

COMMISSION ON STATE MANDATES

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September 2, 2009

Mr. Keith Petersen
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

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

Re: *Crime Statistics Reports (K-14); 02-TC-12*
Santa Monica Community College District, Claimant
Penal Code Sections 646.91, 12028, 12028.5, 13012, 13014, 13020, 13021, 13023, 13700, 13701, 13702, 13710, and 13730; Family Code Sections 6240, 6250, and 6250.5
Statutes 1979, Chapters 255 and 860 (SB 281 and AB 1421); Statutes 1980, Chapter 1340 (SB 1447); Statutes 1982, Chapters 142 and 147 (SB 561 and Senate Resolution 64);
Statutes 1984, Chapter 1609 (SB 1472); Statutes 1989, Chapter 1172 (SB 202);
Statutes 1992, Chapter 1338 (SB 1184); Statutes 1993, Chapter 1230 (AB 2250);
Statutes 1995, Chapters 803 and 965 (AB 488 and SB 132); Statutes 1996, Chapters 872 and 1142 (AB 3472 and SB 1797); Statutes 1998, Chapter 933 (AB 1999); Statutes 1999, Chapters 561, 659, 661, and 662 (AB 59, SB 355, AB 825, and SB 218); Statutes 2000, Chapters 254, 626, and 1001 (SB 2052, AB 715, and SB 1944); Statutes 2001, Chapters 468 and 483 (SB 314 and AB 469); Statutes 2002, Chapter 833 (SB 1807);
California Department of Justice, Criminal Statistics Reporting Requirements, March 2000

Dear Mr. Petersen:

The draft staff analysis for this test claim is enclosed for your review and comment.

Written Comments

Any party or interested person may file written comments on the draft staff analysis by Wednesday, **September 23, 2009**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. (Cal. Code Regs., tit. 2, § 1181.2.) If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

