

SixTen and Associates

Mandate Reimbursement Services

KEITH B. PETERSEN, MPA, JD, President
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Telephone: (858) 514-8605
Fax: (858) 514-8645
E-Mail: Kbpsixten@aol.com

March 23, 2004

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

RECEIVED

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**COMMISSION ON
STATE MANDATES**

Re: Test Claim 02-TC-12
Santa Monica Community College District
Crime Statistics Reports

Dear Ms. Higashi:

I have received the comments of the Department of Finance ("DOF") dated February 13, 2004, to which I now respond on behalf of the test claimant.

A. The Opposition and Comments of the DOF are Incompetent and Should be Excluded

Test claimant objects to the comments of the DOF, in total, as being legally incompetent and move that they be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

"...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information or belief."

The DOF's comments do not comply with these essential requirements. Since the Commission cannot use unsworn comments or comments unsupported by declarations, but must make conclusions based upon an analysis of the statutes and facts supported in the record, test claimant requests that the comments and assertions of the DOF not be included in the Staff's Analysis.

B. The Legislature Has Ratified the Establishment of Community College Police Departments

Since the governing boards of community college districts were allowed to establish community college police departments in 1970, the legislature has ratified their continued existence.

1. History of Community College Police Departments

In 1970, former Education Code Section 25429 provided that the governing board of a community college district may establish a community college police department and employ such personnel as may be necessary for its needs. Persons so employed were peace officers only in or about the campus of the community college and other grounds or properties owned, operated, controlled, or administered by the community college.

Chapter 1010, Statutes of 1976, Section 2 recodified and renumbered Education Code Section 25429 as Education Code Section 72330.

Chapter 1340, Statutes of 1980, Section 9, added Penal Code Section 830.31, effective September 30, 1980, which identified those persons who are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest. Subdivision (c) included members of a community college police department appointed pursuant to Education Code Section 72330. Therefore, the former parochial jurisdiction of community college police departments was extended from only the college campuses and college properties to any place in the state.

Chapter 470, Statutes of 1981, Section 77, amended Education Code Section 72330 to clarify that community college police are peace officers as defined by Section 830.31 of the Penal Code, but only for the purpose of carrying out the duties of their employment.

Chapter 945, Statutes of 1982, Section 5, amended Education Code Section 72330 to provide that a community college police department shall be under the supervision of a community college chief of police and that each campus of a multicampus community college district may designate a chief of police.

Chapter 1165, Statutes of 1989, Section 3, amended Education Code Section 72330 to change the reference to peace officers defined "by Section 830.31 of the Penal Code" to those defined "in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code."

Chapter 1165, Statutes of 1989, Section 23, repealed Penal Code Section 830.31, and Section 25 added Penal Code Section 830.32 which defines "peace officers." Subdivision (a) includes members of a community college police department appointed pursuant to Education Code Section 72330.

Chapter 409, Statutes of 1991, Section 4, amended Education Code Section 72330 to add subdivision (c) which requires the governing board of a community college to set minimum qualifications for the community college chief of police and requires the chief of security or chief of police to comply with the training requirements of the subdivision.

Chapter 746, Statutes of 1998, Section 3, amended Penal Code Section 830.32 to add subdivision (c) to provide that peace officers employed by a California Community College district, who have completed training as prescribed by subdivision (f) of Section 832.3, shall be designated as school police officers.

So, it can be seen that the legislature has expanded the role of community college police officers from "only in or about the campus and other grounds or properties owned by the college" in 1970, to full-fledged police departments with offices on each campus and authorized to enforce the law anywhere in the state.

2. The Duties and Obligations of Community College Police Have Been Greatly Expanded

Chapter 659, Statutes of 1999, Section 1, amended Family Code Section 6240 to include, peace officers of a California community college police department within the definition of a "law enforcement officer" as used in Part 3 - "Emergency Protective Orders," commencing with Section 6240. Section 6250 allows a judicial officer to issue an *ex parte* emergency protective order when a law enforcement officer asserts reasonable grounds to believe any of the following: (a) that a person is in immediate and present danger of domestic violence, (b) that a child is in immediate and present danger of abuse by a family or household member, (c) that a child is in immediate and present danger of being abducted by a parent or relative, or (d) that an elder or dependent adult is in immediate and present danger of abuse. Therefore, the legislature has expanded the powers of California community colleges to include the authority to obtain emergency protective orders to help prevent domestic violence, child abuse, child abductions and elder abuse.

