

**1. INCORRECT REDUCTION CLAIM TITLE**

In re State Controller's Office Audit Report on Santa Clara

County Peace Officers Procedural Bill of Rights Program

**2. CLAIMANT INFORMATION**

Santa Clara County

Name of Local Agency or School District

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**3. CLAIMANT REPRESENTATIVE INFORMATION**

Claimant designates the following person to act as its sole representative in this incorrect reduction claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

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*For CSM Use Only*

Filing Date: **RECEIVED**

**SEP 16 2010**

**COMMISSION ON STATE MANDATES**

IRC #: **10-4499-I-01**

**4. IDENTIFICATION OF STATUTES OR EXECUTIVE ORDERS**

Please specify the subject statute or executive order that claimant alleges is not being fully reimbursed pursuant to the adopted parameters and guidelines.

Government Code sections 3300-3310; Stats. 1976, ch. 465; Stats. 1978, ch. 775, ch. 1173, ch. 1174, ch. 1178; Stats. 1979, ch. 405; Stats. 1980, ch. 1367; Stats. 1982, ch. 994; Stats. 1983, ch. 964; Stats. 1989, ch. 1165; and Stats. 1990, ch. 675

**5. AMOUNT OF INCORRECT REDUCTION**

Please specify the fiscal year and amount of reduction. More than one fiscal year may be claimed.

Fiscal Year	Amount of Reduction
2003-04	\$118,861.00
2004-05	\$158,546.00
2005-06	\$249,395.00

**TOTAL:** \$526,802.00**6. NOTICE OF INTENT TO CONSOLIDATE**

Please check the box below if there is intent to consolidate this claim.

Yes, this claim is being filed with the intent to consolidate on behalf of other claimants.

Sections 7 through 11 are attached as follows:

**7. Written Detailed**

**Narrative:** pages 1 to 21.

**8. Documentary Evidence**

**and Declarations:** Exhibit KL.

**9. Claiming Instructions:**

Exhibit D.

**10. Final State Audit Report or Other Written Notice of Adjustment:**

Exhibit A.

**11. Reimbursement Claims:**

Exhibit HI.

STATE OF CALIFORNIA  
COMMISSION ON STATE MANDATES

In Re:	)	No.
	)	
STATE CONTROLLER'S OFFICE	)	
AUDIT REPORT ON SANTA	)	
CLARA COUNTY PEACE	)	
OFFICERS PROCEDURAL	)	
BILL OF RIGHTS (POBOR)	)	
PROGRAM	)	
_____	)	

**INCORRECT REDUCTION CLAIM  
COUNTY OF SANTA CLARA**

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COUNTY OF SANTA CLARA

STATE OF CALIFORNIA  
COMMISSION ON STATE MANDATES

In Re:	)	No.
	)	
STATE CONTROLLER'S OFFICE	)	INCORRECT REDUCTION CLAIM
AUDIT REPORT ON SANTA	)	BY THE COUNTY OF SANTA CLARA
CLARA COUNTY PEACE	)	
OFFICERS PROCEDURAL	)	
BILL OF RIGHTS (POBOR)	)	
PROGRAM	)	
_____	)	

On May 14, 2008, the State Controller's Office (hereinafter "SCO") issued its final audit report on the County of Santa Clara's (hereinafter "County") claims for costs incurred based on the legislatively-created Peace Officers Bill of Rights (POBOR) Program (Test Claim No. 4499; Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989, and Chapter 675, Statutes of 1990, and as reconsidered by Case No. 05-RL-4499-01) for July 1, 2003 through June 30, 2006. A

true and correct copy of the SCO's final audit report is attached hereto as Exhibit A and incorporated herein by reference. The SCO incorrectly reduced the County's claim of \$748,888 by \$526,802, thus allowing only \$222,086. The County requests that the Commission on State Mandates reverse the audit findings and award the County the correct claim amount of \$748,888.

### FACTS

In 1976, the Legislature enacted Government Code sections 3300 through 3310, known as the Peace Officers Procedural Bill of Rights Act (POBOR) to ensure stable employer-employee relations and effective law enforcement services. This legislation provides a series of rights and procedural safeguards to peace officers employed by local agencies and school districts that are subject to investigation or discipline. It applies to all employees classified as peace officers whether they are classified as permanent employees, serve at the pleasure of the agency and are terminable without cause ("at-will" employees), or are on probation and have not reached permanent status.

This program was found to be a state-mandated reimbursable program by this Commission on September 1, 1999. A true and correct copy of the Commission's Statement of Decision is attached hereto as Exhibit B and is incorporated herein by reference. On July 27, 2000, the Commission adopted parameters and guidelines that authorized reimbursement, beginning July 1, 1994, to counties, cities, a city and county, school districts, and special districts that employ peace officers. Subsequently, the parameters and guidelines were amended with a technical correction

and adopted on August 17, 2000, a true and correct copy of which is attached hereto as Exhibit C and is incorporated herein by reference. Claiming Instructions were duly issued by the SCO, a true and correct copy of which is attached hereto as Exhibit D and is incorporated herein by reference.

In 2005, Statutes 2005, chapter 72, section 6 (AB 138) added section 3313 to the Government Code directing the Commission to review the Statement of Decision, adopted in 1999, to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates*<sup>1</sup> and other applicable court decisions.

On April 26, 2006, the Commission reviewed its original findings and adopted a Statement of Decision on reconsideration,<sup>2</sup> a true and correct copy of which is attached hereto as Exhibit E and is incorporated herein by reference. The Statement of Decision on reconsideration became final on May 1, 2006. On March 28, 2008, the Commission adopted amended Parameters and Guidelines<sup>3</sup> which apply to costs incurred and claimed for the 2006-2007 fiscal year. A true and correct copy of which is attached hereto as Exhibit F and is incorporated herein by reference. Claiming Instructions were duly issued by the SCO, a true and correct copy of which is attached hereto as Exhibit G and is incorporated herein by reference.

Based upon the foregoing program, Parameters and Guidelines, and Claiming Instructions, the County timely submitted its claims for fiscal years 2003-2004, 2004-

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<sup>1</sup> (2004) 33 Cal.4th 859.

<sup>2</sup> 05-RL-4499-01.

<sup>3</sup> 06-PGA-06.

2005 and 2005-2006, which are the subject of this incorrect reduction claim. True and correct copies of these reimbursement claims are attached hereto as Exhibits H, I, and J, respectively, and are incorporated herein by reference.

The reimbursable components of this program include, for cities and counties, under the first set of Parameters and Guidelines:

A. Administrative Activities (On-going Activities)

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities
2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.
3. Updating the status of the POBOR cases.

B. Administrative Appeal

1. Reimbursement period of July 1, 1994 through December 31, 1998 – The administrative appeal activities listed below apply to permanent employees, at-will employees, and probationary employees. Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interest are not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent, probationary and at-will employees for purposes of punishment;
- Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
- Other actions against permanent, probationary and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative



body.

2. Reimbursement period beginning January 1, 1999 - The administrative appeal activities listed below apply to permanent employees and the Chief of Police. Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent employees for purposes of punishment;
- Denial of promotion for permanent employees for reasons other than merit; and
- Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

C. Interrogations

Claimants are eligible for reimbursement for the performance of the activities listed in this section only when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. (Gov. Code § 3303.)

Claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer. Claimants are also not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities. (Gov. Code § 3303, subd. (i).)

1. When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in

accordance with regular department procedures. (Gov. Code § 3303, subd. (a).)

Included in the foregoing is the preparation and review of overtime compensation requests.

2. Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code § 3303, subds. (b) and (c).)

Included in the foregoing is the review of agency complaints or other documents to prepare the notice of interrogation; determination of the investigating officers; redaction of the agency complaint for names of the complainant or other accused parties or witnesses or confidential information; preparation of notice or agency complaint; review by counsel; and presentation of notice or agency complaint to peace officer.

3. Tape recording the interrogation when the peace officer employee records the interrogation. (Gov. Code § 3303, subd. (g).)

Included in the foregoing is the cost of tape and storage, and the cost of transcription.

4. Providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code § 3303, subd. (g));

- a) The further proceeding is not a disciplinary action;
- b) The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e., the charges supporting the dismissal does not harm the employee's reputation or ability to find future employment);
- c) The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;
- d) The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;
- e) The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.

Included in the foregoing is the cost of tape copying.

5. Producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer, in the following circumstances (Gov. Code § 3303, subd. (g)):

- a) When the investigation does not result in disciplinary action; and
- b) When the investigation results in:
  - A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e.; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
  - A transfer of a permanent, probationary or at-will employee for purposes of punishment;
  - A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit; or
  - Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.

Included in the foregoing is the review of the complaints, notes or tape recordings for issues of confidentiality by law enforcement, human relations or counsel; cost of processing, service and retention of copies.

D. Adverse Comment

Performing the following activities upon receipt of an adverse comment (Gov. Code §§ 3305 and 3306):

Counties

- a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then counties are entitled to reimbursement for:
  - Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- b) If an adverse comment *is* related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities:
  - Providing notice of the adverse comment;
  - Providing an opportunity to review and sign the adverse comment;
  - Providing an opportunity to respond to the adverse comment within 30 days; and

- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- c) If an adverse comment is *not* related to the investigation of a possible criminal offense, then counties obtained are entitled to reimbursement for:
- Providing notice of the adverse comment; and
  - Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

#### Cities and Special Districts

- a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- b) If an adverse comment is related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
  - Providing an opportunity to review and sign the adverse comment;
  - Providing an opportunity to respond to the adverse comment within 30 days; and
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
  - Providing an opportunity to respond to the adverse comment within 30 days; and
  - Obtaining the signature of the peace officer on the adverse

comment; or

- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Included in the foregoing are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing.

Based on the foregoing, the County timely filed its reimbursement claims.

On January 23, 2008, the SCO issued its draft audit report. Finding 1 of the audit report states that the County claimed unallowable salaries and benefits. The report also alleges that, under Finding 2, the County claimed unallowable productive hours; under Finding 3, the County understated benefit rates; under Finding 4, the County understated indirect costs; and under Finding 5, the County claimed unallowable travel and training costs.

On March 11, 2008, the County issued its response to the draft audit report in which it rebutted Findings 1, 2 and 5.<sup>4</sup> A true and correct copy of the County's response is attached hereto as Exhibit K and is incorporated herein by reference. The final audit report was issued on May 14, 2008.

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<sup>4</sup> The County accepted Findings 3 and 4 regarding understated benefit rates and indirect costs, respectively.

## ANALYSIS AND DISCUSSION

### **A. AUDIT FINDING NUMBER ONE REGARDING POBOR ADMINISTRATIVE ACTIVITIES IS INCORRECT.**

Audit Finding 1 states that the County over-claimed salaries, benefits and related indirect costs related to POBOR administrative activities in the amount of \$73,067. The SCO asserts that such over-claiming was due to claiming for ineligible activities, such as, preparing the file, logging the initial case information, interviewing complainants, training, reviewing reports, and so on. As the County pointed out in its response, the SCO based its finding on the wrong set of Parameters and Guidelines. The original Parameters and Guidelines did not have that level of specificity and the amended Parameters and Guidelines were not effective until the 2006-2007 fiscal year — the fiscal year after the claims represented in the instant audit. The County cannot be held to a standard that was non-existent at the time the costs were incurred and of which the County had no notice. The SCO must audit each claim based on the Parameters and Guidelines applicable to the particular claiming cycle. In the instant case, the amended Parameters and Guidelines were not relevant to the claiming cycle being audited.

The SCO objects to a number of claimed activities stating, in essence, that there was no nexus between the activity claimed and the Parameters and Guidelines. The only guidance the County had at the time of claiming were the following activities as set forth in the Parameters and Guidelines:

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities

2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.
3. Updating the status of the POBOR cases.

Each of these components is sufficiently flexible so as to allow local government to adapt them to its own method of implementing the mandate. If the Legislature had had in mind a specific manner in which to implement the mandate, it would have said so.<sup>5</sup>

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities

The County properly claimed costs for visiting other Internal Affairs (IA) units during the establishment of its IA unit. Part of developing internal policies can include reviewing other department doing the same or similar work. This information is not only important to the development of internal policies; it is also a reasonable method of compliance as it allows for the mere editing or cutting-and-pasting of other policies. Thus, time spent gathering information can yield time saving in the process of drafting the policies.

2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.

The County properly claimed training costs. The SCO pared the list of covered topics to those it believes relate to the mandate. For a mandate as complex and pervasive as POBOR, however, such limitations are not proper. Training on

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<sup>5</sup> *People v. Rodriguez* (1963) 222 Cal.App.2d 221, 227. “A legislative enactment should be construed in accordance with the ordinary meaning of the language used and it should be assumed that the Legislature knew what it was saying and meant what it said.”

POBOR properly encompasses issues of labor relations, confidentiality issues, investigation errors, first amendment- related conduct, key mistakes in workplace investigations, and assessing credibility, to name a few. While the County appreciates the SCO's attempt to include some costs rather than give a full disallowance, the SCO did not allow for some legitimate costs.

3. Updating the status of the POBOR cases.

In the instant case, the County properly claimed those activities involved in setting up a POBOR file. The creation of the file is, itself, an update of the status of the case. This is also the case for placing the case information in the file management system which allows for later updating.

**B. AUDIT FINDING NUMBER ONE REGARDING POBOR ADMINISTRATIVE APPEALS IS INCORRECT.**

Audit Finding 1 states that the County over-claimed salaries, benefits and related indirect costs related to POBOR administrative appeals in the amount of \$3,566. The SCO alleges that such over-claiming was due to claiming for ineligible appeals which are part and parcel of due process and, as such, are outside the scope of POBOR. In 1999 when the Commission considered the POBOR test claim, it carefully evaluated existing due process protections from the protections imposed by POBOR. (See SOD, at pp. 4-8.) The Commission's Statement of Decision resulted in the following Parameters and Guidelines on this matter:

Reimbursement period beginning January 1, 1999 - The administrative appeal activities listed below apply to permanent employees and the Chief of Police. Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code § 3304, subd. (b)):



- Dismissal, demotion, suspension, salary reduction or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent employees for purposes of punishment;
- Denial of promotion for permanent employees for reasons other than merit; and
- Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

As set forth under the final bullet, other actions against a permanent employee that negatively impact his career are reimbursable such as reprimand and suspension. The claiming of these costs by the County was therefore proper.

**C. AUDIT FINDING NUMBER ONE REGARDING INTERROGATION COSTS IS INCORRECT.**

Audit Finding 1 states that the County over-claimed salaries, benefits and related indirect costs related to POBOR interrogations in the amount of \$250,262. This finding was based upon the SCO's interpretation of the Parameters and Guidelines which was made without thoughtful review of the Commission's Statement of Decision. The Statement of Decision is the "law of the case" and is given deference when there is any discrepancy between the finding of a judicial body and the documents that arise from that finding.

This Commission, in 1999, addressed the test claim legislation of POBOR which provides safeguards for the protection of peace officers that are subject of investigation or discipline. Of primary concern was whether and to what extent these safeguards and protections were more expansive than those already in existence through statute, case law and the Constitution. Indeed, as evidenced in the Statement

of Decision, this Commission took particular care to root out those protections that were not duplicative of pre-existing due process rights and to delineate the scope and extent of the state-mandated activities:

Government Code section 3303, subdivision (a), establishes procedures for the timing and compensation of a peace officer subject to investigation and interrogation by an employer.

This section requires that the interrogation be conducted at a reasonable hour, preferably at a time when the peace officer is on duty, or during the “normal waking hours” of the peace officer, unless the seriousness of the investigation requires otherwise. If the interrogation takes place during the off-duty time of the peace officer, the peace officer “shall” be compensated for the off-duty time in accordance with regular department procedures.

The claimant contended that Government Code section 3303, subdivision (a), results in the payment of overtime to the investigated employee and, thus, imposes reimbursable state mandated activities. The claimant stated the following:

“If a typical police department works in three shifts, such as the Police Department for this City, two-thirds of the police force work hours [that are] not consistent with the work hours of Investigators in the Internal Affairs section. Even in a smaller department without such a section, hours conflict if command staff assigned to investigate works a shift different than the employees investigated. Payment of overtime occurs to the employees investigated or those performing the required investigation, or is at least a potential risk to an employer for the time an employee is interrogated pursuant to this section.”

The Commission agreed. Conducting the investigation when the peace officer is on duty, and compensating the peace officer for off-duty time in accordance with regular department procedures are new requirements not previously imposed on local agencies and school districts. (SOD, Exhibit B at pp. 12-13. Emphasis added.)

The use of the conjunctive “and” and the plural “requirements” refers to the fact that this Commission found that both the costs of conducting the interrogation during on-duty hours and the costs of paying overtime for off-duty time are

reimbursable activities of the mandate. This conclusion is supported by the evidence before this Commission at the hearing as stated above.

The fact that that is omitted in the conclusion to the Statement of Decision, which is an abbreviated summary of the text, is not definitive. The interpretation of any writing requires that words be given their plain and ordinary meaning,<sup>6</sup> and the interpretation should give meaning to the circumstances under which it was made and should relate to the whole.<sup>7</sup> In the instant case, the use of "and" in the text and the quote to the supporting evidence clearly indicates that the Commission intended to allow reimbursement for both on-duty and off-duty time.

Thus, the County properly claimed the costs of conducting the interrogation while the officer was on duty and those costs for compensating the officer when the interrogation was performed during off-duty hours.

**D. AUDIT FINDING NUMBER ONE REGARDING POBOR ADVERSE COMMENTS IS INCORRECT.**

Audit Finding 1 states that the County over-claimed salaries, benefits and related indirect costs related to POBOR adverse comments in the amount of \$104,444. The SCO maintains that these costs resulted from claiming activities that are not reimbursable, such as reviewing and documenting the complaint, summarizing the complaint, and reviewing the procedures for compliance. And yet these activities were expressly allowed by the Parameters and Guidelines:

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<sup>6</sup> *Redevelopment Agency of City of Sacramento v. Malaki* (1963) 216 Cal.App.2d 480, 487-488. See also Civil Code § 1646.

<sup>7</sup> *Mundy v. Superior Court* (1995) 31 Cal.App.4<sup>th</sup> 1396, 1405. See also Civil Code § 1647.

Included in the foregoing are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing.

According to the plain language of the Parameters and Guidelines, these activities are reimbursable and were properly claimed by the County.

**E. AUDIT FINDING NUMBER TWO REGARDING THE COUNTY'S PRODUCTIVE HOURLY RATE IS INCORRECT.**

Audit Finding 2 states that the County over-claimed salaries, benefits and related indirect costs in the amount of \$18,752. This finding was based upon the County's computation of its productive hourly rates for employees. The computation was proper and complied with the SCO's Claiming Instructions. Therefore, the County requests that this Commission reverse Audit Finding 2 to allow for the recovery of costs incurred for this state-mandated program for the reasons discussed below.

1. **The County's Productive Hourly Rate Computation Complies With The SCO-Issued General Claiming Instructions.**

The computation of an annual productive hourly rate used by the County removes non-productive time spent on authorized breaks, training, and staff meetings. The resulting total countywide annual productive hours of 1,571 is the basis for the annual productive hourly rate used in the County's claim.

In the audit report, the SCO relied upon the Mandated Cost Manual for Local

Agencies with regard to the productive hourly rate computation. To support its argument that the County's rate was improper, the SCO cited the following text from the Manual:

A productive hourly rate may be computed for each job title whose labor is directly related to the claimed reimbursable cost.

A local agency has the option of using any of the following:

- Actual annual productive hours for each job title,
- The local agency's average annual productive hours or, for simplicity,
- An annual average of 1,800\* hours to compute the productive hourly rate.

\* \* \*

\* 1,800 annual productive hours include:

- Paid holidays
- Vacation earned
- Sick leave taken
- Informal time off
- Jury duty
- Military leave taken<sup>8</sup>

Relying on this section, the SCO argued that the County's figure of 1,571 productive hours was incorrect and that a figure of 1,800 hours should have been used. However, the SCO omitted relevant portions of the Manual which indicate that the productive hourly rate can be calculated in three different ways.

A full reading of the Manual indicates that using 1,800 hours is not the only approved approach. As set forth above, the Manual clearly states that use of countywide average annual productive hours is also an approved method. The County

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<sup>8</sup> Section 2, General Claiming Instructions, Subsection 7. Direct Labor Costs, Subdivision A. Direct Labor - Determine a Productive Hourly Rate (revised version 9/01) (Emphasis added).

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calculated its average annual productive hours in full compliance with the Manual as issued. The County cannot and should not be penalized for using an approved methodology.

To date, the SCO has not been able to cite one reference as to why the County's productive hourly rate methodology is improper.

2. **The County's Computation Results in a More Accurate and Consistent Productive Hourly Rate.**

The County submits, on average, 25 to 30 S.B. 90 claims annually. As these claims are prepared by numerous County departments and staff members, the process could easily fall victim to inconsistency in approaches, accuracy and documentation with respect to calculating a different productive hourly rate for each claim.

Recognizing this threat and wanting to create a more reliable, county-wide system, the County embarked on the creation of a verifiable and accurate method of establishing a productive hourly rate through the computation of average productive hours. As a result, the County's methodology improves its S.B. 90 program claiming accuracy, consistency, and documentation. It also facilitates the State audit process because the methodology for the County's annual productive hours calculation is fully documented and supported.

In establishing its average annual productive hours, the County carefully ensured that all non-productive time was removed from the total annual hours. In addition to those items suggested by the SCO above, the County removed time spent in training and on breaks. This methodology ensures greater accuracy. The more

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accurate the computational factors, the more accurate the result. Indeed, in response to the final audit report, the County made further adjustments solidifying the precision of its productive hours computation.

The SCO's main complaint seems to be that the County used required break times and required training times rather than actual times spent on these activities. This argument lacks merit.

State law requires that workers be given two fifteen minute break periods per day. Presumably, County employees take these breaks. The presumption that these breaks are taken is no different from the presumption that paid holidays, which are specifically set forth as properly included in the calculation by the SCO, are also taken. Instead of making this presumption, the SCO would have the County employ a clock-in, clock-out system for breaks to ensure that the break times do not actually add up to 28 or 32 minutes daily. Such an expenditure of time and costs is unwarranted in light of the statistically invalid difference that may be found between actual break time and the required break time.

The same argument applies with even greater force to the presumption that County employees will undertake the necessary training required for licensure or certification. Such education is more likely to be pursued because of its impact on the employees' license or certification and, ultimately, their ability to perform their jobs.

The use of a countywide productive hourly rate is explicitly authorized by the

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State Controller's claiming instructions.<sup>9</sup> The productive hourly rate used by the County for this claim is fully documented and was accurately calculated by the County Controller's Office. All supporting documents for the calculation of countywide productive hours were provided during the state audit.

Further, as shown in the letter of December 27, 2001 from the County Controller to the State Controller's Office, the State was notified years ago that the County was electing to use the productive hourly rate methodology authorized by the State-mandated claiming procedures. A true and correct copy of this letter is attached hereto as Exhibit L and is incorporated herein by reference. The County reported that the switch to a countywide methodology for the calculation of average productive hours per position would improve state mandate claiming accuracy, consistency, and documentation, and would facilitate the State audit function. Consequently, more than 50 claims were submitted and accepted during 2002 and 2003 using this methodology. Furthermore, the State Controller has accepted the County's use of the countywide productive hours methodology for state mandated claims as evidenced by an e-mail from Jim Spano dated February 6, 2004, a true and correct copy of which is attached hereto as Exhibit M and is incorporated herein by reference.

**F. AUDIT FINDING NUMBER FIVE REGARDING COUNTY'S TRAINING COSTS IS INCORRECT.**

Audit Finding 5 states that the County over-claimed costs related to POBOR

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<sup>9</sup> Mandated Cost Manual for Local Agencies, Section 2, General Claiming Instructions, Subsection 7. Direct Labor Costs, Subdivision A. Direct Labor - Determine a Productive Hourly Rate (revised version 9/01).



travel and training in the amount of \$1,521. The SCO asserts that these costs were excluded because they related to ineligible training under Finding 1. As noted above, however, the Parameters and Guidelines provided the following regarding allowable training costs:

2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.

The Commission could have been more specific regarding these costs, but it chose to provide an expansive category for training. The SCO cannot use the audit process to place limitations on the program that the Commission did not see fit to include.

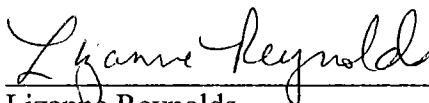
### CONCLUSION

In light of the arguments presented above, the County requests that the Commission reverse the SCO's audit findings and award the County the correct claim amount of \$748,888.

Dated: 8-23-10

Respectfully submitted,

MIGUEL MÁRQUEZ  
County Counsel

  
Lizanne Reynolds  
Deputy County Counsel

Attorneys for County of Santa Clara

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# Exhibit A

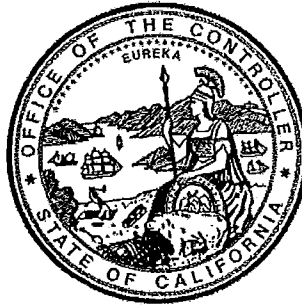
# **SANTA CLARA COUNTY**

Audit Report

## **PEACE OFFICERS PROCEDURAL BILL OF RIGHTS PROGRAM**

Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178,  
Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980;  
Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983;  
Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990

*July 1, 2003, through June 30, 2006*



**JOHN CHIANG**  
California State Controller

May 2008



**JOHN CHIANG**  
California State Controller

May 14, 2008

John V. Guthrie  
Director of Finance  
Santa Clara County  
East Wing, 2<sup>nd</sup> Floor  
70 West Hedding Street  
San Jose, CA 95110

Dear Mr. Guthrie:

The State Controller's Office audited the costs claimed by Santa Clara County for the legislatively mandated Peace Officers Procedural Bill of Rights Program (Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990) for the period of July 1, 2003, through June 30, 2006.

The county claimed \$748,888 (\$749,888 less a \$1,000 penalty for filing a late claim) for the mandated program. Our audit disclosed that \$222,086 is allowable and \$526,802 is unallowable. The unallowable costs resulted primarily from the county claiming ineligible costs. The State paid the county \$227,693. The amount paid exceeds allowable costs claimed by \$5,607.

If you disagree with the audit findings, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (CSM). The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at CSM's Web site, at [www.csm.ca.gov](http://www.csm.ca.gov) (Guidebook link); you may obtain IRC forms by telephone, at (916) 323-3562, or by e-mail, at [csminfo@csm.ca.gov](mailto:csminfo@csm.ca.gov).

If you have any questions, please contact Jim L. Spano, Chief, Mandated Cost Audits Bureau, at (916) 323-5849.

Sincerely,

*Original signed by*

JEFFREY V. BROWNFIELD  
Chief, Division of Audits

JVB/sk

cc: Ram Venkatesan, SB 90 Coordinator  
Santa Clara County Controller-Treasurer Department  
Alan Minato, Fiscal Officer  
Santa Clara County Sheriff's Department  
Jessie Fuentes, Fiscal Officer  
Santa Clara County Probation Department  
George Dooley, Administrative Services Manager  
Santa Clara County District Attorney's Office  
Todd Jerue, Program Budget Manager  
Corrections and General Government  
Department of Finance  
Carla Castaneda  
Principal Program Budget Analyst  
Department of Finance  
Paula Higashi, Executive Director  
Commission on State Mandates

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# Audit Report

## Summary

The State Controller's Office (SCO) audited the costs claimed by Santa Clara County for the legislatively mandated Peace Officers Procedural Bill of Rights Program (Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990) for the period of July 1, 2003, through June 30, 2006.

The county claimed \$748,888 (\$749,888 less a \$1,000 penalty for filing a late claim) for the mandated program. Our audit disclosed that \$222,086 is allowable and \$526,802 is unallowable. The unallowable costs resulted primarily from the county claiming ineligible costs. The State paid the county \$227,693. The amount paid exceeds allowable costs claimed by \$5,607.

## Background

Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990, added and amended Government Code sections 3300 through 3310. This legislation, known as the Peace Officers Procedural Bill of Rights (POBOR), was enacted to ensure stable employer-employee relations and effective law enforcement services.

This legislation provides procedural protections to peace officers employed by local agencies and school districts when a peace officer is subject to an interrogation by the employer, is facing punitive action, or receives an adverse comment in his or her personnel file. The protections apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at will" employees), and peace officers on probation who have not reached permanent status.

On November 30, 1999, the Commission on State Mandates (CSM) determined that this legislation imposed a state mandate reimbursable under Government Code section 17561 and adopted the statement of decision. CSM determined that the peace officer rights law constitutes a partially reimbursable state mandated program within the meaning of the California Constitution, Article XIII B, Section 6, and Government Code section 17514. The CSM further defined that activities covered by due process are not reimbursable.

The parameters and guidelines establish the state mandate and define reimbursement criteria. CSM adopted the parameters and guidelines on July 27, 2000 and corrected it on August 17, 2000. The parameters and guidelines categorize reimbursable activities into the four following components: Administrative Activities, Administrative Appeal,



Interrogation, and Adverse Comment. In compliance with Government Code section 17558, the SCO issues claiming instructions for mandated programs, to assist local agencies in claiming reimbursable costs.

## **Objective, Scope, and Methodology**

We conducted the audit to determine whether costs claimed represent increased costs resulting from the Peace Officers Procedural Bill of Rights Program for the period of July 1, 2003, through June 30, 2006.

Our audit scope included, but was not limited to, determining whether costs claimed were supported by appropriate source documents, were not funded by another source, and were not unreasonable and/or excessive.

We conducted the audit according to *Government Auditing Standards*, issued by the Comptroller General of the United States, and under the authority of Government Code sections 12410, 17558.5, and 17561. We did not audit the county's financial statements. We limited our audit scope to planning and performing audit procedures necessary to obtain reasonable assurance that costs claimed were allowable for reimbursement. Accordingly, we examined transactions, on a test basis, to determine whether the costs claimed were supported.

We limited our review of the county's internal controls to gaining an understanding of the transaction flow and claim preparation process as necessary to develop appropriate auditing procedures.

## **Conclusion**

Our audit disclosed instances of noncompliance with the requirements outlined above. These instances are described in the accompanying Summary of Program Costs (Schedule 1) and in the Findings and Recommendations section of this report.

For the audit period, Santa Clara County claimed \$748,888 (\$749,888 less a \$1,000 penalty for filing a late claim) for costs of the Peace Officers Procedural Bill of Rights Program. Our audit disclosed that \$222,086 is allowable and \$526,802 is unallowable.

For the fiscal year (FY) 2003-04 claim, the State made no payments to the county. Our audit disclosed that \$47,561 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$47,561, contingent upon available appropriations.

For the FY 2004-05 claim, the State made no payments to the county. Our audit disclosed that \$112,228 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$112,228, contingent upon available appropriations.

For the FY 2005-06 claim, the State paid the county \$227,693. Our audit disclosed that \$62,297 is allowable. The State will offset \$165,396 from other mandated program payments due to the county. Alternatively, the county may remit this amount to the State.

**Views of  
Responsible  
Official**

We issued a draft audit report on January 23, 2008. Irene Lui, Divisional Manager, responded by letter dated March 11, 2008 (Attachment), disagreeing with the audit results for Findings 1, 2, and 5 and agreeing with the audit results for Findings 3 and 4. This final audit report includes the county's response.

**Restricted Use**

This report is solely for the information and use of Santa Clara County, The California Department of Finance, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

*Original signed by*

JEFFREY V. BROWNFIELD  
Chief, Division of Audits

May 14, 2008

**Schedule 1—  
Summary of Program Costs  
July 1, 2003, through June 30, 2006**

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference <sup>1</sup>
<u>July 1, 2003, through June 30, 2004</u>				
Salaries	\$ 91,196	\$ 26,890	\$ (64,306)	Finding 1, 2
Benefits	27,816	8,441	(19,375)	Finding 1, 2
Total direct costs	119,012	35,331	(83,681)	
Indirect costs	48,410	13,230	(35,180)	Finding 1, 2, 4
Total direct and indirect costs	167,422	48,561	(118,861)	
Less late filing penalty	(1,000)	(1,000)	—	
Total program costs	<u>\$ 166,422</u>	47,561	<u>\$ (118,861)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 47,561</u>		
<u>July 1, 2004, through June 30, 2005</u>				
Salaries	\$ 125,091	\$ 49,340	\$ (75,751)	Finding 1, 2
Benefits	37,276	14,759	(22,517)	Finding 1, 2, 3
Services and supplies	1,991	1,991	—	
Travel and training	3,299	1,778	(1,521)	Finding 5
Total direct costs	167,657	67,868	(99,789)	
Indirect costs	103,117	44,360	(58,757)	Finding 1, 2, 3
Total program costs	<u>\$ 270,774</u>	112,228	<u>\$ (158,546)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 112,228</u>		
<u>July 1, 2005, through June 30, 2006</u>				
Salaries	\$ 140,795	\$ 28,671	\$ (112,124)	Finding 1, 2
Benefits	51,201	9,894	(41,307)	Finding 1, 2
Total direct costs	191,996	38,565	(153,431)	
Indirect costs	119,696	23,732	(95,964)	Finding 1, 2
Total program costs	<u>\$ 311,692</u>	62,297	<u>\$ (249,395)</u>	
Less amount paid by the State		(227,693)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (165,396)</u>		

## Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference <sup>1</sup>
<u>Summary: July 1, 2002, through June 30, 2005</u>				
Salaries	\$ 357,082	\$ 104,901	\$ (252,181)	
Benefits	116,293	33,094	(83,199)	
Services and supplies	1,991	1,991	—	
Travel and training	3,299	1,778	(1,521)	
Total direct costs	478,665	141,764	(336,901)	
Indirect costs	271,223	81,322	(189,901)	
Total direct and indirect costs	749,888	223,086	(526,802)	
Less late filing penalty	(1,000)	(1,000)	—	
Total program costs	<u>\$ 748,888</u>	222,086	<u>\$ (526,802)</u>	
Less amount paid by the State		(227,693)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (5,607)</u>		
<u>Summary by Cost Component</u>				
Administrative activities	\$ 215,269	\$ 130,574	\$ (84,695)	
Administrative appeal	3,566	—	(3,566)	
Interrogation	401,220	68,787	(332,433)	
Adverse comment	129,833	23,725	(106,108)	
Subtotal	749,888	223,086	(526,802)	
Less late filing penalty	(1,000)	(1,000)	—	
Total program costs	<u>\$ 748,888</u>	<u>\$ 222,086</u>	<u>\$ (526,802)</u>	

<sup>1</sup> See the Findings and Recommendations section.

# Findings and Recommendations

## FINDING 1— Unallowable salaries and benefits

The county claimed unallowable salaries and benefits totaling \$324,521 for the audit period because the activities it claimed were not identified as reimbursable costs in the parameters and guidelines for the program. Related unallowable indirect costs totaled \$184,518.

The following table summarizes the audit adjustments by cost component:

	Claimed Costs	Allowable Costs	Audit Adjustment
<u>Salaries and Benefits</u>			
Administrative Activities:			
Sheriff's Department	\$ 18,587	\$ 10,124	\$ (8,463)
Probation Department	93,584	58,094	(35,490)
District Attorney's Office	18,318	18,318	—
Total Administrative Activities	<u>130,489</u>	<u>86,536</u>	<u>(43,953)</u>
Administrative Appeals:			
Sheriff's Department	1,388	—	(1,388)
Probation Department	985	—	(985)
District Attorney's Office	—	—	—
Total Administrative Appeals	<u>2,373</u>	<u>—</u>	<u>(2,373)</u>
Interrogation:			
Sheriff's Department	71,506	10,156	(61,350)
Probation Department	162,587	32,351	(130,236)
District Attorney's Office	18,880	2,530	(16,350)
Total Interrogation	<u>252,973</u>	<u>45,037</u>	<u>(207,936)</u>
Adverse Comment:			
Sheriff's Department	54,680	11,389	(43,291)
Probation Department	31,741	5,633	(26,108)
District Attorney's Office	1,119	259	(860)
Total Adverse Comment	<u>87,540</u>	<u>17,281</u>	<u>(70,259)</u>
Total salaries and benefits	473,375	148,854	(324,521)
Related indirect costs	271,223	86,705	(184,518)
Total	<u>\$ 744,598</u>	<u>\$ 235,559</u>	<u>\$ (509,039)</u>
<u>Recap by Department</u>			
Sheriff's Department	\$ 198,910	\$ 42,901	\$ (156,009)
Probation Department	498,045	166,384	(331,661)
District Attorney's Office	47,643	26,274	(21,369)
Total	<u>\$ 744,598</u>	<u>\$ 235,559</u>	<u>\$ (509,039)</u>

For each fiscal year, the county claimed costs for activities that did not exceed the duties of due process of law and therefore did not impose increased costs as a result of compliance with the mandate and were ineligible for reimbursement.