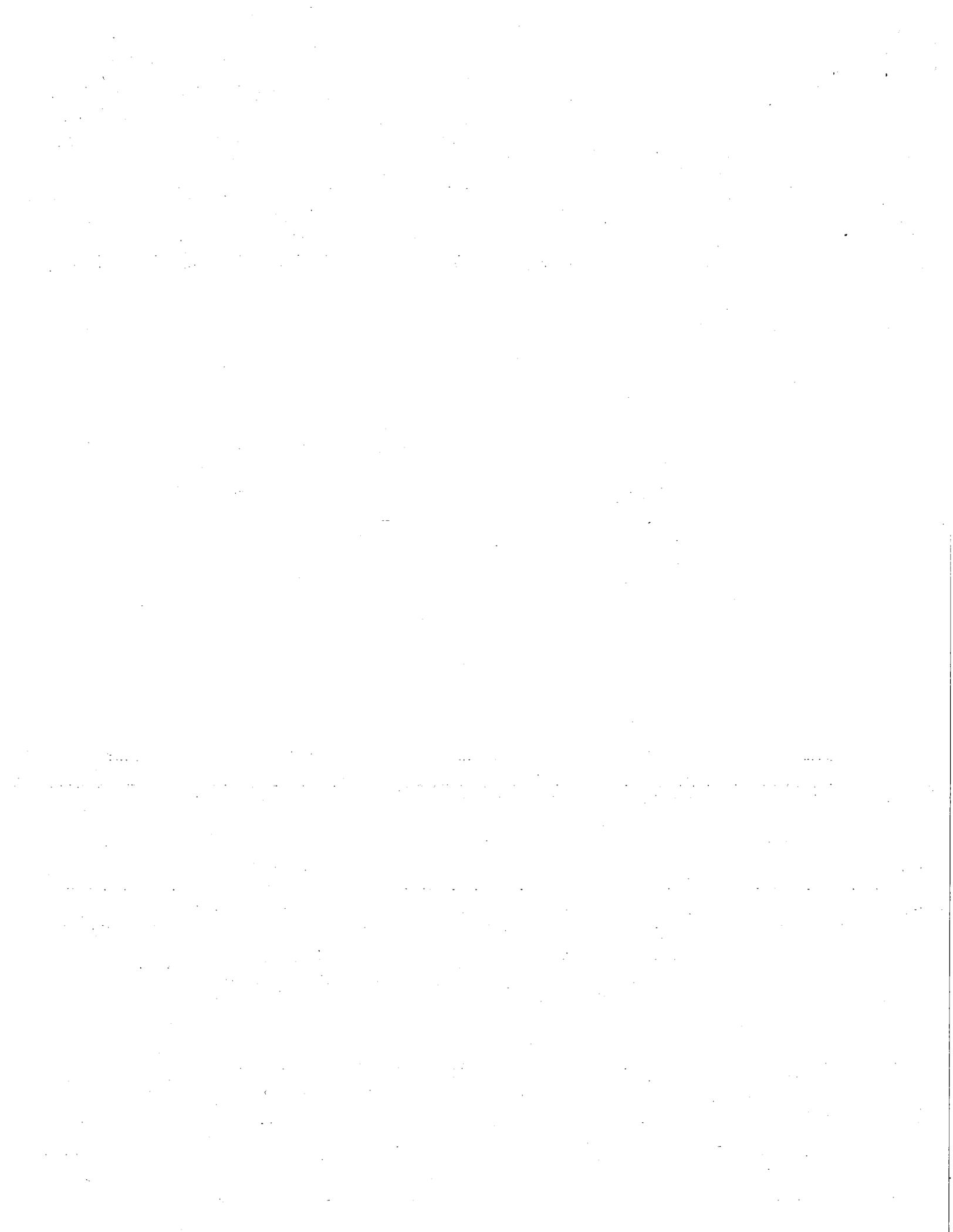
Hearing

This test claim is set for hearing on **Friday, October 30, 2009**, at 9:30 a.m. in Room 447, State Capitol, Sacramento, CA. The final staff analysis will be issued on or about October 15, 2009. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

Sincerely


PAULA HIGASHI
Executive Director

Enclosures



ITEM __
TEST CLAIM
DRAFT STAFF ANALYSIS

Penal Code Sections 646.91, 12028, 12028.5, 13012, 13014, 13020, 13021, 13023, 13700,
13701, 13702, 13710, and 13730;

Family Code Sections 6240, 6250, and 6250.5

Statutes 1979, Chapters 255 and 860 (SB 281 and AB 1421);

Statutes 1980, Chapter 1340 (SB 1447);

Statutes 1982, Chapters 142 and 147 (SB 561 and Senate Resolution 64);

Statutes 1984, Chapter 1609 (SB 1472); Statutes 1989, Chapter 1172 (SB 202);
Statutes 1992, Chapter 1338 (SB 1184); Statutes 1993, Chapter 1230 (AB 2250);

Statutes 1995, Chapters 803 and 965 (AB 488 and SB 132);

Statutes 1996, Chapters 872 and 1142 (AB 3472 and SB 1797);

Statutes 1998, Chapter 933 (AB 1999);

Statutes 1999, Chapters 561, 659, 661, and 662

(AB 59, SB 355, AB 825, and SB 218);

Statutes 2000, Chapters 254, 626, and 1001 (SB 2052, AB 715, and SB 1944);

Statutes 2001, Chapters 468 and 483 (SB 314 and AB 469);

Statutes 2002, Chapter 833 (SB 1807);

California Department of Justice, Criminal Statistics
Reporting Requirements, March 2000

Crime Statistics Reports (K-14)

02-TC-12

Santa Monica Community College District, Claimant

EXECUTIVE SUMMARY

This test claim has been filed on behalf of K-12 school districts and community college districts to address Penal Code and Family Code statutes and alleged executive orders that require law enforcement agencies and their officers to report crime statistics to the Department of Justice; develop, adopt, and implement written response policies on domestic violence; develop and prepare written incident reports of domestic violence; confiscate firearms or other deadly weapons at the scene of a domestic violence incident; bring and attend court actions when necessary before disposing of the weapons; destroy, sell or restore the weapons; obtain and serve emergency protective orders; and maintain records of protective orders in domestic violence cases.

