

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM:

Education Code Sections 67380 and 67381,
as added and amended by

Statutes of 1990, Chapter 1638; Statutes of
1991, Chapter 585; Statutes of 1992, Chapter
886; Statutes of 1993, Chapter 8; Statutes of
1996, Chapter 1075; Statutes of 1998,
Chapter 284

Filed on June 25, 1999;

By Contra Costa Community College District,
Claimant

NO. CSM 98-TC-20

Campus Safety Plans

PROPOSED 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 April 26, 2001)

ADOPTED STATEMENT OF DECISION

On March 29, 2001, the Commission on State Mandates (Commission) heard this test claim during a regularly scheduled hearing. Mr. Keith Petersen appeared for Contra Costa Community College District. Mr. Jeffrey Bell appeared for the Department of Finance.

At the hearing, oral and documentary evidence was introduced, the test claim was submitted, and the vote was taken.

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, by a vote of 4 to 3, approved the test claim in part.

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BACKGROUND

Test Claim Legislation

The test claim legislation concerns two sections of the Education Code, sections 67380 and 67381.¹ The first section, 67380, requires some postsecondary institutions to compile and report occurrences and arrests of specific crimes committed on their respective campuses. These institutions are also required, at the request of students, employees and applicants, to prepare, post and distribute campus safety plans. The second section, 67381, requires law enforcement agencies of all public colleges and universities and some independent postsecondary institutions to enter into written agreements with local law enforcement agencies delineating their respective geographical boundaries for investigating certain violent crimes on campuses.²

History of Test Claim Legislation

- **Section 67380**

In 1990, AB 3918 (Statutes of 1990, Chapter 1638) added section 67380 to the Education Code, which required, in part,³ the governing board of each community college district, the Trustees of the California State University, the Board of Directors of the Hasting College of Law and the Regents of the University of California to:

- Compile records of all occurrences reported to the police or campus authorities and arrests, for crimes involving violence, theft or destruction of property, illegal drugs or alcoholic intoxication that happened on campus.
- Make the above information available at the request of any applicant, student or employee.
- Prepare, prominently post and distribute, on request, a campus safety plan which sets forth the availability and location of security personnel, methods for summoning assistance of security personnel, any special safeguards which have been established for particular facilities or activities, any actions taken in the preceding 18 months to increase safety and any changes in safety precautions expected to be made during the next 24 months.

However, AB 3918 also added section 67382, subdivision (b), to the Education Code, which excluded community colleges, and other institutions, from the requirements of section 67380. Section 67382, subdivision (b) provides:

(b) Notwithstanding any other provision of this section, this section **shall not apply to the California Community Colleges unless and until the Legislature makes funds available to the California**

¹ All further statutory references are to the Education Code unless otherwise indicated.

² Education Code section 67380, 67381, 67382 and 94380 as added by the Statutes of 1990, Chapter 1638. Sections 67380, 67381 and 67382 applied to public postsecondary institutions only and section 94380, which was identical to 67380, applied to private postsecondary and vocational educational institutions.

³ Education Code section 94380 contained the same language as 67380, but it applied to private postsecondary and vocational educational institutions.

Community Colleges for the purpose of this chapter.” [Emphasis added.]⁴

This exclusion has remained unchanged since the statute was originally enacted and is still in effect. In addition, there is no evidence that such funds have been made available to community colleges pursuant to this provision.

Nonetheless, since its inception, section 67380 has been amended to expand its scope and to delete obsolete and redundant provisions. In 1992, AB 1094 (Statutes of 1991, Chapter 585) added “hate violence” to its reportable crimes and required colleges to report their findings on hate violence to the California Postsecondary Education Commission who in turn would report said findings to the Legislature and Governor. In addition, specific reporting deadlines for hate crimes were imposed on colleges.⁵

In 1993, AB 3739 (Statutes of 1993, Chapter 886) expanded the scope of section 67380 to include any postsecondary institution receiving public funds for student financial aid. It also required colleges to compile information regarding crimes and to make this information available, within two business days of a request, to any applicant, student or employee as well as the media.⁶ Since 1993, there have been no substantive changes to section 67380. In fact, the only change to section 67380 after 1993 was in 1997 when one Government Code section was added as a reference.⁷ Thus, section 67380 has essentially remained unchanged since 1993.

