

COMMISSION ON STATE MANDATES

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July 10, 2003

Leonard Kaye, Esq.
County of Los Angeles
Auditor-Controller's Office
Kenneth Hahn Hall of Administration
500 West Temple Street, Room 525
Los Angeles, CA 90012-2766

And Interested Parties and Affected State Agencies (see enclosed mailing list)

RE: Final Staff Analysis and Hearing Date

Postmortem Examinations: Unidentified Bodies, Human Remains, 00-TC-18

County of Los Angeles, Claimant

Government Code Sections 27521, 27521.1; Health and Safety Code Section 102870, Penal Code Section 14202; Statutes 2000, Chapter 284

Dear Mr. Kaye:

The final staff analysis of this test claim has been completed and is enclosed for your review.

Hearing

This test claim is set for hearing on **Thursday, July 31, 2003**, at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. Please let us know in advance if you or a representative of your agency will testify at the hearing, or if other witnesses will appear.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

If you have any questions, please contact Eric Feller at (916) 323-8221.

Sincerely,

A handwritten signature in cursive script that reads "Paula Higa".

Paula Higa
Executive Director

Enc. Final Staff Analysis

cc. Mailing List (current mailing list attached)

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ITEM4
TESTCLAIM
FINAL STAFF ANALYSIS

Government Code Sections 2752 1, 2752 1.1
Health and Safety Code Section 102870, Penal Code Section 14202
Statutes 2000, Chapter 284

Postmortem Examinations: Unidentified Bodies, Human Remains (OO-TC-18)

Filed by County of Los Angeles

EXECUTIVE SUMMARY

Background

Claimant, County of Los Angeles, submitted this test claim in June 2001 alleging a reimbursable state mandate for counties and local law enforcement in new activities and costs related to post mortem examinations or autopsies by coroners, and reporting requirements for law enforcement. Claimant attempted to amend this claim in its comments on the draft staff analysis to add Penal Code section 14250, subdivisions (b) and (c)(1), as added by Statutes 2000, chapter 822, and amended by Statutes 200 1, chapter 467. Commission staff accepted the amendment, but severed it from the claim pursuant to the Executive Director's authority to expedite claims in Government Code section 17530 and consolidated it with claim 00-TC-27, *DNA Database*, which was previously filed on the same code sections,

The Department of Finance (DOF) states that pursuant to Government Code section 27491, the decision by a coroner to examine unidentified remains (other than DNA sampling) is a discretionary act not required by the State, nor was it required prior to the test claim legislation. According to DOF, any subsequent requirements regarding autopsy procedures are only initiated when a coroner chooses to examine unidentified remains, DOF also argues that the investigating law enforcement agency's report to the Department of Justice (DOJ) is discretionary because the report is initiated after the local agency exercises discretion to investigate the case. Thus, DOF concludes that this test claim has not resulted in a new program or higher level of service.

Conclusion

For reasons in the analysis, staff finds that Government Code section 27521.1 imposes a reimbursable state-mandated program on local law enforcement within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 175 14. The mandate is for local law enforcement investigating the death of an unidentified person to report the death to the DOJ, in a DOJ-approved format, within 10 calendar days of the date the body or human remains are discovered. The exception is for children under 12 or found persons with evidence that they were at risk, as defined by Penal Code section 14213,

Staff finds that Government Code section 27521, Penal Code section 14202 and Health and Safety Code section 102870, as added or amended by Statutes 2000, chapter 284, do not constitute a reimbursable state-mandated program because they are not subject to article XIII B, section 6.

Recommendation

Staff recommends that the Commission adopt the staff analysis and approve the test claim for the law enforcement reporting activity in Government Code section 2752 1.1.

STAFF ANALYSIS

Claimant

County of Los Angeles

Chronology

- 6/29/01 Claimant County of Los Angeles files test claim with the Commission
- 8/8/01 DOF files comments on the test claim
- 9/6/01 Claimant County of Los Angeles files declaration in response to DOF comments
- 6/4/03 Commission staff issues draft staff analysis
- 6/24/03 Claimant files comments on the draft staff analysis
- 6/25/03 Claimant files' amendment to test claim to add Penal Code section 14250, subdivisions (b) and (c)(1), as added by Statutes 2000, chapter 822, and amended by Statutes 2001, chapter 467.
- 7/7/03 Commission staff deems claimant's amendment complete, and notifies claimant that it will sever amendment from the claim and consolidate amendment with claim OO-TC-27, *DNA Database*,
- 7/10/03 Commission staff issues final staff analysis

BACKGROUND

Test claim legislation: The test claim legislation' states that a postmortem examination or autopsy² conducted at the discretion of the coroner on an unidentified body or human remains shall include the following activities:

- (1) taking all available fingerprints and palm prints;
- (2) a dental exam consisting of dental charts and dental X-rays;
- (3) collection of tissue, including a hair sample, or body fluid samples for future DNA testing, if necessary;
- (4) frontal and lateral facial photographs with the scale indicated;
- (5) notation and photos, with a scale, of significant scars, marks, tattoos, clothing items, or other personal effects found with or near the body;
- (6) notations of observations pertinent to the estimation of the time of death; and
- (7) precise documentation of the location of the remains.

