ITEM 6

RECONSIDERATION OF PRIOR STATEMENT OF DECISION
FINAL STAFF ANALYSIS

Penal Code Section 1417.3, as amended by Statutes 1985, Chapter 875; Statutes 1986, Chapter 734; and Statutes 1990, Chapter 382

98-TC-07

Photographic Record of Evidence
(04-RL-9807-09)

Reconsideration Directed by Statutes 2004, Chapter 316, Section 3, Subdivision (d)
(Assem. Bill No. 2851)

EXECUTIVE SUMMARY

In Statutes 2004, chapter 316, section 3, subdivision (d), the Legislature directed the Commission on State Mandates (Commission) to reconsider whether the *Photographic Record of Evidence* test claim (No. 98-TC-07) constitutes a reimbursable mandate under article XIII B, section 6 of the California Constitution "in light of federal statutes enacted and federal and state court decisions rendered since these statutes were enacted: [¶] … [¶] (d) Photographic Record of Evidence (No. 98-TC-07; and Chapter 875 of the Statutes of 1985, Chapter 734 of the Statutes of 1986, and Chapter 382 of the Statutes of 1990)."

On October 26, 2000, the Commission found that the test claim statute imposes a reimbursable mandate on local law enforcement agencies for the activities listed in the Statement of Decision. The parameters and guidelines, adopted in February 2002, specified the reimbursable activities.

The Legislative Analyst's Office (LAO) argues that the test clam statute caused a shift in responsibility for handling court exhibits from the courts (which were funded by county budgets at the time the test claim statute was enacted) to local agencies. LAO asserts that under the rule in *City of San Jose v. State of California,*[1] a shift in responsibility between local governments is not a reimbursable state-mandated program. LAO also argues that the test claim statute may impose no net costs, thereby precluding a finding that it is a reimbursable mandate under Government Code section 17556, subdivision (e).

Conclusion

For reasons stated in the analysis, staff finds that effective July 1, 2005, subdivision (b) of Penal Code section 1417.3 imposes a reimbursable state-mandated program on local agencies that put on evidence in criminal trials, within the meaning of article XIII B, section 6 of the California

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

Constitution and Government Code section 17514. Specifically, section 1417.3, subdivision (b), requires local agencies putting into evidence exhibits toxic by their nature that pose a health hazard to humans, to do the following as to those exhibits:

- Provide a photographic record; (Pen. Code, § 1417.3, subd.(b).)
- Provide a written chemical analysis certified by a competent authority; (Pen. Code, § 1417.3, subd. (b).)

Staff also finds that, effective July 1, 2005, the following activity is a reimbursable state-mandate for local agencies, except for counties, that put on evidence in criminal trials:

- Storing exhibits toxic by their nature that pose a health hazard to humans. (Pen. Code, § 1417.3, subd. (b).)

Staff also finds that, as a mandate of the court, subdivision (a) of Penal Code section 1417.3 falls within the exclusion of article XIII B, section 9, subdivision (b), of the California Constitution. Specifically, providing a photographic record of evidence for exhibits that pose a security, safety, or storage problem is a court mandate outside the constitutional spending limit of the local agency. As a court-imposed mandate, it is not reimbursable.

Recommendation

Therefore, staff recommends that the Commission adopt this analysis.

STAFF ANALYSIS

Chronology

10/22/98	Test Claim filed by Los Angeles Police Department
10/26/00	Commission adopts Statement of Decision
11/21/00	Claimant submits proposed parameters and guidelines
02/28/02	Commission adopts parameters and guidelines
10/24/02	Commission adopts statewide cost estimate
12/31/03	Legislative Analyst's Office (LAO) issues report, *New Mandates: Analysis of Measures Requiring Reimbursement* recommending reconsideration of the *Photographic Record of Evidence* test claim
08/25/04	Legislature enacts Assembly Bill 2851, an urgency statute requiring the Commission to reconsider *Photographic Record of Evidence* (effective 8/25/04)
04/25/05	LAO submits comments on the reconsideration
05/24/05	Commission issues draft staff analysis on the reconsideration
07/12/05	Commission issues final staff analysis on the reconsideration

Background

Statutes 2004, chapter 316, section 3, subdivision (d), (Assem. Bill No. 2851) directs the Commission to reconsider whether the *Photographic Record of Evidence* test claim is a reimbursable state mandate under article XIII B, section 6 of the California Constitution, as follows:

> Notwithstanding any other provision of law, by January 1, 2006, the Commission on State Mandates shall reconsider whether each of the following statutes constitutes a reimbursable mandate under Section 6 of Article XIII B of the California Constitution in light of federal statutes enacted and federal and state court decisions rendered since these statutes were enacted: [¶] … [¶]
>
> (d) Photographic Record of Evidence (No. 98-TC-07; and Chapter 875 of the Statutes of 1985, Chapter 734 of the Statutes of 1986, and Chapter 382 of the Statutes of 1990).