Many of the statutes and alleged executive orders have been pled in prior test claims approved by the Commission for county and city law enforcement agencies.¹ These prior decisions do not apply to school district and community college police departments.

Analysis

Staff finds that the test claim statutes and alleged executive orders do not constitute a state-mandated program for school district and community college district police departments and their law enforcement officers based on the courts' holding in *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, and *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355. State law does not require school districts to employ law enforcement officers and, thus, the downstream requirements of the test claim statutes and alleged executive orders are not legally compelled by the state. Nor is there any evidence in the record that school districts and community college districts will face certain and severe adverse consequences for relying upon the general law enforcement resources of cities and counties. Thus, there is no evidence that school districts and community college districts are practically compelled to comply with the downstream requirements imposed by the test claim statutes and alleged executive orders.

Conclusion

Staff concludes that the test claim statutes and alleged executive orders do not constitute a reimbursable state-mandated program for K-12 school districts and community college districts within the meaning of article XIII B, section 6 of the California Constitution.

Recommendation

Staff recommends that the Commission adopt this analysis and deny the test claim.

¹ See for example; *Domestic Violence* (CSM-4222), *Domestic Violence Arrest Policies and Standards* (CSM 96-362-02), *Crime Victims' Domestic Violence Incident Reports* (CSM 99-TC-08), and *Crime Statistics Reports for the Department of Justice* (02-TC-04, 02-TC-11, 07-TC-10 (test claim amendment)).

STAFF ANALYSIS

Claimant

Santa Monica Community College District

Chronology

02/11/03 Claimant files test claim
02/19/03 Test claim deemed complete
03/21/03 Department of Finance requests extension of time to file comments
03/24/03 Commission staff grants extension to file comments until April 21, 2003
04/17/03 Department of Finance requests extension of time to file comments
04/17/03 Commission staff grants extension to file comments until May 21, 2003
08/20/03 Department of Finance requests extension of time to file comments
08/21/03 Commission staff grants extension to file comments until September 30, 2003
10/23/03 Department of Finance requests extension of time to file comments
10/24/03 Commission staff grants extension to file comments until December 18, 2003
10/31/03 Department of Finance requests extension of time to file comments
11/7/03 Commission staff grants extension to file comments until February 7, 2004
02/13/04 Department of Finance files comments on the test claim
03/25/04 Claimant files rebuttal

Background

This test claim has been filed on behalf of K-12 school districts and community college districts to address Penal Code and Family Code statutes and alleged executive orders that require law enforcement agencies and their officers to report crime statistics to the Department of Justice; develop, adopt, and implement written response policies on domestic violence; develop and prepare written incident reports of domestic violence; confiscate firearms or other deadly weapons at the scene of a domestic violence incident; bring and attend court actions when necessary before disposing of the weapons; destroy, sell or restore the weapons; obtain and serve emergency protective orders; and maintain records of protective orders in domestic violence cases.

Many of the statutes and alleged executive orders have been pled in prior test claims approved by the Commission for county and city law enforcement agencies.² These prior decisions do not apply to school district and community college police departments.

² See for example; *Domestic Violence* (CSM-4222), *Domestic Violence Arrest Policies and Standards* (CSM 96-362-02), *Crime Victims' Domestic Violence Incident Reports*

Claimant's Position

The claimant contends that the test claim statutes and alleged executive order imposes a reimbursable state-mandated program on K-12 school districts and community college districts for the direct and indirect costs of labor, material and supplies, data processing services and software, contracted services and consultants, equipment and capital assets, staff and student training and travel to implement the following activities:

Miscellaneous Reports

- A. To install and maintain records required by the Department of Justice for the correct reporting of required statistical data as to the reports described in following paragraphs (1) through (10), to report that statistical data to the Department at those times and in the manner that the Attorney General prescribes, and to give the Attorney General access to that statistical data, pursuant to Penal Code sections 13020 and 13021.
 1. To report to the Department, when requested, the administrative actions in dealing with criminals or delinquents taken by the police department of the district, including those in the juvenile justice system and, after October 4, 2001, to additionally include those minors who are the subject of a petition or hearing in the juvenile court to transfer their cases to the jurisdiction of an adult criminal court or whose cases are directly filed or otherwise initiated in an adult criminal court, pursuant to Penal Code section 13012, subdivision (d).
 2. To report to the Department, monthly by the 10th working day of each month, statistical data on the offenses of criminal homicide, forcible rape, robbery, assault, burglary, larceny-theft and motor vehicle theft, the nature of the crime and the value of property stolen and recovered, pursuant to "Criminal Statistics Reporting Requirements," Section B-1.
 3. To report to the Department, monthly by the 10th working day of each month, arson data including the type of arson, the number of actual offenses, the number of clearances, and the estimated dollar value of property damages, pursuant to "Criminal Statistics Reporting Requirements," Section B-2.
 4. To report to the Department, monthly by the 10th working day of each month, on all persons who are the victims of, and all persons who are charged with, homicide, to include demographic information, including age, gender, race and ethnic background, pursuant to Penal Code section 13014, subdivisions (a)(1) and (b), and "Criminal Statistics Reporting Requirements," Section B-3.
 5. To report to the Department, monthly by the 15th working day of each month, any information required relative to criminal acts or attempted

(CSM 99-TC-08), and *Crime Statistics Reports for the Department of Justice* (02-TC-04, 02-TC-11, 07-TC-10 (test claim amendment)).

criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, gender, sexual orientation, national origin, or physical or mental disability, pursuant to Penal Code section 13023 and "Criminal Statistics Reporting Requirements," Section B-4.

6. To report to the Department, monthly by the 10th working day of each month, data on peace officers killed or assaulted in the line of duty, including information on the type of criminal activity, type of weapon used, type of assignment, time of assault, number with or without personal injury, police assaults cleared and officers killed by felonious act or by accident or negligence, pursuant to "Criminal Statistics Reporting Requirements," Section B-5.
7. To report to the Department, monthly by the 10th day of each month, the number of victims of violent crimes who are 60 years of age or older, pursuant to Senate Concurrent Resolution 64 and "Criminal Statistics Reporting Requirements," Section B-7.
8. To report to the Department, within 10 days of the date of death, on persons who die in custody including the circumstances relating to the death, pursuant to "Criminal Statistics Reporting Requirements," Section B-8.
9. To report to the Department, annually on a date specified, on enforcement and criminal justice surveys on the number of full time, sworn and civilian, male and female, law enforcement personnel employed by the district, pursuant to "Criminal Statistics Reporting Requirements," Section G.
10. To report to the Department, annually in the 3rd week of December, the number of citizens' complaints received by the district concerning its peace officers, indicating the total number of complaints, the number alleging criminal conduct, and the number sustained in each category, pursuant to Penal Code section 13102, subdivision (e), and "Criminal Statistics Reporting Requirements," Section H.

Domestic Violence Matters

- B. To develop, adopt, and implement written policies and standards, as specified, and to periodically update those policies and standards, for officers' responses to domestic violence calls which reflect 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, pursuant to Penal Code section 13701, subdivision (a).
- C. To develop, adopt, and implement written policies and standards, and periodically update those policies and standards, for dispatchers' responses to domestic violence calls which shall reflect that calls reporting threatened, imminent, or ongoing domestic violence, and the violation of any protection order shall be

ranked among the highest priority of calls and which prohibits the verification of the validity of a protective order before responding to the request for assistance, pursuant to Penal Code section 13702.