The test claim legislation authorizes the examination or autopsy to include full body X-rays, and requires the coroner to prepare a final report of investigation in a format established by the DOJ.

In addition, the jaws and other tissue samples must be removed and retained for one year after identification of the deceased, and no civil or criminal challenges are pending, or indefinitely. If

¹ Statutes 2000, chapter 284; Government Code sections 27521, 27521.1, Health and Safety Code section 102870, Penal Code section 14202.

² The terms "autopsy" and "postmortem exam," both in the test claim statute, are synonymous. "Autopsy" is primarily used hereafter.

the coroner is unable to establish the identity of the deceased, the coroner must (1) submit dental charts and dental X-rays of the unidentified body to the DOJ on forms supplied by the DOJ within 45 days of the date the body or human remains were discovered; and (2) submit the final report of investigation to the DOJ within 180 days of the date the body or remains were discovered. If the coroner cannot establish the identity of the body or remains, a dentist may examine the body or remains, and if the body still cannot be identified, the coroner must prepare and forward the dental examination record to DOJ. Law enforcement must report the death of an unidentified person to DOJ no later than 10 calendar days after the date the body or remains are discovered.

The test claim legislation was sponsored by the California Society of Forensic Dentistry in response to years of volunteer consultant work by members of the Society helping DOJ identify more than 2,200 unidentified dead persons in California. The sponsors argued that the ways in which evidence was collected or retained was inconsistent, and that information reported to the DOJ varied from very inadequate to extremely detailed. The sponsors also indicated that unidentified bodies had been buried or cremated without retaining evidence that could later assist in identifying them.³

Coroner duties: Each county in California performs the coroner's functions as defined in the California Government Code, the Health and Safety Code, the Penal Code and various other codes and regulations. The office of coroner may be elective or appointive,⁴ or may be abolished and replaced by the office of medical examiner,⁵ or may be consolidated with the duties of the public administrator, district attorney or sheriff.⁶ Coroners and deputy coroners are peace officers.⁷

Pre- 1975 statutes require coroners to inquire into and determine the circumstances, manner and causes of certain types of deaths, The coroner's duty is to investigate these deaths and ascertain the cause and time of death, which must be stated on the death certificate.⁸ The types of death over which the coroner has jurisdiction, as listed in Government Code section 27491 and Health and Safety Code section 102850, are those that are:

- Violent, sudden or unusual;
- Unattended;
- Where the deceased has not been attended by a physician in the 20 days before death;
- Self-induced or criminal abortion;
- Known or suspected homicide, suicide or accidental poisoning;
- By recent or old injury or accident;

³ Senate Rules Committee, Office of Senate Floor Analyses, Third Reading analysis of Senate Bill No, 1736 (1999-2000 Reg. Sess.) as amended August 8, 2000, page 4.

⁴ Government Code section 24009,

⁵ Government Code section 24010. Any reference to "coroners" in this analysis includes medical examiners, deputy coroners, or positions that perform the same duties.

⁶ Government Code section 24300,

⁷ Penal Code section 830.35, subdivision (c).

⁸ Health and Safety Code sections 102855 and 102860.

- Drowning, fire, hanging, gunshot, stabbing, cutting, exposure, starvation, acute alcoholism, drug addiction, strangulation, aspiration;
- Suspected sudden infant death syndrome;
- By criminal means;
- Associated with known or alleged rape or crime against nature;
- In prison or while under sentence;
- By known or suspected contagious disease constituting a public hazard;
- By occupational disease or hazard;
- Of state mental hospital patient;
- Of developmentally disabled patient in state developmental services hospital.
- Under circumstances as to afford a reasonable ground to suspect that the death was caused by the criminal act of another,
- Where the attending physician and surgeon or physician assistant is unable to state the cause of death.⁹

When the coroner investigates one of these types of deaths, he or she signs the death certificate? In deaths where it is reasonable to suspect criminal means, the coroner must report the death to local law enforcement, along with all information received by the coroner relating to the death.”