We broke down the audit findings for overstated salaries and benefits by individual cost component for each of the three county departments included in the county's claims. The ineligible activities claimed are indicated for each county department.

### Administrative Activities

For the Administrative Activities cost component, the county claimed \$130,489 in salaries and benefits (\$18,587 by the Sheriff's Department, \$93,584 by the Probation Department, and \$18,318 by the District Attorney's Office) during the audit period. Related indirect costs totaled \$80,163. We determined that \$43,953 was unallowable (\$8,463 by the Sheriff's Department, and \$35,490 by the Probation Department) because costs claimed were for ineligible activities. Related unallowable indirect costs totaled \$29,114.

The parameters and guidelines, section IVA (Administrative Activities, Ongoing Activities), allow for reimbursement of the following ongoing activities:

1. Developing or updating internal policies, procedures, manual and other materials pertaining to the conduct of the mandated activities.
2. Attendance at specific training for human resources, law enforcement, and legal counsel regarding the requirements of the mandate.
3. Updating the status of the POBOR cases.

#### *Sheriff's Department*

The Sheriff's Department claimed the following reimbursable activities:

- Updating POBOR case records (FY 2005-06).
- Training for Internal Affairs staff (FY 2003-04 and FY 2004-05).

However, the department claimed the following activities that are not reimbursable:

- Preparing the file.
- Logging initial case information into the system and assign the case.
- Interviewing the complainants.

#### *Probation Department*

The Probation Department claimed the following reimbursable activities:

- Reviewing and updating internal policies and procedures relating to POBOR.
- Training for Internal Affairs staff (training hours were partially adjusted to account for hours that were not related to POBOR training). Unallowable training hours included the following topics:

- Labor relations
- Unionized vs. non-unionized employees
- Private and public employees
- Handling sexual harassment issues
- Confidentiality issues
- Investigation errors
- Ethical issues in probation

### Administrative Activities

For the Administrative Activities cost component, the county claimed \$130,489 in salaries and benefits (\$18,587 by the Sheriff's Department, \$93,584 by the Probation Department, and \$18,318 by the District Attorney's Office) during the audit period. Related indirect costs totaled \$80,163. We determined that \$43,953 was unallowable (\$8,463 by the Sheriff's Department, and \$35,490 by the Probation Department) because costs claimed were for ineligible activities. Related unallowable indirect costs totaled \$29,114.

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The Sheriff's Department claimed the following reimbursable activities:

- Updating POBOR case records (FY 2005-06).
- Training for Internal Affairs staff (FY 2003-04 and FY 2004-05).

However, the department claimed the following activities that are not reimbursable:

- Preparing the file.
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The Probation Department claimed the following reimbursable activities:

- Reviewing and updating internal policies and procedures relating to POBOR.
- Training for Internal Affairs staff (training hours were partially adjusted to account for hours that were not related to POBOR training). Unallowable training hours included the following topics:

- Labor relations
- Unionized vs. non-unionized employees
- Private and public employees
- Handling sexual harassment issues
- Confidentiality issues
- Investigation errors
- Ethical issues in probation

Budgeting implications  
Juvenile Justice Reforms  
Discrimination issues  
Electronic research  
First Amendment related conduct  
Preparing investigations reports  
Key mistakes in workplace investigations  
Assessing credibility  
Types of lawsuits  
Representation and indemnification  
Supervisory liability of failure to train  
Minimizing exposure to liability

The department also claimed the following activities that are not reimbursable (FY 2004-05):

- Reviewing Internal Affairs (IA) investigations reports to approve or to make corrections.
- Visiting other IA units during the establishment of the IA unit at the Probation Department.
- Conducting interviews for IA Management Analyst position.
- Reviewing the progress of development of the IA database.
- Reviewing complaints, response letters, Merit System Rules, and assigning cases.
- Reviewing training schedule for the unit.

#### *District Attorney's Office*

The District Attorney's Office claimed the following reimbursable activities:

- Updating/maintaining POBOR case records.
- Training for Internal Affairs staff (FY 2003-04).
- Develop internal policies and procedures (FY 2003-04).

The District Attorney's Office did not claim any ineligible activities in this category.

#### **Administrative Appeals**

For the Administrative Appeals cost component, the county claimed \$2,373 in salaries and benefits (\$1,388 by the Sheriff's Department and \$985 by the Probation Department) during the audit period. Related indirect costs totaled \$1,193. We determined that both amounts were unallowable because costs claimed were for ineligible activities.



The parameters and guidelines, section IVB(2) (Administrative Appeals), allow reimbursement for providing the opportunity for, and the conduct of, an administrative appeal for the following disciplinary actions:

1. Dismissal, demotion, suspension, salary reduction, or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e., the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
2. Transfer of permanent employees for purposes of punishment;
3. Denial of promotion for permanent employees for reasons other than merit; and
4. Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss, or hardship, and that impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; and the preparation and service of any rulings or orders of the administrative body.

In reference to reimbursable circumstances surrounding administrative appeal hearings pursuant to Government Code section 3304, subdivision (b), the CSM statement of decision regarding the adopted parameters and guidelines states:

The Commission found that the administrative appeal would be required in the absence of the test claim legislation when:

- A permanent employee is dismissed, demoted, suspended, receives a reduction in pay or a written reprimand; or
- A probationary or at-will employee is dismissed and the employee's reputation and ability to obtain future employment is harmed by the dismissal.

Under these circumstances, the Commission determined that the administrative appeal does not constitute a new program or higher lever of service because prior law requires such an appeal under the due process. Moreover, the Commission recognized that pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing the administrative appeal in the above circumstances would not constitute "costs mandated by the state" since the administrative appeal merely implements the requirements of the United States Constitution.

In other words, if officers appeal actions such as transfer for purposes of punishment or denial of promotion, then administrative appeal costs can be claimed for reimbursement. However, if officers appeal actions such as dismissal, demotion, suspension, reduction in pay, or written reprimand, then those appeal hearings would fall under due process and could not be claimed for reimbursement.

*Sheriff's Department*

Our review of claimed costs under this cost component revealed that no administrative hearings were held for the cases included in the claims. Even if the hearings had taken place for the two cases in question, they would have resulted from unallowable disciplinary actions (letter of reprimand and suspension) that fall under due process. Subsequently, claimed activities were unallowable for reimbursement.

*Probation Department*

All costs claimed under this cost component included hours incurred during appeal hearings that resulted from unallowable disciplinary actions (suspension and letter of reprimand). Subsequently, claimed activities were unallowable for reimbursement.

*District Attorney's Office*

The District Attorney's Office did not claim any costs under this cost component.

**Interrogation**

For the Interrogation cost component, the county claimed \$252,973 in salaries and benefits (\$71,506 by the Sheriff's Department, \$162,587 by the Probation Department, and \$18,880 by the District Attorney's Office) during the audit period. Related indirect costs totaled \$147,574. We determined that \$207,936 was unallowable (\$61,350 by the Sheriff's Department, \$130,236 by the Probation Department, and \$16,350 by the District Attorney's Office) because costs claimed were for ineligible activities. Related unallowable indirect costs totaled \$120,026.

The parameters and guidelines, section IV(C) (Interrogations), identify the specific interrogation activities that are reimbursable when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department during off-duty time, if the interrogation could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. Section IV(C) also identifies reimbursable activities under compensation and timing of an interrogation, interrogation notice, tape recording of an interrogation, and documents provided to the employee.

The parameters and guidelines, section IV(C), also state that claimants are not eligible for interrogation activities when an interrogation of a peace officer occurs in the normal course of duty. It further states:

When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures.

In reference to compensation and timing of the interrogation pursuant to Government Code section 3303, subdivision (a), the CSM Final Staff Analysis to the adopted parameters and guidelines states:

It does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review the responses given by the officers and/or witnesses, as implied by the claimant's proposed language. Certainly, local agencies were performing these investigative activities before POBAR was enacted.

The parameters and guidelines, section IV(C), also state that the following activities are reimbursable:

Tape recording the interrogation when the peace officer employee records the interrogation.

Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers.

#### *Sheriff's Department*

The Sheriff's Department claimed the following reimbursable activities:

- Providing Interrogation Notice and/or Statement of Allegations to the officer.
- Reviewing the tape/summarize/transcribe accused officers' statements (accused officers generally receive the copy of their interviews).
- Providing copies of tapes and file documentation in case of further proceedings/hearings/action (FY 2003-04 and FY 2004-05).

However, the department claimed the following activities that are not reimbursable:

- Gathering reports and reviewing complaints and evidence as part of investigating the allegations.
- Investigation time.
- Preparing questions for the interviews.
- Interviewing witnesses during normal working hours (investigators' time).
- Reviewing tape and summarizing/transcribing witness officer's statements (witness officers generally do not receive a copy of their interview).
- Conducting pre-interrogation meetings.
- Interviewing accused officers during normal working hours (investigators' time).

#### *Probation Department*

The Probation Department claimed the following reimbursable activities:

- Providing administrative notice to the accused officer regarding the nature of allegations
- Transcribing/summarizing accused officer's statement (accused officers generally receive the copy of their interviews).

However, the department claimed the following activities that are not reimbursable:

- Gathering reports, log sheets, and evidence.
- Reviewing complaints, reports, and evidence as part of investigating the allegations.
- Interviewing witnesses, both civilian and officers (investigators' time).
- Traveling to interview witnesses.
- Transcribing witness tapes (witnesses do not receive copies of their interviews.)
- Reviewing tapes and making corrections.
- Preparing interview questions.
- Conducting pre-interrogation meetings.
- Interviewing accused officers during normal working hours (investigators' time).

#### *District Attorney's Office*

The District Attorney's Office claimed providing prior notice to the subject officers regarding the investigation/allegations as a reimbursable activity.

However, the District Attorney's Office claimed the following activities that are not reimbursable:

- Gathering reports, log sheets, etc.
- Reviewing complaints, reports, and evidence as part of investigating the allegations.
- Preparing interview questions.
- Interviewing witnesses during normal working hours (investigators' time).
- Conducting pre-interrogation meetings.
- Interviewing accused officers during normal working hours (investigators' time).
- Preparing a summary report of the agency complaint as part of the case file preparation.
- Reviewing interview tapes.

#### **Adverse Comment**

For the Adverse Comment cost component, the county claimed \$87,540 in salaries and benefits (\$54,680 by the Sheriff's Department, \$31,741 by the Probation Department, and \$1,119 by the District Attorney's Office) during the audit period. Related indirect costs totaled \$42,293. We determined that \$70,259 was unallowable (\$43,291 by the Sheriff's

Department, \$26,108 by the Probation Department, and \$860 by the District Attorney's Office) because costs claimed were for ineligible activities. Related unallowable indirect costs totaled \$34,185.

Depending on the circumstances surrounding an adverse comment, the parameters and guidelines, section IVD (Adverse Comment), allow some or all of the following four activities upon receipt of an Adverse Comment:

- Providing notice of the adverse comment;
- Providing an opportunity to review and sign the adverse comment;
- Providing an opportunity to respond to the adverse comment within 30 days; and
- Noting on the document the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.

The parameters and guidelines also state:

Included in the foregoing are review of circumstances or documentation leading to the adverse comment by the supervisor, command staff, human resources staff, or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of the adverse comment to officer and notification concerning rights regarding same; review of response to the adverse comment; attaching same to adverse comment, and filing.

*Sheriff's Department*

The Sheriff's Department claimed the following activities that are reimbursable:

- Preparing and serving an Administrative Notice of Allegations.
- Reviewing documentation leading to the adverse comment/findings by Command staff.

However, the department claimed the following activities that are not reimbursable:

- Reviewing the circumstances of the complaint to determine the level of investigation prior to starting the case investigation process (to determine whether the case will be investigated at the Internal Affairs or division level).
- Documenting the complaint/allegation and reviewing it for accuracy during the initial complaint intake prior to starting the investigation.
- Summarizing the investigation in a case summary report and having Internal Affairs review the summary report to ensure proper procedures were followed.
- Preparing interview questions.

*Probation Department*

The Probation Department claimed the following reimbursable activities:

- Preparing and serving the Final Disciplinary Order (adverse comment notice).
- Interacting with labor relations to ensure proper disciplinary action (reviewing documentation leading to adverse comment/findings by Labor Relations staff).
- Reviewing documentation leading to the adverse comment/findings by Command staff.

However, the department claimed the following activities that are not reimbursable:

- Preparing the investigation summary and reviewing it with the supervisor prior to closing the case.
- Preparing the final case report.

*District Attorney's Office*

The District Attorney's Office claimed the following reimbursable activities:

- Reviewing documentation leading to the adverse comment/findings by Command staff.

However, the District Attorney's Office claimed preparing the case summary report, which is not a reimbursable activity.

(NOTE: For FY 2004-05 and FY 2005-06, the District Attorney's Office combined interrogation activities and adverse comment activities, and claimed them under the Interrogations cost component.)

The following table summarizes the overstated costs by fiscal year:

Cost Category	Fiscal Year			Total
	2003-04	2004-05	2005-06	
Salaries and benefits:				
Sheriff's Department	\$ (36,003)	\$ (39,709)	\$ (38,780)	\$ (114,492)
Probation Department	(32,644)	(52,500)	(107,675)	(192,819)
District Attorney's Office	(13,877)	(1,396)	(3,690)	(18,963)
Subtotal	(82,524)	(93,605)	(150,145)	(326,274)
Related indirect costs	(35,831)	(55,199)	(93,917)	(184,947)
Audit adjustment	\$ (118,355)	\$ (148,804)	\$ (244,062)	\$ (511,221)

The program's parameters and guidelines, adopted by CSM on July 27, 2000, define the criteria for procedural protections for the county's peace officers.

The parameters and guidelines, section IV (Reimbursable Activities), outline specific tasks that are deemed to be above the due process clause. The statement of decision, on which the parameters and guidelines were based, noted that due process activities were not reimbursable.

The parameters and guidelines, section VA(1) (Salaries and Benefits), require that claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

The parameters and guidelines, section VI (Supporting Data), require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state-mandated program.

#### Recommendation

We recommend that the county ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

#### County's Response

The County does not agree with this finding at all and our response is given under individual cost component and under each department.

#### SCO's Comments

The finding and recommendation remains unchanged, except that we have allowed additional costs under the cost component of Administrative Activities for the District's Attorney's Office.

We will address our comments in the same order as they appear in the county's response.

#### County's Response

#### **Administrative Activities**

##### *Sheriff's Department*

The audit disallowed the reimbursement for three categories: preparing the file, logging the initial case information and interviewing the complainant. While these changes to the reimbursement section are now clearly spelled out in the Ps & Gs, they would be viewed as new cost the department must now carry. As such, we believe they would fall under Government Code 17514 which states – "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.

That being said, it is our opinion that since no notification was made prior to this change and the fact that the impact would directly cause an effect to the funding recovery process, these costs should be allowed at this time.

*Probation Department*

We do not agree with the narrow interpretation given to “due process” of law and the restrictive definition of the activities over and above the duties beyond the due process of law.

We do not agree with the audit interpretation of training that the training course, if they include other topics only proportionate costs will be allowed. In our view the training has to be a composite one and it cannot be a restrictive one. We cannot go through the training with a microscope on this issue and we disagree with the audit’s negative approach to training.

*District Attorney’s Office*

The above comment [audit finding] is incorrect as investigator training records were not checked by the audit and the identity of the officer who was disallowed was not disclosed by the audit. The District Attorney’s office claimed in FY 2003-04 that six investigators attended a peace officer standards and training (POST) internal affairs school. A review of the POST records confirmed that all six investigators attended and were given credit for the IA class. We request that this finding may be withdrawn and the costs allowed.

SCO’s Comments**Administrative Activities***Sheriff’s Department*

The county’s response to this finding is vague. The county implies that unallowable activities described in the audit report relate to language in the revised parameters and guidelines and, as this specific language did not appear in the original parameters and guidelines, these activities must be reimbursable. This contention is not valid. The audit finding is based on the original parameters and guidelines issued on July 27, 2000, and corrected on August 17, 2000. Reimbursable activities include: (1) developing or updating internal policies, procedures, manuals, or other materials pertaining to the conduct of mandated activities; (2) attendance at specific training for human resources, law enforcement, and legal counsel regarding the requirements of the mandate; and (3) updating the status of POBOR cases. The county did not explain how preparing a case file, logging case information into the county’s system and assigning the case, and interviewing complainants fit into one of the three reimbursable activities described above. These activities have nothing to do with updating internal policies and procedures, training on the requirements of the mandate, or updating the status of POBOR cases.

*Probation Department*

The parameters and guidelines state that one of the reimbursable activities under the cost component of Administrative Activities includes attendance at specific training for human resources, law enforcement, and legal counsel *regarding the requirements of the mandate* [emphasis added]. The county’s argument suggests that if POBOR requirements were discussed at any time during the course of any training attended by



human resources, law enforcement, or legal counsel, then the entire cost of that training should be reimbursable. We disagree. The language in the parameters and guidelines states that only training that concerns the requirements of the mandate is reimbursable. Accordingly, training that does not concern the requirements of the mandate is not reimbursable.

We reviewed the class outlines and schedules documented by the county for the training hours claimed and allocated allowable training costs based on the percentage of training time devoted to the requirements of the mandate. Accordingly, training hours for topics unrelated to the requirements of the mandated program are unallowable, which is consistent with the language in the adopted parameters and guidelines. We noted all of the specific training topics in the audit report that were deemed unallowable. The county did not provide any additional documentation or information supporting why these topics should be considered allowable training costs under the mandated program.

#### *District Attorney's Office*

Based on subsequent discussions with the county, we are satisfied that the county has adequate support for the unallowable training hours mentioned in the draft audit report for training conducted during FY 2003-04. Accordingly, we revised the audit finding to include an additional \$2,182 of allowable costs for FY 2003-04 (\$1,381 for salaries, \$372 for benefits, and \$429 for related indirect costs).

#### County's Response

##### **Administrative Appeals**

#### *Sheriff's Department*

The language in the audit contradicts itself in as far as what is allowed and what is not. For an example, on the top of page 9 it states, "The parameter and guidelines, section IVB (2) allow reimbursement for providing the opportunity for, and the conduct of, and administrative appeal for the following reasons:

1. Dismissal, demotion, suspension, reduction in pay, or written reprimand. . . . .

Then when you go to the finding of the audit on page 10, it states – "Our review of claimed costs under this cost component revealed that no administrative hearings were held for the cases included in the claims. Even if the hearings had taken place for the two cases in question, they would have resulted from unallowable disciplinary actions (letter of reprimand and suspension) that fall under due process.

Clearly the two cases that the audit looked at would have fallen under the reimbursable category. Section IVB (2) allows for reimbursement for those two issues should an administrative appeal take place.

It is our belief that the auditor misstated the factual basis for when reimbursement can be claimed when she said it was only allowed for anything other than dismissal, demotion, suspension, reduction in pay, or written reprimand. It is clear that POBAR does not even allow an administrative hearing for those things that do not rise to the level of

written reprimand – such as verbal counseling, documented counseling, supervisor comment card. . . This belief is further supported in the Commissions Ps & Gs where it is stated “The following activities and costs are reimbursable:

4. Other actions against permanent employees that result in disadvantage, harm, loss, or hardship, and that impact the career opportunities of the employee.” There is no doubt that a dismissal, demotion, suspension, reduction in pay, or written reprimand falls within this area and as such would be covered for reimbursement.

### SCO’s Comments

#### **Administrative Appeals**

##### *Sheriff’s Department*

In its response, the county misinterprets the language of the parameters and guidelines when it claims that section IVB(2) “allow[s] reimbursement for providing the opportunity for, and the conduct of, an administrative appeal for the following reasons: 1. Dismissal, demotion, suspension, reduction in pay, or written reprimand. . . .”

The county did not include the rest of the sentence, replacing it instead with six dots. The first bullet point of section IVB(2) of the parameters and guidelines actually says “dismissal, demotion, suspension, reduction in pay, or written reprimand *received by the Chief of Police whose liberty interest is not affected (i.e.: the charges supporting a dismissal do not harm the employee’s reputation or ability to find future employment.)* [emphasis added].” The costs incurred by the county for administrative appeal hearings were not claimed for the Chief of Police, so this sentence of the parameters and guidelines does not apply when analyzing the county’s claim.

The county claimed administrative appeal costs for permanent employees. Section IVB(2) of the parameters and guidelines addresses allowable costs for permanent employees under the next three bullet points when it includes:

- Transfer of permanent employees for purposes of punishment;
- Denial of promotion for permanent employees for reasons other than merit; and
- Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss, or hardship and impact the career opportunities of the employee.

The county suggests that the last bullet point covers the costs included in its claim by stating “there is no doubt that a dismissal, demotion, suspension, reduction in pay, or written reprimand falls within this area and as such would be covered for reimbursement.” The county’s conclusion is incorrect.

The CSM's original statement of decision for the POBOR program, adopted November 30, 1999, states the following on page 11:

Thus, the Commission found that the administrative appeal hearing would be required in the absence of the test claim legislation when:

- A permanent employee is dismissed, demoted, suspended, receives a reduction in pay or a written reprimand; or
- A probationary or at-will employee is dismissed and the employee's reputation and ability to obtain future employment is harmed by the dismissal.

Under these circumstances, the Commission determined that the administrative appeal *does not* constitute a new program or higher level of service because prior law requires such an appeal under the due process clause. Moreover, the Commission recognized that pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing the administrative appeal in the above circumstances would not constitute "costs mandated by the state" since the administrative appeal merely implements the requirement of the United States Constitution.

The CSM language is clear, and the costs claimed for the Sheriff's Department under this cost component are unallowable because they are already required by the due process clause.

#### County's Response

#### **Interrogation**

##### *Sheriff's Department*

The big issue in this area, which was raised during the exit conference, was based on reimbursement for the officer's time. While the auditor stated reimbursement would be made if the officer was off-duty and overtime was caused, the Commissions Ps & Gs do not state that. Rather, what they do state is that overtime will be reimbursed when required by the seriousness of the investigation and the officer is interviewed off-duty. This is clearly different from what was stated during the conference. While many of these other exclusions are recent changes to the POBAR status, we believe they would therefore fall under the guides of Government Code 17514 which states – "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.

##### *Probation Department*

We do not agree with the audit's standing view that a majority of our costs incurred under this activity come under "due process of law" and therefore not reimbursable if the activity is performed during normal hours. If this interpretation is taken as correct, cost of doing business in an efficient way will be jeopardized. It is the efficiency of conducting business and the authority of the local agency in deciding how to perform a mandate which is under question in this case. We totally disagree with the audit finding.

*District Attorney's Office*

The county disagrees with the above comments that indicate "local agencies were performing these investigative activities before POBAR was enacted" etc. POBAR was enacted on January 1, 1977. The requirement of POBAR has far exceeded investigative activities required prior to its enactment. Opponents to the ACT were the California Peace Officers Association, Cities and Counties and Sheriff's Association and League of Cities. This Act requires a great deal of work and administrative record keeping.

SCO's Comments**Interrogations***Sheriff*

If a peace officer or peace officer witness is interviewed during his or her off-duty time, the county is eligible for reimbursement for the overtime costs incurred. What the auditor stated at the exit conference is consistent with the parameters and guidelines. Furthermore, the audit report states the criteria for reimbursement of costs incurred for the cost component of Interrogations when it quotes the parameters and guidelines section IV(C). In addition, the county's suggestion that the audit findings reflect "recent changes in the POBOR status" is without merit. The parameters and guidelines were originally adopted on July 27, 2000, and corrected on August 17, 2000. No changes have been made to the parameters and guidelines until the CSM adopted amended parameters and guidelines on December 4, 2006. The amended parameters and guidelines apply to claims filed beginning in FY 2006-07. The audit period for this audit extends to FY 2005-06.

*Probation Department*

Based on the county's written response, it appears that the Probation Department believes that all activities under the cost component of Interrogations must be performed at any time other than during normal working hours in order to be reimbursable. However, the only activity in the parameters and guidelines that contains this caveat regards the reimbursable activity of interrogating a peace officer during his or her off-duty time. The list of unallowable activities cited in the audit report that the department performed fall under due process. Consequently, the CSM did not include these activities as reimbursable activities in the parameters and guidelines.

The only activities that are eligible for reimbursement under the mandated program are those that are spelled out in the adopted parameters and guidelines. If the county disagrees with what the CSM adopted as allowable activities, it can file a proposal with CSM to amend the adopted parameters and guidelines. In the meantime, SCO audits of POBOR claims submitted by the county will rely on the adopted parameters and guidelines as the criteria for reimbursement.

*District Attorney's Office*

The language contained in the audit report stating that "local agencies were performing these investigative activities before POBAR was enacted" comes directly from page 912 of CSM's staff analysis of the proposed parameters and guidelines for the POBOR program (Item #10), which was discussed during CSM's July 27, 2000, hearing. We do not question the amount of work and administrative record-keeping that may be required by claimants to comply with the requirements of the POBOR statutes. However, it is not relevant to the conduct of our audits. Reimbursable costs are based upon activities that the CSM has determined to be allowable within the adopted parameters and guidelines.

County's Response**Adverse Comment***Sheriff's Department*

The first area of denial for reimbursement relates to "Reviewing the circumstances of the complaint to determine the level of investigation prior to starting the case investigation. This refers to the internal issue of whether the case will be handled by IA investigators or by division level investigators. However what it does not do is determine if the case will be handled at all. The Commission's Ps & Gs state what is not reimbursable is determining whether the case rises to the level of an investigation. The issue here is whether all citizen complaints that are investigated need to be handled within Internal Affairs to fall within that SB90 reimbursement section. It is our contention that whether or not the case is handled in IA or by the administration within the division it is still a full investigation and treated, statistically monitored and handled as a citizen complaint. If this is not the case, then those agencies which do not have a formal IA unit would not be allowed any reimbursement.

The issue of determining where the case is handled, Internal Affairs or with the Division, is merely based on which arena is better suited to handle the allegations, what is best for a speedy, fair, and thorough investigation. It is not an issue of whether it is a complaint or not.

*Several of the other denied areas in this section we believe would again fall under Government Code 17514 which states – "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.*

*District Attorney's Office*

The County strongly believes that the claiming methodology is complex as is the view of all the various departments in the State. The Government agencies throughout the State of California are not consistent with POBAR requirements due to various historic reasons including differences in state and local perspectives of implementation of this act and the costs thereof. The Commission on state mandates has to reexamine the reimbursable activities with a wider definition thereby allowing the agencies to claim all the relevant costs without restricting the local agencies bound to narrow definition of words and meanings. The Act has to be seen in its overall perspective and the narrow reading of the Act has to be done away with.

SCO's Comments**Adverse Comment***Sheriff's Department*

Most of the county's response relates to the activity of reviewing the circumstances of the complaint to determine the level of investigation prior to starting the case investigation. The county infers that the parameters and guidelines state that determining whether the case rises to the level of an investigation is not reimbursable. However, no language like this appears in the adopted parameters and guidelines. Neither is there any language in the parameters and guidelines stating that this activity is reimbursable. In addition, there is no requirement that reimbursable activities must be performed within the Internal Affairs unit.

As noted in the audit report, the county's activity of reviewing documentation leading to the adverse comment/findings by command staff was eligible for reimbursement. However, we determined that the activity of reviewing the circumstances of a complaint to determine the level of investigation is an investigative activity that is not reimbursable under the mandated program. We also determined that the other three activities cited in the audit report were investigative activities that are unallowable because the activities are not included in the parameters and guidelines as reimbursable activities under the mandated program.

*Probation Department*

The county did not respond to the Adverse Comment findings for the Probation Department.

*District Attorney's Office*

The county's comments do not relate to the audit findings contained in the audit report. Rather, the county offers its opinion that the CSM did not allow for more areas of reimbursement to claimants under the adopted statement of decision and parameters and guidelines.

**FINDING 2—  
Unallowable  
productive hours**

The county overstated allowable salaries and related benefits costs by a total of \$11,800 for the audit period (\$2,543 by the Sheriff's Department, \$7,762 by the Probation Department, and \$1,495 by the District Attorney's Office). Related unallowable indirect costs totaled \$6,952. This overstatement occurred because the county understated annual productive hours in its calculation of productive hourly rates in each fiscal year.

**Ineligible Training Hours**

When calculating annual productive hours, the county deducted training time based on hours required by employees' bargaining unit agreements and/or continuing education requirements for licensure/certification rather than deducting actual non-program specific training. Starting with FY 2002-03, the county introduced a training code under its automated payroll system to track employees' training hours. The training code keeps track of the following types of training:

1. Mandatory training for licensure/certification requirements and continuing education for specific job classifications such as attorneys, probation officers, real estate property appraisers, physicians, nurses, and others.
2. POST training for law enforcement personnel.
3. County-required training such as new employee orientation, supervisory training, safety seminars, and software classes.

The county claimed that the training hours charged to this code were actual time spent by employees attending non-program-related training. However, the county was unable to substantiate the excluded training hours with any supporting documentation. Further, some of the training types described above relate to specific programs/classifications and therefore cannot be excluded from annual productive hours for the entire county. Training types described under items 1 and 2 above benefit specific job classifications and functions and therefore cannot be considered non-program-related training. Deduction from annual productive hours of the training types described under item 3 above is potentially allowable because the hours are non-program specific. However, the county did not keep track of this type of training separately in its payroll system.

**Ineligible Break Time**

When calculating annual productive hours, the county also deducted authorized break time rather than actual break time taken. The county did not adjust for break time directly charged to program activities and deducted break time per bargaining unit contract agreements. Because the county did not keep track of actual break time taken by employees, it cannot deduct break time from its calculations of annual productive hours.

The following table summarizes the overstated costs by fiscal year:

Cost Category	Fiscal Year			Total
	2003-04	2004-05	2005-06	
Salaries and benefits:				
Sheriff's Department	\$ (980)	\$ (554)	\$ (1,009)	\$ (2,543)
Probation Department	(542)	(4,920)	(2,300)	(7,762)
District Attorney's Office	(1,388)	(130)	23	(1,495)
Subtotal	(2,910)	(5,604)	(3,286)	(11,800)
Related indirect costs	(1,000)	(3,905)	(2,047)	(6,952)
Audit adjustment	\$ (3,910)	\$ (9,509)	\$ (5,333)	\$ (18,752)

The parameters and guidelines, section VA(1) (Salaries and Benefits), require that claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

The parameters and guidelines, section VI (Supporting Data), require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state-mandated program.

Recommendation

We recommend that the county establish and implement procedures to ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

County's Response

This audit finding relates to unsupported salaries, benefits and related indirect costs arising out of the usage of Countywide Productive hour rate. This issue of Countywide Productive hours was replied to in all responses to State audit reports on other programs. We repeat our earlier responses on the issue of countywide productive hourly rate for record. . .

We notice that in this audit report only two issues have been taken up namely the deduction of training hours and usage of authorized break time rather than the actual break time.

We note that compared to the previous audit reports, there is a welcome change now that the audit finding is not the rejection of the policy of countywide productive hours in its entirety but is extremely limited to the treatment and documentation for training and break time only. Thank you for accepting the countywide productive hour policy. Consequently, we will only discuss the two specific issues of documentation for training time and break.

The County implemented the countywide calculation of productive hours in FY 2000-01. Claims filed for that fiscal year were based on calculations that included training time received by employees and reported by County departments, based on collective bargaining agreements or rosters related to actual training session that were



conducted. Break-time was similarly calculated, based on requirements of collective bargaining agreements and State law. For all subsequent fiscal years, the County modified the automated payroll system to capture actual hours of training by individual employee for all County departments.

The county's policy for reporting training time is only related to non-program training. Departments have been advised to exclude program-related training from the pay period data reporting. We explained this to the state audit staff. We also explained that the payroll section can only maintain the total time spent and reported by each department. The analysis as to whether they were program-related or not are done in the departments. We informed the state audit staff to check this issue in the departments by a visit there if they wished. All data and records required for the audit were produced.

On the issue of reporting actual break-time taken by employees, our automated payroll system could accommodate such a change; but the additional time and cost of recording such information would exceed the value of the information obtained. This information can readily be determined by simple calculation. This conclusion is consistent with OMB A-87 cost allocation principles, which limit the effort expected of state and local government to calculate indirect costs when such costs are "... not readily assignable. . . without effort disproportionate to the results achieved." In the case of daily break-time required by both State law and collective bargaining agreements, the recording of actual break-time taken twice daily by more than 15,000 employees during 250 workdays per year would not result in the determination of a materially different amount of actual time taken than could be readily calculated pursuant to the 30 minutes daily standard specified by the collective bargaining agreements. The cost of doing this would be prohibitive. Because the County has direct all employees (Attachment A) to limit the daily reporting of hours worked to 7.5 hours when preparing SB 90 claims, the effect of not allowing the County to exclude one-half hour per day break-time from the productive hour calculation would be to increase the hours charged to SB 90 claims by the same one-half hour per day for all claims involving full-day charges and therefore except for increasing the workload no useful purpose will be served. As stated in the case of training time earlier, the break time on days when the staff works exclusively on specific programs is not included in the break time for this purpose.

We previously clarified all these issues in response to an email dated February 6, 2004, from the Audit Division of the State Controller's Office. The email stated that the State would accept the usage of countywide productive hourly rate with certain conditions (Attachment B). That email raised the same issues raised in this audit report. For your reference the email from the Audit Division of the State Controller's Office dated February 6, 2004, is reproduced below.

*Copy of email dated February 6, 2004 from Jim Spano to the County of Santa Clara*

*Ram,*

*I reviewed the county's proposal dated December 19, 2001, to use countywide productive hours and have discussed your analysis with my staff and Division of Accounting and reporting staff. The use of countywide productive hours would be acceptable to the State*

*Controller's Office provided all employee classifications are included and productive hours are consistently used for all county programs (mandated and non-mandated).*

*The SCO's Mandated Cost Manual (claiming instructions), which includes Guidelines for preparing mandated cost claims, does not identify the time spent on training and authorized breaks as deductions (excludable Components) from total hours when computing productive hours. However, if a County chooses to deduct time for training and authorized breaks in calculating countywide productive hours, its accounting system must separately identify the actual time associated with these two components. The accounting system must also separately identify training time directly charged to program activities. Training time directly charged to program activities may not be deducted when calculating productive hours.*

*The countywide productive hours used by Santa Clara County were not consistently applied to all mandates for FY 2000-01. Furthermore, countywide productive hours used during the audit periods include unallowable deductions for time spent on training and authorized breaks. The county deducted training time based on hours required by employees' bargaining unit agreement and continuing education requirements for licensure/certification rather than actual training hours taken. In addition, the county deducted authorized break time rather than actual break time taken. The county did not adjust for training time and break time directly charged to program activities during the audit period, and therefore, cannot exclude those hours from productive hours.*

*If you would like to discuss the above further, please contact me.  
Jim Spano*

We responded to all the issues raised in the above email. We continue to use the countywide productive hours policy or non SB90 programs, as accepted in the above email. Further, before the introduction of the countywide productive hour policy in the County of Santa Clara in our letter of December 27, 2001, we noticed (Attachment C) the State Controller that the County was electing to change its SB 90 claiming procedures for the calculation of productive hourly rates. The County reported that the switch to a countywide methodology for the calculation of average countywide productive hours per position would improve SB 90 claiming accuracy, consistency, and documentation and facilitate the State audit function. Consequently, more than 50 claims have been submitted and accepted during the past two years using this countywide methodology.

We advised state audit staff and provided a copy of the County's letter dated December 27, 2001 and explained our understanding of the SB 90 instructions pertaining to the calculation of productive hours. The State auditors did not provide any written State procedures, regulations, or other legal authority to refute our interpretation of Section 7 of the State Controller's SB 90 Claiming Instructions for Cities, Counties and Special Districts.

We invite your kind attention to the amount involved in this finding which is very less compared to the claimed cost and therefore request you to drop this finding and allow the costs as claimed by us.

### SCO's Comments

The finding and recommendation remain unchanged.

The SCO concurs that the county may use countywide productive hours to calculate productive hourly rates. The SCO notified Santa Clara County by e-mail dated February 6, 2004, stating in part, "The use of countywide productive hours would be acceptable to the State Controller's Office provided all employee classifications are included and productive hours are consistently used for all county programs (mandates and nonmandated)."

