

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Penal Code Section 1417.3 , as amended by Statutes of 1985, Chapter 875, Statutes of 1986, Chapter 734, and Statutes of 1990, Chapter 3 82;

Filed on October 23, 1998

By the Los Angeles Police Department,  
Claimant.

No. 98-TC-07

*Photographic Record of Evidence*

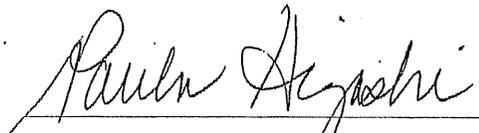
STATEMENT OF DECISION PURSUANT  
TO GOVERNMENT CODE SECTION  
17500 ET SEQ.; TITLE 2, CALIFORNIA  
CODE OF REGULATIONS, DIVISION 2,  
CHAPTER 2.5, ARTICLE 7

*(Adopted on October 26, 2000)*

**STATEMENT OF DECISION**

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

This Decision shall become effective on October 31, 2000.

  
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Paula Higashi, Executive Director

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*(Adopted on October 26, 2000)*

**STATEMENT OF DECISION**

The Commission on State Mandates (Commission) heard and decided this test claim on September 28, 2000 during a regularly scheduled hearing. Pamela Stone, Steve Johnson, Norman Lee, and Allan Burdick appeared on the behalf of the claimant and Cedrick Zemitis appeared on the behalf of 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, by a vote of 4-2, approved this test claim.

**BACKGROUND AND FINDINGS**

The test claim legislation requires a photographic record of evidence, and in some instances a certified chemical analysis of the exhibit, for those exhibits in a criminal trial that pose a security, storage, or safety problem, or if the exhibit, by its nature, is toxic and poses a health hazard. The ability to introduce evidence in a criminal trial stems from the due process requirements of the United States Constitution. In addition, the California Evidence Code provides that all relevant evidence is admissible.

Claimant's Contentions

The claimant contends that the test claim legislation imposes a new program upon law enforcement agencies. Specifically, the claimant submits that the test claim legislation requires the introduction of a photographic record of evidence and, if necessary, chemical analysis of

exhibits in a criminal trial that poses a health, security, storage, or safety problem. Moreover, the claimant contends that the test claim legislation amended prior law, which had required the court to keep all exhibits that were introduced in a criminal trial, to now require the party to store those exhibits that pose a health, security, storage, or safety problem. Therefore, the claimant concludes that the test claim legislation imposes reimbursable state-mandated activities upon law enforcement agencies,

#### Department of Finance's Contentions

The Department of Finance (DOF) agrees with the claimant that the test claim legislation imposes additional costs upon local agencies. However, DOF contends that the test claim legislation does not impose unique activities upon local agencies as required under article XIII B, section 6 of the California Constitution. It is DOF's position that the test claim legislation imposes the requirement to introduce certain exhibits as a photographic record upon all parties in a criminal proceeding. Therefore, DOF concludes that the test claim legislation does not impose unique reimbursable state-mandated activities upon law enforcement agencies.

Alternatively, it is DOF's position that if the Commission finds that the test claim legislation imposes reimbursable state-mandated costs upon law enforcement agencies, any savings related to agencies' not having to comply with safety procedures for the transportation of toxic or other hazardous exhibits to and from the courtroom should be offset.

#### Commission's Findings

In order for a statute or executive order, which is the subject of a test claim, to impose a reimbursable state-mandated program, the language: (1) must impose a program upon local governmental entities; (2) the program must be new, thus constituting a "new program", or it must create an increased or "higher level of service" over the former required level of service; and (3) the newly required program or increased level of service must impose costs mandated by the state.

The California Supreme Court has defined a "new program" or "higher level of service" as a program that carries out the governmental function of providing services to the public, or a law, which to implement a state policy, imposes unique requirements on local agencies or school districts that do not apply generally to all residents and entities in the state.<sup>1</sup> The court in *Carmel Valley Fire Protection Dist. v. State of California* stated, "only one of these findings is necessary to trigger reimbursement."<sup>2</sup>

To determine if a required program is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.<sup>3</sup> To determine if the new

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<sup>1</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

<sup>2</sup> *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537

<sup>3</sup> *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.

program or higher level of service imposes costs mandated by the state, a review of state and federal statutes, regulations, and case law must be undertaken.<sup>4</sup>

Based on the foregoing, the Commission addresses the following issues to determine if the test claim legislation imposes reimbursable state-mandated activities upon law enforcement agencies :

- 1, Does the test claim legislation carry out the governmental function of providing services to the public or impose unique requirements upon law enforcement agencies and, thus, constitute a "program" within the meaning of article XIII B, section 6 of the California Constitution?
- 2, Does the test claim legislation impose a new program or higher level of service upon law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution and impose "costs mandated by the state," within the meaning of Government Code section 17514?

### Issue 1

Does the test claim legislation carry out the governmental function of providing services to the public or impose unique requirements upon law enforcement agencies and, thus, constitute a "program" within the meaning of article XIII B, section 6 of the California Constitution?

