BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM:

Penal Code Sections 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, 11165.6, 11165.7, 11165.9, 11165.12, 11166, 11166.2, 11166.9, 11168 (Including Former Penal Code Section 11161.7), 11169, and 11170

Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982, Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter 1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531 and 1459; Statutes 1988, Chapters 269, 1497 and 1580; Statutes 1989, Chapter 153; Statutes 1990, Chapters 650, 1330, 1363 and 1603; Statutes 1991, Chapter 132; Statutes 1992, Chapters 163, 459 and 1338; Statutes 1993, Chapters 219, 346 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997, Chapters 842, 843 and 844; Statutes 1999, Chapters 475 and 1012; Statutes 2000, Chapters 287 and 916;

California Code of Regulations, Title 11, Sections 901, 902 and 903; Department of Justice Forms SS 8572 ("Suspected Child Abuse Report") and ; SS 8583 ("Child Abuse Investigation Report");

Filed on June 29, 2001,

By County of Los Angeles, Claimant.

Case No.: 00-TC-22

Interagency Child Abuse and Neglect Investigation Reports

STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7

(Adopted on December 6, 2007)

STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on December 6, 2007. Sergeant Dan Scott, of the County of Los Angeles Sheriff's Department, and Leonard Kaye appeared on behalf of the claimant, County of Los Angeles. Susan Geanacou and Carla Castañeda appeared for the Department of Finance.

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

The Commission adopted the modified staff analysis to partially approve this test claim at the hearing by a vote of 7 to 0.

Summary of Findings

The County of Los Angeles filed a test claim on June 29, 2001, alleging that amendments to California's mandatory child abuse reporting laws impose a reimbursable state-mandated program. A child abuse reporting law was first added to the Penal Code in 1963, and initially required medical professionals to report suspected child abuse to local law enforcement or child welfare authorities. The law was regularly expanded to include more professions required to report suspected child abuse (now termed "mandated reporters"), and in 1980, California reenacted and amended the law, entitling it the "Child Abuse and Neglect Reporting Act," or CANRA. As part of this program, the Department of Justice (DOJ) maintains a Child Abuse Centralized Index, which, since 1965, maintains reports of child abuse statewide. The index is now used by government agencies conducting background checks on individuals who will interact with children in employment or volunteer settings.

A number of changes to the law have occurred, particularly with a reenactment in 1980, and substantive amendments in 1997 and 2000. Claimant alleges that all of these changes have imposed a reimbursable state-mandated program.

Initially, Department of Finance (DOF) and the Department of Social Services (DSS) both opposed the test claim, arguing that the claim alleges duties of law enforcement and child protective services that were required by prior law. Where the state agencies acknowledge that some new duties may have been imposed, they contend that adequate funding has already been provided to counties as part of the joint federal-state-local funding scheme for child welfare. At the test claim hearing on December 6, 2007, DOF stated agreement with the staff analysis.

The Commission finds that the test claim statutes and executive orders have created numerous new local duties for reporting child abuse to the state, as well as record-keeping and notification activities that were not required by prior law, thus mandating a new program or higher level of service.

At this time, there is no evidence in the record to demonstrate that the mandated activities have been offset or funded by the state or federal government in a manner and amount "sufficient to fund the cost of the state mandate." On the contrary, Welfare and Institutions Code section 10101 indicates that "the state's share of the costs of the child welfare program shall be 70 percent of the actual nonfederal expenditures for the program, or the amount appropriated by the Legislature for that purpose, whichever is less." Conversely, counties must have a share of costs for child welfare services of at least 30 percent of the nonfederal expenditures. In addition, there is no evidence that the counties are required to use the funds identified for the costs of mandated activities.

Therefore, the Commission finds that Government Code section 17556, subdivision (e) does not apply to disallow a finding of costs mandated by the state, but that all claims for reimbursement for the approved activities must be offset by any program funds already received from non-local sources.

Conclusion

The Commission concludes that Penal Code sections 11165.9, 11166, 11166.2, 11166.9, 11168 (formerly 11161.7), 11169, 11170, as added or amended by Statutes 1977, chapter 958, Statutes 1980, chapter 1071, Statutes 1981, chapter 435, Statutes 1982, chapters 162 and 905, Statutes 1984, chapters 1423 and 1613, Statutes 1985, chapter 1598, Statutes 1986, chapters 1289 and 1496, Statutes 1987, chapters 82, 531 and 1459, Statutes 1988, chapters 269, 1497 and 1580, Statutes 1989, chapter 153, Statutes 1990, chapters 650, 1330, 1363 and 1603, Statutes 1992, chapters 163, 459 and 1338, Statutes 1993, chapters 219 and 510, Statutes 1996, chapters 1080 and 1081, Statutes 1997, chapters 842, 843 and 844, Statutes 1999, chapters 475 and 1012, and Statutes 2000, chapter 916; and executive orders California Code of Regulations, title 11, section 903, and "Child Abuse Investigation Report" Form SS 8583, mandate new programs or higher levels of service within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for cities and counties for the following specific new activities:

Distributing the Suspected Child Abuse Report Form

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Distribute the child abuse reporting form adopted by the Department of Justice (currently known as the "Suspected Child Abuse Report" Form SS 8572) to mandated reporters. (Pen. Code, § 11168, formerly § 11161.7.)

Reporting Between Local Departments

Accepting and Referring Initial Child Abuse Reports when a Department Lacks Jurisdiction:

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Transfer a call electronically or immediately refer the case by telephone, fax, or electronic transmission, to an agency with proper jurisdiction, whenever the department lacks subject matter or geographical jurisdiction over an incoming report of suspected child abuse or neglect. (Pen. Code, § 11165.9.)

Cross-Reporting of Suspected Child Abuse or Neglect from County Welfare and Probation Departments to the Law Enforcement Agency with Jurisdiction and the District Attorney's Office:

A county probation department shall:

- Report by telephone immediately, or as soon as practically possible, to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Penal Code section 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare department. (Pen. Code, § 11166, subd. (h), now subd. (j).)

- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

  As of January 1, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours. (Pen. Code, § 11166, subd. (h), now subd. (j).)

A county welfare department shall:

- Report by telephone immediately, or as soon as practically possible, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Penal Code section 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare department.

  This activity does not include making an initial report of child abuse and neglect from a county welfare department to the law enforcement agency having jurisdiction over the case, which was required under prior law to be made "without delay." (Pen. Code, § 11166, subd. (h), now subd. (j).)

- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency, including the law enforcement agency having jurisdiction over the case, to which it is required to make a telephone report under this subdivision.

  As of January 1, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours. (Pen. Code, § 11166, subd. (h), now subd. (j).)

<u>Cross-Reporting of Suspected Child Abuse or Neglect from the Law Enforcement Agency to the County Welfare and Institutions Code Section 300 Agency, County Welfare, and the District Attorney's Office:</u>

A city or county law enforcement agency shall:

- Report by telephone immediately, or as soon as practically possible, to the agency given responsibility for investigation of cases under Welfare and Institutions Code section 300 and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within Penal Code section 11165.2, subdivision (b), which shall be reported only to the county welfare department. (Pen. Code, § 11166, subd. (i), now subd. (k).)

- Report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. (Pen. Code, § 11166, subd. (i), now subd. (k).)

- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

  As of January 1, 2006, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours. (Pen. Code, § 11166, subd. (i), now subd. (k).)

Receipt of Cross-Reports by District Attorney's Office:

A district attorney's office shall:

- Receive reports of every known or suspected instance of child abuse reported to law enforcement, county probation or county welfare departments, except acts or omissions of general neglect coming within Penal Code section 11165.2, subdivision (b). (Pen. Code, § 11166, subds. (h) and (i), now subds. (j) and (k).)

Reporting to Licensing Agencies:

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Report by telephone immediately or as soon as practically possible to the appropriate licensing agency every known or suspected instance of child abuse or neglect when the instance of abuse or neglect occurs while the child is being cared for in a child day care facility, involves a child day care licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee or staff person. The agency shall also send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision. The agency shall send the licensing agency a copy of its investigation report and any other pertinent materials.

  As of July 31, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours. (Pen. Code, § 11166.2.)

Additional Cross-Reporting in Cases of Child Death:

A city or county law enforcement agency shall:

- Cross-report all cases of child death suspected to be related to child abuse or neglect to the county child welfare agency. (Pen. Code, § 11166.9, subd. (k), now § 11174.34, subd. (k).)

A county welfare department shall:

- Cross-report all cases of child death suspected to be related to child abuse or neglect to law enforcement. (Pen. Code, § 11166.9, subd. (k), now § 11174.34, subd. (k).)
- Create a record in the Child Welfare Services/Case Management System (CWS/CMS) on all cases of child death suspected to be related to child abuse or neglect. (Pen. Code, § 11166.9, subd. (l), now § 11174.34, subd. (l).)

- Enter information into the CWS/CMS upon notification that the death was subsequently determined not to be related to child abuse or neglect. (Pen. Code, § 11166.9, subd. (l), now § 11174.34, subd. (l).)

Investigation of Suspected Child Abuse, and Reporting to and from the State Department of Justice

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive, as defined in Penal Code section 11165.12, for purposes of preparing and submitting the state "Child Abuse Investigation Report" Form SS 8583, or subsequent designated form, to the Department of Justice. (Pen. Code, § 11169, subd. (a); Cal. Code Regs., tit. 11, § 903, "Child Abuse Investigation Report" Form SS 8583.)
- Forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect which is determined to be substantiated or inconclusive, as defined in Penal Code section 11165.12. Unfounded reports, as defined in Penal Code section 11165.12, shall not be filed with the Department of Justice. If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact. The reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission. (Pen. Code, § 11169, subd. (a); Cal. Code Regs., tit. 11, § 903, "Child Abuse Investigation Report" Form SS 8583.)

Notifications Following Reports to the Central Child Abuse Index

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index, in any form approved by the Department of Justice, at the time the "Child Abuse Investigation Report" is filed with the Department of Justice. (Pen. Code, § 11169, subd. (b).)
- Make relevant information available, when received from the Department of Justice, to the child custodian, guardian ad litem appointed under section 326, or counsel appointed under section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse or severe neglect. (Pen. Code, § 11170, subd. (b)(1).)
- Inform the mandated reporter of the results of the investigation and of any action the agency is taking with regard to the child or family, upon completion of the child abuse investigation or after there has been a final disposition in the matter. (Pen. Code, § 11170, subd. (b)(2).)
- Notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index, upon receipt of relevant information concerning child abuse or neglect investigation reports contained in the index from the Department of Justice when investigating a home for the placement of dependant children. The notification shall

include the name of the reporting agency and the date of the report. (Pen. Code, § 11170, subd. (b)(5), now subd. (b)(6).)

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Obtain the original investigative report from the reporting agency, and draw independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, or placement of a child, when a report is received from the Child Abuse Central Index. (Pen. Code, § 11170, subd. (b)(6)(A), now (b)(8)(A).)

Any city or county law enforcement agency, county probation department, or county welfare department shall:

- Notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index, upon receipt of relevant information concerning child abuse or neglect reports contained in the index from the Department of Justice regarding placement with a responsible relative pursuant to Welfare and Institutions Code sections 281.5, 305, and 361.3. The notification shall include the location of the original investigative report and the submitting agency. The notification shall be submitted to the person listed at the same time that all other parties are notified of the information, and no later than the actual judicial proceeding that determines placement. (Pen. Code, § 11170, subd. (c).)

Record Retention

Any city or county police or sheriff's department, or county probation department if designated by the county to receive mandated reports shall:

- Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of 8 years for counties and cities (a higher level of service above the two-year record retention requirement pursuant to Gov. Code §§ 26202 (cities) and 34090 (counties).) If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years. (Pen. Code, § 11169, subd. (c).)

A county welfare department shall:

- Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of 7 years for welfare records (a higher level of service above the three-year record retention requirement pursuant to Welf. & Inst. Code, § 10851.) If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years. (Pen. Code, § 11169, subd. (c).)