<u>The Test Claim Statute</u>

Penal Code section 1417.3[2] (as added by Stats. 1985, ch. 875, and amended by Stats. 1986, ch. 734, and Stats. 1990, ch. 382) requires, upon court order, a photographic record for certain types of exhibits in criminal trials:

> 1417.3. (a) At any time prior to the final determination of the action or proceeding, exhibits offered by the state or defendant shall be returned to the party offering them by order of the court when an exhibit poses a security, storage, or safety problem, as recommended by the clerk of the court. If an

[2] All further statutory references are to the Penal Code unless otherwise indicated.

exhibit by its nature is severable the court shall order the clerk to retain a portion of the exhibit not exceeding three pounds by weight or one cubic foot by volume and shall order the return of the balance of the exhibit to the district attorney. The clerk, upon court order, shall substitute a full and complete photographic record of any exhibit or part of any exhibit returned to the state under this section. The party to whom the exhibit is being returned shall provide the photographic record.

> (b) Exhibits toxic by their nature that pose a health hazard to humans [3] shall be introduced to the court in the form of a photographic record and a written chemical analysis certified by competent authority. Where the court finds that good cause exists to depart from this procedure, toxic exhibits may be brought into the courtroom and introduced. However, following introduction of the exhibit, the person or persons previously in possession of the exhibit shall take responsibility for it and the court shall not be required to store the exhibit.

Trial Court Funding

LAO's comments raise the issue of whether trial courts are local or state agencies for purposes of imposing reimbursable mandates. Thus, a brief history of trial court funding is provided.

Historically, California trial courts have been funded by counties. In 1985, the Governor and the Legislature enacted the Trial Court Funding Act (Stats. 1985, ch. 1607), providing for state funding of trial courts with retention of local administrative control. The bill provided for block grants to counties based on a formula of reimbursement for statutorily authorized judicial positions.[4] If a county opted into the program, it waived claims for reimbursement under article XIII B, section 6 for state–mandated programs imposed on trial courts.[5] However, no funds were appropriated to implement the 1985 act.[6]

In 1988, the Brown-Presley Trial Court Funding Act (Stats. 1988, ch. 945) was enacted. Under this act, the state accepted significant responsibility for funding trial courts beginning in 1989.[7]

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[3] Staff note: The parameters and guidelines indicated that substances falling within the definitions and lists in the following code sections would be reimbursable subject to subdivision (a) of the statute: 40 Code of Federal Regulations part 261, or human health hazards which are subject to Health and Safety Code sections 117600 *et seq.*, or Health and Safety Code sections 25140, *et seq.*. The parameters and guidelines also specified, for subdivision (b), that the sampling, analysis, or report preparation for controlled substances, including those defined in Health and Safety Code sections 11054 et seq., is not reimbursable unless the exhibit is toxic and poses a health hazard to humans.

[4] Judicial Council of California, Administrative Office of the Courts, *Special Report: Trial Court Funding* (1997) page 11. See < http://www.courtinfo.ca.gov/reference/documents/tcfnews.pdf> as of May 6, 2005.

[5] Former Government Code sections 77203.5 and 77005.

[6] Judicial Council of California, Administrative Office of the Courts, *Special Report: Trial Court Funding* (1997) page 11. See < http://www.courtinfo.ca.gov/reference/documents/tcfnews.pdf> as of May 6, 2005.

[7] *Ibid.*

This law retained the provision for counties to opt in to trial court funding,[8] and those that did so waived their claims for mandate reimbursement.[9]

The Governor and Legislature enacted the Trial Court Realignment and Efficiency Act in 1991 (Stats. 1991, ch. 90) to increase state funding for trial courts and streamline court administration through trial court coordination and financial information reporting.[10] By 1997, counties bore about 60 percent of trial court costs for specified operations, and the state the remaining 40 percent.[11]

On September 13, 1997, the Lockyer-Isenberg Trial Court Funding Act (Stats. 1997, ch. 850) was enacted to restructure the trial court funding system. This act removed the local "opt-in" provisions and transferred principal funding responsibility for trial court operations to the state beginning in fiscal year 1997-98, while freezing county contributions at fiscal year 1994-95 levels.[12]

In 2000, the Trial Court Employment Protection and Governance Act was enacted to give the courts the status of independent employers, making trial court staff employees of the courts, rather than county employees as under prior law.[13]

In 2001, the Legislature enacted the Trial Court Facilities Act of 2002 (Stats. 2002, ch. 1082, Gov. Code, § 70301 et seq.) to facilitate the transfer of court facilities from counties to the state. The transition of court facilities is ongoing until 2007.[14]

Thus, trial courts were considered part of county government until approximately 1997, when the state took primary responsibility for trial court funding.[15]

Commission Statement of Decision

On October 26, 2000, the Commission adopted the *Photographic Record of Evidence* Statement of Decision, determining that the test claim statute imposes a reimbursable mandate on law

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[8] Former Government Code section 77004 defined "option county" as, "a county which has adopted the provisions of this chapter for the current fiscal year."