#### Does the Test Claim Legislation Impose Unique Requirements Upon Law Enforcement Agencies?

The Department of Finance (DOF) contends that the test claim legislation does not impose reimbursable costs upon law enforcement agencies because the test claim legislation does not impose activities that are unique to local government as defined in *County of Los Angeles*. The Commission agrees that the test claim legislation does not impose unique requirements upon local government. Penal Code section 1417.3 requires the introduction of a photographic record of evidence and, if necessary, a written chemical analysis of exhibits that pose a health, security, storage, or safety problem. In addition, the party introducing such evidence is now required to take possession and store the exhibit. These requirements apply to any party wishing to introduce such evidence in a criminal trial. Therefore, the Commission finds that the requirement to introduce a photographic record of evidence, provide a written chemical analysis of the evidence if necessary, and take possession and store evidence that poses a health, security, storage, or safety problem is not unique to local government.

However, the analysis of whether the test claim legislation constitutes a new program is not over simply because the test claim activities are not unique to local government. As further stated in *County of Los Angeles*, the definition of a "new program" or "higher level of service" includes a program that carries out the governmental function of providing services to the

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<sup>4</sup> *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76; *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1594; Government Code sections 17513, 17516.

public.<sup>5</sup> As stated by the court in *Carmel Valley*, “only one of these findings is necessary, to trigger reimbursement.”<sup>6</sup> Therefore, an analysis of whether the test claim legislation carries out the governmental function of providing services to the public must be undertaken.

### Does the Test Claim Legislation Carry Out the Governmental Function of Providing Services to the Public?

To determine whether the test claim legislation carries out the governmental function of providing services to the public it is necessary, to define the program within which the test claim legislation operates. In *Carmel Valley*, the court was faced with the question of whether the requirement to provide safety clothing and equipment for firefighters represented a reimbursable state-mandated program. In answering the question of whether the legislation represented a “new program” or “higher level of service,” the court did not view the program as simply the provision of safety equipment to firefighters. Rather, the court viewed the program as something much broader – the provision of fire protection in the state.

The *Carmel Valley* court explained:

“Police and fire protection are two of the, most essential and basic functions of government., [Citation omitted] This” classification is not weakened by the State’s assertion that, there are private sector fire fighters who are, also subject to the [test claim legislation]’ . . . . We have no difficulty in concluding as ‘a matter of judicial notice that the *overwhelming number of fire fighters discharge a classical governmental function.*”<sup>8</sup> (Emphasis added. )

The Commission finds that the program within which the test claim legislation operates is the criminal justice system in the state: “The prosecution of criminals in California is a peculiarly governmental function administered by local agencies as a service to the public like the provision of fire protection. The Commission further finds that under the test claim legislation the overwhelming number of hazardous exhibits would be maintained and introduced by local law enforcement agencies. These exhibits could include drugs, weapons, or any other hazardous instrumentality of the crime. Therefore, in accordance with the principles set forth in *Carmel Valley*, the Commission finds the introduction of photographic records of evidence that pose a health, security, storage, or safety problem’, the provision of a written chemical analysis of evidence that poses a health hazard, and the storage of such evidence by the party introducing it, “carries out the governmental function of providing services to the public”- and thereby constitutes a “program” within the meaning of article XIII B, section 6 of the California Constitution.<sup>9</sup>

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<sup>5</sup> *County of Los Angeles, supra* (1987) 43 Cal.3d 46, 56.

<sup>6</sup> *Camel Valley Fire Protection Dist., supra* (1987) 190 Cal.App.3d 521, 537

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172.

However, the inquiry must continue to determine if these activities are new or impose a higher level of service and if so, if there are costs mandated by the state. These issues are discussed below.

## Issue 2

Does the test claim legislation impose a new program or higher level of service upon law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution and impose costs mandated by the state within the meaning of Government Code section 17514?

In order for the test claim legislation to impose a reimbursable program under article XIII B, section 6 of the California Constitution, the newly required activities must be state mandated.<sup>10</sup> To determine if a required program is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.<sup>11</sup>

### Prior Law

The Sixth Amendment to the United States Constitution provides:

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; . . . and to be informed of the nature and cause of the accusation; to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor, and, to have the Assistance of Counsel for his defence.”<sup>12</sup>

From these due process rights stems the requirement for the prosecution to produce evidence of an individual's guilt. Evidence Code section 140 defines “evidence” as “Testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact.” Evidence Code section 350 provides that only relevant evidence is admissible.

Before the enactment of the test claim legislation, the prosecution was able to introduce evidence at criminal trials, including evidence toxic by its nature. Prior law provided that all exhibits introduced or filed in any criminal action shall be retained by the court clerk until final determination of the action.<sup>13</sup> Prior law also included procedures for the disposition of exhibits and the release of exhibits upon stipulation of the parties.<sup>14</sup> The Commission finds that prior

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<sup>10</sup> *Lucia Mar Unified School Dist.*, *supra* 44 Cal.3d 830, 835.

<sup>11</sup> *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.

<sup>12</sup> The Bill of Rights, the first ten amendments to the United States Constitution, was ratified on December 15, 1791.