The Commission concludes that any test claim statutes, executive orders and allegations not specifically approved above, do not mandate a new program or higher level of service, or impose costs mandated by the state under article XIII B, section 6.

BACKGROUND

This test claim alleges that amendments to California's mandatory child abuse reporting laws impose a reimbursable state-mandated program. A child abuse reporting law was first added to the Penal Code in 1963, and initially required medical professionals to report suspected child abuse to local law enforcement or child welfare authorities. The law was regularly expanded to include more professions required to report suspected child abuse (now termed "mandated reporters"), and in 1980, California reenacted and substantively amended the law, entitling it the "Child Abuse and Neglect Reporting Act," sometimes referred to as "CANRA."

The court in *Planned Parenthood Affiliates v. Van de Kamp* (1986) 181 Cal.App.3d 245, pages 258-260, provides an overview of the complete Child Abuse and Neglect Reporting Act, following the 1980 reenactment at Penal Code section 11164 et seq. (footnotes omitted):

> The law is designed to bring the child abuser to justice and to protect the innocent and powerless abuse victim. (See Comment, *Reporting Child Abuse: When Moral Obligations Fail* (1983) 15 Pacific L.J. 189.) The reporting law imposes a mandatory reporting requirement on individuals whose professions bring them into contact with children. (*Id.*, at pp. 189-190.) Physical abuse, sexual abuse, willful cruelty, unlawful corporal punishment and neglect must be reported.
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> ¶…¶
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> The reporting law applies to three broadly defined groups of professionals: "health practitioners," child care custodians, and employees of a child protective agency. "Health practitioners" is a broad category subdivided into "medical" and "nonmedical" practitioners, and encompasses a wide variety of healing professionals, including physicians, nurses, and family and child counselors. (§§ 11165, subds. (i), (j); 11165.2.) "Child care custodians" include teachers, day care workers, and a variety of public health and educational professionals. (§§ 11165, subd. (h); 11165.1 [first of two identically numbered sections]; 11165.5.) Employees of "child protective agencies" consist of police and sheriff's officers, welfare department employees and county probation officers. (§ 11165, subd. (k).)
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> The Legislature acknowledged the need to distinguish between instances of abuse and those of legitimate parental control. "[T]he Legislature recognizes that the reporting of child abuse ... involves a delicate balance between the right of parents to control and raise their own children by imposing reasonable discipline and the social interest in the protection and safety of the child ... . [I]t is the intent of the Legislature to require the reporting of child abuse which is of a serious nature and is not conduct which constitutes reasonable parental discipline." (Stats. 1980, ch. 1071, § 5, p. 3425.)
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> To strike the "delicate balance" between child protection and parental rights, the Legislature relies on the judgment and experience of the trained professional to distinguish between abusive and nonabusive situations. "[A]ny child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment *whom he or*

she knows or reasonably suspects has been the victim of child abuse shall report the known or suspected instance of child abuse to a child protective agency .... '[R]easonable suspicion' means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, *drawing when appropriate on his or her training and experience*, to suspect child abuse." (§ 11166, subd. (a), italics added.) As one commentator has observed, "[t]he occupational categories ... are presumed to be uniquely qualified to make informed judgments when suspected abuse is not blatant." (See Comment, *Reporting Child Abuse: When Moral Obligations Fail, supra.*, 15 Pacific L.J. at p. 214, fn. omitted.)

The mandatory child abuse report must be made to a "child protective agency," i.e., a police or sheriff's department or a county probation or welfare department. The professional must make the report "immediately or as soon as practically possible by telephone." The professional then has 36 hours in which to prepare and transmit to the agency a written report, using a form supplied by the Department of Justice. The telephone and the written reports must include the name of the minor, his or her present location, and the information that led the reporter to suspect child abuse. (§§ 11166, subd. (a); 11167, subd. (a); 11168.) Failure to make a required report is a misdemeanor, carrying a maximum punishment of six months in jail and a $1,000 fine. (§ 11172, subd. (e).)

The child protective agency receiving the initial report must share the report with all its counterpart child protective agencies by means of a system of cross-reporting. An initial report to a probation or welfare department is shared with the local police or sheriff's department, and vice versa. Reports are cross-reported in almost all cases to the office of the district attorney. (§ 11166, subd. (g).) Initial reports are confidential, but may be disclosed to anyone involved with the current investigation and prosecution of the child abuse claim, including the district attorney who has requested notification of any information relevant to the reported instance of abuse. (§ 11167.5.)

A child protective agency receiving the initial child abuse report then conducts an investigation. The Legislature intends an investigation be conducted on every report received. The investigation should include a determination of the "person or persons apparently responsible for the abuse." (Stats. 1980, ch. 1071, § 5, pp. 3425-3426.) Once the child protective agency conducts an "active investigation" of a report and determines that it is "not unfounded," the agency must forward a written report to the Department of Justice, on forms provided by the department. (§§ 11168, 11169.) An "unfounded" report is one "which is determined by a child protective agency investigator to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse as defined in Section 11165." (§ 11165.6, subd. (c)(2).)

The Department of Justice retains the reports in a statewide index, a computerized data bank known as the "Child Abuse Central Registry," which is to be continually updated and "shall not contain any reports that are determined to be unfounded." (§ 11170, subd. (a).) If a child protective agency subsequently

> determines that a report is "unfounded," it must so inform the Department of Justice who shall remove the report from its files. (§ 11169.)
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> The reports in the registry are not public documents, but may be released to a number of individuals and government agencies. Principally, the information may be released to an investigator from the child protective agency currently investigating the reported case of actual or suspected abuse or to a district attorney who has requested notification of a suspected child abuse case. Past reports involving the same minor are also disclosable to the child protective agency and the district attorney involved or interested in a current report under investigation. In addition, future reports involving the same minor will cause release of all past reports to the investigating law enforcement agencies. (§§ 11167.5, subd. (b)(1); 11167, subd. (c); 11170, subd. (b)(1).)

As part of the earlier versions of California's mandated reporting laws, a Child Abuse Centralized Index has been operated by the Department of Justice (DOJ) since 1965.[1] In addition, in January 1974, Congress enacted the federal "Child Abuse Prevention and Treatment Act," known as CAPTA (Pub.L. No. 93-247). This established a federal advisory board and grant funding for states with comprehensive child abuse and neglect reporting laws. This law has been continually reenacted and currently provides grant funds to all eligible states and territories for child abuse and neglect reporting, prevention, and treatment programs.[2]

Claimant's Position

The County of Los Angeles's June 29, 2001[3] test claim filing alleges that amendments to child abuse reporting statutes since January 1, 1975, and related DOJ regulations and forms, have resulted in reimbursable increased costs mandated by the state. The test claim narrative and declarations allege that the test claim statutes and executive orders imposed new activities on the claimant in the following categories:

1. Program Implementation
2. Initial Case Finding and Reporting
3. Taking and Referring Reports
4. Cross-Reporting and District Attorney Reporting
5. Investigation and File Queries, Maintenance
6. Child Abuse Central Index Reporting
7. Notifications

The filing includes declarations of representatives from the County of Los Angeles Department of Children and Family Services, the District Attorney's Office, and the Sheriff's Department.

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[1] Former Penal Code section 11165.1, as amended by Statutes 1974, chapter 348.

[2] 42 United States Code section 5106a.

[3] The potential reimbursement period begins no earlier than July 1, 1999, based upon the filing date for this test claim. (Gov. Code, § 17557.)

Claimant filed comments on September 7, 2007, expressing agreement with the draft staff analysis findings and conclusions, and attaching exhibits related to the county's implementation of the program.

Department of Finance Position

In comments filed December 10, 2001, DOF alleges the test claim does not meet filing standards, stating that "[t]he claimant has failed to set forth clearly and precisely which specific statutory provisions, enacted on or after 1975, imposed new mandates on local government, as required by [Commission regulations.]"

Addressing the substantive issues raised, DOF argued that no reimbursable state-mandated program has been imposed by any of the test claim statutes or executive orders. DOF asserted that the claim "attempts to characterize as "new duties" many of the long-standing statutory obligations of local law enforcement, probation, and child protective agencies to receive and refer reports concerning allegations of child abuse."

DOF also contended that "[a]rticle XIII B, section 6 requires subvention only when the costs in question can be recovered *solely* from local tax revenues. [footnote (fn): *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.] The Child Welfare Program, of which child protective services are a part, is funded by a combination of federal, state and local funds. [fn: Welfare and Institutions Code § 10101, Exhibit 4, attached.]" DOF argued that because of this joint funding, "the test claim legislation is not subject to state subvention."

On July 20, 2007, DOF filed a response to Commission staff's request for additional information to address the assertion that the test claim activities have been funded. DOF's response included a CD containing pages from the Budget Act regarding Item 5180-151-0001, and DSS County Fiscal Letters, from fiscal year 1999-2000 through 2006-2007. This filing is discussed further at Issue 3 below.

On September 12, 2007, DOF filed comments on the draft staff analysis stating concurrence with the recommendation to partially approve the test claim, but concluding that if the analysis is approved by the Commission, "the claimant's statements that the activities have neither been offset or funded by the state or federal government must be fully substantiated."

Department of Social Services Position

DSS's comments on the test claim filing, submitted December 10, 2001, conclude that for any new activities alleged "no additional reimbursement is warranted. The existing funding scheme adequately reimburses local government for costs associated with the delivery of child welfare services which includes the provision of services and level of services mandated under current law." DSS's comments regarding specific test claim activities will be addressed in the analysis below.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6, of the California Constitution[4] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[5] "Its

[4] Article XIII B, section 6, subdivision (a), 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

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."[6] 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.[7] 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.[8]

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.[9] To determine if the program is new or imposes a higher level of service, the test claim statutes and executive orders must be compared with the legal requirements in effect immediately before the enactment.[10] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[11]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[12]

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.[13] In making its

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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.

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

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

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

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

[9] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar, supra,* 44 Cal.3d 830, 835.)

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

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

[12] *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.

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."[14]

Issue 1: What is the scope of the Commission's jurisdiction on this test claim?

DOF challenged the sufficiency of the test claim pleadings in their comments filed December 10, 2001. Government Code section 17551 requires the Commission to hear and decide upon a claim by a local agency or school district that the claimant is entitled to reimbursement pursuant to article XIII B, section 6 of the California Constitution. Government Code section 17521 defines the test claim as the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Thus, the Government Code gives the Commission jurisdiction only over those statutes or executive orders pled by the claimant in the test claim. At the time of the test claim filing on June 29, 2001, section 1183, subdivision (e), of the Commission regulations required the following content for an acceptable filing:[15]

> All test claims, or amendments thereto, shall be filed on a form provided by the commission [and] shall contain at least the following elements and documents:
>
> (1) A copy of the statute or executive order alleged to contain or impact the mandate. The specific sections of chaptered bill or executive order alleged must be identified.

The regulation also required copies of all "relevant portions of" law and "[t]he specific chapters, articles, sections, or page numbers must be identified," as well as a detailed narrative describing the prior law and the new program or higher level of service alleged.

The test claim cover pages list "Penal Code Part 4, Title 1, Chapter 2, Article 2.5: The Child Abuse and Neglect Report Act, as Specified, and as Added or Amended by Chapter 1071, Statutes of 1980 and Subsequent Statutes, Including Penal Code Section 11168, and as Including Former Penal Code Section 11161.7, Amended by Chapter 958, Statutes of 1977." The title pages also include specific references to three regulations and two state forms, pled as executive orders.

The Commission identifies specific allegations in the test claim narrative or in the claimant's rebuttal comments filed February 15, 2002, regarding Penal Code sections 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, 11165.6, 11165.7, 11165.9, 11165.12, 11166, 11166.2, 11166.9, 11168, 11169, and 11170, as added or amended by Statutes 1980, chapter 1071, through amendments by Statutes 2001, chapter 916. The test claim allegations also include former Penal Code section 11161.7, as amended by Statutes 1977, chapter 958, as it was later incorporated into Penal Code section 11168. The claim alleges reimbursable costs are imposed on the county Department of Children and Family Services, the District Attorney's Office, and the Sheriff's

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

[14] *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.