- **Section 67381**

In 1998, section 67381 was added to the Education Code requiring the governing board of each community college district, the Trustees of the California State University, the Regents of the University of California and the governing board of independent postsecondary institutions, as defined, to adopt rules requiring:⁸

- Local law enforcement agencies to enter into written agreements with campus law enforcement agencies that are located in their respective jurisdictions.
- Each written agreement to designate which law enforcement agency shall have operational responsibility for the investigation of each violent crime and delineate the specific geographical boundaries of each agency’s operational responsibility.
- The written agreements to be available to the public for viewing by July 1, 1999 and shall be transmitted to the Legislative Analyst by September 1, 1999.

⁴ The community college exception was moved from section 67382 to section 67380, subdivision (f) by the Statutes of 1992, Chapter 886.

⁵ Education Code section 67380, as added by the Statutes of 1991, Chapter 585.

⁶ Education Code section 67380, as added by the Statutes of 1993, Chapter 886.

⁷ Education Code section 67380, as added by the Statutes of 1996, Chapter 1075.

⁸ Education Code section 67381, as added by the Statutes of 1998, Chapter 284.

Claimant's Position

Claimant contends that the test claim legislation results in community colleges incurring costs mandated by state pursuant to Government Code 17514, by creating new state mandated duties related to the uniquely governmental function of providing public education to children.

Claimant asserts that the new duties mandated by the state upon community colleges are as follows:

Section 67380

- (A) Compile information on specified crimes and incidents occurring within their jurisdiction.
- (B) Make this information available within two business days to any student, employee, student-applicant or to the media unless it is exempted from disclosure.
- (C) Prepare, prominently post and copy for distribution a campus safety plan which sets out the availability and location of security personnel, methods for summoning assistance personnel, any specified safeguards which have been established in the past 18 months and the change in safety precautions expected to be made in 24 months.
- (D) Report the compiled crime data to the governing board and the California Postsecondary Education Commission every two years in the manner specified.⁹

Section 67381

- (E) Enter into written agreements with local law enforcement agencies that clarify operational responsibilities for investigations of Part 1 violent crimes (means willful homicide, forcible rape, robbery and aggravated assault occurring on each campus) and which delineates the specific geographical boundaries of each agency's operational responsibility, including maps as necessary, and provide a copy of those agreements to the Legislative Analyst.
- (F) Be responsible for its own costs of investigation of crimes and incidents unless otherwise specified in a written agreement.

Department of Finance's Position

Section 67380

The Department of Finance (DOF) contends that activities (A), (B), (C) and (D), above, relate specifically to section 67380, subdivision (a), paragraphs 1, 2, 3, 4 and 5, which are optional to community colleges until the Legislature makes such funds available to community colleges pursuant to subdivision (f) of section 67380.

DOF further contends that no reimbursable state mandate exists for activities (A), (B), (C) and (D) as section 67380 is not unique to local government, because subdivision (a) specifies that the section applies to both public and private institutions.

In addition, DOF contends that activity (C) would be mitigated as section 67380, subdivision (a), allows safety information to be published in a student handbook that is made generally available

⁹ Section 67380 only requires that data pertaining to "hate violence" be reported not all crimes as stated by claimant. Education Code section 67380, subdivision (5).

to students. DOF further contends that any costs to add this section to a student handbook would be negligible compared to the non-mandated costs incurred in publishing a handbook or class schedule.

Section 67381

DOF asserts that activities (E) and (F) relate specifically to section 67381, subdivisions (b) and (f), and are not reimbursable, because they are not unique to local government as they apply equally to public and private postsecondary institutions.

DOF also asserts that activity (F) is declaratory of existing law and is therefore not a reimbursable state mandate, because it does not impose a higher level of service.

Lastly, DOF contends that activity (E) is not unique to local government, because it fails to carry out the governmental function of police protection to the public. Specifically, DOF asserts that activity (E) “requires community colleges to perform the administrative functions of entering into written agreements with local law enforcement agencies and reporting the related agreements to the Legislative Analyst, as opposed to law enforcement activities.”