Chapter 659, Statutes of 1999, Section 1.5 added Family Code Section 6250.5, which allows a judicial officer to issue an *ex parte* emergency protective order to a peace officer of a community college when that peace officer asserts reasonable grounds to believe that there is a demonstrated threat to campus safety, when the issuance of that

order is consistent with a memorandum of understanding between the college and the local sheriff or police chief. Therefore, the authority and responsibility of community college police departments was again expanded to obtain emergency protective orders when there is reasonable grounds to believe that there is a demonstrated threat to campus safety

Penal Code Section 646.9 defines the crime of stalking. Chapter 659, Statutes of 1999, Section 2, amended subdivision (a) of Penal Code Section 646.91 to add peace officers of a community college to the list of peace officers who are charged with the responsibility of obtaining an *ex parte* emergency protective order based upon a victim's allegation that he or she has been willfully, maliciously and repeatedly followed or harassed by another person who has made a credible threat and the victim is in reasonable fear for his or her safety, or the safety of his or her immediate family. Subdivision (b) requires the community college police officer to sign the emergency order. Subdivision (h) then requires the officer to (1) serve the order on the restrained person, if he or she can be reasonably located, (2) to give a copy of the order to the protected person, or a minor protected person's parent or guardian, and (3) file a copy of the order with the court as soon as practicable after issuance. Subdivision (l) requires the community college police officer to use every reasonable means to enforce an emergency protective order. Subdivision (k) requires the officer to carry copies of the order while on duty. Therefore, community college police officers are now required to sign emergency orders prohibiting "stalking," to serve the order on the restrained person if he or she can be reasonably located, to give a copy of the order to the protected person, to file a copy of the order with the court, and to carry copies of the order while on duty.

Penal Code Section 12028.5 defines domestic violence incidents and provides for the temporary taking custody of firearms at the scene of domestic violence incidents and provides procedures to be taken subsequent to the taking of temporary custody of those firearms. Chapter 659, Statutes of 1999, Section 3, amended Section 12028.5, subdivision (b), to add community college police officers to those officers required to take custody of firearms and comply with Section 12028.5. Therefore, community college police officers, who are at the scene of a family violence incident involving a threat to human life or a physical assault, are now required to take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual search as necessary for the protection of the officer or other persons present.

Chapter 659, Statutes of 1999, Section 3, renumbered former subdivisions (c) through (j) of Section 12028.5 as subdivisions (d) through (k) respectively. Subdivision (f) requires, in those cases where a law enforcement agency has reasonable cause to

believe that the return of the firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, to advise the owner of the firearm or other deadly weapon and, within 10 days of the seizure, initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned. Therefore, when a community college district police officer seizes a firearm or other deadly weapon at the scene of a domestic violence incident, and the officer has reasonable cause to believe that the return of the firearm or other deadly weapon would likely result in endangering the victim or the person reporting the assault or threat, the district, is required to refer the seizure to district counsel for the filing of a petition to determine if the firearm or other deadly weapon should be returned.

Chapter 1 of Title 5 of the Penal Code, commencing with Section 13700, is entitled "Law Enforcement Response to Domestic Violence." Chapter 659, Statutes of 1999, Section 5, amended Subdivision (c) of Education Code Section 13700 to include community college police officers within the definition of peace officers subject to the Title on Responses to Domestic Violence. Section 13701, at subdivision (a), requires every law enforcement agency (including community college district police departments) in the state to develop, adopt and implement written policies and standards for officers' responses to domestic violence calls to reflect the fact that domestic violence is alleged criminal conduct and that a request for assistance in a situation involving domestic violence is the same as any other request for assistance where violence has occurred. Subdivision (b) requires the written policies to encourage the arrest of domestic violence offenders if there is probable cause to believe that an offense has been committed and requires the arrest of the offender if there is probable cause to believe that a protective order has been violated. Therefore, community colleges with police officers are required to develop, adopt and implement written policies pertaining to responses to domestic violence calls and to arrest offenders.

Again, we see the legislature, time and time again, relying upon community college police departments by including them when making provisions for emergency protective orders, domestic violence situations, stalking, serving and enforcement of temporary restraining orders, taking custody of firearms, initiating petitions in superior court and making arrests on campus of domestic violence offenders.