- D. To maintain a complete and systematic record of all protection orders, and periodically update those records, with respect to domestic violence incidents, including orders which have not yet been served, and restraining orders and proofs of service, to enable law enforcement officers responding to domestic violence calls to be informed of the existence, terms, and effective dates of protection orders in effect, pursuant to Penal Code section 13710, subdivision (a)(1).
- E. To notify the sheriff or police chief of the city, in whose jurisdiction the school district is located, of any protection orders served by a district peace officer, pursuant to Penal Code section 13710, subdivision (a)(2).
- F. To serve a protection order on the party to be restrained at the scene of a domestic violence incident or at any time the party is in custody, pursuant to Penal Code section 13710, subdivision (c).
- G. To develop a system of recording all domestic violence-related calls, and periodically update that system, to include whether weapons were involved, supported by a written incident report, compiling and reporting, monthly, the total number of calls received and the number of those calls involving weapons, pursuant to Penal Code section 13730, subdivision (a).
- H. To develop an incident report form, as specified, and periodically update that report form, to include domestic violence identification code and which is to be identified on the face of the report as a domestic violence report, pursuant to Penal Code section 13730, subdivision (c).
- I. To report to the Department, monthly by the 10th working day of each month, statistics on the number of domestic violence related calls for assistance received, the number of cases involving weapons, and type of weapon used during the incident, pursuant to the "Criminal Statistics Reporting Requirements," Section B-6.

Emergency Protective Orders

- J. To obtain an ex parte emergency protective order from a judicial officer when a district peace officer has reasonable grounds to believe that a person is in immediate and present danger of domestic violence, a child is in immediate and present danger of abuse by a family or household member, a child is in immediate and present danger of being abducted by a parent or relative, or an elder or dependent adult is in immediate and present danger of abuse, as specified.
- K. To obtain an ex parte emergency protective order from a judicial officer, when consistent with an existing memorandum of understanding between the district police department and the sheriff or police chief of the city in whose jurisdiction the district is located, when the peace officer has reasonable grounds to believe there is a demonstrated threat to campus safety, pursuant to Family Code section 6250.6.

- L. To obtain an ex parte emergency protective order from a judicial officer when a district peace officer has reasonable grounds to believe that a person is in immediate and present danger of stalking, as specified in Penal Code section 646.91.

Confiscation and Disposal of Weapons

- M. To take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or lawful search as necessary for the protection of the peace officers or other persons present, pursuant to Penal Code section 12028.5, subdivision (b). And, after January 1, 2002, to confiscate any firearm or other deadly weapon discovered by an officer at the scene of a domestic violence incident, pursuant to Penal Code section 13730, subdivision (c)(3).
- N.-V. On those occasions where a firearm or other deadly weapon is taken into temporary custody or when confiscated by an officer at the scene of a domestic violence incident, the officer shall comply with the notice, receipt, and hearing requirements in Penal Code section 12028.5.
- W. In those cases where the firearm and/or deadly weapon is destroyed or disposed of, the officer shall perform the activities specified in Penal Code section 12028, subdivisions (c),(d), and (f).

Declarations have been filed by Eileen Miller, Chief of Police for the Santa Monica Community College District, and Greg Bass, Director of Child Welfare and Attendance for Clovis Unified School District, alleging that their entities have incurred costs of \$1,000 to implement the test claim statutes.

Comments from the Department of Finance

The Department of Finance opposes the test claim and contends that the test claim should be denied on the ground that the state has not mandated a program within the meaning of article XIII B, section 6 of the California Constitution. Based on the plain language of Education Code section 72330, and pursuant to *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, the decision to establish a police department on a community college campus is a voluntary action taken by each district and, thus, the downstream activities required by the statutes are also voluntary.

Discussion

The courts have found that article XIII B, section 6, of the California Constitution³ recognizes the state constitutional restrictions on the powers of local government to tax and spend.⁴ “Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”⁵ 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.⁶ 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.⁷

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.⁸ 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.⁹ A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”¹⁰

³ 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 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.

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

⁵ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

⁶ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

⁷ *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*).

⁸ *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.)

⁹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

¹⁰ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

Finally, the newly required activity or increased level of service must impose costs mandated by the state.¹¹

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 6.¹² In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”¹³

Issue: Do the test claim statutes and alleged executive orders constitute a state-mandated program for school district and community college district police departments or their law enforcement officers within the meaning of article XIII B, section 6 of the California Constitution?

This test claim addresses Penal Code and Family Code statutes that impose requirements and provide authority to local law enforcement agencies, including police departments maintained by K-12 school districts and community college districts, as follows.