In order to carry out the duties of office in investigating death in accordance with applicable statutes, it is necessary that the coroner have wide discretion in ordering an autopsy when, in the coroner’s judgment, it is the appropriate means of ascertaining the cause of death.¹² This is still true as evidenced by the express discretion granted the coroner in the statutory scheme. For example, the coroner has “discretion to determine the extent of inquiry to be made into any death occurring under natural circumstances” and falling within Government Code section 27491 (the types of death over which the coroner has jurisdiction).¹³ The coroner also “may, in his or her discretion, take possession of the body.. .”¹⁴ and “allow removal of parts of the body by a licensed physician and surgeon or trained transplant technician” for transplant or scientific purposes, under certain conditions.¹⁵ Currently, the only instances in which an autopsy is required by law, i.e., outside the coroner’s discretion, is if a spouse (or if none, surviving child or parent or next of kin) requests it in writing,¹⁶ or if the suspected cause of death is Sudden Infant

⁹ Government Code section 27491 and Health and Safety Code section 102850,

¹⁰ Government Code section 27491.

¹¹ Government Code section 2749 1.1.

¹² *Huntley v. Zurich General Acc. & Liability Ins. Co.* (1929) 100 Cal. App. 201,213.214. 20 Opinions of the California Attorney General 145 (1952).

¹³ Government Code section 27491.

¹⁴ Government Code section 2749 1.4.

¹⁵ Government Code section 27491.45, subdivision (b).

¹⁶ Government Code section 27520. This section states that the requestor pays the autopsy costs.

Death Syndrome (SIDS).¹⁷ Even in SIDS cases, the coroner has discretion in deciding whether to autopsy if the physician desires to certify the cause of death is SIDS.¹⁸

For unidentified bodies, existing law states that coroners shall forward dental examination records to the DOJ if all of the following apply: (1) the coroner investigates the death, (2) the coroner is unable to establish the identity of the body or remains by visual means, fingerprints or other identifying data, and (3) the coroner has a dentist conduct a dental examination of the body or remains and still cannot identify the deceased.¹⁹ Preexisting law authorizes but does not require law enforcement to submit dental or skeletal X-rays to DOJ for missing persons?

A coroner may be liable for “omission of an official duty.”²¹ In *Davila v. County of Los Angeles*,²² the county was found negligent for cremating a body without notifying kin. The court held that a coroner has a duty to act with reasonable diligence to locate a family member of a body placed in the coroner’s custody before disposing of it. In *Davila*, the court started by restating and examining Government Code section 8 15.6:

“[w]here a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty.” For liability to attach under this statute, (1) there must be an enactment imposing a mandatory duty, (2) the enactment must be intended to protect against the risk of the kind of injury suffered by the individual asserting liability, and (3) the breach of the duty must be the cause of the injury suffered, [citation.]

In finding the mandatory duty to notify the family, the *Davila* court stated:

[T]he existence of a mandatory duty is established by Government Code section 27471 subdivision (a): “Whenever the coroner takes custody of a dead body pursuant to law, he or she *shall make a reasonable attempt to locate the family.*” [FN1] (Italics added.) The same duty is reflected in Health and Safety Code sections 7 104 (when the person with the duty of interment “cannot *after reasonable diligence* be found . . . the coroner shall inter the remains . . .”) and 7 104.1 (if within “30 days after the coroner notifies or *diligently attempts to notify* the person responsible for the interment . . . the person fails, refuses, or neglects to inter the remains, the coroner may inter the remains”). (Italics added.) Quite clearly, the coroner had a mandatory duty to make a reasonable attempt to locate decedent’s family. [citation.]²³

¹⁷ Government Code sections 2749 1, subdivision (a) and 27491.41, subdivision (c).

¹⁸ Government Code sections 27491.41, subdivision (c) (2).

¹⁹ Health and Safety Code section 102870.

²⁰ Penal Code section 14206, subdivisions (a)(2) and (b).

²¹ Code of Civil Procedure section 339 states the statute of limitations is two years. The duties are outlined in Government Code section 2749 1 and Health and Safety Code section 102850.

²² *Davila v. County of Los Angeles* (1996) 50 Cal.App.4th 137, 143,

²³ *Id.* at page 140.

Davila implies a coroner also has a duty of reasonable diligence to identify a body because it is necessary to identify the deceased in order to locate the deceased's family.