### **Training Time**

We concur that the county's payroll system was modified in FY 2002-03 to capture actual hours of training. However, we determined that the county's accounting system does not separately identify training time directly charged to program and non-program activities. We have a copy of a county memo dated June 10, 2002, to department payroll, personnel staff, service centers, and timekeepers advising the use of the new training code to report training hours. The memo goes on to state, "the hours that the employee is away from his/her normal productive work is the key for reporting the hours regardless of the type of training or if the training is mandatory or non-mandatory."

However, the county states in its response that "the county's policy for reporting training time is only related to non-program training. Departments have been advised to exclude non-program related training from the pay period data reporting." The county goes on to state that individual county departments maintain records as to whether training reported was program-related or not and that our audit staff should examine this issue. While we noted that the county deducted hours for training codes "ZTT" and "ZXT" during the audit period in its calculation of productive hours (24.35 for FY 2003-04, 26.6 hours for FY 2004-05, and 23.03 hours for FY 2005-06), it has not provided the pertinent details of how these hours were derived. It is not the responsibility of SCO auditors to audit training records of various county departments to determine which training time was used in the county's calculation of its productive hourly rates. Instead, the county should provide the pertinent details of how it calculated the hours deducted from productive hours for each fiscal year of the audit period; it has not yet done so. If the county can subsequently provide adequate documentation that its calculation of deductible productive hours for employee training was related only to non-program-specific training during the audit period, we will revise the audit report as appropriate.

### **Break Time**

The SCO's claiming instructions, which include guidelines for preparing mandated cost claims, do not identify time spent on authorized breaks as deductions (excludable components) from total hours when computing productive hours. The county deducted authorized break time rather than actual break time taken. Limiting daily reporting of hours worked to 7.5 hours does not address instances in which staff works less than eight hours a day, nor does it ensure consistency of application to all programs

(mandates and non-mandates). The county did not adjust for break time directly charged to program activities during the audit period; therefore, the county cannot exclude those hours from productive hours.

The county's response also implies that the county satisfactorily addressed the issues raised in the e-mail from the SCO to Santa Clara County dated February 6, 2004. However, calculating productive hours based on estimated costs is not consistent with Office of Management and Budget (OMB) Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments. If the county chooses to deduct actual break time taken in calculating productive hours, its accounting system must separately identify the actual break time taken. In addition, the county's claim that SCO has accepted "more than 50 claims" using this countywide methodology during the past two years refers to unaudited claims that were processed by SCO for payment. It is erroneous to suggest that this precludes the SCO from taking a finding during the conduct of an actual audit of one or more of these claims.

**FINDING 3—  
Understated benefit  
rates**

The county understated employee benefit costs by \$941 for FY 2004-05 (\$748 by the Sheriff's Department and \$193 by the District Attorney's Office). Related unallowable indirect costs totaled \$347. This understatement occurred because the county calculated benefit rates for employees by dividing their annual benefits by their respective total compensation (benefits plus salaries), instead of only salaries. Therefore, the county understated benefit rates for this fiscal year for these two departments. We recalculated benefit rates by dividing employees' total annual benefits by their total annual salaries to arrive at the correct benefit rates.

The parameters and guidelines, section VA(1) (Salaries and Benefits), require that claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

The parameters and guidelines, section VI (Supporting Data), require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state mandated program.

Recommendation

We recommend that the county ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

County's Response

We accept the audit comments and request that the costs be allowed to the extent understated.

SCO's Comments

The county agrees with the finding.

**FINDING 4—  
Understated indirect  
costs**

The county understated indirect costs by \$1,222 for FY 2003-04. This understatement occurred because the Probation Department mistakenly applied its indirect cost rate to the incorrect base. For FY 2003-04, the Probation Department computed its indirect cost rate on the basis of salaries and benefits. However, on the mandate claim, the rate was mistakenly applied to claimed salaries only. We recomputed allowable indirect costs by applying the claimed indirect cost rate to both salaries and benefits allowable.

The program's parameters and guidelines, section VB (Indirect Costs), state that indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Compensation for indirect costs is eligible for reimbursement using the procedures provided in the OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments."

**Recommendation**

We recommend that the county calculate its indirect costs in a manner that is consistent with the methodology outlined in OMB Circular A-87.

**County's Response**

We accept the finding as it was an oversight and we request that the costs be recalculated and allowed.

**SCO's Comments**

The county agrees with the finding.

**FINDING 5—  
Unallowable travel  
and training costs**

The county claimed unallowable travel and training costs of \$1,521 for FY 2004-05. This overstatement occurred because the Probation Department claimed ineligible training-related expenses. As discussed in Finding 1 under the Administrative Activities cost component, the Probation Department's training hours were adjusted to account only for eligible POBOR-related training. We also adjusted travel expenses associated with attendance at the ineligible portion of training classes accordingly.

The parameters and guidelines, Section VA(5) (Supporting Documentation-Training), allow for reimbursement of travel and training costs incurred for the performance of mandated activities. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, and per diem.

**Recommendation**

We recommend that the county ensure that claimed costs include only eligible costs and are based on expenditures that occurred as a result of performing mandated activities.

County's Response

As stated earlier, we do not agree with the narrow interpretation on training costs as explained by the audit. We therefore are of the strong view that all the training costs and costs associated with the training are reimbursable and as such should be reimbursed to us without any cuts.

SCO's Comments*Probation Department*

The parameters and guidelines state that one of the reimbursable activities under the Administrative Activities cost component includes attendance at specific training for human resources, law enforcement, and legal counsel *regarding the requirements of the mandate* [emphasis added]. Accordingly, training that does not concern the requirements of the mandate is not reimbursable. We allocated allowable training costs based on the percentage of training time devoted to the requirements of the mandate, as noted above within Finding 1. Accordingly, travel costs associated with employee training that is not eligible for reimbursement is also unallowable.

**OTHER ISSUE—  
Audit Criteria**County's Response

The POBOR law and the Ps and Gs for state mandates are highly complicated. The initial Ps and Gs adopted by the Commission in July 2000 did not specifically disallow the various activities such as interrogation during regular work hours, training etc. AB138 enacted in 2005 directed the Commission to review the Statement of Decision adopted in 1999. The Ps and Gs were then amended by the Commission; and the SCO issued the amended claiming instructions on March 19, 2007. The very fact that the Commission had to reconsider and reissue amended Ps and Gs in 2007 (after 7 years the Ps & Gs was initially adopted) shows that the original Ps and Gs were subject to different interpretations in various claimable costs. The State auditors, however, have used the amended Ps and Gs (recently issued in 2007) to justify their disallowances for the previous years' claims that were compiled based on the original Ps and Gs.

We, and many other local agencies, cannot agree to those disallowances of the non-overtime hours and findings based on the subsequently revised Ps and Gs in March 2007. The County has made every attempt to efficiently and effectively complete the SB 90 claims in a fair and reasonable basis. The action of disallowing the majority of the claims based on the auditors' interpretations is not an appropriate approach, and will defeat the objectives of mandating this claim.

SCO's Comment

The county's comment that the audit was based on the revised parameters and guidelines for the POBOR program (adopted by CSM on December 4, 2006) appears frequently in its response to the draft report. During the audit exit conference, the county's SB 90 coordinator asked us several times whether the audit was based on the original parameters and guidelines or on the revised parameters and guidelines adopted on

December 4, 2006. On each occasion, We responded that the audit was based on our understanding of the original parameters and guidelines adopted by CSM and that the revised parameters and guidelines apply to claims filed for FY 2006-07 and subsequent years.

Any references to the revised parameters and guidelines adopted on December 4, 2006, made during the exit meeting or in any discussion during the audit process were made solely to point out that reimbursable and non-reimbursable activities of the mandated program are spelled out more clearly in the revised parameters and guidelines. Except for changes to allowable activities for the cost components of Administrative Appeal for probationary and at-will peace officers (pursuant to amended Government Code Section 3304) and Adverse Comment (for punitive actions protected by the due process clause), reimbursable activities did not change from the original parameters and guidelines. In addition, our understanding of allowable and unallowable activities per the original parameters and guidelines did not change as a result of the CSM amending them on December 4, 2006.

The draft audit report and this final report state that the audit was based on parameters and guidelines adopted by the CSM on July 27, 2000, and corrected on August 17, 2000. The language in the audit report and in the SCO response to the county's comments emanates either from the original parameters and guidelines, the original statement of decision, or from the CSM staff analysis of the originally proposed parameters and guidelines for this mandate program.

The county's statement that the CSM had to reconsider and reissue amended parameters and guidelines due to different interpretations of claimable costs is not correct. The CSM was *required* to review its original statement of decision for the POBOR program, adopted in 1999, pursuant to AB 138 (Statutes 2005, chapter 72, section 6) to clarify whether the subject legislation for the POBOR program imposed a mandate consistent with the California Supreme Court decision in *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal. 4<sup>th</sup> 859 and other applicable court decisions. Accordingly, CSM adopted its statement of decision upon reconsideration on May 1, 2006.

Adopting revised parameters and guidelines based on reconsideration of its original statement of decision is consistent with the CSM's normal procedures. In this instance, the CSM also directed its staff to work with state agencies and interested parties to develop and recommend a reasonable reimbursement methodology, pursuant to Government Code section 17519.5, for inclusion in the revised parameters and guidelines. State agencies and interested parties proposed changes to the reimbursable activities and various reasonable reimbursement methodologies; all proposed changes were considered by CSM staff prior to adoption of the revised parameters and guidelines on December 4, 2006.

**Attachment—  
County's Response to  
Draft Audit Report**

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## County of Santa Clara

Finance Agency  
Controller-Treasurer Department

County Government Center  
70 W. Hedding Street, East Wing, 2<sup>nd</sup> Floor  
San Jose, California 95110-1705  
(408) 299-5200 FAX (408) 289-8629



DATE: March 11, 2008

TO: Jim L. Spano  
Chief, Compliance Audits Bureau,  
State Controller's Office, Division of audits,  
Post Office Box 942850,  
Sacramento, CA 94250-5874

FROM: Irene Lui  
Divisional Manager,  
Cost management and claims

RE: Response to POBOR Draft audit report

Dear Mr. Spano,

Thank you for sending us the draft audit report regarding our claim for the legislatively mandated Peace Officers Procedural Bill of Rights Program (Chapter 465, Statutes of 1976) for the period from July 1, 2003 through June 30, 2006

We attach our responses to your audit findings in the order they were presented on your draft report. Except the matters that we have specifically accepted, we disagree to all other findings; the attached detailed response addresses our concerns from respective claiming departments. Please review our comments and make appropriate adjustments for the draft report accordingly.

Your draft report attempts to disallow \$511,221 out of our claimed amount of \$744,598 which is about 69%. This high percentage of disallowance was mainly contributed by the difference in interpretation of legal provisions and Ps and Gs between the state auditors and the local governments. Your strict and narrow interpretation of Ps and Gs is, in fact, a relatively new phenomenon that has not been adhered to by any local agencies, and will only lead to prolonged litigation that hurts both the State and local agencies.

Board of Supervisors: Donald F. Gage, Blanca Alvarado, Pete McHugh, Ken Yeager, Liz Kniss  
County Executive: Peter Kutas, Jr.

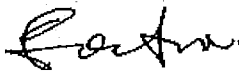
Noting this situation, we along with the CSAC has tried to negotiate a balanced settlement which is still pending in spite of our efforts for the past few years.

The POBOR law and the Ps and Gs for state mandates are highly complicated. The initial Ps and Gs adopted by the Commission in July 2000 did not specifically disallow the various activities such as interrogation during regular work hours, training etc. AB138 enacted in 2005 directed the Commission to review the Statement of Decision adopted in 1999. The Ps and Gs were then amended by the Commission; and the SCO issued the amended claiming instructions on March 19, 2007. The very fact that the Commission had to reconsider and reissue amended Ps and Gs in 2007 (after 7 years the Ps & Gs was initially adopted) shows that the original Ps and Gs were subject to different interpretations in various claimable costs. The State auditors, however, have used the amended Ps and Gs (recently issued in 2007) to justify their disallowances for the previous years' claims that were compiled based on the original Ps & Gs.

We, and many other local agencies, cannot agree to those disallowances of the non-overtime hours and findings based on the subsequently revised Ps and Gs in March 2007. The County has made every attempt to efficiently and effectively complete the SB90 claims in a fair and reasonable basis. The action of disallowing the majority of the claims based on the auditors' interpretations is not an appropriate approach, and will defeat the objectives of mandating this claim.

We appreciate the opportunity to review and comment upon this audit. We would like to meet with you and your staff to explain our various points, and to seek a reasonable settlement of the claimed costs before we explore other alternatives available to us. Please contact Ram Venkatesan, the County SB 90 Coordinator, at (408) 299-5210 if you have questions.

Regards,



Irene Lui  
Divisional manager

**Attachment:** Detailed response to your draft audit findings

**Board of Supervisors:** Donald F. Gage, Blanca Alvarado, Pete McHugh, Ken Ycager, Liz Kniss  
**County Executive:** Peter Kutas, Jr.

**County of Santa Clara**  
**SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008**

**FINDING 1—Unallowable salaries and benefits**

The county claimed unallowable salaries and benefits costs totaling \$326,274 for the audit period because the activities it claimed were not identified as reimbursable costs in the parameters and guidelines for the program. Related unallowable indirect costs totaled \$184,947.

The following table summarizes the audit adjustments by cost component:

	Claimed Costs	Allowable Costs	Audit Adjustment
<b>Salaries and Benefits</b>			
<b>Administrative Activities:</b>			
Sheriff's Department	\$ 18,587	\$ 10,124	\$ (8,463)
Probation Department	93,584	58,094	(35,490)
District Attorney's Office	18,318	16,565	(1,753)
<b>Total Administrative Activities</b>	<b>130,489</b>	<b>84,783</b>	<b>(45,706)</b>
<b>Administrative Appeals:</b>			
Sheriff's Department	1,388	—	(1,388)
Probation Department	985	—	(985)
District Attorney's Office	—	—	—
<b>Total Administrative Appeals</b>	<b>2,373</b>	<b>—</b>	<b>(2,373)</b>
<b>Interrogation:</b>			
Sheriff's Department	71,506	10,156	(61,350)
Probation Department	162,587	32,351	(130,236)
District Attorney's Office	18,880	2,530	(16,350)
<b>Total Interrogation</b>	<b>252,973</b>	<b>45,037</b>	<b>(207,936)</b>
<b>Adverse Comment:</b>			
Sheriff's Department	54,680	11,389	(43,291)
Probation Department	31,741	5,633	(26,108)
District Attorney's Office	1,119	259	(860)
<b>Total Adverse Comment</b>	<b>87,540</b>	<b>17,281</b>	<b>(70,259)</b>
<b>Total salaries and benefits</b>	<b>473,375</b>	<b>147,101</b>	<b>(326,274)</b>
<b>Related indirect costs</b>	<b>271,223</b>	<b>86,276</b>	<b>(184,947)</b>
<b>Total</b>	<b>\$744,598</b>	<b>\$233,377</b>	<b>\$ (511,221)</b>
<b>Recap by Department</b>			
<b>Sheriff's Department</b>			
	\$198,910	\$ 42,901	\$ (156,009)
<b>Probation Department</b>			
	498,045	166,384	(331,661)
<b>District Attorney's Office</b>			
	47,643	24,092	(23,551)
<b>Total</b>	<b>\$744,598</b>	<b>\$233,377</b>	<b>\$ (511,221)</b>

**County of Santa Clara**

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*For each fiscal year, the county claimed costs for activities that did not exceed the duties of due process of law and therefore did not impose increased costs as a result of compliance with the mandate and were ineligible for reimbursement.*

*We broke down the audit findings for overstated salaries and benefits by individual cost component for each of the three county departments included in the county's claims. The ineligible activities claimed are indicated for each county department.*

**County's response:**

The County does not agree with this finding at all and our response is given under individual cost component and under each department.

*For the Administrative Activities cost component, the county claimed \$130,489 in salaries and benefits costs (\$18,587 by the Sheriff's Department, \$93,584 by the Probation Department, and \$18,318 by the District Attorney's Office) during the audit period. Related indirect costs totaled \$80,163. We determined that \$45,706 was unallowable (\$8,463 by the Sheriff's Department, \$35,490 by the Probation Department, and \$1,753 by the District Attorney's Office) because costs claimed were for ineligible activities. Related unallowable indirect costs totaled \$29,543.*

The parameters and guidelines, section IVA (Administrative Activities, Ongoing Activities), allow for reimbursement of the following ongoing activities:

1. Developing or updating internal policies, procedures, manual and other materials pertaining to the conduct of the mandated activities.
2. Attendance at specific training for human resources, law enforcement, and legal counsel regarding the requirements of the mandate.
3. Updating the status of the POBOR cases.

**Sheriff's Department**

*The Sheriff's Department claimed the following reimbursable activities:*

- *Updating POBOR case records (FY 2005-06).*
- *Training for Internal Affairs staff (FY 2003-04 and FY 2004-05).*

*However, the department claimed the following activities that are not reimbursable:*

- *Preparing the file.*
- *Logging initial case information into the system and*

**County of Santa Clara**  
**SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008**

*assign the case.*

- *Interviewing the complainants.*

**County's response (Sheriff)**

The audit disallowed the reimbursement for three categories: preparing the file, logging the initial case information and interviewing the complainant. While these changes to the reimbursement section are now clearly spelled out in the Ps & Gs, they would be viewed as new cost the department must now carry. As such, we believe they would fall under Government Code 17514 which states - "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.

That being said, it is our opinion that since no notification was made prior to this change and the fact that the impact would directly cause an effect to the funding recovery process, these costs should be allowed at this time.

**Probation Department**

*The Probation Department claimed the following reimbursable activities:*

- *Reviewing and updating internal policies and procedures relating to POBOR.*

**County's response (Probation)**

We do not agree with the narrow interpretation given to "due process" of law and the restrictive definition of the activities over and above the duties beyond the due process of law

- *Training for Internal Affairs staff (training hours were partially adjusted to account for hours that were not related to POBOR training). Unallowable training hours included the following topics:*

- Labor relations
- Unionized vs. non-unionized employees
- Private and public employees
- Handling sexual harassment issues
- Confidentiality issues
- Investigation errors
- Ethical issues in probation
- Budgeting implications
- Juvenile Justice Reforms
- Discrimination issues

**County of Santa Clara**  
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Electronic research  
First Amendment related conduct  
Preparing investigations reports  
Key mistakes in workplace investigations  
Assessing credibility  
Types of lawsuits  
Representation and indemnification  
Supervisory liability of failure to train  
Minimizing exposure to liability

*The department also claimed the following activities that are not reimbursable (FY 2004-05):*

- *Reviewing Internal Affairs (IA) investigations reports to approve or to make corrections.*
- *Visiting other IA units during the establishment of the IA unit at the Probation Department.*
- *Conducting interviews for IA Management Analyst position.*
- *Reviewing the progress of development of the IA database.*
- *Reviewing complaints, response letters, Merit System Rules, and assigning cases.*
- *Reviewing training schedule for the unit.*

**County's response (Probation)**

We do not agree with the audit interpretation of training that the training course, if they include other topics only proportionate costs will be allowed. In our view the training has to be a composite one and it cannot be a restrictive one. We cannot go through the training with a microscope on this issue and we disagree with the audit's negative approach to training.

**District Attorney's Office**

*The District Attorney's Office claimed the following reimbursable activities:*

- *Updating/maintaining POBOR case records.*
- *Training for Internal Affairs staff (FY 2003-04) (hours were adjusted for one employee, whose training records did not reflect attendance at the claimed training class).*
- *Develop internal policies and procedures (FY 2003-04).*

*The District Attorney's Office did not claim any ineligible activities in this category.*

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**County's response (DA)**

The above comment is incorrect as investigator training records were not checked by the audit and the identity of the officer who was disallowed was not disclosed by the audit. The District Attorney's office claimed in FY 2003-04 that six investigators attended a peace officer standards and training (POST) internal affairs school. A review of the POST records confirmed that all the six investigators attended and were given credit for the IA class. We request that this finding may be withdrawn and the costs allowed.

*Administrative Appeals*

*For the Administrative Appeals cost component, the county claimed \$2,373 in salaries and benefits costs (\$1,388 by the Sheriff's Department and \$985 by the Probation Department) during the audit period. Related indirect costs totaled \$1,193. We determined that both amounts were unallowable because costs claimed were for ineligible activities.*

The parameters and guidelines, section IVB (2) (Administrative Appeals), allow reimbursement for providing the opportunity for, and the conduct of, an administrative appeal for the following disciplinary actions:

1. Dismissal, demotion, suspension, salary reduction, or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e., the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
2. Transfer of permanent employees for purposes of punishment;
3. Denial of promotion for permanent employees for reasons other than merit; and
4. Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss, or hardship, and that impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical

## County of Santa Clara

### SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

services; and the preparation and service of any rulings or orders of the administrative body.

In reference to reimbursable circumstances surrounding administrative appeal hearings pursuant to Government Code section 3304, subdivision (b), the CSM statement of decision regarding the adopted parameters and guidelines states:

The Commission found that the administrative appeal would be required in the absence of the test claim legislation when:

- A permanent employee is dismissed, demoted, suspended, receives a reduction in pay or a written reprimand; or
- A probationary or at-will employee is dismissed and the employee's reputation and ability to obtain future employment is harmed by the dismissal.

Under these circumstances, the Commission determined that the administrative appeal does not constitute a new program or higher level of service because prior law requires such an appeal under the due process. Moreover, the Commission recognized that pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing the administrative appeal in the above circumstances would not constitute "costs mandated by the state" since the administrative appeal merely implements the requirements of the United States Constitution.

*In other words, if officers appeal actions such as transfer for purposes of punishment or denial of promotion, then administrative appeal costs can be claimed for reimbursement. However, if officers appeal actions such as dismissal, demotion, suspension, reduction in pay, or written reprimand, then those appeal hearings would fall under due process and could not be claimed for reimbursement.*

Sheriff's Department

*Our review of claimed costs under this cost component revealed that no administrative hearings were held for the cases included in the claims. Even if the hearings had taken place for the two cases in question, they would have resulted from unallowable disciplinary actions (letter of reprimand and suspension) that fall under due process.*



**County of Santa Clara**  
**SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008**

*Subsequently, claimed activities were unallowable for reimbursement.*

**County's response (Sheriff)**

**Administrative Appeal**

The language in the audit contradicts itself in as far as what is allowed and what is not. For an example, on the top of page 9 it states, "The parameter and guidelines, section IVB (2) allow reimbursement for providing the opportunity for, and the conduct of, an administrative appeal for the following reasons:

1. Dismissal, demotion, suspension, reduction in pay, or written reprimand.....

Then when you go to the finding of the audit on page 10, it states - "Our review of claimed costs under this cost component revealed that no administrative hearings were held for the cases included in the claims. Even if the hearings had taken place for the two cases in question, they would have resulted from unallowable disciplinary actions (letter of reprimand and suspension) that fall under due process.

Clearly the two cases that the audit looked at would have fallen under the reimbursable category. Section IVB (2) allows for reimbursement for those two issues should an administrative appeal take place.

It is our belief that the auditor misstated the factual basis for when reimbursement can be claimed when she said it was only allowed for anything other than dismissal, demotion, suspension, reduction in pay, or written reprimand. It is clear that POBAR does not even allow an administrative hearing for those things that do not rise to the level of written reprimand - such as verbal counseling, documented counseling, supervisor comment card... This belief is further supported in the Commissions Ps & Gs where it is stated "The following activities and costs are reimbursable:

4. Other actions against permanent employees that result in disadvantage, harm, loss, or hardship, and that impact the career opportunities of the employee." There is no doubt that a dismissal, demotion, suspension, reduction in pay, or written reprimand falls within this area and as such would be covered for reimbursement.

**Probation Department**

*All costs claimed under this cost component included hours incurred during appeal hearings that resulted from unallowable disciplinary actions (suspension and letter of reprimand). Subsequently, claimed activities were unallowable for reimbursement.*

**District Attorney's Office**

**County of Santa Clara**

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*The District Attorney's Office did not claim any costs under this cost component.*

*Interrogation*

*For the Interrogation cost component, the county claimed \$252,973 in salaries and benefits costs (\$71,506 by the Sheriff's Department, \$162,587 by the Probation Department, and \$18,880 by the District Attorney's Office) during the audit period. Related indirect costs totaled \$147,574. We determined that \$207,936 was unallowable (\$61,350 by the Sheriff's Department, \$130,236 by the Probation Department, and \$16,350 by the District Attorney's Office) because costs claimed were for ineligible activities. Related unallowable indirect costs totaled \$120,026.*

*The parameters and guidelines, section IV(C) (Interrogations), identify the specific interrogation activities that are reimbursable when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department during off-duty time, if the interrogation could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. Section IV(C) also identifies reimbursable activities under compensation and timing of an interrogation, interrogation notice, tape recording of an interrogation, and documents provided to the employee.*

*The parameters and guidelines, section IV(C), also state that claimants are not eligible for interrogation activities when an interrogation of a peace officer occurs in the normal course of duty. It further states:*

*When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures is absolutely essential.*

*In reference to compensation and timing of the interrogation pursuant to Government Code section 3303, subdivision (a), the CSM Final Staff Analysis to the adopted parameters and guidelines states:*

*It does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review the responses given by the officers and/or witnesses, as implied by the claimant's proposed language. Certainly, local agencies were performing these investigative activities before POBAR was enacted.*

*The parameters and guidelines, section IV(C), also state that the following activities are reimbursable:*

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*Tape recording the interrogation when the peace officer employee records the interrogation is an essential part of the interrogation.*

*Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers is required.*

**Sheriff's Department**

*The Sheriff's Department claimed the following reimbursable activities:*

- *Providing Interrogation Notice and/or Statement of Allegations to the officer.*
- *Reviewing the tape/summarize/transcribe accused officers' statements (accused officers generally receive the copy of their interviews).*
- *Providing copies of tapes and file documentation in case of further proceedings/hearings/action (FY 2003-04 and FY 2004-05).*

*However, the department claimed the following activities that are not reimbursable:*

- *Gathering reports and reviewing complaints and evidence as part of investigating the allegations.*
- *Investigation time.*
- *Preparing questions for the interviews.*
- *Interviewing witnesses during normal working hours (investigators' time).*
- *Reviewing tape and summarizing/transcribing witness officer's statements (witness officers generally do not receive a copy of their interview).*
- *Conducting pre-interrogation meetings.*
- *Interviewing accused officers during normal working hours (investigators' time).*

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### County Response (Sheriff) Interrogation

The big issue in this area, which was raised during the exit conference, was based on reimbursement for the officer's time. While the auditor stated reimbursement would be made if the officer was off-duty and overtime was caused, the Commissions Ps & Gs do not state that. Rather, what they do state is that overtime will be reimbursed when required by the seriousness of the investigation and the officer is interviewed off-duty. This is clearly different from what was stated during the conference. While many of these other exclusions are recent changes to the POBAR status, we believe they would therefore fall under the guides of Government Code 17514 which states - "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

### Probation Department

*The Probation Department claimed the following reimbursable activities:*

- *Providing administrative notice to the accused officer regarding the nature of allegations*
- *Transcribing/summarizing accused officer's statement (accused officers generally receive the copy of their interviews).*

*However, the department claimed the following activities that are not reimbursable:*

- *Gathering reports, log sheets, and evidence.*
- *Reviewing complaints, reports, and evidence as part of investigating the allegations.*
- *Interviewing witnesses, both civilian and officers (investigators' time).*
- *Traveling to interview witnesses.*
- *Transcribing witness tapes (witnesses do not receive copies of their interviews.)*
- *Reviewing tapes and making corrections.*
- *Preparing interview questions.*
- *Conducting pre-interrogation meetings.*
- *Interviewing accused officers during normal working hours (investigators' time).*

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**County's response (Probation)**

We do not agree with the audit's standing view that a majority of our costs incurred under this activity come under "due process of law" and therefore not reimbursable if the activity is performed during normal hours. If this interpretation is taken as correct, cost of doing business in an efficient way will be jeopardized. It is the efficiency of conducting business and the authority of the local agency in deciding how to perform a mandate which is under question in this case. We totally disagree with audit finding.

**District Attorney's Office**

*The District Attorney's Office claimed providing prior notice to the subject officers regarding the investigation/allegations as a reimbursable activity.*

*However, the District Attorney's Office claimed the following activities that are not reimbursable:*

- *Gathering reports, log sheets, etc.*
- *Reviewing complaints, reports, and evidence as part of investigating the allegations.*
- *Preparing interview questions.*
- *Interviewing witnesses during normal working hours (investigators' time).*
- *Conducting pre-interrogation meetings.*
- *Interviewing accused officers during normal working hours (investigators' time).*
- *Preparing a summary report of the agency complaint as part of the case file preparation.*
- *Reviewing interview tapes.*

**County's Response (DA)**

The County disagrees with the above comments that indicate "local agencies were performing these investigative activities before POBAR was enacted" etc. POBAR was enacted on January 1, 1977. The requirement of POBAR has far exceeded investigative activities required prior to its enactment. Opponents to the ACT were the California Peace Officers Association, Cities and Counties and Sheriff's Association and League of Cities. This Act requires a great deal of work and administrative record keeping.

*Adverse Comment*

*For the Adverse Comment cost component, the county claimed \$87,540 in salaries and benefits costs (\$54,680 by the Sheriff's Department, \$31,741 by the Probation*

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*Department, and \$1,119 by the District Attorney's Office) during the audit period. Related indirect costs totaled \$42,293. We determined that \$70,259 was unallowable (\$43,291 by the Sheriff's Department, \$26,108 by the Probation Department, and \$860 by the District Attorney's Office) because costs claimed were for ineligible activities. Related unallowable indirect costs totaled \$34,185.*

*Depending on the circumstances surrounding an adverse comment, the parameters and guidelines, section IVD (Adverse Comment); allow some or all of the following four activities upon receipt of an Adverse Comment:*

- Providing notice of the adverse comment;*
- Providing an opportunity to review and sign the adverse comment;*
- Providing an opportunity to respond to the adverse comment within 30 days; and*
- Noting on the document the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.*

*The parameters and guidelines also state:*

*Included in the foregoing are review of circumstances or documentation leading to the adverse comment by the supervisor, command staff, human resources staff, or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of the adverse comment to officer and notification concerning rights regarding same; review of response to the adverse comment; attaching same to adverse comment, and filing.*

**Sheriff's Department**

*The Sheriff's Department claimed the following activities that are reimbursable:*

- Preparing and serving an Administrative Notice of Allegations.*
- Reviewing documentation leading to the adverse comment/findings by Command staff.*

*However, the department claimed the following activities that are not reimbursable:*

- Reviewing the circumstances of the complaint to determine the level of investigation prior to starting the*

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*case investigation process (to determine whether the case will be investigated at the Internal Affairs or division level).*

- *Documenting the complaint/allegation and reviewing it for accuracy during the initial complaint intake prior to starting the investigation.*
- *Summarizing the investigation in a case summary report and having Internal Affairs review the summary report to ensure proper procedures were followed.*
- *Preparing interview questions.*

**County's response (Sheriff)**

**Adverse Comment**

The first area of denial for reimbursement relates to "Reviewing the circumstances of the complaint to determine the level of investigation prior to starting the case investigation. This refers to the internal issue of whether the case will be handled by IA investigators or by division level investigators. However what it does not do is determine if the case will be handled at all. The Commission's Ps & Gs state what is not reimbursable is determining whether the case rises to the level of an investigation. The issue here is whether all citizen complaints that are investigated need to be handled within Internal Affairs to fall within that SB90 reimbursement section. It is our contention that whether or not the case is handled in IA or by the administration within the division it is still a full investigation and treated, statistically monitored and handled as a citizen complaint. If this is not the case, then those agencies which do not have a formal IA unit would not be allowed any reimbursement.

The issue of determining where the case is handled, Internal Affairs or with the Division, is merely based on which arena is better suited to handle the allegations, what is best for a speedy, fair and thorough investigation. It is not an issue of whether it is a complaint or not.

*Several of the other denied areas in this section we believe would again fall under Government Code 17514 which states - "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*

**Probation Department**

*The Probation Department claimed the following reimbursable activities:*

- *Preparing and serving the Final Disciplinary Order*

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*(adverse comment notice).*

- *Interacting with labor relations to ensure proper disciplinary action (reviewing documentation leading to adverse comment/findings by Labor Relations staff).*
- *Reviewing documentation leading to the adverse comment/findings by Command staff.*

*However, the department claimed the following activities that are not reimbursable:*

- *Preparing the investigation summary and reviewing it with the supervisor prior to closing the case.*
- *Preparing the final case report.*

District Attorney's Office

*The District Attorney's Office claimed the following reimbursable activities:*

- *Reviewing documentation leading to the adverse comment/findings by Command staff.*

*However, the District Attorney's Office claimed preparing the case summary report, which is not a reimbursable activity.*

*(NOTE: For FY 2004-05 and FY 2005-06, the District Attorney's Office combined interrogation activities and adverse comment activities, and claimed them under the Interrogations cost component.)*

**County's response (DA)**

The County strongly believes that the claiming methodology is complex as is the view of all the various departments in the State. The Government agencies throughout the State of California are not consistent with POBAR requirements due to various historic reasons including differences in state and local perspectives of implementation of this act and the costs thereof. The Commission on state mandates has to reexamine the reimbursable activities with a wider definition thereby allowing the agencies to claim all the relevant costs without restricting the local agencies bound to narrow definition of words and meanings. The Act has to be seen in its overall perspective and the narrow reading of the Act has to be done away with.



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The following table summarizes the overstated costs by fiscal year:

Cost Category	Fiscal Year			Total
	2003-04	2004-05	2005-06	
Salaries and benefits:				\$
Sheriff's Department	\$ (36,003)	\$ (39,709)	\$ (38,780)	(114,492)
Probation Department	(32,644)	(52,500)	(107,675)	(192,819)
District Attorney's Office	(13,877)	(1,396)	(3,690)	(18,963)
Subtotal	(82,524)	(93,605)	(150,145)	(326,274)
Related indirect costs	(35,831)	(55,199)	(93,917)	(184,947)
Audit adjustment	\$ (118,355)	\$ (148,804)	\$ (244,062)	\$ (511,221)

*The program's parameters and guidelines, adopted by GSM on July 27, 2000, define the criteria for procedural protections for the county's peace officers.*

*The parameters and guidelines section IV (Reimbursable Activities); outline specific tasks that are deemed to be above the due process clause. The statement of decision, on which the parameters and guidelines were based, noted that due process activities were not reimbursable.*

*The parameters and guidelines, section VA(1) (Salaries and Benefits), require that claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.*

*The parameters and guidelines section VI (Supporting Data); require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state-mandated program.*

**Recommendation**

*We recommend that the county ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.*

**FINDING 2—Unallowable productive hours**

*The county overstated allowable salaries and related benefits costs by a total of \$11,800 for the audit period (\$2,543 by the Sheriff's Department, \$7,762 by the Probation Department, and \$1,495 by the District Attorney's Office). Related unallowable indirect costs*

## County of Santa Clara

### SB90 mandate-Detailed Response to PQBOR Draft audit report-March, 2008

*totaled \$6,952. This overstatement occurred because the county understated annual productive hours in its calculation of productive hourly rates in each fiscal year.*

#### *Ineligible Training Hours*

*When calculating annual productive hours, the county deducted training time based on hours required by employees' bargaining unit agreements and/or continuing education requirements for licensure/certification rather than deducting actual non-program specific training. Starting with FY 2002-03, the county introduced a training code under its automated payroll system to track employees' training hours. The training code keeps track of the following types of training:*

- 1. Mandatory training for licensure/certification requirements and continuing education for specific job classifications such as attorneys, probation officers, real estate property appraisers, physicians, nurses, and others.*
- 2. POST training for law enforcement personnel.*
- 3. County-required training such as new employee orientation, supervisory training, safety seminars, and software classes.*

*The county claimed that the training hours charged to this code were actual time spent by employees attending non-program-related training. However, the county was unable to substantiate the excluded training hours with any supporting documentation. Further, some of the training types described above relate to specific programs/classifications and therefore cannot be excluded from annual productive hours for the entire county. Training types described under items 1 and 2 above benefit specific job classifications and functions and therefore cannot be considered non-program-related training. Deduction from annual productive hours of the training types described under item 3 above is potentially allowable because the hours are non-program specific. However, the county did not keep track of this type of training separately in its payroll system.*

#### *Ineligible Break Time*

*When calculating annual productive hours, the county also deducted authorized break time rather than actual break time taken. The county did not adjust for break time directly charged to program activities and deducted break time per*

**County of Santa Clara**

SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

*bargaining unit contract agreements. Because the county did not keep track of actual break time taken by employees, it cannot deduct break time from its calculations of annual productive hours.*

The following table summarizes the overstated costs by fiscal year:

Cost Category	Fiscal Year			Total
	2003-04	2004-05	2005-06	
Salaries and benefits:				
Sheriff's Department	\$ (980)	\$ (554)	\$ (1,009)	\$ (2,543)
Probation Department	(542)	(4,920)	(2,300)	(7,762)
District Attorney's Office	(1,388)	(130)	23	(1,495)
Subtotal	(2,910)	(5,604)	(3,286)	(11,800)
Related indirect costs	(1,000)	(3,905)	(2,047)	(6,952)
Audit adjustment				\$
	\$ (3,910)	\$ (9,509)	\$ (5,333)	(18,752)

The parameters and guidelines, section VA(1) (Salaries and Benefits), require that claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee; the productive hourly rate, and related employee benefits.

