you.

3 Other comments from commissioners?

4 MEMBER POWELL: I have a --

5 CHAIRPERSON PERRAULT: Oh.

6 MEMBER POWELL: -- question. Sorry.

7 CHAIRPERSON PERRAULT: Okay. And then -- yes.

8 After Mr. Powell, we'll go to Ms. Gallegos.

9 Go ahead, Mr. Powell.

10 MEMBER POWELL: So I see -- maybe this is just the
11 error of reading statutes in a vacuum --

12 MR. SUPACHANA: Pardon my interruption. I cannot
13 hear Mr. Powell.

14 MEMBER POWELL: Sorry about that. In Section (g)
15 there is a sentence bolded helpfully that -- that says,
16 "The costs associated with these medical evidentiary
17 exams shall be funded by the state subject to
18 appropriation by the legislature," and that's a full
19 sentence. I -- I don't see in that section a discussion
20 about private insurance, be it Medicare or Medi-Cal or
21 Victim Compensation Board, and so I'm just a little
22 confused why that -- you know, "The costs associated with
23 these medical and evidentiary exams shall be funded" is
24 now, under the proposed decision, "not shall be funded
25 entirely."

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1 MS. SHELTON: I'm going to let Laura just explain
2 how this worked with the funding, and it was in forms
3 from Cal OES that are not actually pled, but they're part
4 of the program. But the legislature -- (g) is still
5 applicable. The legislature can still appropriate money,
6 and, you know, there's nothing that we can do about that.

7 MEMBER POWELL: If they appropriate money --

8 MS. SHELTON: Then the --

9 MEMBER POWELL: -- the county then can claim that
10 money for private insurance exams or if it's zero --

11 MS. SHELTON: Under -- no. Under the decision,
12 you're reimbursing the portion of when a child is --
13 was -- is eligible for Medi-Cal or Victims Compensation
14 payment for that.

15 If there's an appropriation from the legislature
16 for all of the child abuse and neglect exams, then
17 there's no reimbursement because they -- unless they
18 short it, unless they cut it short. We can't --

19 MS. DOUGHERTY: Was your question what would
20 happen if the legislature does appropriate funding?

21 MEMBER POWELL: Tomorrow they appropriate as much
22 money as necessary.

23 MS. DOUGHERTY: Then -- then all of the exams
24 could be reimbursed through Cal OES, as written.

25 MEMBER POWELL: But part of the issue --

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1 MS. DOUGHERTY: So --

2 MEMBER POWELL: -- is the -- the failure to
3 appropriate --

4 MS. DOUGHERTY: There's a --

5 MEMBER POWELL: -- funds?

6 MS. DOUGHERTY: The failure to appropriate is --
7 is the problem, so this claim came here, but being under
8 Section 6(c), we can only address what the state has
9 shifted from itself to the counties.

10 MS. SHELTON: And there's a lot of case law. We
11 can't force the legislature to make an appropriation.

12 CHAIRPERSON PERRAULT: Hold -- hold on.

13 Okay. Let -- let me go to Ms. Gallegos, please,
14 first, and then Mr. Adams.

15 MEMBER GALLEGOS: Yeah. Just a quick question.
16 Could you explain who is covered by the Victims
17 Compensation Board and why all participants or -- or
18 people who have had exams would not be covered by one of
19 the two, Medi-Cal or Victims Compensation Board?

20 MS. DOUGHERTY: My understanding of the Victim
21 Compensation Board is that it's sort of a -- a backup
22 system for children who, for whatever reason, are not
23 fully insured by Medi-Cal. But as far as the -- the
24 primary distinction in here between the private insurance
25 and anything the state covers is -- is statutory. It is 57

1 in the Welfare and Institutions Code that if the child
2 has private -- if anyone has private insurance, the state
3 will not be paying for their medical expenses. So the --
4 that line is just black and white.

5 Does that answer your question?

6 CHAIRPERSON PERRAULT: Mr. Adams.

7 MEMBER ADAMS: Just to comment on the legislative
8 appropriating money, they certainly have and then there's
9 also that little issue where in budgets the
10 administration will suspend mandate payments, which is
11 another frustrating accounting.

12 I would hope that this goes to -- to a court that
13 a judge would, at some point, say, "These should have
14 never been billed to private insurance. Never, never,
15 never. This was -- always should have been a public cost
16 and, therefore, darn it, State, you should be paying for
17 all of them now."