So, while it may have been true in 1970 that community college district police departments were discretionary, the subsequent acts of the legislature have ratified the continued existence of community college district police departments by deferring to them when making specific provisions for the safety of students and staff at community colleges.

C. DOF's Assertion that Colleges Need Not Comply is Draconian in Nature

DOF argues that community college districts need not comply with the requirements of reporting crime statistics because their existence is purely discretionary. This is tantamount to arguing that community college districts can avoid the costs of reporting crime statistics by merely abandoning their police departments. This is exactly the erroneous thinking condemned in City of Sacramento v. State of California (1990) 50 Cal.3rd 51 (hereinafter referred to as *Sacramento II*).

(1) Sacramento II Facts:

The adoption of the Social Security Act of 1935 provided for a Federal Unemployment Tax ("FUTA"). FUTA assesses an annual tax on the gross wages paid by covered private employers nationwide. However, employers in a state with a federally "certified" unemployment insurance program receive a "credit" against the federal tax in an amount determined as 90 percent of contributions made to the state system. A "certified" state program also qualifies for federal administrative funds.

California enacted its unemployment insurance system in 1935 and had sought to maintain federal compliance ever since.

In 1976, Congress enacted Public Law number 94-566 which amended FUTA to require, for the first time, that a "certified" state plan include coverage of public employees. States that did not alter their unemployment compensation laws accordingly faced a loss of both the federal tax credit and the administrative subsidy.

In response, the California Legislature adopted Chapter 2, Statutes of 1978 (hereinafter chapter 2/78), to conform to Public Law 94-566, and required the state and all local governments to participate in the state unemployment insurance system on behalf of their employees.

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(2) Sacramento I Litigation

The City of Sacramento and the County of Los Angeles filed claims with the State Board of Control seeking state subvention of the costs imposed on them by chapter 2/78. The State Board denied the claim. On mandamus, the Sacramento Superior Court overruled the Board and found the costs to be reimbursable. In City of Sacramento v. State of California (1984) 156 Cal.App.3d 182 (hereinafter *Sacramento I*) the Court of Appeal affirmed concluding, *inter alia*, that chapter 2/78 imposed state-mandated costs reimbursable under section 6 of article XIII B. The court also held, however, that the potential loss of federal funds and tax credits did not render Public

Law 94-566 so coercive as to constitute a "mandate of the federal government" under Section 9(b).¹

In other words, *Sacramento I* concluded that the loss of federal funds and tax credits did not amount to "compulsion."

(3) *Sacramento II* Litigation

After remand, the case proceeded through the courts again. In *Sacramento II*, the court held that the obligations imposed by chapter 2/78 failed to meet the "program" and "service" standards for mandatory subvention because it imposed no "unique" obligation on local governments, nor did it require them to provide new or increased governmental services to the public. The Court of Appeal decision, finding the expenses reimbursable, was reversed.

However, the court disapproved that portion of *Sacramento I* which held that the loss of federal funds and tax credits did not amount to "compulsion."

(4) *Sacramento II* "Compulsion" Reasoning

The State argued that the test claim legislation required a clear legal compulsion not present in Public Law 94-566. The local agencies responded that the consequences of California's failure to comply with the federal "carrot and stick" scheme were so substantial that the state had no realistic "discretion" to refuse.

In disapproving *Sacramento I*, the court explained:

"If California failed to conform its plan to new federal requirements as they arose, its businesses faced a new and serious penalty - full, double unemployment taxation by both state and federal governments." (Opinion, at page 74)

The State then argued that California was not compelled to comply because it could have chosen to terminate its own unemployment insurance system, leaving the state's

¹ Section 1 of article XIII B limits annual "appropriations". Section 9(b) provides that "appropriations subject to limitation" do not include "[A]ppropriations required to comply with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly."

employers faced with only one tax, the federal tax. The court replied to this suggestion:

“However, we cannot imagine the drafters and adopters of article XIII B intended to force the state to such draconian ends. (¶) ...The alternatives were so far beyond the realm of practical reality that they left the state ‘without discretion’ to depart from federal standards.” (Opinion, at page 74, emphasis supplied)

In other words, terminating its own unemployment program after 43 years or more in operation was not an acceptable option because it was so far beyond the realm of practical reality so as to be a draconian response, leaving the state without any real discretion to do otherwise. The only reasonable alternative was to comply with the new legislation.