The parameters and guidelines, section VI (Supporting Data), require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state-mandated program.

Recommendation

*We recommend that the county establish and implement procedures to ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.*

**County's response (Finance)**

**FINDING 2— Unallowable productive hours**

This audit finding relates to unsupported salaries, benefits and related indirect costs arising out of the usage of Countywide Productive hour rate. This issue of Countywide Productive hours was replied to in all responses to State audit reports on other programs. We repeat our earlier responses on the issue of countywide productive hourly rate for record...

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We notice that in this audit report only two issues have been taken up namely the deduction of training hours and usage of authorized break time rather than the actual break time.

We note that compared to the previous audit reports, there is a welcome change now that the audit finding is not the rejection of the policy of countywide productive hours in its entirety but is extremely limited to the treatment and documentation for training and break time only. Thank you for accepting the countywide productive hour policy. Consequently, we will only discuss the two specific issues of documentation for training time and break.

The County implemented the countywide calculation of productive hours in FY 2000-01. Claims filed for that fiscal year were based on calculations that included training time received by employees and reported by County departments, based on collective bargaining agreements or rosters related to actual training sessions that were conducted. Break-time was similarly calculated, based on requirements of collective bargaining agreements and State law. For all subsequent fiscal years, the County modified the automated payroll system to capture actual hours of training by individual employee for all County departments.

The county's policy for reporting training time is only related to non-program training. Departments have been advised to exclude program-related training from the pay period data reporting. We explained this to the state audit staff. We also explained that the payroll section can only maintain the total time spent and reported by each department. The analysis as to whether they were program-related or not are done in the departments. We informed the state audit staff to check this issue in the departments by a visit there if they wished. All data and records required for the audit were produced.

On the issue of reporting actual break-time taken by employees, our automated payroll system could accommodate such a change; but the additional time and cost of recording such information would exceed the value of the information obtained. This information can readily be determined by simple calculation. This conclusion is consistent with OMB A-87 cost allocation principles, which limit the effort expected of state and local governments to calculate indirect costs when such costs are "... not readily assignable...without effort disproportionate to the results achieved." In the case of daily break-time required by both State law and collective bargaining agreements, the recording of actual break-time taken twice daily by more than 15,000 employees during 250 workdays per year would not result in the determination of a materially different amount of actual time taken than could be readily calculated pursuant to the 30 minute daily standard specified by the collective bargaining agreements. The cost of doing this would be prohibitive. Because the County has directed all employees (Attachment A) to limit the daily reporting of hours worked to 7.5 hours when preparing SB 90 claims, the

**County of Santa Clara**

**SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008**

effect of not allowing the County to exclude one-half hour per day break-time from the productive hour calculation would be to increase the hours charged to SB 90 claims by the same one-half hour per day for all claims involving full-day charges and therefore except for increasing the workload no useful purpose will be served.. As stated in the case of training time earlier, the break time on days when the staff works exclusively on specific programs is not included in the break time for this purpose.

We previously clarified all these issues in response to an email dated February 6, 2004 from the Audit Division of the State Controller's Office. The email stated that the State would accept the usage of a countywide productive hourly rate with certain conditions (Attachment B). That email raised the same issues raised in this audit report. For your reference the email from the Audit Division of the State Controller's Office dated February 6, 2004 is reproduced below.

*Copy of email dated February 6, 2004 from Jim Spano to the County of Santa Clara*

*Ram,*

*I reviewed the county's proposal dated December 19, 2001, to use countywide Productive hours and have discussed your analysis with my staff and Division Of Accounting and reporting staff. The use of countywide productive hours Would be acceptable to the State Controller's Office provided all employee Classifications are included and productive hours are consistently used for all county programs (mandated and non-mandated).*

*The SCO's Mandated Cost Manual (claiming instructions), which includes Guidelines for preparing mandated cost claims, does not identify the time Spent on training and authorized breaks as deductions (excludable Components) from total hours when computing productive hours. However, if a County chooses to deduct time for training and authorized breaks in calculating countywide productive hours, its accounting system must separately identify the actual time associated with these two components. The accounting system must also separately identify training time directly charged to program activities. Training time directly charged to program activities may not be deducted when calculating productive hours.*

*The countywide productive hours used by Santa Clara County were not consistently applied to all mandates for FY 2000-01. Furthermore, countywide productive hours used during the audit periods include unallowable deductions for time spent on training and authorized breaks. The county deducted training time based on hours required by employees' bargaining unit agreement and continuing education requirements for licensure/certification rather than actual training hours taken. In addition, the county deducted authorized break time rather than actual break time taken. The county did not adjust for training time and break time directly charged to program activities during the audit period, and therefore, cannot exclude those hours from productive hours.*

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*If you would like to discuss the above further, please contact me.  
Jim Spano*

We responded to all the issues raised in the above email. We continue to use the countywide productive hours policy for non-SB90 programs, as accepted in the above email. Further, before the introduction of the countywide productive hour policy in the County of Santa Clara in our letter of December 27, 2001, we noticed (Attachment C) the State Controller that the County was electing to change its SB 90 claiming procedures for the calculation of productive hourly rates. The County reported that the switch to a countywide methodology for the calculation of average countywide productive hours per position would improve SB 90 claiming accuracy, consistency, and documentation and facilitate the State audit function. Consequently, more than 50 claims have been submitted and accepted during the past two years using this countywide methodology.

We advised state audit staff and provided a copy of the County's letter dated December 27, 2001 and explained our understanding of the SB 90 instructions pertaining to the calculation of productive hours. The State auditors did not provide any written State procedures, regulations or other legal authority to refute our interpretation of Section 7 of the State Controller's SB 90 Claiming Instructions for Cities, Counties and Special Districts.

We invite your kind attention to the amount involved in this finding which is very less compared to the claimed cost and therefore request you to drop this finding and allow the costs as claimed by us.

**FINDING 3—Understated benefit rates**

*The county understated employee benefit costs by \$941 for FY 2004-05 (\$748 by the Sheriff's Department and \$193 by the District Attorney's Office). Related unallowable indirect costs totaled \$347. This understatement occurred because the county calculated benefit rates for employees by dividing their annual benefits by their respective total compensation (benefits plus salaries), instead of only salaries. Therefore, the county understated benefit rates for this fiscal year for these two departments. We recalculated benefit rates by dividing employees' total annual benefits by their total annual salaries to arrive at the correct benefit rates.*

*The parameters and guidelines, section VA(1) (Salaries and Benefits), require that claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.*

**County of Santa Clara**

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*The parameters and guidelines section VI (Supporting Data); require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state mandated program.*

**Recommendation**

*We recommend that the county ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.*

**County's response (probation)**

We accept the audit comments and request that the costs be allowed to the extent understated.

**FINDING 4 - understated indirect costs**

*The county understated indirect costs by \$1,222 for FY 2003-04. This understatement occurred because the Probation Department mistakenly applied its indirect cost rate to the incorrect base. For FY 2003-04, the Probation Department computed its indirect cost rate on the basis of salaries and benefits. However, on the mandate claim, the rate was mistakenly applied to claimed salaries only. We recomputed allowable indirect costs by applying the claimed indirect cost rate to both salaries and benefits allowable.*

The program's parameters and guidelines, section VB (Indirect Costs), state that indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Compensation for indirect costs is eligible for reimbursement using the procedures provided in the OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments."

**Recommendation**

*We recommend that the county calculate its indirect costs in a manner that is consistent with the methodology outlined in OMB Circular A-87.*

**County's response (Probation)**

We accept the finding as it was an oversight and we request that the costs be recalculated and allowed.

**County of Santa Clara**  
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**FINDING 5—Unallowable travel and training costs**

The county claimed unallowable travel and training costs of \$1,521 for FY 2004-05. This overstatement occurred because the Probation Department claimed ineligible training-related expenses. As discussed in Finding 1 under the Administrative Activities cost component, the Probation Department's training hours were adjusted to account only for eligible POBOR-related training. We also adjusted travel expenses associated with attendance at the ineligible portion of training classes accordingly.

The parameters and guidelines, Section VA (5) (Supporting Documentation-Training), allow for reimbursement of travel and training costs incurred for the performance of mandated activities. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, and per diem.

**Recommendation**

We recommend that the county ensure that claimed costs include only eligible costs and are based on expenditures that occurred as a result of performing mandated activities.

**County's response (probation)**

As stated earlier, we do not agree with the narrow interpretation on training costs as explained by the audit. We therefore are of the strong view that all the training costs and costs associated with the training are reimbursable and as such should be reimbursed to us without any cuts.

**General response**

We thank the audit team for their speedy audit work and the discussions they had with us. However we felt highly disappointed with their unwillingness to go through the program implementation constraints and the background of the procedures followed in the county in this program. Please also see our cover letter to which this response is attached.



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**State Controller's Office  
Division of Audits  
Post Office Box 942850  
Sacramento, CA 94250-5874**

**<http://www.sco.ca.gov>**

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# Exhibit B

**BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA**

**IN RE TEST CLAIM:**

Government Code Sections 3300 through 3310,

As Added and Amended by Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174, and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675; and

Filed on December 21, 1995;

By the City of Sacramento, Claimant.

NO. CSM 4499

*Peace Officers Procedural Bill of Rights*


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 November 30, 1999)*

**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 December 1, 1999.

  
Paula Higashi, Executive Director

**BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA**

**IN RE TEST CLAIM:**

Government Code Sections 3300 through 3310,

As Added and Amended by Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174, and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675; and

Filed on December 21, 1995;

By the City of Sacramento, Claimant.

NO. CSM 4499

*Peace Officers Procedural Bill of Rights*

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 November 30, 1999)*

**STATEMENT OF DECISION**

On August 26, 1999 the Commission on State Mandates (Commission) heard this test claim during a regularly scheduled hearing. Ms. Pamela A. Stone appeared for the City of Sacramento. Mr. Allan Burdick appeared for the League of California Cities/SB 90 Service. Ms. Elizabeth Stein appeared for the California State Personnel Board. Mr. James Apps and Mr. Joseph Shinstock appeared for the Department of Finance. The following persons were witnesses for the City of Sacramento: Ms. Dee Contreras, Director of Labor Relations, and Mr. Edward J. Takach, Labor Relations Officer.

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 Government Code section 17500 et seq. and section 6, article XIII B of the California Constitution and related case law.

The Commission, by a vote of 5 to 1, approved this test claim.

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## BACKGROUND

In 1976, the Legislature enacted Government Code sections 3300 through 3310, known as the Peace Officers Procedural Bill of Rights Act. The test claim legislation provides a series of rights and procedural safeguards to peace officers employed by local agencies and school districts that are subject to investigation or discipline. Legislative intent is expressly provided in Government Code section 3301 as follows:

“The Legislature hereby finds and declares that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that stable relations are continued throughout the state and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, within the State of California. ”

The test claim legislation applies to all employees classified as “peace officers” under specified provisions of the Penal Code, including those peace officers employed by counties, cities, special districts and school districts. <sup>1</sup> The test claim legislation also applies to peace officers that are classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause (“at-will” employees)<sup>2</sup> and peace officers on probation who have not reached permanent status .<sup>3</sup>

## COMMISSION FINDINGS

**Issue: Does the test claim legislation, which establishes rights and procedures for peace officers subject to investigation or discipline, constitute a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514<sup>4</sup>?**

For a statute to impose a reimbursable state mandated program, the statutory language must direct or obligate an activity or task upon local governmental agencies. In addition, the required

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<sup>1</sup> Government Code section 3301 states: “For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code.”

<sup>2</sup> *Gray v. City of Gustine* (1990) 224 Cal.App.3d 621; *Binkley v. City of Long Beach* (1993) 16 Cal.App.4th 1795.

<sup>3</sup> *Bell v. Duffy* (1980) 111 Cal.App.3d 643; *Barnes v. Personnel Department of the City of El Cajon* (1978) 87 Cal.App.3d 502.

<sup>4</sup> Government Code section 17514 defines “costs mandated by the state” as follows: “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.”

activity or task must be new, thus constituting a “new program”, or create an increased or “higher level of service” over the former required level of service. The 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 and does not apply generally to all residents and entities in the state. To determine if a required activity 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 prior to the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must be state mandated and impose “costs mandated by the state.”

The test claim legislation requires local agencies and school districts to take specified procedural steps when investigating or disciplining a peace officer employee. The stated purpose of the test claim legislation is to promote stable relations between peace officers and their employers and to ensure the effectiveness of law enforcement services. Based on the legislative intent, the Commission found that the test claim legislation carries out the governmental function of providing a service to the public. Moreover, the test claim legislation imposes unique requirements on local agencies and school districts that do not apply generally to all residents and entities of the state. Thus, the Commission determined that the test claim legislation constitutes a “program” within the meaning of article XIII B, section 6 of the California Constitution.

The Commission recognized, however, that several California courts have analyzed the test claim legislation and found a connection between its requirements and the requirements imposed by the due process clause of the United States and California Constitutions. For example, the court in *Riveros v. City of Los Angeles* analyzed the right to an administrative appeal under the test claim legislation for a probationary employee and noted that the right to such a hearing arises from the due process clause.

*“The right to such a hearing arises from the due process protections of the Fourteenth Amendment to the United States Constitution. . . . The limited purpose of the section 3304 appeal is to give the peace officer a chance to establish a formal record of the circumstances surrounding his termination and try to convince his employer to reverse its decision, either by showing that the charges are false or through proof of mitigating circumstances [citation omitted]. This is very nearly the same purpose for the hearing mandated by due process requirements, which must afford the officer a chance to refute the charges or clear his name.”* (Emphasis added .)<sup>6</sup>

Thus, the Commission continued its inquiry and compared the test claim legislation to the prior legal requirements imposed on public employers by the due process clause to determine if the activities defined in the test claim legislation are new or impose a higher level of service.

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<sup>5</sup> *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.

<sup>6</sup> *Riveros v. City of Los Angeles* (1996) 41 Cal.App.4th 1342, 1359.

The Commission also considered whether there are any "costs mandated by the state." Since the due process clause of the United States Constitution is a form of federal law, the Commission recognized that Government Code section 17556, subdivision (c), is triggered. Pursuant to Government Code section 17556, subdivision (c), there are *no* "costs mandated by the state" and no reimbursement is required if the test claim legislation "implemented a federal law resulting in costs mandated by the federal government, unless the [test claim legislation] mandates costs which exceed the mandate in that federal law or regulation. "<sup>7</sup>

These issues are discussed below.

### **The Due Process Clause of the U.S. and California Constitutions**

The due process clause of the United States and California Constitutions provide that the state shall not "deprive any person of life, liberty, or property without due process of law. "<sup>8</sup> In the public employment arena, an employee's property and liberty interests are commonly at stake.

#### Property Interest in Employment

Property interests protected by the due process clause extend beyond actual ownership of real estate or money. The U.S. Supreme Court determined that a property interest deserving protection of the due process clause exists when an employee has a "legitimate claim" to continued employment.

"To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it. . . ."

"Property interests, of course, are not created by the Constitution. Rather they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law - -rules or understandings that secure certain benefits and that support claims of entitlement to those benefits. "<sup>9</sup>

Applying the above principles, both the U.S. Supreme Court and California courts hold that "permanent" employees, who can only be dismissed or subjected to other disciplinary

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<sup>7</sup> Government Code section 17513 defines "costs mandated by the federal government" as follows:

" 'Costs mandated by the federal government' means any increased costs incurred by a local agency or school district after January 1, 1973, in order to comply with the requirements of a federal statute or regulation. 'Costs mandated by the federal government' includes costs resulting from enactment of state law or regulation where failure to enact that law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state. 'Costs mandated by the federal government does not include costs which are specifically reimbursed or funded by the federal or state government or programs or services which may be implemented at the option of the state, local agency, or school district. "

<sup>8</sup> U.S. Constitution, 14th Amendment; California Constitution, Article 1, §§ 7 and 15.

<sup>9</sup> *Board of Regents v. Roth* (1972) 408 U.S. 564, 577.

measures for “cause”, have a legitimate claim of entitlement to their job and thus, possess a property interest in continued employment.<sup>10</sup>

Moreover, California courts require employers to comply with due process when a permanent employee is dismissed<sup>12</sup>, demoted<sup>13</sup>, suspended<sup>13</sup>, receives a reduction in salary<sup>14</sup> or receives a written reprimand.<sup>15</sup>

The Department of Finance and the State Personnel Board contended that due process property rights attach when an employee is transferred. They cited *Runyon v. Ellis* and an SPB Decision (*Ramallo* SPB Dec. No. 95-19) for support.

The Commission disagreed with the State’s argument in this regard. First, in *Runyon v. Ellis*, the court found that the employee was entitled to an administrative hearing under the due process clause as a result of a transfer *and an accompanying reduction of pay*. The court did not address the situation where the employee receives a transfer alone.<sup>6</sup> In addition, in *Howell v. County of San Bernardino*, the court recognized that “[a]lthough a permanent employee’s right to continued employment is generally regarded as fundamental and vested, an employee enjoys no such right to continuation in a particular job assignment.”<sup>17</sup> Thus, the Commission found that local government employers are not required to provide due process protection in the case of a transfer.

Furthermore, although the SPB decision may apply to the State as an employer, the Commission found that that the SPB decision does not apply to actions taken by a local government employer.

Accordingly, the Commission found that an employee does *not* enjoy the rights prescribed by the due process clause when the employee is transferred.

When a property interest is affected and due process applies, the procedural safeguards required by the due process clause generally require notice to the employee and an opportunity to respond, with some variation as to the nature and timing of the procedural safeguards. In cases of dismissal, demotion, long-term suspension and reduction of pay, the California

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<sup>10</sup> *Slochower v. Board of Education* (1956) 350 U.S. 55 1, where the U.S. Supreme Court found that a tenured college professor dismissed from employment had a property interest in continued employment that was safeguarded by the due process clause; *Gilbert v. Homar* (1997) 520 U.S. 924, where the U.S. Supreme Court found that a police officer, employed as a permanent employee by a state university, had a property interest in continued employment and was afforded due process protections resulting from a suspension without pay; *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, where the California Supreme Court held a permanent civil service employee of the state has a property interest in continued employment and cannot be dismissed without due process of law.

<sup>11</sup> *Skelly, supra*, 15 Cal.3d 194.

<sup>12</sup> *Ng v. State Personnel Board* (1977) 68 Cal. App. 3d 600.

<sup>13</sup> *Civil Service Assn. v. City and County of San Francisco* (1978) 22 Cal.3d 552, 558-560.

<sup>14</sup> *Ng, supra*, 68 Cal.App.3d 600, 605.

<sup>15</sup> *Stanton v. City of West Sacramento* (1991) 226 Cal.App.3d 1438.

<sup>16</sup> *Runyon v. Ellis* (1995) 40 Cal.App.4th 961.

<sup>17</sup> *Howell v. County of San Bernardino* (1983) 149 Cal.App.3d 200, 205.



Supreme Court in *Skelly* prescribed the following due process requirements *before* the discipline becomes effective:

- Notice of the proposed action;
- The reasons for the action;
- A copy of the charges and materials upon which the action is based; and
- The right to respond, either orally or in writing, to the authority initially imposing discipline.<sup>18</sup>

In cases of short-term suspensions (ten days or less), the employee's property interest is protected as long as the employee receives notice, reasons for the action, a copy of the charges, and the right to respond *either during the suspension, or within a reasonable time thereafter*.<sup>19</sup>

Similarly, the Commission found that in the case of a written reprimand where the employee is not deprived of pay or benefits, the employer is not required to provide the employee with the due process safeguards *before* the effective date of the written reprimand. Instead, the court in *Stanton* found that an appeals process provided to the employee *after* the issuance of the written reprimand satisfies the due process clause.<sup>20</sup>

The claimant disagreed with the Commission's interpretation of the *Stanton* case and its application to written reprimands.

The claimant contended *Stanton* stands for the proposition that the due process guarantees outlined in *Skelly* do not apply to a written reprimand. Thus, the claimant concluded that an employee is not entitled to any due process protection when the employee receives a written reprimand. The claimant cited the following language from *Stanton* in support of its position:

"... As the City notes, no authority supports plaintiff's underlying assertion that issuance of a written reprimand triggers the due process safeguards outlined in *Skelly*. Courts have required adherence to *Skelly* in cases in which an employee is demoted [citations omitted] ; suspended without pay [citations omitted] ; or dismissed [citations omitted]. We find no authority mandating adherence to *Skelly* when a written reprimand is issued. "

"We see no justification for extending *Skelly* to situations involving written reprimands. Demotions, suspension and dismissal all involve depriving the public employee of pay or benefits; a written reprimand results in no such loss to the employee. "

The facts in *Stanton* are as follows. A police officer received a written reprimand for discharging a weapon in violation of departmental rules. After he received the reprimand, he appealed to the police chief in accordance with the memorandum of understanding and the

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<sup>18</sup> *Skelly, supra*, Cal.3d 194, 215.

<sup>19</sup> *Civil Service Assn., Cal.3d* 562, 564.

<sup>20</sup> *Stanton, supra* Cal.App.3d 1438, 1442.

police chief upheld the reprimand. The officer then filed a lawsuit contending that he was entitled to an administrative appeal. The court denied the plaintiff's request finding that the meeting with the police chief satisfied the administrative appeals provision in the test claim legislation (Government Code section 3304), and thus, satisfied the employee's due process rights.

The Commission agreed that the court in *Stanton* held the rights outlined in *Skelly* do not apply when an employee receives a written reprimand. Thus, under *Skelly*, the rights to receive notice, the reasons for the reprimand, a copy of the charges and the right to respond are not required to be given to an employee *before* the reprimand takes effect.

However, the court found that the employee *is* guaranteed due process protection upon receipt of a written reprimand. The court found that when the appeals process takes place *after* the reprimand, due process is satisfied. The court in *Stanton* also states the following:

“Moreover, Government Code section 3303 et seq., the Public Safety Officer Procedural Bill of Rights Act, provides police officers who are disciplined by their departments with procedural safeguards. Section 3304, subdivision (b) states no punitive action may be taken by a public agency against a public safety officer without providing the officer with an opportunity for administrative appeal. Punitive action includes written reprimands. [Citation omitted.] Even without the protection afforded by *Skelly*, plaintiff's *procedural due process rights*, following a written reprimand,' *are protected* by the appeals process mandated by Government Code section 3304, subdivision (b). ” (Emphasis added.)<sup>21</sup>

Accordingly, the Commission found that the due process clause of the United States and California Constitutions apply when a permanent employee is

- Dismissed;
- Demoted;
- Suspended;
- Receives a reduction in salary; and
- Receives a written reprimand.

#### Liberty Interest

Although probationary and at-will employees, who can be dismissed without cause, do not have a property interest in their employment, the employee may have a liberty interest affected by a dismissal when the charges supporting the dismissal damage the employee's reputation and impair the employee's ability to find other employment. The courts have defined the liberty interest as follows:

“[A]n employee's liberty is impaired if the government, in connection with an employee's dismissal or failure to be rehired, makes a 'charge

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<sup>21</sup> *Stanton, supra*, 226 Cal.App.3d 1438, 1442.

against him that might seriously damage his standing and associations in the community, ' such as a charge of dishonesty or immorality, or would 'impose on him a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities. ' [Citations omitted.] A person's protected liberty interests are not infringed merely by defamatory statements, for an interest in reputation alone is not a constitutionally protected liberty interest. [Citations omitted.] Rather, the liberty interest is infringed only when the defamation is made in connection with the loss of a government benefit, such as, . . . employment. [Citations omitted. ] " <sup>22</sup>

For example, in *Murden v. County of Sacramento*, the court found a protected liberty interest when a *temporary* deputy sheriff was dismissed from employment based on charges that he was engaging two female employees in embarrassing and inappropriate conversation regarding sexual activities. The court noted that the charge impugned the employee's character and morality, and if circulated, would damage his reputation and impair his ability to find other employment.

The court in *Murden* clarified that a dismissal based on charges that the employee was unable to learn the basic duties of the job does *not* constitute a protected interest.<sup>23</sup>

When the employer infringes on a person's liberty interest, due process simply requires notice to the employee, and an opportunity to refute the charges and clear his or her name. Moreover, the "name-clearing" hearing can take place *after* the actual dismissal.<sup>24</sup>

Accordingly, the Commission found that the due process clauses of the United States and California Constitutions apply when the charges supporting the dismissal of a probationary or at-will employee damage the employee's reputation and impair the employee's ability to find other employment.

### **Test Claim Legislation**

As indicated above, employers are required by the due process clause to offer notice and hearing protections to *permanent* employees for dismissals, demotions, suspensions, reductions in salary and written reprimands.

Employers are also required by the due process clause to offer notice and hearing protections to *probationary* and *at-will* employees when the dismissal harms the employee's reputation and ability to obtain future employment.

As more fully discussed below, the Commission found that the test claim legislation imposes some of the *same* notice and hearing requirements imposed under the due process clause.

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<sup>22</sup> *Murden v. County of Sacramento* (1984) 160 Cal.App.3d 302, 308, quoting from *Board of Regents v. Roth*, *supra*, 408 U.S. at p. 573. See also *Paul v. Davis* (1976) 424 U.S. 693, 711-712; and *Lubey v. City and County of San Francisco* (1979) 98 Cal.App.3d 340.

<sup>23</sup> *Murden, supra* 0 Cal.App.3d, 308.

<sup>24</sup> *Murden, supra* 160 Cal.App.3d 302, 310; *Arnett v. Kennedy* (1974) 416 U.S. 134, 157; and *Codd v. Velger* (1977) 429 U.S. 624, 627.

## Administrative Appeal

Government Code section 3304, as added by the test claim legislation, provides that “no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the public safety officer with an opportunity for administrative appeal.”<sup>25</sup>

Punitive action is defined in Government Code section 3303 as follows:

“For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary<sup>26</sup>, written reprimand, or transfer for purposes of punishment.”

The California Supreme Court determined that the phrase “for purposes of punishment” in the foregoing section relates only to a transfer and not to other personnel actions.<sup>27</sup> Thus, in transfer cases, the peace officer is required to prove that the transfer was intended for purposes of punishment in order to be entitled to an administrative appeal. If the transfer is to “compensate for a deficiency in performance,” however, an appeal is not required.<sup>28, 29</sup>

In addition, at least one California appellate court determined that employers must extend the right to an administrative appeal under the test claim legislation to peace officers for other actions taken by the employer that result in “disadvantage, harm, loss or hardship” and impact the peace officer’s career.<sup>30</sup> In *Hopson*, the court found that an officer who received a report in his personnel file by the police chief regarding a shooting in violation of policies and procedures was entitled to an administrative appeal under Government Code section 3304. The court held that the report constituted “punitive action” under the test claim legislation

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<sup>25</sup> In the Claimant’s comments to the Draft Staff Analysis, the claimant recited Government Code section 3304, as amended in 1997 (*Stats. 1997, c. 148*) and 1998 (*Stats. 1998, c. 786*). These amendments made substantive changes to Government Code section 3304 by adding subdivisions (c) through (g). These changes include a statute of limitations concerning how long the agency can use acts as a basis for discipline, a provision prohibiting the removal of a chief of police without providing written notice describing the reasons for the removal and an administrative hearing, and a provision limiting the right to an administrative appeal to officers who successfully complete the probationary period. The Commission noted that *neither the 1997 nor 1998 statutes are alleged in this test claim.*

<sup>26</sup> The courts have held that “reduction in salary” includes loss of skill pay (*McManigal v. City of Seal Beach* (1985) 166 Cal.App.3d 975, pay grade (*Baggett v. Gates* (1982) 32 Cal.3d 128, rank (*White v. County of Sacramento* (1982) 31 Cal. 3d 676, and probationary rank (*Henneberque v. City of Culver City* (1983) 147 Cal.App.3d 250.

<sup>27</sup> *White v. County of Sacramento* (1982) 31 Cal.3d 676.

<sup>28</sup> *Holcomb v. City of Los Angeles* (1989) 210 Cal.App.3d 1560; *Heyenga v. City of San Diego* (1979) 94 Cal.App.3d 756; *Orange County Employees Assn., Inc. v. County of Orange* (1988) 205 Cal.App.3d 1289.

<sup>29</sup> The claimant testified that what constitutes a transfer for purposes of punishment is in the eyes of the employee. The claimant stated that in the field of labor relations, peace officers will often request a full POBOR hearing and procedure on a transfer which is not acceptable to the officer in question, even though the transfer is not accompanied by a reduction in pay or benefits and no disciplinary action has been taken.

<sup>30</sup> *Hopson v. City of Los Angeles* (1983) 139 Cal.App.3d 347, 354, relying on *White v. County of Sacramento* (1982) 31 Cal.3d 676, 683.

based on the source of the report, its contents, and its potential impact on the career of the officer.<sup>31</sup>

The Commission recognized that the test claim legislation does not specifically set forth the hearing procedures required for the administrative appeal. Rather, the type of administrative appeal is left up to the discretion of each local agency and school district.<sup>32</sup> The courts have determined, however, that the type of hearing required under Government Code section 3304 must comport with standards of fair play and due process.<sup>33, 34</sup>

The Department of Finance and the State Personnel Board contended that Government Code section 3304 does not require an administrative appeal for probationary and at-will employees. They cited Government Code section 3304, subdivision (b), as it is *currently* drafted, which provides the following: “No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency against any public safety officer who has *successfully completed the probationary period that may be required by his or her employing agency* without providing the public safety officer with an opportunity for administrative appeal.”

However, the Commission determined that the italicized language in section 3304, subdivision (b), was added by the Legislature in 1998 and became effective on January 1, 1999. (Stats. 1998, c. 768). When Government Code section 3304, subdivision (b), was originally enacted in 1976, it did not limit the right to an administrative appeal to permanent employees only. Rather, that section stated the following:

“(b) No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the public safety officer with an opportunity for administrative appeal.”

Accordingly, the Commission found that an administrative appeal under Government Code section 3304, subdivision (b), was required to be provided to probationary and at-will employees faced with punitive action or a denial of promotion until December 31, 1998.

The Department of Finance also contended that the cost of conducting an administrative hearing is already required under the due process clause and the *Skelly* case, which predate the test claim legislation.

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<sup>31</sup> *Id* at p. 353-354.

<sup>32</sup> *Binkley v. City of Long Beach* (1993) 16 Cal.App.4th 1795, 1806; *Runyan, supra*, 40 Cal.App.4th 961, 965.

<sup>33</sup> *Doyle v. City of Chino* (1981) 117 Cal. App. 3d 673, 684. In addition, the court in *Stanton v. City of West Sacramento* (1991) 226 Cal.App.3d 1438, 1442, held that the employee’s due process rights were protected by the administrative appeals process mandated by Government Code section 3304. Furthermore, in cases involving “misconduct”, the officer is entitled to a liberty interest name-clearing hearing under Government section 3304. (*Lubey v. City and County of San Francisco* (1979) 98 Cal.App.3d 340; *Murden, supra*).

<sup>34</sup> The Commission noted that at least two cases have referred to the need for an administrative appeals procedure that would enable the officer to obtain court review pursuant to Code of Civil Procedure section 1094.5. Such a review implies that an evidentiary hearing be held from which a record and findings may be prepared for review by the court. (*Doyle, supra*, 117 Cal.App. 3d 673; *Henneberque, supra*, 147 Cal.App.3d 250.) In addition, the California Supreme Court uses the words “administrative appeal” of section 3304 interchangeably with the word “hearing.” (*White, supra*, 31 Cal.3d 676.)

The Commission agreed that in some circumstances, the due process clause requires the same administrative hearing as the test claim legislation. However, as reflected by the table below, the Commission found that test claim legislation is broader than the due process clause and applies to additional employer actions that have not previously enjoyed the protections of the due process clause.

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Due Process	Test Claim Legislation
Dismissal of a permanent employee	Dismissal of permanent, <i>probationary</i> or <i>at-will</i> employees
Demotion of a permanent employee	Demotion of permanent, <i>probationary</i> or <i>at-will</i> employees
Suspension of a permanent employee	Suspension of permanent, <i>probationary</i> or <i>at-will</i> employees
Reduction in salary for a permanent employee	Reduction in salary for permanent, <i>probationary</i> or <i>at-will</i> employees
Written reprimand of a permanent employee	Written reprimand of permanent, <i>probationary</i> or <i>at-will</i> employees
Dismissal of a probationary or at-will employee which harms the employee's reputation and ability to find future employment	Dismissal of a probationary or at-will employee which harms the employee's reputation and ability to find future employment
	Transfer of a permanent, probationary or at-will employee for purposes of punishment
	Denial of promotion for permanent, probationary or at-will employees on grounds other than merit
	Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee

Thus, the Commission found that the administrative appeal would be required in the absence of the test claim legislation when:

- A permanent employee is dismissed, demoted, suspended, receives a reduction in pay or a written reprimand; or
- A probationary or at-will employee is dismissed and the employee's reputation and ability to obtain future employment is harmed by the dismissal.

Under these circumstances, the Commission determined that the administrative appeal *does not* constitute a new program or higher level of service because prior law requires such an appeal

under the due process clause. Moreover, the Commission recognized that pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing the administrative appeal in the above circumstances would not constitute "costs mandated by the state" since the administrative appeal merely implements the requirements of the United States Constitution.

The Commission found, however, that the due process clauses of the United States and California Constitutions do not require an administrative appeal in the following circumstances:

- Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interest *are not* affected (i.e. ; the charges do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent, probationary and at-will employees for purposes of punishment;
- Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
- Other actions against permanent, probationary and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Thus, in these situations, the Commission found that the administrative appeal required by Government Code section 3304 constitutes a new program or higher level of service and imposes "costs mandated by the state" under Government Code section 17514.

#### Compensation and Timing of an Interrogation

Government Code section 3303 describes the procedures for the interrogation of a peace officer. The procedures and rights given to peace officers under section 3303 do *not* apply to any interrogation in the normal course of duty, counseling, instruction, or informal verbal admonition by a supervisor. In addition, the requirements do not apply to an investigation concerned solely and directly with alleged criminal activities.<sup>35</sup>

Government Code section 3303, subdivision (a), establishes procedures for the timing and compensation of a peace officer subject to investigation and interrogation by an employer. This section requires that the interrogation be conducted at a reasonable hour, preferably at a time when the peace officer is on duty, or during the "normal waking hours" of the peace officer, unless the seriousness of the investigation requires otherwise. If the interrogation takes place during the off-duty time of the peace officer, the peace officer "shall" be compensated for the off-duty time in accordance with regular department procedures.

The claimant contended that Government Code section 3303, subdivision (a), results in the payment of overtime to the investigated employee and, thus, imposes reimbursable state mandated activities. The claimant stated the following:

"If a typical police department works in three shifts, such as the Police Department for this City, two-thirds of the police force work hours [that are] not consistent with the work hours of Investigators in the Internal Affairs section.

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<sup>35</sup> Gov. Code, § 3303, subd. (i).

Even in a smaller department without such a section, hours conflict if command staff assigned to investigate works a shift different than the employees investigated. Payment of overtime occurs to the employees investigated or those performing the required investigation, or is at least a potential risk to an employer for the time an employee is interrogated pursuant to this section. ”

The Commission agreed. Conducting the investigation when the peace officer is on duty, and compensating the peace officer for off-duty time in accordance with regular department procedures are new requirements not previously imposed on local agencies and school districts.