California Community Colleges Chancellor’s Office’s (CCC) Position

CCC contends that section 67380 is not a reimbursable state mandate, because community colleges are not mandated by its provisions unless and until the state provides funding. CCC further contends that if section 67381 is considered a state mandate, then claimant is only entitled to reimbursement for the costs of implementing the statute and not for reimbursement of costs incurred prior to the statute.

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 Constitution¹⁰ and Government Code section 17514,¹¹ the statutory language must first direct or obligate an activity or task upon local governmental agencies. 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 new or higher level of service over the former required level of service. 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 a service to the public, or laws which, to implement a state

¹⁰ Section 6, article XIII B 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.”

¹¹ 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.”

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 legislation and the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the newly required activity or higher level of service must impose “costs mandated by the state”.¹²

Section 67380

Issue 1: Is section 67380 subject to article XIII B, section 6 of the California Constitution?

In order for a statute to be subject to article XIII B, section 6 of the California Constitution, the statutory language must direct or obligate an activity or task upon local governmental agencies or school districts. If the language does not mandate local agencies or school districts to perform a task, then compliance with the test claim statute is within the discretion of the local agency or school district and a reimbursable state mandated program does not exist.

In examining statutes, courts apply the basic rules of statutory construction. The meaning of a statute must first be interpreted within the language in which it was framed. If the language is “plain,” then the sole judicial function is to enforce it according to its terms. There is no room for interpretation. Courts will not determine the wisdom, desirability or propriety of statutes enacted by the legislature.¹³

In the present case, DOF and CCC contend that claimant’s activities, (A), (B), (C) and (D), are optional to community colleges until the Legislature makes such funds available to community colleges pursuant to 67380, subdivision (f). Section 67380, subdivision (f), provides:

(f) Notwithstanding any other provision of this section, this section **shall not apply** to the California Community Colleges unless and until the Legislature makes funds available to the California Community Colleges for the purposes of this section.¹⁴ [Emphasis added.]

Likewise, claimant admits that section 67380, subdivision (f), excludes community colleges from compliance with its provisions until such time funds are made available by the Legislature.

Accordingly, subdivision (f) of section 67380 clearly states that section 67380 is not applicable to community colleges until the Legislature makes funds available to them to carry out its provisions. There is no information that such funds have been made available to community colleges. Thus, until such funds are made available, community colleges are not required to comply with section 67380. Therefore, the Commission finds that section 67380 is not subject to article XIII B, section 6 of the California Constitution.

¹² Article XIII B, section 6 of the California Constitution; *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; Gov. Code, § 17514.

¹³ *Marin Hospital Dist v. Rothman* (1983) 139 Cal. App.3d 495.

¹⁴ Before the Statutes of 1993, Chapter 8, section 10, this subdivision was outlined in Education Code section 67382. Section 67382 was repealed by the Statutes of 1993 and added as subdivision (f) in section 67380.

Despite the foregoing, claimant contends that subdivision (f) does not preclude the Commission from finding a reimbursable state mandate, because it does not meet Government Code section 17556, subdivision (e)'s exception to a finding of "costs mandated by the state," or any other exception. This contention is misplaced. Section 17556, subdivision (e), or any other exception, has no bearing on whether section 67380 is subject to article XIII B, section 6. Rather, claimant's contention only becomes applicable if the Commission determines that section 67380 is subject to article XIII B, section 6. Until such time, section 17556, subdivision (e), is moot.

Conclusion on Section 67380

Based on the foregoing, the Commission finds that section 67380 is not subject to article XIII B, section 6 of the California Constitution, because it does not impose any mandated duties or activities on community colleges.

Accordingly, the Commission denies this portion of the test claim.

Section 67381

Issue 1: Does section 67381 constitute 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 upon community colleges?