[9] Former Government Code sections 77203.5 and 77005.

[10] Judicial Council of California, Administrative Office of the Courts, *Special Report: Trial Court Funding* (1997) page 11. See < http://www.courtinfo.ca.gov/reference/documents /tcfnews.pdf> as of May 6, 2005.

[11] Assembly Committee on the Judiciary, Analysis of Assembly Bill 233 (1997-1998 Reg. Sess.), as amended March 10, 1997, page 1.

[12] *Ibid.*

[13] Statutes 2000, chapter 1010. See Judicial Council of California, Administrative Office of the Courts, Fact Sheet: Transfer of Court Facilities, March 2005, page 1. http://www.courtinfo.ca.gov/programs/occm/files /factrans.pdf.

[14] Trial Court Facilities Act (Stats. 2002, ch. 1082, Gov. Code, § 70301 et seq.)

[15] The Lockyer-Isenberg Trial Court Funding Act (Stats. 1997, ch. 850).

enforcement agencies (Commission claim no. 98-TC-07, filed by the Los Angeles Police Department).

The Commission determined that the following activities are reimbursable:

- Activities reasonably necessary to provide a photographic record of evidence for evidence that poses a security, safety, or storage problem as determined by the court. (Pen. Code, § 1417.3, subd. (a).)
- Activities reasonably necessary to provide a photographic record of evidence for evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)
- The provision of a certified written chemical analysis of evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)
- The storage of evidence that poses a security, safety, or storage problem as determined by the court. (Pen. Code, § 1417.3, subd. (a).)
- The storage of evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)

Commission Parameters and Guidelines

The Commission adopted parameters and guidelines for the test claim statute in February 2002. Under the heading "Reimbursable Costs," the parameters and guidelines state:

> For each eligible claimant, the following activities are eligible for reimbursement:
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> A. Administrative Activities
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> 1. Developing internal policies, procedures, and manuals, to implement the activities … (one-time activity).
> 2. Maintaining files manually or electronically pursuant to implementation of activities listed in … these Parameters and Guidelines. The cost of this activity will be prorated for photographs actually introduced or offered as exhibits (ongoing activity).
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> B. Photographic Record of Evidence (Pen. Code, § 1417.3(a))
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> For exhibits that pose a security, safety, or storage problem as determined by the court, or for exhibits that pose a health hazard to humans, including the definition of hazardous waste in 40 Code of Federal Regulations part 261, or human health hazards which are subject to Health and Safety Code sections 117600 *et seq.*, or Health and Safety Code sections 25140, *et seq.*:
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> 1. Purchasing equipment and supplies reasonably necessary to photograph the exhibits, whether for digital or film pictures, including, but not limited to: cameras, developing equipment, laser printers, software, film, computers, and storage.
> 2. Taking of the photographs, sorting and storing photographs, and developing and printing photographs. This activity is limited to photographs actually introduced or offered into evidence as exhibits. Claimant must provide supporting documentation with subsequent

reimbursement claims that the court has deemed the exhibit a security, safety or storage problem by providing a copy of the court order, local rule, or other proof of the court's determination.

C. Provision of Certified Written Chemical Analysis (Pen. Code, § 1417.3 (b))

For those exhibits that pose a health hazard to humans, the sampling, analysis, and preparation of a written report by a laboratory certified by the State of California for performing the chemical analysis. This does not include reimbursement for sampling, analysis, or report preparation for controlled substances, including those defined in Health and Safety Code sections 11054 et. seq. unless the exhibit is toxic and poses a health hazard to humans.

D. Storage of Exhibits (Cal. Code of Regs., tit. 2, § 1183.1(a))

For exhibits that pose a security, safety, or storage problem as determined by the court, or for exhibits that pose a health hazard to humans for which the local entity offers or introduces a photographic record of evidence:

Transportation to and maintenance within an appropriate storage facility for the type of exhibit. Storage of the exhibit shall be from the time of photographing until after final determination of the action as prescribed by Penal Code sections 1417.1, 1417.5, 1417.6, or court order or rule of court that dictates the retention schedule for exhibits in criminal trials.

State Agency Position

Legislative Analyst's Office: The Legislative Analyst's Office (LAO), in its publication *New Mandates: Analysis of Measures Requiring Reimbursement* (December 2003),[16] reviews 23 Commission decisions, including *Photographic Record of Evidence*. LAO asserts that when the test claim legislation was enacted (in 1985, 1986, and 1990) counties had primary or exclusive responsibility for funding court operations. Thus, the test claim statute was merely a shift of responsibility for handling exhibits from one local agency (courts) to another (local law enforcement agencies). According to LAO, under *City of San Jose v. State of California*,[17] this type of shift is not a reimbursable state mandate.

