BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Penal Code Section 293, as added and amended by Statutes of 1992, Chapter 502; Statutes of 1993, Chapter 555; and Statutes of 1993-94, 1st Extraordinary Session, Chapter 36; Filed on June 30, 1999; By the City of Hayward, Claimant.	No. 98-TC-21 ***Sex Crime Confidentiality*** STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on September 28, 2001)*

PROPOSED STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim on August 23, 2001 during a regularly scheduled hearing. Mr. Harry R. Bruno, Jr., Ms. Veronica Larson and Ms. Pamela Stone appeared on behalf of the City of Hayward. Ms. Jennifer Osborn appeared for the Department of Finance.

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

The Commission unanimously approved this test claim.

BACKGROUND AND FINDINGS

The test claim statute requires a law enforcement agency employee who receives a report from a person who alleges that he or she was the victim of specified sex crimes to inform the reporting person that his or her name will become a matter of public record unless he or she requests confidentiality. This statute also requires that the person's response be memorialized in any written report of the alleged sex offense. Finally, the law enforcement agency may not disclose the person's name or address if the person has requested confidentiality except to specified persons. The test claim statute added section 293 to the Penal Code in 1992. It was amended in 1993 and again in the Extraordinary Session of 1993-94.

The test claim legislation was introduced to "protect victims of sexual assaults or offenses by prohibiting the disclosure of their names by the press to the public."[1] This legislation originally provided that no person shall print, publish, or broadcast, or cause or allow to be printed, published, or broadcast, in any instrument of mass communication the name, address, or other

[1] Senate Committee on Judiciary, Committee Analysis, Hearing date: June 18, 1991.

identifying fact or information of the victim of any sexual offense, as specified, a violation of which shall be punishable as a misdemeanor and subject to civil action.

Opposition to SB 296 (Torres) surfaced immediately from the California Newspaper Publishers Association and the American Civil Liberties Union citing *The Florida Star v. B.J.F.*[2] case to support their position that this legislation was in violation of the First Amendment. By the time the bill reached the Assembly, it had been substantially amended to address this opposition while still providing certain protections to victims of sex offenses. This legislation was necessary, according to the author, because "[w]omen are afraid to come forward with charges of rape because of fear they will be publicly identified and humiliated."[3]

Claimant's Position

Claimant contended that the test claim statute imposes a reimbursable state mandate for the following activities:

Implementation Costs

1. Review of existing policies and procedures for compliance with the law;
2. Establish a new form to record response of sex crime victims regarding confidentiality of personal information;
3. Train all law enforcement personnel in new policies and procedures;
4. Develop new fields in city's database form to record victims request re keeping personal information confidential;
5. Develop system to allow victims name and address to be deleted; and,
6. Develop Sex Crime Incident Report Deletion form.

On-Going Costs

1. Advising sex crime victim of right to keep personal information confidential; and,
2. Redacting of personal information from police reports.

Department of Finance's Position

The Department of Finance (DOF) stated that the test claim statute "may have resulted in a reimbursable state-mandated local program. If the Commission reaches the same conclusion…the nature and extent of the specific activities required of the City of Hayward can be addressed in the parameters and guidelines which will then have to be developed for the program."[4]

Additional comments submitted by DOF on the Draft Staff Analysis stated: "…we concur that the statutes may have resulted in a reimbursable state mandated local program for the following duties:

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[2] *The Florida Star v. B.J.F.* (1989) 491 U.S. 524, 109 [S.Ct. 2603].
[3] Assembly Committee on Public Safety, Bill Analysis Worksheet, February 7, 1992.
[4] Department of Finance comments submitted July 29, 1999.

- The requirement that law enforcement personnel who personally receive a report of a sex offense from an alleged victim inform the alleged victim that his or her name will become a matter of public record unless he or she request that it does not;

- The requirement that law enforcement personnel indicate on a written report that the alleged victim has been informed of his or her right to confidentiality, and memorialize his or her response, and;

- The prohibition from disclosure by law enforcement agencies of the address or name of a person who has alleged to be a victim of a sex offense to any person except as specified."[5]

COMMISSION FINDINGS

In order for a statute or an executive order to impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution [6] and Government Code section 17514,[7] the statutory language must first direct or obligate an activity or task upon local governmental entities. If the statutory language does not direct or obligate local agencies to perform a task, then compliance with the test claim statute or executive order is within the discretion of the local agency and a reimbursable state mandated program does not exist.