Related programs: In 1979, California became the first state to implement a statewide Dental Identification Program to process dental records submitted by law enforcement agencies and coroners in California and other states. The DOJ classifies, indexes, and compares dental records of missing and unidentified persons against each other for matches.²⁴

In 1998, the Legislature enacted the DNA and Forensic Identification Data Base and Data Bank Act to assist in prosecuting crimes and identifying missing persons. This database consists of DNA samples of those convicted of specified felonies.²⁵

The DOJ administers the Violent Crime Information Center to assist in identifying and apprehending persons responsible for specific violent crimes, and for the disappearance and exploitation of persons, particularly children and dependent adults.²⁶

The DOJ also keeps a DNA database in which law enforcement collects samples for DNA analysis voluntarily submitted by family members or relatives of a missing person, and the coroner collects samples from the unidentified deceased. Those samples are sent to DOJ for DNA analysis and comparison.²⁷

Claimant's Position

Claimant contends that the test claim legislation constitutes a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution and Government Code section 175 14. Claimant seeks reimbursement for the activities related to postmortem examinations of unidentified bodies and human remains and reporting the death of unidentified persons to the DOJ. Specifically, claimant alleges the following activities are now required relating to a postmortem examination or autopsy:

- ⌘ Develop policies and procedures for the initial and continuing implementation of the subject law;
- ⌘ Perform autopsies, including any required microscopic, toxicology, and microbiological testing, photographs, fingerprints, tissue sampling for future DNA testing, X-ray notation at the time of death, location of the death, dental examination, and preparing the final report to the DOJ;
- ⌘ Storage and autopsy samples under appropriate conditions, including tissue and fluids, in proper receptacles; and allowing access as necessary for periods of time as required by the autopsy protocol;

²⁴ California Department of Justice, Office of the Attorney General's website <<http://www.ag.ca.gov/missing/content/dental.htm>> [as of April 18, 2003]. Former Health and Safety Code section 10254 (Stats. 1978, ch. 462) was repealed in 1995 (Stats. 1995, ch. 415);

²⁵ Penal Code section 295 et. seq. The list of felonies is in Penal Code section 296.

²⁶ Penal Code section 14200 et. seq.

²⁷ Penal Code section 14250, California Department of Justice, Office of the Attorney General's website <<http://www.ag.ca.gov/missing/content/dna.htm>> [as of April 18, 2003]. This program is the subject of the DNA database test claim filed by the County of San Bernardino (00-TC-27).

- Death scene investigation and related interviews, evidence collection, including specimens and photographs, and travel as required for the fulfillment of the requirements, including travel to pick up a body for autopsy, and to return the body to the original county, if it has been transported out of the county for autopsy;
- Train departmental personnel to prepare the final report to the DOJ;
- Participation in workshops within the state for ongoing professional training as necessary to satisfy standards required by the subject law.

Claimant notes that similar duties to those above were found reimbursable, as evidenced by the State Controller's Office Claiming Instructions for the 'Sudden Infant Death Syndrome (SIDS) Autopsy Protocol Program.'²⁸

Claimant also responds to the DOF's contention (stated below) that the activities of the test claim legislation are discretionary by arguing that the coroner, under Government Code section 2749 1, has a statutory duty to "inquire into and determine the circumstances, manner, and cause of" death and conduct necessary inquiries to determine, among other things, whether the death was "violent, sudden, or unusual," "unattended," and if the deceased had "not been attended by a physician in the 20 days before death," Claimant contends that this mandatory inquiry has been supplemented, pursuant to Government Code section 27521 of the test claim statute, to determine the identity of the deceased, Claimant states that prior to the test claim legislation certain activities, such as taking palm prints and hair samples, had been limited to homicide victims.

Claimant, in its 6123103 amendment to this test claim, comments that the coroner's duties are mandatory, not discretionary. Claimant states that irrespective of the type of postmortem inquiry, examination or autopsy employed by the coroner to complete the mandatory determination of the circumstances, manner and cause of death of an unidentified body or human remains pursuant to Government Code section 2749 1, further mandatory duties to identify the deceased were added by Government Code section 27521, Those duties include:

1. Taking all available fingerprints and palm prints;
2. A dental examination consisting of dental charts and dental X-rays of the deceased's teeth;
3. Collection of tissue, including a hair sample, or body fluid samples for future DNA tests;
4. Frontal and lateral facial photos with scale indicated; , , ,
5. Notation and photos, with a scale, of significant scars, marks, tattoos, clothing, or personal effects found with or near the body;
6. Notations of observations pertinent to estimating the time of death;
7. Precise documentation of location of the remains.