LAO also raises the issue of whether the test claim legislation was "cost neutral" to counties, as suggested by testimony of the County Clerk's Association when the bill was enacted.[18] If so, LAO suggests that Government Code section 17556, subdivision (e) would render the test claim non-reimbursable, as a measure that does not impose net costs.

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[16] See <http://www.lao.ca.gov/2003/state_mandates/ state_mandates_1203.html> as of February 15, 2005. (Exhibit D, p. 421)

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

[18] LAO alludes to this testimony, but does not quote or cite it.

In comments submitted on April 25, 2005, LAO repeats these assertions, and provides more detailed background information on the history of trial-court funding.

No other state agency submitted comments on this reconsideration, or on the draft staff analysis.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[19] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[20] "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[21] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[22]

In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[23]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[24] To determine if the

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[19] Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides:

> (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

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

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

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

[23] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.)*; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

[24] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra,* 44 Cal.3d 830, 835.)

program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.[25] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[26]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[27]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[28] In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[29]

Issue 1: What is the effective date of the Commission's decision on reconsideration?

Assembly Bill 2851, an urgency statute that became effective on August 25, 2004, directs the Commission to reconsider its statement of decision on the *Photographic Record of Evidence* test claim. According to the legislative history, Assembly Bill 2851 implements the changes recommended by the Assembly Special Committee on State Mandates. This committee was established in 2003 to review all reimbursable state mandates, particularly those that have been suspended or deferred, and to recommend reforms to the reimbursement system.

The parameters and guidelines for the *Photographic Record of Evidence* test claim were adopted in 2002, with a reimbursement period beginning July 1, 1997.

Assembly Bill 2851, however, does not specify the effective date for the Commission's decision on reconsideration.[30] The question is whether the Legislature intended to apply the Commission's decision on reconsideration retroactively back to the original reimbursement period of July 1, 1997 (i.e., to reimbursement claims that have already been filed, some of which may have been paid), or to prospective claims filed in future budget years.

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

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

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

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

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

[30] In this respect, Assembly Bill 2851 is different than another recent statute directing the Commission to reconsider a prior final decision. Statutes 2004, chapter 227, which directs the Commission to reconsider Board of Control test claims relating to regional housing, states in Section 109, "[a]ny changes by the commission shall be deemed effective July 1, 2004."

Unlike other statutes directing reconsideration of Commission decisions (e.g., Sen. Bill No. 1895), Assembly Bill 2851 is *not* a trailer bill to the Budget Act of 2004. Thus, for the reasons below, staff finds the Legislature intended that the Commission's decision on reconsideration apply prospectively to future budget years only, beginning July 1, 2005.

A statute may be applied retroactively only if the statute contains "express language of retroactively [sic] or if other sources provide a clear and unavoidable implication that the Legislature intended retroactive application."[31] In *McClung v. Employment Development Department,* the California Supreme court explained this rule as follows:

> "Generally, statutes operate prospectively only." [Citation omitted.] "The presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic. Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly … For that reason, the "principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal appeal." [Citation omitted.] "The presumption against statutory retroactivity has consistently been explained by reference to the unfairness of imposing new burdens on persons after the fact." [Citation omitted.]
>
> This is not to say that a statute may never apply retroactively. "A statute's retroactivity is, *in the first instance, a policy determination for the Legislature* and one to which courts defer absent 'some constitutional objection' to retroactivity." [Citation omitted.] But it has long been established that a statute that interferes with antecedent rights will not operate retroactively unless such retroactivity be "the unequivocal and inflexible import of the terms, and the manifest intention of the legislature." [Citation omitted.] "*A statute may be applied retroactively only if it contains express language of retroactively [sic] or if other sources provide a clear and unavoidable implication that the Legislature intended retroactive application*." [Citation omitted.] (Emphasis added.)[32]

There is nothing in the plain language of Assembly Bill 2851 or its legislative history to suggest that the Legislature intended to apply the Commission's decision on reconsideration retroactively. In the absence of clear legislative intent to the contrary, staff finds that Assembly Bill 2851 is not to be applied retroactively, and the period of reimbursement for the Commission's decision on reconsideration begins July 1, 2005. Thus, to the extent the Commission modifies its prior decision in *Photographic Record of Evidence*, the changes would become effective for claims filed in the 2005-2006 fiscal year.

Issue 2: Is the test claim statute subject to article XIII B, section 6 of the California Constitution?

Assembly Bill 2851 directs the Commission to reconsider this claim "in light of federal statutes enacted and federal and state court decisions rendered since the test claim statutes were enacted."