Accordingly, the Commission found that Government Code section 3303, subdivision (a), constitutes a new program or higher level of service under article XIII B, section 6 of the California Constitution and imposes “costs mandated by the state” under Government Code section 17514.

#### Notice Prior to Interrogation

Government Code section 3303, subdivisions (b) and (c), require the employer, prior to interrogation, to inform and provide notice of the nature of the investigation and the identity of all officers participating in the interrogation to the employee.

The Commission recognized that under due process principles, an employee with a property interest is entitled to notice of the disciplinary action proposed by the employer.<sup>36</sup> Thus, an employee is required to receive notice when the employee receives a dismissal, suspension, demotion, reduction in salary or receipt of a written reprimand. Due process, however, *does not* require notice prior to an investigation or interrogation since the employee has not yet been charged and the employee’s salary and employment position have not changed.

Accordingly, the Commission found that providing the employee with prior notice regarding the nature of the interrogation and identifying the investigating officers constitutes a new program or higher level of service under article XIII B, section 6 of the California Constitution and imposes “costs mandated by the state” under Government Code section 17514.

#### Tape Recording of Interrogation

Government Code section 3303, subdivision (g), provides, in relevant part the following:

“The complete interrogation of a public safety officer may be recorded. *If* a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. . . . The public safety officer being interrogated shall have the right to bring his or her own recording device and record any and all aspects of the interrogation. ” (Emphasis added.)

The claimant contended that the activity of tape recording the interrogation and providing the peace officer with the tape recording of the interrogation as specified in section 3303, subdivision (g), constitute reimbursable state mandated activities. The claimant stated the following:

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<sup>36</sup> *Skelly, supra*, 15 Cal.3d 194.



"As shown above, Government Code, section 3303 (g) allows the interrogation of a peace officer to be tape recorded. The section is silent as to whom may record the interrogation, and who may request that the session be recorded. In practice, the employee will almost always request to record the interrogation. As the employee desires to record same, the employer is faced with the requirement of also tape recording the interrogation in order to assure that the employee's tape is not edited, redacted, or changed in any manner, and to have a verbatim record of the proceedings. "<sup>37</sup>

At the hearing, Ms. Dee Contreras, Director of Labor Relations for the City of Sacramento, testified as follows:

"If the employee comes in and tapes, and, trust me, they all come in and tape, if they're sworn peace officers, their attorneys come in with tapes. You wind up with two tape recorders on a desk. If they tape and we do not, then they have a record that we do not have or we must rely on a tape created by the employee we are investigating. That would not be a wise choice, from the employer's perspective. "

"If we take notes and they tape, our notes are never going to be exactly the same as the tape is going to be if it's transcribed, so we wind up with what is arguably an inferior record to the record that they have. "

"So it is essentially - - it says they may tape but the practical application of that is: For everybody who comes in with a tape recorder to tape, which is virtually every peace officer, we then must tape. "<sup>38</sup>

The Department of Finance disagreed and contended that the test claim statute does not require local agencies to tape the interrogation. The Department further contended that if the local agency decides to tape the interrogation, the cost of providing the tape to the officer is required under the due process clause.

Based on the evidence presented at the hearing, the Commission recognized the reality faced by labor relations' professionals in their implementation of the test claim legislation. Accordingly, the Commission found that tape recording the interrogation when the employee records the interrogation is a mandatory activity to ensure that all parties have an accurate record. The Commission's finding is also consistent with the legislative intent to assure stable employer-employee relations are continued throughout the state and that effective services are provided to the people.<sup>39</sup>

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<sup>37</sup> Claimant's comments to Draft Staff Analysis.

<sup>38</sup> August 26, 1999 Hearing Transcript, page 18, lines 7-2 1.

<sup>39</sup> This finding is consistent with one of the principles of statutory construction that "where statutes provide for performance of acts or the exercise of power or authority by public officers protecting private rights or in public interest, they are mandatory. " (3 Sutherland, Statutory Construction (5th ed. 1992) § 57.14, p. 36.) See also section 1183.1 of the Commission's regulations, which provides that the parameters and guidelines adopted on a mandated program shall provide a description of the most reasonable methods of complying with the mandate.

The Commission also recognized that Government Code section 3303, subdivision (g), requires that the employee shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The Commission found that providing the employee with access to the tape *prior to a further interrogation at a subsequent time* is a new activity and, thus, constitutes a new program or higher level of service.

However, the Commission found that providing the employee with access to the tape *if further proceedings are contemplated* does not constitute a new program or higher level of service when the further proceeding is a disciplinary action protected by the due process clause. Under certain circumstances, due process already requires the employer to provide an employee who holds either a property or liberty interest in the job with the materials upon which the disciplinary action is based.

Accordingly, the Commission found that even in the absence of the test claim legislation, the due process clause requires employers to provide the tape recording of the interrogation to the employee when:

- A permanent employee is dismissed, demoted, suspended, receives a reduction in pay or a written reprimand; or
- A probationary or at-will employee is dismissed and the employee's reputation and ability to obtain future employment is harmed by the dismissal<sup>40</sup>; and when
- The disciplinary action is based, in whole or in part, on the interrogation of the employee.

Under these circumstances, the Commission found that the requirement to provide access to the tape recording of the interrogation under the test claim legislation *does not* impose a new program or higher level of service because this activity was required under prior law through the due process clause. Moreover, pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing access to the tape recording merely implements the requirements of the United States Constitution.

However, when the further proceeding does not constitute a disciplinary action protected by due process, the Commission found that providing the employee with access to the tape is a new activity and, thus, constitutes a new program or higher level of service.

In sum, the Commission found that the following activities constitute reimbursable state mandated activities :

- Tape recording the interrogation when the employee records the interrogation.
- Providing the employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories:
  - (a) The further proceeding is not a disciplinary action;

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<sup>40</sup> *Skelly, supra; Ng, supra; Civil Service Assn., supra; Stanton, supra; Murden, supra.*

- (b) The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e., the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
- (c) The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;
- (d) The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;
- (e) The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.

#### Documents Provided to the Employee

Government Code section 3303, subdivision (g), also provides that the peace officer "shall" be entitled to a transcribed copy of any interrogation notes made by a stenographer or any reports or complaints made by investigators or other persons, except those that are deemed to be confidential.

The Department of Finance and the SPB contended that the cost of providing copies of transcripts, reports and recordings of interrogations are required under the due process clause and, thus, do not constitute a reimbursable state mandated program.

In *Pasadena Police Officers Association*, the California Supreme Court analyzed Government Code section 3303, noting that it does not specify when an officer is entitled to receive the reports and complaints. The court also recognized that section 3303 does not specifically address an officer's due process entitlement to discovery in the event the officer is *charged* with misconduct.<sup>41</sup> Nevertheless, the court determined that the Legislature intended to require law enforcement agencies to disclose the reports and complaints to an officer under investigation only *after* the officer's interrogation.<sup>42</sup>

The Commission recognized that the court's decision in *Pasadena Police Officers Association* is consistent with due process principles. Due process requires the employer to provide an employee who holds either a property or liberty interest in the job with a copy of the charges and materials upon which the disciplinary action is based when the officer is charged with misconduct.<sup>43</sup>

Accordingly, even in the absence of the test claim legislation, the Commission found that the due process clause requires the employer to provide a copy of all investigative materials, including non-confidential complaints, reports and charges when, as a result of the interrogation,

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<sup>41</sup> *Pasadena Police Officers Assn. v. City of Pasadena* (1990) 51 Cal.3d 564, 575 (Exhibit A, Bates page 0135).

<sup>42</sup> *Id.* at 579.

<sup>43</sup> *Skelly, supra.*

- ⌘ A permanent employee is dismissed, demoted, suspended, receives a reduction in pay or a written reprimand; or
- ⌘ A probationary or at-will employee is dismissed and the employee's reputation and ability to obtain future employment is harmed by the dismissal.

Under these circumstances, the requirement to produce documents under the test claim legislation *does not* impose a new program or higher level of service because this activity was required under prior law through the due process clause. Moreover, the Commission recognized that pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing the investigative materials in the above circumstances would not constitute "costs mandated by the state" since producing such documentation merely implements the requirements of the United States constitution.

However, the Commission found that the due process clause does not require employers to produce the charging documents and reports when requested by the officer in the following circumstances:

- (a) When the investigation *does not* result in disciplinary action; and
- (b) When the investigation results in:
  - ⌘ A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e. ; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment) ;
  - ⌘ A transfer of a permanent, probationary or at-will employee for purposes of punishment;
  - ⌘ A denial of promotion for a permanent, probationary or at-will employees for reasons other than merit; or
  - ⌘ Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

The Department of Finance and the State Personnel Board disagreed with this conclusion. They contended that "*State civil service* probationary or at-will employees are entitled to [the due process rights prescribed by] *Skelly* . . . . by the State Personnel Board" to the charging documents and reports and, thus, Government Code section 3303, subdivision (g), does not constitute a reimbursable state mandated program with respect to these employees. However, they cited no authority for this proposition.

The Department of Finance and the State Personnel Board also contended that Government Code section 3303, subdivision (g), does not constitute a reimbursable state mandated program when a permanent employee is transferred based on their assertion that a transfer is covered by the due process clause. As noted earlier, the Commission disagreed with this contention and found that a permanent employee does *not* enjoy the rights prescribed by the due process clause when the employee is transferred.

Accordingly, in the circumstances described above, the Commission found that producing the documents required by Government Code section 3303, subdivision (g), constitutes a new program or higher level of service and imposes "costs mandated by the state" under Government Code section 175 14.

#### Representation at Interrogation

Government Code section 3303, subdivision (i), provides that the peace officer "shall" have the right to be represented during the interrogation when a formal written statement of charges has been filed or whenever the interrogation focuses on matters that are likely to result in punitive action.

The claimant contended that Government Code section 3303, subdivision (i), results in reimbursable state mandated activities since additional professional and clerical time is needed to schedule the interview when the peace officer asserts the right to representation.

The Commission disagreed with the claimant's contention. Before the enactment of the test claim legislation, peace officers had the same right to representation under Government Code sections 3500 to 35 10, also known as the Meyers-Milias-Brown Act (MMBA). The MMBA governs labor management relations in California local governments, including labor relations between peace officers and employers .<sup>44</sup>

Government Code section 3503, which was enacted in 1961, provides that employee organizations have the right to represent their members in their employment relations with public agencies. The California Supreme Court analyzed section 3503 in *Civil Service Association v. City and County of San Francisco*, a case involving the suspension of eight civil service employees. The court recognized an employee's right to representation under the MMBA in disciplinary actions.

"We have long recognized the right of a public employee to have his counsel represent him at disciplinary hearings. (*Steen v. Board of Civil Service Commr.* (1945) 26 Cal.2d 7 16, 727; [Citations omitted.]) While *Steen* may have dealt with representation by a licensed attorney, the right to representation by a labor organization in the informal process here involved seems to follow from the right to representation contained in the Meyers-Milias-Brown Act and the right to representation recognized in *Steen*. "<sup>45</sup>

Peace officers employed by school districts have similar rights under the Educational Employment Relations Act, beginning with Government Code section 3540.<sup>46</sup>

Based on the foregoing, the Commission found that the right to representation at the interrogation under Government Code section 3303, subdivision (i), *does not* constitute a new

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<sup>44</sup> *Santa Clara County Dist. Attorney Investigators Assn. v. County of Santa Clara* (1975) 51 Cal.App.3d 255.

<sup>45</sup> *Civil Service Assn., supra*, 22 Cal.3d 552, 568.

<sup>46</sup> Government Code section 3543.2, which was added in 1975 (Stats. 1975, c. 961) provides that school district employees are entitled to representation relating to wages, hours of employment, and other terms and conditions of employment.

program or higher level of service under article XIII B, section 6 of the California Constitution.

#### Adverse Comments in Personnel File

Government Code sections 3305 and 3306 provide that no peace officer "shall" have any adverse comment entered in the officer's personnel file without the peace officer having first read and signed the adverse comment.<sup>47</sup> If the peace officer refuses to sign the adverse comment, that fact "shall" be noted on the document and signed or initialed by the peace officer. In addition, the peace officer "shall" have 30 days to file a written response to any adverse comment entered in the personnel file. The response "shall" be attached to the adverse comment.

Thus, the Commission determined that Government Code sections 3305 and 3306 impose the following requirements on employers:

- To provide notice of the adverse comment;<sup>48</sup>
- To provide an opportunity to review and sign the adverse comment;
- To provide an opportunity to respond to the adverse comment within 30 days; and
- To note on the document that the peace officer refused to sign the adverse comment and to obtain the peace officer's signature or initials under such circumstances.

The claimant contended that county employees have a pre-existing statutory right to inspect and respond to adverse comments contained in the officer's personnel file pursuant to Government Code section 3 1011. The claimant further stated that Labor Code section 1198.5 provides city employees with a pre-existing right to review, but not respond to, adverse comments. Thus, the claimant contended that Government Code sections 3305 and 3306 constitute a new program or higher level of service under article XIII B, section 6 of the California Constitution.

As described below, the Commission found that Government Code sections 3305 and 3306 constitute a *partial* reimbursable state mandated program.

#### Due Process

Under due process principles, an employee with a property or liberty interest is entitled to notice and an opportunity to respond, either orally or in writing, prior to the disciplinary action proposed by the employer.<sup>49</sup> If the adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a

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<sup>47</sup> The court in *Aguilar v. Johnson* (1988) 202 Cal. App. 3d 24 1, 249-252, held that an adverse comment under Government Code sections 3305 and 3306 include comments from law enforcement personnel and citizen complaints.

<sup>48</sup> The Commission found that notice is required since the test claim legislation states that "no peace officer shall have any adverse comment entered in the officer's personnel file *without the peace officer having first read and signed the adverse comment.*" Thus, the Commission found that the officer must receive notice of the comment before he or she can read or sign the document.

<sup>49</sup> *Skelly, supra*, 15 Cal.3d 194.

permanent peace officer or harms the officer's reputation and opportunity to find future employment, then the provisions of the test claim legislation which require notice and an opportunity to review and file a written response are already guaranteed under the due process clause.<sup>50</sup> Under such circumstances, the Commission found that the notice, review and response requirements of Government Code sections 3305 and 3306 *do not* constitute a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution. Moreover, the Commission recognized that pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing notice and an opportunity to respond do not impose "costs mandated by the state".

However, the Commission found that under circumstances where the adverse comment affects the officer's property or liberty interest as described above, the following requirements imposed by the test claim legislation *are not* required by the due process clause:

- z Obtaining the signature of the peace officer on the adverse comment, or
- z Noting the peace officer's refusal to sign the adverse comment and obtain the peace officer's signature or initials under such circumstances.

The Department of Finance and the State Personnel Board stated the following: "If the adverse comment can be considered a 'written reprimand,' however, the POBOR required 'notice' and the 'opportunity to respond' may already be required by due process. The extent of due process due an employee who suffers an official reprimand is not entirely clear. "

The Commission agreed that if the adverse comment results in, or is considered a written reprimand, then notice and an opportunity to respond is already required by the due process clause and are not reimbursable state mandated activities. However, due process does not require the local agency to obtain the signature of the peace officer on the adverse comment, or note the peace officer's refusal to sign the adverse comment and obtain the peace officer's signature or initials under such circumstances. Accordingly, the Commission found that these two activities required by the test claim legislation when an adverse comment is received constitute a new program or higher level of service and impose "costs mandated by the state" under Government Code section 17514 even where there is due process protection.

The Legislature has also established protections for local public employees similar to the protections required by Government Code sections 3305 and 3306 in statutes enacted prior to the test claim legislation. These statutes are discussed below.

#### Existing Statutory Law Relating to Counties

Government Code section 3 101 1, enacted in 1974,<sup>51</sup> established review and response protections for county employees. That section provides the following:

"Every county employee shall have the *right to inspect and review* any official record relating to his or her performance as an employee or to a grievance

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<sup>50</sup> *Hopson, supra*, 139 Cal.App.3d 347.

<sup>51</sup> Stats. 1974, c. 315.

concerning the employee which is kept or maintained by the county; provided, however, that the board of supervisors of any county may exempt letters of reference from the provisions of this section.

The contents of such records shall be made available to the employee for inspection and review at reasonable intervals during the regular business hours of the county.

The county shall provide an opportunity for the employee to *respond* in writing, or personal interview, to any information about which he or she disagrees. Such response shall become a permanent part of the employee's personnel record. The employee shall be responsible for providing the written responses to be included as part of the employee's permanent personnel record.

*This section does not apply to the records of an employee relating to the investigation of a possible criminal offense. ” (Emphasis added .)*

Therefore, the Commission determined that under existing law, counties are required to provide a peace officer with the opportunity to review and respond to an adverse comment *if* the comment *does not* relate to the investigation of a possible criminal offense.<sup>52</sup> Under such circumstances, the Commission found that the review and response provisions of Government Code sections 3305 and 3306 *do not* constitute a new program or higher level of service.

However, even if the adverse comment *does not* relate to the investigation of a possible criminal offense, the Commission found that the following activities required by the test claim legislation were not required under existing law:

- Providing notice of the adverse comment; and
- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Accordingly, the Commission found that the above activities constitute a new program or higher level of service and impose "costs mandated by the state" under Government Code section 175 14.

Furthermore, the Commission found that when the adverse comment *does* relate to the investigation of a possible criminal offense, the following activities constitute a new program or higher level of service and impose "costs mandated by the state" under Government Code section 175 14:

- Providing notice of the adverse comment;
- Providing an opportunity to review and sign the adverse comment; and
- Obtaining the signature of the peace officer on the adverse comment; or

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<sup>52</sup> The Commission found that Government Code section 3 1011 does *not* impose a notice requirement on counties since section 3 10 11 does not require the county employee to review the comment *before* the comment is placed in the personnel file.



- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Existing Statutory Law Relating to Cities and Special Districts

Labor Code section 1198.5, enacted in 1975,<sup>53</sup> established review procedures for public employees, including peace officers employed by a city or special district. At the time the test claim legislation was enacted, Labor Code section 1198.5 provided the following:

“(a) Every employer shall at reasonable times, and at reasonable intervals as determined by the Labor Commissioner, upon the request of an employee, permit that employee to inspect such personnel files which are used or have been used to determine that employee's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action.

(b) Each employer subject to this section shall keep a copy of each employee's personnel file at the place the employee reports to work, or shall make such file available at such place within a reasonable period of time after a request therefor by the employee. *A public employer shall, at the request of a public employee, permit the employee to inspect the original personnel files at the location where they are stored at no loss of compensation to the employee.*

(c) *This section does not apply to the records of an employee relating to the investigation of a possible criminal offense.* It shall not apply to letters of reference.

(d) If a local agency has established an independent employee relations board or commission, any matter or dispute pertaining to this section shall be under the jurisdiction of that board or commission, but an employee shall not be prohibited from pursuing any available judicial remedy, whether or not relief has first been sought from a board or commission.

(e) This section shall apply to public employers, including, but not limited to, every city, county, city and county, district, and every public and quasi-public agency. This section shall not apply to the state or any state agency, and shall not apply to public school districts with respect to employees covered by Section 4403 1 of the Education Code. Nothing in this section shall be construed to limit the rights of employees pursuant to Section 31011 of the Government Code or Section 87031 of the Education Code, or to provide access by a public safety employee to confidential preemployment information.”<sup>54</sup> (Emphasis added.)

Therefore, the Commission determined that under existing law, cities and special districts are required to provide a peace officer the opportunity to review the adverse comment *if* the

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<sup>53</sup> Stats. 1975, c. 908, § 1.

<sup>54</sup> Labor Code section 1198.5 was amended in 1993 to delete all provisions relating to local public employers (Stats. 1993, c. 59.) The Legislature expressed its intent when enacting the 1993 amendment “to relieve local entities of the duty to incur unnecessary expenses. . . .”

comment *does not* relate to the investigation of a possible criminal offense? Under such circumstances, the Commission found that the review provisions of Government Code sections 3305 and 3306 *do not* constitute a new program or higher level of service.

However, even if the adverse comment *does not* relate to the investigation of a possible criminal offense, the Commission found that the following activities required by the test claim legislation were not required under existing law:

- Providing notice of the adverse comment;
- Providing an opportunity to respond to the adverse comment within 30 days; and
- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Accordingly, the Commission found that the above activities constitute a new program or higher level of service and impose "costs mandated by the state" under Government Code section 175 14.

Furthermore, the Commission found that when the adverse comment *does* relate to the investigation of a possible criminal offense, the following activities constitute a new program or higher level of service and impose "costs mandated by the state" under Government Code section 175 14:

- Providing notice of the adverse comment;
- Providing an opportunity to review and sign the adverse comment;
- Providing an opportunity to respond to the adverse comment within 30 days; and
- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

#### Existing Statutory Law Relating to School Districts

Education Code section 4403 1 establishes notice, review and response protections to peace officers employed by school districts. Section 4403 1 provides in relevant part the following:

"(a) Materials in personnel files of employees that may serve as a basis for affecting the status of their employment are to be made available for the inspection of the person involved.

"(d) *Information of a derogatory nature, except [ratings, reports, or records that were obtained in connection with a promotional examination], shall not be entered or filed unless and until the employee is given notice and an opportunity to review and comment thereon. An employee shall have the right*

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<sup>55</sup> The Commission found that Labor Code section 1198.5 does *not* impose a notice requirement on counties since section 1198.5 does not require the city or special district employee to review the comment *before* the comment is placed in the personnel file.

to enter, and have attached to any derogatory statement, his own comments thereon...” (Emphasis added.)

Education Code section 87031 provides the same protections to community college district employees.<sup>56</sup>

Therefore, the Commission determined that existing law, codified in Education Code sections 44031 and 87031, requires school districts and community college districts to provide a peace officer with notice and the opportunity to review and respond to an adverse comment *if* the comment *was* not obtained in connection with a promotional examination. Under such circumstances, the Commission found that the notice, review and response provisions of Government Code sections 3305 and 3306 do *not* constitute a new program or higher level of service.

However, even when Education Code sections 44031 and 87031 apply, if the adverse comment *was not* obtained in connection with a promotional examination, the Commission found that the following activities required by the test claim legislation were not required under existing law:

- z Obtaining the signature of the peace officer on the adverse comment; or
- z Noting the peace officer’s refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Accordingly, the Commission found that the above activities constitute a new program or higher level of service and impose “costs mandated by the state” under Government Code section 175 14.

Furthermore, the Commission found that when the adverse comment is obtained in connection with a promotional examination, the following activities constitute a new program or higher level of service and impose “costs mandated by the state” under Government Code section 17514:

- z Providing notice of the adverse comment;
- z Providing an opportunity to review and sign the adverse comment;
- z Providing an opportunity to respond to the adverse comment within 30 days; and
- z Obtaining the signature of the peace officer on the adverse comment; or
- z Noting the peace officer’s refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

## CONCLUSION

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<sup>56</sup> Education Code sections 44031 and 87031 were derived from Education Code section 13001.5, which was originally added by Statutes of 1968, Chapter 433.

Based on the foregoing analysis, the Commission concluded that the test claim legislation constitutes a partial reimbursable state mandated program pursuant to article XIII B, section 6 of the California Constitution for the following reimbursable activities:

1. Providing the opportunity for an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):
  - Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interest are *not* affected (i.e. ; the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
  - Transfer of permanent, probationary and at-will employees for purposes of punishment;
  - Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
  - Other actions against permanent, probationary and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.
2. Conducting an interrogation of a peace officer while the officer is on duty, or compensating the peace officer for off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)
3. Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subds. (b) and (c).)
4. Tape recording the interrogation when the employee records the interrogation. (Gov. Code, § 3303, subd. (g).)
5. Providing the employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code, § 3303, subd. (g)):
  - (a) The further proceeding is not a disciplinary action;
  - (b) The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e., the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
  - (c) The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;
  - (d) The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;
  - (e) The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.

6. Producing transcribed copies of any notes made by a stenographer at an interrogation, and reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer in the following circumstances (Gov. Code, § 3303, subd. (g)):

(a) When the investigation *does not* result in disciplinary action; and

(b) When the investigation results in:

- A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is *not* affected (i.e. ; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
- A transfer of a permanent, probationary or at-will employee for purposes of punishment;
- A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit; or
- Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.

6. Performing the following activities upon receipt of an adverse comment (Gov. Code, §§ 3305 and 3306):

School Districts

(a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:

- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

(b) If an adverse comment *is* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for the following activities:

- Providing notice of the adverse comment;
- Providing an opportunity to review and sign the adverse comment;
- Providing an opportunity to respond to the adverse comment within 30 days; and
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

- (c) If an adverse comment *is not* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

#### Counties

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then counties are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
  - Providing an opportunity to review and sign the adverse comment;
  - Providing an opportunity to respond to the adverse comment within 30 days; and
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment; and
  - Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

#### Cities and Special Districts

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then cities and special districts are entitled to reimbursement for:

- ⌘ Obtaining the signature of the peace officer on the adverse comment; or
  - ⌘ Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment is related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities :
- ⌘ Providing notice of the adverse comment;
  - ⌘ Providing an opportunity to review and sign the adverse comment;
  - ⌘ Providing an opportunity to respond to the adverse comment within 30 days; and
  - ⌘ Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
- ⌘ Providing notice of the adverse comment;
  - Providing an opportunity to respond to the adverse comment within 30 days; and
  - ⌘ Obtaining the signature of the peace officer on the adverse comment; or
  - ⌘ Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

---

# Exhibit C



## PARAMETERS AND GUIDELINES

Government Code Sections 3300 through 3310

As Added and Amended by Statutes of 1976, Chapter 465;  
Statutes of 1978, Chapters 775, 1173, 1174, and 1178;  
Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter  
994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and  
Statutes of 1990, Chapter 675

### *Peace Officers Procedural Bill of Rights*

#### I. SUMMARY AND SOURCE OF THE MANDATE

In order to ensure stable employer-employee relations and effective law enforcement services, the Legislature enacted Government Code sections 3300 through 3310, known as the Peace Officers Procedural Bill of Rights (POBAR).

The test claim legislation provides procedural protections to peace officers employed by local agencies and school districts<sup>1</sup> when a peace officer is subject to an interrogation by the employer, is facing punitive action or receives an adverse comment in his or her personnel file. The protections required by the test claim legislation apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at-will" employees), and peace officers on probation who have not reached permanent status.

On November 30, 1999, the Commission adopted its Statement of Decision that the test claim legislation constitutes a partial reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

#### II. ELIGIBLE CLAIMANTS

Counties, cities, a city and county, school districts and special districts that employ peace officers are eligible claimants.

#### III. PERIOD OF REIMBURSEMENT

At the time this test claim was filed, Section 17557 of the Government Code stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. On December 21, 1995, the City of Sacramento filed the test claim for this mandate. Therefore, costs incurred for Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174, and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675 are eligible for reimbursement on or after July 1, 1994.

<sup>1</sup> Government Code section 3301 states: "For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code."

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If total costs for a given year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

#### IV. REIMBURSABLE ACTIVITIES

For each eligible claimant, all direct and indirect costs of labor, supplies and services, training and travel for the performance of the following activities, are eligible for reimbursement:

##### A. Administrative Activities (On-going Activities)

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities
2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.
3. Updating the status of the POBAR cases.

##### B. Administrative Appeal

1. Reimbursement period of July 1, 1994 through December 31, 1998 – The administrative appeal activities listed below apply to permanent employees, at-will employees, and probationary employees.

Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interest are not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent, probationary and at-will employees for purposes of punishment;
- Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
- Other actions against permanent, probationary and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees; and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

2. Reimbursement period beginning January 1, 1999 – The administrative appeal activities listed below apply to permanent employees and the Chief of Police.

Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent employees for purposes of punishment;
- Denial of promotion for permanent employees for reasons other than merit; and
- Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

#### C. Interrogations

Claimants are eligible for reimbursement for the performance of the activities listed in this section only when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. (Gov. Code, § 3303.)

Claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer. Claimants are also not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities. (Gov. Code, § 3303, subd. (i).)

1. When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)

Included in the foregoing is the preparation and review of overtime compensation requests.

2. Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subds. (b) and (c).)

Included in the foregoing is the review of agency complaints or other documents to prepare the notice of interrogation; determination of the investigating officers; redaction of the agency complaint for names of the complainant or other accused parties or witnesses or confidential information; preparation of notice or agency

complaint; review by counsel; and presentation of notice or agency complaint to peace officer.

3. Tape recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g).)

Included in the foregoing is the cost of tape and storage, and the cost of transcription.

4. Providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code, § 3303, subd. (g));

- a) The further proceeding is not a disciplinary action;

- b) The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e., the charges supporting the dismissal does not harm the employee's reputation or ability to find future employment);

- c) The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;

- d) The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;

- e) The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.

Included in the foregoing is the cost of tape copying.

5. Producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer, in the following circumstances (Gov. Code, § 3303, subd. (g)):

- a) When the investigation does not result in disciplinary action; and

- b) When the investigation results in:

- A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e., the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
- A transfer of a permanent, probationary or at-will employee for purposes of punishment;
- A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit; or
- Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.

Included in the foregoing is the review of the complaints, notes or tape recordings for issues of confidentiality by law enforcement, human relations or counsel; cost of processing, service and retention of copies.

#### D. Adverse Comment

Performing the following activities upon receipt of an adverse comment (Gov. Code, §§ 3305 and 3306):

##### School Districts

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
  - Providing an opportunity to review and sign the adverse comment;
  - Providing an opportunity to respond to the adverse comment within 30 days; and
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

##### Counties

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools counties are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
  - Providing an opportunity to review and sign the adverse comment;

- Providing an opportunity to respond to the adverse comment within 30 days; and
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then counties obtained are entitled to reimbursement for:
- Providing notice of the adverse comment; and
  - Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Cities and Special Districts

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then ~~schools~~ cities and special districts are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
  - Providing an opportunity to review and sign the adverse comment;
  - Providing an opportunity to respond to the adverse comment within 30 days; and
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
  - Providing an opportunity to respond to the adverse comment within 30 days; and
  - Obtaining the signature of the peace officer on the adverse comment; or

- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Included in the foregoing are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing.

## V. CLAIM PREPARATION AND SUBMISSION

Claims for reimbursement must be timely filed and identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV. of this document.

### SUPPORTING DOCUMENTATION

Claimed costs shall be supported by the following cost element information:

#### A. Direct Costs

Direct Costs are defined as costs that can be traced to specific goods, services, units, programs, activities or functions.

Claimed costs shall be supported by the following cost element information:

#### 1. Salaries and Benefits

Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

Reimbursement includes compensation paid for salaries, wages, and employee benefits. Employee benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and worker's compensation insurance. Employee benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.

#### 2. Materials and Supplies

Only expenditures that can be identified as a direct cost of this mandate may be claimed. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

#### 3. Contract Services

Provide the name(s) of the contractor(s) who performed the services, including any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services. Submit contract consultant and attorney invoices with the claim.

#### 4. Travel

Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points, and travel costs.

#### 5. Training

The cost of training an employee to perform the mandated activities is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, and per diem.

#### B. Indirect Costs

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the OMB A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) for the department if the indirect cost rate claimed exceeds 10%. If more than one department is claiming indirect costs for the mandated program, each department must have its own ICRP prepared in accordance with OMB A-87. An ICRP must be submitted with the claim when the indirect cost rate exceeds 10%.

### VI. SUPPORTING DATA

For audit purposes, all costs claimed shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested, and all reimbursement claims are subject to audit during the period specified in Government Code section 17558.5, subdivision (a).

All claims shall identify the number of cases in process at the beginning of the fiscal year, the number of new cases added during the fiscal year, the number of cases completed or closed during the fiscal year, and the number of cases in process at the end of the fiscal year.

### VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT

Any offsetting savings the claimant experiences as a direct result of the subject mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds shall be identified and deducted from this claim.



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**VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION**

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.

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# Exhibit D

OFFICE OF THE STATE CONTROLLER

STATE MANDATED COSTS CLAIMING INSTRUCTIONS NO. 2000-11

PEACE OFFICERS PROCEDURAL BILL OF RIGHTS (LOCAL AGENCIES)

OCTOBER 2, 2000

In accordance with Government Code Section (GC) 17561, eligible claimants may submit claims to the State Controller's Office (SCO) for reimbursement of costs incurred for state mandated cost programs. The following are claiming instructions and forms that eligible claimants will use for the filing of claims for Peace Officers Procedural Bill of Rights (PPBR). These claiming instructions are issued subsequent to adoption of the program's parameters and guidelines (P's & G's) by the Commission on State Mandates (COSM).

On November 30, 1999, the COSM determined that the PPBR program establishes costs mandated by the state according to the provisions listed in the attached P's & G's. For your reference, the P's & G's are included as an integral part of the claiming instructions.

Government Code Sections 3300 through 3310, as added and amended by Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990, provide procedural protection for peace officers employed by local agencies when a peace officer is subject to an interrogation by the employer, is facing punitive action, or receives an adverse comment in his or her personnel file. This applies to peace officers classified as permanent employees, peace officers who serve at the pleasure of the local agency, and are terminable without cause ("at will" employees), and peace officers on probation who have not reached permanent status.

**Eligible Claimants**

Any city, county, city and county, or special district employing peace officers pursuant to Penal Code Section 830 and incurring increased costs as a direct result of this mandate is eligible to claim reimbursement of these costs.

**Filing Deadlines**

Reimbursement claims for the 1994-95 through 1999-00 fiscal years must be filed with the SCO. Claims must be delivered or postmarked on or before January 30, 2001. Annually thereafter, having received payment for an estimated claim, the claimant must file a reimbursement claim by January 15<sup>th</sup> of the following fiscal year. Claims filed after the deadline will be reduced by a late penalty of 10%, not to exceed \$1,000. In order for a claim to be considered properly filed, it must include any specific supporting documentation requested in the instructions. *Claims filed more than one year after the deadline, or without the requested supporting documentation, will not be accepted.*

Estimated claims filed with the SCO must be postmarked by January 15<sup>th</sup> of the fiscal year in which costs will be incurred. However, 2000-01 estimated claims must be filed with the SCO and postmarked by January 30, 2001. Timely filed claims will be paid before late claims.

### **Minimum Claim Cost**

GC § 17564(a) provides that no claim shall be filed pursuant to § 17561 unless such a claim exceeds \$200 per program per fiscal year. However, any county as the fiscal agent for special districts, may submit a combined claim in excess of \$200 on behalf of districts within the county even if an individual claim does not exceed \$200. A combined claim must show the individual claim costs for each eligible district. Once a combined claim is filed, all subsequent fiscal years relating to the same mandate must be filed in a combined form. The county receives the reimbursement payment and is responsible for disbursing funds to each participating district. A district may withdraw from the combined claim form by providing the county and the SCO with a written notice of its intent to file a separate claim at least 180 days prior to the deadline for filing the claim. Claims should be rounded to the nearest dollar.

### **Estimated Claims**

Unless otherwise specified in the claiming instructions, local agencies are not required to provide cost schedules and supporting documents with an estimated claim if the estimated amount does not exceed the previous fiscal year's actual costs by more than 10%. The claimant can simply enter the estimated amount on form FAM-27, line (07). However, if the estimated claim exceeds the previous fiscal year's actual costs by more than 10%, the claimant must complete supplemental claim forms to support their estimated costs as specified for the program to explain the reason for the increased costs. If no explanation supporting the higher estimate is provided with the claim, it will automatically be adjusted to 110% of the previous fiscal year's actual costs.

### **Reimbursement Claims**

Initial reimbursement claims will only be reimbursed to the extent that expenditures can be supported and if such information is unavailable, claims will be reduced. In addition, ongoing reimbursement claims must be supported by documentation as evidence of the expenditures. Examples of documentation may include, but are not limited to, employee time records that identify mandate activities, payroll records, invoices, receipts, contracts, travel expense vouchers, purchase orders, and caseload statistics.

### **Audit of Costs**

All claims submitted to the SCO are reviewed to determine if costs are related to the mandate, are reasonable and not excessive, and the claim was prepared in accordance with the P's & G's adopted by the COSM. If any adjustments are made to a claim, a "Notice of Claim Adjustment," specifying the claim component adjusted, the amount adjusted, and the reason for the adjustment, will be mailed within 30 days after payment of the claim.

On-site audits will be conducted by the SCO as deemed necessary. Accordingly, all documentation to support actual costs claimed must be retained for a period of two years after the end of the calendar year in which the reimbursement claim was filed or amended regardless of the year of costs incurred. When no funds are appropriated for initial claims at the time the claim is filed, supporting documents must be retained for two years from the date of initial payment of the claim. Claim documentation shall be made available to the SCO on request.