[15] The required contents of a test claim are now codified at Government Code section 17553.

Department. The Commission takes jurisdiction over these statutes and code sections, along with the executive orders pled, and these will be analyzed below for the imposition of a reimbursable state mandated program.

In addition, San Bernardino Community College District filed interested party comments on the draft staff analysis on September 7, 2007, requesting that the test claim findings be made for the legal requirements "for all police departments and law enforcement agencies, and not exclude school district police departments without a compelling reason." On December 5, 2007, a request was received from DOF to postpone the hearing on *ICAN* until a final decision is reached in *Department of Finance v. Commission on State Mandates*, [California Court of Appeal Case No. C056833 (POBOR)]. In order to allow the County of Los Angeles claim to move forward on the December 6, 2007 hearing agenda, the test claim statutes and executive orders pled in 00-TC-22, as they may apply to other types of local governmental entities, were severed and consolidated with another pending test claim, *Child Abuse and Neglect Reporting*, 01-TC-21, filed by the San Bernardino Community College District. Therefore, *this* statement of decision is limited to findings for cities and counties.

Issue 2: Do the test claim statutes and executive orders mandate a new program or higher level of service on cities and counties within the meaning of article XIII B, section 6 of the California Constitution?

A test claim statute or executive order mandates a new program or higher level of service within an existing program when it compels a local agency or school district to perform activities not previously required, or when legislation requires that costs previously borne by the state are now to be paid by local government.[16] Thus, in order for a statute to be subject to article XIII B, section 6 of the California Constitution, the statutory language must order or command that local governmental agencies perform an activity or task, or result in "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."[17]

The test claim allegations will be analyzed by areas of activities, as follows: (a) mandated reporting of child abuse and neglect (b) distributing the Suspected Child Abuse Report Form; (c) reporting between local departments; (d) investigation of suspected child abuse, and reporting to and from the state Department of Justice; (e) notifications following reports to the Child Abuse Central Index; and (f) record retention. The prior law in each area will be identified.

(A) Mandated Reporting of Child Abuse and Neglect

Penal Code Section 11166, Subdivision (a):

Penal Code section 11166,[18] subdivision (a), as pled, provides that "a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his

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[16] *Lucia Mar Unified School Dist., supra*, 44 Cal.3d 830, 836.

[17] California Constitution, article XIII B, section 6, subdivision (c).

[18] As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992,

or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make a report to the agency immediately or as soon as is practicably possible by telephone and the mandated reporter shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident." Penal Code section 11165.9 requires reports be made "to any police department, sheriff's department, county probation department if designated by the county to receive mandated reports, or the county welfare department. It does not include a school district police or security department."

Mandated child abuse reporting has been part of California law since 1963, when Penal Code section 11161.5 was first added. Former Penal Code section 11161.5, as amended by Statutes 1974, chapter 348, required specified medical professionals, public and private school officials and teachers, daycare workers, summer camp administrators, and social workers to report on observed non-accidental injuries or apparent sexual molest, by making a report by telephone and in writing to local law enforcement and juvenile probation departments, or county welfare or health departments. The code section began:

> (a) In any case in which a minor is brought to a physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, or religious practitioner for diagnosis, examination or treatment, or is under his charge or care, or in any case in which a minor is observed by any registered nurse when in the employ of a public health agency, school, or school district and when no physician and surgeon, resident, or intern is present, by any superintendent, any supervisor of child welfare and attendance, or any certificated pupil personnel employee of any public or private school system or any principal of any public or private school, by any teacher of any public or private school, by any licensed day care worker, by an administrator of a public or private summer day camp or child care center, or by any social worker, and it appears to the [reporting party] from observation of the minor that the minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon the minor, he shall report such fact by telephone and in writing, within 36 hours, to both the local police authority having jurisdiction and to the juvenile probation department;[19] or in the alternative, either to the county welfare department, or to the county health department. The report shall state, if known, the name of the minor, his whereabouts and the character and extent of the injuries or molestation.

The list of "mandated reporters," as they are now called, has grown since 1975. The detailed list, now found at Penal Code section 11165.7,[20] includes all of the original reporters and now also

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chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

[19] Subdivision (b) provided that reports that would otherwise be made to a county probation department are instead made to the county welfare department under specific circumstances.

[20] Added by Statutes 2000, chapter 916.

includes: teacher's aides and other classified school employees; county office of education employees whose employment requires regular child contact; licensing workers; peace officers and other police or sheriff employees; firefighters; therapists; medical examiners; animal control officers; film processors; clergy and others.

The Commission finds that the duties alleged are not required of local entities, but of mandated reporters as individual citizens. The statutory scheme requires duties of individuals, identified by either their profession or their employer, but the duties are not being performed on behalf of the employer or for the benefit of the employer, nor are they required by law to be performed using the employer's resources. Penal Code section 11166 also includes the following provision, criminalizing the failure of mandated reporters to report child abuse or neglect:[21]

> Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars ($1,000) or by both that fine and punishment.

Failure to make an initial telephone report, followed by preparation and submission of a written report within 36 hours, on a form designated by the Department of Justice, subjects the mandated reporter to criminal liability. This criminal penalty applies to mandated reporters as individuals and does not extend to their employers. In addition, under Penal Code section 11172, mandated reporters are granted immunity as individuals for any reports they make: "No mandated reporter shall be civilly or criminally liable for any report required or authorized by this article, and *this immunity shall apply even if* the mandated reporter acquired the knowledge or reasonable suspicion of child abuse or neglect *outside of his or her professional capacity or outside the scope of his or her employment*." [Emphasis added.] Therefore, the Commission finds that the duties are required of mandated reporters as individuals, and Penal Code section 11166, subdivision (a), does not mandate a new program or higher level of service on local governments for the activities required of mandated reporters.

Definitions of Child Abuse and Neglect: Penal Code Sections 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, and 11165.6:

Penal Code section 11165.6,[22] as pled, defines "child abuse" as "a physical injury that is inflicted by other than accidental means on a child by another person." The code section also defines the term "child abuse or neglect" as including the statutory definitions of sexual abuse (§ 11165.1[23]), neglect (§ 11165.2[24]), willful cruelty or unjustifiable punishment (§ 11165.3[25]),

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[21] This provision was moved to Penal Code section 11166 by Statutes 2000, chapter 916. Prior to that, the misdemeanor provision was found at section 11172, as added by Statutes 1980, chapter 1071.

[22] As repealed and reenacted by Statutes 2000, chapter 916.

[23] Added by Statutes 1987, chapter 1459; amended by Statutes 1997, chapter 83 and Statutes 2000, chapter 287. Derived from former Penal Code section 11165 and 11165.3.

[24] Added by Statutes 1987, chapter 1459. Derived from former Penal Code section 11165.

[25] Added by Statutes 1987, chapter 1459.

unlawful corporal punishment or injury (§ 11165.4[26]), and abuse or neglect in out-of-home care (§ 11165.5[27]).

The test claim alleges that all of the statutory definitions of abuse and neglect in the Child Abuse and Neglect Reporting Act result in a reimbursable state-mandated program. While the definitional code sections alone do not require any activities, they do require analysis to determine if, in conjunction with the other test claim statutes, they mandate a new program or higher level of service by increasing the "scope of child abuse and neglect that is initially reported to child protective services,"[28] as suggested by the claimant.

Former Penal Code section 11161.5 mandated child abuse reporting when "the minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon the minor." The prior law of Penal Code section 273a[29] follows:

> (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding 1 year, or in the state prison for not less than 1 year nor more than 10 years.
>
> (2) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor.

The Commission finds that the definition of child abuse and neglect found in prior law was very broad, and required mandated child abuse reporting of physical and sexual abuse, as well as non-accidental acts by any person which could cause mental suffering or physical injury. Prior law

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[26] Added by Statutes 1987, chapter 1459; amended by Statutes 1988, chapter 39, and Statutes 1993, chapter 346.

[27] Added by Statutes 1987, chapter 1459; amended by Statutes 1988, chapter 39, Statutes 1993, chapter 346, and Statutes 2000, chapter 916. The cross-reference to section 11165.5 was removed from section 11165.6 by Statutes 2001, chapter 133.

[28] Test Claim Filing, page 13.

[29] Added by Statutes 1905, chapter 568; amended by Statutes 1963, chapter 783, and Statutes 1965, chapter 697. The section has since had the penalties amended, but the description of the basic crime of child abuse and neglect remains good law at Penal Code section 273a.

also required mandated reporting of situations that injured the health or may endanger the health of the child, caused or permitted by any person.

The Commission finds these sweeping descriptions of reportable child abuse and neglect under prior law encompass every part of the statutory definitions of child abuse and neglect, as pled. Even though the definitions have been rewritten, in *Williams v. Garcetti* (1993) 5 Cal.4th 561, 568, the Court stated a fundamental rule of statutory construction: "'Where changes have been introduced to a statute by amendment it must be assumed the changes have a purpose ....' " [Citation omitted.] That purpose is not necessarily to change the law. 'While an intention to change the law is usually inferred from a material change in the language of the statute [citations], a consideration of the surrounding circumstances may indicate, on the other hand, that the amendment was merely the result of a legislative attempt to clarify the true meaning of the statute.'" The Commission finds that the same acts of abuse or neglect that are reportable under the test claim statutes were reportable offenses under pre-1975 law.

Penal Code section 11165.1 provides that "sexual abuse," for purposes of child abuse reporting, includes "sexual assault" or "sexual exploitation," which are further defined. Sexual assault includes all criminal acts of sexual contact involving a minor, and sexual exploitation refers to matters depicting, or acts involving, a minor and "obscene sexual conduct." Prior law required reporting of "sexual molestation," as well as "unjustifiable physical pain or mental suffering."

"Sexual molestation" is not a defined term in the Penal Code. However, former Penal Code section 647a, now section 647.6, criminalizes actions of anyone "who annoys or *molests* any child under the age of 18." In a case regularly cited to define "annoy or molest," *People v. Carskaddon* (1957) 49 Cal.2d 423, 425-426, the California Supreme Court found that:

> The primary purpose of the above statute is the 'protection of children from interference by sexual offenders, and the apprehension, segregation and punishment of the latter.' (*People v. Moore, supra*, 137 Cal.App.2d 197, 199; *People v. Pallares*, 112 Cal.App.2d Supp. 895, 900 [246 P.2d 173].) The words 'annoy' and 'molest' are synonymously used (Words and Phrases, perm. ed., vol. 27, 'molest'); they generally refer to conduct designed 'to disturb or irritate, esp. by continued or repeated acts' or 'to offend' (Webster's New Inter. Dict., 2d ed.); and as used in this statute, they ordinarily relate to 'offenses against children, [with] a connotation of abnormal sexual motivation on the part of the offender.' (*People v. Pallares, supra*, p. 901.) Ordinarily, the annoyance or molestation which is forbidden is 'not concerned with the state of mind of the child' but it is 'the objectionable acts of defendant which constitute the offense,' and if his conduct is 'so lewd or obscene that the normal person would unhesitatingly be irritated by it, such conduct would 'annoy or molest' within the purview of' the statute. (*People v. McNair*, 130 Cal.App.2d 696, 697-698 [279 P.2d 800].)

By use of the general term "sexual molestation" in prior law, rather than specifying sexual assault, incest, prostitution, or any of the numerous Penal Code provisions involving sexual crimes, the statute required mandated child abuse reporting whenever there was evidence of "offenses against children, [with] a connotation of abnormal sexual motivation." Thus, sexual abuse was a reportable offense under prior law, as under the definition at Penal Code section 11165.1.