18 CHAIRPERSON PERRAULT: Thank you.

19 All right. Other comments? Ms. Nash.

20 MEMBER NASH: I just want to say I share
21 Mr. Adams' feelings and concerns and frustrations about
22 the situation. I understand the state of the law and
23 that our -- our hands are tied. I appreciate staff's
24 careful explanation of the law, but this is one where I'm
25 very frustrated.

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1 CHAIRPERSON PERRAULT: Okay. Other comments or
2 questions?

3 MEMBER GREENE ROSS: I third that motion. Thank
4 you.

5 CHAIRPERSON PERRAULT: Okay.

6 MR. NARAYAN: Honorable Chair, may I make a brief
7 comment? I'm happy to --

8 CHAIRPERSON PERRAULT: Very --

9 MR. NARAYAN: -- wait.

10 CHAIRPERSON PERRAULT: Very briefly, please. Very
11 briefly.

12 MR. NARAYAN: Okay. I just want to say that --
13 two principles here.

14 One is that that if this seems odd to the
15 Commission, it's because it is. At a very high level,
16 what's happening in the test claim statute is that
17 counties have a duty to do something. Previously there
18 was fee authority to do it. State takes away the fee
19 authority. We still have to do this activity because
20 it's a duty. We can no longer charge. It's a state
21 mandate.

22 In this case, if it seems like there is some sort
23 of a loophole that the legislature can only fix, that is
24 a correct reading of the problem here, and that problem
25 is unconstitutional. The fix is by the Commission, not

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1 by the legislature because the legislature took away the
2 fee authority of counties and accrued to itself the
3 ability to pass on the costs to counties that have to
4 subsidize these exams. What we're arguing here is that
5 there is a new activity, there is a new program. That
6 new activity, that new program is providing these exams
7 free of charge. That was not something that counties had
8 to do prior to the enactment of AB 1402.

9 To the extent that the proposed decision tries to
10 characterize the test claim as Article XIII B, Section
11 6(c) issue, we disagree strenuously. That is one basis
12 upon which an activity can constitute an unfunded state
13 mandate, but it is not the primary basis. The primary
14 basis is the finding of a new program or higher level of
15 service. That's the way that the County of Santa Clara
16 pled the test claim statute. In the law there's this
17 principle that the plaintiff is the master of their
18 complaint. We pled this as a new activity and a new
19 program, not as a mere transfer of state responsibility.
20 We think that's happening too, but the primary issue here
21 is that there is a new program, there is a new activity,
22 and it's one that does not distinguish on the basis of
23 insurance status.

24 CHAIRPERSON PERRAULT: Thank you for being brief.

25 Let me just comment. I -- I'm not sure that I

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1 agree that this is a new activity. It's a new funding
2 source that has to -- responsibility for paying for that
3 activities, but the activity itself, in and of itself, I
4 don't think is new.

5 I will just note, you know -- again, you know,
6 I -- I echo and understand the frustration of my fellow
7 commissioners on this issue. Unfortunately, oftentimes
8 we see the legislature pass bills upon appropriation.
9 More times than not we would like to not see that happen,
10 but they do. Many times that that is -- you know,
11 there's -- there's some -- again, I won't get into the
12 politics and the tactics around that, but it happens
13 frequently. As you can imagine, there then becomes a
14 balance of if -- if the state was to fund every
15 legislation that came through upon appropriation, the
16 state -- it -- it's untenable. They couldn't. The state
17 doesn't have that -- that funding source.

18 So -- so I hear your frustration, and I think that
19 it -- it is an activity, and the legislature does
20 squarely have the responsibility during the -- the fiscal
21 budget process time to make -- you know, make the
22 appropriation of this a priority. I think that -- to
23 your point, Mr. Adams, you know, if they're going to pass
24 a bill that they believe ties the hands of counties, that
25 they should fight for that as part of the budget process, 61

1 but it's an unfortunate sort of impact that we're having
2 before us as a result, I think, of legislative activity
3 and -- and the budgetary -- overall budgetary process
4 that, you know, again, the legislature owns a portion of
5 along with administration.