Claimant further commented that the remaining provisions of section 27521, as discussed below, are mandatory. Government Code section 27521, subdivision (b), which lists the seven activities above, is explicit in what a postmortem examination, for purposes of determining identity, shall include, According to claimant, before the test claim legislation, the following activities were not mandated: (1) frontal and lateral facial photos with scale indicated; (2) retention of jaws and

²⁸ Claimant refers to CSM# 4393, a test claim on Statutes 1989, chapter 955, entitled *Sudden Infant Death Syndrome Autopsies*, which was found to be a reimbursable mandate,

other tissue samples for future possible use (as now required by subdivision (e) of section 2752 1); (3) storage of material used in positive identification of the body.

State Agency Position

In its comments on the test claim, DOF states that pursuant to Government Code section 27491, the decision by a coroner to examine unidentified remains (other than DNA sampling) is a discretionary act that is not required by the State, nor was it required prior to the test claim legislation. Any subsequent requirements, according to DOF, regarding autopsy procedures are only initiated when a coroner chooses to examine unidentified remains,

DOF argues that the investigating law enforcement agency's report to DOJ is discretionary because it is only initiated after the local agency exercises discretion to investigate a case. Thus, DOF concludes that this test claim does not contain a state mandate that has resulted in a new program or higher level of service and a reimbursable cost,

DOF did not comment on the draft staff analysis.

DISCUSSION

In order for the test claim legislation to impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution and Government Code section 175 14, the statutory language must mandate a new program or an increased or higher level of service over the former required level of service. "Mandates" as used in article XIII B, section 6, is defined to mean "orders" or "commands."²⁹ The California Supreme Court has defined "program" subject to article XIII B, section 6 of the California Constitution as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.³⁰ To determine if the "program" is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.³¹ Finally, the new program or increased level of service must impose "costs mandated by the state."³²

This test claim presents the following issues:

- z Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?
- z Does the test claim legislation impose a new program or higher level of service on local officials within the meaning of article XIII B, section 6 of the California Constitution?
- z Does the test claim legislation impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 175561

²⁹ *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 174,

³⁰ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

³¹ *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

³² Government Code section 17514.

Issue 1: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

A, Does the test claim legislation impose state-mandated duties?

Article XIII B, section 6 of the California Constitution provides, with exceptions not relevant here, that “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.” This constitutional provision was specifically intended to prevent the state from forcing programs on local government that require expenditure by local governments of their tax revenues.³³ In this respect, the California Supreme Court and the courts of appeal have held that article XIII B, section 6 was not intended to entitle local agencies and school districts to reimbursement for all costs resulting from legislative enactments, but only those costs “mandated” by a new program or higher level of service imposed upon them by the state.³⁴

To implement article XIII B, section 6, the Legislature enacted section 17500 and following. Section 17514 defines “costs mandated by the state” as “any increased costs which a local agency or school district is required to incur . . . as a result of any statute . . . which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.” Mandate is defined as “orders” or “commands.”³⁵ Thus, in order for a statute to be subject to article XIII B, section 6, the statutory language must command or order an activity or task on local governmental agencies. If the statutory language does not mandate coroners to perform a task, then compliance with the test claim statute is at the option of the coroner and a reimbursable state mandated program does not exist.

The question whether a test claim statute is a state-mandated program within the meaning of article XIII B, section 6 is purely a question of law.³⁶ Thus, based on the principles outlined below, when making the determination on this issue, the Commission, like the court, is bound by the rules of statutory construction.

Health and Safety Code section 102870: This section, enacted in 1995, requires coroners to forward dental examination records to the DOJ if all of the following apply: (1) the coroner investigates the death, (2) the coroner is unable to establish the identity of the body or remains by visual means, fingerprints or other identifying data, and (3) the coroner has a dentist conduct a dental examination of the body or remains and still cannot identify the deceased.

The test claim statute (Stats, 2000, ch. 284) technically amended subdivision (b) of section 102870 to refer to Government Code section 27521 and to the Violent Crime Information

³³ *County of Fresno v. State of California* (1991) 53 Cal.3d 482,487; *County of Los Angeles*, (1987) 43 Cal.3d 46, 56. *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283-1284.

³⁴ *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d 830, 834; *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816,

³⁵ *Long Beach Unified School District v. State of California* (1990) 225 Cal. App. 3d 155, 174.

³⁶ *City of San Jose v. State of California*, *supra*, 45 Cal.App.4th 1802, 1810.

Center.³⁷ This amendment to the test claim statute does not impose any state-mandated duties on local agencies. Because this amendment to section 102870 imposes no state-mandated duty, staff finds that section 102870, as amended by Statutes 2000, chapter 284, is not subject to article XIII B, section 6.

