



May 8, 2019

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

Ms. Erika Li  
Department of Finance  
915 L Street, 10th Floor  
Sacramento, CA 95814

*And Parties, Interested Parties, and Interested Persons (See Mailing List)*

**Re: Proposed Decision**

*Peace Officer Training: Mental Health/Crisis Intervention, 17-TC-06*  
Penal Code Sections 13515.26, 13515.27, 13515.28, 13515.29, and 13515.295;  
as added or amended by Statutes 2015, Chapter 468 (SB 11) and  
Statutes 2015, Chapter 469 (SB 29)  
Cities of Claremont and South Lake Tahoe, Claimants

Dear Ms. Chinn and Ms. Li:

The Proposed Decision for the above-named matter is enclosed for your review.

**Hearing**

This matter is set for hearing on **Friday, May 24, 2019**, at 10:00 a.m., State Capitol,  
Room 447, Sacramento, California.

Please notify Commission staff not later than the Wednesday prior to the hearing that you or a witness you are bringing plan to testify and please specify the names of the people who will be speaking for inclusion on the witness list. Staff will no longer send reminder emails because the Commission does not have the resources to contact each party and interested party. Therefore, the last communication from Commission Staff is this Proposed Decision and it is incumbent upon the participants to let Commission staff know if they wish to testify or bring witnesses.

If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

**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.

Sincerely,

Heather Halsey  
Executive Director

**ITEM 3**  
**TEST CLAIM**  
**PROPOSED DECISION**

Penal Code Sections 13515.26; 13515.27; 13515.28; 13515.29; and 13515.295

Statutes 2015, Chapter 468 (SB 11); and Statutes 2015, Chapter 469 (SB 29)

*Peace Officer Training: Mental Health/Crisis Intervention*

17-TC-06

Cites of Claremont and South Lake Tahoe, Claimants

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**EXECUTIVE SUMMARY**

**Overview**

This Test Claim alleges reimbursable state-mandated activities arising from Statutes 2015, chapter 468 (SB 11); and Statutes 2015, chapter 469 (SB 29). These statutes require the Commission on Peace Officer Standards and Training (POST) to establish, and for law enforcement Field Training Officers (FTOs) to take, training courses on law enforcement interaction with persons with mental illness or intellectual disability.

Staff recommends that the Commission partially approve this Test Claim as specified below.

**Procedural History**

The claimants filed the Test Claim on May 10, 2018. Commission staff issued the Notice of Complete Test Claim, Schedule for Comments, and, Notice of Tentative Hearing Date on September 26, 2018. The Department of Finance (Finance) filed comments on the Test Claim on October 26, 2018. The claimants did not file rebuttal comments. Commission staff issued the Draft Proposed Decision on February 12, 2019.<sup>1</sup> Claimants filed comments on the Draft Proposed Decision on March 4, 2019.<sup>2</sup>

**Commission Responsibilities**

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. “Test claim” means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

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<sup>1</sup> Exhibit C, Draft Proposed Decision.

<sup>2</sup> Exhibit D, Claimants’ Comments on the Draft Proposed Decision.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>3</sup>

**Claims**

The following chart provides a brief summary of the claims and issues raised and staff’s recommendation.

Issue	Description	Staff Recommendation
Was the Test Claim timely filed?	Government Code section 17551 states that local agency and school district test claims must be filed “not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.” <sup>4</sup> Section 1183.1(c) of the Commission’s regulations, in turn, defines “12 months” as 365 days. <sup>5</sup>	<i>Timely filed</i> - The test claim statutes became effective January 1, 2016. The claimants allege they first incurred costs mandated by the state on May 23, 2017 and June 6, 2017, respectively. <sup>6</sup> The Test Claim was filed May 10, 2018, within 365 days of first incurring costs. Therefore, based on the date costs were first incurred, the Test Claim was timely filed in accordance with Government Code section 17551 and section 1183.1(c) of the Commission’s regulations.
Do Penal Code sections 13515.26 and 13515.27, added by Statutes 2015, chapter 468; and section 13515.295, added by Statutes 2015, chapter 469, impose a reimbursable state-mandated program?	Penal Code sections 13515.26, 13515.27, and 13515.295 require POST to establish training courses, and to review and update the existing Field Training Program, with respect to how officers effectively address incidents involving persons with mental illness or intellectual disability.	<i>Deny</i> - Penal Code sections 13515.26, 13515.27, and 13515.295 impose requirements on POST, a state agency, but do not impose any state-mandated activities on local government.

<sup>3</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>4</sup> Government Code section 17551(c).

<sup>5</sup> Title 2, California Code of Regulations, section 1183.1(c) (Register 2018, No. 9, eff. April 1, 2018.)

<sup>6</sup> Exhibit A, Test Claim, page 14.

Issue	Description	Staff Recommendation
Does Penal Code section 13515.29, added by Statutes 2015, chapter 469, impose a reimbursable state-mandated program?	<p>Penal Code section 13515.29 directs POST to establish and keep updated the field training officer course, which addresses how to interact with persons with mental illness or intellectual disability. In response to Penal Code section 13515.29, POST issued a bulletin stating that it “utilized subject matter experts to incorporate the 4 hours of crisis intervention behavioral health training into the FTO course, and that the FTO course will remain at 40 hours.<sup>7</sup> And POST certified several entities, including community colleges, to present the FTO training.<sup>8</sup></p> <p>Section 13515.29 also requires prospective FTOs to have four hours of training within the FTO course relating to “how to interact with persons with mental illness or intellectual disability.”</p>	<p><i>Deny</i> - Penal Code section 13515.29 does not impose a new program or higher level of service on local government, or increased costs mandated by the state, in accordance with <i>County of Los Angeles v. Commission on State Mandates</i> (2003) 110 Cal.App.4th 1176. There is no requirement for the law enforcement employer to develop and present the course, and the total number of training hours in the existing FTO course remains the same.</p>
Does Penal Code section 13515.28, added by Statutes 2015, chapter 469, impose a reimbursable state-mandated program?	<p>Penal Code section 13515.28 requires existing FTOs to have an additional eight hours of crisis intervention behavioral health training, to be completed</p>	<p><i>Approve</i> - In response to Penal Code section 13515.28, POST created an expanded course outline for the required eight-hour training.<sup>9</sup> In addition,</p>

<sup>7</sup> Exhibit E, “Crisis Intervention Behavioral Health Training, Senate Bill 29, Impact on Law Enforcement,” <https://post.ca.gov/FTO-Crisis-Intervention-Behavioral-Health-Training> (accessed on January 23, 2019), emphasis added.

<sup>8</sup> Exhibit E, California POST Course Catalog, list of certified presenters for the FTO program, [https://catalog.post.ca.gov/PresenterCourseDescription.aspx?crs\\_no=31725&crs\\_title=FIELD+TRAINING+OFFICER&numPresentations=17&pageId=10](https://catalog.post.ca.gov/PresenterCourseDescription.aspx?crs_no=31725&crs_title=FIELD+TRAINING+OFFICER&numPresentations=17&pageId=10) (accessed on January 23, 2019).

<sup>9</sup> Exhibit E, “Regulation 1081 Minimum Standards for Legislatively Mandated Courses, Crisis Intervention Behavioral Health Training for Field Training Officers, Expanded Course Outline (8 hours),” [https://post.ca.gov/Portals/0/post\\_docs/resources/CIT/SB29\\_FTO\\_8HR\\_Course\\_ECO.pdf](https://post.ca.gov/Portals/0/post_docs/resources/CIT/SB29_FTO_8HR_Course_ECO.pdf) (accessed on January 23, 2019.)

Issue	Description	Staff Recommendation
	<p>between January 1, 2017 and June 30, 2017, or within 180 days of appointment as an FTO.</p>	<p>POST issued a bulletin authorizing, but not requiring, agencies to present the course required by Penal Code section 13515.28 using the POST outline.<sup>10</sup> Therefore, presenting the course is not mandated by the state and to the extent that a local agency does so, it is based on its own discretionary decision and is not subject to subvention.</p> <p>However, section 13515.28 imposes a reimbursable state-mandated program for cities and counties, and those police protection districts <i>that wholly supplant the law enforcement functions of the county within their jurisdiction</i> pursuant to Government Code section 53060.7, that are required to have a Field Training Program under California Code of Regulations, title 11, section 1004 and have appointed or assigned FTOs for that program, to ensure that each FTO assigned or appointed prior to January 1, 2017 shall attend a <i>one-time</i>, eight hour training on crisis intervention and behavioral health before June 30, 2017; and to ensure that each FTO assigned or appointed after January 1, 2017 shall attend a <i>one-time</i>, eight hour training on crisis intervention and behavioral health within 180 days of being</p>

<sup>10</sup> Exhibit E, “Crisis Intervention Behavioral Health Training, Senate Bill 29, Impact on Law Enforcement,” <https://post.ca.gov/FTO-Crisis-Intervention-Behavioral-Health-Training> (accessed on January 23, 2019), emphasis added.

Issue	Description	Staff Recommendation
		<p>assigned or appointed as an FTO.</p> <p>FTOs who have completed 40 hours of crisis intervention and behavioral health training or who have completed eight hours of crisis intervention and behavioral health training in the past 24 months are <i>exempt</i> from these requirements.</p>

**Staff Analysis**

**A. The Test Claim Was Timely Filed.**

Government Code section 17551 states that test claims must be filed “not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.”<sup>11</sup>

Section 1183.1(c) of the Commission’s regulations, in turn, defines “12 months” for purposes of filing a test claim as “365 days” and specifically provides:

Except as provided in Government Code sections 17573 and 17574, any test claim or amendment filed with the Commission must be filed not later than 12 months (365 days) following the effective date of a statute or executive order, or within 12 months (365 days) of first incurring increased costs as a result of a statute or executive order, whichever is later.<sup>12</sup>

The test claim statutes became effective on January 1, 2016. The claimants have filed evidence in the form of declarations and POST training records showing they first incurred costs under the test claim statutes on May 23, 2017 and June 6, 2017, respectively.<sup>13</sup> The Test Claim was filed May 10, 2018, less than 365 days from the dates of first incurred costs. Therefore, on the basis of the date costs were first incurred, the Test Claim was timely filed in accordance with Government Code section 17551 and Title 2, California Code of Regulations, section 1183.1(c).

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<sup>11</sup> Government Code section 17551(c).

<sup>12</sup> Title 2, California Code of Regulations, section 1183.1(c) (Register 2018, No. 9, eff. April 1, 2018.)

<sup>13</sup> Exhibit A, Test Claim, pages 20, 24, 48, 57-60 [Declaration of Deborah McIntyre, Finance Director and Chief Fiscal Officer for the City of Lake Tahoe; Declaration of Adam Pirrie, Finance Director and Chief Fiscal Officer for the City of Claremont; POST report of training dated May 23, 2017 for Officers Robertson and Spaeth of the City of Lake Tahoe; POST report of training dated June 6, 2017 for City of Claremont officers].

**B. Penal Code Sections 13515.26, 13515.27, and 13515.295 Impose Requirements on POST, a State Agency, But Do Not Impose Any State-Mandated Activities on Local Government.**

Penal Code section 13515.26 requires POST to review its training modules and course content “in the *regular basic course* relating to persons with mental illness, intellectual disability, or substance abuse disorder,” and identify areas where additional training is needed.<sup>14</sup> POST shall then update its training “in consultation with appropriate community, local, and state organizations, and agencies that have expertise in the area of mental illness, intellectual disability, and substance abuse disorders...”<sup>15</sup> The training “shall be presented within the existing hours allotted for the regular basic course.”<sup>16</sup>

Section 13515.27 requires POST to establish a three-hour continuing training course for existing peace officers, relating to interacting with persons with mental illness.<sup>17</sup> That course “shall be *made available by the commission* to each law enforcement officer with a rank of supervisor or below and who is assigned to patrol duties or to supervise officers who are assigned to patrol duties.”<sup>18</sup> POST has established a course to comply with section 13515.27 that can be utilized for training and makes it clear that the course is “not mandatory for law enforcement.”<sup>19</sup>

Penal Code section 13515.295 requires POST to “conduct a review and evaluation of the required competencies of the field training program,” especially with respect to how officers effectively address incidents involving persons with mental illness or intellectual disability, and to update the training accordingly.<sup>20</sup>

There is nothing in the plain language of sections 13515.26, 13515.27, or 13515.295 that impose any express requirements on local government, and the claimants have made no argument and presented no evidence that these sections impose additional activities or costs.

Accordingly, Penal Code sections 13515.26, 13515.27, and 13515.295 do not impose any state-mandated activities on local government.

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<sup>14</sup> Penal Code section 13515.26(a) (Stats. 2015, ch. 468).

<sup>15</sup> Penal Code section 13515.26(b) (Stats. 2015, ch. 468).

<sup>16</sup> Penal Code section 13515.26(d-e) (Stats. 2015, ch. 468).

<sup>17</sup> Penal Code section 13515.27(a-b) (Stats. 2015, ch. 468).

<sup>18</sup> Penal Code section 13515.27(c) (Stats. 2015, ch. 468).

<sup>19</sup> Exhibit E, “Crisis Intervention Behavioral Health Training, Senate Bill 11, Impact on Law Enforcement,” <https://post.ca.gov/crisis-intervention-behavioral-health-training> (accessed on January 18, 2019).

<sup>20</sup> Penal Code section 13515.295 (added, Stats. 2015, ch. 469).

**C. Penal Code Section 13515.29, Which Requires *Prospective* Field Training Officers (FTOs) to Receive Four Hours of Training as Part of the FTO Course That Addresses How to Interact with Persons with Mental Illness or Intellectual Disability, Does Not Mandate a New Program or Higher Level of Service or Result in Increased Costs Mandated by the State Since There Is No Requirement for the Law Enforcement Employer to Develop and Present the Course, and the Total Number of Training Hours in the FTO Course Remains the Same.**

POST regulations provide, with some exceptions, that “[a]ny department which employs peace officers and/or Level 1 Reserve peace officers shall have a POST-approved Field Training Program.”<sup>21</sup> Each department’s Field Training Program is required to have Field Training Officers (FTOs) to train new officers before they can be assigned to general law enforcement uniformed patrol duties without direct and immediate supervision.<sup>22</sup> And FTOs are required to first complete a POST-certified, 40-hour, Field Training Officer Course before they can provide the training to other officers.<sup>23</sup>

The test claim statute added section 13515.29 to the Penal Code to require POST to establish and keep updated an FTO course “relating to competencies of the field training program and police training program that addresses how to interact with persons with mental illness or intellectual disability.”<sup>24</sup> That course is required to be “at least four hours of classroom instruction and instructor-led active learning” and “[a]ll *prospective field training officers* shall complete the course...*as part of the existing field training officer program.*”<sup>25</sup> This statute does not require local law enforcement employers to develop or present the training.