Penal Code section 11165.2 specifies that "neglect," as used in the Child Abuse and Neglect Reporting Act, includes situations "where any person having care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered," "*including* the intentional failure of the person having care or custody of a child to provide adequate food, clothing, shelter, or medical care." Not providing adequate food, clothing, shelter, or medical care is tantamount to placing a child "in such situation that its person or health may be endangered," as described in prior law, above. Thus the same circumstances of neglect were reportable under prior law, as under the definition pled.

The prior definition of child abuse included situations where "[a]ny person … willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering." The current definition of "willful cruelty or unjustifiable punishment of a child," found at Penal Code section 11165.3 carries over the language of Penal Code section 273a, without distinguishing between the misdemeanor and felony standards.[30]

The definition of unlawful corporal punishment or injury, found at Penal Code section 11165.4, as pled, prohibits "any cruel or inhuman corporal punishment or injury resulting in a traumatic condition." Again, prior law required reporting of any non-accidental injuries, "willful cruelty," and "unjustifiable physical pain or mental suffering," which encompasses all of the factors described in the definition for reportable "unlawful corporal punishment or injury." The current law also excludes reporting of self-defense and reasonable force when used by a peace officer or school official against a child, within the scope of employment. This exception actually narrows the scope of child abuse reporting when compared to prior law.

Penal Code section 11165.5 defines "abuse or neglect in out-of-home care" as all of the previously described definitions of abuse and neglect, "where the person responsible for the child's welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or employee of a public or private school or other institution or agency." Prior law required reporting of abuse by "any person," and neglect by anyone who had a role in the care of the child.[31] Thus any abuse reportable under section 11165.5, would have been reportable under prior law, as detailed above. As further evidence of this redundancy, Statutes 2001, chapter 133, effective July 31, 2001, removed the reference to "abuse or neglect in out-of-home care" from the general definition of "child abuse and neglect" at Penal Code section 11165.6.

Therefore, the Commission finds that Penal Code sections 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, and 11165.6, do not mandate a new program or higher level of service by increasing the scope of child abuse and neglect reporting.

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[30] Penal Code section 273a distinguishes between those "circumstances or conditions likely to produce great bodily harm or death" (felony), and those that are not (misdemeanor).

[31] *People v. Toney* (1999) 76 Cal.App.4th 618, 621-622: "No special meaning attaches to this language [care or custody] "beyond the plain meaning of the terms themselves. The terms 'care or custody' do not imply a familial relationship but only a willingness to assume duties correspondent to the role of a caregiver." (*People v. Cochran* (1998) 62 Cal.App.4th 826, 832, 73 Cal.Rptr.2d 257.)"

Penal Code Section 11165.7:

The claimant also requests reimbursement for training mandated reporters. The test claim filing, at page 43, makes the following allegation (all brackets are in the claimant's original text):

> Mandated reporters [Section 11165.7] report child abuse [as defined in Section 11165.6] that is suspected [Section 11166(a)] and such reporters are required to undergo training in accordance with Section 11165.7 subdivisions (c) and (d):
>
> > "(c) Training in the duties imposed by this article shall include training in child abuse identification and training in child abuse reporting. As part of that training, school districts shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights.
> >
> > (d) School districts that do not train the employees specified in subdivision (a) in the duties of child care custodians under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided."

Claimant's quote of Penal Code section 11165.7,[32] subdivisions (c) and (d) is accurate, as amended by Statutes 2000, chapter 916. Penal Code section 11165.7, subdivision (a), is the list of professions that are mandated reporters; subdivision (b), as pled, provided that volunteers who work with children "are encouraged to obtain training in the identification and reporting of child abuse."

The specific language regarding training in the test claim statute refers to school districts.[33] A separate test claim was filed for training activities on this same code section by San Bernardino Community College District on behalf of school districts. This will be heard by the Commission at a separate hearing: *Child Abuse and Neglect Reporting* (01-TC-21). The analysis for Penal Code section 11165.7 in this test claim is limited to cities and counties.

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[32] Added by Statutes 1987, chapter 1459; amended by Statutes 1991, chapter 132, Statutes 1992, chapter 459, and Statutes 2000, chapter 916.

[33] Although this is addressed in more detail in the 01-TC-21 test claim, some history of Penal Code section 11165.7 is helpful to put the training language into legislative context. Prior to amendment by Statutes 2000, chapter 916, subdivision (a) did not provide the complete list of mandated reporters, but instead defined the term "child care custodian" for the purposes of the Child Abuse and Neglect Reporting Act. The definition provided that a "child care custodian" included "an instructional aide, a teacher's aide, or a teacher's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education; [and] a classified employee of any public school who has been trained in the duties imposed by this article, if the school has so warranted to the State Department of Education." All other categories of "child care custodian" defined in former Penal Code section 11165.7, including teachers, child care providers, social workers, and many others, were not dependent on whether the individual had received training on being a mandated reporter.

The Commission finds, based on the plain meaning of the statute,[34] that there is no express duty in the test claim statute for local agencies, as employers or otherwise, to provide training to mandated reporters in child abuse identification and reporting. Rather, as described in *Planned Parenthood, supra*, 181 Cal.App.3d 245, 259, at footnote 4: "[t]he Legislature has enacted numerous provisions to ensure these occupational categories [mandated reporters] receive the necessary training in child abuse detection. (See, e.g., Bus. & Prof. Code, §§ 28, 2089, 2091.)" So, while the Business and Professions Code requires that specific professionals, including psychologists, clinical social workers, marriage and family therapists, physicians, and surgeons, receive training on mandated child abuse reporting as part of their initial licensing and continuing education requirements, the training is not required to be provided by local agency employers pursuant to the test claim statutes.[35] Therefore, the Commission finds that Penal Code section 11165.7, subdivisions (c) and (d), does not mandate a new program or higher level of service on local agencies for training mandated reporters.

(B) Distributing the Suspected Child Abuse Report Form:

Penal Code Section 11168, Including Former Penal Code Section 11161.7, and the "Suspected Child Abuse Report" Form SS 8572:

Penal Code section 11161.7 was added by Statutes 1974, chapter 836, and required DOJ to issue an optional form, for use by medical professionals to report suspected child abuse. Then, Statutes 1977, chapter 958, one of the test claim statutes, amended section 11161.7 and for the first time required a mandatory reporting form to be adopted by DOJ, to be distributed by county welfare departments.

The 1980 reenactment of the child abuse reporting laws moved the provision to Penal Code section 11168,[36] which now requires:

> The written reports required by Section 11166 shall be submitted on forms adopted by the Department of Justice after consultation with representatives of the various professional medical associations and hospital associations and county probation or welfare departments. Those forms shall be distributed by the agencies specified in Section 11165.9.

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[34] "If the terms of the statute are unambiguous, the court presumes the lawmakers meant what they said, and the plain meaning of the language governs." (*Estate of Griswold* (2001) 25 Cal.4th 904, 911.)

[35] The activity of training on the requirements of the Child Abuse and Neglect Reporting Act, is one that, while not explicitly required by the plain language of the statute, may be found to be one "of the most reasonable methods of complying with the mandate" during the parameters and guidelines part of the test claim process. California Code of Regulations, title 2, section 1183.1, subdivision (a)(4), requires the parameters and guidelines to contain a description of the reimbursable activities, including "those methods not specified in statute or executive order that are necessary to carry out the mandated program."

[36] As added by Statutes 1980, chapter 1071 and amended by Statutes 2000, chapter 916. Derived from former Penal Code section 11161.7, added by Statutes 1974, chapter 836, and amended by Statutes 1977, chapter 958.

The Commission finds that agencies specified in section 11165.9 did not have a duty to distribute the state-issued "Suspected Child Abuse Report" (Form SS 8572), or any other child abuse reporting form, prior to Statutes 1977, chapter 958. Therefore, the Commission finds that Penal Code section 11168, as pled, mandates a new program or higher level of service, as follows:

> *Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:*
>
> - Distribute the child abuse reporting form adopted by the Department of Justice (currently known as the "Suspected Child Abuse Report" Form SS 8572) to mandated reporters.

(C) Reporting Between Local Departments

Accepting and Referring Initial Child Abuse Reports when a Department Lacks Jurisdiction: Penal Code Section 11165.9:

Penal Code section 11165.9,[37] as pled, requires:

> Reports of suspected child abuse or neglect shall be made by mandated reporters to any police department, sheriff's department, county probation department if designated by the county to receive mandated reports, or the county welfare department. It does not include a school district police or security department. Any of those agencies shall accept a report of suspected child abuse or neglect whether offered by a mandated reporter or another person, or referral by another agency, even if the agency to whom the report is being made lacks subject matter or geographical jurisdiction to investigate the reported case, unless the agency can immediately electronically transfer the call to an agency with proper jurisdiction. When an agency takes a report about a case of suspected child abuse or neglect in which that agency lacks jurisdiction, the agency shall immediately refer the case by telephone, fax, or electronic transmission to an agency with proper jurisdiction.

As discussed above, the prior law of Penal Code section 11161.5, subdivision (a), required the mandated reporters to report child abuse "by telephone and in writing, within 36 hours, to both the local police authority having jurisdiction and to the juvenile probation department; or in the alternative, either to the county welfare department, or to the county health department."

Thus, police, sheriff's, probation, and county health and welfare departments were required to accept mandated child abuse reports under prior law;[38] however, one aspect of Penal Code section 11165.9 creates a new duty. Now, local police, sheriff's, probation or county welfare departments, *even when they lack jurisdiction* over the reported incident "shall accept a report of suspected child abuse or neglect whether offered by a mandated reporter or another person, or referral by another agency" unless they take action to immediately transfer the telephone call to the proper agency. Otherwise, they must accept the report, and then forward it "immediately" by telephone, fax or electronic transmission to the proper agency. Prior law placed the burden solely on the mandated reporter to file the report with an agency with proper jurisdiction. With the change made by Statutes 2000, chapter 916, a local police, sheriff's, probation or county welfare department with improper jurisdiction must take affirmative steps to accept and refer a

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[37] As added by Statutes 2000, chapter 916. Derived from former Penal Code section 11165.

[38] Former Penal Code section 11161.5, subdivision (a).

child abuse report, rather than simply telling a caller that they have contacted the wrong department. Therefore, the Commission finds that Penal Code section 11165.9, as added by Statutes 2000, chapter 916, mandates a new program or higher level of service, as follows:

> *Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:*
>
> - Transfer a call electronically or immediately refer the case by telephone, fax, or electronic transmission, to an agency with proper jurisdiction, whenever the department lacks subject matter or geographical jurisdiction over an incoming report of suspected child abuse or neglect.

Cross-Reporting of Suspected Child Abuse or Neglect from County Welfare and Probation Departments to the Law Enforcement Agency with Jurisdiction and the District Attorney's Office:
Penal Code Section 11166, Subdivision (h):[39]

Penal Code section 11166, subdivision (h), as pled, requires reporting from the county probation or welfare departments to the law enforcement agency with jurisdiction, and to the district attorney's office. The law requires county welfare or probation departments to report by telephone, fax or electronic transmission "every known or suspected instance of child abuse or neglect" to the law enforcement agency with jurisdiction, the local agency responsible for investigation of Welfare and Institutions Code section 300 cases (such as a child protective services department), and to the district attorney's office. There is an exception to reporting cases to law enforcement and the district attorney when they only involve general neglect, or an inability to provide "regular care due to the parent's substance abuse." If an initial telephone report is made, a written report by mail, fax or electronic transmission must follow within 36 hours.

Statutes 2000, chapter 916, operative January 1, 2001, modified the reporting requirements by allowing the initial reports to be made by fax or electronic means, rather than initially by telephone. Thus, there is now the option of meeting the mandate requirements in a single step if the initial report is made by fax or electronic transmission. Statutes 2005, chapter 713, operative January 1, 2006, following the filing of the test claim, made the same change for reports from law enforcement agencies. This statute also re-lettered the subdivisions from (h) to (j).