1. Report crime statistics to the Department of Justice. Penal Code section 13010 requires the Department of Justice to collect crime statistics data from “all persons and agencies mentioned in Section 13020 and from any other appropriate source.” Penal Code section 13020 identifies the state and local law enforcement agencies required to “install and maintain records needed for the correct reporting of statistical data required by him or her” and to “report statistical data to the department at those times and in the manner that the Attorney General prescribes.” Although section 13020 does not specifically identify school districts and community college districts as entities that are required to maintain and report crime statistics data to the Department of Justice, the plain language of the statute imposes the duty on “every other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General.” In addition, Penal Code section 13014 requires “every state and local governmental entity responsible for the investigation and prosecution of a homicide case” to provide the Department of Justice with demographic information about the victim and the person or persons charged with the crime. Penal Code sections 13021 and 13023 require “local law enforcement agencies” to report information relating to misdemeanor violations and hate crimes to the Department of Justice.

The claimant also pled Senate Resolution No. 64 (Stats. 1982, ch. 147), which states in relevant part the following:

¹¹ *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.

¹² *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

¹³ *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.

Resolved by the Senate of the State of California, the Assembly thereof concurring,

That local law enforcement officials are requested to make every attempt to modify their data gathering procedures and computer storage systems to provide information as the number of victims of violent crimes who are 60 years of age or older; and be it further Resolved, That the Department of Justice is requested to solicit and collect information from local law enforcement agencies concerning the ages and victims of crime and to incorporate that information in its crime statistics reporting system ...

In March 2000, the Department of Justice issued a set of "general guidelines" describing the reporting requirements in a document entitled "Criminal Statistics Reporting Requirements." Section B of the document lists the crimes data required to be reported by "Sheriff Departments, Police Departments, and other state and local agencies with peace officer powers." Data required to be reported includes "crimes and clearances, arson offenses, homicides, hate crimes, law enforcement officers killed or assaulted, domestic violence related calls for assistance,¹⁴ violent crimes committed against senior citizens, death in custody, law enforcement and criminal justice personnel survey, and citizens' complaints against peace officers survey."

2. Law enforcement response to domestic violence. Penal Code section 13701 requires every law enforcement agency in the state, by January 1, 1986, to develop, adopt, and implement written policies and standards, as specified in the statute, for officers' responses to domestic violence calls. Penal Code section 13702 requires every law enforcement agency in the state, by July 1, 1991, to develop, adopt, and implement written policies and standards for dispatchers' responses to domestic violence calls. Penal Code section 13710 requires law enforcement agencies to maintain a complete and systematic record of all protection orders with respect to domestic violence incidents, including orders that have not yet been served, restraining orders, and proofs of service. Penal Code section 13710, subdivision (a)(2), also requires the police department of a community college or school district to notify the sheriff or police chief of the city in the jurisdiction of any protection order served by the department. Finally, Penal Code section 13730 requires each law enforcement agency to develop a system, by January 1, 1986, for recording all domestic violence-related calls for assistance made to the department, including whether weapons were involved. All domestic violence-related calls for assistance shall be supported by a written incident report, as specified in the statute, identifying the incident.

For purposes of these statutes, "officer" is defined by Penal Code section 13700 to include "a peace officer as defined in subdivision (a) and (b) of Section 830.32." As more fully explained below, Penal Code section 830.32 designates persons employed as a member of a police department of a K-12 school district and a community college district as peace officers, if the primary duty of the peace officer is the enforcement of the law.

¹⁴ See also, Penal Code section 13730, subdivision (b).

3. Confiscation of firearm or other deadly weapon at the scene of a domestic violence incident. Penal Code section 12028.5, subdivision (b), requires a school district or community college peace officer defined in Penal Code section 830.32, who is at the scene of a domestic violence incident involving a threat to human life or physical assault, to take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search as necessary for the protection of the officer or other persons present. The officer is then required to give the owner or person who possessed the weapon a receipt containing information specified in the statute. If the weapon is not retained for use as evidence related to criminal charges brought as a result of the domestic violence incident, or is not retained because it was illegally possessed, the weapon shall be made available to the owner or person who had lawful possession after the owner demonstrated that he or she has properly applied for possession with the Department of Justice. School district or community college district peace officers are required to deliver the firearm or weapon to the city police department or county sheriff within 24 hours. If the law enforcement agency has reasonable cause to believe that the return of the weapon would result in endangering the victim or person reporting the assault, the agency shall advise the owner of the weapon and initiate a petition in superior court, and comply with notice and hearing activities, to determine if the weapon should be returned.