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[31] *McClung v. Employment Development Department* (2004) 34 Cal.4th 467, 475.

[32] *Ibid.*

Staff is not aware of any federal statutes or federal court decisions that affect the *Photographic Record of Evidence* test claim, and no federal statutes or cases have been identified by the parties or interested parties for this particular claim.

A. Is Penal Code section 1417.3, subdivision (a), subject to article XIII B, section 6?

Subdivision (a) of Penal Code section 1417.3 reads:

> (a) At any time prior to the final determination of the action or proceeding, exhibits offered by the state or defendant shall be returned to the party offering them by *order of the court* when an exhibit poses a security, storage, or safety problem, *as recommended by the clerk of the court.* If an exhibit by its nature is severable the court shall order the clerk to retain a portion of the exhibit not exceeding three pounds by weight or one cubic foot by volume *and shall order* the return of the balance of the exhibit to the district attorney. The clerk, *upon court order*, shall substitute a full and complete photographic record of any exhibit or part of any exhibit returned to the state under this section. The party to whom the exhibit is being returned shall provide the photographic record. [Emphasis added.]

Thus, the activity at issue is, by order of the court, providing a photographic record of exhibits that pose a security, storage, or safety problem.[33]

Article XIII B, section 9, subdivision (b), of the California Constitution excludes from either the state or local spending limit any "[a]ppropriations required for purposes of complying with mandates *of the courts* or the federal government which, without discretion,[34] require an expenditure for additional services or which unavoidably make the providing of existing services more costly." [Emphasis added.] Article XIII B places spending limits on both the state and local governments. "Costs mandated by the courts" are expressly excluded from these ceilings.[35]

The California Supreme Court has explained article XIII B as follows:

> Article XIII B - the so-called "Gann limit" - restricts the amounts state and local governments may appropriate and spend each year from the "proceeds of taxes." (§§ 1, 3, 8, subds. (a)-(c).) … In language similar to that of earlier statutes, article XIII B also requires state reimbursement of resulting local costs whenever, after

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[33] In the original Statement of Decision, the activity of storing exhibits that pose a security, safety or storage problem was also found to be reimbursable, but this activity does not appear on the face of Penal Code section 1417.3, subdivision (a). (Exhibit A, p. 137)

[34] In *City of Sacramento v. State of California, supra,* 50 Cal. 3d 51, which interpreted section XIII B, section 9, the court held that "without discretion" as used in section 9 (b) is not the same as legal compulsion. Rather it means that the alternatives are so far beyond the realm of practical reality that they leave the state without discretion to depart from the federal standards. Thus, the court held that the state enacted the test claim statute in response to a federal mandate for purposes of article XIII B, so the state statute was not reimbursable. (*Id.* at p. 74). Although the context in *City of Sacramento* was federal mandates analyzed under article XIII B, section 9, subdivision (b), the analysis is instructive in this case.

[35] *Id.* at page 57.

> January 1, 1975, "the Legislature or any state agency mandates a new program or higher level of service on any local government, ..." (§ 6.) Such mandatory state subventions are excluded from the local agency's spending limit, but included within the state's. (§ 8, subds. (a), (b).) Finally, article XIII B excludes from either the state or local spending limit any "[a]ppropriations required for purposes of complying with mandates of *the courts* or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the providing of existing services more costly." (§ 9, subd. (b) … .) [Emphasis added.][36]

In other words, for activities to comply with a court mandate, article XIII B section 9, subdivision (b) excludes their costs from the constitutional spending cap of the affected state or local entity.[37] By contrast, expenditures for state-mandated programs under section 6 of article XIII B are exempt from a local agency's spending limit, but are not exempt from the state's constitutional spending cap.[38] Since court mandates are excluded from the constitutional spending limit, reimbursement under article XIII B, section 6 is not invoked.

Thus, the issue is whether the activities in subdivision (a) of the test claim statute are mandates of the court.

As indicated from the emphasized portions of section 1417.3, subdivision (a) on the previous page, providing a photographic record of evidence for exhibits that pose a security, storage, or safety problem is a task triggered by order of the court. The statute authorizes the court to issue an order, but does not require it.

The mandated activity in subdivision (a) of the test claim statute leaves the local agency without discretion to depart from the order of the court. The activity triggered by court order is to provide a photographic record of evidence for exhibits that pose a security, safety, or storage problem. Since this activity is required to comply with a court-ordered mandate, it falls within the exclusion of article XIII B, section 9, subdivision (b). Like a federal mandate, the activity is outside the constitutional spending limit of the local agency.

Therefore, staff finds that the activity in subdivision (a) of the test claim statute (upon court order, providing a photographic record of evidence for exhibits that pose a security, storage, or safety problem) is not subject to article XIII B, section 6 because it falls within the exclusion of article XIII B, section 9, subdivision (b), in that it is an activity to comply with a mandate of the court.