Although the local law enforcement employer may incur costs for its prospective FTOs to attend the FTO course, staff finds that Penal Code section 13515.29 does not impose a new program or higher level of service, or result in increased costs mandated by the state. The total number of hours required by the state for the existing FTO course did not increase as a result of the test claim statute. The plain language of the statute requires the updated training to be “part of the existing field training officer program,” and POST has clarified that the FTO course remains at 40 hours. Thus, in accordance with *County of Los Angeles II*,<sup>26</sup> the statute does not impose a new program or higher level of service, or result in increased costs mandated by the state.

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<sup>21</sup> California Code of Regulations, title 11, section 1004(a) (Register 2015, No. 50).

<sup>22</sup> California Code of Regulations, title 11, section 1004(a)(4).

<sup>23</sup> California Code of Regulations, title 11, section 1004(d); Exhibit E, PAM section D-13-4, Field Training, <https://post.ca.gov/commission-procedure-d-13-field-training> (accessed on December 13, 2018).

<sup>24</sup> Penal Code section 13515.29(a) (Stats. 2015, ch. 469).

<sup>25</sup> Penal Code section 13515.29(b)(c) (Stats. 2015, ch. 469).

<sup>26</sup> *County of Los Angeles v. Commission on State Mandates* 110 Cal.App.4th 1176, 1194-1195.



**D. Penal Code Section 13515.28, Which Requires Assigned or Appointed FTO's to Receive an Additional Eight Hours of Crisis Intervention Behavioral Health Training to Better Train New Peace Officers on How to Effectively Interact with Persons with Mental Illness or Intellectual Disability, Imposes a Reimbursable State-Mandated Program on Eligible Local Agencies.**

**1. Penal Code section 13515.28 imposes new FTO training requirements on local law enforcement agencies.**

Penal Code section 13515.28, enacted by Statutes 2015, chapter 469, requires assigned or appointed FTOs, except those specified FTOs who have previous similar training, to complete an additional eight hours of crisis intervention behavioral health training by a June 30, 2017 or within 180 days of being assigned or appointed as an FTO, in order to better train new peace officers on how to effectively interact with persons with mental illness or intellectual disability. Specifically, as relevant to this issue, section 13515.28 provides:

(a)(1) The commission shall require the field training officers who provide instruction in the field training program to have at least eight hours of crisis intervention behavioral health . . .

(2) If a field training officer has completed eight hours of crisis intervention behavioral health training within the past 24 months, or if a field training officer has completed 40 hours of crisis intervention behavioral health training, the requirement described in paragraph (1) shall not apply.

[¶] . . . [¶]

(c) Field training officers assigned or appointed before January 1, 2017, shall complete the crisis intervention behavioral health training by June 30, 2017. Field training officers assigned or appointed on or after January 1, 2017, shall complete the crisis intervention behavioral health training within 180 days of assignment or appointment.

The claimants allege that section 13515.28 requires eight hours of repeated or continuing crisis intervention behavioral health training *every 24 months*.<sup>27</sup> Finance interprets the test claim statute to require eight hours of crisis intervention behavioral health training only once per appointed or assigned FTO.<sup>28</sup> In comments on the Draft Proposed Decision, the claimants state “We appreciate Commission staff’s clarification and legal analysis explaining that [section] 13515.28...only requires each FTO to attend a one-time per employee eight-hour course, and not an additional eight-hour course after 24 months...”<sup>29</sup> The claimants further state: “If it is the State’s determination that field training officers are not mandated to attend any further training on this topic once they have attended a one-time, eight-hour segment, we are happy to comply with this interpretation and to avoid additional training and costs.”<sup>30</sup>

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<sup>27</sup> Exhibit A, Test Claim, pages 12-13.

<sup>28</sup> Exhibit B, Finance’s Comments on the Test Claim, page 2.

<sup>29</sup> Exhibit D, Claimants’ Comments on the Draft Proposed Decision, page 1.

<sup>30</sup> Exhibit D, Claimants’ Comments on the Draft Proposed Decision, page 1.

Staff finds that eight hours of crisis intervention behavioral health training is required *one* time per employee providing training as an FTO, and not every 24 months as previously alleged by the claimants. This interpretation is supported by the plain language of Penal Code section 13515.28(a)(2), which exempts FTOs who have completed eight hours of crisis intervention behavioral health training within the past 24 months or have completed 40 hours of crisis intervention behavioral health training, the legislative history, and POST’s implementation of Statutes 2015, chapter 469.

Although the requirements of section 13515.28 are expressly directed to the officers themselves, the requirements imposed on the officers fall on the local law enforcement agencies required by section 1004 of the POST regulations to have a Field Training Program. The training of the officers occurs within the scope of employment and their appointment or assignment as an FTO by the employer.<sup>31</sup> In addition, under the Federal Fair Labor Standards Act (FLSA), which applies to local government employers, the employer is responsible for compensating the employee for job-related training time that is required and not voluntary.<sup>32</sup>

However, these statutes do not require local law enforcement employers to develop or present the training. In this case, the claimants utilized outside organizations to provide the training required by Penal Code section 13515.28; their officers attended training provided by California State Parks, Butte College Public Safety Training Center, South Bay Regional Training Consortium, Yolo County Sheriff’s Department, and Embassy Consulting Services.<sup>33</sup>

Accordingly, Penal Code section 13515.28 imposes the following new requirements on local law enforcement agencies required to have a Field Training Program under California Code of Regulations, title 11, section 1004 and have appointed or assigned FTOs for that program:<sup>34</sup>

- Ensure that each FTO assigned or appointed prior to January 1, 2017 shall attend a one-time, eight-hour training on crisis intervention and behavioral health before June 30, 2017.

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<sup>31</sup> California Code of Regulations, title 11, section 1004(a), which states that “[a]ny department which employs peace officers and/or Level 1 Reserve peace officers shall have a POST-approved Field Training Program.” Section 1004(b) provides that a department that does not provide general law enforcement uniformed patrol services, or hires only lateral entry officers possessing a POST basic certificate and completed a similar POST approved Field Training Program may request an exemption.

<sup>32</sup> See Code of Federal Regulations, title 29, sections 785.27, 785.29; *Garcia v. San Antonio Metropolitan Transit Authority et al.* (1985) 469 U.S. 528.

<sup>33</sup> Exhibit A, Test Claim, pages 48-61.

<sup>34</sup> California Code of Regulations, title 11, section 1004(a), states that “[a]ny department which employs peace officers and/or Level 1 Reserve peace officers shall have a POST-approved Field Training Program.” Section 1004(b) states that a department that does not provide general law enforcement uniformed patrol services, or hires only lateral entry officers possessing a POST basic certificate and who have completed a similar POST approved Field Training Program may request an exemption and not comply with this requirement.

- Ensure that each FTO assigned or appointed after January 1, 2017 shall attend a one-time, eight-hour training on crisis intervention and behavioral health within 180 days of being assigned or appointed as an FTO.

FTOs who have completed 40 hours of crisis intervention and behavioral health training or who have completed eight hours of crisis intervention and behavioral health training in the past 24 months, are *exempt* from these requirements. In addition, reimbursement is not required for the local law enforcement employer to develop or present the training since these activities are not mandated.

**2. The New Requirements of Penal Code Section 13515.28 Impose a State-Mandated Program Only on City and County Law Enforcement Agencies, and Police Protection Districts That Wholly Supplant the Law Enforcement Functions of the County Within their Jurisdiction, That Are Required to Have a Field Training Program and Have Appointed or Assigned FTOs For That Program.**

The minimum training standards and rules for peace officers that are outlined in Penal Code sections 13510 et seq. (which includes section 13515.28) “shall apply to those cities, counties, cities and counties, and districts receiving state aid pursuant to this chapter . . . .”<sup>35</sup> Participating agencies agree to abide by the standards established by POST and may apply to POST for state aid.<sup>36</sup> Although this statutory language only requires local agencies to comply with the training standards as a condition of their participation in POST, the court in *County of Los Angeles II* held that POST training “for all practical purposes” is not voluntary.<sup>37</sup>

However, the Third District Court of Appeal, in *Department of Finance v. Commission on State Mandates (POBRA)* held that school districts, community college districts, and special districts that are permitted, but not required, by state law to employ peace officers who *supplement* the general law enforcement units of cities and counties, are not legally compelled by state law to comply with the new requirements.<sup>38</sup> Thus, the Court found, they were not eligible claimants entitled to reimbursement under article XIII B, section 6 of the California Constitution.<sup>39</sup> However, cities, counties, and special police protection districts that wholly supplant the law enforcement functions of the county within the jurisdiction of that district pursuant to Government Code section 53060.7), were found to be *prima facie* eligible for reimbursement

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<sup>35</sup> Penal Code section 13510(a).

<sup>36</sup> Penal Code sections 13522 and 13523.

<sup>37</sup> *County of Los Angeles v. Commission on State Mandates* 110 Cal.App.4th 1176, 1194 [“POST certification is, for all practical purposes, not a ‘voluntary’ program and therefore the County must, in order to comply with [the test claim statute], add domestic violence training to its curriculum.”].

<sup>38</sup> *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1357

<sup>39</sup> *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1357

because they have “as an *ordinary, principal, and mandatory duty* the provision of policing services within their territorial jurisdiction.”<sup>40</sup>

Thus, only city and county law enforcement agencies, and those police protection districts *that wholly supplant the law enforcement functions of the county within their jurisdiction* pursuant to Government Code section 53060.7, are mandated by the state to comply with the new training requirements imposed by Penal Code sections 13515.28.

### **3. The New Requirements Imposed by Penal Code Section 13515.28 Constitute a New Program or Higher Level of Service.**

The new training requirements for FTOs imposed by Penal Code section 13515.28 on local law enforcement agencies constitute a new program or higher level of service because they require additional training hours, carry out the governmental function of providing a service to the public, and impose unique requirements on local government that do not apply generally to all residents and entities in the state. Section 13515.28 requires eight hours of training relating to crisis intervention behavioral health, and requires that training to be completed within a six month period (depending on when an FTO was appointed or assigned) in addition to existing training requirements imposed by law. In addition, POST interprets Penal Code section 13515.28 to require the development and implementation of an entirely new course of one-time training.<sup>41</sup>

Moreover, Penal Code section 13515.28 carries out the governmental function of providing a service to the public, and imposes unique requirements on local government that do not apply generally to all residents and entities in the state.

Based on the foregoing, staff finds that the additional training required by Penal Code sections 13515.28 constitutes a new program or higher level of service.

### **4. The Mandated Activities Result in Increased Costs Mandated by the State.**

For the mandated activities to constitute reimbursable state-mandated activities under article XIII B, section 6 of the California Constitution, they must result in local agencies incurring increased costs mandated by the state. Government Code section 17514 defines “costs mandated by the state” as any increased cost that a local agency or school district incurs as a result of any statute or executive order that mandates a new program or higher level of service. Government Code section 17564(a) further requires that no claim shall be made nor shall any payment be made unless the claim exceeds \$1,000. In addition, a finding of costs mandated by the state means that none of the exceptions in Government Code section 17556 apply to deny the claim.

The claimants have alleged new costs incurred to comply with Penal Code section 13515.28, and have alleged that there are no ongoing offsetting revenues such as fee authority. Specifically, the City of South Lake Tahoe alleges \$11,150 in costs mandated by the state for fiscal year 2016-2017, and projects \$11,485 in fiscal year 2018-2019, for officers to attend the eight-hour training

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<sup>40</sup> *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, 1367-1368 [emphasis added].

<sup>41</sup> Exhibit E, “Crisis Intervention Behavioral Health Training, Senate Bill 29, Impact on Law Enforcement,” <https://post.ca.gov/FTO-Crisis-Intervention-Behavioral-Health-Training> (accessed on January 29, 2019).

course required by section 13515.28.<sup>42</sup> The City of Claremont alleges \$2,981 net costs (after a one-time grant) for fiscal year 2016-2017, and projects \$5,718 for fiscal year 2018-2019, without the grant, for its officers to attend the eight-hour training. The claimants have submitted documentation of their officers' time and tuition expenses to attend the required training, which are authenticated by declarations sworn under penalty of perjury.<sup>43</sup> And, as discussed above, the training required by section 13515.28 is required only one time per FTO employee assigned or appointed; therefore some claimants may experience ongoing costs for new FTOs, but not for repeat training of FTOs that have already received the eight-hour training.

Moreover, there is no evidence in the record or in the law that local agencies have received state aid from POST, or other additional revenue, sufficient to cover the costs of the new mandated activities pursuant to Government Code section 17556(e), or that the other exceptions to costs mandated by the state in section 17556 apply to deny this claim.

Based on the foregoing, staff finds, pursuant to Government Code section 17514, that the new requirements mandated by Penal Code section 13515.28 result in increased costs mandated by the state. In addition, any grants or other state funding that may be received by an eligible claimant will be identified in Parameters and Guidelines as offsetting revenue.

### **Conclusion**

Based on the forgoing analysis, staff finds that Penal Code section 13515.28, as added by Statutes 2015, chapter 469, imposes a reimbursable state-mandated program for city and county law enforcement agencies, and those police protection districts *that wholly supplant the law enforcement functions of the county within their jurisdiction* pursuant to Government Code section 53060.7, that are required to have a Field Training Program under California Code of Regulations, title 11, section 1004 and have appointed or assigned FTOs for that program, to:<sup>44</sup>

- Ensure that each FTO assigned or appointed prior to January 1, 2017 shall attend a one-time, eight-hour training on crisis intervention and behavioral health before June 30, 2017.
- Ensure that each FTO assigned or appointed after January 1, 2017 shall attend a one-time, eight-hour training on crisis intervention and behavioral health within 180 days of being assigned or appointed as an FTO.

FTOs who have completed 40 hours of crisis intervention and behavioral health training or who have completed eight hours of crisis intervention and behavioral health training in

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<sup>42</sup> Exhibit A, Test Claim, pages 13-15.

<sup>43</sup> See Exhibit A, Test Claim, pages 47-55 [Cost Documentation for each Officer]; 20-27 [Declarations].

<sup>44</sup> California Code of Regulations, title 11, section 1004(a), states that “[a]ny department which employs peace officers and/or Level 1 Reserve peace officers shall have a POST-approved Field Training Program.” Section 1004(b) states that a department that does not provide general law enforcement uniformed patrol services, or hires only lateral entry officers possessing a POST basic certificate and who have completed a similar POST approved Field Training Program may request an exemption and not comply with this requirement.

the past 24 months, are *exempt* from these requirements. In addition, reimbursement is not required for the local law enforcement employer to develop or present the training since these activities are not mandated.