Penal Code section 14202: This section, operative since 1989, requires the Attorney General to maintain the Violent Crime Information Center. The test claim statute (Stats, 2000, ch. 284) technically amended Penal Code section 14202 by adding a reference to Government Code section 27521. This amendment to the test claim statute does not impose any state-mandated duties on local agencies. Therefore, because this amendment imposes no state-mandated duty, staff finds that Penal Code section 14202, as amended by Statutes 2000, chapter 284, is not subject to article XIII B, section 6.

Government Code section 27521: This section specifies that autopsies conducted at the discretion of the coroner shall include collecting identifying data on the unidentified body or human remains and reporting the data to DOJ. Subdivision (a) states that any autopsy conducted “at the discretion” of a coroner on an unidentified body or human remains shall be subject to section 2752 1.

Subdivision (b) states that county coroners are to include the following data in the discretionary autopsies:

1. All available fingerprints and palm prints;
2. A dental examination consisting of dental charts and dental X-rays of the deceased person’s teeth, which may be conducted on the body or human remains by a qualified dentist as determined by the coroner;
3. The collection of tissue, including a hair sample, or body fluid samples for future DNA testing, if necessary;
4. Frontal and lateral facial photographs with the scale indicated;
5. Notation and photographs, with a scale, of significant scars, marks, tattoos, clothing items, or other personal effects found with or near the body;
6. Notations of observations pertinent to the estimation of the time of death;
7. Precise documentation of the location of the remains.

Subdivision (c) states that the examination or autopsy “may include full body X-rays.”

Subdivision (d) states the coroner shall prepare a final report of investigation in a format established by DOJ, to include the autopsy information in subdivision (b).

Subdivision (e) states:

The body of an unidentified deceased person may not be cremated or buried until the jaws (maxilla and mandible with teeth) and other tissue samples are retained for future possible use. Unless the coroner has determined that the body of the unidentified deceased person has suffered significant deterioration or decomposition, the jaws shall not be removed until immediately before the body is cremated or buried. The coroner

³⁷ As stated above under related programs, the Violent Crime Information Center is administered by DOJ to assist in identifying and apprehending persons responsible for specific violent crimes, and for the disappearance and exploitation of persons. (Pen. Code, § 14200 et. seq.).

shall retain the jaws and other tissue samples for one year after a positive identification is made, and no civil or criminal challenges are pending, or indefinitely.

Subdivision (f) states:

If the coroner with the aid of the dental examination and any other identifying findings is unable to establish the identity of the body or human remains, the coroner shall submit dental charts and dental X-rays of the unidentified deceased person to the Department of Justice on forms supplied by the Department of Justice within 45 days of the date the body or human remains were discovered,

Subdivision (g) states:

If the coroner with the aid of the dental examination and other identifying findings is unable to establish the identity of the body or human remains, the coroner shall submit the final report of investigation to the Department of Justice within 180 days of the date the body or human remains were discovered.

As noted above, the DOF argues that pursuant to Government Code section 2749 1 (a pre-1975 statute that states the types of death over which the coroner has jurisdiction) the coroner's decision to examine unidentified remains (other than DNA sampling) is a discretionary act that is not required by the State, nor was it required prior to the test claim legislation. Any subsequent requirements, according to DOF, regarding autopsy procedures are only initiated when a coroner chooses to examine unidentified remains,

Claimant responds to DOF by arguing that the coroner, under Government Code section 2749 1, has a statutory duty to "inquire into and determine the circumstances, manner, and cause of" death and conduct necessary inquiries to determine, among other things, whether the death was "violent, sudden, or unusual," "unattended," and if the deceased had "not been attended by a physician in the 20 days before death," Claimant contends that these requirements have been supplemented, pursuant to Government Code section 27521 of the test claim statute, to determine the identity of the deceased,

Pursuant to the rules of statutory construction, courts and administrative agencies are required, when the statutory language is plain, to enforce the statute according to its terms. The California Supreme Court explained:

In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. We begin by examining the statutory language, giving the words their usual and ordinary meaning. If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citations omitted]³⁸

Subdivision (a) of Government Code section 27521 states, "[a]ny postmortem examination or autopsy conducted at the discretion of a coroner upon an unidentified body or human remains shall be subject to this section." (Emphasis added.) The plain language of subdivision (a) is unambiguous in making the coroner's autopsy activities discretionary rather than mandatory.

³⁸ *Estate of Griswald* (2001) 25 Cal.4th 904, 910-911.