In order for section 67381 to be subject to article XIII B, section 6 of the California Constitution, the 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.¹⁵ In *Carmel Valley*, the court held that only one of these findings is necessary to trigger the applicability of article XIII B, section 6.¹⁶

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.¹⁷

In the present case, section 67381 requires law enforcement agencies of all public colleges and universities and some independent postsecondary institutions to enter into written agreements with local law enforcement agencies delineating their respective geographical boundaries for investigating certain violent crimes on campuses. Claimant contends that section 67381 is a program, because it carries out the governmental function of providing public education. DOF asserts that section 67381 is not reimbursable, because it is not unique to local government and applies equally to public and private postsecondary institutions.

In addition, DOF contends that activity (E) is not unique to local government, because it fails to carry out the governmental function of police protection to the public. Specifically, DOF asserts that activity (E) "requires community colleges to perform the administrative functions of

¹⁵ *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

¹⁶ *Carmel Valley Fire Protection Dist., supra*, 190 Cal.App.3d at 537.

¹⁷ *Carmel Valley Fire Protection Dist., supra*, 190 Cal.App.3d 537; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51.

entering into written agreements with local law enforcement agencies and reporting the related agreements to the Legislative Analyst, as opposed to law enforcement activities.”

The Commission finds that section 67381 carries out the governmental function of providing police protection to the public, because it requires local law enforcement and campus law enforcement agencies to enter into written agreements to delineate which agency is responsible for the investigation of certain violent crimes on college campuses within their respective jurisdictions. Accordingly, the Commission finds that section 67381 constitutes a “program” within the meaning of article XIII B, section 6 of the California Constitution.

Issue 2: Does section 67381 impose a “new program or higher level of service” upon community colleges 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?

Claimant’s activity (E), costs incurred by community colleges to enter into written agreements with local law enforcement agencies, relates specifically to the following provisions of section 67381:

(b) The governing board of each community college district, the Trustees of the California State University, the Regents of the University of California, and the governing board of independent postsecondary institutions, as defined, shall adopt rules requiring each of their respective campuses to enter into written agreements with local law enforcement agencies that clarify operational responsibilities for investigations of Part 1 violent crimes occurring on each campus.

(d) Each written agreement entered into pursuant to this section shall designate which law enforcement agency shall have operational responsibility for the investigation of each Part 1 violent crime and delineate the specific geographical boundaries of each agency's operational responsibility, including maps as necessary.

(e) Written agreements entered into pursuant to this section shall be in place and available for public viewing by July 1, 1999. Each of the entities identified in subdivision (b) shall transmit a copy of each written agreement it has entered into pursuant to this section, and any other information it deems pertinent to its implementation of this section, to the Legislative Analyst on or before September 1, 1999.

Claimant’s activity (F), costs incurred by community colleges for the investigations of certain crimes and incidents on campuses, relates specifically to the following provision of section 67381:

(f) Each agency shall be responsible for its own costs of investigation unless otherwise specified in a written agreement.

Written Agreements

The Commission finds that claimant’s activity (E) is subject to article XIII B, section 6, because it requires community colleges with law enforcement agencies to enter into written agreements with local law enforcement agencies to delineate their respective geographical boundaries for

investigating certain violent crimes on college campuses. Further, activity (E) is a “new program or higher level of service,” because it was non-existent before section 67381 was enacted.

Further, the Commission finds that activity (E) only imposes “costs mandated by state” for the activity of preparing the above written agreements, and the activity related to placing these written agreements in a place of public viewing and transmitting them to the Legislative Analyst. Thus, activity (E) is a reimbursable state mandate under section XIII B, article 6 of the California Constitution.

However, subdivision (g) of section 67381 provides that “[n]othing in this section shall affect existing written agreements between campus law enforcement agencies and local law enforcement agencies that otherwise meet the standards contained in subdivision (d) . . .”¹⁸ Thus, in addition to the above reimbursable activities, community colleges that already have written agreements in place may incur costs to review and modify existing agreements to conform with section 67381.

Consequently, the Commission finds that activity (E) imposes the following “costs mandated by state:”

1. The activity of preparing the above written agreements, or
2. The activity of reviewing and modifying existing agreements to conform with section 67381, and
3. The activity related to placing these written agreements in a place of public viewing and transmitting them to the Legislative Analyst.