The prior law of former section 11161.5, subdivision (a), required "cross-reporting" by county welfare or health departments to the local police authority with jurisdiction and juvenile probation departments, as follows:

> Whenever it is brought to the attention of a director of a county welfare department or health department that a minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that a minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon a minor, he shall file a report

[39] Subsequent amendments (not pled) re-lettered subdivision (h). The subdivision is now lettered (j). For consistency with the pleadings, the subdivision will be referred to as (h) in the discussion.

without delay with the local police authority having jurisdiction and to the juvenile probation department as provided in this section.

Thus, prior law did require county welfare departments to file a report of suspected child abuse or neglect "with the local police authority with jurisdiction," "without delay."[40] However, all of the other local child abuse cross-reporting duties were added by Statutes 1980, chapter 1071, or in later amendments.

The Commission finds that Penal Code section 11166[41] mandates a new program or higher level of service on county probation and welfare departments for the following activities, as of the beginning of the reimbursement period, July 1, 1999:

A county probation department shall:

- Report by telephone immediately, or as soon as practically possible, to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Penal Code section 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare department.

- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

  As of January 1, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours.

A county welfare department shall:

- Report by telephone immediately, or as soon as practically possible, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Penal Code section 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates solely to the inability of the parent to

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[40] A common definition of the word "immediately," which is used in the current statute, is "without delay," which is used in the prior law. (American Heritage Dict. (4th ed. 2000).)

[41] As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare department.

This activity does not include making an initial report of child abuse and neglect from a county welfare department to the law enforcement agency having jurisdiction over the case, which was required under prior law to be made "without delay."

- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency, including the law enforcement agency having jurisdiction over the case, to which it is required to make a telephone report under this subdivision.

  As of January 1, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours.

Cross-Reporting of Suspected Child Abuse or Neglect from the Law Enforcement Agency to the the County Welfare and Institutions Code Section 300 Agency, County Welfare, and the District Attorney's Office:
Penal Code Section 11166, Subdivision (i):[42]

Penal Code section 11166, subdivision (i) provides the requirement that law enforcement agencies must relay known or suspected child abuse and neglect reports by telephone to the Welfare and Institutions Code section 300 agency for the county, and to the district attorney's office, with an exception for reporting cases of general neglect to the district attorney. The law enforcement agency must also cross-report to the county welfare department all reports of suspected child abuse or neglect alleged to have occurred as a result of the action of a person responsible for the child's welfare. A written report by mail, fax or electronic transmission must follow any telephone report within 36 hours.

Statutes 2000, chapter 916, operative January 1, 2001, modified the reporting requirements by allowing the initial reports to be made by fax or electronic means, rather than initially by telephone. Thus, there is now the option of meeting the mandate requirements in a single step if the initial report is made by fax or electronic transmission. Statutes 2005, chapter 713, operative January 1, 2006, following the filing of the test claim, made the same change for reports from law enforcement agencies. This statute also re-lettered the subdivisions from (i) to (k).

The Commission finds that Penal Code section 11166, subdivision (i)[43] mandates a new program or higher level of service on city and county law enforcement agencies for the following activities, as of the beginning of the reimbursement period, July 1, 1999:

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[42] Subsequent amendments (not pled) re-lettered subdivision (i). The subdivision is now lettered (k). For consistency with the pleadings, the subdivision will be referred to as (i) in the discussion.

[43] As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

A city or county law enforcement agency shall:

- Report by telephone immediately, or as soon as practically possible, to the agency given responsibility for investigation of cases under Welfare and Institutions Code section 300 and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within Penal Code section 11165.2, subdivision (b), which shall be reported only to the county welfare department.
- Report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse.
- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

  As of January 1, 2006, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours.

Receipt of Cross-Reports by District Attorney's Office: Penal Code Section 11166, Subdivisions (h) and (i):

The claimant also alleges that Penal Code section 11166, by requiring cross-reporting of suspected child abuse *to* the district attorney, imposes a consequential "duty of the District Attorney to receive, monitor or audit those reports."[44] The activity of "receiving" the suspected child abuse reports on the part of the district attorney is one that is implicit as a reciprocal duty in response to the requirement that law enforcement, probation and county welfare departments provide such reports. Therefore, the Commission finds that Penal Code section 11166 also mandates a new program or higher level of service, as follows:

A district attorney's office shall:

- Receive reports of every known or suspected instance of child abuse reported to law enforcement, county probation or county welfare departments, except acts or omissions of general neglect coming within Penal Code section 11165.2, subdivision (b).

The test claim includes a declaration from the Los Angeles County District Attorney's Office, stating that the agency "is required to audit each case so reported and ensure that, pursuant to the test claim legislation, appropriate investigative agency's reports are completed by these agencies." As described by the California Supreme Court in *Dix v. Superior Court* (1991) 53 Cal.3d 442, 451, "[t]he prosecutor ordinarily has sole discretion to determine whom to charge, what charges to file and pursue, and what punishment to seek." The test claim statutes have not altered that level of independence, nor has the plain meaning of the test claim statutes required any new duties of the district attorney's office to monitor or audit the reports received. To the

[44] Claimant's February 15, 2002 Comments, page 14.

extent that such follow-up activities are necessary, they are part of the prosecutor's ordinary, discretionary, duty to determine whom and what to charge, as described in the *Dix* case.

Therefore, the Commission finds that the activities of monitoring and auditing the suspected child abuse reports, as alleged, are not required by the plain meaning of the test claim statutes, and they do not mandate a new program or higher level of service upon the district attorney's office.

Reporting to Licensing Agencies:
Penal Code Section 11166.2:

Penal Code section 11166.2, [45] as pled, "any agency specified in Section 11165.9 shall immediately or as soon as practically possible report by telephone to the appropriate licensing agency" when suspected child abuse or neglect "occurs while the child is being cared for in a child day care facility, involves a child day care licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee or staff person." In addition, the reporting agency "shall also send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information." Finally, the reporting "agency shall send the licensing agency a copy of its investigation report and any other pertinent materials."

Statutes 2001, chapter 133, operative July 31, 2001, following the filing of the test claim, modified the reporting requirements by allowing agencies to make the initial reports by fax or electronic means, rather than initially by telephone. Thus, reporting agencies now have the option of meeting the mandate requirements in a single step if they make the initial report by fax or electronic transmission.

No cross-reports were required to be made to community care licensing or other licensing agencies under prior law. Therefore, the Commission finds Penal Code section 11166.2 mandates a new program or higher level of service, for the following new activity:

> *Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:*
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> - Report by telephone immediately or as soon as practically possible to the appropriate licensing agency every known or suspected instance of child abuse or neglect when the instance of abuse or neglect occurs while the child is being cared for in a child day care facility, involves a child day care licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee or staff person. The agency shall also send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision. The agency shall send the licensing agency a copy of its investigation report and any other pertinent materials.
>
> As of July 31, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours.

[45] As added by Statutes 1985, chapter 1598 and amended by Statutes 1987, chapter 531; Statutes 1988, chapter 269; Statutes 1990, chapter 650; and Statutes 2000, chapter 916.

Additional Cross-Reporting in Cases of Child Death:
Penal Code Section 11166.9, Subdivisions (k) and (l):

Claimant also alleges in comments filed on February 15, 2002, at page 17, that new activities were required when Penal Code section 11166.9 was amended by Statutes 1999, chapter 1012, adding subdivisions (k) and (l).[46] Previously the code section addressed the statewide effort to identify and address issues related to child deaths, but did not require any mandatory activities of local government.

With the amendment by Statutes 1999, chapter 1012, Penal Code section 11166.9, subdivision (k) requires "Law enforcement and child welfare agencies shall cross-report all cases of child death suspected to be related to child abuse or neglect whether or not the deceased child has any known surviving siblings."

In addition, pursuant to subdivision (l), the county child welfare department must also create a record in a state reporting system regarding the case of a child death. Therefore, the Commission finds that Penal Code section 11166.9, subdivisions (k) and (l), mandates a new program or higher level of service, for the following new activities:

A city or county law enforcement agency shall:

- Cross-report all cases of child death suspected to be related to child abuse or neglect to the county child welfare agency.

A county welfare department shall:

- Cross-report all cases of child death suspected to be related to child abuse or neglect to law enforcement.
- Create a record in the Child Welfare Services/Case Management System (CWS/CMS) on all cases of child death suspected to be related to child abuse or neglect.
- Enter information into the CWS/CMS upon notification that the death was subsequently determined not to be related to child abuse or neglect.

[46] As added by Statutes 1992, chapter 844 and amended by Statutes 1995, chapter 539; Statutes 1997, chapter 842; Statutes 1999, chapter 1012; Statutes 2000, chapter 916. This code section has since been renumbered Penal Code section 11174.34, by Statutes 2004, chapter 842, without amending the text. For consistency with the pleadings, the section will be referred to as 11166.9 in the discussion.

(D) Investigation of Suspected Child Abuse, and Reporting to and from the State Department of Justice

Penal Code Sections 11165.12, 11166, Subdivision (a), 11169, Subdivision (a), and 11170; and the Automated Child Abuse Reporting System (ACAS): California Code of Regulations, Title 11, Sections 901, 902, and 903; and the "Child Abuse Investigation Report" Form SS 8583:

Penal Code section 11169, subdivision (a),[47] as pled, requires "[a]n agency specified in section 11165.9," to forward a written report to DOJ, by mail, fax or electronic transmission "of every case it investigates of known or suspected child abuse or neglect which is determined not to be unfounded," other than cases of general neglect. The reports are required to be in a form approved by DOJ.

Penal Code section 11165.12[48] provides the definitions of unfounded, substantiated and inconclusive reports. Each requires a determination "by the investigator who conducted the investigation." Unfounded reports -- those which have been found following an active investigation to be false, inherently improbable, the result of an accidental injury, or otherwise not satisfying the statutory definition of child abuse and neglect -- are not to be reported to DOJ. Thus, only substantiated and inconclusive reports are to be forwarded to DOJ, pursuant to section 11169, subdivision (a), as described above.

California Code of Regulations, title 11, section 901, provides definitions for the Automated Child Abuse System, or ACAS. Section 902 states the purpose of ACAS "as the index of investigated reports of suspected child abuse received," and is a reference file "used to refer authorized individuals or entities to the underlying child abuse investigative files maintained at the reporting CPA."[49] The Commission finds that California Code of Regulations, title 11, sections 901 or 902, do not require any activities that are not otherwise described in statute, and thus do not mandate a new program or higher level of service.

Penal Code section 11169, subdivision (a) provides that "[t]he reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission." California Code of Regulations, title 11, section 903, designates the current form SS 8583 as "the standard reporting form for submitting summary reports of child abuse to DOJ," and describes mandatory information which must be included on the form "in order for it to be considered a "retainable report" by DOJ and entered into ACAS."

The prior law, former Penal Code section 11161.5, subdivision (a), required all written child abuse reports received by the police to be forwarded to the state, as follows:

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[47] As added by Statutes 1980, chapter 1071 and amended by Statutes 1981, chapter 435, Statutes 1985, chapter 1598, Statutes 1988, chapters 269 and 1497, Statutes 1997, chapter 842, and Statutes 2000, chapter 916.

[48] As added by Statutes 1987, chapter 1459 and amended by Statutes 1990, chapter 1330, Statutes 1997, chapter 842, and Statutes 2000, chapter 916.

[49] "CPA" refers to "child protective agency," which is defined in California Code of Regulations, title 11, section 901, subdivision (f), as referring back to the agencies listed in Penal Code section 11165.9.

> Copies of all written reports received by the local police authority shall be forwarded to the Department of Justice.

Thus, prior law only required a local police authority that received a written report of child abuse to forward a copy of the report to the state, as received.

