

**ITEM 4**  
**TEST CLAIM**  
**PROPOSED STATEMENT OF DECISION**

Penal Code Sections 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, 11165.6,  
11165.7, 11165.9, 11165.12, 11166, 11166.2, 11166.9,  
11168 (Including Former Penal Code Section 11161.7), 11169, and 11170

Statutes 1977, Chapter 958  
Statutes 1980, Chapter 1071  
Statutes 1981, Chapter 435  
Statutes 1982, Chapters 162 and 905  
Statutes 1984, Chapters 1423 and 1613  
Statutes 1985, Chapter 1598  
Statutes 1986, Chapters 1289 and 1496  
Statutes 1987, Chapters 82, 531 and 1459  
Statutes 1988, Chapters 269, 1497 and 1580  
Statutes 1989, Chapter 153  
Statutes 1990, Chapters 650, 1330, 1363 and 1603  
Statutes 1991, Chapter 132  
Statutes 1992, Chapters 163, 459 and 1338  
Statutes 1993, Chapters 219, 346 and 510  
Statutes 1996, Chapters 1080 and 1081  
Statutes 1997, Chapters 842, 843 and 844  
Statutes 1999, Chapters 475 and 1012  
Statutes 2000, Chapters 287 and 916

California Code of Regulations, Title 11, Sections 901, 902 and 903

Department of Justice Forms SS 8572 (“Suspected Child Abuse Report”) and  
SS 8583 (“Child Abuse Investigation Report”)

*Interagency Child Abuse and Neglect (ICAN) Investigation Reports*  
(00-TC-22)

County of Los Angeles, Claimant

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**EXECUTIVE SUMMARY**

The sole issue before the Commission on State Mandates (“Commission”) is whether the Proposed Statement of Decision accurately reflects the Commission’s decision on the *Interagency Child Abuse and Neglect Investigation Reports* test claim.<sup>1</sup>

**Recommendation**

Staff recommends that the Commission adopt the Proposed Statement of Decision, beginning on page three, which accurately reflects the staff analysis and recommendation on this test claim.

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<sup>1</sup> California Code of Regulations, title 2, section 1188.1, subdivision (a).

Minor changes, including those that reflect the hearing testimony and vote count, will be included when issuing the final Statement of Decision.

If the Commission's vote on item 3 modifies the staff analysis, staff recommends that the motion to adopt the Proposed Statement of Decision reflect those changes, which will be made before issuing the final Statement of Decision. Alternatively, if the changes are significant, staff recommends that adoption of a Proposed Statement of Decision be continued to the January 31, 2008 Commission hearing.

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BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM:

Penal Code Sections 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, 11165.6, 11165.7, 11165.9, 11165.12, 11166, 11166.2, 11166.9, 11168 (Including Former Penal Code Section 11161.7), 11169, and 11170

Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982, Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter 1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531 and 1459; Statutes 1988, Chapters 269, 1497 and 1580; Statutes 1989, Chapter 153; Statutes 1990, Chapters 650, 1330, 1363 and 1603; Statutes 1991, Chapter 132; Statutes 1992, Chapters 163, 459 and 1338; Statutes 1993, Chapters 219, 346 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997, Chapters 842, 843 and 844; Statutes 1999, Chapters 475 and 1012; Statutes 2000, Chapters 287 and 916;

California Code of Regulations, Title 11, Sections 901, 902 and 903; Department of Justice Forms SS 8572 (“Suspected Child Abuse Report”) and ; SS 8583 (“Child Abuse Investigation Report”);

Filed on June 29, 2001,

By County of Los Angeles, Claimant.

Case No.: 00-TC-22

*Interagency Child Abuse and Neglect  
Investigation Reports*

PROPOSED STATEMENT OF DECISION  
PURSUANT TO GOVERNMENT CODE  
SECTION 17500 ET SEQ.; CALIFORNIA  
CODE OF REGULATIONS, TITLE 2,  
DIVISION 2, CHAPTER 2.5, ARTICLE 7

(Proposed for Adoption on December 6, 2007)

**PROPOSED STATEMENT OF DECISION**

The Commission on State Mandates (“Commission”) heard and decided this test claim during a regularly scheduled hearing on December 6, 2007. [Witness list will be included in the final Statement of 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 section 17500 et seq., and related case law.

The Commission [adopted/modified] the staff analysis to partially approve this test claim at the hearing by a vote of [vote count will be included in the final Statement of Decision].

### **Summary of Findings**

The County of Los Angeles filed a test claim on June 29, 2001, alleging that amendments to California's mandatory child abuse reporting laws impose a reimbursable state-mandated program. A child abuse reporting law was first added to the Penal Code in 1963, and initially required medical professionals to report suspected child abuse to local law enforcement or child welfare authorities. The law was regularly expanded to include more professions required to report suspected child abuse (now termed "mandated reporters"), and in 1980, California reenacted and amended the law, entitling it the "Child Abuse and Neglect Reporting Act," or CANRA. As part of this program, the Department of Justice (DOJ) maintains a Child Abuse Centralized Index, which, since 1965, maintains reports of child abuse statewide. The index is now used by government agencies conducting background checks on individuals who will interact with children in employment or volunteer settings.

A number of changes to the law have occurred, particularly with a reenactment in 1980, and substantive amendments in 1997 and 2000. Claimant alleges that all of these changes have imposed a reimbursable state-mandated program.

Department of Finance and the Department of Social Services both oppose the test claim, arguing that the claim alleges duties of law enforcement and child protective services that were required by prior law. Where the state agencies acknowledge that some new duties may have been imposed, they contend that adequate funding has already been provided to counties as part of the joint federal-state-local funding scheme for child welfare.

The Commission finds that the test claim statutes and executive orders have created numerous new local duties for reporting child abuse to the state, as well as record-keeping and notification activities that were not required by prior law, thus mandating a new program or higher level of service.

At this time, there is no evidence in the record to demonstrate that the mandated activities have been offset or funded by the state or federal government in a manner and amount "sufficient to fund the cost of the state mandate." On the contrary, Welfare and Institutions Code section 10101 indicates that "the state's share of the costs of the child welfare program shall be 70 percent of the actual nonfederal expenditures for the program, or the amount appropriated by the Legislature for that purpose, whichever is less." Conversely, counties must have a share of costs for child welfare services of at least 30 percent of the nonfederal expenditures. In addition, there is no evidence that the counties are required to use the funds identified for the costs of mandated activities. There is no evidence in the record on funding for cities, school districts, or special districts.

Therefore, the Commission finds that Government Code section 17556, subdivision (e) does not apply to disallow a finding of costs mandated by the state, but that all claims for reimbursement for the approved activities must be offset by any program funds already received from non-local sources.

### **Conclusion**

The Commission concludes that Penal Code sections 11165.9, 11166, 11166.2, 11166.9, 11168 (formerly 11161.7), 11169, 11170, as added or amended by Statutes 1977, chapter 958, Statutes

1980, chapter 1071, Statutes 1981, chapter 435, Statutes 1982, chapters 162 and 905, Statutes 1984, chapters 1423 and 1613, Statutes 1985, chapter 1598, Statutes 1986, chapters 1289 and 1496, Statutes 1987, chapters 82, 531 and 1459, Statutes 1988, chapters 269, 1497 and 1580, Statutes 1989, chapter 153, Statutes 1990, chapters 650, 1330, 1363 and 1603, Statutes 1992, chapters 163, 459 and 1338, Statutes 1993, chapters 219 and 510, Statutes 1996, chapters 1080 and 1081, Statutes 1997, chapters 842, 843 and 844, Statutes 1999, chapters 475 and 1012, and Statutes 2000, chapter 916; and executive orders California Code of Regulations, title 11, section 903, and “Child Abuse Investigation Report” Form SS 8583, mandate new programs or higher levels of service within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

### ***Distributing the Suspected Child Abuse Report Form***

*Any police department (not including a K-12 school district police or security department), sheriff’s department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:*

- Distribute the child abuse reporting form adopted by the Department of Justice (currently known as the “Suspected Child Abuse Report” Form SS 8572) to mandated reporters. (Pen. Code, § 11168, formerly § 11161.7.)

### ***Reporting Between Local Departments***

#### **Accepting and Referring Initial Child Abuse Reports when a Department Lacks Jurisdiction:**

*Any police department (not including a K-12 school district police or security department), sheriff’s department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:*

- Transfer a call electronically or immediately refer the case by telephone, fax, or electronic transmission, to an agency with proper jurisdiction, whenever the department lacks subject matter or geographical jurisdiction over an incoming report of suspected child abuse or neglect. (Pen. Code, § 11165.9.)

#### **Cross-Reporting of Suspected Child Abuse or Neglect from County Welfare and Probation Departments to the Law Enforcement Agency with Jurisdiction and the District Attorney’s Office:**

*A county probation department shall:*

- Report by telephone immediately, or as soon as practically possible, to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney’s office every known or suspected instance of child abuse, as defined in Penal Code section 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent’s substance abuse, which shall be reported only to the county welfare department. (Pen. Code, § 11166, subd. (h), now subd. (j).)

- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

As of January 1, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours. (Pen. Code, § 11166, subd. (h), now subd. (j).)

*A county welfare department shall:*

- Report by telephone immediately, or as soon as practically possible, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney’s office every known or suspected instance of child abuse, as defined in Penal Code section 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent’s substance abuse, which shall be reported only to the county welfare department.

This activity does not include making an initial report of child abuse and neglect from a county welfare department to the law enforcement agency having jurisdiction over the case, which was required under prior law to be made “without delay.” (Pen. Code, § 11166, subd. (h), now subd. (j).)

- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency, including the law enforcement agency having jurisdiction over the case, to which it is required to make a telephone report under this subdivision.

As of January 1, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours. (Pen. Code, § 11166, subd. (h), now subd. (j).)

Cross-Reporting of Suspected Child Abuse or Neglect from the Law Enforcement Agency to the County Welfare and Institutions Code Section 300 Agency, County Welfare, and the District Attorney’s Office:

*A law enforcement agency (including city, special district, school district and community college district police departments, and county sheriff’s departments) shall:*

- Report by telephone immediately, or as soon as practically possible, to the agency given responsibility for investigation of cases under Welfare and Institutions Code section 300 and to the district attorney’s office every known or suspected instance of child abuse reported to it, except acts or omissions coming within Penal Code section 11165.2, subdivision (b), which shall be reported only to the county welfare department. (Pen. Code, § 11166, subd. (i), now subd. (k).)
- Report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child’s welfare, or as the result of the failure of a person responsible for the child’s welfare to adequately protect the minor from abuse when the person responsible for the child’s welfare knew or reasonably should have known that the minor was in danger of abuse. (Pen. Code, § 11166, subd. (i), now subd. (k).)

- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

As of January 1, 2006, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours. (Pen. Code, § 11166, subd. (i), now subd. (k).)

Receipt of Cross-Reports by District Attorney’s Office:

*A district attorney’s office shall:*

- Receive reports of every known or suspected instance of child abuse reported to law enforcement, county probation or county welfare departments, except acts or omissions of general neglect coming within Penal Code section 11165.2, subdivision (b). (Pen. Code, § 11166, subs. (h) and (i), now subs. (j) and (k).)

Reporting to Licensing Agencies:

*Any police department (not including a K-12 school district police or security department), sheriff’s department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:*

- Report by telephone immediately or as soon as practically possible to the appropriate licensing agency every known or suspected instance of child abuse or neglect when the instance of abuse or neglect occurs while the child is being cared for in a child day care facility, involves a child day care licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee or staff person. The agency shall also send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision. The agency shall send the licensing agency a copy of its investigation report and any other pertinent materials.

As of July 31, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours. (Pen. Code, § 11166.2.)

Additional Cross-Reporting in Cases of Child Death:

*A law enforcement agency (including city, special district, school district and community college district police departments, and sheriff’s departments) shall:*

- Cross-report all cases of child death suspected to be related to child abuse or neglect to the county child welfare agency. (Pen. Code, § 11166.9, subd. (k), now § 11174.34, subd. (k).)

*A county welfare department shall:*

- Cross-report all cases of child death suspected to be related to child abuse or neglect to law enforcement. (Pen. Code, § 11166.9, subd. (k), now § 11174.34, subd. (k).)

- Create a record in the Child Welfare Services/Case Management System (CWS/CMS) on all cases of child death suspected to be related to child abuse or neglect. (Pen. Code, § 11166.9, subd. (1), now § 11174.34, subd. (1).)
- Enter information into the CWS/CMS upon notification that the death was subsequently determined not to be related to child abuse or neglect. (Pen. Code, § 11166.9, subd. (1), now § 11174.34, subd. (1).)

***Investigation of Suspected Child Abuse, and Reporting to and from the State Department of Justice***

*Any police department (not including a K-12 school district police or security department), sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:*

- Complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive, as defined in Penal Code section 11165.12, for purposes of preparing and submitting the state “Child Abuse Investigation Report” Form SS 8583, or subsequent designated form, to the Department of Justice. (Pen. Code, § 11169, subd. (a); Cal. Code Regs., tit. 11, § 903, “Child Abuse Investigation Report” Form SS 8583.)
- Forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect which is determined to be substantiated or inconclusive, as defined in Penal Code section 11165.12. Unfounded reports, as defined in Penal Code section 11165.12, shall not be filed with the Department of Justice. If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact. The reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission. (Pen. Code, § 11169, subd. (a); Cal. Code Regs., tit. 11, § 903, “Child Abuse Investigation Report” Form SS 8583.)

***Notifications Following Reports to the Central Child Abuse Index***

*Any police department (not including a K-12 school district police or security department), sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:*

- Notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index, in any form approved by the Department of Justice, at the time the “Child Abuse Investigation Report” is filed with the Department of Justice. (Pen. Code, § 11169, subd. (b).)
- Make relevant information available, when received from the Department of Justice, to the child custodian, guardian ad litem appointed under section 326, or counsel appointed under section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse or severe neglect. (Pen. Code, § 11170, subd. (b)(1).)
- Inform the mandated reporter of the results of the investigation and of any action the agency is taking with regard to the child or family, upon completion of the child abuse



investigation or after there has been a final disposition in the matter. (Pen. Code, § 11170, subd. (b)(2).)

- Notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index, upon receipt of relevant information concerning child abuse or neglect investigation reports contained in the index from the Department of Justice when investigating a home for the placement of dependant children. The notification shall include the name of the reporting agency and the date of the report. (Pen. Code, § 11170, subd. (b)(5), now subd. (b)(6).)

*Any police department (not including a K-12 school district police or security department), sheriff's department, county probation department if designated by the county to receive mandated reports, county welfare department, county licensing agency, or district attorney's office shall:*

- Obtain the original investigative report from the reporting agency, and draw independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, or placement of a child, when a report is received from the Child Abuse Central Index. (Pen. Code, § 11170, subd. (b)(6)(A), now (b)(8)(A).)

*Any law enforcement agency, county probation department, or county welfare department shall:*

- Notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index, upon receipt of relevant information concerning child abuse or neglect reports contained in the index from the Department of Justice regarding placement with a responsible relative pursuant to Welfare and Institutions Code sections 281.5, 305, and 361.3. The notification shall include the location of the original investigative report and the submitting agency. The notification shall be submitted to the person listed at the same time that all other parties are notified of the information, and no later than the actual judicial proceeding that determines placement. (Pen. Code, § 11170, subd. (c).)