In addition, the required activity or task must constitute a new program or create a higher level of service over the former required level of service. The California Supreme Court has defined the word "program," subject to article XIII B, section 6 of the California Constitution, as an activity that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. To determine if the "program" is new or imposes a higher level of service, a comparison must be made between the test claim statute and the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the new program or increased level of service must impose "costs mandated by the state."[8]

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[5] Department of Finance comments, submitted August 1, 2001.

[6] Article XIII B, section 6 of the California Constitution provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

(a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

[7] Government Code section 17514 provides: "Costs mandated by the state means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

[8] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 66; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835; Government Code section 17514.

Issue 1 Is the test claim statute a "program" within the meaning of article XIII B, section 6 of the California Constitution by carrying out either the governmental function of providing services to the public or imposing unique requirements on local law enforcement agencies?

In order for the test claim statute to be subject to article XIII B, section 6 of the California Constitution, the test claim statute must constitute a "program." In *County of Los Angeles v. State of California*, the California Supreme Court defined the word "program," within the meaning of article XIII B, section 6, as a program that carries out the governmental function of providing a service to the public, or laws, which to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.[9] In *Carmel Valley*, the court held that only one of these findings is necessary to trigger the applicability of article XIII B, section 6.[10]

California courts have continually held that police and fire protection are two of the most basic functions of local government and are peculiarly governmental in nature.[11] In the present case, the test claim statute concerns law enforcement personnel taking a police report from an alleged victim of a sex crime. The purpose of the statute is to protect victims of sexual assaults by prohibiting the disclosure of the victim's name to the public. To accomplish this purpose, law enforcement personnel who personally receive a report of a sex offense from an alleged victim are required to: 1) inform the alleged victim of a sex offense that his or her name will become a matter of public record unless he or she request that it does not; and, 2) indicate on any written report that the alleged victim has been properly informed of his or her right to confidentiality and memorialize his or her response. In addition, law enforcement agencies are prohibited from disclosing the address or name of a person who is alleged to be the victim of a sex offense to any person except the prosecutor, parole officers of the Department of Corrections, hearing officers of the parole authority, or other person or public agencies where authorized or required by law. These activities are imposed uniquely on local government and do not apply generally to all residents and entities in the state.

Accordingly, the Commission found that the test claim statute is a "program" within the meaning of article XIII B, section 6 of the California Constitution, because it carries out the uniquely governmental function of providing police services and protection to the public.

Issue 2 Does the test claim statute constitute a "new program or higher level of service" and impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514?

[9] *County of Los Angeles, supra,* 43 Cal.3d 46, 56.
[10] *Carmel Valley Fire Protection Dist., supra,* 190 Cal.App.3d at 537.
[11] *Carmel Valley Fire Protection Dist., supra,* 190 Cal.App.3d 537; *City of Sacramento, supra,* 50 Cal.3d 51.

To determine if a program is new or imposes a higher level of service, a comparison must be undertaken between the test claim statute and the legal requirements in effect immediately before the enactment of the test claim statute.[12]

Prior Law & Confidentiality Statutes

Prior to the enactment of the test claim legislation, section 293 had been repealed for over fifty years. As added by the test claim statute[13], section 293 provides:

> (a) Any employee of a law enforcement agency who personally receives a report from any person, alleging that the person making the report has been the victim of a sex offense, shall inform that person that his or her name will become a matter of public record unless he or she requests that it not become a matter of public record, pursuant to Section 6254 of the Government Code**.**
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> (b) Any written report of an alleged sex offense shall indicate that the alleged victim has been properly informed pursuant to subdivision (a) and shall memorialize his or her response.
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> (c) No law enforcement agency shall disclose to any person, except the prosecutor, parole officers of the Department of Corrections, hearing officers of the parole authority, or other persons or public agencies where authorized or required by law, the address of a person who alleges to be the victim of a sex offense.
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> (d) No law enforcement agency shall disclose to any person, except the prosecutor, parole officers of the Department of Corrections, hearing officers of the parole authority, or other persons or public agencies where authorized or required by law, the name of a person who alleges to be the victim of a sex offense, if that person has elected to exercise his or her right pursuant to this section and Section 6254 of the Government Code**.**
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> (e) For purposes of this section, sex offense means any crime listed in paragraph (2) of subdivision (f) of Section 6254 of the Government Code[14] which is also defined in Chapter 1 (commencing with Section 261) or Chapter 5 (commencing with Section 281) of Part 1 of Title 9.
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> (f) Parole officers of the Department of Corrections and hearing officers of the parole authority shall be entitled to receive information pursuant to subdivisions (c) and (d) only if the person to whom the information pertains alleges that he or she is the victim of a sex offense, the alleged perpetrator of which is a parolee who is alleged to have committed the sex offense while on parole.[15]