The claimant further alleges that "investigation" is newly required by the test claim statutes and regulations, in order to complete Form SS 8583, pled as an executive order, for submittal to DOJ. The state agencies dispute that investigation is a new activity. DSS, in comments filed December 10, 2001, states: "Department staff believes that the requirement for the county welfare department to conduct an independent investigation in response to allegations of abuse and neglect is not a newly imposed duty." Neither DSS nor DOF's comments cite any provision of law demonstrating that independent investigation of child abuse reports was required by prior law.

Claimant correctly cites the 1999 *Alejo v. City of Alhambra* appellate court decision,[50] in which the court found that the duty to investigate reports of suspected child abuse and neglect is mandatory. The *Alejo* case concerned a claim of "negligence per se" against the city and the individual police officer for failing to investigate a report from a father that his three-year-old son was being physically abused by the mother's live-in boyfriend. The negligence per se doctrine is used to litigate situations where a violation of a statute or regulation ultimately leads to an injury of a type that the law was intended to prevent. In this case, the court found that the police violated a statute that required the investigation of child abuse reports, which led to the three-year-old child being further abused by the mother's boyfriend. First, the court determined that the police have no general duty to investigate individual reports of child abuse or neglect:

> We acknowledge, as a general rule one has no duty to come to the aid of another. (*Williams v. State of California* (1983) 34 Cal.3d 18, 23 [192 Cal.Rptr. 233, 664 P.2d 137].) Accordingly, there is no duty owed by police to individual members of the general public because "[a] law enforcement officer's duty to protect the citizenry is a general duty owed to the public as a whole." (*Von Batsch v. American Dist. Telegraph Co.* (1985) 175 Cal.App.3d 1111, 1121 [222 Cal.Rptr. 239].) Therefore, absent a special relationship or a statute creating a special duty, the police may not be held liable for their failure to provide protection. (*Id.* at p. 1122.)[51]

Since the court determined that the police have a general duty to protect the public at large, but not a duty to protect specific individuals in the absence of another statute, the opinion then examines whether any specific statute was violated by the police for failing to investigate the report of child abuse. The court determined that Penal Code section 11166, subdivision (a), "creates such a duty."[52]

> As we read section 11166, subdivision (a), it imposes two mandatory duties on a police officer who receives an account of child abuse.

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

[51] *Id.* at page 1185.

[52] *Ibid.*

> Although section 11166, subdivision (a) does not use the term "investigate," *it clearly envisions some investigation in order for an officer to determine whether there is reasonable suspicion to support the child abuse allegation and to trigger a report to the* county welfare department and the district attorney under section 11166, subdivision (i) and to the *Department of Justice under section 11169, subdivision (a).* The latter statute provides in relevant part: "A child protective agency shall forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse which is determined not to be unfounded .... A child protective agency shall not forward a report to the Department of Justice unless it has conducted an active investigation and determined that the report is not unfounded, as defined in Section 11165.12." An "unfounded" report is one "which is determined by a child protective agency investigator to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse, as defined in Section 11165.6." (§ 11165.12, subd. (a).) "Child abuse" is defined in section 11165.6 as "a physical injury which is inflicted by other than accidental means on a child by another person."
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> ¶…¶
>
> Contrary to the city's position, the duty to investigate and report child abuse is mandatory under section 11166, subdivision (a) if a reasonable person in Officer Doe's position would have suspected such abuse. The language of the statute, prior cases and public policy all support this conclusion.[53]

Thus, the court finds that the test claim statutes do mandate investigation, and the Commission must follow this statement of law when reaching its conclusions in this test claim. However, the court was not examining the law from a mandates perspective, and made the finding based on current law. For its purposes, the court had no need to determine whether the earlier versions of the child abuse reporting law initially created the duty to investigate.

The investigation activity identified in the test claim is one that is necessary in order to complete the state "Child Abuse Investigation Report" Form SS 8583. Penal Code section 11169, subdivision (a), as added by Statutes 1980, chapter 1071, and substantively amended by Statutes 1985, chapter 1598, provides that the "agency specified in Section 11165.9" must first conduct an active investigation to determine whether the child abuse or severe neglect "report is not unfounded" before sending a completed report form to the state.[54] No earlier statutes required any determination of the validity of a report of child abuse or neglect before completing a child abuse investigative report form and forwarding it to the state. Therefore, the Commission finds that an investigation sufficient to determine whether a report of suspected child abuse or neglect is unfounded, substantiated, or inconclusive, as defined by Penal Code section 11165.12, is newly mandated by Penal Code section 11169, subdivision (a), as described by the court in *Alejo*.[55]

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[53] *Id.* at pages 1186-1187. [Emphasis added.]

[54] Penal Code section 11169.

[55] *Alejo v. City of Alhambra, supra*, 75 Cal.App.4th 1180, 1186.

The Commission finds that Penal Code section 11169, subdivision (a), the California Code of Regulations, title 11, section 903, and the state "Child Abuse Investigation Report" Form SS 8583, mandate a new program or higher level of service, as follows:

> *Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:*
>
> - Complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive, as defined in Penal Code section 11165.12, for purposes of preparing and submitting the state "Child Abuse Investigation Report" Form SS 8583, or subsequent designated form, to the Department of Justice.
> - Forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect which is determined to be substantiated or inconclusive, as defined in Penal Code section 11165.12. Unfounded reports, as defined in Penal Code section 11165.12, shall not be filed with the Department of Justice. If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact. The reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission.

(E) Notifications Following Reports to the Child Abuse Central Index

Penal Code Section 11169, Subdivision (b):

Penal Code section 11169, subdivision (b), as amended by Statutes 2000, chapter 916, for the first time requires that when "an agency specified in section 11165.9," forwards a report of suspected child abuse or neglect to DOJ:

> the agency shall also notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index. The notice required by this section shall be in a form approved by the Department of Justice. The requirements of this subdivision shall apply with respect to reports forwarded to the department on or after the date on which this subdivision becomes operative.

DSS's December 10, 2001 comments concur with the claimant that written notification is a new activity, but disputes the claim for reimbursement based upon the existing funding scheme. DOF's comments on the test claim filing similarly acknowledge "that this particular requirement was added to the child abuse reporting scheme after 1975, and that it may result in trace cost increases to the claimant," but concludes that such costs are subject to a federal-state-local funding ratio and "not subject to state subvention."

The Commission finds that the statute requires an entirely new duty that was not mandated by prior law. Therefore, the Commission finds that the plain language of Penal Code section 11169, subdivision (b), mandates a new program or higher level of service, for the following new activity:

> *Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:*

- Notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index, in any form approved by the Department of Justice, at the time the "Child Abuse Investigation Report" is filed with the Department of Justice.

The potential reimbursement period for this activity begins no earlier than January 1, 2001—the operative date of Statutes 2000, chapter 916.

Penal Code Section 11170:

Penal Code section 11170[56] describes the duties of the DOJ to maintain the Child Abuse Central Index and make reports available. It refers to reports made pursuant to Penal Code section 11169. As described above, Penal Code section 11169 requires reports to be made by "an agency specified in Section 11165.9." When "submitting agency," "investigating agency" or similar terms are used in Penal Code section 11170, the statute refers back to the agencies that submitted the initial Child Abuse Investigation Reports pursuant to section 11169—which in turn are the agencies identified in Penal Code section 11165.9.

The pre-1975 law of former Penal Code section 11161.5 provided that if the DOJ records resulted in reports or information being returned to the reporting agency, the reports received were required to be made available to specified individuals "having a direct interest in the welfare of the minor" and others, including probation and child welfare departments, as follows:

> Reports and other pertinent information received from the department shall be made available to: any licensed physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, or religious practitioner with regard to his patient or client; any director of a county welfare department, school superintendent, supervisor of child welfare and attendance, certificated pupil personnel employee, or school principal having a direct interest in the welfare of the minor; and any probation department, juvenile probation department, or agency offering child protective services.

Penal Code section 11170, subdivision (b)(1), requires that after information is received by "an agency that submits a report pursuant to Section 11169" from the DOJ "that is relevant to the known or suspected instance of child abuse or severe neglect reported by the agency," "[t]he agency shall make that information available to the reporting medical practitioner, child custodian, guardian ad litem" or appointed counsel, "or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse or severe neglect." While the requirement is similar to prior law, there was no duty in prior law for the reporting agency to make reports and information available to the child custodian, guardian ad litem, appointed counsel or licensing agency. Therefore, the Commission finds that Penal Code section 11170, subdivision (b)(1) mandates a new program or higher level of service for the following activity:

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[56] As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 162, Statutes 1984, chapter 1613, Statutes 1985, chapter 1598, Statutes 1986, chapter 1496, Statutes 1987, chapter 82, Statutes 1989, chapter 153, Statutes 1990, chapters 1330 and 1363, Statutes 1992, chapters 163 and 1338, Statutes 1993, chapter 219, Statutes 1996, chapter 1081, Statutes 1997, chapters 842, 843, and 844, Statutes 1999, chapter 475, and Statutes 2000, chapter 916.

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Make relevant information available, when received from the Department of Justice, to the child custodian, guardian ad litem appointed under section 326, or counsel appointed under section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse or severe neglect.

Another new provision, Penal Code section 11170, subdivision (b)(2) creates a duty for the agency that investigated a mandated report of child abuse to report back to the mandated reporter on the conclusion of the investigation. Penal Code section 11170, subdivision (b)(2) refers to the investigating agency of a report made pursuant to Penal Code section 11166, subdivision (a), which in turn requires mandated reports be made to agencies specified in section 11165.9. There was no duty in prior law for agencies listed in 11165.9 to provide such information, therefore, the Commission finds that Penal Code section 11170, subdivision (b)(2), mandates a new program or higher level of service for the following activity:

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Inform the mandated reporter of the results of the investigation and of any action the agency is taking with regard to the child or family, upon completion of the child abuse investigation or after there has been a final disposition in the matter.

Penal Code section 11170, subdivision (b)(5), now numbered (b)(6),[57] requires the DOJ to make information available to "investigative agencies or probation officers, or court investigators" "responsible for placing children or assessing the possible placement of children" regarding any known or suspected child abusers residing in the home. When such information is received by an investigating agency, the statute requires that the agency notify the person that they are in the Child Abuse Central Index. There was no duty in prior law for the investigating agency to provide such information; therefore, the Commission finds that Penal Code section 11170, subdivision (b)(5), now (b)(6), mandates a new program or higher level of service for the following activity:

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index, upon receipt of relevant information concerning child abuse or neglect investigation reports contained in the index from the Department of Justice when investigating a home for the placement of dependant children. The notification shall include the name of the reporting agency and the date of the report.

Claimant alleges that there is a new program or higher level of service required by Penal Code section 11170, subdivision (b)(6)(A), now renumbered (b)(8)(A).[58] The subdivision, as pled,

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[57] This subdivision was renumbered by Statutes 2004, chapter 842.

[58] This subdivision was renumbered by Statutes 2004, chapter 842.

provides that an investigating party, including any agency named in section 11169 that is required to make reports to the Child Abuse Central Index (these are the agencies receiving child abuse and neglect reports pursuant to section 11165.9), as well as district attorney's offices, and county licensing agencies, that receives information from the state Child Abuse Central Index is:

> responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, or placement of a child.

The Commission finds that the words "responsible for" in this statute are vague and ambiguous, and may be interpreted alternatively as either mandatory (e.g. "investigators *shall obtain* the original report,") or discretionary, (e.g. if the investigator finds it necessary for the investigation, they are to obtain the original report from the local reporter, rather than from the state.) Therefore it is necessary to look at extrinsic evidence of legislative intent.[59] The statutory language was added by Statutes 1990, chapter 1330 (Sen. Bill No. (SB) 2788), as double joined with Statutes 1990, chapter 1363 (Assem. Bill No. (AB) 3532.) The legislative history for SB 2788 yields a reading of "responsible for" as a mandatory term. Specifically, the Assembly Public Safety Committee, Republican Analysis, (Reg. Sess. 1989-1990) on SB 2788, version dated August 28, 1990, states:

> this bill would *require* any appropriate person or agency responsible for child care oversight to, upon notification that a report exist[s], seek the original information pertaining to the incident and make an independent decision on the merits of the report for investigation, prosecution or licensure determination. [Emphasis added.] [60]

Therefore, the Commission finds that Penal Code section 11170, subdivision (b)(6)(A), now (b)(8)(A), mandates a new program or higher level of service, as follows:

> *Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department, county licensing agency, or district attorney's office shall:*

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[59] "Because the words themselves provide no definitive answer, we must look to extrinsic sources." *People v. Woodhead* (1987) 43 Cal.3d 1002, 1008.