### ***Record Retention***

*Any police department (not including a K-12 school district police or security department), sheriff's department, or county probation department if designated by the county to receive mandated reports, shall:*

- Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of 8 years for counties and cities (a higher level of service above the two-year record retention requirement pursuant to Gov. Code §§ 26202 (cities) and 34090 (counties)), and for a minimum of 10 years for community colleges and special district police departments. If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years.

*A county welfare department shall:*

- Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of 7 years for welfare records (a higher level of service above the three-year record retention requirement pursuant to Welf. & Inst. Code,

§ 10851.) If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years. (Pen. Code, § 11169, subd. (c).)

The Commission concludes that any test claim statutes, executive orders and allegations not specifically approved above, do not mandate a new program or higher level of service, or impose costs mandated by the state under article XIII B, section 6.

## BACKGROUND

This test claim alleges that amendments to California's mandatory child abuse reporting laws impose a reimbursable state-mandated program. A child abuse reporting law was first added to the Penal Code in 1963, and initially required medical professionals to report suspected child abuse to local law enforcement or child welfare authorities. The law was regularly expanded to include more professions required to report suspected child abuse (now termed "mandated reporters"), and in 1980, California reenacted and substantively amended the law, entitling it the "Child Abuse and Neglect Reporting Act," sometimes referred to as "CANRA."

The court in *Planned Parenthood Affiliates v. Van de Kamp* (1986) 181 Cal.App.3d 245, pages 258-260, provides an overview of the complete Child Abuse and Neglect Reporting Act, following the 1980 reenactment at Penal Code section 11164 et seq. (footnotes omitted):

The law is designed to bring the child abuser to justice and to protect the innocent and powerless abuse victim. (See Comment, *Reporting Child Abuse: When Moral Obligations Fail* (1983) 15 Pacific L.J. 189.) The reporting law imposes a mandatory reporting requirement on individuals whose professions bring them into contact with children. (*Id.*, at pp. 189-190.) Physical abuse, sexual abuse, willful cruelty, unlawful corporal punishment and neglect must be reported.

¶...¶

The reporting law applies to three broadly defined groups of professionals: "health practitioners," child care custodians, and employees of a child protective agency. "Health practitioners" is a broad category subdivided into "medical" and "nonmedical" practitioners, and encompasses a wide variety of healing professionals, including physicians, nurses, and family and child counselors. (§§ 11165, subds. (i), (j); 11165.2.) "Child care custodians" include teachers, day care workers, and a variety of public health and educational professionals. (§§ 11165, subd. (h); 11165.1 [first of two identically numbered sections]; 11165.5.) Employees of "child protective agencies" consist of police and sheriff's officers, welfare department employees and county probation officers. (§ 11165, subd. (k).)

The Legislature acknowledged the need to distinguish between instances of abuse and those of legitimate parental control. "[T]he Legislature recognizes that the reporting of child abuse ... involves a delicate balance between the right of parents to control and raise their own children by imposing reasonable discipline and the social interest in the protection and safety of the child ... . [I]t is the intent of the Legislature to require the reporting of child abuse which is of a serious nature and is not conduct which constitutes reasonable parental discipline." (Stats. 1980, ch. 1071, § 5, p. 3425.)

To strike the “delicate balance” between child protection and parental rights, the Legislature relies on the judgment and experience of the trained professional to distinguish between abusive and nonabusive situations. “[A]ny child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment *whom he or she knows or reasonably suspects has been the victim of child abuse* shall report the known or suspected instance of child abuse to a child protective agency .... ‘[R]easonable suspicion’ means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, *drawing when appropriate on his or her training and experience*, to suspect child abuse.” (§ 11166, subd. (a), italics added.) As one commentator has observed, “[t]he occupational categories ... are presumed to be uniquely qualified to make informed judgments when suspected abuse is not blatant.” (See Comment, *Reporting Child Abuse: When Moral Obligations Fail*, *supra.*, 15 Pacific L.J. at p. 214, fn. omitted.)

The mandatory child abuse report must be made to a “child protective agency,” i.e., a police or sheriff’s department or a county probation or welfare department. The professional must make the report “immediately or as soon as practically possible by telephone.” The professional then has 36 hours in which to prepare and transmit to the agency a written report, using a form supplied by the Department of Justice. The telephone and the written reports must include the name of the minor, his or her present location, and the information that led the reporter to suspect child abuse. (§§ 11166, subd. (a); 11167, subd. (a); 11168.) Failure to make a required report is a misdemeanor, carrying a maximum punishment of six months in jail and a \$1,000 fine. (§ 11172, subd. (e).)

The child protective agency receiving the initial report must share the report with all its counterpart child protective agencies by means of a system of cross-reporting. An initial report to a probation or welfare department is shared with the local police or sheriff’s department, and vice versa. Reports are cross-reported in almost all cases to the office of the district attorney. (§ 11166, subd. (g).) Initial reports are confidential, but may be disclosed to anyone involved with the current investigation and prosecution of the child abuse claim, including the district attorney who has requested notification of any information relevant to the reported instance of abuse. (§ 11167.5.)

A child protective agency receiving the initial child abuse report then conducts an investigation. The Legislature intends an investigation be conducted on every report received. The investigation should include a determination of the “person or persons apparently responsible for the abuse.” (Stats. 1980, ch. 1071, § 5, pp. 3425-3426.) Once the child protective agency conducts an “active investigation” of a report and determines that it is “not unfounded,” the agency must forward a written report to the Department of Justice, on forms provided by the department. (§§ 11168, 11169.) An “unfounded” report is one “which is determined by a child protective agency investigator to be false, to be inherently improbable, to involve

an accidental injury, or not to constitute child abuse as defined in Section 11165.” (§ 11165.6, subd. (c)(2).)

The Department of Justice retains the reports in a statewide index, a computerized data bank known as the “Child Abuse Central Registry,” which is to be continually updated and “shall not contain any reports that are determined to be unfounded.” (§ 11170, subd. (a).) If a child protective agency subsequently determines that a report is “unfounded,” it must so inform the Department of Justice who shall remove the report from its files. (§ 11169.)

The reports in the registry are not public documents, but may be released to a number of individuals and government agencies. Principally, the information may be released to an investigator from the child protective agency currently investigating the reported case of actual or suspected abuse or to a district attorney who has requested notification of a suspected child abuse case. Past reports involving the same minor are also disclosable to the child protective agency and the district attorney involved or interested in a current report under investigation. In addition, future reports involving the same minor will cause release of all past reports to the investigating law enforcement agencies. (§§ 11167.5, subd. (b)(1); 11167, subd. (c); 11170, subd. (b)(1).)

As part of the earlier versions of California’s mandated reporting laws, a Child Abuse Centralized Index has been operated by the Department of Justice (DOJ) since 1965.<sup>2</sup> In addition, in January 1974, Congress enacted the federal “Child Abuse Prevention and Treatment Act,” known as CAPTA (Pub.L. No. 93-247). This established a federal advisory board and grant funding for states with comprehensive child abuse and neglect reporting laws. This law has been continually reenacted and currently provides grant funds to all eligible states and territories for child abuse and neglect reporting, prevention, and treatment programs.<sup>3</sup>

### **Claimant’s Position**

The County of Los Angeles’s June 29, 2001<sup>4</sup> test claim filing alleges that amendments to child abuse reporting statutes since January 1, 1975, and related DOJ regulations and forms, have resulted in reimbursable increased costs mandated by the state. The test claim narrative and declarations allege that the test claim statutes and executive orders imposed new activities on the claimant in the following categories:

1. Program Implementation
2. Initial Case Finding and Reporting
3. Taking and Referring Reports
4. Cross-Reporting and District Attorney Reporting

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<sup>2</sup> Former Penal Code section 11165.1, as amended by Statutes 1974, chapter 348.

<sup>3</sup> 42 United States Code section 5106a.

<sup>4</sup> The potential reimbursement period begins no earlier than July 1, 1999, based upon the filing date for this test claim. (Gov. Code, § 17557.)

5. Investigation and File Queries, Maintenance
6. Child Abuse Central Index Reporting
7. Notifications

The filing includes declarations of representatives from the County of Los Angeles Department of Children and Family Services, the District Attorney's Office, and the Sheriff's Department.

Claimant filed comments on September 7, 2007, expressing agreement with the draft staff analysis findings and conclusions, and attaching exhibits related to the county's implementation of the program.

### **Department of Finance Position**

In comments filed December 10, 2001, DOF alleges the test claim does not meet filing standards, stating that "[t]he claimant has failed to set forth clearly and precisely which specific statutory provisions, enacted on or after 1975, imposed new mandates on local government, as required by [Commission regulations.]"

Addressing the substantive issues raised, DOF argued that no reimbursable state-mandated program has been imposed by any of the test claim statutes or executive orders. DOF asserted that the claim "attempts to characterize as "new duties" many of the long-standing statutory obligations of local law enforcement, probation, and child protective agencies to receive and refer reports concerning allegations of child abuse."

DOF also contended that "[a]rticle XIII B, section 6 requires subvention only when the costs in question can be recovered *solely* from local tax revenues. [footnote (fn): *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.] The Child Welfare Program, of which child protective services are a part, is funded by a combination of federal, state and local funds. [fn: Welfare and Institutions Code § 10101, Exhibit 4, attached.]" DOF argued that because of this joint funding, "the test claim legislation is not subject to state subvention."

On July 20, 2007, DOF filed a response to Commission staff's request for additional information to address the assertion that the test claim activities have been funded. DOF's response included a CD containing pages from the Budget Act regarding Item 5180-151-0001, and DSS County Fiscal Letters, from fiscal year 1999-2000 through 2006-2007. This filing is discussed further at Issue 3 below.

On September 12, 2007, DOF filed comments on the draft staff analysis stating concurrence with the recommendation to partially approve the test claim, but concluding that if the analysis is approved by the Commission, "the claimant's statements that the activities have neither been offset or funded by the state or federal government must be fully substantiated."

### **Department of Social Services Position**

DSS's comments on the test claim filing, submitted December 10, 2001, conclude that for any new activities alleged "no additional reimbursement is warranted. The existing funding scheme adequately reimburses local government for costs associated with the delivery of child welfare services which includes the provision of services and level of services mandated under current law." DSS's comments regarding specific test claim activities will be addressed in the analysis below.

## Interested Party Comments

San Bernardino Community College District, the claimant for a related but separate test claim, *Child Abuse and Neglect Reporting* (01-TC-21), filed comments on the draft staff analysis for ICAN (00-TC-22), received September 7, 2007. The comments argue that the analysis “appears to assume that since school district police departments are lodged in school districts, these police departments need not implement this mandate, or that their compliance will be different from all other police departments. There are no findings of fact or law for this conclusion.” The interested party comments are addressed in the analysis below.

## COMMISSION FINDINGS

The courts have found that article XIII B, section 6, of the California Constitution<sup>5</sup> recognizes the state constitutional restrictions on the powers of local government to tax and spend.<sup>6</sup> “Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”<sup>7</sup> A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.<sup>8</sup> In addition, the required activity or task must be new, constituting a “new program,” or it must create a “higher level of service” over the previously required level of service.<sup>9</sup>

The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.<sup>10</sup> To determine if the program is new or imposes a higher level of service, the test claim statutes and executive

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<sup>5</sup> Article XIII B, section 6, subdivision (a), provides: (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

<sup>6</sup> *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

<sup>7</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

<sup>8</sup> *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

<sup>9</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, (*San Diego Unified School Dist.*); *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835 (*Lucia Mar*).

<sup>10</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar, supra*, 44 Cal.3d 830, 835.)

orders must be compared with the legal requirements in effect immediately before the enactment.<sup>11</sup> A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”<sup>12</sup>

Finally, the newly required activity or increased level of service must impose costs mandated by the state.<sup>13</sup>

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>14</sup> In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>15</sup>

### **Issue 1: What is the scope of the Commission’s jurisdiction on this test claim?**

DOF challenged the sufficiency of the test claim pleadings in their comments filed December 10, 2001. Government Code section 17551 requires the Commission to hear and decide upon a claim by a local agency or school district that the claimant is entitled to reimbursement pursuant to article XIII B, section 6 of the California Constitution. Government Code section 17521 defines the test claim as the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Thus, the Government Code gives the Commission jurisdiction only over those statutes or executive orders pled by the claimant in the test claim. At the time of the test claim filing on June 29, 2001, section 1183, subdivision (e), of the Commission regulations required the following content for an acceptable filing:<sup>16</sup>

All test claims, or amendments thereto, shall be filed on a form provided by the commission [and] shall contain at least the following elements and documents:

(1) A copy of the statute or executive order alleged to contain or impact the mandate. The specific sections of chaptered bill or executive order alleged must be identified.

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<sup>11</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

<sup>12</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

<sup>13</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 (*County of Sonoma*); Government Code sections 17514 and 17556.

<sup>14</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

<sup>15</sup> *County of Sonoma*, *supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>16</sup> The required contents of a test claim are now codified at Government Code section 17553.

The regulation also required copies of all “relevant portions of” law and “[t]he specific chapters, articles, sections, or page numbers must be identified,” as well as a detailed narrative describing the prior law and the new program or higher level of service alleged.

The test claim cover pages list “Penal Code Part 4, Title 1, Chapter 2, Article 2.5: The Child Abuse and Neglect Report Act, as Specified, and as Added or Amended by Chapter 1071, Statutes of 1980 and Subsequent Statutes, Including Penal Code Section 11168, and as Including Former Penal Code Section 11161.7, Amended by Chapter 958, Statutes of 1977.” The title pages also include specific references to three regulations and two state forms, pled as executive orders.

The Commission identifies specific allegations in the test claim narrative or in the claimant’s rebuttal comments filed February 15, 2002, regarding Penal Code sections 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, 11165.6, 11165.7, 11165.9, 11165.12, 11166, 11166.2, 11166.9, 11168, 11169, and 11170, as added or amended by Statutes 1980, chapter 1071, through amendments by Statutes 2001, chapter 916. The test claim allegations also include former Penal Code section 11161.7, as amended by Statutes 1977, chapter 958, as it was later incorporated into Penal Code section 11168. The claim alleges reimbursable costs are imposed on the county Department of Children and Family Services, the District Attorney’s Office, and the Sheriff’s Department. The Commission takes jurisdiction over these statutes and code sections, along with the executive orders pled, and these will be analyzed below for the imposition of a reimbursable state mandated program.

**Issue 2: What local entities are included in the definition of “police department” as used in Penal Code section 11165.9?**

San Bernardino Community College District filed interested party comments on the draft staff analysis on September 7, 2007, requesting that the test claim findings be made for the legal requirements “for all police departments and law enforcement agencies, and not exclude school district police departments without a compelling reason.”

The definition under one of the test claim statutes, Penal Code section 11165.9, requires that mandated reports of suspected child abuse or neglect shall be made to

*any police department, sheriff’s department, county probation department if designated by the county to receive mandated reports, or the county welfare department. It does not include a school district police or security department.*

This definition is also cross-referenced throughout the Child Abuse and Neglect Reporting Act, delineating which local departments are responsible for particular follow-up reporting activities.