<sup>13</sup> Statutes of 1953, Chapter 51 originally added former Evidence Code section 1417.

<sup>14</sup> Former Evidence Code sections 1418.6 and 1418.

law did not include procedures for photographing evidence, providing chemical analyses, as necessary, and the return of exhibits to the parties that pose a security, storage,\* or safety problem or those exhibits that, by their nature, pose a health hazard,

#### Current Law: The Test Claim Legislation

Penal Code section 1417.3 provides:

“(a) At any time prior to the final determination of the action or proceeding, exhibits offered by the state or defendant shall be returned to the party offering them by order of the court when an exhibit poses a security, storage, or safety problem, as recommended by the clerk of the court. If an exhibit by its nature is severable, the court shall order the clerk to retain a portion of the exhibit not exceeding three-pounds by weight or one cubic foot by volume and shall order the return of the balance of the exhibit to the district attorney. The clerk, upon court order, shall substitute a full and complete photographic record of any exhibit or part of any exhibit returned to the state under this section. The party to whom the exhibit is being returned shall provide the photographic record,

“(b) Exhibits toxic by their nature that pose a health hazard to humans shall be introduced to the court in the form of a photographic record and a written chemical analysis certified by a competent authority. Where the court finds that good cause exists to depart from this procedure, toxic exhibits may be brought into the courtroom and introduced. However, following introduction of the exhibit, the person or persons previously in possession of the exhibit shall take responsibility for it and the court shall not be required to store the exhibit.”

As, stated above, prior law did not require parties introducing exhibit&that pose a ‘security, storage, or safety problem or those exhibits, that, by their nature, pose a health hazard to provide a photographic record of evidence. Prior law did not require the introduction of a certified ‘chemical analysis of exhibits that pose a health hazard. Nor did prior law require the party in possession of this type of evidence to assume the responsibility for storage. These activities were added by the test claim legislation and imposed upon any party wishing to introduce such evidence in a criminal proceeding. As, discussed above, the activities required by the test claim legislation carry out the governmental function of providing services to the public. The Commission finds that under the test claim legislation, local law enforcement agencies are now required to: (1) provide a photographic record for evidence that poses a health, safety, security, or storage problem; (2) provide a certified chemical analysis of evidence that pose a health hazard; and (3) store the evidence.

DOF has concluded “section 1417.3 of the Penal Code may result in additional costs to local entities.”<sup>15</sup> However, it is DOF’s position that if the Commission finds that the test claim legislation imposes mandated costs upon law enforcement agencies any claims must be offset

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<sup>15</sup> However, DOF contends that the test claim activities are not unique to local government and therefore are not reimbursable. The Commission addresskd this argument under Issue 1 and concluded that the test claim activities carry out the governmental function of providing services to the public,

by any local operational savings in accordance with Government Code section 17556, subdivision (e). Government Code section 17756, subdivision (e) provides:

“The commission shall not find costs mandated by the state . . . , in any claim submitted by a local agency or school district; if, after a hearing, the commission finds that:

“ .....  
“(e) The statute . . . , provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts. . . .”

The Commission disagrees with DOF’s characterization of section 17556, subdivision (e) and that subdivision (e), is inapplicable to the present test claim. The Commission finds that there is no evidence that the test claim legislation has provided offsetting savings to local law enforcement agencies that result in no net costs.

Therefore, the Commission finds that the test claim legislation has imposed a new program or higher level of service upon law enforcement agencies with the meaning of article XIII B, section 6 of the California Constitution. Furthermore, the Commission finds that this new program constitutes costs mandated by the state within the meaning of Government Code section 175 14.

**CONCLUSION**

Based on the foregoing, the Commission concludes that the test claim legislation does impose a reimbursable state-mandated program upon law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 175 14 for the following:

- Activities reasonably necessary to provide a photographic record of evidence for evidence that poses a security, safety, or storage problem as determined by the court. (Pen. Code, § 1417.3, subd. (a).)
- Activities reasonably necessary to provide a photographic record of evidence for evidence that poses a health hazard, (Pen, Code,, § 1417.3, subd. (b).)
- The provision of a certified written chemical analysis of evidence that poses a health hazard, (Pen. Code, § 1417.3, subd. (b).)
- The storage of evidence that poses a security, safety, or storage problem as determined by the court. (Pen. Code, § 1417.3, subd. (a).)
- The storage of evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)

**DECLARATION OF SERVICE BY MAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 958 14.

October 3 1, 2000, I served the:

**Adopted S tatement of Decision**

*98-E-07; Photographic Record of Evidence*

Penal Code Section 1417.3

Statutes of 1985, Chapter 875

Statutes of 1986, Chapter 734

Statutes of 1990 Chapter 382

Los Angeles Police Department, Claimant

by placing a true copy thereof in an envelope addressed to:

Mr. Allan Burdick

DMG Maximus

4320 Auburn Blvd., Suite 2000

Sacramento, California 95841

*State Agencies and Interested Parties (See attached mailing list);*

and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully paid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 3 1, 2000, at Sacramento, California

  
\_\_\_\_\_  
Victoria Soriano