[60] The court in *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 31, "set forth a list of legislative history documents that have been recognized by the California Supreme Court or this court as constituting cognizable legislative history," including reports of the Assembly Committee on Public Safety (*supra* at p. 33.)

Further, although an author's letter to the Governor is not a reliable form of legislative history on its own, Sen. Newton R. Russell's August 31, 1990 letter to the Governor is consistent with the committee analysis cited above: "SB 2788 will also insert language stating that all authorized persons and agencies, if conducting either child abuse or child care licensing investigation, and having access to information form the CACI, are required to obtain, and make independent conclusions from, the original child abuse report." [Emphasis in original.]

- Obtain the original investigative report from the reporting agency, and draw independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, or placement of a child, when a report is received from the Child Abuse Central Index.

Penal Code section 11170, subdivision (c) requires that the DOJ provide information from the Child Abuse Central Index "to any agency responsible for placing children pursuant to …the Welfare and Institutions Code," section 305 et seq., "upon request," when relevant to a child's potential "placement with a responsible relative pursuant to" Welfare and Institutions Code sections 281.5, 305, and 361.3.

Welfare and Institutions Code section 305 et seq. refers to temporary custody and detention of dependent children. Welfare and Institutions Code section 281.5 refers to placement by a probation officer; section 305 refers to temporary custody by "any peace officer";[61] and section 361.3 concerns placement with a relative by "the county social worker and court." Thus, when any law enforcement agency, probation department, or child welfare department receives information regarding placement of a child with a relative from DOJ, as described in Penal Code section 11170, subdivision (c), the agency receiving the information is statutorily obligated to notify the individual "that he or she is in the index." There was no duty in prior law to provide such information; therefore, the Commission finds that Penal Code section 11170, subdivision (c), mandates a new program or higher level of service for the following activity:

> *Any city or county law enforcement agency, county probation department, or county welfare department shall:*
>
> - Notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index, upon receipt of relevant information concerning child abuse or neglect reports contained in the index from the Department of Justice regarding placement with a responsible relative pursuant to Welfare and Institutions Code sections 281.5, 305, and 361.3. The notification shall include the location of the original investigative report and the submitting agency. The notification shall be submitted to the person listed at the same time that all other parties are notified of the information, and no later than the actual judicial proceeding that determines placement.

Also, the claimant, at page 34 of the test claim filing, alleges that Penal Code section 11170, subdivision (d) requires that the claimant "provide certain information when necessary for out-of-state law enforcement agencies." The Commission finds that the subdivision is directed solely to "the department," which, when used through the rest of section 11170, refers to the state Department of Justice. The context of subdivision (d) does not suggest a different usage was intended.[62] Therefore the Commission finds that Penal Code section 11170, subdivision (d), does not mandate a new program or higher level of service.

Similarly, claimant alleges a mandate from Penal Code section 11170, subdivision (e), which provides that an individual may make a request to DOJ to "determine if he or she is listed in the

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[61] Peace officers are defined at Penal Code section 830 et seq.

[62] "Terms ordinarily possess a consistent meaning throughout a statute." *People v. Standish* (2006) 38 Cal.4th 858, 870.

Child Abuse Central Index." If they are listed, DOJ is required to provide "the date of the report and the submitting agency." Then "[t]he requesting person is responsible for obtaining the investigative report from the submitting agency pursuant to paragraph (13) of subdivision (a) of Section 11167.5." Penal Code section 11167.5 indicates that reports are available pursuant to the Public Records Act (Gov. Code, § 6250, et seq.) The duties expressed in Penal Code section 11170, subdivision (e) are imposed on the state or individuals; any related activities for local governments are required by prior law, specifically Government Code section 6253 of the Public Records Act, not the test claim statutes. Therefore, the Commission finds that Penal Code section 11170, subdivision (e), does not mandate a new program or higher level of service.

(F) Record Retention

Penal Code Section 11169, Subdivision (c):

Penal Code section 11169, subdivision (c), requires:

> Agencies shall retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice pursuant to subdivision (a) for the same period of time that the information is required to be maintained on the Child Abuse Central Index pursuant to this section. Nothing in this section precludes an agency from retaining the reports for a longer period of time if required by law.

The time for retention of records on the Child Abuse Central Index is controlled by Penal Code section 11170,[63] as follows:

> (3) Information from an inconclusive or unsubstantiated report filed pursuant to subdivision (a) of Section 11169 shall be deleted from the Child Abuse Central Index after 10 years if no subsequent report concerning the same suspected child abuser is received within that time period. If a subsequent report is received within that 10-year period, information from any prior report, as well as any subsequently filed report, shall be maintained on the Child Abuse Central Index for a period of 10 years from the time the most recent report is received by the department.

Reading the two sections together, the record retention period for each of the underlying local investigatory files is a minimum of 10 years, much longer if a subsequent report on the same suspected child abuser is received during the 10 year period. DSS and DOF dispute the claim for mandate reimbursement for record retention activities. DSS asserts that the duty to retain the child protective agency's investigative file documenting each investigation is not a new duty, citing Welfare and Institutions Code section 10851 and regulatory requirements for three years

[63] As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 162, Statutes 1984, chapter 1613, Statutes 1985, chapter 1598, Statutes 1986, chapter 1496, Statutes 1987, chapter 82, Statutes 1989, chapter 153, Statutes 1990, chapters 1330 and 1363, Statutes 1992, chapters 163 and 1338, Statutes 1993, chapter 219, Statutes 1996, chapter 1081, Statutes 1997, chapters 842, 843, and 844, Statutes 1999, chapter 475, and Statutes 2000, chapter 916.

of records retention.[64] DOF also cites the pre-existing three-year record retention requirement, and concludes that "the longer retention requirement for child abuse investigation records imposes no new costs, and may in fact avoid the costs of record destruction. Finally, if the records are stored electronically, a longer retention period should result in no additional costs whatsoever." The Commission notes that the Welfare and Institutions Code record retention requirement is only applicable to public social services records. Records required to be held by city police and county sheriff's departments are only subject to the more general Government Code sections 26202 and 34090, which allow counties and cities, respectively, to authorize destruction of records after two years.

Statutes 1997, chapter 842 added the records retention requirements to Penal Code sections 11169 and 11170, resulting in a longer records retention period than otherwise required by prior law; thus mandating a higher level of service. Therefore, the Commission finds that Penal Code section 11169, subdivision (c) mandates a new program or higher level of service, for the following:

Any city or county police or sheriff's department, or county probation department if designated by the county to receive mandated reports shall:

- Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of 8 years for counties and cities (a higher level of service above the two-year record retention requirement pursuant to Gov. Code §§ 26202 (cities) and 34090 (counties).) If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years.

A county welfare department shall:

- Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of 7 years for welfare records (a higher level of service above the three-year record retention requirement pursuant to Welf. & Inst. Code, § 10851.) If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years.

Issue 3: Do the test claim statutes found to mandate a new program or higher level of service also impose costs mandated by the state pursuant to Government Code section 17514?

Reimbursement under article XIII B, section 6 is required only if any new program or higher level of service is also found to impose "costs mandated by the state." Government Code section 17514 defines "costs mandated by the state" as any *increased* cost a local agency is required to incur as a result of a statute or executive order that mandates a new program or higher level of service. The claimant alleges costs in excess of $200, the minimum standard at the time of filing the test claim, pursuant to Government Code section 17564.

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[64] DSS also cites the record retention requirement for juvenile courts (Welf. & Inst. Code, § 826), but it is irrelevant to the test claim allegations which address the records of the investigating agency, not those of the courts.

The only Government Code section 17556 exception that may apply to this test claim with respect to counties is subdivision (e), which provides, that "[t]he commission shall not find costs mandated by the state," if:

> …
>
> (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.

Both DSS and DOF's December 10, 2001 comments assert that there are state funds available that can be used for new state-mandated child abuse reporting-related activities. However, neither letter was specific in stating what funds were available for the activities.

On May 9, 2007, Commission staff requested that the state agencies provide additional information in this regard, to "identify what funds have been appropriated and allocated to each county for child abuse and neglect reporting and investigation services." On July 20, 2007, DOF filed a response to the request, stating that:

> Counties receive allocations from: 1) Title IV-E federal funds, 2) Temporary Assistance for Needy Families (TANF) block grants, 3) Title XIX Funds, 4) Title XX Funds, 5) Title IV-B Funds, and 6) the General Fund. Funds are appropriated in the annual Budget Act under Item 5180-151-0001. Additionally, transfer authority exists in other budget items that may be used for activities associated with ICAN. Attached for your reference is a compact disc (CD) containing the Budget Act appropriations (Item 5180-151-0001) for fiscal years 1999-2000 through 2006-2007. The sections contain the funds appropriated for Department of Social Services' local assistance programs. Please note that these appropriations do not specify the multiple programs or specific activities that may be funded with the appropriation.
>
> The following describes the purpose of the various funds allocated to the counties.
>
> - General Fund appropriations are used to match Title IV-E funds based on the 70/30 (state/county) share of nonfederal funds. Title IV-E funds and General Fund appropriations are also used to provide "augmentation funds" to counties beyond the predetermined formulas based on caseload. Augmentation funding occurs when a county has spent its share and additional money is needed to support County Welfare Services (CWS) programs.
> - TANF funds and county funds pay for emergency assistance, including investigation and crisis resolution activities performed by social workers.
> - Title IV-B funds are used to provide services and support to preserve families, protect children, and prevent child abuse and neglect.
> - Title IV-E funds can be used for case management and emergency assistance activities as well as training and professional development of a child welfare workforce. These funds are budgeted based on a county welfare department's

caseload and the number of social worker staff and clerical staff, using the specific county's salaries, benefits, and associated overhead costs.

- Title XIX funds are used for medical care assistance of CWS programs.
- Title XX funds are used to provide for more flexibility in the delivery of child welfare services. These funds are not used for medical care or employee wages.

DOF's CD also includes copies of the DSS County Fiscal Letters from 1999-2000 through 2006-2007, as well as a table summarizing county welfare funding for those fiscal years.

Despite all of the documentation provided, there is no evidence in the record to demonstrate that the mandated activities have been offset or funded by the state or federal government in a manner and amount "sufficient to fund the cost of the state mandate." On the contrary, Welfare and Institutions Code section 10101 indicates that "the state's share of the costs of the child welfare program shall be 70 percent of the actual nonfederal expenditures for the program or the amount appropriated by the Legislature for that purpose, whichever is less." Conversely, counties must have a share of costs for child welfare services of at least 30 percent of the nonfederal expenditures. Even the augmentation funds are only available, according to DOF's letter, "when a county has spent *its share* and additional money is needed." In addition, the funding information is limited to county welfare departments and does not include costs incurred by local law enforcement, when they perform the mandated activities identified.

DOF's December 10, 2001 comments cite the *County of Fresno, supra,* 53 Cal.3d. at page 487, to conclude that because test claim activities are jointly funded, "the test claim legislation is not subject to state subvention." The *County of Fresno* decision addressed a challenge to the constitutionality of Government Code section 17556, subdivision (d), which provides an exception to a finding of costs mandated by the state when the local government may pay for the new activities through service charges, fees, or assessments. In determining that the limit expressed by subdivision (d) was constitutional, the California Supreme Court stated that "the Constitution requires reimbursement only for those expenses that are recoverable solely from taxes." However, contrary to DOF's suggestion, the *County of Fresno* decision does not apply as this test claim does not have facts addressing available fees, service charges, or assessments for mandatory child abuse reporting.