The Commission finds that the plain language of Penal Code section 11165.9 excludes “school district police or security department” from the definition of “police department” used throughout the section and article. This is true of current law,<sup>17</sup> as well as prior law. Former Penal Code section 11165.9, added by Statutes 1987, chapter 1459, stated “as used in this article, “child protective agency” means a police or sheriff’s department, a county probation department,

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<sup>17</sup> Penal Code section 11165.9, amended last by Statutes 2006, chapter 701, provides mandated reporters shall make reports of suspected child abuse or neglect “to any police department or sheriff’s department, not including a school district police or security department ...”



or a county welfare department. It does not include a school district police or security department.” [Emphasis added.]

There must be a further determination of what is meant by “school district police or security departments” in the context of Penal Code section 11165.9 – specifically, did the Legislature intend that community college districts be included in this term? “School district” has been defined elsewhere in the California codes to be inclusive of community college districts for particular purposes, such as in the Commission’s own statutes.<sup>18</sup> However, rules of statutory construction demand that we first look to the words in context to determine the meaning.<sup>19</sup> “School district” is not defined in Penal Code section 11165.9 or elsewhere in the Child Abuse and Neglect Reporting Act, nor is there a general definition to be used in the Penal Code as a whole.

In *RRLH, Inc. v. Saddleback Valley Unified School Dist.* (1990) 222 Cal.App.3d 1602, 1609, the court engaged in statutory construction to determine whether a particular instance of the term “local agency or district” was inclusive or exclusive of “school districts.” While the case does not resolve the question here, it does lay out the rules of statutory construction to be used in reaching a conclusion:

We acknowledge the Legislature has not always been consistent in its definition of local agency or district, sometimes excluding and sometimes including school districts. (See [Gov. Code,] § 66000.) Accordingly, we must look to the general principles of statutory construction to harmonize the seemingly conflicting provisions of section 53080 and former section 53077.5.

Preeminent among statutory construction principles is the requirement that courts must ascertain the intent of the Legislature. (*California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 698, 170 Cal.Rptr. 817, 621 P.2d 856; *DeYoung v. City of San Diego* (1983) 147 Cal.App.3d 11, 17-18, 194 Cal.Rptr. 722.) Further, legislation should be given a reasonable, common sense interpretation consistent with the apparent purpose of the Legislature. In addition, legislation should be interpreted so as to give significance to every word, phrase and sentence of an act. And all parts of the legislation must be harmonized by considering the questioned parts in the context of the statutory framework taken as a whole. (*Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230, 110 Cal.Rptr. 144, 514 P.2d 1224; *McCauley v. City of San Diego* (1987) 190 Cal.App.3d 981, 992, 235 Cal.Rptr. 732.)

Education Code section 38000<sup>20</sup> authorizes the formation of K-12 school district police and security departments. Community college district police departments are authorized under

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<sup>18</sup> Government Code section 17519 defines “school district” as “any school district, community college district, or county superintendent of schools.”

<sup>19</sup> “Statutory language is not considered in isolation. Rather, we ‘instead interpret the statute as a whole, so as to make sense of the entire statutory scheme.’” *Bonnell v. Medical Bd. of California* (2003) 31 Cal.4th 1255, 1261.

<sup>20</sup> Formerly numbered Education Code section 39670; derived from 1959 Education Code section 15831.

Education Code section 72330, which although it was derived from the same original statute as Education Code section 38000, was renumbered with the reorganization of the Education Code by Statutes 1976, chapter 1010. The reorganization furthered the statutory distinctions between K-12 “school districts” and “community college districts,” which have since grown throughout the California codes, including the Penal Code.<sup>21</sup> Education Code section 72330 et seq. never uses the term “school district,” but rather consistently refers to a “community college police department.”

The Legislature is deemed to be aware of existing laws and could have crafted the exception in Penal Code section 11165.9 for “school district police and security departments” to explicitly include “community college districts” in the definition of school districts for this purpose. “We must assume that the Legislature knew how to create an exception if it wished to do so....” (*City of Ontario v. Superior Court* (1993) 12 Cal.App.4th 894, 902, 16 Cal.Rptr.2d 32.) The fact that it has done so elsewhere in the Penal Code is further evidence of the fact that the Legislature knows how to include community college districts in the definition of school districts for certain purposes, and yet did not do so here.<sup>22</sup>

Further, excluding community college districts from the definition of school districts here is consistent with legislative history. Penal Code section 11165.9, as added by Statutes 1987, chapter 1459, was derived from a definition found in former Penal Code section 11165—that section had been amended earlier in the same session by Statutes 1987, chapter 1444 (Sen. Bill (SB) No. 646) to specify for the first time that police departments do not include school district police and security departments. The Senate Rules Committee, Office of Senate Floor Analyses, 3rd reading analysis of SB 646 (Reg. Sess. 1987-1988), as amended September 1, 1987, states:

According to Senator Watson’s Task Force on Child Abuse and its Impact on Public Schools, there has been a great deal of concern expressed over reports of alleged child abuse being made to a school district police or security department rather than to local law enforcement agencies. Existing law is unclear about whether such reports meet the statutory criteria.

These school related agencies do not always have the full training that other peace officers receive, and often they do not have the personnel necessary to deal with reports of child abuse. Moreover, procedures and recordkeeping vary from school to school; thus, the possibility exists that reports might be lost or rendered unusable in any subsequent criminal action.

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<sup>21</sup> Penal Code section 291, 291.1 and 291.5 set up separate statutes for law enforcement informing public schools, private schools, and community college districts, respectively when a teacher, instructor or other employees are arrested for sex offenses.

<sup>22</sup> Penal Code section 830.32 separately describes “[m]embers of a California Community College police department appointed pursuant to Section 72330 of the Education Code” and “members of a police department of a school district pursuant to Section 38000 of the Education Code.” Further, Penal Code section 13710, subdivision (a)(2), relating to restraining orders, states: “The police department of a community college or school district described in subdivision (a) or (b) of Section 830.32 shall ... .”

According to the Senate Judiciary Committee analysis, this bill has been recommended to clarify that school district police or security departments would not be considered child protective agencies for the purposes of child abuse reporting.

The analysis also states that the other purpose of the bill:

is to narrow the definition of child abuse for the purposes of reporting to allow school personnel to break up fights on the premises and to defend themselves. ¶...¶ The task force listened to a number of individuals employed by school districts who complained that the reporting requirements under existing law were too vague. As a result, reports of abuse were made against school personnel who engaged in certain conduct which might be considered abusive in certain situations but which was employed in order to stop a fight, used for self-defense, or applied to take possession of weapons or dangerous objects from a pupil. School personnel suggested the vagueness of the existing reporting requirements coupled with the fact that their positions demanded a substantial amount of contact with unruly and disruptive children subjected them to repeated reports of child abuse, each of which needed to be investigated.

In this context, referencing “public schools,” “pupils,” and “unruly and disruptive children,” the Legislature’s use of the term “school district” is consistent with a limitation to K-12. In addition, one further distinction exists in the authorizing statutes for K-12 school district police departments, and the corresponding community college district statute. Education Code section 38000 includes the following language: “It is the intention of the Legislature in enacting this section that a school district police or security department is supplementary to city and county law enforcement agencies and is not vested with general police powers.” This language was not included in Education Code section 72330 when it was derived from the earlier code section, indicating that community college police departments do not have the same fundamental restriction on their purpose and authority. Based upon all of the above, the Commission finds that the meaning of “school district police or security department” in Penal Code section 11165.9 is the same as that found in Education Code section 38000, which solely authorizes the formation of K-12 school district police and security departments. Therefore, Penal Code section 11165.9 excludes K-12 school districts from receiving child abuse and neglect reports and engaging in follow-up reporting.

A question remains regarding what the phrase “*any police department*” means for purposes of reimbursement under article XIII B, section 6? The statutory language is not limited to city police departments, and only explicitly excludes school district police and security departments, therefore the Commission finds it includes other types of police departments, including special district and community college district police departments, based on the rules of statutory construction, as described below.<sup>23</sup>

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<sup>23</sup> “When a statute contains an exception to a general rule, that exception is strictly construed and other exceptions are excluded.” *Demchuk v. State Dept. of Health Services* (1991) 4 Cal.App.4th Supp. 1, at page 5.

The courts have concluded that police protection is a basic and essential function of “local government” and, thus, state statutes addressing police protection services are subject to the reimbursement requirements of article XIII B, section 6.<sup>24</sup> “Local government” is defined for purposes of article XIII B, section 6 to include community college districts and special districts.<sup>25</sup>

No court has held that only counties and cities perform the essential governmental function of providing police protection services to the public. Government Code section 53060.7 identifies a number of authorized special district police departments and states: “These districts wholly supplant the law enforcement functions of the county within the jurisdiction of that district. ... (b) The Legislature hereby recognizes the importance of the agencies identified in subdivision (a) in performing essential police protection services within these agencies’ respective communities and, in enacting laws, shall attempt to encourage funding equity among all local law enforcement agencies for public safety purposes.” Public Utilities Code sections 28767.5 and 170062 provide some other examples of authorized special district police departments. As stated above, Education Code section 72330 provides the authority for community college districts to form police departments, and provides that the district “may employ personnel as necessary to enforce the law on or near the campus ... grounds or properties owned, operated, controlled, or administered by the community college.” Thus, even though community college districts and special districts are not legally compelled by the state to form police departments, these entities perform an essential service to protect the public on their campuses and in their communities.

Community college and special district police departments do not have a real choice to avoid the costs of complying with statutes referencing Penal Code section 11165.9, when the legislative purpose is designed “to protect children from abuse and neglect,” as described in Penal Code section 11164. Such police departments are required under the test claim statutes to accept reports of child abuse and neglect, as discussed in detail below, and engage in follow-up reporting, regardless of the initial discretionary nature of the formation of the department. In *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 887, the California Supreme Court questioned the application of case law “so as to preclude reimbursement under article XIII B, section 6 of the state Constitution and Government Code section 17514, whenever an entity makes an initial discretionary decision that in turn triggers mandated costs.”<sup>26</sup> Although the Court did not resolve the question, the Commission finds that to deny reimbursement in this case to community college districts and special districts which have formed police departments and are therefore required to comply with the test claim statutes would conflict with the underlying

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<sup>24</sup> *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

<sup>25</sup> California Constitution, article XIII B, section 8, states: “As used in this article and except as otherwise expressly provided herein: ... (d) ‘Local government’ means any city, county, city and county, school district, special district, authority, or other political subdivision of or within the state.” Government Code section 17519 includes “community college district” in the definition of “school district” for this purpose.

<sup>26</sup> Discussing, but not overruling, the portion of the decision in *Kern High School Dist., supra*, 30 Cal.4th 727, 743, which affirmed *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, by finding that “the proper focus under a legal compulsion inquiry is upon the nature of claimants’ participation in the underlying programs themselves.”

intent of article XIII B, section 6 – “to require the state to pay for any new governmental programs, or higher levels of service under existing programs, that it imposes upon local governmental agencies.” Based upon all of the above, the Commission finds that any police department, including city, county, special district and community college district police departments, and excluding only

K-12 “school district police and security departments,” are eligible claimants when Penal Code section 11165.9 is cross-referenced in a test claim statute to identify the departments responsible for performing a mandated activity.

**Issue 3: Do the test claim statutes and executive orders mandate a new program or higher level of service on local agencies or school districts within the meaning of article XIII B, section 6 of the California Constitution?**

A test claim statute or executive order mandates a new program or higher level of service within an existing program when it compels a local agency or school district to perform activities not previously required, or when legislation requires that costs previously borne by the state are now to be paid by local government.<sup>27</sup> Thus, in order for a statute to be subject to article XIII B, section 6 of the California Constitution, the statutory language must order or command that local governmental agencies perform an activity or task, or result in “a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility.”<sup>28</sup>

The test claim allegations will be analyzed by areas of activities, as follows: (a) mandated reporting of child abuse and neglect (b) distributing the Suspected Child Abuse Report Form; (c) reporting between local departments; (d) investigation of suspected child abuse, and reporting to and from the state Department of Justice; (e) notifications following reports to the Central Child Abuse Index; and (f) record retention. The prior law in each area will be identified.

***(A) Mandated Reporting of Child Abuse and Neglect***

***Penal Code Section 11166, Subdivision (a):***

Penal Code section 11166,<sup>29</sup> subdivision (a), as pled, provides that “a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make a report to the agency immediately or as soon as is practicably possible by telephone and the mandated reporter shall prepare and send a written report thereof within 36 hours of receiving the information concerning the

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<sup>27</sup> *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d 830, 836.

<sup>28</sup> California Constitution, article XIII B, section 6, subdivision (c).

<sup>29</sup> As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

incident.” Penal Code section 11165.9 requires reports be made “to any police department, sheriff’s department, county probation department if designated by the county to receive mandated reports, or the county welfare department. It does not include a school district police or security department.”

Mandated child abuse reporting has been part of California law since 1963, when Penal Code section 11161.5 was first added. Former Penal Code section 11161.5, as amended by Statutes 1974, chapter 348, required specified medical professionals, public and private school officials and teachers, daycare workers, summer camp administrators, and social workers to report on observed non-accidental injuries or apparent sexual molest, by making a report by telephone and in writing to local law enforcement and juvenile probation departments, or county welfare or health departments. The code section began:

(a) In any case in which a minor is brought to a physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, or religious practitioner for diagnosis, examination or treatment, or is under his charge or care, or in any case in which a minor is observed by any registered nurse when in the employ of a public health agency, school, or school district and when no physician and surgeon, resident, or intern is present, by any superintendent, any supervisor of child welfare and attendance, or any certificated pupil personnel employee of any public or private school system or any principal of any public or private school, by any teacher of any public or private school, by any licensed day care worker, by an administrator of a public or private summer day camp or child care center, or by any social worker, and it appears to the [reporting party] from observation of the minor that the minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon the minor, he shall report such fact by telephone and in writing, within 36 hours, to both the local police authority having jurisdiction and to the juvenile probation department;<sup>30</sup> or in the alternative, either to the county welfare department, or to the county health department. The report shall state, if known, the name of the minor, his whereabouts and the character and extent of the injuries or molestation.

The list of “mandated reporters,” as they are now called, has grown since 1975. The detailed list, now found at Penal Code section 11165.7,<sup>31</sup> includes all of the original reporters and now also includes: teacher’s aides and other classified school employees; county office of education employees whose employment requires regular child contact; licensing workers; peace officers and other police or sheriff employees; firefighters; therapists; medical examiners; animal control officers; film processors; clergy and others.

The Commission finds that the duties alleged are not required of local entities, but of mandated reporters as individual citizens. The statutory scheme requires duties of individuals, identified

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<sup>30</sup> Subdivision (b) provided that reports that would otherwise be made to a county probation department are instead made to the county welfare department under specific circumstances.

<sup>31</sup> Added by Statutes 2000, chapter 916.

by either their profession or their employer, but the duties are not being performed on behalf of the employer or for the benefit of the employer, nor are they required by law to be performed using the employer's resources. Penal Code section 11166 also includes the following provision, criminalizing the failure of mandated reporters to report child abuse or neglect:<sup>32</sup>

Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars (\$1,000) or by both that fine and punishment.