**Staff Recommendation**

Staff recommends that the Commission adopt the Proposed Decision to partially approve the Test Claim and authorize staff to make any technical, non-substantive changes to the Proposed Decision following the hearing.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

<p><b>IN RE TEST CLAIM</b></p> <p>Penal Code Sections 13515.26; 13515.27; 13515.28; 13515.29; and 13515.295</p> <p>Statutes 2015, Chapter 468 (SB 11); and Statutes 2015, Chapter 469 (SB 29)</p> <p>Filed on May 10, 2018</p> <p>Cities of Claremont and South Lake Tahoe, Claimants</p>	<p>Case No.: 17-TC-06</p> <p><i>Peace Officer Training: Mental Health/Crisis Intervention</i></p> <p>DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7.</p> <p><i>(Adopted May 24, 2019)</i></p>
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**DECISION**

The Commission in State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on May 24, 2019. [Witness list will be included in the adopted Decision.]

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

The Commission [adopted/modified] the Proposed Decision to [approve/partially approve/deny] the Test Claim by a vote of [vote will be included in the adopted Decision], as follows:

<b>Member</b>	<b>Vote</b>
Lee Adams, County Supervisor	
Mark Hariri, Representative of the State Treasurer	
Jeannie Lee, Representative of the Director of the Office of Planning and Research	
Sarah Olsen, Public Member	
Carmen Ramirez, City Council Member	
Yvette Stowers, Representative of the State Controller, Vice Chairperson	
Jacqueline Wong-Hernandez, Representative of the Director of the Department of Finance, Chairperson	

## **Summary of the Findings**

This Test Claim addresses Statutes, 2015, chapters 468 and 469 (SB 11 and SB 29), which require the Commission on Peace Officer Standards and Training (POST) to establish, and for Field Training Officers (FTOs) to take, training courses on law enforcement interaction with persons with mental illness or intellectual disability.

The Commission finds that the Test Claim is timely filed within 365 days of the date that the claimants first incurred costs.

The Commission further finds that Penal Code sections 13515.26, 13515.27, and 13515.295 impose requirements on POST, a state agency, but do not impose any state-mandated activities on local government.

The Commission also finds that Penal Code section 13515.29, which requires prospective FTOs to receive four hours of training that addresses how to interact with persons with mental illness or intellectual disability as part of the existing FTO course, does not mandate a new program or higher level of service or result in increased costs mandated by the state since there is no requirement for the law enforcement employer to develop and present the course, and the total number of training hours in the existing FTO course remains the same.

However, the Commission finds that Penal Code section 13515.28, as added by Statutes 2015, chapter 469, imposes a reimbursable state-mandated program for cities and counties, and those police protection districts *that wholly supplant the law enforcement functions of the county within their jurisdiction* pursuant to Government Code section 53060.7, that are required to have a Field Training Program under California Code of Regulations, title 11, section 1004 and have appointed or assigned FTOs for that program, to:<sup>45</sup>

- Ensure that each FTO assigned or appointed prior to January 1, 2017 shall attend a one-time, eight-hour training on crisis intervention and behavioral health before June 30, 2017.
- Ensure that each FTO assigned or appointed after January 1, 2017 shall attend a one-time, eight-hour training on crisis intervention and behavioral health within 180 days of being assigned or appointed as an FTO.

FTOs who have completed 40 hours of crisis intervention and behavioral health training or who have completed eight hours of crisis intervention and behavioral health training in the past 24 months, are *exempt* from these requirements. In addition, reimbursement is not required for the local law enforcement employer to develop or present the training since these activities are not mandated.

All other statutes and code sections pled, and claims for reimbursement asserted are denied.

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<sup>45</sup> California Code of Regulations, title 11, section 1004(a), states that “[a]ny department which employs peace officers and/or Level 1 Reserve peace officers shall have a POST-approved Field Training Program.” Section 1004(b) states that a department that does not provide general law enforcement uniformed patrol services, or hires only lateral entry officers possessing a POST basic certificate and who have completed a similar POST approved Field Training Program may request an exemption and not comply with this requirement.



## COMMISSION FINDINGS

### I. Chronology

01/01/2016	The effective date of the test claim statutes.
05/23/2017	The date the City of Lake Tahoe first incurred costs. <sup>46</sup>
06/06/2017	The date the City of Claremont first incurred costs. <sup>47</sup>
05/10/2018	The claimants filed the Test Claim. <sup>48</sup>
09/26/2018	Commission staff issued the Notice of Complete Test Claim, Schedule for Comments, and Notice of Tentative Hearing Date.
10/26/2018	The Department of Finance (Finance) filed comments on the Test Claim. <sup>49</sup>
02/12/2019	Commission staff issued the Draft Proposed Decision. <sup>50</sup>
03/04/2019	The claimants filed comments on the Draft Proposed Decision. <sup>51</sup>

### II. Background

This Test Claim addresses Statutes 2015, chapters 468 and 469, requiring the Commission on Peace Officer Standards and Training (POST) to establish, and for Field Training Officers (FTOs) to take, training courses on law enforcement interaction with persons with mental illness or intellectual disability.

POST was established by the Legislature in 1959 to set minimum selection and training standards for California law enforcement.<sup>52</sup> POST consists of sheriffs and chiefs of police; rank and file officers; city and county elected officials; educators or trainers in criminal justice; two public members who are not peace officers; and the Attorney General as an ex officio member.<sup>53</sup> POST is charged with developing and implementing programs to increase the effectiveness of law enforcement, including training and education courses for officers.<sup>54</sup> POST adopts minimum standards for physical and mental fitness, and minimum training standards, for peace

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<sup>46</sup> Exhibit A, Test Claim, pages 20, 47-55 [Declaration of Deborah McIntyre, Finance Director and Chief Fiscal Officer for the City of Lake Tahoe; POST report of training dated May 23, 2017 for Officers Robertson and Spaeth of the City of Lake Tahoe].

<sup>47</sup> Exhibit A, Test Claim, pages 24, 56-60 [Declaration of Adam Pirrie, Finance Director and Chief Fiscal Officer for the City of Claremont; POST report of training dated June 6, 2017 for City of Claremont officers].

<sup>48</sup> Exhibit A, Test Claim, page 1.

<sup>49</sup> Exhibit B, Finance's Comments on the Test Claim, page 1.

<sup>50</sup> Exhibit C, Draft Proposed Decision.

<sup>51</sup> Exhibit D, Claimants' Comments on the Draft Proposed Decision.

<sup>52</sup> Penal Code section 13500 et seq.

<sup>53</sup> Penal Code section 13500(b-c) (Stats. 2007, ch. 409).

<sup>54</sup> Penal Code section 13503.

officers.<sup>55</sup> The minimum training standards and rules “shall apply to those cities, counties, cities and counties, and districts receiving state aid pursuant to this chapter . . . .”<sup>56</sup> Participating agencies agree to abide by the standards established by POST and may apply to POST for state aid.<sup>57</sup>

## **A. Prior Law**

### **1. Training Requirements for all Peace Officers Performing General Law Enforcement Uniformed Patrol Duties**

Penal Code sections 832 and 13510, and California Code of Regulations, title 11, section 1005 (POST regulations) require every person described as a peace officer (except certain reserve officers, peace officers whose primary duties are investigative, coroners or deputy coroners, and jail deputies) to complete a regular basic training course certified by POST before being assigned duties, which include the exercise of peace officer powers. Those powers include, but are not limited to, the power to make an arrest,<sup>58</sup> to take a person into custody for mental health assessment and evaluation,<sup>59</sup> and to serve and execute a search warrant.<sup>60</sup> The regular basic course is described in detail in the POST Administrative Manual (PAM) Section D-1, with links to the content and curriculum. The minimum hour requirement for basic training is currently set at 664 hours,<sup>61</sup> and includes content such as “Leadership, Professionalism, and Ethics,” “Laws of Arrest,” “Search and Seizure,” “Investigative Report Writing,” and many other competencies.<sup>62</sup>

Section 1005 of the POST regulations also requires, with exceptions, that every peace officer “following completion of the Regular Basic Course and before being assigned to perform general law enforcement uniformed patrol duties without direct and immediate supervision, shall complete a POST-approved Field Training Program.” “General law enforcement duties” are defined in POST regulations as “duties which include the investigation of crime, patrol of a geographic area, responding to the full range of requests for police services, and performing any enforcement action on the full range of law violations.”<sup>63</sup>

The Field Training Program is governed by section 1004 of the POST regulations, which provides that “[a]ny department which employs peace officers and/or Level 1 Reserve peace

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<sup>55</sup> Penal Code section 13510.

<sup>56</sup> Penal Code section 13510(a).

<sup>57</sup> Penal Code sections 13522 and 13523.

<sup>58</sup> Penal Code section 836.

<sup>59</sup> Welfare and Institutions Code section 5150.

<sup>60</sup> Penal Code sections 1523; 1530; 1532; 1534.

<sup>61</sup> Exhibit E, PAM section D-1-3 (d) Basic Training, RBC Standard Format-Training, Testing, and Hourly Requirements, <https://post.ca.gov/commission-procedure-d-1-basic-training#d11> (accessed on December 14, 2018).

<sup>62</sup> Exhibit E, Regular Basic Course Training Specifications, POST, <https://post.ca.gov/regular-basic-course-training-specifications> (accessed on December 14, 2018).

<sup>63</sup> California Code of Regulations, title 11, section 1001.

officers shall have a POST-approved Field Training Program.”<sup>64</sup> A department “may request an exemption” from the Field Training Program if it only hires “lateral entry officers” who have completed the Regular Basic Course *and* completed a POST-approved Field Training Program, or “[t]he department does not provide general law enforcement uniformed patrol services.” Section 1004 further provides that the Field Training Program “shall be delivered over a minimum of 10 weeks,” and be based on the structured learning content specified in PAM, section D-13.<sup>65</sup> The Field Training content requirements identified in PAM, section D-13 include agency orientation (including standards and conduct), ethics, leadership, patrol procedures and vehicle operations, officer safety, report writing, California Codes and law, department policies, control of persons and prisoners, traffic, use of force, search and seizure, investigations and evidence, community relations, and conflict resolution.<sup>66</sup>

In addition, all officers are required by regulation, once appointed, to complete 24 hours of continuing training every two years, including at least two hours of “communications training, either tactical or interpersonal,” and at least 12 hours of “perishable skills,” such as tactical driving, use of firearms, and “arrest and control.”<sup>67</sup> Officers are also required to complete First Aid and CPR training every two years (at least eight hours);<sup>68</sup> training on responding to Domestic Violence Complaints every two years (two hours);<sup>69</sup> Racial Profiling training every five years (two hours);<sup>70</sup> and *annual* refresher training on High Speed Vehicle Pursuit,<sup>71</sup> Blood-Borne Pathogen precautions,<sup>72</sup> and Respiratory Protection Fitting.<sup>73</sup>

## **2. Training Requirements for Field Training Officers**

Section 1004(a)(4) of the POST regulations requires that each department’s Field Training Program have Field Training Officers (FTOs) to train new officers before they can be assigned to general law enforcement uniformed patrol duties without direct and immediate supervision. The FTOs must first have been awarded a POST Basic Certificate, have a minimum of one year general law enforcement uniformed patrol experience, have been selected based upon a department-specific selection process, and have met the requirements in section 1004(d).

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<sup>64</sup> California Code of Regulations, title 11, section 1004(a) (Register 2015, No. 50).

<sup>65</sup> California Code of Regulations, title 11, section 1004(a) (Register 2015, No. 50); Exhibit E, PAM section D-13, Field Training, <https://post.ca.gov/commission-procedure-d-13-field-training> (accessed on December 13, 2018).

<sup>66</sup> Exhibit E, PAM section D-13, Field Training, <https://post.ca.gov/commission-procedure-d-13-field-training> (accessed on December 13, 2018).

<sup>67</sup> California Code of Regulations, title 11, section 1005(d) (Register 2015, No. 50).

<sup>68</sup> Penal Code section 13518; California Code of Regulations, title 22, section 100022.

<sup>69</sup> Penal Code section 13519; California Code of Regulations, title 11, section 1081.

<sup>70</sup> Penal Code section 13519.4; California Code of Regulations, title 11, section 1081.

<sup>71</sup> Penal Code section 13519.8; California Code of Regulations, title 11, section 1081.

<sup>72</sup> California Code of Regulations, title 8, section 5193.

<sup>73</sup> California Code of Regulations, title 8, section 5144.

Section 1004(d) requires FTOs to complete a POST-certified Field Training Officer Course (40 hours) and 24 hours of update training every three years, which may be satisfied by either completing “a POST-certified Field Training Officer Update Course,” or “24 hours of department-specific training in the field training topics contained in the Field Training Officer Update Course.”<sup>74</sup>

Sections D-13-4 and D-13-6 of the PAM describe the minimum course requirements for the FTO course and FTO update course. The FTO course is required to be a minimum of 40 hours, and to cover, for example: “Teaching and Training Skills Development,” “Expectations and Roles of the FTO,” “Evaluation/Documentation,” “Driver Safety,” “Officer Safety,” “Intervention,” “Legal Issues and Liabilities,” “Competency Expectations,” and, “Trainee Termination.”<sup>75</sup> An FTO Update Course, in order to be POST-certified, must be a minimum of 24 hours, and must include the following topics: Review of Regular Basic Course Training; Legal Issues and Liabilities; Contemporary Learning Methods; Training/Teaching Skills Development; Leadership, Ethics, and Professionalism; Driver Safety; Remediation/Testing/Scenarios; Trainee Termination; Evaluation/Documentation; Teaching Skills/Demonstration Competency Expectations; and Additional Agency/Presenter-specific topics (which may include: Community Oriented Policing, Challenging Traits of Today’s Trainees, Report Writing for FTOs, Problem Solving for FTOs, Supervisory Skills Development, etc.).<sup>76</sup>

### **B. Test Claim Statutes**

Statutes 2015, chapter 468 added sections 13515.26 and 13515.27 to the Penal Code, which address new requirements for the POST basic training course for peace officers, and new continuing training content for peace officers that POST was required to create and make available as an elective training course.<sup>77</sup> The plain language of Penal Code sections 13515.26 and 13515.27 is directed entirely to POST. Section 13515.26 requires POST to “review the training module in the regular basic course relating to persons with mental illness, intellectual disability, or substance abuse disorder, and analyze existing training curricula in order to identify areas where additional training is needed...”<sup>78</sup> “Upon identifying what additional training is needed,” section 13515.26 requires POST to “update the training in consultation with appropriate community, local, and state organizations, and agencies that have expertise in the area of mental illness, intellectual disability, and substance abuse disorders, and with appropriate consumer and

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<sup>74</sup> California Code of Regulations, title 11, section 1004(a; d) (Register 2015, No. 50); Exhibit E, PAM section D-13-4, Field Training, <https://post.ca.gov/commission-procedure-d-13-field-training> (accessed on December 13, 2018).