### **Retention of Claiming Instructions**

The claiming instructions and forms in this package should be retained permanently in your *Mandated Cost Manual* for future reference and use in filing claims. These forms should be duplicated to meet your filing requirements. You will be notified of updated forms or changes to claiming instructions as necessary.

For your reference, these and future mandated costs claiming instructions and forms can be found on the Internet at [www.sco.ca.gov/ard/local/locreim/index.htm](http://www.sco.ca.gov/ard/local/locreim/index.htm).

### **Address for Filing Claims**

Submit a signed original and a copy of form FAM-27, Claim for Payment, and a copy of all other forms and supporting documents to:

If delivery is by  
U.S. Postal Service:

Office of the State Controller  
Attn: Local Reimbursements Section  
Division of Accounting and Reporting  
P.O. Box 942850  
Sacramento, CA 94250

If delivery is by  
other delivery services:

Office of the State Controller  
Attn: Local Reimbursements Section  
Division of Accounting and Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95816

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

*Government Code Sections 3300 through 3310, As Added and Amended by Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174, and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675*

And filed December 21, 1995;

By the City of Sacramento, Claimant.

NO. CSM - 4499

**ADOPTION OF  
PARAMETERS AND  
GUIDELINES PURSUANT  
TO GOVERNMENT CODE  
SECTION 17557 AND  
TITLE 2, CALIFORNIA  
CODE OF REGULATIONS,  
SECTION 1183.12**

(Adopted on July 27, 2000)

**ADOPTED PARAMETERS AND GUIDELINES**

The Commission on State Mandates adopted the attached Parameters and Guidelines on July 27, 2000.

  
PAULA HIGASHI, Executive Director

## PARAMETERS AND GUIDELINES

Government Code Sections 3300 through 3310

As Added and Amended by Statutes of 1976, Chapter 465;  
Statutes of 1978, Chapters 775, 1173, 1174, and 1178;

Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and  
Statutes of 1990, Chapter 675

### *Peace Officers Procedural Bill of Rights*

#### I. SUMMARY AND SOURCE OF THE MANDATE

In order to ensure stable employer-employee relations and effective law enforcement services, the Legislature enacted Government Code sections 3300 through 3310, known as the Peace Officers Procedural Bill of Rights (POBAR).

The test claim legislation provides procedural protections to peace officers employed by local agencies and school districts<sup>1</sup> when a peace officer is subject to an interrogation by the employer, is facing punitive action or receives an adverse comment in his or her personnel file. The protections required by the test claim legislation apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at-will" employees), and peace officers on probation who have not reached permanent status.

On November 30, 1999, the Commission adopted its Statement of Decision that the test claim legislation constitutes a partial reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

#### II. ELIGIBLE CLAIMANTS

Counties, cities, a city and county, school districts and special districts that employ peace officers are eligible claimants.

#### III. PERIOD OF REIMBURSEMENT

At the time this test claim was filed, Section 17557 of the Government Code stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. On December 21, 1995, the City of Sacramento filed the test claim for this mandate. Therefore, costs incurred for Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174, and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675 are eligible for reimbursement on or after July 1, 1994.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial

<sup>1</sup> Government Code section 3301 states: "For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code."

years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If total costs for a given year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

#### IV. REIMBURSABLE ACTIVITIES

For each eligible claimant, all direct and indirect costs of labor, supplies and services, training and travel for the performance of the following activities, are eligible for reimbursement:

##### A. Administrative Activities (On-going Activities)

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities
2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.
3. Updating the status of the POBAR cases.

##### B. Administrative Appeal

1. Reimbursement period of July 1, 1994 through December 31, 1998 – The administrative appeal activities listed below apply to permanent employees, at-will employees, and probationary employees.

Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interest are not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent, probationary and at-will employees for purposes of punishment;
- Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
- Other actions against permanent, probationary and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.



2. Reimbursement period beginning January 1, 1999 – The administrative appeal activities listed below apply to permanent employees and the Chief of Police.

Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent employees for purposes of punishment;
- Denial of promotion for permanent employees for reasons other than merit; and
- Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

C. Interrogations

Claimants are eligible for reimbursement for the performance of the activities listed in this section only when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. (Gov. Code, § 3303.)

Claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer. Claimants are also not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities. (Gov. Code, § 3303, subd. (i).)

1. When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)

Included in the foregoing is the preparation and review of overtime compensation requests.

2. Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subds. (b) and (c).)

Included in the foregoing is the review of agency complaints or other documents to prepare the notice of interrogation; determination of the investigating officers; redaction of the agency complaint for names of the complainant or other accused parties or witnesses or confidential information; preparation of notice or agency

complaint; review by counsel; and presentation of notice or agency complaint to peace officer.

3. Tape recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g).)

Included in the foregoing is the cost of tape and storage, and the cost of transcription.

4. Providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code, § 3303, subd. (g));

- a) The further proceeding is not a disciplinary action;
- b) The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e., the charges supporting the dismissal does not harm the employee's reputation or ability to find future employment);
- c) The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;
- d) The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;
- e) The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.

Included in the foregoing is the cost of tape copying.

5. Producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer, in the following circumstances (Gov. Code, § 3303, subd. (g)):

- a) When the investigation does not result in disciplinary action; and
- b) When the investigation results in:
  - A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e.; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
  - A transfer of a permanent, probationary or at-will employee for purposes of punishment;
  - A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit; or
  - Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.

Included in the foregoing is the review of the complaints, notes or tape recordings for issues of confidentiality by law enforcement, human relations or counsel; cost of processing, service and retention of copies.

#### D. Adverse Comment

Performing the following activities upon receipt of an adverse comment (Gov. Code, §§ 3305 and 3306):

##### School Districts

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
  - Providing an opportunity to review and sign the adverse comment;
  - Providing an opportunity to respond to the adverse comment within 30 days; and
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

##### Counties

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
  - Providing an opportunity to review and sign the adverse comment;

- Providing an opportunity to respond to the adverse comment within 30 days; and
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then counties obtained are entitled to reimbursement for:
- Providing notice of the adverse comment: and
  - Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

#### Cities and Special Districts

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
  - Providing an opportunity to review and sign the adverse comment;
  - Providing an opportunity to respond to the adverse comment within 30 days; and
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
  - Providing an opportunity to respond to the adverse comment within 30 days; and
  - Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Included in the foregoing are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing.

#### **V. CLAIM PREPARATION AND SUBMISSION**

Claims for reimbursement must be timely filed and identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV. of this document.

#### **SUPPORTING DOCUMENTATION**

Claimed costs shall be supported by the following cost element information:

##### **A. Direct Costs**

Direct Costs are defined as costs that can be traced to specific goods, services, units, programs, activities or functions.

Claimed costs shall be supported by the following cost element information:

##### **1. Salaries and Benefits**

Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

Reimbursement includes compensation paid for salaries, wages, and employee benefits. Employee benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and worker's compensation insurance. Employee benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.

##### **2. Materials and Supplies**

Only expenditures that can be identified as a direct cost of this mandate may be claimed. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

##### **3. Contract Services**

Provide the name(s) of the contractor(s) who performed the services, including any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services. Submit contract consultant and attorney invoices with the claim.

##### **4. Travel**

Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction.

Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points, and travel costs.

#### 5. Training

The cost of training an employee to perform the mandated activities is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location.

Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, and per diem.

#### B. Indirect Costs

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the OMB A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) for the department if the indirect cost rate claimed exceeds 10%. If more than one department is claiming indirect costs for the mandated program, each department must have its own ICRP prepared in accordance with OMB A-87. An ICRP must be submitted with the claim when the indirect cost rate exceeds 10%.

### VI. SUPPORTING DATA

For audit purposes, all costs claimed shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested, and all reimbursement claims are subject to audit during the period specified in Government Code section 17558.5, subdivision (a).

All claims shall identify the number of cases in process at the beginning of the fiscal year, the number of new cases added during the fiscal year, the number of cases completed or closed during the fiscal year, and the number of cases in process at the end of the fiscal year.

### VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT

Any offsetting savings the claimant experiences as a direct result of the subject mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds shall be identified and deducted from this claim.

### VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.

**CLAIM FOR PAYMENT**  
**Pursuant to Government Code Section 17561**  
**PEACE OFFICERS PROCEDURAL BILL OF RIGHTS**

For State Controller Use Only

(19) Program Number 00187  
 (20) Date File \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 (21) LRS Input \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

**L** (01) Claimant Identification Number  
**A** (02) Mailing Address  
**B** Claimant Name  
**E** County of Location  
**L** Street Address or P.O. Box  
**H** City State Zip Code  
**E**

**Reimbursement Claim Data**

(22) PPBR-1, (03)(a)	
(23) PPBR-1, (03)(b)	
(24) PPBR-1, (03)(c)	
(25) PPBR-1, (03)(d)	
(26) PPBR-1, (04)(1)(e)	
(27) PPBR-1, (04)(2)(e)	
(28) PPBR-1, (04)(3)(e)	
(29) PPBR-1, (04)(4)(e)	
(30) PPBR-1, (06)	
(31)	
(32)	
(33)	
(34)	
(35)	
(36)	
(37)	

Type of Claim	Estimated Claim	Reimbursement Claim
	(03) Estimated <input type="checkbox"/>	(09) Reimbursement <input type="checkbox"/>
	(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>
	(05) Amended <input type="checkbox"/>	(11) Amended <input type="checkbox"/>
Fiscal Year of Cost	(06) 20__/20__	(12) 19__/20__
Total Claimed Amount	(07)	(13)
Less: 10% Late Penalty, not to exceed \$1,000		(14)
Less: Estimated Claim Payment Received		(15)
Net Claimed Amount		(16)
Due from State	(08)	(17)
Due to State		(18)

**(38) CERTIFICATION OF CLAIM**

In accordance with the provisions of Government Code § 17561, I certify that I am the person authorized by the local agency to file claims with the State of California for costs mandated by Chapter 465, Statutes of 1976, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1096, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein; and such costs are for a new program or increased level of services of an existing program mandated by Chapter 465, Statutes of 1976.

The amounts for Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs for the mandated program of Chapter 465, Statutes of 1976, set forth on the attached statements.

Signature of Authorized Representative \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Date \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Type or Print Name \_\_\_\_\_

Title \_\_\_\_\_

(39) Name of Contact Person for Claim \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Telephone Number (\_\_\_\_) \_\_\_\_\_ Ext. \_\_\_\_\_  
 E-mail Address \_\_\_\_\_

**PEACE OFFICERS PROCEDURAL BILL OF RIGHTS**  
**Certification Claim Form**  
**Instructions**

**FORM**  
**FAM-27**

- (01) Leave blank.
- (02) A set of mailing labels with the claimant's I.D. number and address has been enclosed with the claiming instructions. The mailing labels are designed to speed processing and prevent common errors that delay payment. Affix a label in the space shown on form FAM-27. Cross out any errors and print the correct information on the label. Add any missing address items, except county of location and a person's name. If you did not receive labels, print or type your agency's mailing address.
- (03) If filing an original estimated claim, enter an "X" in the box on line (03) Estimated.
- (04) If filing an original estimated claim on behalf of districts within the county, enter an "X" in the box on line (04) Combined.
- (05) If filing an amended or combined claim, enter an "X" in the box on line (05) Amended. Leave boxes (03) and (04) blank.
- (06) Enter the fiscal year in which costs are to be incurred.
- (07) Enter the amount of estimated claim. If the estimate exceeds the previous year's actual costs by more than 10%, complete form PPBR-1 and enter the amount from line (11).
- (08) Enter the same amount as shown on line (07).
- (09) If filing an original reimbursement claim, enter an "X" in the box on line (09) Reimbursement.
- (10) If filing an original reimbursement claim on behalf of districts within the county, enter an "X" in the box on line (10) Combined.
- (11) If filing an amended or a combined claim on behalf of districts within the county, enter an "X" in the box on line (11) Amended.
- (12) Enter the fiscal year for which actual costs are being claimed. If actual costs for more than one fiscal year are being claimed, complete a separate form FAM-27 for each fiscal year.
- (13) Enter the amount of reimbursement claim from form PPBR-1, line (11).
- (14) Filing Deadline. Initial Claims of Ch. 465/76. If the reimbursement claim for the fiscal years 1994-95, through 1999-00, is filed after January 30, 2001, the claim must be reduced by a late penalty. Enter either the product of multiplying line (13) by the factor 0.10 (10% penalty) or \$1,000, whichever is less.
- In subsequent years, reimbursement claims must be filed by January 15 of the fiscal year in which costs are incurred or the claims shall be reduced by a late penalty. Enter either the product of multiplying line (13) by the factor 0.10 (10% penalty) or \$1,000, whichever is less.
- (15) If filing a reimbursement claim and have previously filed an estimated claim for the same fiscal year, enter the amount received for the estimated claim. Otherwise, enter a zero.
- (16) Enter the result of subtracting line (14) and line (15) from line (13).
- (17) If line (16) Net Claimed Amount is positive, enter that amount on line (17) Due from State.
- (18) If line (16) Net Claimed Amount is negative, enter that amount in line (18) Due to State.
- (19) to (21) Leave blank.
- (22) to (37) Reimbursement Claim Data. Bring forward the cost information as specified on the left-hand column of lines (22) through (30) for the reimbursement claim e.g. PPBR-1, (03)(a), means the information is located on form PPBR-1, line (03)(a). Enter the information on the same line but in the right-hand column. Cost information should be rounded to the nearest dollar, (i.e., no cents). Indirect costs percentage should be shown as a whole number and without the percent symbol (i.e., 35% should be shown as 35). Completion of this data block will expedite the payment process.
- (38) Read the statement "Certification of Claim." If it is true, the claim must be dated, signed by the agency's authorized representative and must include the person's name and title, typed or printed. Claims cannot be paid unless accompanied by a signed certification.
- (39) Enter the name, telephone number, and e-mail addresss of the person whom this office should contact if additional information is required.

**SUBMIT A SIGNED ORIGINAL AND A COPY OF FORM FAM-27, AND A COPY OF ALL OTHER FORMS AND SUPPORTING DOCUMENTS TO:**

*Address, if delivered by U.S. Postal Service:*

OFFICE OF THE STATE CONTROLLER  
 ATTN: Local Reimbursements Section  
 Division of Accounting and Reporting  
 P.O. Box 942850  
 Sacramento, CA 94250

*Address, if delivered by other delivery service:*

OFFICE OF THE STATE CONTROLLER  
 ATTN: Local Reimbursements Section  
 Division of Accounting and Reporting  
 3301 C Street, Suite 500  
 Sacramento, CA 95816



MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS CLAIM SUMMARY					FORM PPBR-1
(01) Claimant	(02) Type of Claim			Fiscal Year	
	Reimbursement <input type="checkbox"/>				
	Estimated <input type="checkbox"/>			19 /20	
<b>Claim Statistics</b>					
(03) (a) Number of cases in process at the beginning of the fiscal year					
(b) Number of new cases added during the fiscal year					
(c) Number of cases completed or closed during the fiscal year					
(d) Number of cases in process at the end of the fiscal year					
<b>Direct Costs</b>		<b>Object Accounts</b>			
(04) Reimbursable Components	(a)	(b)	(c)	(d)	(e)
	Salaries	Benefits	Services and Supplies	Travel and Training	Total
1. Administrative Activities					
2. Administrative Appeal					
3. Interrogations					
4. Adverse Comment					
(05) Total Direct Costs					
<b>Indirect Costs</b>					
(06) Indirect Cost Rate	[From ICRP]				%
(07) Total Indirect Costs	[Line (06) x line (05)(a)] or [line (06) x{line (05)(a) + line (05)(b)}]				
(08) Total Direct and Indirect Costs	[Line (05)(e) + line (07)]				
<b>Cost Reduction</b>					
(09) Less: Offsetting Savings, if applicable					
(10) Less: Other Reimbursements, if applicable					
(11) Total Claimed Amount	[Line (08) - {(line (09) + line (10))}]				

**PEACE OFFICERS PROCEDURAL BILL OF RIGHTS**  
**Certification Claim Form**  
**Instructions**

**FORM**  
**PPBR-1**

- (01) Enter the name of the claimant.
- (02) Type of Claim. Check a box, Reimbursement or Estimated, to identify the type of claim being filed. Enter the fiscal year of costs
- From PPBR-1 must be filed for a reimbursement claim. Do not complete form PPBR-1 if you are filing an estimated claim and the estimate does not exceed the previous fiscal year's actual costs by more than 10%. Simply enter the amount of the estimated claim on form FAM-27, line (07). However, if the estimated claim exceeds the previous fiscal year's actual costs by more than 10%, form PPBR-1 must be completed and a statement attached explaining the increased costs. Without this information the high estimated claim will automatically be reduced to 110% of the previous fiscal year's actual costs.
- (03) (a) Enter the number of cases that were processed at the beginning of the fiscal year.  
 (b) Enter the number of new cases that were added during the fiscal year.  
 (c) Enter the number of cases that were completed or closed during the fiscal year.  
 (d) Enter the number of cases that were in process at the end of the fiscal year.
- (04) Reimbursable Components. For each reimbursable component, enter the total from form PPBR-2, line (05), columns (d), (e), (f), and (g) to form PPBR-1, block (04) columns (a), (b), (c), and (d) in the appropriate row. Total each row.
- (05) Total Direct Costs. Total columns (a) through (e).
- (06) Indirect Cost Rate. Indirect costs may be computed as 10% of direct labor costs, excluding fringe benefits. If an indirect cost rate of greater than 10% is used, include the Indirect Cost Rate Proposal (ICRP) with the claim. If more than one department is reporting costs, each must have its own ICRP for the program.
- (07) Total Indirect Costs. Multiply Total Salaries, line (05)(a), by the Indirect Cost Rate, line (06). If both salaries and benefits were used in the distribution base for the computation of the indirect cost rate, then multiply the sum of Total Salaries, line (05)(a), and Total Benefits, line (05)(b), by the Indirect Cost Rate, line (06).
- (08) Total Direct and Indirect Costs. Enter the sum of Total Direct Costs, line (05)(e), and Total Indirect Costs, line (07).
- (09) Less: Offsetting Savings, if applicable. Enter the total savings experienced by the claimant as a direct result of this mandate. Submit a detailed schedule of savings with the claim.
- (10) Less: Other Reimbursements, if applicable. Enter the amount of other reimbursements received from any source including, but not limited to, service fees collected, federal funds, and other state funds, which reimbursed any portion of the mandated cost program. Submit a schedule detailing the reimbursement sources and amounts.
- (11) Total Claimed Amount. Subtract the sum of Offsetting Savings, line (09), and Other Reimbursements, line (10), from Total Direct and Indirect Costs, line (08). Enter the remainder on this line and carry the amount forward to form FAM-27, line (13) for the Reimbursement Claim.

<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT/ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant	(02) Fiscal Year Costs Were Incurred
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(03) Reimbursable Component: Check only **one** box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expenses: Complete columns (a) through (g). **Object Accounts**

(a) Employee Names, Job Classifications, Functions Performed, and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Hours Worked or Quantity	(d) Salaries	(e) Benefits	(f) Services and Supplies	(g) Travel and Training

(05) Total	<input type="checkbox"/>	Subtotal	<input type="checkbox"/>	Page: ___ of ___
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<b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>CLAIM SUMMARY</b> <b>Instructions</b>	<b>FORM</b> <b>PPBR-2</b>
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- (01) Enter the name of the claimant.
- (02) No entry required.
- (03) Reimbursable Components. Check the box that indicates the cost component being claimed. Check only one box per form. A separate form PPBR-2 shall be prepared for each applicable component.
- (04) Description of Expenses. The following table identifies the type of information required to support reimbursable costs. To detail costs for the component activity box "checked" in block (03), enter the employee names, position titles, a brief description of the activities performed, actual time spent by each employee, productive hourly rates, fringe benefits, supplies used, contract services, and travel and training expenses. **The descriptions required in column (4)(a) must be of sufficient detail to explain the cost of activities or items being claimed.** For audit purposes, all supporting documents must be retained by the claimant for a period of not less than two years after the end of the calendar year in which the reimbursement claim was filed or last amended, whichever is later. Such documents shall be made available to the State Controller's Office on request.

Object/ Sub object Accounts	Columns							Submit thes supporting documents with the claim
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	
Salaries	Employee Name Title	Hourly Rate	Hours Worked	Salaries = Hourly Rate x Hours Worked				
Benefits	Activities Performed	Benefit Rate	Hours Worked		Benefits = Benefit Rate x Salaries			
Services and Supplies	Name of Contractor	Hourly Rate	Hours Worked Inclusive Dates of Service			Itemized Cost of Services Performed		Invoice
Contract Services	Specific Tasks Performed							
Supplies	Description of Supplies Used	Unit Cost	Quantity Used			Cost= Unit Cost X Quantity Used		
Travel and Training	Purpose of Trip Name and Title	Per Diem Rate	Days				Rate x Days or Miles	
Travel	Departure and Return Date	Mileage Rate	Miles				Total Travel Cost	
Training	Employee Name Title		Dates Attended				Registration Fee	

- (05) Total line (04), columns (d), (e), (f), and (g) and enter the sum on this line. Check the appropriate box to indicate if the amount is a total or subtotal. If more than one form is needed to detail the component costs, number each page. Enter totals from line (05), columns (d), (e), (f), and (g) to form PPBR-1, block (04), columns (a), (b), (c), and (d) in the appropriate row.

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# Exhibit E

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR  
STATEMENT OF DECISION ON:

Government Code Sections 3300 through 3310

As Added and Amended by Statutes 1976,  
Chapter 465; Statutes 1978, Chapters 775, 1173,  
1174, and 1178; Statutes 1979, Chapter 405;  
Statutes 1980, Chapter 1367; Statutes 1982,  
Chapter 994; Statutes 1983, Chapter 964;  
Statutes 1989, Chapter 1165; and  
Statutes 1990, Chapter 675 (CSM 4499)

Directed by Government Code Section 3313,  
Statutes 2005, chapter 72, section 6  
(Assem. Bill (AB) No. 138),  
Effective July 19, 2005.

Case No.: 05-RL-4499-01

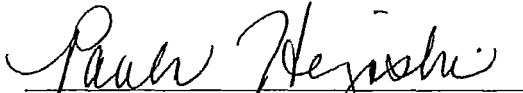
*Peace Officer Procedural Bill of Rights*

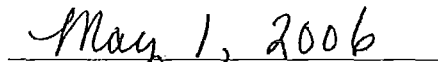
STATEMENT OF DECISION PURSUANT  
TO GOVERNMENT CODE SECTION 17500  
ET SEQ.; CALIFORNIA CODE OF  
REGULATIONS, TITLE 2, DIVISION 2,  
CHAPTER 2.5, ARTICLE 7

(Adopted on April 26, 2006)

**STATEMENT OF DECISION**

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

  
\_\_\_\_\_  
PAULA HIGASHI, Executive Director

  
\_\_\_\_\_  
Date



BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR  
STATEMENT OF DECISION ON:

Government Code Sections 3300 through 3310

As Added and Amended by Statutes 1976,  
Chapter 465; Statutes 1978, Chapters 775, 1173,  
1174, and 1178; Statutes 1979, Chapter 405;  
Statutes 1980, Chapter 1367; Statutes 1982,  
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Directed by Government Code Section 3313,  
Statutes 2005, chapter 72, section 6  
(Assem. Bill (AB) No. 138),  
Effective July 19, 2005.

**Case No.: 05-RL-4499-01**

***Peace Officer Procedural Bill of Rights***

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

(Adopted on April 26, 2006)

**STATEMENT OF DECISION**

The Commission on State Mandates (“Commission”) heard and decided this test claim during a regularly scheduled hearing on April 26, 2006. Pam Stone, Dee Contreras, and Ed Takach appeared for the City of Sacramento. Lt. Dave McGill appeared for the Los Angeles Police Department. Susan Geanacou appeared for the Department of Finance.

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 the staff analysis to partially approve the test claim at the hearing by a vote of 5 to 1.

**Summary of Findings**

Statutes 2005, chapter 72, section 6 (AB 138) added section 3313 to the Government Code to direct the Commission to “review” the Statement of Decision, adopted in 1999, on the *Peace Officer Procedural Bill of Rights* test claim (commonly abbreviated as “POBOR”) to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions.

In 1999, the Commission approved the test claim and adopted the original Statement of Decision. The Commission found that certain procedural requirements under POBOR were rights already provided to public employees under the due process clause of the



United States and California Constitutions. Thus, the Commission denied the procedural requirements of POBOR that were already required by law on the ground that they did not impose a new program or higher level of service, or impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c). Government Code section 17556, subdivision (c), generally provides that the Commission shall not find costs mandated by the state for test claim statutes that implement a federal law, unless the test claim statute mandates costs that exceed the federal mandate. The Commission approved the activities required by POBOR that exceeded the requirements of existing state and federal law.

On July 27, 2000, the Commission adopted parameters and guidelines that authorized reimbursement, beginning July 1, 1994, to counties, cities, a city and county, school districts, and special districts that employ peace officers for the ongoing activities summarized below:

- Developing or updating policies and procedures.
- Training for human resources, law enforcement, and legal counsel.
- Updating the status of cases.
- Providing the opportunity for an administrative appeal for permanent, at-will, and probationary employees that were subject to certain disciplinary actions that were not covered by the due process clause of state and federal law.
- When a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the employer that could lead to certain disciplinary actions, the following costs and activities are eligible for reimbursement: compensation to the peace officer for interrogations occurring during off-duty time; providing prior notice to the peace officer regarding the nature of the interrogation and identification of investigating officers; tape recording the interrogation; providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time or if any further specified proceedings are contemplated; and producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of complaints of reports or complaints made by investigators.
- Performing certain activities, specified by the type of local agency or school district, upon the receipt of an adverse comment against a peace officer employee.

On review of this claim pursuant to Government Code section 3313, the Commission finds that the *San Diego Unified School Dist.* case supports the Commission's 1999 Statement of Decision, which found that the POBOR legislation constitutes a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for counties, cities, school districts, and special districts identified in Government Code section 3301 that employ peace officers.

The Commission further finds that the *San Diego Unified School Dist.* case supports the Commission's 1999 Statement of Decision that the test claim legislation constitutes a partial reimbursable state-mandated program within the meaning of article XIII B,

section 6 of the California Constitution and Government Code section 17514 for all activities previously approved by the Commission except the following:

- The activity of providing the opportunity for an administrative appeal to probationary and at-will peace officers (except when the chief of police is removed) pursuant to Government Code section 3304 is no longer a reimbursable state-mandated activity because the Legislature amended Government Code section 3304 in 1998. The amendment limited the right to an administrative appeal to only those peace officers “who successfully completed the probationary period that may be required” by the employing agency and to situations where the chief of police is removed. (Stats. 1998, ch. 786, § 1.)
- The activities of obtaining the signature of the peace officer on the adverse comment or noting the officer’s refusal to sign the adverse comment, pursuant to Government Code sections 3305 and 3306, when the adverse comment results in a punitive action protected by the due process clause<sup>1</sup> does not constitute a new program or higher level of service and does not impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c).

### BACKGROUND

Statutes 2005, chapter 72, section 6 (AB 138) added section 3313 to the Government Code to direct the Commission to “review” the Statement of Decision, adopted in 1999, on the *Peace Officer Procedural Bill of Rights* test claim. Government Code section 3313 states the following:

In the 2005-06 fiscal year, the Commission on State Mandates shall review its statement of decision regarding the Peace Officer Procedural Bill of Rights test claim and make any modifications necessary to this decision to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions. If the Commission on State Mandates revises its statement of decision regarding the Peace Officer Procedural Bill of Rights test claim, the revised decision shall apply to local government Peace Office Procedural Bill of Rights activities occurring after the date the revised decision is adopted.

#### Commission’s Decision on *Peace Officer Procedural Bill of Rights* (CSM 4499)

The Legislature enacted the Peace Officers Procedural Bill of Rights Act (commonly abbreviated as “POBOR”), by adding Government Code sections 3300 through 3310, in 1976. POBOR provides a series of rights and procedural safeguards to peace officers employed by local agencies and school districts that are subject to investigation or

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<sup>1</sup> Due process attaches when a permanent employee is dismissed, demoted, suspended, receives a reduction in salary, or receives a written reprimand. Due process also attaches when the charges supporting a dismissal of a probationary or at-will employee constitute moral turpitude that harms the employee’s reputation and ability to find future employment and, thus, a name-clearing hearing is required.

discipline. Generally, POBOR prescribes certain protections that must be afforded officers during interrogations that could lead to punitive action against them; gives officers the right to review and respond in writing to adverse comments entered in their personnel files; and gives officers the right to an administrative appeal when any punitive action is taken against them, or they are denied promotion on grounds other than merit.<sup>2</sup>

Legislative intent for POBOR is expressly provided in Government Code section 3301 as follows:

The Legislature hereby finds and declares that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that stable relations are continued throughout the state and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, within the State of California.

POBOR applies to all employees classified as “peace officers” under specified provisions of the Penal Code, including those peace officers employed by counties, cities, special districts and school districts.<sup>3</sup>

In 1995, the City of Sacramento filed a test claim alleging that POBOR, as it existed from 1976 until 1990, constituted a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.<sup>4</sup> In 1999, the Commission approved the test claim and adopted a Statement of Decision.<sup>5</sup> The Commission found that certain procedural requirements under POBOR were rights already provided to public employees under the due process clause of the United States and California Constitutions. Thus, the Commission denied the procedural requirements of POBOR that were already required by law on the ground that they did not impose a new program or

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<sup>2</sup> See California Supreme Court’s summary of the legislation in *Baggett v. Gates* (1982) 32 Cal.3d 128, 135.

<sup>3</sup> Government Code section 3301 states: “For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code.”

<sup>4</sup> The POBOR Act has been subsequently amended by the Legislature. (See Stats. 1994, ch. 1259; Stats. 1997, ch. 148; Stats. 1998, ch. 263; Stats. 1998, ch. 786; Stats. 1999, ch. 338; Stats. 2000, ch. 209; Stats. 2002, ch. 1156; Stats. 2003, ch. 876; Stats. 2004, ch. 405; and Stats. 2005, ch. 22.) These subsequent amendments are outside the scope of the Commission’s decision in POBOR (CSM 4499), and therefore are *not* analyzed to determine whether they impose reimbursable state-mandated activities within the meaning of article XIII B, section 6.

<sup>5</sup> Administrative Record, page 859.

higher level of service, or impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c). Government Code section 17556, subdivision (c), generally provides that the Commission shall not find costs mandated by the state for test claim statutes that implement a federal law, unless the test claim statute mandates costs that exceed the federal mandate. The Commission approved the activities required by POBOR that exceeded the requirements of existing state and federal law.

On July 27, 2000, the Commission adopted parameters and guidelines that authorized reimbursement, beginning July 1, 1994, to counties, cities, a city and county, school districts, and special districts that employ peace officers for the ongoing activities summarized below:

- Developing or updating policies and procedures.
- Training for human resources, law enforcement, and legal counsel.
- Updating the status of cases.
- Providing the opportunity for an administrative appeal for permanent, at-will, and probationary employees that were subject to certain disciplinary actions that were not covered by the due process clause of state and federal law.
- When a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the employer that could lead to certain disciplinary actions, the following costs and activities are eligible for reimbursement: compensation to the peace officer for interrogations occurring during off-duty time; providing prior notice to the peace officer regarding the nature of the interrogation and identification of investigating officers; tape recording the interrogation; providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time or if any further specified proceedings are contemplated; and producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of complaints of reports or complaints made by investigators.
- Performing certain activities, specified by the type of local agency or school district, upon the receipt of an adverse comment against a peace officer employee.<sup>6</sup>

On March 29, 2001, the Commission adopted a statewide cost estimate covering fiscal years 1994-1995 through 2001-2002 in the amount of \$152,506,000.<sup>7</sup>

#### Audit by the Bureau of State Audits

The Legislative Analyst's Office (LAO), in its Analysis of the 2002-2003 Budget Bill, reviewed a sample of POBOR reimbursement claims and found that the annual state costs associated with the program was likely to be two to three times higher than the amount projected in the statewide cost estimate and significantly higher than what the Legislature initially expected. LAO projected costs in the range of \$50 to \$75 million annually.

<sup>6</sup> Administrative Record, page 1273.

<sup>7</sup> Administrative Record, page 1309.

LAO also found a wide variation in the costs claimed by local governments. Thus, LAO recommended that the Legislature refer the POBOR program to the Joint Legislative Audit Committee for review, possible state audit, and possible revisions to the parameters and guidelines.

In March 2003, the Joint Legislative Audit Committee authorized the Bureau of State Audits to conduct an audit of the process used by the Commission to develop statewide cost estimates and to establish parameters and guidelines for the claims related to POBOR.

On October 15, 2003, the Bureau of State Audits issued its audit report, finding that reimbursement claims were significantly higher than anticipated and that some agencies claimed reimbursement for questionable activities.<sup>8</sup> While the Bureau of State Audits recommended the Commission make changes to the overall mandates process, it did not recommend the Commission make any changes to the parameters and guidelines for the POBOR program. The Commission implemented all of the Bureau's recommendations.

On July 19, 2005, the Legislature enacted Government Code section 3313 (Stats. 2005, ch. 72, § 6 (AB 138)) and directed the Commission to "review" the Statement of Decision in POBOR.

#### **Comments Filed Before the Issuance of the Draft Staff Analysis by the City and County of Los Angeles**

On October 19, 2005, Commission staff requested comments from interested parties, affected state agencies, and interested persons on the Legislature's directive to "review" the POBOR program. Comments were received from the City of Los Angeles and the County of Los Angeles. The City and County both contend that the Commission properly found that POBOR constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution. The County further argues that, under the California Supreme Court decision in *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, reimbursement must be expanded to include all activities required under the test claim statutes including those procedures required by the federal due process clause. The County of Los Angeles also proposes that the Commission adopt a reasonable reimbursement methodology in the parameters and guidelines to reimburse these claims.

#### **Comments Filed on the Draft Staff Analysis**

On February 24, 2006, Commission staff issued the draft staff analysis and requested comments on the draft. The Commission received responses from the following parties:

##### City of Sacramento

The City of Sacramento argues the following:

- Prior law does not require due process protections for employees receiving short-term suspensions, reclassifications, or reprimands. Therefore, the administrative appeal required by the test claim legislation constitutes a new program or higher

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<sup>8</sup> Administrative Record, page 1407 et seq.

level of service when an officer receives a short-term suspension, reclassification, or reprimand.

- Not every termination of a police chief warrants a liberty interest hearing required under prior law. The decision of the Commission should distinguish between those situations where there is a valid right to a liberty interest hearing under principles of due process, from the remaining situations where a police chief is terminated.
- The decision of the Commission should reflect “the onerous requirements imposed when interrogations are handled under POBOR.”
- All activities required when an officer receives an adverse comment are reimbursable.

#### County of Alameda

The County of Alameda states that interrogation of a sworn officer under POBOR is difficult and requires preparation. The County alleges that ten hours of investigation must be conducted before an interview that might take thirty minutes.

#### County of Los Angeles

The County of Los Angeles contends that investigation is a reimbursable state-mandated activity. The County also argues that, pursuant to the *San Diego Unified School Dist.* case, all due process activities are reimbursable.

#### County of Orange

The County of Orange believes the staff analysis “does not fully comprehend or account for the [investigation] requirements of interrogation governed by Government Code section 3303.” The County contends that the requirements of law enforcement agencies to investigate complaints have correspondingly increased under POBOR. When a complaint is received, the County argues that “every department is called upon to conduct very detailed investigations when allegations of serious misconduct occur. These investigations can vary in scope and depth from abuses of authority, the use of deadly force, excessive force where injuries may be significant, serious property damage, and criminal behavior.” The County also contends that the investigation involves the subject officer and other officer witnesses.