If a local agency decision is discretionary, no state-mandated costs will be found. In *City of Merced v. State of California*,³⁹ in which the court determined that the city's decision to exercise eminent domain was discretionary so that no state reimbursement was required for loss of goodwill to businesses over which eminent domain was exercised, the court reasoned as follows:

We agree that the Legislature intended for payment of goodwill to be discretionary, The above authorities reveal that whether a city or county decides to exercise eminent domain is, essentially, an option of the city or county rather than a mandate of the state, *The fundamental concept is that the city or county is not required to exercise eminent domain.* [Emphasis added.]⁴⁰

The California Supreme Court has explained the *City of Merced* case as follows:

[T]he core point articulated by the court in *City of Merced* is that activities undertaken at the option or discretion of a local government entity (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate and hence do not require reimbursement of funds — even if the local entity is obligated to incur costs as a result of its discretionary decision to participate in a particular program or practice.⁴¹

The legislative history of Government Code section 27521 also indicates that its autopsy activities are not mandatory.

As introduced, the test claim legislation expressly required an autopsy in cases where the coroner could not otherwise identify the body, The original version of Senate Bill No. 1736 (Stats, 2000, ch. 284) amended Health and Safety Code section 102870, stating in relevant part:

SECTION 1, Section 102870 of the Health and Safety Code is amended to read:
102870. (a) In deaths investigated by the coroner or medical examiner where he or she is unable to establish the identity of the body or human remains by visual means, fingerprints, or other identifying data, the coroner or medical examiner ~~may have a qualified dentist, as determined by the coroner or medical examiner, carry out a dental examination of the body or human remains.~~ *shall conduct a medical examination on the body or human remains that includes, but is not limited to, all the following procedures:* . . .

The May 23, 2000 version amended the bill to move these unidentified body autopsy procedures to Government Code sections 27521, and to make the procedures discretionary.

Rejection of a specific provision contained in an act as originally introduced is most persuasive that the act should not be interpreted to include what was left out.⁴² Since the bill originally

³⁹ *City of Merced v. State of California* (1984) 153 Cal. App. 3d 777,783,

⁴⁰ *Ibid*,

⁴¹ *Department of Finance v. Commission on State Mandates* (May 22, 2003, S109219) Cal. 4th __.

⁴² *Bollinger v. San Diego Civil Service Comm.* (1999) 71 Cal. App. 4th 568,575. Also see *Robert Woodbury v. Patricia Brown-Dempsey* (June 3, 2003, E03 1001) ___ Cal. App. 4th. <<http://www.courtinfo.ca.gov/opinions/documents/E031001.PDF>>

required an autopsy for unidentified decedents, but was amended to make the decision to perform an autopsy discretionary (keeping consistent with the statutory scheme), the autopsy should not be interpreted to be a required activity.

Therefore, because Government Code section 27521 does not constitute a state mandate, staff finds that it is not subject to article XIII B, section 6. This includes all the activities of section 27521 because they are based on the coroner's discretion to autopsy, such as submitting autopsy data, submitting the final report of investigation, retention of jaws, and submitting dental records to DOJ.

Government Code section 27521.1: This section requires a local law enforcement agency investigating the death of an unidentified person to report the death to the DOJ no later than 10 calendar days after the date the body or human remains are discovered. Because this section imposes a reporting requirement on a local agency, staff finds that Government Code section 2752 1.1 imposes a state-mandated duty and is therefore subject to article XIII B, section 6. Therefore, this statute is further discussed below.

B. Does Government Code section 27521.1 qualify as a “program”?

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a “program,” defined as a program that carries out the governmental function of providing a service to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.⁴³ Only one of these findings is necessary to trigger article XIII B, section 6.⁴⁴

Government Code section 2752 1.1 involves the duty of law enforcement agencies investigating the death of an unidentified person to report the death to DOJ no later than 10 days after the body or human remains are discovered. This is a program that provides governmental functions in the areas of public safety, criminal justice, crime and vital statistics, and location of missing persons. Moreover, Government Code section 2752 1.1 imposes unique data collecting and reporting duties on local law enforcement agencies that do not apply generally to all residents and entities in the state. Therefore, staff finds that the test claim legislation constitutes a “program” within the meaning of article XIII B, section 6 of the California Constitution.

Issue 2: Does Government Code section 27521.1 impose a new program or higher level of service on local agencies within the meaning of article XIII B, section 6 of the California Constitution?

Article XIII B, section 6 of the California Constitution states, “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 determine if the “program” is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.⁴⁵

⁴³ *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

⁴⁴ *Camel Valley Fire Protection Dist.* (1987) 190 Cal.App.3d 521, 537.

⁴⁵ *Lucia Mar Unified School Dist. v. Honig, supra*, 44 Cal.3d 830, 835,

Government Code section 27521.1, law enforcement agency report: This section requires a law enforcement agency investigating the death of an unidentified person to report the death to the DOJ, in a DOJ-approved format, within 10 days of discovery,

DOF stated that the investigating law enforcement agency's report to DOJ is discretionary because the local law enforcement agency first must choose to go forward with a criminal investigation. According to DOF, DOJ's report is only initiated after the local agency exercises discretion to investigate a case.