<sup>75</sup> Exhibit E, PAM section D-13-4, Field Training, <https://post.ca.gov/commission-procedure-d-13-field-training> (accessed on December 13, 2018).

<sup>76</sup> Exhibit E, PAM section D-13-3, Field Training, <https://post.ca.gov/commission-procedure-d-13-field-training> (accessed on December 13, 2018).

<sup>77</sup> See, Exhibit A, Test Claim, page 29 (Stats. 2015, ch. 468).

<sup>78</sup> Penal Code section 13515.26(a) (Stats. 2015, ch. 468).

family advocate groups.”<sup>79</sup> The updated training “shall address issues related to stigma, shall be culturally relevant and appropriate, and shall include:”

- (1) Recognizing indicators of mental illness, intellectual disability, and substance use disorders.
- (2) Conflict resolution and deescalation techniques for potentially dangerous situations,
- (3) Use of force options and alternatives.
- (4) The perspective of individuals or families who have experiences with persons with mental illness, intellectual disability, and substance use disorders.
- (5) Mental health resources available to the first responders to events that involve mentally disabled persons.<sup>80</sup>

Finally, section 13515.26 requires that the training “shall be at least 15 hours, and shall include training scenarios and facilitated learning activities...” and “shall be presented within the existing hours allotted for the regular basic course.”<sup>81</sup>

Section 13515.27 requires POST to “establish and keep updated a classroom-based continuing training course...relating to behavioral health and law enforcement interaction with persons with mental illness, intellectual disability, and substance abuse disorders.”<sup>82</sup> That course “shall be at least three consecutive hours...shall address issues related to stigma, be culturally relevant and appropriate, and shall include:”

- (1) The cause and nature of mental illness, intellectual disability, and substance use disorders.
- (2) Indicators of mental illness, intellectual disability, and substance use disorders.
- (3) Appropriate responses to a variety of situations involving persons with mental illness, intellectual disability, and substance use disorders.
- (4) Conflict resolution and deescalation techniques for potentially dangerous situations.
- (5) Appropriate language usage when interacting with potentially emotionally distressed persons.
- (6) Resources available to serve persons with mental illness or intellectual disability,

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<sup>79</sup> Penal Code section 13515.26(b) (Stats. 2015, ch. 468).

<sup>80</sup> Penal Code section 13515.26(c) (Stats. 2015, ch. 468).

<sup>81</sup> Penal Code section 13515.26(d-e) (Stats. 2015, ch. 468).

<sup>82</sup> Penal Code section 13515.27(a) (Stats. 2015, ch. 468).

(7) The perspective of individuals or families who have experiences with persons with mental illness, intellectual disability, and substance use disorders.<sup>83</sup>

The course “shall be made available by [POST] to each law enforcement officer with a rank of supervisor or below and who is assigned to patrol duties or to supervise officers who are assigned to patrol duties.” POST was required to implement this new course on or before August 1, 2016.<sup>84</sup>

The other test claim statute pled is Statutes 2015, chapter 469, which added Penal Code sections 13515.28, 13515.29, and 13515.295, relating to the Field Training Program. Section 13515.28 states that POST “shall require...[FTOs]...to have at least eight hours of crisis intervention behavioral health training to better train new peace officers on how to effectively interact with persons with mental illness or intellectual disability.”<sup>85</sup> That eight-hour course “shall include classroom instruction and instructor-led active learning, such as scenario-based training, and shall be taught in segments that are at least four hours long.”<sup>86</sup> However, if an FTO “has completed eight hours of crisis intervention behavioral health training within the past 24 months, or if [an FTO] has completed 40 hours of crisis intervention behavioral health training, the requirement...shall not apply.”<sup>87</sup> The required training “shall address issues related to stigma, shall be culturally relevant and appropriate, and shall include all of the following topics:”

- (1) The cause and nature of mental illnesses and intellectual disabilities.
- (2) (A) How to identify indicators of mental illness, intellectual disability, and substance use disorders.  
(B) How to distinguish between mental illness, intellectual disability, and substance use disorders.  
(C) How to respond appropriately in a variety of situations involving persons with mental illness, intellectual disability, and substance use disorders.
- (3) Conflict resolution and deescalation techniques for potentially dangerous situations.
- (4) Appropriate language usage when interacting with potentially emotionally distressed persons.
- (5) Community and state resources available to serve persons with mental illness or intellectual disability, and how these resources can be best utilized by law enforcement.

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<sup>83</sup> Penal Code section 13515.27(b) (Stats. 2015, ch. 468).

<sup>84</sup> Penal Code section 13515.27(c-d) (Stats. 2015, ch. 468).

<sup>85</sup> Penal Code section 13515.28(a) (Stats. 2015, ch. 469).

<sup>86</sup> Penal Code section 13515.28(a) (Stats. 2015, ch. 469).

<sup>87</sup> Penal Code section 13515.28(a) (Stats. 2015, ch. 469).

(6) The perspective of individuals or families who have experiences with persons with mental illness, intellectual disability, and substance use disorders.<sup>88</sup>

FTOs “assigned or appointed before January 1, 2017 shall complete the crisis intervention behavioral health training by June 30, 2017,” while FTOs “assigned or appointed on or after January 1, 2017, shall complete the crisis intervention behavioral health training within 180 days of assignment or appointment.”<sup>89</sup>

Section 13515.29 provides that POST “shall establish and keep updated a field training officer course relating to competencies of the field training program that addresses how to interact with persons with mental illness or intellectual disability.”<sup>90</sup> That course “shall consist of at least four hours of classroom instruction and instructor-led active learning, such as scenario-based training, shall address issues related to stigma, and shall be culturally relevant and appropriate.”<sup>91</sup> “All prospective [FTOs] shall complete the course...as part of the existing field training officer program.”<sup>92</sup> POST is required to implement this section on or before August 1, 2016.<sup>93</sup>

Section 13515.295 provides that POST “shall, by May 1, 2016, conduct a review and evaluation of the required competencies of the field training program and police training program to identify areas where additional training is necessary to better prepare law enforcement officers to effectively address incidents involving persons with a mental illness or intellectual disability.”<sup>94</sup> POST “shall update the training in consultation with appropriate community, local, and state organizations, and agencies that have expertise in the area of mental illness, intellectual disabilities, and substance abuse disorders, and with appropriate consumer and family advocate groups.”<sup>95</sup> The training “shall address issues related to stigma, shall be culturally relevant and appropriate, and shall include all of the following topics:”

- (1) How to identify indicators of mental illness, intellectual disability, substance use disorders, neurological disorders, traumatic brain injury, post-traumatic stress disorder, and dementia.
- (2) Autism spectrum disorder.
- (3) Genetic disorders, including, but not limited to, Down syndrome.
- (4) Conflict resolution and deescalation techniques for potentially dangerous situations.

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<sup>88</sup> Penal Code section 13515.28(b) (Stats. 2015, ch. 469).

<sup>89</sup> Penal Code section 13515.28(c) (Stats. 2015, ch. 469).

<sup>90</sup> Penal Code section 13515.29(a) (Stats. 2015, ch. 469).

<sup>91</sup> Penal Code section 13515.29(b) (Stats. 2015, ch. 469).

<sup>92</sup> Penal Code section 13515.29(c) (Stats. 2015, ch. 469).

<sup>93</sup> Penal Code section 13515.29(d) (Stats. 2015, ch. 469).

<sup>94</sup> Penal Code section 13515.295(a) (Stats. 2015, ch. 469).

<sup>95</sup> Penal Code section 13515.295(b) (Stats. 2015, ch. 469).

- (5) Alternatives to the use of force when interacting with potentially dangerous persons with mental illness or intellectual disabilities.
- (6) The perspective of individuals or families who have experiences with persons with mental illness, intellectual disability, and substance use disorders.
- (7) Involuntary holds.
- (8) Community and state resources available to serve persons with mental illness or intellectual disability, and how these resources can be best utilized by law enforcement.<sup>96</sup>

### **C. POST's Notice Issued in Response to the Test Claim Statutes**

In response to Statutes 2015, chapter 468, POST developed a three-hour continuing training course entitled "Police Response to People with Mental Illness, Intellectual Disabilities, and Substance Abuse Disorders."<sup>97</sup> POST states that officers attending this course can meet their perishable skills requirement for Communications, but the course itself is not mandatory.<sup>98</sup>

POST responded to the requirements of Statutes 2015, chapter 469 by issuing the following notice:

On October 3, 2015, Governor Brown, signed into law Senate Bill 29. In brief, the resulting laws mandate mental health training for Field Training Officers (FTO) and an increase in hours in Learning Domain 37 of the Regular Basic Course. This information is intended to facilitate an understanding of the new laws and how they will be implemented. Please refer to the California Penal Code (PC) for a full description of each law.

#### **Field Training Officers shall have 8 hours of crisis intervention behavioral health training**

PC 13515.28(a)(1)

Field Training Officers (FTO) will complete 8 hours of crisis intervention behavioral health training (CIT) as follows;

- FTOs assigned or appointed on or before January 1, 2017 shall complete the training by June 30, 2017
- FTOs assigned or appointed after January 1, 2017 shall complete the training within 180 days of assignment or appointment

FTOs are exempted if they have attended;

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<sup>96</sup> Penal Code section 13515.295(c) (Stats. 2015, ch. 469).

<sup>97</sup> Exhibit E, "Crisis Intervention Behavioral Health Training, Senate Bill 11, Impact on Law Enforcement," <https://post.ca.gov/crisis-intervention-behavioral-health-training> (accessed on January 18, 2019).

<sup>98</sup> Exhibit E, "Crisis Intervention Behavioral Health Training, Senate Bill 11, Impact on Law Enforcement," <https://post.ca.gov/crisis-intervention-behavioral-health-training> (accessed on January 18, 2019).



- a 40 hour CIT course or
- an 8 hour or more CIT course since October 3, 2013, that meets the criteria enumerated in PC13515.28(a)(1)

To assist agencies with PC 13515.28(a)(1), POST is offering the following resources and services;

- An expanded course outline (ECO) (pdf) and hourly distribution (pdf) for a Mental Health Course that satisfies the 8 hour training requirement for FTOs. Agencies or training centers may utilize the ECO to deliver a course by certifying it through their Regional Consultant.
- Mental health training course providers may request their course outline be reviewed by POST to ensure it meets the required criteria of PC 13515.28(a)(1). Please initiate this review through the appropriate POST Regional Consultant. If the course does not meet the criteria of SB 29, providers will be advised what to include in the course to satisfy the requirements.

**Field Training Officers shall have 4 hours of crisis intervention behavioral health training as part of the Field Training Officer Course**

PC 13515.29(a)

FTOs are required to have 4 hours of crisis intervention behavioral health training (**in addition to** the mandated **8 hours** of training required by PC 13515(a)(1)) as part of the Field Training Officer Course. POST has utilized subject matter experts to incorporate the 4 hours of CIT training into the FTO course. The FTO course will remain at 40 hours.

**Law Enforcement Agencies shall provide additional training in the Field Training Programs (FTP) or Police Training Programs (PTP) to better prepare law enforcement officers to effectively address incidents involving persons with a mental illness or intellectual disability.**

PC 13515.295

In response to PC 13515.295, POST has reviewed existing programs and developed an additional competency 12.7.09 (Address Issues Related to Stigma) that must be added to all Field Training Programs and Police Training Program.

Competency 12.7.09 (Address Issues Related to Stigma);

- Must be added to all existing Field Training Programs (docx) or Police Training Programs (pdf), as an addendum, to include an attestation (doc)
- Incorporated into any new program submitted to POST for approval.<sup>99</sup>

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<sup>99</sup> Exhibit E, “Crisis Intervention Behavioral Health Training, Senate Bill 29, Impact on Law Enforcement,” <https://post.ca.gov/FTO-Crisis-Intervention-Behavioral-Health-Training> (accessed on January 29, 2019).

Accordingly, POST has interpreted Statutes 2015, chapter 469, which added Penal Code sections 13515.28, 13515.29, and 13515.295, to require that all FTOs, unless exempt under section 13515.28(a)(2),<sup>100</sup> complete eight hours of crisis intervention behavioral health training by June 30, 2017, or within 180 days of appointment as an FTO;<sup>101</sup> that the 40 hour FTO Course for *prospective* FTOs include four hours of crisis intervention behavioral health training, on or before August 1, 2016;<sup>102</sup> and that pursuant to its review of existing training required by section 13515.295, “an additional competency 12.7.09 (Address Issues Related to Stigma)...must be added to all Field Training Programs and Police Training Program.”<sup>103</sup>

### **III. Positions of the Parties**

#### **A. City of South Lake Tahoe and City of Claremont**

The claimants have pled, on the Test Claim form, both Statutes 2015, chapter 468, which added Penal Code sections 13515.26 and 13515.27; and Statutes 2015, chapter 469, which added sections 13515.28, 13515.28, and 13515.295. However, claimants’ narrative and declarations only allege reimbursable costs and activities arising from Penal Code sections 13515.28 and 13515.29.<sup>104</sup>

Claimants alleged in the Test Claim that the test claim statutes require FTOs who provide instruction in the Field Training Program to have at least eight hours of crisis intervention behavioral health training every 24 months.<sup>105</sup> However, in their comments on the Draft Proposed Decision, claimants acknowledge the conclusion in the Draft Proposed Decision that the eight-hour training required by section 13515.28 is required only once per employee: “If it is the State’s determination that field training officers are not mandated to attend any further training on this topic once they have attended a one-time, eight-hour segment, we are happy to

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<sup>100</sup> Penal Code section 13515.28(a)(2) (Stats. 2015, ch. 469) [“If a field training officer has completed eight hours of crisis intervention behavioral health training within the past 24 months, or if a field training officer has completed 40 hours of crisis intervention behavioral health training, the requirement described in paragraph (1) shall not apply.”].

<sup>101</sup> Penal Code section 13515.28 (Stats. 2015, ch. 469); Exhibit E, “Crisis Intervention Behavioral Health Training, Senate Bill 29, Impact on Law Enforcement,” <https://post.ca.gov/FTO-Crisis-Intervention-Behavioral-Health-Training> (accessed on January 29, 2019).

