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BACKGROUND AND FINDINGS OF FACT

The test claim was filed with the Commission on October 15, 1993, by the City of Santa Barbara.

The elements for filing a test claim, as specified in section 1183 of Title 2 of the California Code of Regulations, were satisfied.

Chapter 1105/92 amended Penal Code section 853.6, subdivision (g), as follows:

"(g) The officer may either book the arrested person prior to release or indicate on the citation that the arrested person shall *appear at the arresting agency to be booked or indicate on the citation that the arrested person shall appear at the arresting agency to be fingerprinted prior to the date the arrested person appears in court.* *If it is indicated on the citation that the arrested person shall be booked or fingerprinted prior to the date of the person's court appearance, the arresting agency at the time of booking or fingerprinting shall provide the arrested person with verification of the booking or fingerprinting by either making an entry on the citation or providing the arrested person a verification form established by the arresting agency.* If it is indicated on the citation that the arrested person is to be booked *or-fingerprinted*, the *magistrate, judge, or court* shall, before the proceedings ~~are finally concluded~~ *begin*, order the defendant to ~~&e--provide verification that he or she was booked or-fingerprinted by the arresting agency.~~ *If the defendant cannot produce the verification, the magistrate, judge, or court shall require that the defendant be booked or fingerprinted by the arresting agency before the next court appearance, and that the defendant provide the verification at the next court appearance unless both parties stipulate that booking or fingerprinting is not necessary.* "

(Material added by Chapter 1105/92 appears in *italics*; material deleted by Chapter 1105/92 appears in ~~strikeout~~.)

Penal Code section 7, subdivision 21, provides:

"To 'book' signifies the recordation of an arrest in official police records, and the taking by the police of fingerprints and photographs of the person arrested, or any of these acts following an **arrest.**"

1 The Commission recognized that prior to Chapter **1105/92**, Penal Code
2 section 853.6, subdivision (g), stated that an arrestee who was
3 cited and released:

4 **"shall be booked, . . . [and] . . . the magistrate**
5 **shall, before the proceedings are finally concluded,**
6 **order the defendant to be booked by the arresting**
7 **agency."**

8 In view of the foregoing statutory provisions, the Commission found
9 that such arrestee was required to be booked under prior law.

10 In addition, the Commission observed Penal Code section 13150 which
11 states:

12 **"For each arrest made, the reporting agency shall report**
13 **to the Department of Justice, concerning each arrest, the**
14 **applicable identification and arrest data described in**
15 **Section 13125 and fingerprints, except as otherwise**
16 **provided by law or prescribed by the Department of**
17 **Justice."**

18 The Commission recognized that Penal Code section 13150, enacted
19 before Chapter **1105/92**, requires all reporting agencies to submit
20 fingerprints to the Department of Justice for each arrest made.

21 Further, the Commission found that Penal Code section 853.6,
22 subdivision (g), of Chapter **1105/92**, merely altered the time frame
23 for performing the pre-existing booking or fingerprinting activity.

24 The Commission noted that the provisions of Penal Code
25 section 853.6, subdivision (g), of Chapter **1105/92**, provides that
26 at the time of booking or fingerprinting the arresting agency shall
27 provide the arrestee with verification of the booking or
28

1 fingerprinting by either making an entry on the citation or
2 providing the arrestee with a verification form.

3
4 The Commission found that even though the verification activity is
5 very limited in scope, such activity was not previously required
6 under prior law when an arrestee was cited and released.

8 The Commission noted that the remaining provisions of Penal Code
9 section 853.6, subdivision (g), of Chapter 1105/92, deal with the
10 situation when the defendant cannot produce the verification of
11 booking or fingerprinting in court. The Commission found that
12 these provisions address the possibility that some arrestees may
13 not appear at the arresting agency to be booked or fingerprinted
14 before the court proceedings begin and, therefore, provide a
15 procedure for completing the booking or fingerprinting process.

17 The Commission observed that Chapter 1105/92 added Penal Code
18 section 853.6, subdivision (k), which states:

19 "(k) For purposes of this section, the term 'arresting
20 agency' includes any other agency designated by the
 arresting agency to provide booking or fingerprinting
 services."

22 The Commission found that Penal Code section 853.6,
23 subdivision (k), simply provides a definition for the term
24 "arresting agency?"

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APPLICABLE LAW RELEVANT TO THE DETERMINATION
OF A REIMBURSABLE STATE MANDATED PROGRAM

Government Code section 17500 and following, and section 6, article XIII B of the California Constitution and related case law.

CONCLUSION

The Commission determines that it has the authority to decide this claim under the provisions of Government Code sections 17500 and 17551, subdivision (a).

The Commission concludes that the provisions of Penal Code section 853.6, subdivision (k), of Chapter 1105/92, do not impose a new program or higher level of service in an existing program within the meaning of section 6 of article XIII B of the California Constitution and Government Code section 17514.

The Commission concludes that, except for that portion related to the verification procedure, the provisions of Penal Code section 853.6, subdivision (g), do not impose a new program or a higher level of service in an existing program within the meaning of section 6 of article XIII B of the California Constitution and Government Code section 17514. With respect to the verification procedure, the Commission concludes that this is a new program or a higher level of service in an existing program imposed upon local agencies, however, such verification is very limited in scope. The verification procedure requires the arresting agency at the time of

1 booking or fingerprinting to provide the arrested person with
2 verification of the booking or fingerprinting by either making an
3 entry on the citation or providing the arrested person a
4 verification form established by the arresting agency.

5
6 Accordingly, such costs incurred related to the verification
7 procedure contained in Penal Code section 853.6, subdivision (g),
8 are costs mandated by the state and are subject to reimbursement
9 within the meaning of section 6, article XIII B of the California
10 Constitution. Therefore, the claimant is directed to submit
11 parameters and guidelines, pursuant to Government Code
12 section 17557 and Title 2, California Code of Regulations,
13 section 1183.1, to the Commission for its consideration.

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15 The foregoing conclusion pertaining to the verification procedure
16 contained in Penal Code section 853.6, subdivision (g), is subject
17 to the following conditions:

18 The determination of a reimbursable state mandated
19 program does not mean that all increased costs claimed
20 will be reimbursed. Reimbursement, if any, is subject to
21 Commission approval of parameters and guidelines for
22 reimbursement of the mandated program; approval of a
statewide cost estimate; a specific legislative
appropriation for such purpose; a timely-filed claim for
reimbursement; and subsequent review of the claim by the
State Controller's Office,

23 If the statewide cost estimate for this mandate does not
24 exceed one million dollars (\$1,000,000) during the first
25 twelve (12) month period following the operative date of
26 the mandate, the Commission shall certify such estimated
27 amount to the State Controller's Office, and the State
28 Controller shall receive, review, and pay claims from the
State Mandates Claims Fund as claims are received.
(Government Code section 17610.)