Staff disagrees, Failure of peace officers to investigate criminal activities would be a dereliction of duty.⁴⁶ California law imposes on sheriffs the duty to "preserve peace,"⁴⁷ arrest "all persons who attempt to commit or who have committed a public offense,"⁴⁸ and "prevent and suppress any affrays, breaches of the peace, riots, and insurrections, and investigate public offenses which have been committed."⁴⁹ Police have the same duties? These are mandatory duties, as evidenced by use of the word "shall" in the statutes?

Preexisting law requires law enforcement to report immediately to DOJ when a person reported missing has been found.⁵² Also, for found children under 12 or found persons with evidence that they were at risk,⁵³ a report must be filed within 24 hours after the person is found. And if a missing person is found alive or dead within 24 hours and local law enforcement has reason to believe the person was abducted, local law enforcement must also report that information to the DOJ.⁵⁴ These statutes do not require the person to be found alive.

Given that law enforcement already had to report to DOJ findings of missing persons, the new activities for finding a deceased person are limited to those in which the deceased is over 12 and not a missing person with evidence of being at risk, as defined.

Thus, staff finds that it is a new program or higher level of service for local law enforcement investigating the death of an unidentified person to report the death to the DOJ, in a DOJ-approved format, within 10 calendar days of the date the body or human remains are discovered.

⁴⁶ *People v. Mejia* (1969) 272 Cal. App. 2d 486,490.

⁴⁷ Government Code section 26600.

⁴⁸ Government Code section 26601.

⁴⁹ Government Code section 26602.

⁵⁰ Government Code section 41601.

⁵¹ Government Code section 14,

⁵² Penal Code section 14207.

⁵³ Evidence that the person is at risk includes, but is not limited to, (1) The person missing is the victim of a crime or foul play, 2) The person missing is in need of medical attention. 3) The person missing has no pattern of running away or disappearing. (4) The person missing may be the victim of parental abduction, (5) The person missing is mentally impaired, (Pen. Code, § 14213, subd. (b).)

⁵⁴ Penal Code section 14207.

The exceptions is for children under 12 or found persons with evidence that they were at risk, as defined by Penal Code section 142 13.

Issue 3: Does Government Code section 27521.1 impose “costs mandated by the state” within the meaning of Government Code sections 17514 and 17556?

In order for the activities listed above to ‘impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, two criteria must apply. First, the activities must impose costs mandated by the state? Second, no statutory exceptions as listed in Government Code section 17556 can apply, Government Code section 17514 defines “costs mandated by the state?’ as follows:

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

In its test claim, the claimant stated it would incur costs of over \$200 per annum,⁵⁶ which was the standard under Government Code section 17564, subdivision (a) at the time the claim was filed.⁵⁷ There is no evidence in the record to rebut this declaration. In addition, staff finds that the exceptions to reimbursement in section 17556 do not apply here.

In summary, staff finds that Government Code section 27521.1 imposes costs mandated by the state pursuant to Government Code section 175 14.

CONCLUSION

Staff finds that Government Code section 27521.1 imposes a reimbursable state-mandated program on local law enforcement within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 175 14, The mandate is for local law enforcement investigating the death of an unidentified person to report the death to the DOJ, in a DOJ-approved format, within 10 calendar days of the date the body or human remains are discovered, The exception is for children under 12 or found persons with evidence that they were at risk, as defined by Penal Code section 142 13.

Staff finds that Government Code section 27521, Penal Code section 14202 and Health and Safety Code section 102870, as added or amended by Statutes 2000, chapter 284, do not constitute a reimbursable state-mandated program because they are not subject to article XIII B, section 6.

RECOMMENDATION

Staff recommends that the Corntnission adopt the staff analysis and approve the test claim for the law enforcement reporting activity in Government Code section 27521.1.

⁵⁵ *Lucia Mar Unified School Dist., supra*, 44 Cal.3d 830, 835. Government Code section 175 14.

⁵⁶ Declaration of David Campbell, County of Los Angeles Coroner’s Office.

⁵⁷ Currently the claim must exceed \$1000 in costs. (Gov. Code, § 17564, subd. (a).)

Commission on State Mandates

Original List Date: 7/6/2001 Mailing information: Final Staff Analysis
Last Updated: 312612003
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Claim Number: OO-TC-18
Issue: Postmortem Examinations: Unidentified Bodies, Human Remains

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