<sup>102</sup> Penal Code section 13515.29 (Stats. 2015, ch. 469); Exhibit E, “Crisis Intervention Behavioral Health Training, Senate Bill 29, Impact on Law Enforcement,” <https://post.ca.gov/FTO-Crisis-Intervention-Behavioral-Health-Training> (accessed on January 29, 2019).

<sup>103</sup> Penal Code section 13515.295 (Stats. 2015, ch. 469); Exhibit E, “Crisis Intervention Behavioral Health Training, Senate Bill 29, Impact on Law Enforcement,” <https://post.ca.gov/FTO-Crisis-Intervention-Behavioral-Health-Training> (accessed on January 29, 2019).

<sup>104</sup> See Exhibit A, Test Claim, pages 13-15; 20; 22; 24; 26.

<sup>105</sup> Exhibit A, Test Claim, page 10.

comply with this interpretation and to avoid additional training and costs.”<sup>106</sup> FTOs assigned or appointed before January 1, 2017 shall complete crisis intervention behavioral health training prior to June 30, 2017. FTOs assigned or appointed after January 1, 2017 shall complete the crisis intervention behavioral health training within 180 days of assignment or appointment.<sup>107</sup> Prospective FTOs shall complete a four-hour course addressing how to interact with persons with mental illness or intellectual disability.<sup>108</sup>

Claimants allege new mandated activities, including:

- 1) Field Training Officers (FTOs) time and expense to attend the 8-hour mandated training sessions. Including: compensating of staff time to attend mandated sessions; compensating costs for backfilling positions (including overtime) during mandated training; travel expenses, instructor fees, facility costs, and training material.
- 2) FTOs time and expense to repeat the mandated 8-hour training after every 24 months (unless a field training officer has completed 40 hours of crisis intervention behavioral training). Including: compensating of staff time to attend mandated sessions; compensating costs for backfilling positions (including overtime) during mandated training, if required by the department; travel expenses, instructor fees, facility costs, and training material.<sup>109</sup>

The City of South Lake Tahoe alleges it incurred \$11,150 to implement the alleged mandate in fiscal year 2016-2017. The City does not project costs for fiscal year 2017-2018, but expects similar costs in 2018-2019.<sup>110</sup>

The City of Claremont alleges that it incurred \$2,981 to implement the alleged mandate in fiscal year 2016-2017, after receiving a one-time grant for direct staff costs and the trainer course fees. The City alleges the net costs after the grant include benefits costs for the officers attending the training and indirect costs. The City does not project costs for fiscal year 2017-2018, but projects \$5,890 in mandated costs in fiscal year 2018-2019.<sup>111</sup>

The claimants argue that the requirements are new; that they are unique to government and carry out a state policy to provide a service to the public, and are therefore a new program or higher level of service; and that the activities are not mandated by any federal law or voter-approved ballot measure. Neither claimant anticipates non-local funds in the future.<sup>112</sup>

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<sup>106</sup> Exhibit C, Claimants’ Comments on the Draft Proposed Decision.

<sup>107</sup> Exhibit A, Test Claim, page 10.

<sup>108</sup> Exhibit A, Test Claim, pages 12-13.

<sup>109</sup> Exhibit A, Test Claim, page 13.

<sup>110</sup> Exhibit A, Test Claim, page 14.

<sup>111</sup> Exhibit A, Test Claim, pages 14-15.

<sup>112</sup> Exhibit A, Test Claim, pages 17-18.

## **B. Department of Finance**

Finance acknowledges that section 13515.28 appears to impose new state-mandated requirements on cities and counties, but asserts that the requirement is one-time, rather than an ongoing mandate:

Contrary to what appears to be Claimants' contention, SB 29 does not require FTOs to receive eight hours of crisis intervention behavioral health training every 24 months. SB 29 actually requires FTOs to receive this training only once. Furthermore, FTOs serving on January 1, 2017, were exempt from the SB 29 training if they completed either eight hours of crisis intervention behavioral health training within the previous 24 months, or 40 hours of such training at any time prior to January 1, 2017.<sup>113</sup>

Finance continues: "Based on Claimants' characterization of the test claim legislation, Finance is concerned the required costs may be significantly overstated."<sup>114</sup> Finance concludes that "the Commission should require Claimants to address these points as the analysis of the claim proceeds."<sup>115</sup>

## **IV. Discussion**

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

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 such local government for the costs of such programs or increased level of service...

The purpose of article XIII B, section 6 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."<sup>116</sup> Thus, the subvention requirement of section 6 is "directed to state-mandated increases in the services provided by [local government] ..."<sup>117</sup>

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or "mandates" local agencies or school districts to perform an activity.<sup>118</sup>
2. The mandated activity constitutes a "program" that either:
  - a. Carries out the governmental function of providing a service to the public; or

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<sup>113</sup> Exhibit B, Finance's Comments on the Test Claim, page 2.

<sup>114</sup> Exhibit B, Finance's Comments on the Test Claim, page 2.

<sup>115</sup> Exhibit B, Finance's Comments on the Test Claim, page 2.

<sup>116</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

<sup>117</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

<sup>118</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

- b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.<sup>119</sup>
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.<sup>120</sup>
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.<sup>121</sup>

The Commission is vested with the exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.<sup>122</sup> The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.<sup>123</sup> In making its decisions, the Commission must strictly construe article XIII B, section 6 of the California Constitution, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>124</sup>

**A. The Test Claim Was Timely Filed.**

Government Code section 17551 states that test claims must be filed “not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.”<sup>125</sup>

Section 1183.1(c) of the Commission’s regulations, in turn, defines “12 months” for purposes of filing a test claim as “365 days” and specifically provides:

Except as provided in Government Code sections 17573 and 17574, any test claim or amendment filed with the Commission must be filed not later than 12 months (365 days) following the effective date of a statute or executive order, or

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<sup>119</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles* (1987) 43 Cal.3d 46, 56).

<sup>120</sup> *San Diego Unified School Dist.* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

<sup>121</sup> *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; Government Code sections 17514 and 17556.

<sup>122</sup> *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

<sup>123</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

<sup>124</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1280 [citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817].

<sup>125</sup> Government Code section 17551(c).

within 12 months (365 days) of first incurring increased costs as a result of a statute or executive order, whichever is later.<sup>126</sup>

The test claim statutes were enacted October 3, 2015, effective January 1, 2016. A timely-filed test claim on the basis of the effective date of the test claim statutes therefore had to be filed no later than January 1, 2017. This Test Claim was filed May 10, 2018 and is therefore not timely on that basis.

However, the claimants have filed evidence in the form of declarations and POST training records showing they first incurred costs under the test claim statutes on May 23, 2017 and June 6, 2017, respectively.<sup>127</sup> The Test Claim was filed May 10, 2018, within 365 days of first incurring costs. Therefore, based on the date costs were first incurred, the Test Claim was timely filed in accordance with Government Code section 17551 and Title 2, California Code of Regulations, section 1183.1(c).

**B. Penal Code Sections 13515.26, 13515.27, and 13515.295 Impose Requirements on POST, a State Agency, But Do Not Impose Any State-Mandated Activities on Local Government.**

Penal Code sections 13515.26, 13515.27, and 13515.295 are addressed to POST, a state entity, and do not impose any requirements on local government.

Section 13515.26 requires POST to review its training modules and course content “in the *regular basic course* relating to persons with mental illness, intellectual disability, or substance abuse disorder,” and identify areas where additional training is needed.<sup>128</sup> POST shall then update its training “in consultation with appropriate community, local, and state organizations, and agencies that have expertise in the area of mental illness, intellectual disability, and substance abuse disorders...”<sup>129</sup> The training “shall be at least 15 hours,” including training scenarios and activities “relating to law enforcement interaction with persons with mental illness, intellectual disability, and substance abuse disorders,” and “shall be presented within the existing hours allotted for the regular basic course.”<sup>130</sup>

Nothing in the plain language of section 13515.26 requires the local government employer to perform any activities. The regular basic course is a requirement for *persons* seeking peace officer status, but does not require the local government employer that hires an officer to pay for

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<sup>126</sup> Title 2, California Code of Regulations, section 1183.1(c) (Register 2018, No. 9, eff. April 1, 2018.)

<sup>127</sup> Exhibit A, Test Claim, pages 20, 24, 48, 57-60 [Declaration of Deborah McIntyre, Finance Director and Chief Fiscal Officer for the City of Lake Tahoe; Declaration of Adam Pirrie, Finance Director and Chief Fiscal Officer for the City of Claremont; POST report of training dated May 23, 2017 for Officers Robertson and Spaeth of the City of Lake Tahoe; POST report of training dated June 6, 2017 for City of Claremont officers].

<sup>128</sup> Penal Code section 13515.26(a) (Stats. 2015, ch. 468).

<sup>129</sup> Penal Code section 13515.26(b) (Stats. 2015, ch. 468).

<sup>130</sup> Penal Code section 13515.26(d-e) (Stats. 2015, ch. 468).

the training or otherwise provide the training.<sup>131</sup> Specifically, Penal Code section 832 requires “every person described in this chapter as a peace officer” to satisfactorily complete an introductory course of training prescribed by POST before they can exercise the powers of a peace officer. Any “person” completing the basic training course “who does not become employed as a peace officer” within three years is required to pass an examination developed or approved by POST.<sup>132</sup> POST is authorized to charge a fee for the basic training examination to each “applicant” who is not sponsored or employed by a local law enforcement agency.<sup>133</sup> In addition, the Legislature has instructed POST to permit the required training to be conducted by any institution approved by POST, which includes community colleges.<sup>134</sup> Thus, the requirement to take basic training is on the person, and not on the local government employer.

Section 13515.27 requires POST to establish a continuing training course for existing peace officers, of “at least three consecutive hours,” which “may include training scenarios and facilitated learning activities, shall address issues related to stigma, shall be culturally relevant and appropriate, and shall include” other specified topics such as the causes and nature of mental illness; indicators of mental illness, disability, or substance abuse; appropriate responses; conflict resolution and de-escalation; appropriate language when interacting with potentially emotionally distressed persons; resources available for persons with mental illness or intellectual disability; and perspectives of individuals or families who have experiences with persons with mental illness, intellectual disability, and substance abuse disorders.<sup>135</sup> That course “shall be *made available by the commission* to each law enforcement officer with a rank of supervisor or below and who is assigned to patrol duties or to supervise officers who are assigned to patrol duties.”<sup>136</sup> Section 13515.27 requires POST to create a new training course and to make it *available* to peace officers, but does not require officers to take the course, or require the local government employer to provide or pay for the new course. POST has established a course to comply with section 13515.27 that can be utilized for training and makes it clear that the course is “not mandatory for law enforcement.”<sup>137</sup>

Penal Code section 13515.295 is similarly directed only to POST. Section 13515.295 requires POST to “conduct a review and evaluation of the required competencies of the field training program,” especially with respect to how officers effectively address incidents involving persons with mental illness or intellectual disability, and to update the training accordingly.<sup>138</sup> There is

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<sup>131</sup> See Penal Code section 832; 13510; 13511.

<sup>132</sup> Penal Code section 832(e).

<sup>133</sup> Penal Code section 832(g).

<sup>134</sup> Penal Code section 13511; Exhibit E, POST’s List of Basic Training Academies, <https://post.ca.gov/basic-training-academies> (accessed on January 18, 2019).

<sup>135</sup> Penal Code section 13515.27(a-b) (Stats. 2015, ch. 468).

<sup>136</sup> Penal Code section 13515.27(c) (Stats. 2015, ch. 468).

<sup>137</sup> Exhibit E, “Crisis Intervention Behavioral Health Training, Senate Bill 11, Impact on Law Enforcement,” <https://post.ca.gov/crisis-intervention-behavioral-health-training> (accessed on January 18, 2019).

<sup>138</sup> Penal Code section 13515.295 (Stats. 2015, ch. 469).

nothing in the plain language of section 13515.295 that imposes any express requirements on local government, and the claimants have made no argument and presented no evidence that section 13515.295 imposes additional activities or costs. As noted above, POST implemented the requirement in 13515.295 by adding, after review, “an additional competency 12.7.09 (Address Issues Related to Stigma)” to “all Field Training Programs and Police Training Program.”<sup>139</sup> The POST competency 12.7.09 has not been pled in this test claim.

Moreover, the claimants, in their Test Claim narrative and declarations, have not alleged that Penal Code sections 13515.26, 13515.27, and 13515.295 impose any new state-mandated activities or costs on local government.

Accordingly, Penal Code sections 13515.26, 13515.27, and 13515.295 do not impose any state-mandated activities on local government.

**C. Penal Code Section 13515.29, Which Requires Prospective FTOs to Receive Four Hours of Training as Part of the FTO Course That Addresses How to Interact with Persons with Mental Illness or Intellectual Disability, Does Not Mandate a New Program or Higher Level of Service or Result in Increased Costs Mandated by the State Since There Is No Requirement for the Law Enforcement Employer to Develop and Present the Course, and the Total Number of Training Hours in the FTO Course Remains the Same.**

POST regulations require, with some exceptions, that every peace officer “following completion of the Regular Basic Course and before being assigned to perform general law enforcement uniformed patrol duties without direct and immediate supervision, to complete a POST-approved Field Training Program.”<sup>140</sup> POST regulations further provide, with some exceptions, that “[a]ny department which employs peace officers and/or Level 1 Reserve peace officers shall have a POST-approved Field Training Program.”<sup>141</sup> Each department’s Field Training Program is required to have Field Training Officers (FTOs) to train new officers before they can be assigned to general law enforcement uniformed patrol duties without direct and immediate supervision.<sup>142</sup> And FTOs are required to first complete a POST-certified, 40-hour, Field Training Officer Course before they can provide the training to other officers.<sup>143</sup>

Statutes 2015, chapter 469 added section 13515.29 to the Penal Code to require POST to establish and keep updated an FTO course “relating to competencies of the field training program and police training program that addresses how to interact with persons with mental

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<sup>139</sup> Exhibit E, “Crisis Intervention Behavioral Health Training, Senate Bill 29, Impact on Law Enforcement,” <https://post.ca.gov/FTO-Crisis-Intervention-Behavioral-Health-Training> (accessed on January 29, 2019), page 2.

<sup>140</sup> California Code of Regulations, title 11, section 1005.

<sup>141</sup> California Code of Regulations, title 11, section 1004(a) (Register 2015, No. 50).

<sup>142</sup> California Code of Regulations, title 11, section 1004(a)(4).