Failure to make an initial telephone report, followed by preparation and submission of a written report within 36 hours, on a form designated by the Department of Justice, subjects the mandated reporter to criminal liability. This criminal penalty applies to mandated reporters as individuals and does not extend to their employers. In addition, under Penal Code section 11172, mandated reporters are granted immunity as individuals for any reports they make: "No mandated reporter shall be civilly or criminally liable for any report required or authorized by this article, and *this immunity shall apply even if the mandated reporter acquired the knowledge or reasonable suspicion of child abuse or neglect outside of his or her professional capacity or outside the scope of his or her employment.*" [Emphasis added.] Therefore, the Commission finds that the duties are required of mandated reporters as individuals, and Penal Code section 11166, subdivision (a), does not mandate a new program or higher level of service on local governments for the activities required of mandated reporters.

Definitions of Child Abuse and Neglect: Penal Code Sections 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, and 11165.6:

Penal Code section 11165.6,<sup>33</sup> as pled, defines "child abuse" as "a physical injury that is inflicted by other than accidental means on a child by another person." The code section also defines the term "child abuse or neglect" as including the statutory definitions of sexual abuse (§ 11165.1<sup>34</sup>), neglect (§ 11165.2<sup>35</sup>), willful cruelty or unjustifiable punishment (§ 11165.3<sup>36</sup>),

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<sup>32</sup> This provision was moved to Penal Code section 11166 by Statutes 2000, chapter 916. Prior to that, the misdemeanor provision was found at section 11172, as added by Statutes 1980, chapter 1071.

<sup>33</sup> As repealed and reenacted by Statutes 2000, chapter 916.

<sup>34</sup> Added by Statutes 1987, chapter 1459; amended by Statutes 1997, chapter 83 and Statutes 2000, chapter 287. Derived from former Penal Code section 11165 and 11165.3.

<sup>35</sup> Added by Statutes 1987, chapter 1459. Derived from former Penal Code section 11165.

<sup>36</sup> Added by Statutes 1987, chapter 1459.

unlawful corporal punishment or injury (§ 11165.4<sup>37</sup>), and abuse or neglect in out-of-home care (§ 11165.5<sup>38</sup>).

The test claim alleges that all of the statutory definitions of abuse and neglect in the Child Abuse and Neglect Reporting Act result in a reimbursable state-mandated program. While the definitional code sections alone do not require any activities, they do require analysis to determine if, in conjunction with the other test claim statutes, they mandate a new program or higher level of service by increasing the “scope of child abuse and neglect that is initially reported to child protective services,”<sup>39</sup> as suggested by the claimant.

Former Penal Code section 11161.5 mandated child abuse reporting when “the minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon the minor.” The prior law of Penal Code section 273a<sup>40</sup> follows:

(1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding 1 year, or in the state prison for not less than 1 year nor more than 10 years.

(2) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor.

The Commission finds that the definition of child abuse and neglect found in prior law was very broad, and required mandated child abuse reporting of physical and sexual abuse, as well as non-accidental acts by any person which could cause mental suffering or physical injury. Prior law

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<sup>37</sup> Added by Statutes 1987, chapter 1459; amended by Statutes 1988, chapter 39, and Statutes 1993, chapter 346.

<sup>38</sup> Added by Statutes 1987, chapter 1459; amended by Statutes 1988, chapter 39, Statutes 1993, chapter 346, and Statutes 2000, chapter 916. The cross-reference to section 11165.5 was removed from section 11165.6 by Statutes 2001, chapter 133.

<sup>39</sup> Test Claim Filing, page 13.

<sup>40</sup> Added by Statutes 1905, chapter 568; amended by Statutes 1963, chapter 783, and Statutes 1965, chapter 697. The section has since had the penalties amended, but the description of the basic crime of child abuse and neglect remains good law at Penal Code section 273a.



also required mandated reporting of situations that injured the health or may endanger the health of the child, caused or permitted by any person.

The Commission finds these sweeping descriptions of reportable child abuse and neglect under prior law encompass every part of the statutory definitions of child abuse and neglect, as pled. Even though the definitions have been rewritten, in *Williams v. Garcetti* (1993) 5 Cal.4th 561, 568, the Court stated a fundamental rule of statutory construction: “‘Where changes have been introduced to a statute by amendment it must be assumed the changes have a purpose ....’” [Citation omitted.] That purpose is not necessarily to change the law. ‘While an intention to change the law is usually inferred from a material change in the language of the statute [citations], a consideration of the surrounding circumstances may indicate, on the other hand, that the amendment was merely the result of a legislative attempt to clarify the true meaning of the statute.’” The Commission finds that the same acts of abuse or neglect that are reportable under the test claim statutes were reportable offenses under pre-1975 law.

Penal Code section 11165.1 provides that “sexual abuse,” for purposes of child abuse reporting, includes “sexual assault” or “sexual exploitation,” which are further defined. Sexual assault includes all criminal acts of sexual contact involving a minor, and sexual exploitation refers to matters depicting, or acts involving, a minor and “obscene sexual conduct.” Prior law required reporting of “sexual molestation,” as well as “unjustifiable physical pain or mental suffering.”

“Sexual molestation” is not a defined term in the Penal Code. However, former Penal Code section 647a, now section 647.6, criminalizes actions of anyone “who annoys or *molests* any child under the age of 18.” In a case regularly cited to define “annoy or molest,” *People v. Carskaddon* (1957) 49 Cal.2d 423, 425-426, the California Supreme Court found that:

The primary purpose of the above statute is the ‘protection of children from interference by sexual offenders, and the apprehension, segregation and punishment of the latter.’ (*People v. Moore, supra*, 137 Cal.App.2d 197, 199; *People v. Pallares*, 112 Cal.App.2d Supp. 895, 900 [246 P.2d 173].) The words ‘annoy’ and ‘molest’ are synonymously used (Words and Phrases, perm. ed., vol. 27, ‘molest’); they generally refer to conduct designed ‘to disturb or irritate, esp. by continued or repeated acts’ or ‘to offend’ (Webster’s New Inter. Dict., 2d ed.); and as used in this statute, they ordinarily relate to ‘offenses against children, [with] a connotation of abnormal sexual motivation on the part of the offender.’ (*People v. Pallares, supra*, p. 901.) Ordinarily, the annoyance or molestation which is forbidden is ‘not concerned with the state of mind of the child’ but it is ‘the objectionable acts of defendant which constitute the offense,’ and if his conduct is ‘so lewd or obscene that the normal person would unhesitatingly be irritated by it, such conduct would ‘annoy or molest’ within the purview of’ the statute. (*People v. McNair*, 130 Cal.App.2d 696, 697-698 [279 P.2d 800].)

By use of the general term “sexual molestation” in prior law, rather than specifying sexual assault, incest, prostitution, or any of the numerous Penal Code provisions involving sexual crimes, the statute required mandated child abuse reporting whenever there was evidence of “offenses against children, [with] a connotation of abnormal sexual motivation.” Thus, sexual abuse was a reportable offense under prior law, as under the definition at Penal Code section 11165.1.

Penal Code section 11165.2 specifies that “neglect,” as used in the Child Abuse and Neglect Reporting Act, includes situations “where any person having care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered,” “including the intentional failure of the person having care or custody of a child to provide adequate food, clothing, shelter, or medical care.” Not providing adequate food, clothing, shelter, or medical care is tantamount to placing a child “in such situation that its person or health may be endangered,” as described in prior law, above. Thus the same circumstances of neglect were reportable under prior law, as under the definition pled.

The prior definition of child abuse included situations where “[a]ny person ... willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering.” The current definition of “willful cruelty or unjustifiable punishment of a child,” found at Penal Code section 11165.3 carries over the language of Penal Code section 273a, without distinguishing between the misdemeanor and felony standards.<sup>41</sup>

The definition of unlawful corporal punishment or injury, found at Penal Code section 11165.4, as pled, prohibits “any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.” Again, prior law required reporting of any non-accidental injuries, “willful cruelty,” and “unjustifiable physical pain or mental suffering,” which encompasses all of the factors described in the definition for reportable “unlawful corporal punishment or injury.” The current law also excludes reporting of self-defense and reasonable force when used by a peace officer or school official against a child, within the scope of employment. This exception actually narrows the scope of child abuse reporting when compared to prior law.

Penal Code section 11165.5 defines “abuse or neglect in out-of-home care” as all of the previously described definitions of abuse and neglect, “where the person responsible for the child’s welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or employee of a public or private school or other institution or agency.” Prior law required reporting of abuse by “any person,” and neglect by anyone who had a role in the care of the child.<sup>42</sup> Thus any abuse reportable under section 11165.5, would have been reportable under prior law, as detailed above. As further evidence of this redundancy, Statutes 2001, chapter 133, effective July 31, 2001, removed the reference to “abuse or neglect in out-of-home care” from the general definition of “child abuse and neglect” at Penal Code section 11165.6.

Therefore, the Commission finds that Penal Code sections 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, and 11165.6, do not mandate a new program or higher level of service by increasing the scope of child abuse and neglect reporting.

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<sup>41</sup> Penal Code section 273a distinguishes between those “circumstances or conditions likely to produce great bodily harm or death” (felony), and those that are not (misdemeanor).

<sup>42</sup> *People v. Toney* (1999) 76 Cal.App.4th 618, 621-622: “No special meaning attaches to this language [care or custody] “beyond the plain meaning of the terms themselves. The terms ‘care or custody’ do not imply a familial relationship but only a willingness to assume duties correspondent to the role of a caregiver.” (*People v. Cochran* (1998) 62 Cal.App.4th 826, 832, 73 Cal.Rptr.2d 257.)”

Penal Code Section 11165.7:

The claimant also requests reimbursement for training mandated reporters. The test claim filing, at page 43, makes the following allegation (all brackets are in the claimant's original text):

Mandated reporters [Section 11165.7] report child abuse [as defined in Section 11165.6] that is suspected [Section 11166(a)] and such reporters are required to undergo training in accordance with Section 11165.7 subdivisions (c) and (d):

“(c) Training in the duties imposed by this article shall include training in child abuse identification and training in child abuse reporting. As part of that training, school districts shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights.

(d) School districts that do not train the employees specified in subdivision (a) in the duties of child care custodians under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided.”

Claimant's quote of Penal Code section 11165.7,<sup>43</sup> subdivisions (c) and (d) is accurate, as amended by Statutes 2000, chapter 916. Penal Code section 11165.7, subdivision (a), is the list of professions that are mandated reporters; subdivision (b), as pled, provided that volunteers who work with children “are encouraged to obtain training in the identification and reporting of child abuse.”

The specific language regarding training in the test claim statute refers to school districts.<sup>44</sup> A separate test claim was filed for training activities on this same code section by San Bernardino Community College District on behalf of school districts. This will be heard by the Commission as a separate agenda item: *Child Abuse and Neglect Reporting* (01-TC-21). Therefore, the analysis for Penal Code section 11165.7 in this test claim is limited to local agencies.

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<sup>43</sup> Added by Statutes 1987, chapter 1459; amended by Statutes 1991, chapter 132, Statutes 1992, chapter 459, and Statutes 2000, chapter 916.

<sup>44</sup> Although this is addressed in more detail in the 01-TC-21 test claim, some history of Penal Code section 11165.7 is helpful to put the training language into legislative context. Prior to amendment by Statutes 2000, chapter 916, subdivision (a) did not provide the complete list of mandated reporters, but instead defined the term “child care custodian” for the purposes of the Child Abuse and Neglect Reporting Act. The definition provided that a “child care custodian” included “an instructional aide, a teacher's aide, or a teacher's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education; [and] a classified employee of any public school who has been trained in the duties imposed by this article, if the school has so warranted to the State Department of Education.” All other categories of “child care custodian” defined in former Penal Code section 11165.7, including teachers, child care providers, social workers, and many others, were not dependent on whether the individual had received training on being a mandated reporter.

The Commission finds, based on the plain meaning of the statute,<sup>45</sup> that there is no express duty in the test claim statute for local agencies, as employers or otherwise, to provide training to mandated reporters in child abuse identification and reporting. Rather, as described in *Planned Parenthood, supra*, 181 Cal.App.3d 245, 259, at footnote 4: “[t]he Legislature has enacted numerous provisions to ensure these occupational categories [mandated reporters] receive the necessary training in child abuse detection. (See, e.g., Bus. & Prof. Code, §§ 28, 2089, 2091.)” So, while the Business and Professions Code requires that specific professionals, including psychologists, clinical social workers, marriage and family therapists, physicians, and surgeons, receive training on mandated child abuse reporting as part of their initial licensing and continuing education requirements, the training is not required to be provided by local agency employers pursuant to the test claim statutes.<sup>46</sup> Therefore, the Commission finds that Penal Code section 11165.7, subdivisions (c) and (d), does not mandate a new program or higher level of service on local agencies for training mandated reporters.

***(B) Distributing the Suspected Child Abuse Report Form:***

*Penal Code Section 11168, Including Former Penal Code Section 11161.7, and the “Suspected Child Abuse Report” Form SS 8572:*

Penal Code section 11161.7 was added by Statutes 1974, chapter 836, and required DOJ to issue an optional form, for use by medical professionals to report suspected child abuse. Then, Statutes 1977, chapter 958, one of the test claim statutes, amended section 11161.7 and for the first time required a mandatory reporting form to be adopted by DOJ, to be distributed by county welfare departments.

The 1980 reenactment of the child abuse reporting laws moved the provision to Penal Code section 11168,<sup>47</sup> which now requires:

The written reports required by Section 11166 shall be submitted on forms adopted by the Department of Justice after consultation with representatives of the various professional medical associations and hospital associations and county probation or welfare departments. Those forms shall be distributed by the agencies specified in Section 11165.9.

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<sup>45</sup> “If the terms of the statute are unambiguous, the court presumes the lawmakers meant what they said, and the plain meaning of the language governs.” (*Estate of Griswold* (2001) 25 Cal.4th 904, 911.)

<sup>46</sup> The activity of training on the requirements of the Child Abuse and Neglect Reporting Act, is one that, while not explicitly required by the plain language of the statute, may be found to be one “of the most reasonable methods of complying with the mandate” during the parameters and guidelines part of the test claim process. California Code of Regulations, title 2, section 1183.1, subdivision (a)(4), requires the parameters and guidelines to contain a description of the reimbursable activities, including “those methods not specified in statute or executive order that are necessary to carry out the mandated program.”

<sup>47</sup> As added by Statutes 1980, chapter 1071 and amended by Statutes 2000, chapter 916. Derived from former Penal Code section 11161.7, added by Statutes 1974, chapter 836, and amended by Statutes 1977, chapter 958.

The Commission finds that agencies specified in section 11165.9 did not have a duty to distribute the state-issued “Suspected Child Abuse Report” (Form SS 8572),<sup>48</sup> or any other child abuse reporting form, prior to Statutes 1977, chapter 958. Therefore, the Commission finds that Penal Code section 11168, as pled, mandates a new program or higher level of service, as follows:

Any police department (not including a K-12 school district police or security department), sheriff’s department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Distribute the child abuse reporting form adopted by the Department of Justice (currently known as the “Suspected Child Abuse Report” Form SS 8572) to mandated reporters.