Government Code section 17556, subdivision (e) requires that there must be "no net costs," or appropriated funds must be "*specifically intended* to fund the costs of the state mandate in an *amount sufficient* to fund the cost of the state mandate." To interpret the law as the December 10, 2001 state agency comments urge would render much of the language of Government Code section 17556, subdivision (e) meaningless. The Commission finds that section 17556, subdivision (e) does not apply to disallow a finding of costs mandated by the state, but that all claims for reimbursement for the approved activities must be offset by any program funds already received and applied to the program from non-local sources. There is no evidence that the counties are required to use the funds identified by DOF for the expenses of the mandated activities.

Thus, for the activities listed in the conclusion below, the Commission finds that the new program or higher level of service also imposes costs mandated by the state within the meaning

of Government Code section 17514, and none of the exceptions of Government Code section 17556 apply.

CONCLUSION

The Commission concludes that Penal Code sections 11165.9, 11166, 11166.2, 11166.9, 11168 (formerly 11161.7), 11169, 11170, as added or amended by Statutes 1977, chapter 958, Statutes 1980, chapter 1071, Statutes 1981, chapter 435, Statutes 1982, chapters 162 and 905, Statutes 1984, chapters 1423 and 1613, Statutes 1985, chapter 1598, Statutes 1986, chapters 1289 and 1496, Statutes 1987, chapters 82, 531 and 1459, Statutes 1988, chapters 269, 1497 and 1580, Statutes 1989, chapter 153, Statutes 1990, chapters 650, 1330, 1363 and 1603, Statutes 1992, chapters 163, 459 and 1338, Statutes 1993, chapters 219 and 510, Statutes 1996, chapters 1080 and 1081, Statutes 1997, chapters 842, 843 and 844, Statutes 1999, chapters 475 and 1012, and Statutes 2000, chapter 916; and executive orders California Code of Regulations, title 11, section 903, and "Child Abuse Investigation Report" Form SS 8583, mandate new programs or higher levels of service within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for cities and counties for the following specific new activities:

Distributing the Suspected Child Abuse Report Form:

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Distribute the child abuse reporting form adopted by the Department of Justice (currently known as the "Suspected Child Abuse Report" Form SS 8572) to mandated reporters. (Pen. Code, § 11168, formerly § 11161.7.)[65]

Reporting Between Local Departments
Accepting and Referring Initial Child Abuse Reports when a Department Lacks Jurisdiction:

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Transfer a call electronically or immediately refer the case by telephone, fax, or electronic transmission, to an agency with proper jurisdiction, whenever the department lacks subject matter or geographical jurisdiction over an incoming report of suspected child abuse or neglect. (Pen. Code, § 11165.9.)[66]

Cross-Reporting of Suspected Child Abuse or Neglect from County Welfare and Probation Departments to the Law Enforcement Agency with Jurisdiction and the District Attorney's Office:

A county probation department shall:

- Report by telephone immediately, or as soon as practically possible, to the law enforcement agency having jurisdiction over the case, to the agency given the

[65] As added by Statutes 1980, chapter 1071 and amended by Statutes 2000, chapter 916. Derived from former Penal Code section 11161.7, as amended by Statutes 1977, chapter 958.

[66] As added by Statutes 2000, chapter 916, operative January 1, 2001.

responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Penal Code section 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare department. (Pen. Code, § 11166, subd. (h), now subd. (j).)[67]

- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

  As of January 1, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours. (Pen. Code, § 11166, subd. (h), now subd. (j).)[68]

A county welfare department shall:

- Report by telephone immediately, or as soon as practically possible, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Penal Code section 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare department.

  This activity does not include making an initial report of child abuse and neglect from a county welfare department to the law enforcement agency having jurisdiction over the case, which was required under prior law to be made "without delay." (Pen. Code, § 11166, subd. (h), now subd. (j).)[69]

- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency, including the law enforcement agency having jurisdiction over the case, to which it is required to make a telephone report under this subdivision.

  As of January 1, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours. (Pen. Code, § 11166, subd. (h), now subd. (j).)[70]

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[67] As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

[68] *Ibid.*

[69] *Ibid.*

[70] *Ibid.*

Cross-Reporting of Suspected Child Abuse or Neglect from the Law Enforcement Agency to the the County Welfare and Institutions Code Section 300 Agency, County Welfare, and the District Attorney's Office:

A city or county law enforcement agency shall:

- Report by telephone immediately, or as soon as practically possible, to the agency given responsibility for investigation of cases under Welfare and Institutions Code section 300 and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within Penal Code section 11165.2, subdivision (b), which shall be reported only to the county welfare department. (Pen. Code, § 11166, subd. (i), now subd. (k).)[71]
- Report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. (Pen. Code, § 11166, subd. (i), now subd. (k).)[72]
- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

  As of January 1, 2006, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours. (Pen. Code, § 11166, subd. (i), now subd. (k).)[73]

Receipt of Cross-Reports by District Attorney's Office:

A district attorney's office shall:

- Receive reports of every known or suspected instance of child abuse reported to law enforcement, county probation or county welfare departments, except acts or omissions of general neglect coming within Penal Code section 11165.2, subdivision (b). (Pen. Code, § 11166, subds. (h) and (i), now subds. (j) and (k).)[74]

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[71] As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

[72] *Ibid.*

[73] *Ibid.*

[74] As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

Reporting to Licensing Agencies:

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Report by telephone immediately or as soon as practically possible to the appropriate licensing agency every known or suspected instance of child abuse or neglect when the instance of abuse or neglect occurs while the child is being cared for in a child day care facility, involves a child day care licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee or staff person. The agency shall also send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision. The agency shall send the licensing agency a copy of its investigation report and any other pertinent materials.

  As of July 31, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours. (Pen. Code, § 11166.2.)[75]

Additional Cross-Reporting in Cases of Child Death:

A city or county law enforcement agency shall:

- Cross-report all cases of child death suspected to be related to child abuse or neglect to the county child welfare agency. (Pen. Code, § 11166.9, subd. (k), now § 11174.34, subd. (k).)[76]

A county welfare department shall:

- Cross-report all cases of child death suspected to be related to child abuse or neglect to law enforcement. (Pen. Code, § 11166.9, subd. (k), now § 11174.34, subd. (k).)[77]
- Create a record in the Child Welfare Services/Case Management System (CWS/CMS) on all cases of child death suspected to be related to child abuse or neglect. (Pen. Code, § 11166.9, subd. (l), now § 11174.34, subd. (l).)[78]
- Enter information into the CWS/CMS upon notification that the death was subsequently determined not to be related to child abuse or neglect. (Pen. Code, § 11166.9, subd. (l), now § 11174.34, subd. (l).)[79]

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[75] As added by Statutes 1985, chapter 1598 and amended by Statutes 1987, chapter 531; Statutes 1988, chapter 269; Statutes 1990, chapter 650; and Statutes 2000, chapter 916.

[76] As amended by Statutes 1999, chapter 1012, operative January 1, 2000. This code section has since been renumbered as Penal Code section 11174.34, without amendment, by Statutes 2004, chapter 842.

[77] *Ibid.*

[78] *Ibid.*

[79] *Ibid.*

Investigation of Suspected Child Abuse, and Reporting to and from the State Department of Justice

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive, as defined in Penal Code section 11165.12, for purposes of preparing and submitting the state "Child Abuse Investigation Report" Form SS 8583, or subsequent designated form, to the Department of Justice. (Pen. Code, § 11169, subd. (a); Cal. Code Regs., tit. 11, § 903, "Child Abuse Investigation Report" Form SS 8583.) [80]

- Forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect which is determined to be substantiated or inconclusive, as defined in Penal Code section 11165.12. Unfounded reports, as defined in Penal Code section 11165.12, shall not be filed with the Department of Justice. If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact. The reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission. (Pen. Code, § 11169, subd. (a); Cal. Code Regs., tit. 11, § 903, "Child Abuse Investigation Report" Form SS 8583.) [81]

Notifications Following Reports to the Child Abuse Central Index

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index, in any form approved by the Department of Justice, at the time the "Child Abuse Investigation Report" is filed with the Department of Justice. (Pen. Code, § 11169, subd. (b).)[82]

- Make relevant information available, when received from the Department of Justice, to the child custodian, guardian ad litem appointed under section 326, or counsel appointed under section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse or severe neglect. (Pen. Code, § 11170, subd. (b)(1).)[83]

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[80] Code section as added by Statutes 1980, chapter 1071, amended by Statutes 1981, chapter 435, Statutes 1985, chapter 1598, Statutes 1988, chapters 269 and 1497, Statutes 1997, chapter 842, and Statutes 2000, chapter 916. Regulation as filed and operative July 17, 1998.

[81] *Ibid.*

[82] As amended by Statutes 1997, chapter 842, Statutes 1999, chapter 475, and Statutes 2000, chapter 916. The potential reimbursement period for this activity begins no earlier than January 1, 2001—the operative date of Statutes 2000, chapter 916.

[83] As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 162, Statutes 1984, chapter 1613, Statutes 1985, chapter 1598, Statutes 1986,

- Inform the mandated reporter of the results of the investigation and of any action the agency is taking with regard to the child or family, upon completion of the child abuse investigation or after there has been a final disposition in the matter. (Pen. Code, § 11170, subd. (b)(2).)[84]

- Notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index, upon receipt of relevant information concerning child abuse or neglect investigation reports contained in the index from the Department of Justice when investigating a home for the placement of dependant children. The notification shall include the name of the reporting agency and the date of the report. (Pen. Code, § 11170, subd. (b)(5), now subd. (b)(6).)[85]

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, county welfare department, county licensing agency, or district attorney's office shall:

- Obtain the original investigative report from the reporting agency, and draw independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, or placement of a child, when a report is received from the Child Abuse Central Index. (Pen. Code, § 11170, subd. (b)(6)(A), now (b)(8)(A).)[86]

Any city or county law enforcement agency, county probation department, or county welfare department shall:

- Notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index, upon receipt of relevant information concerning child abuse or neglect reports contained in the index from the Department of Justice regarding placement with a responsible relative pursuant to Welfare and Institutions Code sections 281.5, 305, and 361.3. The notification shall include the location of the original investigative report and the submitting agency. The notification shall be submitted to the person listed at the same time that all other parties are notified of the information, and no later than the actual judicial proceeding that determines placement. (Pen. Code, § 11170, subd. (c).)

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chapter 1496, Statutes 1987, chapter 82, Statutes 1989, chapter 153, Statutes 1990, chapters 1330 and 1363, Statutes 1992, chapters 163 and 1338, Statutes 1993, chapter 219, Statutes 1996, chapter 1081, Statutes 1997, chapters 842, 843, and 844, Statutes 1999, chapter 475, and Statutes 2000, chapter 916.

[84] *Ibid.*

[85] As amended by Statutes 1997, chapter 844, Statutes 1999, chapter 475, and Statutes 2000, chapter 916. This subdivision was renumbered by Statutes 2004, chapter 842.

[86] *Ibid.*

Record Retention

Any city or county police or sheriff's department, or county probation department if designated by the county to receive mandated reports shall:

- Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of 8 years for counties and cities (a higher level of service above the two-year record retention requirement pursuant to Gov. Code §§ 26202 (cities) and 34090 (counties).) If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years. (Pen. Code, § 11169, subd. (c).)[87]

A county welfare department shall:

- Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of 7 years for welfare records (a higher level of service above the three-year record retention requirement pursuant to Welf. & Inst. Code, § 10851.) If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years. (Pen. Code, § 11169, subd. (c).)[88]

The Commission concludes that any test claim statutes, executive orders and allegations not specifically approved above, do not mandate a new program or higher level of service, or impose costs mandated by the state under article XIII B, section 6.

[87] As amended by Statutes 1997, chapter 842.

[88] *Ibid.*