<sup>143</sup> California Code of Regulations, title 11, section 1004(d); Exhibit E, PAM section D-13-4, Field Training, <https://post.ca.gov/commission-procedure-d-13-field-training> (accessed on December 13, 2018).



illness or intellectual disability.”<sup>144</sup> That course is required to be “at least four hours of classroom instruction and instructor-led active learning” and “[a]ll *prospective field training officers* shall complete the course...*as part of the existing field training officer program.*”<sup>145</sup>

This statute does not require local law enforcement employers to develop the training. Rather, Penal Code section 13515.29 directs POST to establish and keep updated the field training officer course, which addresses how to interact with persons with mental illness or intellectual disability. In response to Penal Code section 13515.29, POST issued the following bulletin stating that it “utilized subject matter experts to incorporate the 4 hours of crisis intervention behavioral health training into the FTO course, and that the FTO course will remain at 40 hours:”<sup>146</sup>

PC 13515.29(a)

FTOs are required to have 4 hours of crisis intervention behavioral health training **(in addition to the mandated 8 hours of training required by PC 13515(a)(1))** as part of the Field Training Officer Course. POST has utilized subject matter experts to *incorporate the 4 hours of CIT training into the FTO course. The FTO course will remain at 40 hours.*<sup>147</sup>

And POST has certified several entities, including community colleges, to present the FTO training.<sup>148</sup> Thus, the local agency employer is not required by state law to present the FTO course.

Although the local law enforcement employer may incur costs for its prospective FTOs to attend the FTO course, the Commission finds that Penal Code section 13515.29 does not impose a new program or higher level of service, or result in increased costs mandated by the state since the total number hours required by the state for the existing FTO course did not increase as a result of the test claim statute. The plain language of the statute requires the updated training to be “part of the existing field training officer program,” and POST has clarified that the FTO course remains at 40 hours.

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<sup>144</sup> Penal Code section 13515.29(a) (Stats. 2015, ch. 469).

<sup>145</sup> Penal Code section 13515.29(b)(c) (Stats. 2015, ch. 469).

<sup>146</sup> Exhibit E, “Crisis Intervention and Behavioral Health Training, Senate Bill 29, Impact on Law Enforcement,” <https://post.ca.gov/FTO-Crisis-Intervention-Behavioral-Health-Training> (accessed on January 23, 2019), emphasis added.

<sup>147</sup> Exhibit E, “Crisis Intervention and Behavioral Health Training, Senate Bill 29, Impact on Law Enforcement,” <https://post.ca.gov/FTO-Crisis-Intervention-Behavioral-Health-Training> (accessed on January 29, 2019), emphasis added.

<sup>148</sup> Exhibit E, California POST Course Catalog, list of certified presenters for the FTO program, [https://catalog.post.ca.gov/PresenterCourseDescription.aspx?crs\\_no=31725&crs\\_title=FIELD+TRAINING+OFFICER&numPresentations=17&pageId=10](https://catalog.post.ca.gov/PresenterCourseDescription.aspx?crs_no=31725&crs_title=FIELD+TRAINING+OFFICER&numPresentations=17&pageId=10) (accessed on January 23, 2019).

In this respect, the requirements of section 13515.29 are similar to those in the statute at issue in *County of Los Angeles II*.<sup>149</sup> In that case, the County sought reimbursement for updated domestic violence training for peace officers, required to be completed every two years by Penal Code section 13519(e).<sup>150</sup> The test claim statute stated that the training “shall be funded from existing resources” and further stated the Legislature’s intent “not to increase the annual training costs of local government.”<sup>151</sup> The Test Claim alleged that although POST bore the cost of producing two-hour telecourses on domestic violence, POST did not provide for any local law enforcement salary reimbursement for attendance at the training, and thus the County sought reimbursement for those costs.<sup>152</sup> The Commission found in the test claim proceedings that POST allows flexibility for local law enforcement agencies to choose training to meet their needs, and that the two-hour training could be fit into the existing 24 hours of POST-required training every two years and, thus, there were no increased costs mandated by the state.<sup>153</sup> The County disagreed, arguing that it could not simply eliminate another training course to make room for domestic violence training without incurring costs.<sup>154</sup> The court concluded that even though the County would “lose some flexibility” in selecting training requirements for its officers, the statute did not mandate a higher level of service, or shift costs from the state to the local governments, or impose increased costs mandated by the state because the *total number of training hours* could remain the same:

Based upon principles discernable from the cases discussed, we find that in the instant case, the legislation does not mandate a “higher level of service.” In the case of an existing program, an increase in existing costs does not result in a reimbursement requirement. Indeed, “costs” for purposes of Constitution article XIII B, section 6 does not equal every increase in a locality’s budget resulting from compliance with a new state directive. Rather, the state must be attempting to divest itself of its responsibility to provide fiscal support for a program, or forcing a new program on a locality for which it is ill-equipped to allocate funding.

. . . . POST training and certification is ongoing and extensive, and local law enforcement agencies may chose [sic] from a menu of course offerings to fulfill the 24-hour requirement. Adding domestic violence training obviously may displace other courses from the menu, or require the adding of courses. Officer downtime will be incurred. However, merely by adding a course requirement to POST’s certification, the state has not shifted from itself to the County the burdens of state government. Rather, it has directed local law enforcement

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<sup>149</sup> *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176 (*County of Los Angeles II*).

<sup>150</sup> The requirement is now in Penal Code section 13519(g).

<sup>151</sup> *County of Los Angeles v. Commission on State Mandates* 110 Cal.App.4th 1176, 1179.

<sup>152</sup> *County of Los Angeles v. Commission on State Mandates* 110 Cal.App.4th 1176, 1181.

<sup>153</sup> *County of Los Angeles v. Commission on State Mandates* 110 Cal.App.4th 1176, 1181, 1184.

<sup>154</sup> *County of Los Angeles v. Commission on State Mandates* 110 Cal.App.4th 1176, 1181, 1187.

agencies to reallocate their training resources in a certain manner by mandating the inclusion of domestic violence training.

. . . . Every increase in cost that results from a new state directive does not automatically result in a valid subvention claim where, as here, the directive can be complied with by a minimal reallocation of resources within the entity seeking reimbursement. Thus, while there may be a mandate, there are no increased costs mandated by Penal Code section 13519.<sup>155</sup>

As was the case in *County of Los Angeles II*, local agencies in this case will not incur any additional costs for prospective FTOs to attend four hours of training required by section 13515.29. The training is part of the existing 40-hour FTO course that all prospective FTOs are required to take. Thus, the total number of training hours required by the state remains the same.

Accordingly, Penal Code section 13515.29 does not mandate a new program or higher level of service or result in increased costs mandated by the state.

**D. Penal Code Section 13515.28, Which Requires Assigned or Appointed FTO's to Receive an Additional Eight Hours of Crisis Intervention Behavioral Health Training to Better Train New Peace Officers on How to Effectively Interact with Persons with Mental Illness or Intellectual Disability, Imposes a Reimbursable State-Mandated Program on City and County Law Enforcement Agencies, and Police Protection Districts That Wholly Supplant the Law Enforcement Functions of the County Within their Jurisdiction.**

**1. Penal Code section 13515.28 imposes new FTO training requirements on local law enforcement agencies.**

As indicated in the section above, before a law enforcement agency can assign or appoint a peace officer as an FTO to provide field training to other officers, the peace officer is required to first complete a POST-certified, 40-hour, Field Training Officer Course.<sup>156</sup>

Penal Code section 13515.28, enacted by Statutes 2015, chapter 469, now requires assigned or appointed FTOs, except those specified FTOs who have previous similar training, to complete an additional eight hours of crisis intervention behavioral health training by a date certain, in order to better train new peace officers on how to effectively interact with persons with mental illness or intellectual disability. Section 13515.28 states the following:

(a)(1) The commission shall require the field training officers who provide instruction in the field training program to have at least eight hours of crisis intervention behavioral health training to better train new peace officers on how to effectively interact with persons with mental illness or intellectual disability. This course shall include classroom instruction and instructor-led active learning, such

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<sup>155</sup> *County of Los Angeles v. Commission on State Mandates* 110 Cal.App.4th 1176, 1194-1195.

<sup>156</sup> California Code of Regulations, title 11, section 1004(d); Exhibit E, PAM section D-13-4, Field Training, <https://post.ca.gov/commission-procedure-d-13-field-training> (accessed on December 13, 2018).

as scenario-based training, and shall be taught in segments that are at least four hours long.

(2) If a field training officer has completed eight hours of crisis intervention behavioral health training within the past 24 months, or if a field training officer has completed 40 hours of crisis intervention behavioral health training, the requirement described in paragraph (1) shall not apply.

(b) The crisis intervention behavioral health training shall address issues relating to stigma, shall be culturally relevant and appropriate, and shall include all of the following topics:

(1) The cause and nature of mental illnesses and intellectual disabilities.

(2)(A) How to identify indicators of mental illness, intellectual disability, and substance use disorders.

(B) How to distinguish between mental illness, intellectual disability, and substance use disorders.

(C) How to respond appropriately in a variety of situations involving persons with mental illness, intellectual disability, and substance use disorders.

(3) Conflict resolution and deescalation techniques for potentially dangerous situations.

(4) Appropriate language usage when interacting with potentially emotionally distressed persons.

(5) Community and state resources available to serve persons with mental illness or intellectual disability, and how these resources can be best utilized by law enforcement.

(6) The perspective of individuals or families who have experiences with persons with mental illness, intellectual disability, and substance use disorders.

(c) Field training officers assigned or appointed before January 1, 2017, shall complete the crisis intervention behavioral health training by June 30, 2017. Field training officers assigned or appointed on or after January 1, 2017, shall complete the crisis intervention behavioral health training within 180 days of assignment or appointment.

(d) This section does not prevent an agency from requiring its field training officers to complete additional hours of crisis intervention behavioral health training or requiring its field training officers to complete that training earlier than as required by this section.<sup>157</sup>

The claimants alleged in their Test Claim that section 13515.28 requires eight hours of repeated or continuing crisis intervention behavioral health training *every 24 months*.<sup>158</sup> Finance

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<sup>157</sup> Penal Code section 13515.28 (Stats. 2015, ch. 469).

<sup>158</sup> Exhibit A, Test Claim, pages 12-13.

interprets the test claim statute to require eight hours of crisis intervention behavioral health training only once per appointed or assigned FTO.<sup>159</sup> The claimants concede this issue in their comments on the Draft Proposed Decision.<sup>160</sup>

The Commission finds that eight hours of crisis intervention behavioral health training is required *one* time per employee providing training as an FTO, and not every 24 months as alleged by the claimant. This interpretation is supported by the plain language of Penal Code section 13515.28, the legislative history of SB 29, and POST's implementation of the test claim statute.

First, nothing in the plain language of Penal Code section 13515.28 suggests the training must be repeated every 24 months, as the claimants suggested in the Test Claim. Unlike Penal Code section 13515.27, which expressly provides for a separate three-hour “*continuing* training course” on similar subject matter,<sup>161</sup> the Legislature did not use that language in Penal Code section 13515.28. Instead, Penal Code section 13515.28(c) requires the training to be completed by June 30, 2017 for FTO's assigned or appointed before January 1, 2017 or within 180 days of assignment or appointment for FTOs assigned thereafter, rather than incorporated into FTOs' normal continuing training hours. As discussed in the Background, all peace officers are required to have at least 24 hours of continuing training every two years, at least 12 hours of which must relate to “perishable skills,” and at least two hours of which must relate to communication skills.<sup>162</sup> In addition, *FTOs* are required to have at least 24 hours of “update training” every three years, relating to the assignment as an FTO. In accordance with the regulations, the updated training for FTOs can be satisfied either by completing a POST-certified “Field Training Officer Update Course,” or “Completing 24 hours of department-specific training in the field training topics contained in the Field Training Officer Update Course.”<sup>163</sup> The Legislature is presumed to be aware of the state of the law,<sup>164</sup> and rather than direct POST to include crisis intervention behavioral health training within the continuing training requirements for all peace officers, or in the Field Training Officer Update Course specifically, Penal Code section 13515.28 instead articulates a specific training requirement (eight hours of crisis intervention for FTOs) and a specific time frame in which it must be completed (before June 30, 2017 for existing FTOs, and within 180 days for FTOs assigned after January 1, 2017).<sup>165</sup> Section 13515.28(d) further states that “[t]his section does not prevent an agency from requiring its field training officers to complete additional hours of crisis intervention behavioral health training.” Thus, the plain language of section 13515.28 requires eight hours of crisis intervention behavioral health training *one* time per officer appointed or assigned as an FTO.

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<sup>159</sup> Exhibit B, Finance's Comments on the Test Claim, page 2.

<sup>160</sup> Exhibit D, Claimants' Comments on the Draft Proposed Decision, page 1.

<sup>161</sup> Penal Code section 13515.27 (Stats. 2015, ch. 468).

<sup>162</sup> See California Code of Regulations, title 11, section 1005(d)(4) (Register 2015, No. 50).

<sup>163</sup> See California Code of Regulations, title 11, section 1004(d)(1) (Register 2015, No. 50).

<sup>164</sup> *Arthur Andersen v. Superior Court* (1998) 67 Cal.App.4th 1481, 1500.

<sup>165</sup> Penal Code section 13515.28 (Stats. 2015, ch. 469).

The statute allows training in addition to the required eight hours, but does not require training every 24 months as previously alleged by the claimants.<sup>166</sup>

The legislative history further supports this interpretation. The Senate Third Reading analysis of Senate Bill 29, as amended August 31, 2015, states the following:

- 1) Requires field training officers who provide instruction in the field training program to have at least eight hours of crisis intervention behavioral health training to better train new peace officers to effectively interact with persons with mental illness or intellectual disability. Training should be taught segments that are at least four hours long.
- 2) Excludes a field training officer who has completed eight hours of crisis intervention behavioral health training within the past 24 months, or 40 hours of crisis intervention behavioral health training, from the training requirement.
- 3) Specifies that field training officers assigned or appointed before January 1, 2017, shall complete the crisis intervention behavioral health training by June 30, 2017. Field training officers assigned or appointed on or after January 1, 2017, shall complete the crisis intervention course within 180 days of assignment or appointment.<sup>167</sup>

Nothing in the bill analyses suggests that the training must be repeated.<sup>168</sup> The bill analyses further state, in terms of fiscal effects:

- 1) Reimbursable state mandated costs in the \$2.57 million (General Fund) range initially and \$600,000 ongoing to backfill for officers participating in the training. There are currently 482 cities and 58 counties in California. To the extent local agency expenditures qualify as a reimbursable state mandate, agencies could claim reimbursement of those costs for missed work hours for all field training officers in training.<sup>169</sup>

Accordingly, the bill analysis suggests that the test claim statute could have significant initial costs, but much smaller ongoing costs; nothing in the plain language suggests that this training is required to be repeated by FTOs, and the legislative history indicates that the initial costs, to send all or nearly all existing FTOs to the eight hour training, are projected to be much larger than the ongoing costs to “backfill” as new FTOs are appointed or assigned. If the intent of the Legislature is an eight-hour training that must be repeated, there is no reason that projected initial costs would be so far out of proportion to projected ongoing costs.