6 But I -- but I will just say I don't -- I don't
7 personally believe this is a new activity and -- and
8 unfortunately I don't know -- you know, again, to
9 Ms. Nash's comments, you know, I think our hands are a
10 little bit tied. We have to make a rendering based on
11 what's within our purview to do so, and I --
12 unfortunately, I don't think this is something the
13 Commission can -- can stand behind as an actual mandate
14 because of new activity or otherwise. I do believe it's
15 something that the legislature, along with the
16 administration, has to work through to fund
17 appropriately.

18 So I'll just end with that. I don't know -- I
19 want to go back to our attorneys if we have any
20 additional last comments, otherwise I'm going to bring it
21 back for a motion.

22 MS. SHELTON: Madam --

23 MR. SUPACHANA: Madam Chair --

24 CHAIRPERSON PERRAULT: Yes.

25 MR. SUPACHANA: Sorry. I apologize.

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1 CHAIRPERSON PERRAULT: Yes. I'll just --

2 MR. SUPACHANA: Just --

3 CHAIRPERSON PERRAULT: Yes. Just one second --

4 MR. SUPACHANA: Thank you.

5 CHAIRPERSON PERRAULT: -- Dennis.

6 Yes.

7 MS. SHELTON: Oh, just to -- I want local
8 government to really understand 17551 and how it was
9 amended for your benefit to assist in these kinds of
10 cases when a program is old and the state takes away
11 money. You can plead that, and so just know that's
12 available. And, again, had that been done, we would have
13 been able to recommend approval for the whole thing.

14 CHAIRPERSON PERRAULT: Thank you so much. I
15 appreciate that.

16 Okay. Before I move it back to the Commission to
17 see if there's a motion, is there any public comments?
18 And, again, we are on Item 4. Are there any public
19 comments on Item 4? I see none in the room.

20 Are there any online, Dennis?

21 MR. SUPACHANA: No, there are no public comments
22 online, Madam Chair.

23 CHAIRPERSON PERRAULT: Thank you so much.

24 Okay. With that, are there any -- is there a
25 motion to approve staff recommendation or otherwise?

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1 MEMBER NASH: I'll make a motion to approve the
2 staff recommendation for the proposed test claim decision
3 in this case.

4 CHAIRPERSON PERRAULT: Okay. I have a motion by
5 Ms. Nash. Is there a second?

6 I will go ahead and second.

7 If we could please have a roll call.

8 MS. GMUR: Mr. Adams.

9 MEMBER ADAMS: No.

10 MS. GMUR: Ms. Gallegos.

11 MEMBER GALLEGOS: Aye.

12 MS. GMUR: Ms. Greene Ross.

13 MEMBER GREENE ROSS: I'm going to vote aye, but I
14 amend -- just hope Finance can help straighten this out
15 in the legislature.

16 MS. GMUR: Ms. Jimenez.

17 MEMBER JIMENEZ: Abstain.

18 MS. GMUR: Ms. Nash.

19 MEMBER NASH: Aye.

20 MS. GMUR: Ms. Perrault.

21 CHAIRPERSON PERRAULT: Aye.

22 MS. GMUR: Mr. Powell.

23 MEMBER POWELL: Aye.

24 CHAIRPERSON PERRAULT: What's that vote? I'm
25 sorry. It's all over the place. Does that motion carry? 64

1 MS. GMUR: Yes. Six, one.

2 CHAIRPERSON PERRAULT: All right. Sorry. I just
3 want to make sure.

4 All right. That motion carries. Thank you so
5 much.

6 MS. GMUR: We now ask the presenters participating
7 remotely for Item 4 to please turn off their video and
8 mute their microphones.

9 Those presenting in person, please return to your
10 seat.

11 Next is Item 5.

12 We now ask the presenters participating remotely
13 for Item 5 to please turn on their video and unmute their
14 microphones. Chief Legal Counsel Camille Shelton will
15 please present a revised proposed decision and parameters
16 and guidelines on California Regional Water Quality
17 Control Board Los Angeles region, Order Number
18 R4-2012-0175, 13-TC-01, and 13-TC-02.

19 MS. SHELTON: Good morning. The revised proposed
20 parameters and guidelines address state-mandated
21 activities arising from the stormwater permit adopted by
22 the Los Angeles Water Quality Control Board in 2012.

23 The Commission approved the test claim for
24 reimbursement beginning December 28th, 2012, and found
25 that the test claim permit imposes a partial reimbursable 65