So here also, terminating community college district police departments after being in existence for 34 years, and after the legislature has vested them with so many additional powers and responsibilities, is not an acceptable option because it is so far beyond the realm of practical reality so as to be a draconian response, leaving community college districts without any real discretion to do otherwise. The only reasonable alternative is to comply with the test claim legislation and report the crime statistics required.

CERTIFICATION

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

Sincerely,



Keith B. Petersen

C: Per Mailing List Attached

DECLARATION OF SERVICE

RE: Crime Statistics Reports 02-TC-12
CLAIMANT: Santa Monica Community College District

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant(s). I am 18 years of age or older and not a party to the within entitled matter.

On the date indicated below, I served the attached: letter of March 23, 2004, addressed as follows:

Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
FAX: (916) 445-0278

AND per mailing list attached

U.S. MAIL: I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.

FACSIMILE TRANSMISSION: On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.

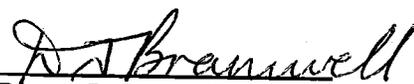
OTHER SERVICE: I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:

A copy of the transmission report issued by the transmitting machine is attached to this proof of service.

_____(Describe)

PERSONAL SERVICE: By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 3/23/04, at San Diego, California.


Diane Bramwell

Commission on State Mandates

Original List Date: 2/19/2003

Mailing Information: Other

Last Updated:

List Print Date: 08/21/2003

Mailing List

Claim Number: 02-TC-12

Issue: Crime Statistics Reports (K-14)

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Mr. Keith B. Petersen

Claimant Representative

SixTen & Associates

Tel: (858) 514-8605

252 Balboa Avenue, Suite 807

Fax: (858) 514-8645

San Diego, CA 92117

Ms. Cheryl Miller

Claimant

Santa Monica Community College District

Tel: (310) 434-4221

1900 Pico Blvd.

Fax: (310) 434-4256

Santa Monica, CA 90405-1628

Mr. Paul Minney

Tel: (916) 646-1400

Spector, Middleton, Young & Minney, LLP

Fax: (916) 646-1300

7 Park Center Drive

Sacramento, CA 95825

Ms. Harmeet Barkschat

Tel: (916) 727-1350

Mandate Resource Services

Fax: (916) 727-1734

5325 Elkhorn Blvd. #307

Sacramento, CA 95842

Ms. Sandy Reynolds

Tel: (909) 672-9964

Reynolds Consulting Group, Inc.

Fax: (909) 672-9963

P.O. Box 987

Sun City, CA 92586

Mr. Steve Smith

Tel: (916) 669-0888

Mandated Cost Systems, Inc.

Fax: (916) 669-0889

11130 Sun Center Drive, Suite 100

Rancho Cordova, CA 95670

Ms. Annette Chinn
Cost Recovery Systems
705-2 East Bidwell Street, #294
Folsom, CA 95630

Tel: (916) 939-7901
Fax: (916) 939-7801

Mr. Arthur Palkowitz
San Diego Unified School District
4100 Normal Street, Room 3159
San Diego, CA 92103-8363

Tel: (619) 725-7565
Fax: (619) 725-7569

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816

Tel: (916) 454-7310
Fax: (916) 454-7312

Ms. Beth Hunter
Centration, Inc.
8316 Red Oak Street, Suite 101
Rancho Cucamonga, CA 91730

Tel: (866) 481-2642
Fax: (866) 481-5383

Mr. Michael Havey
State Controller's Office (B-08)
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Tel: (916) 445-8757
Fax: (916) 323-4807

Mr. Keith Gmeinder
Department of Finance (A-15)
915 L Street, 8th Floor
Sacramento, CA 95814

Tel: (916) 445-8913
Fax: (916) 327-0225

Ms. Susan Geanacou
Department of Finance (A-15)
5 L Street, Suite 1190
Sacramento, CA 95814

Tel: (916) 445-3274
Fax: (916) 324-4888

Dr. Carol Berg
Education Mandated Cost Network
1121 L Street, Suite 1060
Sacramento, CA 95814

Tel: (916) 446-7517
Fax: (916) 446-2011