This conclusion does not apply to subdivision (b) of the test claim statute; however, for which the analysis continues.

B. Is Penal Code section 1417.3, subdivision (b), subject to article XIII B, section 6?

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[36] *Id.* at pages 58-59.

[37] *Id.* at page 71.

[38] California Constitution, article XIII B, section 8, subdivision (a).

In order for a statute to be subject to article XIII B, section 6, the test claim statute must impose a state-mandated activity on a local agency or school district.[39]

Penal Code section 1417.3, subdivision (b), states:

> (b) Exhibits toxic by their nature that pose a health hazard to humans shall be introduced to the court in the form of a photographic record and a written chemical analysis certified by competent authority. Where the court finds that good cause exists to depart from this procedure, toxic exhibits may be brought into the courtroom and introduced. However, following introduction of the exhibit, the person or persons previously in possession of the exhibit shall take responsibility for it and the court shall not be required to store the exhibit.

This subdivision requires local agencies that put on evidence in criminal trials to perform certain activities that, unlike those in subdivision (a), are not triggered by court order. The plain language of the statute requires, "Exhibits toxic by their nature that pose a health hazard to humans *shall be introduced* to the court in the form of a photographic record and a written chemical analysis certified by competent authority."[40] [Emphasis added.] Also, local agencies are required to store the exhibit as indicated in the following provision: "following introduction of the exhibit, the person or persons previously in possession of the exhibit shall take responsibility for it and the court shall not be required to store the exhibit."[41]

The plain language of subdivision (b) indicates that the following activities are required: (1) providing a photographic record of evidence for exhibits that pose a health hazard to humans; (2) providing a written chemical analysis certified by a competent authority of exhibits that pose a health hazard to humans; and (3) storing exhibits that pose a health hazard to humans.

Subdivision (b) of the test claim statute also states, in part: "Where the court finds that good cause exists to depart from this procedure [of introducing toxic exhibits in the form of photographic record and written chemical analysis], toxic exhibits may be brought into the courtroom and introduced."[42] Since courts can make an exception on a showing of good cause, is introducing a toxic exhibit in the form of a photographic record and written chemical analysis really mandated by the state?

Staff finds that it is. It is the court's decision whether to grant good cause, not a local decision. If the court did grant good cause, no reimbursable costs would be incurred because photographs would not be required. The parameters and guidelines specify that only photographs actually admitted into evidence are reimbursable.[43] Therefore, staff finds that introducing toxic exhibits in the form of photographic record and written chemical analysis is a mandated activity.

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[39] *Kern High School Dist.*, *supra*, 30 Cal.4th, 727, 741.

[40] Penal Code section 1417.3, subdivision (b).

[41] *Ibid.*

[42] Penal Code section 1417.3, subdivision (b).

[43] Commission on State Mandates, Parameters and Guidelines for Photographic Record of Evidence (98-TC-07), page 2. "The cost of this activity will be prorated for photographs actually introduced or offered as exhibits." (Exhibit A. p. 271)

According to LAO, when the test claim legislation was enacted (in 1985, and amended in 1986 and 1990) counties had primary or exclusive responsibility for funding court operations. Thus, LAO asserts that the test claim statute was merely a shift of responsibility for handling exhibits from one local agency (courts) to another (local law enforcement agencies). LAO argues that under *City of San Jose v. State of California*,[44] this shift is not a reimbursable state mandate.

Staff disagrees. The *City of San Jose* case is not applicable to this test claim. In *City of San Jose* the court faced the question of whether a statute constituted a new program or higher level of service within the meaning of article XIII B, section 6.[45] The statute at issue *authorized* counties to charge booking fees to cities and other local agencies for persons arrested and booked into county jails by employees of the cities or other local agencies. The fee was triggered by the county's decision to charge it. The city argued that the statute was a state-mandated program under article XIII B, section 6 for which the state must reimburse costs. The state argued that the statute simply authorized allocation of booking costs, a cost formerly borne solely by counties, among all local agencies responsible for arrests. The state alleged that since there was no shifting of costs from state to local government (only a local to local shift) the statute did not come within article XIII B, section 6, so no reimbursement was necessary.[46] The court agreed with the state. It noted that the "flaw in the City's reliance on Lucia Mar[47] is that in our case the shift in funding is not from the State to the local entity but from county to city."[48]

The *City of San Jose* case does not apply to this case because in that case the city's costs were incurred because of the county's decision to charge the fee. By contrast, in subdivision (b) of the test claim statute, the activities are state-mandated in that they are expressly required by the statute rather than triggered by a court order (or a local decision as in *City of San Jose*). Thus, *City of San Jose* is inapplicable to this test claim reconsideration.