Nonetheless, CCC contends that if section 67381 is considered a state mandate, then claimant is only entitled to reimbursement for the costs of implementing the statute and not for reimbursement of costs incurred before the statute. The Commission finds that any costs associated with the above activities are a reimbursable state mandate to the extent that they were incurred after the enactment of section 67381.

Investigation of Specified Crimes

With regard to claimant’s activity (F), subdivision (f) of section 67381, costs for investigating certain crimes on college campuses, DOF contends that it is declaratory of existing law and is therefore not a reimbursable state mandate, because it does not impose a higher level of service. A reimbursable mandate is created only when the state imposes on a local government or school district a “new program or a higher level of service.”¹⁹

Specifically, DOF asserts that section 67381, subdivision (a), reaffirms that campus law enforcement agencies have the primary responsibility for law enforcement on their respective campuses. Section 67381, subdivision (a), provides:

- (a) The Legislature **reaffirms** that campus law enforcement agencies have the primary authority for providing police or security services, including the investigations of criminal activity, to their campuses. [Emphasis added.]

¹⁸ Education Code 67381, subdivision (g).

¹⁹ California Constitution, article XIII B, section 6.

As previously discussed, in examining statutes, courts apply the basic rules of statutory construction. The meaning of a statute must first be interpreted within the language in which it was framed. If the language is “plain,” then the sole judicial function is to enforce it according to its terms. There is no room for interpretation.²⁰

In the present case, under prior law, Education Code section 72330, community colleges may establish law enforcement agencies on campuses.²¹ In addition, section 67381, subdivision (a), explicitly “reaffirms” that campus law enforcement agencies are responsible for their own costs for investigating certain violent crimes on campuses. Thus, the “plain meaning” of subdivision (a) shows that any costs associated with investigations under section 67381 was the responsibility of campus law enforcement agencies before section 67381 was enacted. Accordingly, claimant’s activity (F), subdivision (f) of section 67381, does not impose a “new program or a higher level of service” on community colleges.

Moreover, claimant has provided no documentation to support that activity (F) is a “new program or higher level of service.” Although activity (F) is included in the test claim as an actual activity incurred by claimant, the supporting declaration of Richard Couser, Chief of District Police Services, does not support such a contention. Mr. Couser’s declaration fails to identify any costs associated with investigating certain violent crimes on campuses under section 67381. Rather, this portion of his declaration only focuses on the required written agreements between college law enforcement agencies and local law enforcement agencies.

Consequently, campus law enforcement agencies were responsible for investigating certain violent crimes under section 67381 both before and after section 67381 was enacted. Accordingly, the Commission finds that claimant’s activity (F), subdivision (f) of section 67381, does not constitute a “new program or higher level of service” and is not a reimbursable state mandate under article XIII B, section 6 of the California Constitution and Government Code section 17514.

Conclusion on Section 67381

The Commission finds that section 67381 constitutes a “program” within the meaning of article XIII B, section 6 of the California Constitution, because it carries out the governmental function of providing police protection to the public.

The Commission further finds that the activity of community colleges entering into written agreements with local law enforcement agencies that clarify operational responsibilities for the investigations of certain violent crimes on campuses and providing a copy of those agreements to the Legislative Analyst (claimant’s activity (E)) is a “new program or a higher level of service” under article XIII B, section 6, of the California Constitution, because it was non-existent before section 67381 was enacted. In addition, the Commission finds that this activity imposes “costs mandated by the state” under Government Code section 17514 for the following activities:

1. The activity of preparing the written agreements, or
2. The activity of reviewing and modifying existing agreements to conform with section 67381, and

²⁰ *Marin Hospital Dist v. Rothman* (1983) 139 Cal. App.3d 495.

²¹ Education Code section 72330, Statutes of 1976, Chapter 1010.

3. The activity related to placing these written agreements in a place of public viewing and transmitting them to the Legislative Analyst.

However, the Commission further finds that that the activity of community colleges being responsible for their own costs of investigating crimes and incidents on campuses (claimant's activity (F)) does not constitute a "new program or higher level of service," because it is declaratory of prior law and thus is not a reimbursable state mandate under article XIII B, section 6 of the California Constitution and Government Code section 17514.

Accordingly, the Commission approves this portion of the test claim as outlined above.