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[12] *County of Los Angeles, supra* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist., supra* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist.* v. *Honig* (1988) 44 Cal.3d 830, 835.

[13] Chapter 502, Statutes of 1992, added section 293; Chapter 555, Statutes of 1993 amended this section; Chapter 36, Statutes of 1993-94, 1st Extraordinary Session further amended this section.

[14] Government Code section 6254 lists the following Penal Code sections: 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, 646.9.

[15] Chapter 502, Statutes of 1992, added section 293; Chapter 555, Statutes of 1993 added the language indicated by single underlining; Chapter 36, Statutes of 1993-94, 1st Extraordinary Session added subdivision (f) and the language indicated by double underlining.

The test claim statute requires local law enforcement personnel who personally receive a report of a sex offense from an alleged victim to: 1) inform the alleged victim of a sex offense that his or her name will become a matter of public record unless he or she request that it does not; and, 2) indicate on any written report that the alleged victim has been properly informed of his or her right to confidentiality and memorialize his or her response. In addition, law enforcement agencies are prohibited from disclosing the address or name of a person who is alleged to be the victim of a sex offense to any person except the prosecutor, parole officers of the Department of Corrections, hearing officers of the parole authority, or other person or public agencies where authorized or required by law.

Under prior law, the specific provisions of the test claim statute did not exist. Some confidentiality protections were provided for victims of sex offenses through both the Public Records Act[16], which provides that the name of the victim of certain sex offenses including rape, domestic violence, child abuse and stalking may be withheld at the request of the victim or the victim's parent or guardian, and Penal Code section 1054.2, which prohibits attorneys from disclosing the address or telephone number of a victim to anyone unless specifically permitted to do so by a court after a hearing and a showing of good cause.

Thus, while certain confidentiality provisions existed in prior law for the victims of sex offenses, none of those statutes included the key provision of the test claim legislation that the law enforcement employee taking the report "…shall inform that person that his or her name will become a matter of public record unless he or she requests that it not become a matter of public record…" and record on the report both that the victim was informed of his or her right to confidentiality and the response given.

The Assembly Committee on Public Safety bill analysis stated, "[U]nder current law, a person who alleges that he or she is the victim of a sex offense has the right to prevent his or her name from becoming a part of the record which is open to public inspection. Because not all such persons may be aware of this right, some names may become known against the wishes of the persons involved. By ensuring that all such persons are informed of this right, this bill is intended to prevent the public disclosure of the names of persons who are victims of sex offenses and who do not wish to have their names disclosed."[17]

Based on the foregoing, the Commission found that Penal Code section 293 of the test claim statute constitutes a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution and imposes costs mandated by the state within the meaning of Government Code section 17514.

CONCLUSION

[16] Government Code section 6254, subdivision (f)(2).
[17] Assembly Committee of Public Safety, Hearing Date: June 23, 1999.

Based on the foregoing, the Commission concluded that the test claim statute, Penal Code section 293, imposes a reimbursable state-mandated program upon local governments within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities:

- Law enforcement personnel who personally receive a report of a sex offense from an alleged victim shall inform the alleged victim of a sex offense that his or her name will become a matter of public record unless he or she request that it does not;

- Law enforcement personnel shall indicate on any written report that the alleged victim has been properly informed of his or her right to confidentiality and shall memorialize his or her response;

- Law enforcement agencies shall not disclose the address or name of a person who alleged to be the victim of a sex offense to any person except the prosecutor, parole officers of the Department of Corrections, hearing officers of the parole authority, or other person or public agencies where authorized or required by law.