***(C) Reporting Between Local Departments***

***Accepting and Referring Initial Child Abuse Reports when a Department Lacks Jurisdiction:  
Penal Code Section 11165.9:***

Penal Code section 11165.9,<sup>49</sup> as pled, requires:

Reports of suspected child abuse or neglect shall be made by mandated reporters to any police department, sheriff’s department, county probation department if designated by the county to receive mandated reports, or the county welfare department. It does not include a school district police or security department. Any of those agencies shall accept a report of suspected child abuse or neglect whether offered by a mandated reporter or another person, or referral by another agency, even if the agency to whom the report is being made lacks subject matter or geographical jurisdiction to investigate the reported case, unless the agency can immediately electronically transfer the call to an agency with proper jurisdiction. When an agency takes a report about a case of suspected child abuse or neglect in which that agency lacks jurisdiction, the agency shall immediately refer the case by telephone, fax, or electronic transmission to an agency with proper jurisdiction.

As discussed above, the prior law of Penal Code section 11161.5, subdivision (a), required the mandated reporters to report child abuse “by telephone and in writing, within 36 hours, to both the local police authority having jurisdiction and to the juvenile probation department; or in the alternative, either to the county welfare department, or to the county health department.”

Thus, police, sheriff’s, probation, and county health and welfare departments were required to accept mandated child abuse reports under prior law;<sup>50</sup> however, one aspect of Penal Code section 11165.9 creates a new duty. Now, local police, sheriff’s, probation or county welfare departments, *even when they lack jurisdiction* over the reported incident “shall accept a report of suspected child abuse or neglect whether offered by a mandated reporter or another person, or referral by another agency” unless they take action to immediately transfer the telephone call to the proper agency. Otherwise, they must accept the report, and then forward it “immediately” by telephone, fax or electronic transmission to the proper agency. Prior law placed the burden

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<sup>48</sup> See attachment 1 to Exhibit G.

<sup>49</sup> As added by Statutes 2000, chapter 916. Derived from former Penal Code section 11165.

<sup>50</sup> Former Penal Code section 11161.5, subdivision (a).

solely on the mandated reporter to file the report with an agency with proper jurisdiction. With the change made by Statutes 2000, chapter 916, a local police, sheriff's, probation or county welfare department with improper jurisdiction must take affirmative steps to accept and refer a child abuse report, rather than simply telling a caller that they have contacted the wrong department. Therefore, the Commission finds that Penal Code section 11165.9, as added by Statutes 2000, chapter 916, mandates a new program or higher level of service, as follows:

Any police department (not including a K-12 school district police or security department), sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Transfer a call electronically or immediately refer the case by telephone, fax, or electronic transmission, to an agency with proper jurisdiction, whenever the department lacks subject matter or geographical jurisdiction over an incoming report of suspected child abuse or neglect.

*Cross-Reporting of Suspected Child Abuse or Neglect from County Welfare and Probation Departments to the Law Enforcement Agency with Jurisdiction and the District Attorney's Office:*

*Penal Code Section 11166, Subdivision (h):*<sup>51</sup>

Penal Code section 11166, subdivision (h), as pled, requires reporting from the county probation or welfare departments to the law enforcement agency with jurisdiction, and to the district attorney's office. The law requires county welfare or probation departments to report by telephone, fax or electronic transmission "every known or suspected instance of child abuse or neglect" to the law enforcement agency with jurisdiction, the local agency responsible for investigation of Welfare and Institutions Code section 300 cases (such as a child protective services department), and to the district attorney's office. There is an exception to reporting cases to law enforcement and the district attorney when they only involve general neglect, or an inability to provide "regular care due to the parent's substance abuse." If an initial telephone report is made, a written report by mail, fax or electronic transmission must follow within 36 hours.

Statutes 2000, chapter 916, operative January 1, 2001, modified the reporting requirements by allowing the initial reports to be made by fax or electronic means, rather than initially by telephone. Thus, there is now the option of meeting the mandate requirements in a single step if the initial report is made by fax or electronic transmission. Statutes 2005, chapter 713, operative January 1, 2006, following the filing of the test claim, made the same change for reports from law enforcement agencies. This statute also re-lettered the subdivisions from (h) to (j).

The prior law of former section 11161.5, subdivision (a), required "cross-reporting" by county welfare or health departments to the local police authority with jurisdiction and juvenile probation departments, as follows:

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<sup>51</sup> Subsequent amendments (not pled) re-lettered subdivision (h). The subdivision is now lettered (j). For consistency with the pleadings, the subdivision will be referred to as (h) in the discussion.

Whenever it is brought to the attention of a director of a county welfare department or health department that a minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that a minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon a minor, he shall file a report without delay with the local police authority having jurisdiction and to the juvenile probation department as provided in this section.

Thus, prior law did require county welfare departments to file a report of suspected child abuse or neglect “with the local police authority with jurisdiction,” “without delay.”<sup>52</sup> However, all of the other local child abuse cross-reporting duties were added by Statutes 1980, chapter 1071, or in later amendments.

The Commission finds that Penal Code section 11166<sup>53</sup> mandates a new program or higher level of service on county probation and welfare departments for the following activities, as of the beginning of the reimbursement period, July 1, 1999:

A county probation department shall:

- Report by telephone immediately, or as soon as practically possible, to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney’s office every known or suspected instance of child abuse, as defined in Penal Code section 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent’s substance abuse, which shall be reported only to the county welfare department.
- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

As of January 1, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours.

A county welfare department shall:

- Report by telephone immediately, or as soon as practically possible, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and

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<sup>52</sup> A common definition of the word “immediately,” which is used in the current statute, is “without delay,” which is used in the prior law. (American Heritage Dict. (4th ed. 2000).)

<sup>53</sup> As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Penal Code section 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare department.

This activity does not include making an initial report of child abuse and neglect from a county welfare department to the law enforcement agency having jurisdiction over the case, which was required under prior law to be made "without delay."

- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency, including the law enforcement agency having jurisdiction over the case, to which it is required to make a telephone report under this subdivision.

As of January 1, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours.

*Cross-Reporting of Suspected Child Abuse or Neglect from the Law Enforcement Agency to the County Welfare and Institutions Code Section 300 Agency, County Welfare, and the District Attorney's Office:*

*Penal Code Section 11166, Subdivision (i):*<sup>54</sup>

Penal Code section 11166, subdivision (i) provides the requirement that law enforcement agencies must relay known or suspected child abuse and neglect reports by telephone to the Welfare and Institutions Code section 300 agency for the county, and to the district attorney's office, with an exception for reporting cases of general neglect to the district attorney. The law enforcement agency must also cross-report to the county welfare department all reports of suspected child abuse or neglect alleged to have occurred as a result of the action of a person responsible for the child's welfare. A written report by mail, fax or electronic transmission must follow any telephone report within 36 hours.

Statutes 2000, chapter 916, operative January 1, 2001, modified the reporting requirements by allowing the initial reports to be made by fax or electronic means, rather than initially by telephone. Thus, there is now the option of meeting the mandate requirements in a single step if the initial report is made by fax or electronic transmission. Statutes 2005, chapter 713, operative January 1, 2006, following the filing of the test claim, made the same change for reports from law enforcement agencies. This statute also re-lettered the subdivisions from (i) to (k).

A threshold question exists on the definition of "law enforcement agency" as used in Penal Code section 11166, subdivision (i). Throughout the Child Abuse and Neglect Reporting Act, the Legislature has referred back to Penal Code section 11165.9 for the definition of agencies that have a duty to accept mandated reports of child abuse and neglect, as well as other duties under the code. That definition uses the terms "any police department, sheriff's department ... not

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<sup>54</sup> Subsequent amendments (not pled) re-lettered subdivision (i). The subdivision is now lettered (k). For consistency with the pleadings, the subdivision will be referred to as (i) in the discussion.



includ[ing] a school district police or security department.” However, when adding the cross-reporting requirements under section 11166, the Legislature did not refer back to section 11165.9, or use the same terminology as in section 11165.9. Penal Code section 11166, subdivision (i), as pled, reads: “A law enforcement agency shall immediately, or as soon as practically possible, report by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney’s office every known or suspected instance of child abuse reported to it, ... .” This language even leaves out the caveat in the immediately preceding subdivision (h), discussed above, which requires reporting to the “law enforcement agency *having jurisdiction* over the case.”

The Commission finds that a broader reading of “law enforcement agency” is warranted, using a basic tenet of statutory construction: “When the Legislature uses materially different language in statutory provisions addressing the same subject or related subjects, the normal inference is that the Legislature intended a difference in meaning.”<sup>55</sup> Applying this rule does not lead to an absurd result in this case because the legislative intent behind the Child Abuse and Neglect Report Act is to protect children from abuse and neglect,<sup>56</sup> a duty that is furthered by the broadest reading of the cross-reporting requirements.

Just prior to the operation of the amendment to Penal Code section 11165.9 by Statutes 1987, chapter 1497, which excluded school district police and security departments from the definition of “child protective agency,” a published court decision addressed circumstances where the Los Angeles Unified School District Police Department (LAUSD PD) received a child abuse report. The issue was whether the mandated reporter had fulfilled his legal obligations when making the report by filing it with the LAUSD PD. In that case, *People v. Bernstein* (1987) 197 Cal.App.3d Supp. 34, 38 -40, the court found that:

LAUSD PD officers have full police power in connection with school district property and its employees. LAUSD PD officers are peace officers while engaged in the performance of their duties, and even if not in the performance of their duties if a danger to person or property, or of flight of the perpetrator, exists. (Pen. Code, § 830.4.) [Footnote omitted.] The officers conduct interviews, file reports, and make arrests like any other peace officers. And the LAUSD PD has investigators assigned primarily to investigate sex crimes in connection with the schools.

As of the trial date, the LAUSD PD sometimes prepared the reporting forms for child abuse which the law requires be forwarded to the Department of Justice. They either forwarded the reports to the LAPD or directly to the Department of Justice. The LAUSD PD did not have the computer facilities necessary to tap into the child abuse index at the Department of Justice. To do so, it had to go through a local law enforcement agency that had the necessary equipment.

¶ ... ¶

We conclude the Legislature contemplated a reporting system in which those persons who were obligated to file a report of suspected child abuse would have a

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<sup>55</sup> *People v. Trevino* (2001) 26 Cal.4th 237, 242.

<sup>56</sup> Penal Code section 11164, subdivision (b).

child protective agency within easy reach and availability; immediacy of the report being made for the protection of the minor victim is of paramount importance. Deficiencies existing in an agency, such as fear of retribution for reporting and lack of an expert investigative staff or computer facilities, were foreseen by the Legislature. Differences caused by human frailty, lack of funds or manpower, and/or bureaucratic stagnation were envisioned. As insurance against the same, provisions in the act calling for cooperative arrangements between local agencies, immunity from liability for reporting, and a system of cross-reporting were included. (§§ 11166, subd. (g), 11166.3, and 11172.)

The Legislature is deemed to be aware of case law,<sup>57</sup> but did not amend the term “law enforcement agency” in Penal Code section 11166, subdivision (i) to correspond with the removal of school district police and security departments from the list of agencies described in Penal Code section 11165.9. While now, pursuant to the definition expressed in section 11165.9, a school district police or security department would have no mandatory duties of child abuse investigation, nor are they the proper recipient of mandated reports, they still may receive other reports of “known or suspected instance of child abuse.”

As discussed above regarding the meaning of “any police department” under section 11165.9, even though entities such as special districts, community college districts, and school districts are not legally compelled by the state to form police departments, they perform an essential service to protect the public on their campuses and in their communities. Once formed, school district, community college district and special district police departments do not have a real choice to avoid the costs of the Penal Code section 11166 cross-reporting activities, when the requirements are intended to provide rapid information regarding known or suspected incidents of abuse or neglect to other agencies with a role in the protection of children.

Based upon all of the above, the Commission finds that Penal Code section 11166, subdivision (i)<sup>58</sup> mandates a new program or higher level of service on all local law enforcement agencies for the following activities, as of the beginning of the reimbursement period, July 1, 1999:

A law enforcement agency (including city, special district, school district and community college district police departments, and sheriff’s departments) shall:

- Report by telephone immediately, or as soon as practically possible, to the agency given responsibility for investigation of cases under Welfare and Institutions Code section 300 and to the district attorney’s office every known or suspected instance of child abuse reported to it, except acts or omissions coming within Penal Code section 11165.2, subdivision (b), which shall be reported only to the county welfare department.

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<sup>57</sup> *Estate of McDill* (1975) 14 Cal.3d 831, 839.

<sup>58</sup> As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

- Report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse.
- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

As of January 1, 2006, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours.

Receipt of Cross-Reports by District Attorney's Office:  
Penal Code Section 11166, Subdivisions (h) and (i):

The claimant also alleges that Penal Code section 11166, by requiring cross-reporting of suspected child abuse to the district attorney, imposes a consequential "duty of the District Attorney to receive, monitor or audit those reports."<sup>59</sup> The activity of "receiving" the suspected child abuse reports on the part of the district attorney is one that is implicit as a reciprocal duty in response to the requirement that law enforcement, probation and county welfare departments provide such reports. Therefore, the Commission finds that Penal Code section 11166 also mandates a new program or higher level of service, as follows:

A district attorney's office shall:

- Receive reports of every known or suspected instance of child abuse reported to law enforcement, county probation or county welfare departments, except acts or omissions of general neglect coming within Penal Code section 11165.2, subdivision (b).

The test claim includes a declaration from the Los Angeles County District Attorney's Office, stating that the agency "is required to audit each case so reported and ensure that, pursuant to the test claim legislation, appropriate investigative agency's reports are completed by these agencies." As described by the California Supreme Court in *Dix v. Superior Court* (1991) 53 Cal.3d 442, 451, "[t]he prosecutor ordinarily has sole discretion to determine whom to charge, what charges to file and pursue, and what punishment to seek." The test claim statutes have not altered that level of independence, nor has the plain meaning of the test claim statutes required any new duties of the district attorney's office to monitor or audit the reports received. To the extent that such follow-up activities are necessary, they are part of the prosecutor's ordinary, discretionary, duty to determine whom and what to charge, as described in the *Dix* case.

Therefore, the Commission finds that the activities of monitoring and auditing the suspected child abuse reports, as alleged, are not required by the plain meaning of the test claim statutes, and they do not mandate a new program or higher level of service upon the district attorney's office.

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<sup>59</sup> Claimant's February 15, 2002 Comments, page 14.

Reporting to Licensing Agencies:  
Penal Code Section 11166.2:

Penal Code section 11166.2,<sup>60</sup> as pled, “any agency specified in Section 11165.9 shall immediately or as soon as practically possible report by telephone to the appropriate licensing agency” when suspected child abuse or neglect “occurs while the child is being cared for in a child day care facility, involves a child day care licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee or staff person.” In addition, the reporting agency “shall also send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information.” Finally, the reporting “agency shall send the licensing agency a copy of its investigation report and any other pertinent materials.”