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<sup>166</sup> See Exhibit D, Claimants’ Comments on the Draft Proposed Decision [Claimants acknowledge and concede this conclusion].

<sup>167</sup> Exhibit A, Test Claim, page 35 [Senate Third Reading Analysis of SB 29, as amended August 31, 2015, p. 1]

<sup>168</sup> See also, Exhibit A, Test Claim, pages 39-40 [Senate Unfinished Business Analysis of SB 29, as amended August 31, 2015].

<sup>169</sup> Exhibit A, Test Claim, pages 38; 45 [Senate Third Reading, p. 4; Senate Unfinished Business Analysis of SB 29, as amended August 31, 2015, p. 7].

Finally, POST interprets section 13515.28 as imposing a one-time training requirement per FTO as follows:

Field Training Officers (FTO) will complete 8 hours of crisis intervention behavioral health training (CIT) as follows;

- FTOs assigned or appointed on or before January 1, 2017 shall complete the training by June 30, 2017
- FTOs assigned or appointed after January 1, 2017 shall complete the training within 180 days of assignment or appointment

FTOs are exempted if they have attended;

- a 40 hour CIT course or
- an 8 hour or more CIT course since October 3, 2013, that meets the criteria enumerated in PC13515.28(a)(1)<sup>170</sup>

POST is the agency charged with implementing the statute and its interpretation has been adopted within POST regulations,<sup>171</sup> and thus, its interpretation is entitled to great weight.<sup>172</sup>

Therefore, Penal Code section 13515.28 requires each FTO assigned or appointed before January 1, 2017 to have one-time crisis intervention behavioral health training (to consist of at least eight hours of training that includes the topics required by section 13515.28(b)) by June 30, 2017, and each FTO assigned or appointed after January 1, 2017 is required to have the same one-time training within 180 days. Nothing in the test claim statute indicates that the eight-hour crisis intervention training called for in section 13515.28(a) must be repeated every 24 months, as the claimants suggest.<sup>173</sup>

Although the requirements of section 13515.28 are expressly directed to the officers themselves, the requirements imposed on the officers fall on the local law enforcement agencies required by section 1004 of the POST regulations to have a Field Training Program. The training of the officers occurs within the scope of employment and their appointment or assignment as an FTO by the employer.<sup>174</sup> In addition, under the Federal Fair Labor Standards Act (FLSA), which

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<sup>170</sup> Exhibit E, “Crisis Intervention Behavioral Health Training, Senate Bill 29, Impact on Law Enforcement,” <https://post.ca.gov/FTO-Crisis-Intervention-Behavioral-Health-Training> (accessed on January 29, 2019).

<sup>171</sup> California Code of Regulations, title 11, section 1004(d)(3).

<sup>172</sup> *Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4th 1, 12-13.

<sup>173</sup> See, e.g. Exhibit A, Test Claim, page 20 [Declaration of Deborah McIntyre, Finance Director for the City of South Lake Tahoe (asserting that the test claim statutes require FTO crisis intervention behavioral health training to be repeated every 24 months)].

<sup>174</sup> California Code of Regulations, title 11, section 1004(a), which states that “[a]ny department which employs peace officers and/or Level 1 Reserve peace officers shall have a POST-approved Field Training Program.” Section 1004(b) provides that a department that does not provide general law enforcement uniformed patrol services, or hires only lateral entry officers

applies to local government employers, the employer is responsible for compensating the employee for job-related training time that is required and not voluntary.<sup>175</sup>

However, Penal Code section 13515.28 does not require local law enforcement employers to develop or present the training. Rather, Penal Code sections 13515.29 and 13515.295 direct POST to establish, review, and keep updated the field training officer course, which addresses how to interact with persons with mental illness or intellectual disability. In response to Penal Code section 13515.28, POST created an expanded course outline for the required eight-hour training.<sup>176</sup> In addition, POST issued a bulletin *allowing* agencies to present the course required by Penal Code section 13515.28 using the POST outline as follows:

Senate Bill 29 (SB29) requires Field Training Officers who are instructors for the field training program to have at least 8 hours of crisis intervention behavioral health training. Agencies *may* certify this expanded course outline (ECO) (pdf) and hourly distribution (pdf) through their Regional Consultant to present an 8 hour behavioral health course that satisfies the 8 hour training requirements for FTOs.<sup>177</sup>

In this case, the claimants utilized outside organizations to provide the training required by Penal Code section 13515.28; their officers attended training provided by California State Parks, Butte College Public Safety Training Center, South Bay Regional Training Consortium, Yolo County Sheriff's Department, and Embassy Consulting Services.<sup>178</sup>

Accordingly, Penal Code section 13515.28 imposes the following new requirements on local law enforcement agencies required to have a Field Training Program under California Code of Regulations, title 11, section 1004 and have appointed or assigned FTOs for that program:<sup>179</sup>

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possessing a POST basic certificate and completed a similar POST approved Field Training Program may request an exemption.

<sup>175</sup> See Code of Federal Regulations, title 29, sections 785.27, 785.29; *Garcia v. San Antonio Metropolitan Transit Authority et al.* (1985) 469 U.S. 528.

<sup>176</sup> Exhibit E, "Regulation 1081 Minimum Standards for Legislatively Mandated Courses, Crisis Intervention Behavioral Health Training for Field Training Officers, Expanded Course Outline (8 hours)," [https://post.ca.gov/Portals/0/post\\_docs/resources/CIT/SB29\\_FTO\\_8HR\\_Course\\_ECO.pdf](https://post.ca.gov/Portals/0/post_docs/resources/CIT/SB29_FTO_8HR_Course_ECO.pdf) (accessed on January 23, 2019).

<sup>177</sup> Exhibit E, "Crisis Intervention Behavioral Health Training, Senate Bill 29, Impact on Law Enforcement," <https://post.ca.gov/FTO-Crisis-Intervention-Behavioral-Health-Training> (accessed on January 29, 2019), emphasis added.

<sup>178</sup> Exhibit A, Test Claim, pages 48-61.

<sup>179</sup> California Code of Regulations, title 11, section 1004(a), states that "[a]ny department which employs peace officers and/or Level 1 Reserve peace officers shall have a POST-approved Field Training Program." Section 1004(b) states that a department that does not provide general law enforcement uniformed patrol services, or hires only lateral entry officers possessing a POST



- Ensure that each FTO assigned or appointed prior to January 1, 2017 shall attend a one-time, eight-hour training on crisis intervention and behavioral health before June 30, 2017. (Penal Code section 13515.28, Statutes 2015, chapter 469.)
- Ensure that each FTO assigned or appointed after January 1, 2017 shall attend a one-time, eight-hour training on crisis intervention and behavioral health within 180 days of being assigned or appointed as an FTO. Penal Code section 13515.28, Statutes 2015, chapter 469.)

FTOs who have completed 40 hours of crisis intervention and behavioral health training or who have completed eight hours of crisis intervention and behavioral health training in the past 24 months, are *exempt* from these requirements. In addition, reimbursement is not required for the local law enforcement employer to develop or present the training since these activities are not mandated.

**2. The New Requirements of Penal Code Section 13515.28 Are Mandated by the State Only on City and County Law Enforcement Agencies, and Police Protection Districts That Wholly Supplant the Law Enforcement Functions of the County Within their Jurisdiction, That Are Required to Have a Field Training Program and Have Appointed or Assigned FTOs for that Program.**

As indicated in the Background, the minimum training standards and rules for peace officers that are outlined in Penal Code sections 13510 et seq. (which includes section 13515.28) “shall apply to those cities, counties, cities and counties, and districts receiving state aid pursuant to this chapter . . . .”<sup>180</sup> Participating agencies agree to abide by the standards established by POST and may apply to POST for state aid.<sup>181</sup> Although this statutory language only requires local agencies to comply with the training standards as a condition of their participation in POST, the court in *County of Los Angeles II* held that POST training “for all practical purposes” is not voluntary.<sup>182</sup> Like the facts in *County of Los Angeles II*, this case also addresses peace officer training required by state law. Thus, the holding in *County of Los Angeles II* applies in this case.

However, the Third District Court of Appeal, in *Department of Finance v. Commission on State Mandates (POBRA)* held that school districts, community college districts, and special districts that are permitted by statute, but not required by state law, to employ peace officers who *supplement* the general law enforcement units of cities and counties, are not legally compelled by state law to comply with the new requirements and, thus, were not eligible claimants entitled to

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basic certificate and who have completed a similar POST approved Field Training Program may request an exemption and not comply with this requirement.

<sup>180</sup> Penal Code section 13510(a).

<sup>181</sup> Penal Code sections 13522 and 13523.

<sup>182</sup> *County of Los Angeles v. Commission on State Mandates* 110 Cal.App.4th 1176, 1194 [“POST certification is, for all practical purposes, not a ‘voluntary’ program and therefore the County must, in order to comply with [the test claim statute], add domestic violence training to its curriculum.”].

reimbursement under article XIII B, section 6 of the California Constitution.<sup>183</sup> The other law enforcement agencies at issue in the *POBRA* case (cities, counties, and special police protection districts that wholly supplant the law enforcement functions of the county within the jurisdiction of that district pursuant to Government Code section 53060.7), were found to be prima facie eligible for reimbursement because they have “as an *ordinary, principal, and mandatory duty* the provision of policing services within their territorial jurisdiction.” The court stated the following:

The Commission notes that *Carmel Valley Fire Protection Dist. v. State* characterizes police protection as one of “the most essential and basic functions of local government.” (*Carmel Valley Fire Protection Dist. v. State, supra*, 190 Cal.App.3d at p. 537, 234 Cal.Rptr. 795, quoting *Verreos v. City and County of San Francisco* (1976) 63 Cal.App.3d 86, 107, 133 Cal.Rptr. 649.) However, that characterization is in the context of cities, counties, and districts that have as an *ordinary, principal, and mandatory duty* the provision of policing services within their territorial jurisdiction. A fire protection district perform must hire firefighters to supply that protection.

Thus, as to cities, counties, and such districts, new statutory duties that increase the costs of such services are prima facie reimbursable. This is true, notwithstanding a potential argument that such a local government's decision is voluntary in part, as to the number of personnel it hires. (See *San Diego Unified School Dist., supra*, 33 Cal.4th at p. 888, 16 Cal.Rptr.3d 466, 94 P.3d 589.) A school district, for example, has an analogous basic and mandatory duty to educate students. In the course of carrying out that duty, some “discretionary” expulsions will necessarily occur. (*Id.* at p. 887, fn. 22, 16 Cal.Rptr.3d 466, 94 P.3d 589.) Accordingly, *San Diego Unified School Dist.* suggests additional costs of “discretionary” expulsions should not be considered voluntary. Where, as a practical matter, it is inevitable that certain actions will occur in the administration of a mandatory program, costs attendant to those actions cannot fairly and reasonably be characterized as voluntary under the rationale of *City of Merced*. (See *San Diego Unified School Dist., supra*, 33 Cal.4th at pp. 887-888, 16 Cal.Rptr.3d 466, 94 P.3d 589.)

However, 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. As there is no such showing in the record, the Commission erred in finding that *POBRA* constitutes a state-mandated

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<sup>183</sup> *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1357

program for school districts and the special districts identified in Government Code section 3301.<sup>184</sup>

Thus, only city and county law enforcement agencies, and those police protection districts *that wholly supplant the law enforcement functions of the county within their jurisdiction* pursuant to Government Code section 53060.7, are mandated by the state to comply with the new training requirements imposed by Penal Code sections 13515.28.

### **3. The New Requirements Imposed by Penal Code Section 13515.28 Constitute a New Program or Higher Level of Service.**

State mandate reimbursement is not required for any and all costs that might be incurred by local government as an incident of a change in law or regulation. Alleged costs must be *mandated by the state*, and must constitute a *new program or higher level of service*, within the meaning of article XIII B, section 6. The California Supreme Court explained in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46:

Looking at the language of section 6 then, it seems clear that by itself the term “higher level of service” is meaningless. It must be read in conjunction with the predecessor phrase “new program” to give it meaning. Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing “programs.” But the term “program” itself is not defined in article XIII B. What programs then did the electorate have in mind when section 6 was adopted? We conclude that the drafters and the electorate had in mind the commonly understood meanings of the term – programs that carry out the governmental function of providing services 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.<sup>185</sup>

Here, section 13515.28 requires an additional eight hours of training relating to crisis intervention behavioral health, and requires that training to be completed within a six-month period (depending on when an FTO was appointed or assigned). This training is above and beyond existing training requirements imposed by law. In addition, POST interprets Penal Code section 13515.28 to require the development and implementation of an entirely new course of one-time training.

Further, Penal Code section 13515.28 carries out the governmental function of providing a service to the public, and imposes unique requirements on local government that do not apply generally to all residents and entities in the state. The Senate Floor Analysis for the bill that added section 13515.28 states that “[p]eople with mental illnesses or intellectual disabilities are involved in nearly half of all police shootings...[t]he bill responds to the public’s demand to increase safety by mandating stronger evidence-based behavioral health training that has proven to reduce volatile confrontations between police officers and people with mental illnesses or

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<sup>184</sup> *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, 1367-1368 [emphasis added].

<sup>185</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

intellectual disabilities.”<sup>186</sup> Thus, the additional training is required pursuant to a state policy that peace officers should be trained to interact with persons with mental illness or intellectual disability and deescalate such situations non-violently.

Based on the foregoing, the Commission finds that the additional eight hours of training required by Penal Code section 13515.28 constitutes a new program or higher level of service.

#### **4. The New Requirements Mandated by Penal Code section 13515.28 Result in Increased Costs Mandated by the State.**

For the mandated activities to constitute reimbursable state-mandated activities under article XIII B, section 6 of the California Constitution, they must result in local agencies incurring increased costs mandated by the state. Government Code section 17514 defines “costs mandated by the state” as any increased cost that a local agency or school district incurs as a result of any statute or executive order that mandates a new program or higher level of service. Government Code section 17564(a) further requires that no claim shall be made nor shall any payment be made unless the claim exceeds \$1,000. In addition, a finding of costs mandated by the state means that none of the exceptions in Government Code section 17556 apply to deny the claim.