4. Obtain and serve emergency protective orders. Family Code section 6250 and Penal Code section 646.91 authorize a judicial officer to issue an ex parte emergency protective order when a law enforcement officer asserts reasonable grounds to believe that a person is in immediate danger of domestic violence, a child is in immediate danger of abuse by a family or household member, a child is in immediate danger of being abducted by a parent or relative, or to protect a person from an alleged stalker. Family Code section 6240, subdivision (b)(11)(12) defines "law enforcement officer" to include a peace officer employed by a police department of a school district or community college district as defined in Penal Code section 830.32. Family Code section 6250.5 states that a judicial officer may issue an ex parte emergency protective order to a school district or community college district peace officer *if* the issuance of that order is consistent with an existing memorandum of understanding between the school police department and the sheriff or city police chief, and the school district officer asserts reasonable grounds that there is a demonstrated threat to campus safety.

For the reasons below, staff finds that the activities listed above are not mandated by the state for school district and community college district police departments or their law enforcement officers.

In 2003, the California Supreme Court decided the *Kern High School Dist.* case and considered the meaning of the term "state mandate" as it appears in article XIII B, section 6 of the California Constitution. The school district claimants in *Kern* participated in various funded programs each of which required the use of school site councils and other advisory committees. The claimants sought reimbursement for the

costs from subsequent statutes which required that such councils and committees provide public notice of meetings, and post agendas for those meetings.¹⁵

When analyzing the term “state mandate,” the court reviewed the ballot materials for article XIII B, which provided that “a state mandate comprises something that a local government entity is required or forced to do.”¹⁶ The ballot summary by the Legislative Analyst further defined “state mandates” as “requirements imposed on local governments by legislation or executive orders.”¹⁷ The court also reviewed and affirmed the holding of *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, determining that, when analyzing state-mandate claims, the underlying program must be reviewed to determine if the claimant’s participation in the underlying program is voluntary or legally compelled.¹⁸ The court stated the following:

In *City of Merced*, the city was under no legal compulsion to resort to eminent domain-but when it elected to employ that means of acquiring property, its obligation to compensate for lost business goodwill was not a reimbursable state mandate, because the city was not required to employ eminent domain in the first place. Here as well, if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district’s obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate. (Emphasis in original.)¹⁹

Thus, the Supreme Court held as follows:

[W]e reject claimants’ assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state, based merely upon the circumstance that notice and agenda provisions are mandatory elements of education-related programs in which claimants have participated, *without regard to whether claimant’s participation in the underlying program is voluntary or compelled.* [Emphasis added.]²⁰

K-12 school districts and community college districts are authorized, but not required to employ peace officers. Penal Code section 830.32 designates persons employed as a member of a police department of a K-12 school district pursuant to Education Code section 38000 as peace officers, if the primary duty of the peace officer is the enforcement of the law as prescribed in Education Code section 38000. Education Code section 38000, subdivision (a), authorizes the governing board of a school district to

¹⁵ *Kern High School Dist.*, *supra*, 30 Cal.4th 727.

¹⁶ *Id.* at page 737.

¹⁷ *Ibid.*

¹⁸ *Id.* at page 743.

¹⁹ *Ibid.*

²⁰ *Id.* at p. 731.

employ peace officers “to ensure the safety of school district personnel and pupils and the security of real and personal property of the school district.”

Penal Code section 830.32 also designates members of a community college police department appointed pursuant to Education Code section 72330 as peace officers, if the primary duty of the peace officer is the enforcement of the law as prescribed in Education Code section 72330. Education Code section 72330, subdivision (a), provides that the governing board of a community college district may employ peace officers “as necessary to enforce the law on or near the campus of the community college and on or near other grounds or properties owned, operated, controlled, or administered by the community college.”