#### Department of Finance

The Department of Finance contends that the *San Diego Unified School Dist.* case does not support the finding that the test claim legislation constitutes a reimbursable state-mandated program for school districts. Finance acknowledges the language in *San Diego Unified School Dist.* declining to extend the *City of Merced* decision to preclude reimbursement whenever any entity makes a discretionary decision that triggers mandated costs. Finance argues, however, that the Supreme Court’s findings are not applicable to school districts since there is no requirement in law for school districts to form a police department. Finance states the following:

... there is no requirement in law for these districts to form a police department and safe schools can be maintained without the need to hire

police officers as is evidenced by the many school districts that do not have police departments. The fact that the Legislature has declared it necessary for POBOR to apply to all public safety officers is not the same as requiring their hiring in the first place. School districts could, indeed, control or even avoid the extra cost of the POBOR legislation by not forming a police department at all, which is materially different from fire protection services that must be provided by fire protection districts. POBOR activities that might be claimed by school districts are, instead, analogous to non-reimbursable activities in the *Department of Finance v. Commission on State Mandates [Kern High School Dist.]* case that flowed from an underlying exercise of discretion and those in past Commission decisions that denied reimbursement to school districts for other peace officer activities.

### Discussion

The courts have found that article XIII B, section 6 of the California Constitution<sup>9</sup> recognizes the state constitutional restrictions on the powers of local government to tax and spend.<sup>10</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>11</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>12</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>13</sup>

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<sup>9</sup> Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) 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>10</sup> *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

<sup>11</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

<sup>12</sup> *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

<sup>13</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 District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

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>14</sup> To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.<sup>15</sup> A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”<sup>16</sup>

Finally, the newly required activity or increased level of service must impose costs mandated by the state.<sup>17</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>18</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>19</sup>

#### **I. Commission Jurisdiction and Period of Reimbursement for Decision on Reconsideration**

It is a well-settled issue of law that administrative agencies, such as the Commission, are entities of limited jurisdiction. Administrative agencies have only the powers that have been conferred on them, expressly or by implication, by statute or constitution. The Commission’s jurisdiction in this case is based solely on Government Code section 3313. Absent Government Code section 3313, the Commission would have no jurisdiction to review and reconsider its decision on POBOR since the decision was adopted and issued well over 30 days ago.<sup>20</sup>

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<sup>14</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.)

<sup>15</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

<sup>16</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

<sup>17</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>18</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>19</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>20</sup> Government Code section 17559.



Thus, the Commission must act within the jurisdiction granted by Government Code section 3313, and may not substitute its judgment regarding the scope of its jurisdiction on reconsideration for that of the Legislature.<sup>21</sup> Since an action by the Commission is void if its action is in excess of the powers conferred by statute, the Commission must narrowly construe the provisions of Government Code section 3313.

Government Code section 3313 provides:

In the 2005-06 fiscal year, the Commission on State Mandates shall review its statement of decision regarding the Peace Officer Procedural Bill of Rights test claim and make any modifications necessary to this decision *to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in San Diego Unified School Dist. v. Commission on State Mandates (2004) 33 Cal.4th 859 and other applicable court decisions*. If the Commission on State Mandates revises its statement of decision regarding the Peace Officer Procedural Bill of Rights test claim, the revised decision shall apply to local government Peace Office Procedural Bill of Rights activities occurring after the date the revised decision is adopted. (Emphasis added.)

The Commission's jurisdiction on review is limited by Government Code section 3313, to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in *San Diego Unified School Dist.* ... and other applicable court decisions."

In addition, Government Code section 3313 states that "the revised decision shall apply to local government Peace Officer Procedural Bill of Rights activities *occurring after the date the revised decision is adopted*." Thus, the Commission finds that the decision adopted by the Commission on this reconsideration or "review" of POBOR applies to costs incurred and claimed for the 2006-2007 fiscal year.

## **II. Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?**

In 1999, the Commission found that the test claim legislation mandates law enforcement agencies to take specified procedural steps when investigating or disciplining a peace officer employee.<sup>22</sup> The Commission found that Government Code section 3304 mandates, under specified circumstances, that "no punitive action [any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment], nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the public safety officer with an opportunity for administrative appeal."

The Commission also found that the following activities are mandated by Government Code section 3303 when the employer wants to interrogate an officer:

<sup>21</sup> *Cal. State Restaurant Assn. v. Whitlow* (1976) 58 Cal.App.3d 340, 346-347.

<sup>22</sup> Original Statement of Decision (AR, p. 862).

- When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)
- Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subds. (b) and (c).)
- Providing the peace officer employee with access to a tape recording of his or her interrogation prior to any further interrogation at a subsequent time, as specified. (Gov. Code, § 3303, subd. (g).)
- Under specified circumstances, producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons when requested by the officer. (Gov. Code, § 3303, subd. (g).)

Finally, Government Code sections 3305 and 3306 provide that no peace officer shall have any adverse comment entered into the officer's personnel file without having first read and signed the adverse comment. If the peace officer refuses to sign the adverse comment, that fact shall be noted on the document and signed or initialed by the peace officer. In addition, the peace officer shall have 30 days to file a written response to any adverse comment entered into the personnel file. The Commission found that Government Code sections 3305 and 3306 impose the following requirements on employers before an adverse comment is placed in an officer's personnel file:

- To provide notice of the adverse comment to the officer.
- To provide an opportunity to review and sign the adverse comment.
- To provide an opportunity to respond to the adverse comment within 30 days.
- To note on the document that the peace officer refused to sign the adverse comment and to obtain the peace officer's signature or initials under such circumstances.

POBOR, by the terms set forth in Government Code section 3301, expressly applies to counties, cities, school districts, and special districts and the Commission approved the test claim for these local entities. Government Code section 3301 states the following: "For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5 of the Penal Code." The legislation, however, does not apply to reserve or recruit officers,<sup>23</sup> coroners, or railroad police officers commissioned by the Governor.

Government Code section 3313 requires the Commission to review these findings to clarify whether the subject legislation imposes a mandate consistent with the California Supreme Court Decision in *San Diego Unified School Dist.* and other applicable court decisions.

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<sup>23</sup> *Burden v. Snowden* (1992) 2 Cal.4th 556, 569.

Generally, in order for test claim legislation to impose a reimbursable state-mandated program, the statutory language must mandate an activity or task on local governmental entities. If the statutory language does not impose a mandate, then article XIII B, section 6 of the California Constitution is not triggered and reimbursement is not required.

In the present case, although the procedural rights and protections afforded a peace officer under POBOR are expressly required by statute, the required activities are not triggered until the employing agency makes certain local decisions. For example, in the case of a city or county, agencies that are required by the Constitution to employ peace officers,<sup>24</sup> the POBOR activities are not triggered until the city or county decides to interrogate the officer, take punitive action against the officer, or place an adverse comment in the officer's personnel file. These initial decisions are not expressly mandated by state law, but are governed by local policy, ordinance, city charter, or memorandum of understanding.<sup>25</sup>

In the case of a school district or special district, the POBOR requirements are not triggered until the school district or special district (1) decides to exercise the statutory authority to employ peace officers, and (2) decides to interrogate the officer, take punitive action against the officer, or place an adverse comment in the officer's personnel file.

After the Commission issued its decision in this case, two California Supreme Court decisions were decided that address the "mandate" issue; *Kern High School Dist.* and *San Diego Unified School Dist.*<sup>26</sup> Thus, based on the court's ruling in these cases, the issue is whether the test claim legislation constitutes a state-mandated program within the meaning of article XIII B, section 6 in light of the local decisions that trigger the POBOR requirements.

As described below, the Legislature expressly declared its intent that the POBOR legislation is a matter of statewide concern and was designed to assure that effective police protection services are provided to all people of the state. The California Supreme Court found that POBOR protects the health, safety, and welfare of the citizens. Thus,

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<sup>24</sup> Article XI of the California Constitution provides for the formation of cities and counties. Section 1, Counties, states that the Legislature shall provide for an elected county sheriff. Section 5, City charter provision, specifies that city charters are to provide for the "government of the city police force."

<sup>25</sup> See *Baggett v. Gates* (1982) 32 Cal.3d 128, 137-140, where the California Supreme Court determined that POBOR *does not* (1) interfere with the setting of peace officers' compensation, (2) regulate qualifications for employment, (3) regulate the manner, method, times, or terms for which a peace officer shall be elected or appointed, nor does it (4) affect the tenure of office or purpose to regulate or specify the causes for which a peace officer can be removed. These are local decisions. But the court found that POBOR impinges on the city's implied power to determine the *manner* in which an employee can be disciplined.

<sup>26</sup> *Kern High School Dist.*, *supra*, 30 Cal.4th 727; *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859.

based on the facts of this case, the Commission finds that the Supreme Court's decision in *San Diego Unified School Dist.* supports the Commission's original finding that the test claim legislation constitutes a state-mandated program for cities, counties, school districts, and special districts as described below.

**A. POBOR constitutes a state-mandated program even though a local decision is first made to interrogate the officer, take punitive action against the officer, or place an adverse comment in the officer's personnel file.**

The procedural rights and protections afforded a peace officer under POBOR are required by statute. The rights are not triggered, however, until the employing agency decides to interrogate an officer, take punitive action against the officer, or place an adverse comment in an officer's personnel file. These initial decisions are not mandated by the state, but are governed by local policy, ordinance, city charter, or a memorandum of understanding.

Nevertheless, based on findings made by the California Supreme Court regarding the POBOR legislation and in *San Diego Unified School Dist.*, the Commission finds that the test claim legislation constitutes a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

After the Commission issued its Statement of Decision in this case, the California Supreme Court decided the *Kern High School Dist.* case and considered the meaning of the term "state mandate" as it appears in article XIII B, section 6 of the California Constitution.<sup>27</sup> In *Kern High School Dist.*, school districts requested reimbursement for notice and agenda costs for meetings of their school site councils and advisory bodies. These bodies were established as a condition of various education-related programs that were funded by the state and federal government.

When analyzing the term "state mandate," the court reviewed the ballot materials for article XIII B, which provided that "a state mandate comprises something that a local government entity is required or forced to do."<sup>28</sup> The ballot summary by the Legislative Analyst further defined "state mandates" as "requirements imposed on local governments by legislation or executive orders."<sup>29</sup>

The court also reviewed and affirmed the holding of *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, determining that, when analyzing state-mandate claims, the Commission must look at the underlying program to determine if the claimant's participation in the underlying program is voluntary or legally compelled.<sup>30</sup> The court stated the following:

In *City of Merced*, the city was under no legal compulsion to resort to eminent domain-but when it elected to employ that means of acquiring property, its obligation to compensate for lost business goodwill was not a

<sup>27</sup> *Kern High School Dist.*, *supra*, 30 Cal.4th 727.

<sup>28</sup> *Id.* at page 737.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Id.* at page 743.

reimbursable state mandate, because the city was not required to employ eminent domain in the first place. Here as well, if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate. (Emphasis in original.)<sup>31</sup>

Thus, the Supreme Court held as follows:

[W]e reject claimants' assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state, based merely upon the circumstance that notice and agenda provisions are mandatory elements of education-related programs in which claimants have participated, *without regard to whether claimant's participation in the underlying program is voluntary or compelled.* [Emphasis added.]<sup>32</sup>

Based on the plain language of the statutes creating the underlying education programs in *Kern High School Dist.*, the court determined that school districts were not legally compelled to participate in eight of the nine underlying programs.<sup>33</sup>

The school districts in *Kern High School Dist.*, however, urged the court to define "state mandate" broadly to include situations where participation in the program is coerced as a result of severe penalties that would be imposed for noncompliance. The court previously applied such a broad construction to the definition of a federal mandate in the case of *City of Sacramento v. State* (1990) 50 Cal.3d 51, 74, where the state's failure to comply with federal legislation that extended mandatory coverage under the state's unemployment insurance law would result in California businesses facing "a new and serious penalty – full, double unemployment taxation by both state and federal governments."<sup>34</sup> Although the court in *Kern High School Dist.* declined to apply the reasoning in *City of Sacramento* that a state mandate may be found in the absence of strict legal compulsion on the facts before it in *Kern*, after reflecting on the purpose of article XIII B, section 6 – to preclude the state from shifting financial responsibilities onto local agencies that have limited tax revenue– the court stated:

In light of that purpose, we do not foreclose the possibility that a reimbursable state mandate under article XIII B, section 6, properly might be found in some circumstances in which a local entity is not legally compelled to participate in a program that requires it to expend additional funds.<sup>35</sup>

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<sup>31</sup> *Ibid.*

<sup>32</sup> *Id.* at page 731.

<sup>33</sup> *Id.* at pages 744-745.

<sup>34</sup> *City of Sacramento, supra*, 50 Cal.3d 51, 74.

<sup>35</sup> *Kern High School Dist., supra*, 30 Cal.4th 727, 752.

Thus, the court in *Kern* recognized that there could be a case, based on its facts, where reimbursement would be required under article XIII B, section 6 in circumstances where the local entity was not legally compelled to participate in a program.

One year later, the Supreme Court revisited the “mandate” issue in *San Diego Unified School Dist.*, a case that addressed a challenge to a Commission decision involving a school district’s expulsion of a student. The school district acknowledged that under specified circumstances, the statutory scheme at issue in the case gave school districts discretion to expel a student. The district nevertheless argued that it was mandated to incur the costs associated with the due process hearing required by the test claim legislation when a student is expelled. The district argued that “although any particular expulsion recommendation may be discretionary, as a practical matter it is inevitable that some school expulsions will occur in the administration of any public school program” and, thus, the ruling in *City of Merced* should not apply.<sup>36</sup>

In *San Diego Unified School Dist.*, the Supreme Court did not overrule the *Kern* or *City of Merced* cases, but stated that “[u]pon reflection, we agree with the District and amici curiae that there is reason to question an extension of the holding of *City of Merced* 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>37</sup> The court explained as follows:

Indeed, it would appear that under a strict application of the language of *City of Merced*, public entities would be denied reimbursement for state-mandated costs in apparent contravention of the intent underlying article XIII B, section 6 of the state Constitution and Government Code section 17514 and contrary to past decisions in which it has been established that reimbursement was in fact proper. For example, in *Carmel Valley* [citation omitted] an executive order requiring that county firefighters be provided with protective clothing and safety equipment was found to create a reimbursable state mandate for the added costs of such clothing and equipment. [Citation omitted.] the court in *Carmel Valley* apparently did not contemplate that reimbursement would be foreclosed in that setting merely because a local agency possessed discretion concerning how many firefighters it would employ – and hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected. Yet, under a strict application of the rule gleaned from *City of Merced* [citation omitted], such costs would not be reimbursable for the simple reason that the local agency’s decision to employ firefighters involves an exercise of discretion concerning, for example, how many firefighters are needed to be employed, etc. We find it doubtful that the voters who enacted article XIII B, section 6, or the Legislature that adopted Government Code section 17514, intended that result, and hence

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<sup>36</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 887.

<sup>37</sup> *Id.* at page 887.

we are reluctant to endorse, in this case, an application of the rule of *City of Merced* that might lead to such result.<sup>38</sup>

Ultimately, however, the court did not resolve the issue regarding the application of the *City of Merced* case to the discretionary expulsions, and resolved the case on alternative grounds.<sup>39</sup>

In the present case, the purpose of POBOR, as stated in Government Code section 3301, is to assure that stable employment relations are continued throughout the state and to further assure that effective law enforcement services are provided to all people of the state. The Legislature declared POBOR a matter of statewide concern.

In 1982, the California Supreme Court addressed the POBOR legislation in *Baggett v. Gates*.<sup>40</sup> In *Baggett*, the City of Los Angeles received information that certain peace officer employees were engaging in misconduct during work hours. The city interrogated the officers and reassigned them to lower paying positions (a punitive action under POBOR). The employees requested an administrative appeal pursuant to the POBOR legislation and the city denied the request, arguing that charter cities cannot be constitutionally bound by POBOR. The court acknowledged that the home rule provision of the Constitution gives charter cities the power to make and enforce all ordinances and regulations, subject only to the restrictions and limitations provided in the city charter. Nevertheless, the court found that the City of Los Angeles was required by the POBOR legislation to provide the opportunity for an administrative appeal to the officers.<sup>41</sup> In reaching its conclusion, the court relied, in part, on the express language of legislative intent in Government Code section 3301 that the POBOR legislation is a “matter of statewide concern.”<sup>42</sup>

The court in *Baggett* also concluded that the consequences of a breakdown in employment relations between peace officers and their employers would create a clear and present threat to the health, safety, and welfare of the citizens of the city, which would extend far beyond local boundaries.

Finally, it can hardly be disputed that the maintenance of stable employment relations between police officers and their employers is a matter of statewide concern. The consequences of a breakdown in such relations are not confined to a city’s borders. These employees provide an essential service. Its absence would create a clear and present threat not only to the health, safety, and welfare of the citizens of the city, but also to the hundreds, if not thousands, of nonresidents who daily visit there. Its effect would also be felt by the many nonresident owners of property and businesses located within the city’s borders. Our society is no longer a

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<sup>38</sup> *Id.* at pages 887-888.

<sup>39</sup> *Id.* at page 888.

<sup>40</sup> *Baggett v. Gates* (1982) 32 Cal.3d 128.

<sup>41</sup> *Id.* at page 141.

<sup>42</sup> *Id.* at page 136.

collection of insular local communities. Communities today are highly interdependent. The inevitable result is that labor unrest and strikes produce consequences which extend far beyond local boundaries.<sup>43</sup>

Thus, the court found that “the total effect of the POBOR legislation is not to deprive local governments of the right to manage and control their police departments but to secure basic rights and protections to a segment of public employees who were thought unable to secure them for themselves.”<sup>44</sup>

In 1990, the Supreme Court revisited the POBOR legislation in *Pasadena Police Officers Assn. v. City of Pasadena (Pasadena)*.<sup>45</sup> The *Pasadena* case addressed the POBOR requirement in Government Code section 3303 to require the employer to provide an officer subject to an interrogation with any reports or complaints made by investigators. In the language quoted below, the court described the POBOR legislation and recognized that the public has a high expectation that peace officers are to be held above suspicion of violation of the laws they are sworn to enforce. Thus, in order to maintain the public’s confidence, “a law enforcement agency *must* promptly, thoroughly, and fairly investigate allegations of officer misconduct ... [and] institute disciplinary proceedings.” (Emphasis added.)

Courts have long recognized that, while the off-duty conduct of employees is generally of no legal consequence to their employers, the public expects peace officers to be “above suspicion of violation of the very laws they are sworn ... to enforce.” [Citations omitted.] Historically, peace officers have been held to a higher standard than other public employees, in part because they alone are the “guardians of peace and security of the community, and the efficiency of our whole system, designed for the purpose of maintaining law and order, depends upon the extent to which such officers perform their duties and are faithful to the trust reposed in them.” [Citation omitted.] To maintain the public’s confidence in its police force, a law enforcement agency must promptly, thoroughly, and fairly investigate allegations of officer misconduct; if warranted, it must institute disciplinary proceedings.<sup>46</sup>

Under a strict application of the *City of Merced* case, the requirements of the POBOR legislation would not constitute a state-mandated program within the meaning of article XIII B, section 6 “for the simple reason” that the local entity’s ability to decide who to discipline and when “could control or perhaps even avoid the extra costs” of the POBOR legislation.<sup>47</sup> But a local entity does not decide who to investigate or discipline based on the costs incurred to the entity. The decision is made, as indicated by the Supreme Court, to maintain the public’s confidence in its police force and to protect the health, safety,

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<sup>43</sup> *Id.* at page 139-140.

<sup>44</sup> *Id.* at page 140.

<sup>45</sup> *Pasadena Police Officers Assn. v. City of Pasadena* (1990) 51 Cal.3d 564.

<sup>46</sup> *Id.* at page 571-572.

<sup>47</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 887-888.



and welfare of its citizens. Thus, as indicated by the Supreme Court in *San Diego Unified School Dist.*, a finding that the POBOR legislation does not constitute a mandated program would conflict with past decisions like *Carmel Valley*, where the court found a mandated program for providing protective clothing and safety equipment to firefighters and made it clear that “[p]olice and fire protection are two of the most essential and basic functions of local government.”<sup>48</sup> Moreover, the POBOR legislation implements a state policy to maintain stable employment relations between police officers and their employers to “assure that effective services are provided to all people of the state.” POBOR, therefore, carries out the governmental function of providing a service to the public, and imposes unique requirements on local agencies to implement the state policy.<sup>49</sup> Thus, a finding that the test claim legislation does not impose a state-mandated program contravenes the purpose of article XIII B, section 6 “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” due to the tax and spend provisions of articles XIII A and XIII B.<sup>50</sup>

Accordingly, even though local decisions are first made to interrogate an officer, take punitive action against the officer, or to place an adverse comment in an officer’s personnel file, the Commission finds, based on *San Diego Unified School Dist.* and the facts presented in this case, that POBOR constitutes a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

**B. POBOR constitutes a state-mandated program for school districts and for special districts identified in Government Code section 3301 that employ peace officers.**

Government Code section 3301, the statute that identifies the peace officers afforded the rights and protections granted in the POBOR legislation, expressly includes peace officers employed by school districts and community college districts pursuant to Penal Code section 830.32. Penal Code section 830.32 provides that members of a school district and community college district police department appointed pursuant to Education Code sections 39670 and 72330 are peace officers if the primary duty of the officer is the enforcement of law as prescribed by Education Code sections 39670 (renumbered section 38000) and 72330, and the officers have completed an approved course of training prescribed by the Commission on Peace Officer Standards and Training (POST) before exercising the powers of a peace officer.

POBOR also applies to special districts authorized by statute to maintain a police department, including police protection districts, harbor or port police, transit police, peace officers employed by the San Francisco Bay Area Rapid Transit District (BART),

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<sup>48</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 887-888; *Carmel Valley Fire Protection Dist. v. State* (1987) 190 Cal.App.3d 521, 537.

<sup>49</sup> *San Diego Unified School*, *supra*, 33 Cal.4th at page 874.

<sup>50</sup> *Id.* at page 888, fn. 23.

peace officers employed by airport districts, peace officers employed by a housing authority, and peace officers employed by fire protection districts.<sup>51</sup>

While counties and cities are mandated by the California Constitution to employ peace officers,<sup>52</sup> school districts and special districts are not expressly required by the state to employ peace officers. School districts and special districts have statutory authority to employ peace officers.

Following the Supreme Court's decision in *Kern High School Dist.*, the Commission denied school district test claims addressing peace officer employees on the ground that school districts are not mandated by state law to have a police department and employ peace officers. In these decisions, the Commission acknowledged the provision in the Constitution (Cal. Const., art. 1, § 28, subd. (c)) that requires K-12 school districts to maintain safe schools. The Commission found, however, that there is no constitutional or statutory requirement to maintain safe schools through school security or a school district police department. Moreover, school districts have governmental immunity under Government Code section 845 and cannot be liable for civil damages for "failure to establish a police department or otherwise to provide police protection service or, if police protection service is provided, for failure to provide sufficient police protection service."<sup>53</sup> Comments on Government Code section 845 by the Law Revision Commission state that the immunity was enacted by the Legislature to prevent judges and juries from removing the ultimate decision-making authority regarding police protection from those (local governments) that are politically responsible for making the decision.<sup>54</sup>

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<sup>51</sup> Government Code section 3301; Penal Code section 830.1, subdivision (a) ["police officer of a district (including police officers of the San Diego Unified Port District Harbor Police) authorized by statute to maintain a police department"]; Penal Code section 830.31, subdivision (d) ["A housing authority patrol officer employed by the housing authority of a ... district ..."]; Penal Code section 830.33 [(a) A member of the San Francisco Bay Area Rapid Transit District Police Department appointed pursuant to Section 28767.5 of the Public Utilities Code ... (b) Harbor or port police regularly employed and paid ... by a ... district ... (c) Transit police officers or peace officers of a ... district ... (d) Any person regularly employed as an airport law enforcement officer by a ... district ...]; and Penal Code section 830.37 [(a) Members of an arson-investigating unit ... of a fire department or fire protection agency of a ... district ... if the primary duty of these peace officers is the detection and apprehension of persons who have violated any fire law or committed insurance fraud ... (b) Members ... regularly paid and employed in that capacity, of a fire department or fire protection agency of a ... district ... if the primary duty of these peace officers ... is the enforcement of law relating to fire prevention or fire suppression.]

<sup>52</sup> See ante, footnote 21.

<sup>53</sup> See *Leger v. Stockton Unified School Dist.* (1988) 202 Cal.App.3d 1448.

<sup>54</sup> 4 California Law Revision Commission Reports 801 (1963).

Immunity under Government Code section 845 also applies to community college districts and special districts.<sup>55</sup>

Thus, based on the Supreme Court's holding in *Kern High School Dist.*, past decisions of the Commission have determined that local entities, such as school districts, are not entitled to reimbursement for activities required by the state when the activities are triggered by the discretionary local decision to employ peace officers.

This case presents different facts, however. Here, unlike the other cases, the Legislature expressly stated in Government Code section 3301 that POBOR is a matter of statewide concern and found that it was necessary to apply the legislation to all public safety officers, as defined. Government Code section 3301 states the following:

The Legislature hereby finds and declares that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that stable relations are continued throughout the state and to assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, wherever situated within the State of California.

Legislative declarations of policy are entitled to great weight by the courts "and it is not the duty or prerogative of the courts to interfere with such legislative finding unless it clearly appears to be erroneous and without reasonable foundation."<sup>56</sup>

Furthermore, in *San Diego Unified School Dist.*, the Supreme Court acknowledged the school district's argument that the due process hearing procedures were mandated when the district exercised its discretion and expelled a student, despite the *City of Merced* and *Kern* cases. The court stated the following:

Indeed, the Court of Appeal below suggested that the present case is distinguishable from *City of Merced* [citation omitted], in light of article I, section 28, subdivision (c), of the state Constitution. That constitutional subdivision, part of Proposition 8 (known as the Victim's Bill of Rights initiative, adopted by the voters at the Primary Election in June 1982), states: "All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure, and peaceful." The Court of Appeal below concluded: "In light of a school district's constitutional obligation to provide a safe educational environment ..., the incurring [due process] hearing costs ... cannot properly be viewed as a nonreimbursable 'downstream' consequence of a decision to seek to expel a student under

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<sup>55</sup> *Peterson v. San Francisco Community College Dist.* (1984) 36 Cal.3d 799; *Hernandez v. Southern California Rapid Transit Dist.* (1983) 142 Cal.App.3d 1063.

<sup>56</sup> *Paul v. Eggman* (1966) 244 Cal.App.2d 461, 471-472.

Education Code section 48915's discretionary provision for damaging or stealing school or private property, receiving stolen property, engaging in sexual harassment or hate violence, or committing other specified acts of misconduct ... that warrant such expulsion."<sup>57</sup>

In response, the Supreme Court stated that "[u]pon reflection, we agree with the District and amici curiae that there is reason to question an extension of the holding of *City of Merced* 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>58</sup> The court explained as follows:

Indeed, it would appear that under a strict application of the language of *City of Merced*, public entities would be denied reimbursement for state-mandated costs in apparent contravention of the intent underlying article XIII B, section 6 of the state Constitution and Government Code section 17514 and contrary to past decisions in which it has been established that reimbursement was in fact proper. For example, in *Carmel Valley* [citation omitted] an executive order requiring that county firefighters be provided with protective clothing and safety equipment was found to create a reimbursable state mandate for the added costs of such clothing and equipment. [Citation omitted.] The court in *Carmel Valley* apparently did not contemplate that reimbursement would be foreclosed in that setting merely because a local agency possessed discretion concerning how many firefighters it would employ – and hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected. Yet, under a strict application of the rule gleaned from *City of Merced* [citation omitted], such costs would not be reimbursable for the simple reason that the local agency's decision to employ firefighters involves an exercise of discretion concerning, for example, how many firefighters are needed to be employed, etc. We find it doubtful that the voters who enacted article XIII B, section 6, or the Legislature that adopted Government Code section 17514, intended that result, and hence we are reluctant to endorse, in this case, an application of the rule of *City of Merced* that might lead to such result.<sup>59</sup>

The Department of Finance contends that the *San Diego Unified School Dist.* case does not support the finding that the test claim legislation constitutes a reimbursable state-mandated program for school districts. Finance acknowledges the language in *San Diego Unified School Dist.* declining to extend the *City of Merced* decision to preclude reimbursement whenever any entity makes a discretionary decision that triggers mandated costs. Finance argues, however, that the Supreme Court's findings are not

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<sup>57</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th at page 887, footnote 22.

<sup>58</sup> *Id.* at page 887.

<sup>59</sup> *Id.* at pages 887-888.

applicable to school districts since there is no requirement in law for school districts to form a police department. Finance states the following:

In the *Carmel Valley Fire Protection District* case ((1987) 190 Cal.App.3d 521), unlike the situation here, the fire districts did not have the option to form a fire department and hire firefighters. In fact, the *San Diego Unified School Dist.* case cited *Carmel Valley* to make it clear that “[p]olice and fire protection are two of the most essential and basic functions of local government.” (*San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 887-888, *Carmel Valley Fire Protection Dist.*, *supra*, 190 Cal.App.3d 521, 537). Such is not the case for school districts and community college districts.

As stated above, there is no requirement in law for these districts to form a police department and safe schools can be maintained without the need to hire police officers as is evidenced by the many school districts that do not have police departments. The fact that the Legislature has declared it necessary for POBOR to apply to all public safety officers is not the same as requiring their hiring in the first place. School districts could, indeed, control or even avoid the extra cost of the POBOR legislation by not forming a police department at all, which is materially different from fire protection services that must be provided by fire protection districts. POBOR activities that might be claimed by school districts are, instead, analogous to non-reimbursable activities in the *Department of Finance v. Commission on State Mandates [Kern High School Dist.]* case that flowed from an underlying exercise of discretion and those in past Commission decisions that denied reimbursement to school districts for other peace officer activities.

Finance, in response to the draft staff analysis, makes no comments with respect to special districts that also have the authority, but are not required, to employ peace officers.<sup>60</sup> At the hearing, however, Finance argued that its comments apply equally to special districts.

The Commission disagrees with the Department of Finance. The fire protection districts in *Carmel Valley* were not mandated by the state to be formed, as asserted by Finance. Fire protection districts are established either by petition of the voters or by a resolution adopted by the legislative body of a county or city within the territory of the proposed district. Once a petition has been certified or a resolution adopted, the local agency

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<sup>60</sup> See, for example, Public Utilities Code section 28767.5, which authorizes BART to employ peace officers:

The district may employ a suitable security force. The employees of the district that are designated by the general manager as security officers shall have the authority and powers conferred by Section 830.9 of the Penal Code upon peace officers. The district shall adhere to the standards for recruitment and training of peace officers established by the Commission on Peace Officer Standards and Training ...

formation commission must approve the formation of the district “with or without amendment, wholly, partially, or conditionally.” A local election is then held and the district is created if a majority of the votes are cast in favor of forming the district.<sup>61</sup> Furthermore, the implication that the phrase “local government” in the *Carmel Valley* case excludes school districts is wrong. “Local government” is specifically defined in article XIII B, section 8 of the Constitution to include school districts and special districts. The definitions in article XIII B, section 8 apply to the mandate reimbursement provisions of section 6. Article XIII B, section 8 states in relevant part the following:

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.

Therefore, the arguments raised by the Department of Finance do not resolve the issue. The Supreme Court in *San Diego Unified School Dist.* did not resolve the issue either. Rather, the court stated the following:

In any event, we have determined that we need not address in this case the problems posed by such an application of the rule articulated in *City of Merced*, because this aspect of the present case can be resolved on an alternative basis.<sup>62</sup>

Thus, the Commission has the difficult task of resolving the issue for purposes of this claim. For the reasons below, the Commission finds that the POBOR legislation constitutes a state-mandated program for school districts and the special districts identified in Government Code section 3301 that employ peace officers.

Under a strict application of the *City of Merced* case, the requirements of the POBOR legislation would not constitute a state-mandated program within the meaning of article XIII B, section 6 for school districts and the special districts that employ peace officers “for the simple reason” that the ability of the school district or special district to decide whether to employ peace officers “could control or perhaps even avoid the extra costs” of the POBOR legislation.<sup>63</sup> But here, the Legislature has declared that, as a matter of statewide concern, it is necessary for POBOR to apply to all public safety officers, as defined in the legislation. As previously indicated, the California Supreme Court concluded that the peace officers identified in Government Code section 3301 of the POBOR legislation provide an “essential service” to the public and that the consequences of a breakdown in employment relations between peace officers and their employers would create a clear and present threat to the health, safety, and welfare of the citizens of the state.<sup>64</sup>

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<sup>61</sup> Health and Safety Code sections 13815 et seq.

<sup>62</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 888.

<sup>63</sup> *Ibid.*

<sup>64</sup> *Baggett*, *supra*, 32 Cal.3d 128, 139-140.

In addition, in 2001, the Supreme Court determined that school districts, apart from education, have an “obligation to protect pupils from other children, and also to protect teachers themselves from violence by the few students whose conduct in recent years has prompted national concern.” The court further held that California fulfills its obligations under the safe schools provision of the Constitution (Cal. Const., art. I, § 28, subd. (c)) by permitting local school districts to establish a police or security department to enforce rules governing student conduct and discipline.<sup>65</sup> The arguments by the school districts regarding the safe schools provision of the Constitution caused the Supreme Court in *San Diego Unified School Dist.* to question the application of the *City of Merced* case.<sup>66</sup>

The Legislature has also recognized the essential services provided by special district peace officers in Government Code section 53060.7. The special districts identified in that statute (Bear Valley Community Services District, Broadmoor Police Protection District, Kensington Police Protection and Community Services District, Lake Shastina Community Services District, and Stallion Springs Community Services District) “wholly supplant the law enforcement functions of the county within the jurisdiction of that district.”

Thus, as indicated by the Supreme Court in *San Diego Unified School Dist.*, a finding that the POBOR legislation does not constitute a state-mandated program for school districts and special districts identified in Government Code section 3301 would conflict with past decisions like *Carmel Valley*, where the court found a mandated program for providing protective clothing and safety equipment to firefighters and made it clear that “[p]olice and fire protection are two of the most essential and basic functions of local government.”<sup>67</sup> The constitutional definition of “local government” for purposes of article XIII B, section 6 includes school districts and special districts. (Cal. Const., art. XIII B, § 8.)

Accordingly, the Commission finds that POBOR constitutes a state-mandated program for school districts that employ peace officers. The Commission further finds that POBOR constitutes a state-mandated program for the special districts identified in Government Code section 3301. These districts include police protection districts, harbor or port police, transit police, peace officers employed by airport districts, peace officers employed by a housing authority, and peace officers employed by fire protection districts.

**III. Does the test claim legislation 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?**

Government Code section 3313 requires the Commission to review its previous findings to clarify whether the test claim legislation constitutes a new program or higher level of service and imposes costs mandated by the state consistent with the California Supreme

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<sup>65</sup> *In re Randy G.* (2001) 26 Cal.4th 556, 562-563.

<sup>66</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 887, fn. 22.

<sup>67</sup> *Id.* at pages 887-888; *Carmel Valley Fire Protection Dist. v. State* (1987) 190 Cal.App.3d 521, 537.

Court Decision in *San Diego Unified School Dist.* and other applicable court decisions. The test claim legislation will impose a new program or higher level of service, and costs mandated by the state when it compels a local entity to perform activities not previously required, and results in actual increased costs mandated by the state.<sup>68</sup> In addition, none of the exceptions to reimbursement found in Government Code section 17556 can apply. The activities found by the Commission to be mandated are analyzed below.

#### Administrative Appeal

Government Code section 3304, as added by the test claim legislation, provides that “no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the public safety officer with an opportunity for administrative appeal.”

Punitive action is defined in Government Code section 3303 as follows:

“For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary,<sup>69</sup> written reprimand, or transfer for purposes of punishment.”

The California Supreme Court determined that the phrase “for purposes of punishment” in the foregoing section relates only to a transfer and not to other personnel actions.<sup>70</sup> Thus, in transfer cases, the peace officer is required to prove that the transfer was intended for purposes of punishment in order to be entitled to an administrative appeal. If the transfer is to “compensate for a deficiency in performance,” however, an appeal is not required.<sup>71</sup>

In addition, at least one California appellate court determined that employers must extend the right to an administrative appeal under the test claim legislation to peace officers for other actions taken by the employer that result in “disadvantage, harm, loss or hardship” and impact the peace officer’s career.<sup>72</sup> In *Hopson*, the court found that an officer who received a report in his personnel file by the police chief regarding a shooting in violation of policies and procedures was entitled to an administrative appeal under Government Code section 3304. The court held that the report constituted “punitive action” under the

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<sup>68</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d 830, 835.