Therefore, staff finds that the remaining activities in the test claim statute are mandated by the state. That is, local agencies that put on evidence in criminal trials, for exhibits toxic by their nature that pose a health hazard to humans, the local agencies, are mandated to: (1) Provide a photographic record of evidence; (2) Provide a written chemical analysis certified by a competent authority; (3) store such exhibits.

C. Does Penal Code section 1417.3, subdivision (b), constitute a program?

In order for the subdivision (b) of Penal Code section 1417.3 to be subject to article XIII B, section 6, the statute must constitute a "program." This means a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all

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

[45] *Id.* at page 1810.

[46] *Id.* at page 1806.

[47] *Lucia Mar, supra,* 44 Cal.3d 830. In *Lucia Mar,* the court found that a shift in funding from the state to a local entity is a reimbursable mandate.

[48] *City of San Jose v. State of California, supra,* 45 Cal.App.4th 1802, 1812.

residents and entities in the state.[49] Only one of these findings is necessary to trigger article XIII B, section 6.[50]

Subdivision (b) of section 1417.3 requires exhibits that are toxic that pose a health hazard to humans to be introduced to the court in the form of a photographic record and a certified chemical analysis.[51] In the original decision, the Commission found that the test claim statute was not unique to local law enforcement agencies because the requirement to introduce exhibits as photographs and/or chemical analyses applies to both the prosecution and the defense, whichever party that introduces an exhibit.

Even though these requirements are not unique to government, the Commission found that introducing exhibits to aid in the prosecution of crime are law enforcement duties within the purview of criminal justice, which carries out a governmental function of providing a service to the public. Therefore, staff finds here, as in the prior final decision, that subdivision (b) of the *Photographic Record of Evidence* test claim statute constitutes a program within the meaning of article XIII B, section 6.

Issue 3: Does Penal Code section 1417.3, subdivision (b), impose a new program or higher level of service on local agencies within the meaning of article XIII B, section 6?

To determine if the "program" is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before enacting the test claim legislation.[52]

Photographs and chemical analyses: Before the test claim statute, local agencies were not required to provide a photographic record of toxic exhibits that posed a health hazard to humans.[53] Nor were local agencies required to provide a written chemical analysis, certified by a competent authority, of exhibits that pose a health hazard to humans. Therefore, staff finds that these two activities are a new program or higher level of service.

Storage: As discussed above, the Trial Court Funding Act (Stats. 1985, ch. 1607) was enacted in 1985, providing for state funding of trial courts with retention of local administrative control. The bill provided block grants to counties based on a formula of reimbursement for statutorily

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

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

[51] Penal Code section 1417.3, subdivision (b).

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

[53] Former Penal Code section 1418.6, which authorized the court to order the release of exhibits before the final determination of the action or proceedings if the parties stipulated to it and no prejudice would be suffered by either party, required a photographic record of released material. Although this statute reads as permissive, one court determined the provision was mandatory and not permissive. *Franklin v. Municipal Court* (1972) 26 Cal.App.3d 884. However, this statute does not specify that the party introducing the exhibit provides the photographs.

authorized judicial positions.[54] If a county opted in to the program, it waived claims for reimbursement for state–mandated local programs under article XIII B, section 6.[55] However, no funds were appropriated to implement the 1985 act.[56] Therefore, when the test claim statute was enacted in 1985, counties had financial and administrative control of trial (superior and municipal) courts.[57]

Since counties had control of trial courts in 1985, counties also bore the costs of custody of admitted exhibits, including storage.[58] Although there was a shift in responsibility for storing exhibits from the courts to county law enforcement agencies, the shift was within county departments (or at least within the county budget areas). Therefore, storing exhibits was not a new activity for counties at the time the test claim statute was enacted.

This does not apply to cities, which have authority to prosecute misdemeanors,[59] as well as put on evidence in other criminal trials.

Staff finds, therefore, that storing exhibits is not a state-mandated activity on counties because counties had this responsibility at the time the test claim statute was enacted, i.e., the activity was not new as to counties at the time the test claim statute was enacted.

Issue 4: Does Penal Code section 1417.3, subdivision (b), impose "costs mandated by the state" on local agencies within the meaning of article XIII B, section 6, and Government Code section 17556 ?

In order for the test claim statute to impose a reimbursable state-mandated program under the California Constitution, the test claim legislation must impose costs mandated by the state.[60] In addition, no statutory exceptions listed in Government Code section 17556 can apply. Government Code section 17514 defines "cost mandated by the state" as follows:

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[54] Judicial Council of California, Administrative Office of the Courts, *Special Report: Trial Court Funding* (1997) p. 11. See < http://www.courtinfo.ca.gov/reference/documents/tcfnews.pdf> as of May 6, 2005.

[55] Former Government Code sections 77203.5 and 77005.