Thus, the underlying decision to employ peace officers is discretionary and not legally compelled by the state. Therefore, the activities required by the test claim statutes and alleged executive orders of school district and community college district police departments and law enforcement officers are, likewise, not legally compelled by the state.

Absent such legal compulsion, the courts have ruled that at times, based on the particular circumstances, “practical” compulsion might be found. The Supreme Court in *Kern High School Dist.* addressed the issue of “practical” compulsion in the context of a school district that had participated in optional funded programs in which new requirements were imposed. In *Kern*, the court determined there was no “practical” compulsion to participate in the underlying programs, since a district that elects to discontinue participation in a program does not face “certain and severe ... penalties” such as “double ... taxation” or other “draconian” consequences.²¹

In 2009, the Third District Court of Appeal decided *Department of Finance v. Commission on State Mandates*, and applied the *Kern* practical compulsion test to determine whether school district police departments were mandated by the state to comply with requirements imposed by the Peace Officer Procedural Bill of Rights Act.²² The court recognized that unlike cities and counties, school districts and community college districts do not have provision of police protection as an essential and basic function. Thus, the court held that providing police protection is not mandated for school districts and community college districts unless there is a concrete showing that, as a practical matter, exercising the authority to hire peace officers is the only reasonable means to carry out their core mandatory functions.

...the “necessity” that is required is facing “ ‘certain and severe penalties’ such as ‘double ... taxation’ or other ‘draconian’ consequences.”
[Citation omitted.] That cannot be established in this case without a concrete showing that reliance upon the general law enforcement resources of cities and counties will result in such severe adverse consequences.

²¹ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 754.

²² *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355.

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...the districts in issue are authorized, but not required, to provide their own peace officers and do not have provision of police protection as an essential and basic function. It is not essential unless there is a showing that, as a practical matter, exercising the authority to hire peace officers is the only reasonable means to carry out their core mandatory functions.²³

The *City of Merced*, *Kern High School Dist.*, and *Department of Finance* cases are precedential and binding on the Commission in determining when and under what circumstances a statute or executive order constitutes a state-mandated program. Staff finds that these cases are directly on point and apply here. There is no evidence in the record that school districts and community college districts are practically compelled to hire law enforcement officers, establish their own police departments, and comply with the downstream requirements imposed by the test claim statutes and alleged executive orders.

In March 2004, the claimant filed rebuttal comments contending that the activities are mandated by the state since the Legislature has expanded the role of community college police officers to full-fledged police departments with offices on each campus, and authorized school district peace officers to enforce the law anywhere in the state. The claimant states the following:

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.²⁴

The claimant further states the following:

...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.²⁵

²³ *Id.* at page 1367.

²⁴ Claimant's rebuttal filed March 25, 2004, page 5.

²⁵ Claimant's rebuttal filed March 25, 2004, page 8.

Similar arguments, however, were made to the court in the *Department of Finance* case with respect to the *Peace Officer Procedural Bill of Rights* program and rejected by the court because there was no evidence in the record that reliance by a school district or community college district upon the general law enforcement resources of cities and counties will result in certain and severe adverse consequences.²⁶

Accordingly, staff finds that the state has not mandated school districts and community college districts to comply with the test claim statutes and alleged executive orders.

Conclusion

Staff concludes that the test claim statutes and alleged executive orders do not constitute a reimbursable state-mandated program for K-12 school districts and community college districts within the meaning of article XIII B, section 6 of the California Constitution.

Recommendation

Staff recommends that the Commission adopt this analysis and deny the test claim.

²⁶ Commission's Respondent's Brief, *Department of Finance v. Commission on State Mandates*, Third District Court of Appeal, Case No. C056833.

Commission on State Mandates

Original List Date: 2/19/2003
Last Updated: 9/2/2009
List Print Date: 09/02/2009
Claim Number: 02-TC-12
Issue: Crime Statistics Reports (K-14)

Agenda Mailing List

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