Statutes 2001, chapter 133, operative July 31, 2001, following the filing of the test claim, modified the reporting requirements by allowing agencies to make the initial reports by fax or electronic means, rather than initially by telephone. Thus, reporting agencies now have the option of meeting the mandate requirements in a single step if they make the initial report by fax or electronic transmission.

No cross-reports were required to be made to community care licensing or other licensing agencies under prior law. Therefore, the Commission finds Penal Code section 11166.2 mandates a new program or higher level of service, for the following new activity:

Any police department (not including a K-12 school district police or security department), sheriff’s department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Report by telephone immediately or as soon as practically possible to the appropriate licensing agency every known or suspected instance of child abuse or neglect when the instance of abuse or neglect occurs while the child is being cared for in a child day care facility, involves a child day care licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee or staff person. The agency shall also send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision. The agency shall send the licensing agency a copy of its investigation report and any other pertinent materials.

As of July 31, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours.

Additional Cross-Reporting in Cases of Child Death:  
Penal Code Section 11166.9, Subdivisions (k) and (l):

Claimant also alleges in comments filed on February 15, 2002, at page 17, that new activities were required when Penal Code section 11166.9 was amended by Statutes 1999, chapter 1012,

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<sup>60</sup> As added by Statutes 1985, chapter 1598 and amended by Statutes 1987, chapter 531; Statutes 1988, chapter 269; Statutes 1990, chapter 650; and Statutes 2000, chapter 916.

adding subdivisions (k) and (l).<sup>61</sup> Previously the code section addressed the statewide effort to identify and address issues related to child deaths, but did not require any mandatory activities of local government.

With the amendment by Statutes 1999, chapter 1012, Penal Code section 11166.9, subdivision (k) requires “Law enforcement and child welfare agencies shall cross-report all cases of child death suspected to be related to child abuse or neglect whether or not the deceased child has any known surviving siblings.” The statute refers to “law enforcement” without any qualifying terms, and does not refer back to Penal Code section 11165.9. The legislative intent expressed in Penal Code section 11166.9 is to “integrate state and local efforts to address fatal child abuse or neglect, and to create a body of information to prevent child deaths.” Based upon the rules of statutory construction and analysis described above regarding Penal Code section 11166, subdivision (i), the Commission finds that the broadest reading of “law enforcement” is warranted, and limitation to the agencies identified in Penal Code section 11165.9 is not applicable.

In addition, pursuant to subdivision (l), the county child welfare department must also create a record in a state reporting system regarding the case of a child death. Therefore, the Commission finds that Penal Code section 11166.9, subdivisions (k) and (l), mandates a new program or higher level of service, for the following new activities:

A law enforcement agency (including city, special district, school district and community college district police departments, and sheriff’s departments) shall:

- Cross-report all cases of child death suspected to be related to child abuse or neglect to the county child welfare agency.

A county welfare department shall:

- Cross-report all cases of child death suspected to be related to child abuse or neglect to law enforcement.
- Create a record in the Child Welfare Services/Case Management System (CWS/CMS) on all cases of child death suspected to be related to child abuse or neglect.
- Enter information into the CWS/CMS upon notification that the death was subsequently determined not to be related to child abuse or neglect.

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<sup>61</sup> As added by Statutes 1992, chapter 844 and amended by Statutes 1995, chapter 539; Statutes 1997, chapter 842; Statutes 1999, chapter 1012; Statutes 2000, chapter 916. This code section has since been renumbered Penal Code section 11174.34, by Statutes 2004, chapter 842, without amending the text. For consistency with the pleadings, the section will be referred to as 11166.9 in the discussion.

***(D) Investigation of Suspected Child Abuse, and Reporting to and from the State Department of Justice***

Penal Code Sections 11165.12, 11166, Subdivision (a), 11169, Subdivision (a), and 11170; and the Automated Child Abuse Reporting System (ACAS): California Code of Regulations, Title 11, Sections 901, 902, and 903; and the “Child Abuse Investigation Report” Form SS 8583:

Penal Code section 11169, subdivision (a),<sup>62</sup> as pled, requires “[a]n agency specified in section 11165.9,” to forward a written report to DOJ, by mail, fax or electronic transmission “of every case it investigates of known or suspected child abuse or neglect which is determined not to be unfounded,” other than cases of general neglect. The reports are required to be in a form approved by DOJ.

Penal Code section 11165.12<sup>63</sup> provides the definitions of unfounded, substantiated and inconclusive reports. Each requires a determination “by the investigator who conducted the investigation.” Unfounded reports -- those which have been found following an active investigation to be false, inherently improbable, the result of an accidental injury, or otherwise not satisfying the statutory definition of child abuse and neglect -- are not to be reported to DOJ. Thus, only substantiated and inconclusive reports are to be forwarded to DOJ, pursuant to section 11169, subdivision (a), as described above.

California Code of Regulations, title 11, section 901, provides definitions for the Automated Child Abuse System, or ACAS. Section 902 states the purpose of ACAS “as the index of investigated reports of suspected child abuse received,” and is a reference file “used to refer authorized individuals or entities to the underlying child abuse investigative files maintained at the reporting CPA.”<sup>64</sup> The Commission finds that California Code of Regulations, title 11, sections 901 or 902, do not require any activities that are not otherwise described in statute, and thus do not mandate a new program or higher level of service.

Penal Code section 11169, subdivision (a) provides that “[t]he reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission.” California Code of Regulations, title 11, section 903, designates the current form SS 8583 as “the standard reporting form for submitting summary reports of child abuse to DOJ,” and describes mandatory information which must be included on the form “in order for it to be considered a “retainable report” by DOJ and entered into ACAS.”

The prior law, former Penal Code section 11161.5, subdivision (a), required all written child abuse reports received by the police to be forwarded to the state, as follows:

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<sup>62</sup> As added by Statutes 1980, chapter 1071 and amended by Statutes 1981, chapter 435, Statutes 1985, chapter 1598, Statutes 1988, chapters 269 and 1497, Statutes 1997, chapter 842, and Statutes 2000, chapter 916.

<sup>63</sup> As added by Statutes 1987, chapter 1459 and amended by Statutes 1990, chapter 1330, Statutes 1997, chapter 842, and Statutes 2000, chapter 916.

<sup>64</sup> “CPA” refers to “child protective agency,” which is defined in California Code of Regulations, title 11, section 901, subdivision (f), as referring back to the agencies listed in Penal Code section 11165.9.

Copies of all written reports received by the local police authority shall be forwarded to the Department of Justice.

Thus, prior law only required a local police authority that received a written report of child abuse to forward a copy of the report to the state, as received.

The claimant further alleges that “investigation” is newly required by the test claim statutes and regulations, in order to complete Form SS 8583,<sup>65</sup> pled as an executive order, for submittal to DOJ. The state agencies dispute that investigation is a new activity. DSS, in comments filed December 10, 2001, states: “Department staff believes that the requirement for the county welfare department to conduct an independent investigation in response to allegations of abuse and neglect is not a newly imposed duty.” Neither DSS nor DOJ’s comments cite any provision of law demonstrating that independent investigation of child abuse reports was required by prior law.

Claimant correctly cites the 1999 *Alejo v. City of Alhambra* appellate court decision,<sup>66</sup> in which the court found that the duty to investigate reports of suspected child abuse and neglect is mandatory. The *Alejo* case concerned a claim of “negligence per se” against the city and the individual police officer for failing to investigate a report from a father that his three-year-old son was being physically abused by the mother’s live-in boyfriend. The negligence per se doctrine is used to litigate situations where a violation of a statute or regulation ultimately leads to an injury of a type that the law was intended to prevent. In this case, the court found that the police violated a statute that required the investigation of child abuse reports, which led to the three-year-old child being further abused by the mother’s boyfriend. First, the court determined that the police have no general duty to investigate individual reports of child abuse or neglect:

We acknowledge, as a general rule one has no duty to come to the aid of another. (*Williams v. State of California* (1983) 34 Cal.3d 18, 23 [192 Cal.Rptr. 233, 664 P.2d 137].) Accordingly, there is no duty owed by police to individual members of the general public because “[a] law enforcement officer’s duty to protect the citizenry is a general duty owed to the public as a whole.” (*Von Batsch v. American Dist. Telegraph Co.* (1985) 175 Cal.App.3d 1111, 1121 [222 Cal.Rptr. 239].) Therefore, absent a special relationship or a statute creating a special duty, the police may not be held liable for their failure to provide protection. (*Id.* at p. 1122.)<sup>67</sup>

Since the court determined that the police have a general duty to protect the public at large, but not a duty to protect specific individuals in the absence of another statute, the opinion then examines whether any specific statute was violated by the police for failing to investigate the report of child abuse. The court determined that Penal Code section 11166, subdivision (a), “creates such a duty.”<sup>68</sup>

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<sup>65</sup> See attachment 2 to Exhibit G for a copy of the form.

<sup>66</sup> *Alejo v. City of Alhambra* (1999) 75 Cal.App.4th 1180.

<sup>67</sup> *Id.* at page 1185.

<sup>68</sup> *Ibid.*

As we read section 11166, subdivision (a), it imposes two mandatory duties on a police officer who receives an account of child abuse.

Although section 11166, subdivision (a) does not use the term “investigate,” *it clearly envisions some investigation in order for an officer to determine whether there is reasonable suspicion to support the child abuse allegation and to trigger a report to the county welfare department and the district attorney under section 11166, subdivision (i) and to the Department of Justice under section 11169, subdivision (a).* The latter statute provides in relevant part: “A child protective agency shall forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse which is determined not to be unfounded .... A child protective agency shall not forward a report to the Department of Justice unless it has conducted an active investigation and determined that the report is not unfounded, as defined in Section 11165.12.” An “unfounded” report is one “which is determined by a child protective agency investigator to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse, as defined in Section 11165.6.” (§ 11165.12, subd. (a).) “Child abuse” is defined in section 11165.6 as “a physical injury which is inflicted by other than accidental means on a child by another person.”

¶...¶

Contrary to the city’s position, the duty to investigate and report child abuse is mandatory under section 11166, subdivision (a) if a reasonable person in Officer Doe’s position would have suspected such abuse. The language of the statute, prior cases and public policy all support this conclusion.<sup>69</sup>

Thus, the court finds that the test claim statutes do mandate investigation, and the Commission must follow this statement of law when reaching its conclusions in this test claim. However, the court was not examining the law from a mandates perspective, and made the finding based on current law. For its purposes, the court had no need to determine whether the earlier versions of the child abuse reporting law initially created the duty to investigate.

The investigation activity identified in the test claim is one that is necessary in order to complete the state “Child Abuse Investigation Report” Form SS 8583. Penal Code section 11169, subdivision (a), as added by Statutes 1980, chapter 1071, and substantively amended by Statutes 1985, chapter 1598, provides that the “agency specified in Section 11165.9” must first conduct an active investigation to determine whether the child abuse or severe neglect “report is not unfounded” before sending a completed report form to the state.<sup>70</sup> No earlier statutes required any determination of the validity of a report of child abuse or neglect before completing a child abuse investigative report form and forwarding it to the state. Therefore, the Commission finds that an investigation sufficient to determine whether a report of suspected child abuse or neglect is unfounded, substantiated, or inconclusive, as defined by Penal Code section 11165.12, is

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<sup>69</sup> *Id.* at pages 1186-1187. [Emphasis added.]

<sup>70</sup> Penal Code section 11169.



newly mandated by Penal Code section 11169, subdivision (a), as described by the court in *Alejo*.<sup>71</sup>

The Commission finds that Penal Code section 11169, subdivision (a), the California Code of Regulations, title 11, section 903, and the state “Child Abuse Investigation Report” Form SS 8583, mandate a new program or higher level of service, as follows:

Any police department (not including a K-12 school district police or security department), sheriff’s department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive, as defined in Penal Code section 11165.12, for purposes of preparing and submitting the state “Child Abuse Investigation Report” Form SS 8583, or subsequent designated form, to the Department of Justice.
- Forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect which is determined to be substantiated or inconclusive, as defined in Penal Code section 11165.12. Unfounded reports, as defined in Penal Code section 11165.12, shall not be filed with the Department of Justice. If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact. The reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission.

***(E) Notifications Following Reports to the Central Child Abuse Index***

***Penal Code Section 11169, Subdivision (b):***

Penal Code section 11169, subdivision (b), as amended by Statutes 2000, chapter 916, for the first time requires that when “an agency specified in section 11165.9,” forwards a report of suspected child abuse or neglect to DOJ:

the agency shall also notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index. The notice required by this section shall be in a form approved by the Department of Justice. The requirements of this subdivision shall apply with respect to reports forwarded to the department on or after the date on which this subdivision becomes operative.

DSS’s December 10, 2001 comments concur with the claimant that written notification is a new activity, but disputes the claim for reimbursement based upon the existing funding scheme. DOJ’s comments on the test claim filing similarly acknowledge “that this particular requirement was added to the child abuse reporting scheme after 1975, and that it may result in trace cost increases to the claimant,” but concludes that such costs are subject to a federal-state-local funding ratio and “not subject to state subvention.”

The Commission finds that the statute requires an entirely new duty that was not mandated by prior law. Therefore, the Commission finds that the plain language of Penal Code section 11169,

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<sup>71</sup> *Alejo v. City of Alhambra, supra*, 75 Cal.App.4th 1180, 1186.

subdivision (b), mandates a new program or higher level of service, for the following new activity:

Any police department (not including a K-12 school district police or security department), sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index, in any form approved by the Department of Justice, at the time the "Child Abuse Investigation Report" is filed with the Department of Justice.

The potential reimbursement period for this activity begins no earlier than January 1, 2001—the operative date of Statutes 2000, chapter 916.

Penal Code Section 11170:

Penal Code section 11170<sup>72</sup> describes the duties of the DOJ to maintain the Child Abuse Central Index and make reports available. It refers to reports made pursuant to Penal Code section 11169. As described above, Penal Code section 11169 requires reports to be made by "an agency specified in Section 11165.9." When "submitting agency," "investigating agency" or similar terms are used in Penal Code section 11170, the statute refers back to the agencies that submitted the initial Child Abuse Investigation Reports pursuant to section 11169—which in turn are the agencies identified in Penal Code section 11165.9.

The pre-1975 law of former Penal Code section 11161.5 provided that if the DOJ records resulted in reports or information being returned to the reporting agency, the reports received were required to be made available to specified individuals "having a direct interest in the welfare of the minor" and others, including probation and child welfare departments, as follows:

Reports and other pertinent information received from the department shall be made available to: any licensed physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, or religious practitioner with regard to his patient or client; any director of a county welfare department, school superintendent, supervisor of child welfare and attendance, certificated pupil personnel employee, or school principal having a direct interest in the welfare of the minor; and any probation department, juvenile probation department, or agency offering child protective services.