[56] Judicial Council of California, Administrative Office of the Courts, *Special Report: Trial Court Funding* (1997) p. 11. See < http://www.courtinfo.ca.gov/reference/documents/tcfnews.pdf> as of May 6, 2005.

[57] "It has long been the law in California that, 'the expense of capture, detention and prosecution of persons charged with crime is to be borne by the county ….'" *City of San Jose v. State of California, supra,* 45 Cal. App. 4th 1802, 1815; See also Government Code section 29602.

[58] Former Penal Code section 1418 provided for disposition of exhibits after a criminal conviction or the end of proceedings. Three months after notifying the owner of the exhibits' whereabouts, the court may "order all such exhibits … as may be released from *the custody of the court* without prejudice to the state, delivered to such party." [Emphasis added.]

[59] Government Code section 36900.

[60] *Lucia Mar, supra*, 44 Cal.3d 830, 835; Government Code section 17514.

> [A]ny increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

Government Code section 17556, (as amended by Stats. 2004, ch. 895, Assem. Bill No. 2855), provides:

> The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:
>
> (a) The claim is submitted by a local agency or school district that requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district that requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.
>
> (b) The statute or executive order affirmed for the state a mandate that had been declared existing law or regulation by action of the courts.
>
> (c) The statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. This subdivision applies regardless of whether the federal law or regulation was enacted or adopted prior to or after the date on which the state statute or executive order was enacted or issued.
>
> (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.
>
> (e*) The statute, executive order,* or an appropriation in a Budget Act or other bill *provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts*, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.
>
> (f) The statute or executive order imposed duties that were expressly included in a ballot measure approved by the voters in a statewide or local election.
>
> (g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction. [Emphasis added.]

As discussed above, the LAO stated that in the legislative history of the test claim statute, the bill's sponsor (County Clerk's Association) suggested the bill would be cost-neutral on counties.

A review of the legislative history of the test claim statute does indicate that the Legislature received information as to cost savings. For example, the following statement appears in a bill

analysis, "The Judicial Council advises that the bill's various provisions probably would result in savings to counties, by reducing the time period during which courts must retain exhibits."[61]

In determining issues under Government Code section 17556, the Commission must base its findings on substantial evidence in the record.[62]

> [S]ubstantial evidence has been defined in two ways: first, as evidence of ponderable legal significance ... reasonable in nature, credible, and of solid value [citation]; and second, as relevant evidence that a reasonable mind might accept as adequate to support a conclusion.[63]

The Commission's finding must also be supported by, "… all relevant evidence in the entire record, considering both the evidence that supports the administrative decision and the evidence against it, in order to determine whether or not the agency decision is supported by "substantial evidence."[64]

Staff finds that the administrative record, including the legislative history of the test claim statute, does not support a finding of no net costs. Specifically, the record does not support a finding that:

> The statute … or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies … that result in no net costs to the local agencies … or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund … [it].[65]

There is no cost data in the record as to savings incurred as a result of providing a photographic record of evidence aside from an assertion of "probable savings" in the legislative history.

Therefore, in the absence of evidence to the contrary, staff finds that the activities in subdivision (b) of section 1417.3, as analyzed above, impose costs mandated by the state within the meaning of article XIII B, section 6, and Government Code section 17556.

CONCLUSION

Staff finds that, effective July 1, 2005, subdivision (b) of Penal Code section 1417.3 imposes a reimbursable state-mandated program on local agencies that put on evidence in criminal trials, within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. Specifically, section 1417.3, subdivision (b), requires local agencies putting into evidence exhibits toxic by their nature that pose a health hazard to humans, to do the following as to those exhibits:

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[61] Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis of Assembly Bill 556 (1985-86 Reg. Sess.), as amended August 20, 1985, page 2.

[62] *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 515. Government Code section 17559, subdivision (b).

[63] *Desmond v. County of Contra Costa* (1993) 21 Cal. App. 4th 330, 335.

[64] *Ibid.*

[65] Government Code section 17556, subdivision (e).

- Provide a photographic record; (Pen. Code, § 1417.3, subd.(b).)
- Provide a written chemical analysis certified by a competent authority; (Pen. Code, § 1417.3, subd. (b).)

Staff also finds that, effective July 1, 2005, the following activity is a reimbursable state-mandate for local agencies, except for counties, that put on evidence in criminal trials:

- Storing exhibits toxic by their nature that pose a health hazard to humans. (Pen. Code, § 1417.3, subd. (b).)

Staff also finds that, as a mandate of the court, subdivision (a) of Penal Code section 1417.3 falls within the exclusion of article XIII B, section 9, subdivision (b), of the California Constitution. Specifically, providing a photographic record of evidence for exhibits that pose a security, safety, or storage problem is a court mandate outside the constitutional spending limit of the local agency. As a court-imposed mandate, it is not reimbursable.

Recommendation

Therefore, staff recommends that the Commission adopt this analysis.