The claimants have alleged new costs incurred to comply with Penal Code section 13515.28, and have alleged that there are no ongoing offsetting revenues. Specifically, the City of South Lake Tahoe alleges \$11,150 in costs mandated by the state for fiscal year 2016-2017, and projects \$11,485 in fiscal year 2018-2019, for officers to attend the eight hour training course required by section 13515.28.<sup>187</sup> The City of Claremont alleges \$2,981 net costs (after a one-time grant) for fiscal year 2016-2017, and projects \$5,718 for fiscal year 2018-2019, without the grant, for its officers to attend the eight-hour training. The claimants have submitted documentation of their officers’ time and tuition expenses to attend the required training, which are authenticated by declarations sworn under penalty of perjury.<sup>188</sup> And, as discussed above, the training required by section 13515.28 is required only one time per FTO employee assigned or appointed; therefore some claimants may experience *recurring* costs when new FTOs are assigned, but not *ongoing* costs for FTOs who have already completed the required eight-hour training.

Moreover, there is no evidence in the record or in the law that local agencies have received any state aid from POST, or other additional revenue, sufficient to cover the costs of the new mandated activities pursuant to Government Code section 17556(e), or that the other exceptions to costs mandated by the state in section 17556 apply to deny this claim.

Based on the foregoing, the Commission finds, pursuant to Government Code section 17514, that the new requirements mandated by Penal Code section 13515.28 result in increased costs mandated by the state. In addition, any grants or other state funding that may be received by an eligible claimant will be identified in Parameters and Guidelines as offsetting revenue.

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<sup>186</sup> See, Exhibit A, Test Claim, page 38 [Senate Third Reading Analysis of SB 29, as amended August 31, 2015, p. 4].

<sup>187</sup> Exhibit A, Test Claim, pages 13-15.

<sup>188</sup> See Exhibit A, Test Claim, pages 47-55 [Cost Documentation for Each Officer]; 20-27 [Declarations].

## V. Conclusion

Based on the foregoing analysis, the Commission partially approves this Test Claim and finds that Penal Code section 13515.28, as added by Statutes 2015, chapter 469, imposes a reimbursable state-mandated program for city and county law enforcement agencies, and those police protection districts *that wholly supplant the law enforcement functions of the county within their jurisdiction* pursuant to Government Code section 53060.7, that are required to have a Field Training Program under California Code of Regulations, title 11, section 1004 and have appointed or assigned FTOs for that program, to:<sup>189</sup>

- Ensure that each FTO assigned or appointed prior to January 1, 2017 shall attend a one-time, eight-hour training on crisis intervention and behavioral health before June 30, 2017. (Penal Code section 13515.28, Stats 2015, ch. 469.)
- Ensure that each FTO assigned or appointed after January 1, 2017 shall attend a one-time, eight-hour training on crisis intervention and behavioral health within 180 days of being assigned or appointed as an FTO. (Penal Code section 13515.28, Stats 2015, ch. 469.)

FTOs who have completed 40 hours of crisis intervention and behavioral health training or who have completed eight hours of crisis intervention and behavioral health training in the past 24 months, are *exempt* from these requirements. In addition, reimbursement is not required for the local law enforcement employer to develop or present the training since these activities are not mandated.

All other statutes and code sections pled, and claims for reimbursement asserted are denied.

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<sup>189</sup> California Code of Regulations, title 11, section 1004(a), states that “[a]ny department which employs peace officers and/or Level 1 Reserve peace officers shall have a POST-approved Field Training Program.” Section 1004(b) states that a department that does not provide general law enforcement uniformed patrol services, or hires only lateral entry officers possessing a POST basic certificate and who have completed a similar POST approved Field Training Program may request an exemption and not comply with this requirement.

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On May 8, 2019, I served the:

- **Proposed Decision issued May 8, 2019**

*Peace Officer Training: Mental Health/Crisis Intervention, 17-TC-06*  
Penal Code Sections 13515.26, 13515.27, 13515.28, 13515.29, and 13515.295;  
as added or amended by Statutes 2015, Chapter 468 (SB 11) and  
Statutes 2015, Chapter 469 (SB 29)  
Cities of Claremont and South Lake Tahoe, Claimants

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 8, 2019 at Sacramento, California.

  
\_\_\_\_\_  
Jill L. Magee  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 3/22/19

**Claim Number:** 17-TC-06

**Matter:** Peace Officer Training: Mental Health/Crisis Intervention

**Claimant:** Cities of Claremont and South Lake Tahoe

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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, § 1181.3.)

**Manny Alvarez Jr.**, Executive Director, *Commission on Peace Officer Standards and Training*  
860 Stillwater Road, Suite 100, West Sacramento, CA 95605  
Phone: (916) 227-3909  
Manny.Alvarez@post.ca.gov

**Socorro Aquino**, *State Controller's Office*  
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 322-7522  
SAquino@sco.ca.gov

**Harmeet Barkschat**, *Mandate Resource Services, LLC*  
5325 Elkhorn Blvd. #307, Sacramento, CA 95842  
Phone: (916) 727-1350  
harmeet@calsdrc.com

**Lacey Baysinger**, *State Controller's Office*  
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 324-0254  
lbaysinger@sco.ca.gov

**Cindy Black**, City Clerk, *City of St. Helena*  
1480 Main Street, St. Helena, CA 94574  
Phone: (707) 968-2742  
ctzafoopoulos@cityofstheleena.org

**Allan Burdick**,  
7525 Myrtle Vista Avenue, Sacramento, CA 95831  
Phone: (916) 203-3608  
allanburdick@gmail.com

**J. Bradley Burgess**, *MGT of America*

895 La Sierra Drive, Sacramento, CA 95864  
Phone: (916)595-2646  
Bburgess@mgtamer.com

**Evelyn Calderon-Yee**, Bureau Chief, *State Controller's Office*  
Local Government Programs and Services, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 324-5919  
ECalderonYee@sco.ca.gov

**Gwendolyn Carlos**, *State Controller's Office*  
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 323-0706  
gcarlos@sco.ca.gov

**Daniel Carrigg**, Deputy Executive Director/Legislative Director, *League of California Cities*  
1400 K Street, Suite 400, Sacramento, CA 95814  
Phone: (916) 658-8222  
Dcarrigg@cacities.org

**Annette Chinn**, *Cost Recovery Systems, Inc.*  
**Claimant Representative**  
705-2 East Bidwell Street, #294, Folsom, CA 95630  
Phone: (916) 939-7901  
achinncrs@aol.com

**Carolyn Chu**, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*  
925 L Street, Suite 1000, Sacramento, CA 95814  
Phone: (916) 319-8326  
Carolyn.Chu@lao.ca.gov

**Michael Coleman**, *Coleman Advisory Services*  
2217 Isle Royale Lane, Davis, CA 95616  
Phone: (530) 758-3952  
coleman@muni1.com

**Anita Dagan**, Manager, Local Reimbursement Section, *State Controller's Office*  
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,  
Sacramento, CA 95816  
Phone: (916) 324-4112  
Adagan@sco.ca.gov

**Donna Ferebee**, *Department of Finance*  
915 L Street, Suite 1280, Sacramento, CA 95814  
Phone: (916) 445-3274  
donna.ferebee@dof.ca.gov

**Susan Geanacou**, *Department of Finance*  
915 L Street, Suite 1280, Sacramento, CA 95814  
Phone: (916) 445-3274  
susan.geanacou@dof.ca.gov

**Dillon Gibbons**, Legislative Representative, *California Special Districts Association*  
1112 I Street Bridge, Suite 200, Sacramento, CA 95814  
Phone: (916) 442-7887  
dillong@csda.net

**Jim Grottkau**, Bureau Chief, *Commission on Peace Officer Standards and Training*  
Basic Training, 860 Stillwater Road, Suite 100, West Sacramento, CA 95605



Phone: (916) 227-3909  
Jim.Grottkau@post.ca.gov

**Heather Halsey**, Executive Director, *Commission on State Mandates*  
980 9th Street, Suite 300, Sacramento, CA 95814  
Phone: (916) 323-3562  
heather.halsey@csm.ca.gov

**Sunny Han**, Project Manager, *City of Huntington Beach*  
2000 Main Street, Huntington Beach, CA 92648  
Phone: (714) 536-5907  
Sunny.han@surfcity-hb.org

**Chris Hill**, Principal Program Budget Analyst, *Department of Finance*  
Local Government Unit, 915 L Street, Sacramento, CA 95814  
Phone: (916) 445-3274  
Chris.Hill@dof.ca.gov

**Edward Jewik**, *County of Los Angeles*  
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012  
Phone: (213) 974-8564  
ejewik@auditor.lacounty.gov

**Matt Jones**, *Commission on State Mandates*  
980 9th Street, Suite 300, Sacramento, CA 95814  
Phone: (916) 323-3562  
matt.jones@csm.ca.gov

**Anita Kerezsi**, *AK & Company*  
2425 Golden Hill Road, Suite 106, Paso Robles, CA 93446  
Phone: (805) 239-7994  
akcompanysb90@gmail.com

**Lisa Kurokawa**, Bureau Chief for Audits, *State Controller's Office*  
Compliance Audits Bureau, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 327-3138  
lkurokawa@sco.ca.gov

**Erika Li**, Program Budget Manager, *Department of Finance*  
915 L Street, 10th Floor, Sacramento, CA 95814  
Phone: (916) 445-3274  
erika.li@dof.ca.gov

**Jill Magee**, Program Analyst, *Commission on State Mandates*  
980 9th Street, Suite 300, Sacramento, CA 95814  
Phone: (916) 323-3562  
Jill.Magee@csm.ca.gov

**Debbie McIntyre**, Finance Director, *City of South Lake Tahoe*  
**Claimant Contact**  
1901 Airport Road, South Lake Tahoe, CA 96150-7004  
Phone: (530) 542-7402  
DMcIntyre@cityofslt.us

**Jane McPherson**, Financial Services Director, *City of Oceanside*  
300 North Coast Highway, Oceanside, CA 92054  
Phone: (760) 435-3055  
JmcPherson@oceansideca.org

**Michelle Mendoza, MAXIMUS**

17310 Red Hill Avenue, Suite 340, Irvine, CA 95403  
Phone: (949) 440-0845  
michellemendoza@maximus.com

**Meredith Miller, Director of SB90 Services, MAXIMUS**

3130 Kilgore Road, Suite 400, Rancho Cordova, CA 95670  
Phone: (972) 490-9990  
meredithcmiller@maximus.com

**Lourdes Morales, Senior Fiscal and Policy Analyst, Legislative Analyst's Office**

925 L Street, Suite 1000, Sacramento, CA 95814  
Phone: (916) 319-8320  
Lourdes.Morales@LAO.CA.GOV

**Andy Nichols, Nichols Consulting**

1857 44th Street, Sacramento, CA 95819  
Phone: (916) 455-3939  
andy@nichols-consulting.com

**Arthur Palkowitz, Artiano Shinoff**

2488 Historic Decatur Road, Suite 200, San Diego, CA 92106  
Phone: (619) 232-3122  
apalkowitz@as7law.com

**Johnnie Pina, Legislative Policy Analyst, League of Cities**

1400 K Street, Suite 400, Sacramento, CA 95814  
Phone: (916) 658-8214  
jpina@cacities.org

**Adam Pirrie, Finance Director, City of Claremont****Claimant Contact**

207 Harvard Ave, Claremont, CA 91711  
Phone: (909) 399-5356  
apirrie@ci.claremont.ca.us

**Jai Prasad, County of San Bernardino**

Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018  
Phone: (909) 386-8854  
jai.prasad@atc.sbcounty.gov

**Mark Rewolinski, MAXIMUS**

808 Moorefield Park Drive, Suite 205, Richmond, VA 23236  
Phone: (949) 440-0845  
markrewolinski@maximus.com

**Brian Rutledge, Budget Analyst, Department of Finance**

Local Government Unit, 915 L Street, Sacramento, CA 95814  
Phone: (916) 445-3274  
Brian.Rutledge@dof.ca.gov

**Theresa Schweitzer, City of Newport Beach**

100 Civic Center Drive, Newport Beach, CA 92660  
Phone: (949) 644-3140  
tschweitzer@newportbeachca.gov

**Camille Shelton, Chief Legal Counsel, Commission on State Mandates**

980 9th Street, Suite 300, Sacramento, CA 95814

Phone: (916) 323-3562  
camille.shelton@csm.ca.gov

**Carla Shelton**, *Commission on State Mandates*  
980 9th Street, Suite 300, Sacramento, CA 95814  
Phone: (916) 323-3562  
carla.shelton@csm.ca.gov

**Natalie Sidarous**, Chief, *State Controller's Office*  
Local Government Programs and Services Division, 3301 C Street, Suite 740, Sacramento, CA 95816  
Phone: 916-445-8717  
NSidarous@sco.ca.gov

**Michelle Skaggs Lawrence**, City Manager, *City of Oceanside*  
300 North Coast Highway, Oceanside, CA 92054  
Phone: (760) 435-3055  
citymanager@oceansideca.org

**Jim Spano**, Chief, Mandated Cost Audits Bureau, *State Controller's Office*  
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 323-5849  
jspano@sco.ca.gov

**Dennis Speciale**, *State Controller's Office*  
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 324-0254  
DSpeciale@sco.ca.gov

**Joe Stephenshaw**, Director, *Senate Budget & Fiscal Review Committee*  
California State Senate, State Capitol Room 5019, Sacramento, CA 95814  
Phone: (916) 651-4103  
Joe.Stephenshaw@sen.ca.gov

**Derk Symons**, Staff Finance Budget Analyst, *Department of Finance*  
Local Government Unit, 915 L Street, Sacramento, CA 95814  
Phone: (916) 445-3274  
Derk.Symons@dof.ca.gov

**Jolene Tollenaar**, *MGT of America*  
2251 Harvard Street, Suite 134, Sacramento, CA 95815  
Phone: (916) 243-8913  
jolenetollenaar@gmail.com

**Evelyn Tseng**, *City of Newport Beach*  
100 Civic Center Drive, Newport Beach, CA 92660  
Phone: (949) 644-3127  
etseng@newportbeachca.gov

**Brian Uhler**, Principal Fiscal & Policy Analyst, *Legislative Analyst's Office*  
925 L Street, Suite 1000, Sacramento, CA 95814  
Phone: (916) 319-8328  
Brian.Uhler@LAO.CA.GOV

**Renee Wellhouse**, *David Wellhouse & Associates, Inc.*  
3609 Bradshaw Road, H-382, Sacramento, CA 95927  
Phone: (916) 797-4883  
dwa-renee@surewest.net

**Patrick Whitnell**, General Counsel, *League of California Cities*

1400 K Street, Suite 400, Sacramento, CA 95814

Phone: (916) 658-8281

pwhitnell@cacities.org

**Hasmik Yaghobyan**, *County of Los Angeles*

Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012

Phone: (213) 974-9653

hyaghobyan@auditor.lacounty.gov