Penal Code section 11170, subdivision (b)(1), requires that after information is received by "an agency that submits a report pursuant to Section 11169" from the DOJ "that is relevant to the known or suspected instance of child abuse or severe neglect reported by the agency," "[t]he agency shall make that information available to the reporting medical practitioner, child custodian, guardian ad litem" or appointed counsel, "or the appropriate licensing agency, if he or

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<sup>72</sup> As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 162, Statutes 1984, chapter 1613, Statutes 1985, chapter 1598, Statutes 1986, chapter 1496, Statutes 1987, chapter 82, Statutes 1989, chapter 153, Statutes 1990, chapters 1330 and 1363, Statutes 1992, chapters 163 and 1338, Statutes 1993, chapter 219, Statutes 1996, chapter 1081, Statutes 1997, chapters 842, 843, and 844, Statutes 1999, chapter 475, and Statutes 2000, chapter 916.

she is treating or investigating a case of known or suspected child abuse or severe neglect.” While the requirement is similar to prior law, there was no duty in prior law for the reporting agency to make reports and information available to the child custodian, guardian ad litem, appointed counsel or licensing agency. Therefore, the Commission finds that Penal Code section 11170, subdivision (b)(1) mandates a new program or higher level of service for the following activity:

Any police department (not including a K-12 school district police or security department), sheriff’s department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Make relevant information available, when received from the Department of Justice, to the child custodian, guardian ad litem appointed under section 326, or counsel appointed under section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse or severe neglect.

Another new provision, Penal Code section 11170, subdivision (b)(2) creates a duty for the agency that investigated a mandated report of child abuse to report back to the mandated reporter on the conclusion of the investigation. Penal Code section 11170, subdivision (b)(2) refers to the investigating agency of a report made pursuant to Penal Code section 11166, subdivision (a), which in turn requires mandated reports be made to agencies specified in section 11165.9. There was no duty in prior law for agencies listed in 11165.9 to provide such information, therefore, the Commission finds that Penal Code section 11170, subdivision (b)(2), mandates a new program or higher level of service for the following activity:

Any police department (not including a K-12 school district police or security department), sheriff’s department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Inform the mandated reporter of the results of the investigation and of any action the agency is taking with regard to the child or family, upon completion of the child abuse investigation or after there has been a final disposition in the matter.

Penal Code section 11170, subdivision (b)(5), now numbered (b)(6),<sup>73</sup> requires the DOJ to make information available to “investigative agencies or probation officers, or court investigators” “responsible for placing children or assessing the possible placement of children” regarding any known or suspected child abusers residing in the home. When such information is received by an investigating agency, the statute requires that the agency notify the person that they are in the Child Abuse Central Index. There was no duty in prior law for the investigating agency to provide such information; therefore, the Commission finds that Penal Code section 11170, subdivision (b)(5), now (b)(6), mandates a new program or higher level of service for the following activity:

Any police department (not including a K-12 school district police or security department), sheriff’s department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

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<sup>73</sup> This subdivision was renumbered by Statutes 2004, chapter 842.

- Notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index, upon receipt of relevant information concerning child abuse or neglect investigation reports contained in the index from the Department of Justice when investigating a home for the placement of dependant children. The notification shall include the name of the reporting agency and the date of the report.

Claimant alleges that there is a new program or higher level of service required by Penal Code section 11170, subdivision (b)(6)(A), now renumbered (b)(8)(A).<sup>74</sup> The subdivision, as pled, provides that an investigating party, including any agency named in section 11169 that is required to make reports to the Child Abuse Central Index (these are the agencies receiving child abuse and neglect reports pursuant to section 11165.9), as well as district attorney’s offices, and county licensing agencies, that receives information from the state Child Abuse Central Index is:

responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, or placement of a child.

The Commission finds that the words “responsible for” in this statute are vague and ambiguous, and may be interpreted alternatively as either mandatory (e.g. “investigators *shall obtain* the original report,”) or discretionary, (e.g. if the investigator finds it necessary for the investigation, they are to obtain the original report from the local reporter, rather than from the state.) Therefore it is necessary to look at extrinsic evidence of legislative intent.<sup>75</sup> The statutory language was added by Statutes 1990, chapter 1330 (Sen. Bill No. (SB) 2788), as double joined with Statutes 1990, chapter 1363 (Assem. Bill No. (AB) 3532.) The legislative history for SB 2788 yields a reading of “responsible for” as a mandatory term. Specifically, the Assembly Public Safety Committee, Republican Analysis, (Reg. Sess. 1989-1990) on SB 2788, version dated August 28, 1990, states:<sup>76</sup>

this bill would *require* any appropriate person or agency responsible for child care oversight to, upon notification that a report exist[s], seek the original information pertaining to the incident and make an independent decision on the merits of the report for investigation, prosecution or licensure determination. [Emphasis added.]<sup>77</sup>

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<sup>74</sup> This subdivision was renumbered by Statutes 2004, chapter 842.

<sup>75</sup> “Because the words themselves provide no definitive answer, we must look to extrinsic sources.” *People v. Woodhead* (1987) 43 Cal.3d 1002, 1008.

<sup>76</sup> See attachment 3 to Exhibit G.

<sup>77</sup> The court in *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 31, “set forth a list of legislative history documents that have been recognized by the California Supreme Court or this court as constituting cognizable legislative history,” including reports of the Assembly Committee on Public Safety (*supra* at p. 33.)

Further, although an author’s letter to the Governor is not a reliable form of legislative history on its own, Sen. Newton R. Russell’s August 31, 1990 letter to the Governor is consistent with the committee analysis cited above: “SB 2788 will also insert language stating that all authorized

Therefore, the Commission finds that Penal Code section 11170, subdivision (b)(6)(A), now (b)(8)(A), mandates a new program or higher level of service, as follows:

Any police department (not including a K-12 school district police or security department), sheriff's department, county probation department if designated by the county to receive mandated reports, county welfare department, county licensing agency, or district attorney's office shall:

- Obtain the original investigative report from the reporting agency, and draw independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, or placement of a child, when a report is received from the Child Abuse Central Index.

Penal Code section 11170, subdivision (c) requires that the DOJ provide information from the Child Abuse Central Index "to any agency responsible for placing children pursuant to ...the Welfare and Institutions Code," section 305 et seq., "upon request," when relevant to a child's potential "placement with a responsible relative pursuant to" Welfare and Institutions Code sections 281.5, 305, and 361.3.

Welfare and Institutions Code section 305 et seq. refers to temporary custody and detention of dependent children. Welfare and Institutions Code section 281.5 refers to placement by a probation officer; section 305 refers to temporary custody by "any peace officer";<sup>78</sup> and section 361.3 concerns placement with a relative by "the county social worker and court." Thus, when any law enforcement agency, probation department, or child welfare department receives information regarding placement of a child with a relative from DOJ, as described in Penal Code section 11170, subdivision (c), the agency receiving the information is statutorily obligated to notify the individual "that he or she is in the index." There was no duty in prior law to provide such information; therefore, the Commission finds that Penal Code section 11170, subdivision (c), mandates a new program or higher level of service for the following activity:

Any law enforcement agency, county probation department, or county welfare department shall:

- Notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index, upon receipt of relevant information concerning child abuse or neglect reports contained in the index from the Department of Justice regarding placement with a responsible relative pursuant to Welfare and Institutions Code sections 281.5, 305, and 361.3. The notification shall include the location of the original investigative report and the submitting agency. The notification shall be submitted to the person listed at the same time that all other parties are notified of the information, and no later than the actual judicial proceeding that determines placement.

Also, the claimant, at page 34 of the test claim filing, alleges that Penal Code section 11170, subdivision (d) requires that the claimant "provide certain information when necessary for out-

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persons and agencies, if conducting either child abuse or child care licensing investigation, and having access to information from the CACI, are required to obtain, and make independent conclusions from, the original child abuse report." [Emphasis in original; see Attachment 3.]

<sup>78</sup> Peace officers are defined at Penal Code section 830 et seq.

of-state law enforcement agencies.” The Commission finds that the subdivision is directed solely to “the department,” which, when used through the rest of section 11170, refers to the state Department of Justice. The context of subdivision (d) does not suggest a different usage was intended.<sup>79</sup> Therefore the Commission finds that Penal Code section 11170, subdivision (d), does not mandate a new program or higher level of service.

Similarly, claimant alleges a mandate from Penal Code section 11170, subdivision (e), which provides that an individual may make a request to DOJ to “determine if he or she is listed in the Child Abuse Central Index.” If they are listed, DOJ is required to provide “the date of the report and the submitting agency.” Then “[t]he requesting person is responsible for obtaining the investigative report from the submitting agency pursuant to paragraph (13) of subdivision (a) of Section 11167.5.” Penal Code section 11167.5 indicates that reports are available pursuant to the Public Records Act (Gov. Code, § 6250, et seq.) The duties expressed in Penal Code section 11170, subdivision (e) are imposed on the state or individuals; any related activities for local governments are required by prior law, specifically Government Code section 6253 of the Public Records Act, not the test claim statutes. Therefore, the Commission finds that Penal Code section 11170, subdivision (e), does not mandate a new program or higher level of service.

#### ***(F) Record Retention***

##### *Penal Code Section 11169, Subdivision (c):*

Penal Code section 11169, subdivision (c), requires:

Agencies shall retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice pursuant to subdivision (a) for the same period of time that the information is required to be maintained on the Child Abuse Central Index pursuant to this section. Nothing in this section precludes an agency from retaining the reports for a longer period of time if required by law.

The time for retention of records on the Child Abuse Central Index is controlled by Penal Code section 11170,<sup>80</sup> as follows:

(3) Information from an inconclusive or unsubstantiated report filed pursuant to subdivision (a) of Section 11169 shall be deleted from the Child Abuse Central Index after 10 years if no subsequent report concerning the same suspected child abuser is received within that time period. If a subsequent report is received within that 10-year period, information from any prior report, as well as any subsequently filed report, shall be maintained on the Child Abuse Central Index

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<sup>79</sup> “Terms ordinarily possess a consistent meaning throughout a statute.” *People v. Standish* (2006) 38 Cal.4th 858, 870.

<sup>80</sup> As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 162, Statutes 1984, chapter 1613, Statutes 1985, chapter 1598, Statutes 1986, chapter 1496, Statutes 1987, chapter 82, Statutes 1989, chapter 153, Statutes 1990, chapters 1330 and 1363, Statutes 1992, chapters 163 and 1338, Statutes 1993, chapter 219, Statutes 1996, chapter 1081, Statutes 1997, chapters 842, 843, and 844, Statutes 1999, chapter 475, and Statutes 2000, chapter 916.

for a period of 10 years from the time the most recent report is received by the department.

Reading the two sections together, the record retention period for each of the underlying local investigatory files is a minimum of 10 years, much longer if a subsequent report on the same suspected child abuser is received during the 10 year period. DSS and DOF dispute the claim for mandate reimbursement for record retention activities. DSS asserts that the duty to retain the child protective agency's investigative file documenting each investigation is not a new duty, citing Welfare and Institutions Code section 10851 and regulatory requirements for three years of records retention.<sup>81</sup> DOF also cites the pre-existing three-year record retention requirement, and concludes that "the longer retention requirement for child abuse investigation records imposes no new costs, and may in fact avoid the costs of record destruction. Finally, if the records are stored electronically, a longer retention period should result in no additional costs whatsoever." The Commission notes that the Welfare and Institutions Code record retention requirement is only applicable to public social services records. Records required to be held by city police and county sheriff's departments are only subject to the more general Government Code sections 26202 and 34090, which allow counties and cities, respectively, to authorize destruction of records after two years. Records required to be held by special districts are governed by Government Code section 60201 et seq. which does not provide any minimum amount of time for general records retention. Community college district minimum records retention is not governed by prior law.

Statutes 1997, chapter 842 added the records retention requirements to Penal Code sections 11169 and 11170, resulting in a longer records retention period than otherwise required by prior law; thus mandating a higher level of service. Therefore, the Commission finds that Penal Code section 11169, subdivision (c) mandates a new program or higher level of service, for the following:

Any police department (not including a K-12 school district police or security department), sheriff's department, or county probation department if designated by the county to receive mandated reports, shall:

- Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of 8 years for counties and cities (a higher level of service above the two-year record retention requirement pursuant to Gov. Code §§ 26202 (cities) and 34090 (counties)), and for a minimum of 10 years for community colleges and special district police departments. If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years.

A county welfare department shall:

- Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of 7 years for welfare records (a higher level of service above the three-year record retention requirement pursuant to Welf. & Inst. Code,

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<sup>81</sup> DSS also cites the record retention requirement for juvenile courts (Welf. & Inst. Code, § 826), but it is irrelevant to the test claim allegations which address the records of the investigating agency, not those of the courts.

§ 10851.) If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years.

**Issue 4: Do the test claim statutes found to mandate a new program or higher level of service also impose costs mandated by the state pursuant to Government Code section 17514?**

Reimbursement under article XIII B, section 6 is required only if any new program or higher level of service is also found to impose “costs mandated by the state.” Government Code section 17514 defines “costs mandated by the state” as any *increased* cost a local agency is required to incur as a result of a statute or executive order that mandates a new program or higher level of service. The claimant alleges costs in excess of \$200, the minimum standard at the time of filing the test claim, pursuant to Government Code section 17564. The test claimant is a county and there are no declarations in the record regarding costs or funding for cities, schools districts, community college districts, or special districts. However, the Commission finds that when the mandated activities apply identically in statute to counties, cities, school districts, community college districts and special districts that operate a police or sheriff’s department, the declaration of costs incurred from the county claimant is sufficient for the purposes of making test claim findings for all local governments.

The only Government Code section 17556 exception that may apply to this test claim with respect to counties is subdivision (e), which provides, that “[t]he commission shall not find costs mandated by the state,” if:

...

(e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

Both DSS and DOF’s December 10, 2001 comments assert that there are state funds available that can be used for new state-mandated child abuse reporting-related activities. However, neither letter was specific in stating what funds were available for the activities.

On May 9, 2007, Commission staff requested that the state agencies provide additional information in this regard, to “identify what funds have been appropriated and allocated to each county for child abuse and neglect reporting and investigation services.” On July 20, 2007, DOF filed a response to the request, stating that:

Counties receive allocations from: 1) Title IV-E federal funds, 2) Temporary Assistance for Needy Families (TANF) block grants, 3) Title XIX Funds, 4) Title XX Funds, 5) Title IV-B Funds, and 6) the General Fund. Funds are appropriated in the annual Budget Act under Item 5180-151-0001. Additionally, transfer authority exists in other budget items that may be used for activities associated with ICAN. Attached for your reference is a compact disc (CD) containing the Budget Act appropriations (Item 5180-151-0001) for fiscal years 1999-2000 through 2006-2007. The sections contain the funds appropriated for Department of Social Services’ local assistance programs. Please note that these



appropriations do not specify the multiple programs or specific activities that may be funded with the appropriation.

The following describes the purpose of the various funds allocated to the counties.

- General Fund appropriations are used to match Title IV-E funds based on the 70/30 (state/county) share of nonfederal funds. Title IV-E funds and General Fund appropriations are also used to provide “augmentation funds” to counties beyond the predetermined formulas based on caseload. Augmentation funding occurs when a county has spent its share and additional money is needed to support County Welfare Services (CWS) programs.
- TANF funds and county funds pay for emergency assistance, including investigation and crisis resolution activities performed by social workers.
- Title IV-B funds are used to provide services and support to preserve families, protect children, and prevent child abuse and neglect.
- Title IV-E funds can be used for case management and emergency assistance activities as well as training and professional development of a child welfare workforce. These funds are budgeted based on a county welfare department’s caseload and the number of social worker staff and clerical staff, using the specific county’s salaries, benefits, and associated overhead costs.
- Title XIX funds are used for medical care assistance of CWS programs.
- Title XX funds are used to provide for more flexibility in the delivery of child welfare services. These funds are not used for medical care or employee wages.

DOF’s CD also includes copies of the DSS County Fiscal Letters from 1999-2000 through 2006-2007, as well as a table summarizing county welfare funding for those fiscal years.

Despite all of the documentation provided, there is no evidence in the record to demonstrate that the mandated activities have been offset or funded by the state or federal government in a manner and amount “sufficient to fund the cost of the state mandate.” On the contrary, Welfare and Institutions Code section 10101 indicates that “the state’s share of the costs of the child welfare program shall be 70 percent of the actual nonfederal expenditures for the program or the amount appropriated by the Legislature for that purpose, whichever is less.” Conversely, counties must have a share of costs for child welfare services of at least 30 percent of the nonfederal expenditures. Even the augmentation funds are only available, according to DOF’s letter, “when a county has spent *its share* and additional money is needed.” In addition, the funding information is limited to county welfare departments and does not include costs incurred by local law enforcement, when they perform the mandated activities identified.

DOF’s December 10, 2001 comments cite the *County of Fresno, supra*, 53 Cal.3d. at page 487, to conclude that because test claim activities are jointly funded, “the test claim legislation is not subject to state subvention.” The *County of Fresno* decision addressed a challenge to the constitutionality of Government Code section 17556, subdivision (d), which provides an exception to a finding of costs mandated by the state when the local government may pay for the new activities through service charges, fees, or assessments. In determining that the limit expressed by subdivision (d) was constitutional, the California Supreme Court stated that “the

Constitution requires reimbursement only for those expenses that are recoverable solely from taxes.” However, contrary to DOF’s suggestion, the *County of Fresno* decision does not apply as this test claim does not have facts addressing available fees, service charges, or assessments for mandatory child abuse reporting.

Government Code section 17556, subdivision (e) requires that there must be “no net costs,” or appropriated funds must be “*specifically intended* to fund the costs of the state mandate in an *amount sufficient* to fund the cost of the state mandate.” To interpret the law as the December 10, 2001 state agency comments urge would render much of the language of Government Code section 17556, subdivision (e) meaningless. The Commission finds that section 17556, subdivision (e) does not apply to disallow a finding of costs mandated by the state, but that all claims for reimbursement for the approved activities must be offset by any program funds already received and applied to the program from non-local sources. There is no evidence that the counties are required to use the funds identified by DOF for the expenses of the mandated activities.

Thus, for the activities listed in the conclusion below, the Commission finds that the new program or higher level of service also imposes costs mandated by the state within the meaning of Government Code section 17514, and none of the exceptions of Government Code section 17556 apply.

## CONCLUSION

The Commission concludes that Penal Code sections 11165.9, 11166, 11166.2, 11166.9, 11168 (formerly 11161.7), 11169, 11170, as added or amended by Statutes 1977, chapter 958, Statutes 1980, chapter 1071, Statutes 1981, chapter 435, Statutes 1982, chapters 162 and 905, Statutes 1984, chapters 1423 and 1613, Statutes 1985, chapter 1598, Statutes 1986, chapters 1289 and 1496, Statutes 1987, chapters 82, 531 and 1459, Statutes 1988, chapters 269, 1497 and 1580, Statutes 1989, chapter 153, Statutes 1990, chapters 650, 1330, 1363 and 1603, Statutes 1992, chapters 163, 459 and 1338, Statutes 1993, chapters 219 and 510, Statutes 1996, chapters 1080 and 1081, Statutes 1997, chapters 842, 843 and 844, Statutes 1999, chapters 475 and 1012, and Statutes 2000, chapter 916; and executive orders California Code of Regulations, title 11, section 903, and “Child Abuse Investigation Report” Form SS 8583, mandate new programs or higher levels of service within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

### ***Distributing the Suspected Child Abuse Report Form:***

*Any police department (not including a K-12 school district police or security department), sheriff’s department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:*

- Distribute the child abuse reporting form adopted by the Department of Justice (currently known as the “Suspected Child Abuse Report” Form SS 8572) to mandated reporters. (Pen. Code, § 11168, formerly § 11161.7.)<sup>82</sup>

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<sup>82</sup> As added by Statutes 1980, chapter 1071 and amended by Statutes 2000, chapter 916. Derived from former Penal Code section 11161.7, as amended by Statutes 1977, chapter 958.

### ***Reporting Between Local Departments***

#### **Accepting and Referring Initial Child Abuse Reports when a Department Lacks Jurisdiction:**

*Any police department (not including a K-12 school district police or security department), sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:*

- Transfer a call electronically or immediately refer the case by telephone, fax, or electronic transmission, to an agency with proper jurisdiction, whenever the department lacks subject matter or geographical jurisdiction over an incoming report of suspected child abuse or neglect. (Pen. Code, § 11165.9.)<sup>83</sup>

#### **Cross-Reporting of Suspected Child Abuse or Neglect from County Welfare and Probation Departments to the Law Enforcement Agency with Jurisdiction and the District Attorney's Office:**

*A county probation department shall:*

- Report by telephone immediately, or as soon as practically possible, to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Penal Code section 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare department. (Pen. Code, § 11166, subd. (h), now subd. (j).)<sup>84</sup>
- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

As of January 1, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours. (Pen. Code, § 11166, subd. (h), now subd. (j).)<sup>85</sup>

*A county welfare department shall:*

- Report by telephone immediately, or as soon as practically possible, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Penal Code section 11165.6, except acts or omissions

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<sup>83</sup> As added by Statutes 2000, chapter 916, operative January 1, 2001.

<sup>84</sup> As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

<sup>85</sup> *Ibid.*

coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare department.

This activity does not include making an initial report of child abuse and neglect from a county welfare department to the law enforcement agency having jurisdiction over the case, which was required under prior law to be made "without delay." (Pen. Code, § 11166, subd. (h), now subd. (j).)<sup>86</sup>

- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency, including the law enforcement agency having jurisdiction over the case, to which it is required to make a telephone report under this subdivision.

As of January 1, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours. (Pen. Code, § 11166, subd. (h), now subd. (j).)<sup>87</sup>

Cross-Reporting of Suspected Child Abuse or Neglect from the Law Enforcement Agency to the County Welfare and Institutions Code Section 300 Agency, County Welfare, and the District Attorney's Office:

*A law enforcement agency (including city, special district, school district and community college district police departments, and county sheriff's departments) shall:*

- Report by telephone immediately, or as soon as practically possible, to the agency given responsibility for investigation of cases under Welfare and Institutions Code section 300 and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within Penal Code section 11165.2, subdivision (b), which shall be reported only to the county welfare department. (Pen. Code, § 11166, subd. (i), now subd. (k).)<sup>88</sup>
- Report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. (Pen. Code, § 11166, subd. (i), now subd. (k).)<sup>89</sup>

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<sup>86</sup> *Ibid.*

<sup>87</sup> *Ibid.*

<sup>88</sup> As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

<sup>89</sup> *Ibid.*

- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

As of January 1, 2006, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours. (Pen. Code, § 11166, subd. (i), now subd. (k).)<sup>90</sup>

Receipt of Cross-Reports by District Attorney’s Office:

*A district attorney’s office shall:*

- Receive reports of every known or suspected instance of child abuse reported to law enforcement, county probation or county welfare departments, except acts or omissions of general neglect coming within Penal Code section 11165.2, subdivision (b). (Pen. Code, § 11166, subs. (h) and (i), now subs. (j) and (k).)<sup>91</sup>

Reporting to Licensing Agencies:

*Any police department (not including a K-12 school district police or security department), sheriff’s department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:*

- Report by telephone immediately or as soon as practically possible to the appropriate licensing agency every known or suspected instance of child abuse or neglect when the instance of abuse or neglect occurs while the child is being cared for in a child day care facility, involves a child day care licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee or staff person. The agency shall also send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision. The agency shall send the licensing agency a copy of its investigation report and any other pertinent materials.

As of July 31, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours. (Pen. Code, § 11166.2.)<sup>92</sup>

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<sup>90</sup> *Ibid.*

<sup>91</sup> As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

<sup>92</sup> As added by Statutes 1985, chapter 1598 and amended by Statutes 1987, chapter 531; Statutes 1988, chapter 269; Statutes 1990, chapter 650; and Statutes 2000, chapter 916.

Additional Cross-Reporting in Cases of Child Death:

*A law enforcement agency (including city, special district, school district and community college district police departments, and sheriff's departments) shall:*

- Cross-report all cases of child death suspected to be related to child abuse or neglect to the county child welfare agency. (Pen. Code, § 11166.9, subd. (k), now § 11174.34, subd. (k).)<sup>93</sup>

*A county welfare department shall:*

- Cross-report all cases of child death suspected to be related to child abuse or neglect to law enforcement. (Pen. Code, § 11166.9, subd. (k), now § 11174.34, subd. (k).)<sup>94</sup>
- Create a record in the Child Welfare Services/Case Management System (CWS/CMS) on all cases of child death suspected to be related to child abuse or neglect. (Pen. Code, § 11166.9, subd. (l), now § 11174.34, subd. (l).)<sup>95</sup>
- Enter information into the CWS/CMS upon notification that the death was subsequently determined not to be related to child abuse or neglect. (Pen. Code, § 11166.9, subd. (l), now § 11174.34, subd. (l).)<sup>96</sup>

***Investigation of Suspected Child Abuse, and Reporting to and from the State Department of Justice***

*Any police department (not including a K-12 school district police or security department), sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:*

- Complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive, as defined in Penal Code section 11165.12, for purposes of preparing and submitting the state "Child Abuse Investigation Report" Form SS 8583, or subsequent designated form, to the Department of Justice. (Pen. Code, § 11169, subd. (a); Cal. Code Regs., tit. 11, § 903, "Child Abuse Investigation Report" Form SS 8583.)<sup>97</sup>
- Forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect which is determined to be substantiated or inconclusive, as defined in Penal Code section 11165.12. Unfounded reports, as

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<sup>93</sup> As amended by Statutes 1999, chapter 1012, operative January 1, 2000. This code section has since been renumbered as Penal Code section 11174.34, without amendment, by Statutes 2004, chapter 842.

<sup>94</sup> *Ibid.*

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*

<sup>97</sup> Code section as added by Statutes 1980, chapter 1071, amended by Statutes 1981, chapter 435, Statutes 1985, chapter 1598, Statutes 1988, chapters 269 and 1497, Statutes 1997, chapter 842, and Statutes 2000, chapter 916. Regulation as filed and operative July 17, 1998.

defined in Penal Code section 11165.12, shall not be filed with the Department of Justice. If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact. The reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission. (Pen. Code, § 11169, subd. (a); Cal. Code Regs., tit. 11, § 903, “Child Abuse Investigation Report” Form SS 8583.)<sup>98</sup>

### ***Notifications Following Reports to the Central Child Abuse Index***

*Any police department (not including a K-12 school district police or security department), sheriff’s department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:*

- Notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index, in any form approved by the Department of Justice, at the time the “Child Abuse Investigation Report” is filed with the Department of Justice. (Pen. Code, § 11169, subd. (b).)<sup>99</sup>
- Make relevant information available, when received from the Department of Justice, to the child custodian, guardian ad litem appointed under section 326, or counsel appointed under section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse or severe neglect. (Pen. Code, § 11170, subd. (b)(1).)<sup>100</sup>
- Inform the mandated reporter of the results of the investigation and of any action the agency is taking with regard to the child or family, upon completion of the child abuse investigation or after there has been a final disposition in the matter. (Pen. Code, § 11170, subd. (b)(2).)<sup>101</sup>
- Notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index, upon receipt of relevant information concerning child abuse or neglect investigation reports contained in the index from the Department of Justice when investigating a home for the placement of dependant children. The notification shall

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<sup>98</sup> *Ibid.*

<sup>99</sup> As amended by Statutes 1997, chapter 842, Statutes 1999, chapter 475, and Statutes 2000, chapter 916. The potential reimbursement period for this activity begins no earlier than January 1, 2001—the operative date of Statutes 2000, chapter 916.

<sup>100</sup> As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 162, Statutes 1984, chapter 1613, Statutes 1985, chapter 1598, Statutes 1986, chapter 1496, Statutes 1987, chapter 82, Statutes 1989, chapter 153, Statutes 1990, chapters 1330 and 1363, Statutes 1992, chapters 163 and 1338, Statutes 1993, chapter 219, Statutes 1996, chapter 1081, Statutes 1997, chapters 842, 843, and 844, Statutes 1999, chapter 475, and Statutes 2000, chapter 916.

<sup>101</sup> *Ibid.*

include the name of the reporting agency and the date of the report. (Pen. Code, § 11170, subd. (b)(5), now subd. (b)(6).)<sup>102</sup>

*Any police department (not including a K-12 school district police or security department), sheriff's department, county probation department if designated by the county to receive mandated reports, county welfare department, county licensing agency, or district attorney's office shall:*

- Obtain the original investigative report from the reporting agency, and draw independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, or placement of a child, when a report is received from the Child Abuse Central Index. (Pen. Code, § 11170, subd. (b)(6)(A), now (b)(8)(A).)<sup>103</sup>

*Any law enforcement agency, county probation department, or county welfare department shall:*

- Notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index, upon receipt of relevant information concerning child abuse or neglect reports contained in the index from the Department of Justice regarding placement with a responsible relative pursuant to Welfare and Institutions Code sections 281.5, 305, and 361.3. The notification shall include the location of the original investigative report and the submitting agency. The notification shall be submitted to the person listed at the same time that all other parties are notified of the information, and no later than the actual judicial proceeding that determines placement. (Pen. Code, § 11170, subd. (c).)

### **Record Retention**

*Any police department (not including a K-12 school district police or security department), sheriff's department, or county probation department if designated by the county to receive mandated reports, shall:*

*Any police department (not including a K-12 school district police or security department), sheriff's department, or county probation department if designated by the county to receive mandated reports, shall:*

- Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of 8 years for counties and cities (a higher level of service above the two-year record retention requirement pursuant to Gov. Code §§ 26202 (cities) and 34090 (counties)), and for a minimum of 10 years for community colleges and special district police departments. If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years.<sup>104</sup>

*A county welfare department shall:*

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<sup>102</sup> As amended by Statutes 1997, chapter 844, Statutes 1999, chapter 475, and Statutes 2000, chapter 916. This subdivision was renumbered by Statutes 2004, chapter 842.

<sup>103</sup> *Ibid.*

<sup>104</sup> As amended by Statutes 1997, chapter 842.



- Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of 7 years for welfare records (a higher level of service above the three-year record retention requirement pursuant to Welf. & Inst. Code, § 10851.) If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years. (Pen. Code, § 11169, subd. (c).)<sup>105</sup>

The Commission concludes that any test claim statutes, executive orders and allegations not specifically approved above, do not mandate a new program or higher level of service, or impose costs mandated by the state under article XIII B, section 6.

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<sup>105</sup> *Ibid.*