<sup>69</sup> The courts have held that “reduction in salary” includes loss of skill pay (*McManigal v. City of Seal Beach* (1985) 166 Cal.App.3d 975, pay grade (*Baggett v. Gates* (1982) 32 Cal.3d 128, rank (*White v. County of Sacramento* (1982) 31 Cal.3d 676, and probationary rank (*Henneberque v. City of Culver City* (1983) 147 Cal.App.3d 250.

<sup>70</sup> *White v. County of Sacramento* (1982) 31 Cal.3d 676.

<sup>71</sup> *Holcomb v. City of Los Angeles* (1989) 210 Cal.App.3d 1560; *Heyenga v. City of San Diego* (1979) 94 Cal.App.3d 756; *Orange County Employees Assn., Inc. v. County of Orange* (1988) 205 Cal.App.3d 1289.

<sup>72</sup> *Hopson v. City of Los Angeles* (1983) 139 Cal.App.3d 347, 354, relying on *White v. County of Sacramento* (1982) 31 Cal.3d 676, 683.



test claim legislation based on the source of the report, its contents, and its potential impact on the career of the officer.<sup>73</sup>

Thus, under Government Code section 3304, as it existed when the Statement of Decision was adopted, the employer is required to provide the opportunity for an administrative appeal to permanent, at-will or probationary peace officers for any action leading to the following actions:

- Dismissal.
- Demotion.
- Suspension.
- Reduction in salary.
- Written reprimand.
- Transfer for purposes of punishment.
- Denial of promotion on grounds other than merit.
- Other actions against the employee that results in disadvantage, harm, loss or hardship and impacts the career opportunities of the employee.

The test claim legislation does not specifically set forth the hearing procedures required for the administrative appeal. Rather, the type of administrative appeal is left up to the discretion of each local entity.<sup>74</sup> The courts have determined, however, that the type of hearing required under Government Code section 3304 must comport with due process standards.<sup>75, 76</sup>

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<sup>73</sup> *Id* at p. 353-354.

<sup>74</sup> *Binkley v. City of Long Beach* (1993) 16 Cal.App.4th 1795, 1806.

<sup>75</sup> *Doyle v. City of Chino* (1981) 117 Cal.App.3d 673, 684. In addition, the court in *Stanton v. City of West Sacramento* (1991) 226 Cal.App.3d 1438, 1442, held that the employee's due process rights were protected by the administrative appeals process mandated by Government Code section 3304.

<sup>76</sup> At least two cases have referred to the need for an administrative appeals procedure that would enable the officer to obtain court review pursuant to Code of Civil Procedure section 1094.5. Such a review implies that an evidentiary hearing be held from which a record and findings may be prepared for review by the court. (*Doyle, supra*, 117 Cal.App. 3d 673; *Henneberque, supra*, 147 Cal.App.3d 250. In addition, the California Supreme Court uses the words "administrative appeal" of section 3304 interchangeably with the word "hearing." (*White, supra*, 31 Cal.3d 676.) A hearing before the Chief of Police was found to be appropriate within the meaning of Government Code section 3304 in a case involving a written reprimand since the Chief of Police was not in any way involved in the investigation and the employee and his attorney had an opportunity to present evidence and set forth arguments on the employee's behalf. (*Stanton, supra*, 226 Cal.App,3d 1438, 1443.)

Finally, the courts have been clear that the administrative hearing required by Government Code section 3304 does *not* mandate an investigatory process. “It is an adjudicative process by which the [peace officers] hope to restore their reputations” and where “the reexamination [of the employer’s decision] must be conducted by someone who has not been involved in the initial determination.”<sup>77</sup>

In 1999, the Commission concluded that under certain circumstances, the administrative appeal required by the POBOR legislation was already required to be provided by the due process clause of the United States and California Constitutions when an action by the employer affects an employee’s property interest or liberty interest. A permanent employee with civil service protection, for example, has a property interest in the employment position if the employee is dismissed, demoted, suspended, receives a reduction in salary, or receives a written reprimand. Under these circumstances, the permanent employee is entitled to a due process hearing.<sup>78</sup>

In addition, the due process clause applies when the charges supporting a dismissal of a probationary or at-will employee harms the employee’s reputation and ability to find future employment.<sup>79</sup> For example, an at-will employee, such as the chief of police, is entitled to a liberty interest hearing (or name-clearing hearing) under the state and federal constitutions when the dismissal is supported by charges of misconduct, mismanagement, and misjudgment – all of which “stigmatize [the employee’s] reputation and impair his ability to take advantage of other employment opportunities in law enforcement administration.”<sup>80</sup> In *Williams v. Department of Water and Power*, a case cited by the City of Sacramento, the court explained that the right to a liberty interest hearing arises in cases involving moral turpitude. There is no constitutional right to a liberty interest hearing when an at-will employee is removed for incompetence, inability to get along with others, or for political reasons due to a change of administration.

The mere fact of discharge from public employment does not deprive one of a liberty interest hearing. [Citations omitted.] Appellant must show her dismissal was based on charges of misconduct which “stigmatize” her reputation or “seriously impair” her opportunity to earn a living. [Citations omitted.] ... “Nearly any reason assigned for dismissal is likely to be to some extent a negative reflection on an individual’s ability, temperament, or character. [Citation omitted.] But not every dismissal assumes a constitutional magnitude.” [Citation omitted.]

The leading case of *Board of Regents v. Roth* (1972) 408 U.S. 564, 574 [unofficial cite omitted] distinguishes between a stigma of moral turpitude, which infringes the liberty interest, and other charges such as incompetence or inability to get along with coworkers which does not. The Supreme Court recognized that where “a person’s good name,

<sup>77</sup> *Caloca v. County of San Diego* (2002) 102 Cal.App.4th 433, 443-444 and 447-448.

<sup>78</sup> See original Statement of Decision (AR, p. 864).

<sup>79</sup> See original Statement of Decision (AR, pp. 863-866, 870).

<sup>80</sup> *Binkley v. City of Long Beach* (1993) 16 Cal.App.4th 1795, 1807.

reputation, honor or integrity is at stake” his right to liberty under the Fourteenth Amendment is implicated and deserves constitutional protection. [Citation omitted.] “In the context of *Roth*-type cases, a charge which infringes one’s liberty can be characterized as an accusation or label given the individual by his employer which belittles his worth and dignity as an individual and, as a consequence is likely to have severe repercussions of which primarily affect professional life, and which may well force the individual down one or more notches in the professional hierarchy.” [Citation omitted.]<sup>81</sup>

Thus, the Commission found that, when a hearing was required by the due process clause of the state and federal constitutions, the activity of providing the administrative appeal did not constitute new program or higher level of service, or impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c).

The Commission found that the administrative appeal constitutes a new program or higher level of service, and imposes costs mandated by the state, in those situations where the due process clause of the United States and California Constitutions did not apply. These include the following:

- Dismissal, demotion, suspension, salary reduction or written reprimand received by *probationary and at-will employees* whose liberty interest *are not* affected (i.e.; the charges do not harm the employee’s reputation or ability to find future employment).
- Transfer of permanent, probationary and at-will employees for purposes of punishment.
- Denial of promotion for permanent, probationary and at-will employees for reasons other than merit.
- Other actions against permanent, probationary and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

As noted by the Commission in the Statement of Decision and parameters and guidelines, the Legislature amended Government Code section 3304 in 1998 by limiting the right to an administrative appeal to only those peace officers “who [have] successfully completed the probationary period that may be required” by the employing agency and to situations where the chief of police is removed. (Stats. 1998, ch. 786, § 1.) Thus, as of January 1, 1999, providing the opportunity for an administrative appeal to probationary and at-will peace officers (except when the chief of police is removed) is no longer a reimbursable state-mandated activity.

Thus, the issue is whether the activity of providing the opportunity for an administrative appeal is reimbursable under current law when (1) permanent peace officer employees are subject to punitive actions, as defined in Government Code section 3303, or denials of promotion on grounds other than merit; and when (2) a chief of police is subject to removal.

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<sup>81</sup> *Williams v. Department of Water and Power* (1982) 130 Cal.App.3d 677, 684-685.

As indicated above, under prior law, permanent employees were already entitled to an administrative hearing pursuant to the due process clause of the United States and California Constitutions if they were subject to the following punitive actions: dismissal, demotion, suspension, reduction in salary, or a written reprimand. In addition, an at-will employee, such as the chief of police, was entitled to a due process liberty interest hearing under prior law if the charges supporting the dismissal constitute moral turpitude that harms the employee's reputation and ability to find future employment. The County of Los Angeles argues, however, that under the California Supreme Court decision in *San Diego Unified School District*, reimbursement must be expanded to include all activities required under the test claim statute, including those procedures previously required by the due process clause. A close reading of the *San Diego Unified School District* case, however, shows that it does not support the County's position.

The County relies on the Supreme Court's analysis on pages 879 (beginning under the header "2. Are the hearing costs state-mandated?") through page 882 of the *San Diego Unified School District* case. There, the court addressed two test claim statutes: Education Code section 48915, which *mandated* the school principal to immediately suspend and recommend the expulsion of a student carrying a firearm or committing another specified offense; and Education Code section 48918, which lays out the due process hearing requirements once the mandated recommendation is made to expel the student. The court recognized that the expulsion recommendation required by Education Code section 48915 was mandated "in that it establishes conditions under which the state, rather than local officials, has made the decision requiring a school district to incur the costs of an expulsion hearing."<sup>82</sup> The Commission and the state, relying on Government Code section 17556, subdivision (c), argued, however, that the district's costs are reimbursable only if, and to the extent that, hearing procedures set forth in Education Code section 48918 exceed the requirements of federal due process.<sup>83</sup> The court disagreed. The court based its conclusion on the fact that the expulsion decision mandated by Education Code 48915, which triggers the district's costs incurred to comply with due process hearing procedures, did not implement a federal law. Thus, the court concluded that all costs incurred that are triggered by the state-mandated expulsion, including those that satisfy the due process clause, are fully reimbursable. The court's holding is as follows:

[W]e cannot characterize any of the hearing costs incurred by the District, triggered by the mandatory provision of Education Code section 48915, as constituting a federal mandate (and hence being nonreimbursable). We conclude that under the statutes existing at the time of the test claim in this case (state legislation in effect through mid-1994), all such hearing costs – those designed to satisfy the minimum requirements of federal due process, and those that may exceed those requirements – are, with respect

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<sup>82</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th at page 880.

<sup>83</sup> *Ibid.*

to the mandatory expulsion provision of section 48915, state mandated costs, fully reimbursable by the state.<sup>84</sup>

The POBOR legislation is different. The costs incurred to comply with the administrative appeal are *not* triggered by a state-mandated event, but are triggered by discretionary decisions made by local officials to take punitive action, or deny a promotion on grounds other than merit against a peace officer employee. Therefore, the Commission finds that the court's holding, authorizing reimbursement for *all* due process hearing costs triggered by a state-mandated event, does not apply to this case.

Rather, what applies from the *San Diego Unified School Dist.* decision to the administrative appeal activity mandated by Government Code section 3304 is the court's holding regarding discretionary expulsions. In the *San Diego* case, the court analyzed the portion of Education Code section 48915 that provided the school principal with the discretion to recommend that a student be expelled for specified conduct. If the recommendation was made and the district accepted the recommendation, then the district was required to comply with the mandatory due process hearing procedures of Education Code section 48918.<sup>85</sup> In this situation, the court held that reimbursement for the procedural hearing costs triggered by a local discretionary decision to seek an expulsion was not reimbursable because the hearing procedures were adopted to implement a federal due process mandate.<sup>86</sup> The court found that the analysis by the Second District Court of Appeal in *County of Los Angeles v. Commission on State Mandates (County of Los Angeles II)* was instructive.<sup>87</sup> In the *County of Los Angeles II* case, the court determined that even in the absence of the test claim statute, counties would be still be responsible for providing services under the constitutional guarantees of federal due process.<sup>88</sup>

This analysis applies here. As indicated above, permanent employees were already entitled to an administrative hearing pursuant to the due process clause of the United States and California Constitutions if they were subject to the following punitive actions: dismissal, demotion, suspension, reduction in salary, or a written reprimand. In addition, an at-will employee, such as the chief of police, was entitled to a due process hearing under prior state and federal law if the charges supporting the dismissal constitute moral turpitude that harms the employee's reputation and ability to find future employment.

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<sup>84</sup> *Id.* at pages 881-882.

<sup>85</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th at pages 884-890.

<sup>86</sup> *Id.* at page 888.

<sup>87</sup> *Id.* at page 888-889; *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805. The test claim statute in *County of Los Angeles* required counties to provide indigent criminal defendants with defense funds for ancillary investigation services for capital murder cases. The court determined that even in the absence of the test claim statute, indigent defendants in capital cases were entitled to such funds under the Sixth Amendment of the federal Constitution. (*Id.* at p. 815.)

<sup>88</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th at page 888-889; *County of Los Angeles, supra*, 32 Cal.App.4th at page 815.

Thus, even in the absence of Government Code section 3304, local government would still be required to provide a due process hearing under these situations.

The City of Sacramento, however, contends in comments to the draft staff analysis that prior law does not require due process protections outlined by the Supreme Court in *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, for employees receiving short-term suspensions, reclassifications, or reprimands. The City states that five-day suspensions, written reprimands and other lesser forms of punishment are covered by POBOR, but not *Skelly* and, thus, the administrative appeal required by POBOR is reimbursable for the lesser forms of punishment.

The City raised the same argument when the Commission originally considered the test claim, and the Commission disagreed with the arguments.<sup>89</sup> The Commission finds that the Commission's original conclusion on this issue is correct.

As discussed below, the City is correct that the *pre-disciplinary* protections outlined in *Skelly* do not apply to a short-term suspension or written reprimand. But prior law still requires due process protection, including an administrative hearing, when a permanent employee receives a short-term suspension, reprimand, or other lesser form of punishment. Thus, the administrative hearing required by the test claim legislation under these circumstances does not constitute a new program or higher level of service or impose costs mandated by the state.

*Skelly* involved the discharge of a permanent civil service employee. The court held that such employees have a property interest in the permanent position and the employee may not be dismissed or subjected to other forms of punitive action without due process of law. Based on the facts of the case (that a discharged employee faced the bleak prospect of being without a job and the need to seek other employment hindered by the charges against him), the court held that the employee was entitled to receive notice of the discharge, the reasons for the action, a copy of the charges and materials upon which the action is based, and the right to a hearing to respond to the authority imposing the discipline *before* the discharge became effective.<sup>90</sup> The Supreme Court in *Skelly* recognized, however, that due process requirements are not so inflexible as to require an evidentiary trial at the *preliminary* stage in every situation involving the taking of property. Although some form of notice and hearing must preclude a final deprivation of property, the timing and content of the notice, as well as the nature of the hearing will depend on the competing interests involved.<sup>91</sup>

Three years after *Skelly*, the Supreme Court decided *Civil Service Association v. the City and County of San Francisco*, a case involving the short-term suspensions of eight civil service employees.<sup>92</sup> The court held that the punitive action involved with a short-term suspension is minor and does not require pre-disciplinary action procedures of the kind

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<sup>89</sup> See original Statement of Decision (AR, pp. 865-866).

<sup>90</sup> *Skelly, supra*, 15 Cal.3d 194, 213-215.

<sup>91</sup> *Id.* at page 209.

<sup>92</sup> *Civil Service Association v. City and County of San Francisco* (1978) 22 Cal.3d 552.

required by *Skelly*.<sup>93</sup> But the employees were still entitled to due process protection, including the right to a hearing, since the temporary right of enjoyment to the position amounted to a taking for due process purposes.<sup>94</sup> The court held as follows:

However, while the principles underlying *Skelly* do not here compel the granting of predisciplinary procedures there mentioned, it does not follow that the employees are totally without right to hearing. *While due process does not guarantee to these appellants any Skelly-type predisciplinary hearing procedure, minimal concepts of fair play and justice embodied in the concept of due process require that there be a 'hearing,' of the type hereinafter explained.* The interest to be protected, i.e., the right to continuous employment, is accorded due process protection. While appellants may not in fact have been deprived of a salary earned but only of the opportunity to earn it, they had the expectancy of earning it free from arbitrary administrative action. [Citation omitted.] This expectancy is entitled to some modicum of due process protection. [Citation and footnote omitted.]

For the reasons state above, however, we believe that such protection will be adequately provided in circumstances such as these by procedures of the character outlined in *Skelly*, (i.e., one that will apprise the employee of the proposed action, the reasons therefore, provide for a copy of the charges including materials upon which the action is based, and the right to respond either orally or in writing, to the authority imposing the discipline) *if provided either during the suspension or within reasonable time thereafter.*<sup>95</sup> (Emphasis added.)

Thus, the court held that the employees that did not receive a hearing at all were entitled to one under principles of due process.<sup>96</sup> As indicated in the Commission's original Statement of Decision, the Third District Court of Appeal in the *Stanton* case also found that due process principles apply when an employee receives a written reprimand without a corresponding loss of pay.<sup>97</sup>

Therefore, in the following situations, the Commission finds that the Commission's original decision in this case was correct in that Government Code section 3304 does not constitute a new program or higher level of service, or impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c), since the administrative appeal merely implements the due process requirements of the state and federal Constitutions:

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<sup>93</sup> *Id.* at page 560.

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

<sup>95</sup> *Id.* at page 564.

<sup>96</sup> *Id.* at page 565.

<sup>97</sup> *Stanton, supra*, 226 Cal.App.3d 1438, 1442.

- When a permanent employee is subject to a dismissal, demotion, suspension, reduction in salary, or a written reprimand.
- When the charges supporting the dismissal of a chief of police constitute moral turpitude, which harms the employee's reputation and ability to find future employment, thus imposing the requirement for a liberty interest hearing.

The due process clause, however, does not apply when a permanent employee is transferred for purposes of punishment, denied a promotion on grounds other than merit, or suffers other actions that result in disadvantage, harm, loss or hardship that impacts the career opportunities of the permanent employee. In addition, the due process clause does not apply when local officials want to remove the chief of police under circumstances that do not create a liberty interest since the chief of police is an at-will employee and does not have a property interest in the position. Providing the opportunity for an administrative appeal under these circumstances is new and not required under prior law. In addition, none of the exceptions in Government Code section 17556 to the finding of costs mandated by the state apply to these situations.

Accordingly, the Commission finds that Government Code section 3304 constitutes a new program or higher level of service and imposes costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for providing the opportunity for an administrative appeal in the following circumstances only:

- When a permanent employee is transferred for purposes of punishment, denied a promotion on grounds other than merit, or suffers other actions that result in disadvantage, harm, loss or hardship that impacts the career opportunities of the permanent employee.
- When local officials want to remove the chief of police under circumstances that do not create a liberty interest (i.e., the charges do not constitute moral turpitude, which harms the employee's reputation and ability to find future employment).

#### Interrogations

Government Code section 3303 prescribes protections that apply when "any" peace officer is interrogated in the course of an administrative investigation that might subject the officer to the punitive actions listed in the section (dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment). The procedures and rights given to peace officers under section 3303 do not apply to any interrogation in the normal course of duty, counseling, instruction, or informal verbal admonition by, or other routine or unplanned contact with, a supervisor. In addition, the requirements do not apply to an investigation concerned solely and directly with alleged criminal activities.<sup>98</sup>

The Commission found that the following activities constitute a new program or higher level of service and impose costs mandated by the state:

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<sup>98</sup> Government Code section 3303, subdivision (i).



- When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)
- Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subds. (b) and (c).)
- Tape recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g).)

Government Code section 3313 directs the Commission to review these findings in order “to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions.” The Commission finds that neither the *San Diego Unified School Dist.* case, nor any other court decision published since 1999, changes the Commission’s conclusion that these activities constitute a new program or higher level of service and impose costs mandated by the state. Thus, these activities remain eligible for reimbursement when interrogating “any” peace officer, including probationary, at-will, and permanent officers that might subject the officer to punitive action.

The Commission also found that Government Code section 3303, subdivision (g), requires that:

- The peace officer employee shall have access to the tape recording of the interrogation if (1) any further proceedings are contemplated or, (2) prior to any further interrogation at a subsequent time.
- The peace officer shall be entitled to a transcribed copy of any interrogation notes made by a stenographer or any reports or complaints made by investigators or other persons, except those that are deemed confidential.

The Commission found that providing the employee with access to the tape prior to a further interrogation at a subsequent time constitutes a new program or higher level of service and imposes costs mandated by the state. However, the due process clause of the United States and California Constitutions already requires the employer to provide an employee who holds either a property or liberty interest in the job with the materials upon which the punitive, disciplinary action is based. Thus, the Commission found that even in the absence of the test claim legislation, the due process clause requires employers to provide the tape recording of the interrogation, and produce the transcribed copy of any interrogation notes made by a stenographer or any reports or complaints made by investigators or other persons, except those that are deemed confidential, to the peace officer employee when:

- a permanent employee is dismissed, demoted, suspended, receives a reduction in pay, or written reprimand; or
- a probationary or at-will employee is dismissed and the employee’s reputation and ability to obtain future employment is harmed by charges of moral turpitude, which support the dismissal.

Under these circumstances, the Commission concluded that the requirement to provide these materials under the test claim legislation *does not* impose a new program or higher level of service because this activity was required under prior law through the due process clause. Moreover, pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing these materials merely implements the requirements of the United States Constitution.

The Commission finds that the conclusion denying reimbursement to provide these materials following the interrogation when the activity is already required by the due process clause of the United States and California Constitutions is consistent with the Supreme Court's ruling in *San Diego Unified School Dist.* The costs incurred to comply with these interrogation activities are *not* triggered by a state-mandated event, but are triggered by discretionary decisions made by local officials to interrogate an officer. Under these circumstances, the court determined that even in the absence of the test claim statute, counties would still be responsible for providing services under the constitutional guarantees of due process under the federal Constitution.<sup>99</sup>

Thus, the Commission finds that the Commission's decision, that Government Code section 3303, subdivision (g), constitutes a new program or higher level of service and imposes costs mandated by the state for the following activities, is legally correct:

- Provide the employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories:
  - (a) the further proceeding is not a disciplinary punitive action;
  - (b) the further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e., the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
  - (c) the further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;
  - (d) the further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;
  - (e) the further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.
- Produce transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer following the interrogation, in the following circumstances:
  - (a) when the investigation *does not* result in disciplinary punitive action; and

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<sup>99</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th at page 888-889; *County of Los Angeles*, *supra*, 32 Cal.App.4th at page 815.

(b) when the investigation results in:

- a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e.; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
- a transfer of a permanent, probationary or at-will employee for purposes of punishment;
- a denial of promotion for a permanent, probationary or at-will employees for reasons other than merit; or
- other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

In comments to the draft staff analysis, the Counties of Orange, Los Angeles, and Alameda, and the City of Sacramento contend that the interrogation of an officer pursuant to the test claim legislation is complicated and requires the employer to fully investigate in order to prepare for the interrogation. The County of Orange further states that “[t]hese investigations can vary in scope and depth from abuses of authority, the use of deadly force, excessive force when injuries may be significant, serious property damage, and criminal behavior.” These local agencies are requesting reimbursement for the time to investigate.

The Commission disagrees and finds that investigation services are not reimbursable. First, investigation of criminal behavior is specifically excluded from the requirements of Government Code section 3303. Government Code section 3303, subdivision (i), states that the interrogation requirements do not apply to an investigation concerned solely and directly with alleged criminal activities. Moreover, article XIII B, section 6, subdivision (a)(2), and Government Code section 17556, subdivision (g), state that no reimbursement is required for the enforcement of a crime.

The County of Los Angeles supports the argument that reimbursement for investigative services is required by citing Penal Code section 832.5, which states that each department that employs peace officers shall establish a procedure to investigate complaints. Penal Code section 832.5, however, was not included in this test claim, and the Commission makes no findings on that statute. The County of Los Angeles also cites to the phrase in Government Code section 3303, subdivision (a), which states that “[t]he interrogation shall be conducted ...” to argue that investigation is required. The County takes the phrase out of context. Government Code section 3303, subdivision (a), states the following:

The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If the interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for any off-duty time in accordance

with regular department procedures, and the public safety officer shall not be released from employment for any work missed.

Government Code section 3303, subdivision (a), establishes the timing of the interrogation, and requires the employer to compensate the interrogated officer if the interrogation takes place during off-duty time. In other words, the statute defines the process that is due the peace officer who is subject to an interrogation. This statute does not require the employer to investigate complaints. When adopting parameters and guidelines for this program, the Commission recognized that Government Code section 3303 does not impose new mandated requirements to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review responses given by officers and/or witnesses to an investigation.<sup>100</sup>

Thus, investigation services go beyond the scope of the test claim legislation and are *not* reimbursable. As explained by the courts, POBOR deals with labor relations.<sup>101</sup> It does not interfere with the employer's right to manage and control its own police department.<sup>102</sup>

Finally, the County of Orange contends that "[s]erious cases also tend to involve lengthy appeals processes that require delicate handling due to the increased rights under POBOR." For purposes of clarification, at the parameters and guidelines phase of this claim, the Commission denied reimbursement for the cost of defending lawsuits appealing the employer action under POBOR, determining that the test claim did not allege that the defense of lawsuits constitutes a reimbursable state-mandated program.<sup>103</sup> Government Code section 3313 does not give the Commission jurisdiction to change this finding.

Nevertheless, when adopting parameters and guidelines for this program, the Commission recognized the complexity of the procedures required to interrogate an officer, and approved several activities that the Commission found to be reasonable methods to comply with the mandated activities pursuant to the authority in section 1183.1, subdivision (a)(4), of the Commission's regulations. For example, the Commission authorized reimbursement, when preparing the notice regarding the nature of the interrogation, for reviewing the complaints and other documents in order to properly prepare the notice. The Commission also approved reimbursement for the mandated interrogation procedures when a peace officer witness was interrogated since the interrogation could lead to punitive action for that officer. Unlike other reconsideration statutes that directed the Commission to revise the parameters and guidelines, the Commission does not have jurisdiction here to change any discretionary findings or add any new activities to the parameters and guidelines that may be

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<sup>100</sup> Analysis adopted by the Commission on the Parameters and Guidelines, July 22, 2000 (AR, p. 912).

<sup>101</sup> *Sulier v. State Personnel Bd.* (2004) 125 Cal.App.4th 21, 26.

<sup>102</sup> *Baggett, supra*, 32 Cal.3d 128, 135.

<sup>103</sup> Analysis adopted by the Commission on the Parameters and Guidelines, July 22, 2000 Commission hearing (AR, pp. 904-906).

considered reasonable methods to comply with the program. The jurisdiction in this case is very narrow and limited to reviewing the Statement of Decision to clarify, as a matter of law, whether the test claim legislation constitutes a new program or higher level of service and imposes costs mandated by the state consistent with the California Supreme Court Decision in *San Diego Unified School Dist.* and other applicable court decisions.<sup>104</sup>

#### Adverse Comments

Government Code sections 3305 and 3306 provide that no peace officer “shall” have any adverse comment entered in the officer’s personnel file without the peace officer having first read and signed the adverse comment. If the peace officer refuses to sign the adverse comment, that fact “shall” be noted on the document and signed or initialed by the peace officer. In addition, the peace officer “shall” have 30 days to file a written response to any adverse comment entered in the personnel file. The response “shall” be attached to the adverse comment.

Thus, Government Code sections 3305 and 3306 impose the following requirements on employers:

- to provide notice of the adverse comment;<sup>105</sup>
- to provide an opportunity to review and sign the adverse comment;
- to provide an opportunity to respond to the adverse comment within 30 days; and
- to note on the document that the peace officer refused to sign the adverse comment and to obtain the peace officer’s signature or initials under such circumstances.

As noted in the 1999 Statement of Decision, the Commission recognized that the adverse comment could be considered a written reprimand or could lead to other punitive actions taken by the employer. If the adverse comment results in a dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer or the comment harms an officer’s reputation and opportunity to find future employment, then the provisions of the test claim legislation which require notice and an opportunity to review and file a written response are already guaranteed under the due process clause of the state and federal constitutions.<sup>106</sup> Under such circumstances, the Commission found that the notice, review and response requirements of Government Code sections 3305 and 3306 *do not* constitute a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution. Moreover, the Commission recognized that pursuant to Government Code section 17556, subdivision (c), the costs incurred in

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<sup>104</sup> However, any party may file a request to amend the parameters and guidelines pursuant to the authority in Government Code section 17557.

<sup>105</sup> The Commission found that notice is required since the test claim legislation states that “no peace officer shall have any adverse comment entered in the officer’s personnel file *without the peace officer having first read and signed the adverse comment.*” Thus, the Commission found that the officer must receive notice of the comment before he or she can read or sign the document.

<sup>106</sup> *Hopson, supra*, 139 Cal.App.3d 347.

providing notice and an opportunity to respond do not impose “costs mandated by the state”. The Commission finds that this finding is consistent with *San Diego Unified School Dist.* since the local entity would be required, in the absence of the test claim legislation, to perform these activities to comply with federal due process procedures.<sup>107</sup>

However, the Commission found that under circumstances where the adverse comment affects the officer’s property or liberty interest as described above, the following requirements imposed by the test claim legislation *are not* specifically required by the case law interpreting the due process clause:

- obtaining the signature of the peace officer on the adverse comment, or
- noting the peace officer’s refusal to sign the adverse comment and obtain the peace officer’s signature or initials under such circumstances.

The Commission approved these two procedural activities since they were not expressly articulated in case law interpreting the due process clause and, thus, exceed federal law. The City of Sacramento contends that these activities remain reimbursable.

The Commission finds, however, that the decision in *San Diego Unified School Dist.* requires that these notice activities be denied pursuant to Government Code section 17556, subdivision (c), since they are “part and parcel” to the federal due process mandate, and result in “de minimis” costs to local government.

In *San Diego Unified School Dist.*, the Supreme Court held that in situations when a local discretionary decision triggers a federal constitutional mandate such as the procedural due process clause, “the challenged state rules or procedures that are intended to implement an applicable federal law -- and whose costs are, in context, de minimis -- should be treated as part and parcel of the underlying federal mandate.”<sup>108</sup> Adopting the reasoning of *County of Los Angeles II*, the court reasoned as follows:

In *County of Los Angeles II*, supra 32 Cal.App.4th 805 [unofficial cite omitted], the initial discretionary decision (in the former case, to file charges and prosecute a crime; in the present case, to seek expulsion) in turn triggers a federal constitutional mandate (in the former case, to provide ancillary defense services; in the present case, to provide an expulsion hearing). In both circumstances, the Legislature, in adopting specific statutory procedures to comply with the general federal mandate, reasonably articulated various incidental procedural protections. These protections are designed to make the underlying federal right enforceable and to set forth procedural details that were not expressly articulated in the case law establishing the respective rights; viewed singly or cumulatively, they do not significantly increase the cost of compliance with the federal mandate. The Court of Appeal in *County of Los Angeles II* concluded that, for purposes of ruling upon a claim for reimbursement, such incidental procedural requirements, producing at most de minimis added cost, should be viewed as part and parcel of the underlying federal

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<sup>107</sup> *San Diego Unified School Dist.*, supra, 33 Cal.4th 859, 888-889.

<sup>108</sup> *Id.* at page 890.

mandate, and hence nonreimbursable under Government Code section 17556, subdivision (c). We reach the same conclusion here.<sup>109</sup>

The Commission finds that obtaining the officer's signature on the adverse comment or indicating the officer's refusal to sign the adverse comment, when the adverse comment results in a punitive action protected by the due process clause, are designed to prove that the officer was on notice about the adverse comment. Since providing notice is already guaranteed by the due process clause of the state and federal constitutions under these circumstances, the Commission finds that the obtaining the signature of the officer or noting the officer's refusal to sign the adverse comment is part and parcel of the federal notice mandate and results in "de minimis" costs to local government.

Therefore, the Commission finds that, under current law, the Commission's conclusion that obtaining the signature of the peace officer on the adverse comment or noting the officer's refusal to sign the adverse comment, when the adverse comment results in a punitive action protected by the due process clause is not a new program or higher level of service and does not impose costs mandated by the state. Thus, the Commission denies reimbursement for these activities.

Finally, the courts have been clear that an officer's rights under Government Code sections 3305 and 3306 are not limited to situations where the adverse comment results in a punitive action where the due process clause may apply. Rather, an officer's rights are triggered by the entry of "any" adverse comment in a personnel file, "or any other file used for personnel purposes," that may serve as a basis for affecting the status of the employee's employment.<sup>110</sup> In explaining the point, the Third District Court of Appeal stated: "[E]ven though an adverse comment does not directly result in punitive action, it has the potential for creating an adverse impression that could influence future personnel decisions concerning an officer, including decisions that do not constitute discipline or punitive action."<sup>111</sup> Thus, the rights under sections 3305 and 3306 also apply to uninvestigated complaints. Under these circumstances (where the due process clause does not apply), the Commission determined that the Legislature, in statutes enacted before the test claim legislation, established procedures for different local public employees similar to the protections required by Government Code sections 3305 and 3306. Thus, the Commission found no new program or higher level of service to the extent the requirements existed in prior statutory law. The Commission approved the test claim for the activities required by the test claim legislation that were not previously required under statutory law.<sup>112</sup> Neither *San Diego Unified School Dist.*, nor any other

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<sup>109</sup> *Id.* at page 889.

<sup>110</sup> *Sacramento Police Officers Assn. v. Venegas* (2002) 101 Cal.App.4th 916, 925.

<sup>111</sup> *Id.* at page 926.

<sup>112</sup> For example, for counties, the Commission approved the following activities that were not required under prior statutory law:

If an adverse comment is related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities:

case, conflicts with the Commission's findings in this regard. Therefore, the Commission finds that the denial of activities following the receipt of an adverse comment that were required under prior statutory law, and the approval of activities following the receipt of an adverse comment that were *not* required under prior statutory law, was legally correct.

### CONCLUSION

The Commission finds that the *San Diego Unified School Dist.* case supports the Commission's 1999 Statement of Decision, which found that the POBOR legislation constitutes a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for counties, cities, school districts, and special districts identified in Government Code section 3301 that employ peace officers.

The Commission further finds that the *San Diego Unified School Dist.* case supports the Commission's 1999 Statement of Decision that the test claim legislation constitutes a partial reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for all activities previously approved by the Commission except the following:

- The activity of providing the opportunity for an administrative appeal to probationary and at-will peace officers (except when the chief of police is removed) pursuant to Government Code section 3304 is no longer a reimbursable state-mandated activity because the Legislature amended Government Code section 3304 in 1998. The amendment limited the right to an administrative appeal to only those peace officers "who successfully completed the probationary period that may be required" by the employing agency and to situations where the chief of police is removed. (Stats. 1998, ch. 786, § 1.)

- 
- Providing notice of the adverse comment;
  - Providing an opportunity to review and sign the adverse comment;
  - Providing an opportunity to respond to the adverse comment within 30 days; and
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

If an adverse comment is not related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for:

- Providing notice of the adverse comment; and
- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.



- The activities of obtaining the signature of the peace officer on the adverse comment or noting the officer's refusal to sign the adverse comment, pursuant to Government Code sections 3305 and 3306, when the adverse comment results in a punitive action protected by the due process clause<sup>113</sup> does not constitute a new program or higher level of service and does not impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c).

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<sup>113</sup> Due process attaches when a permanent employee is dismissed, demoted, suspended, receives a reduction in salary, or receives a written reprimand. Due process also attaches when the charges supporting a dismissal of a probationary or at-will employee constitute moral turpitude that harms the employee's reputation and ability to find future employment and, thus, a name-clearing hearing is required.

# Exhibit F

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE PROPOSED AMENDMENT TO  
THE PARAMETERS AND GUIDELINES  
FOR THE TEST CLAIM ON:

Government Code Sections 3301, 3303,  
3304, 3305, 3306

As Added and Amended by Statutes of 1976,  
Chapter 465; Statutes of 1978, Chapters 775,  
1173, 1174, and 1178; Statutes of 1979,  
Chapter 405; Statutes of 1980, Chapter 1367;  
Statutes of 1982, Chapter 994; Statutes of  
1983, Chapter 964; Statutes of 1989, Chapter  
1165; and Statutes of 1990, Chapter 675

Filed on June 25, 2007 by the County of Los  
Angeles, Claimant.

No. 06-PGA-06 [05-RL-4499-01 (4499)]

*Peace Officers Procedural Bill of Rights*

ADOPTION OF PARAMETERS AND  
GUIDELINES AMENDMENT PURSUANT TO  
GOVERNMENT CODE SECTION 17557 AND  
TITLE 2, CALIFORNIA CODE OF  
REGULATIONS, SECTION 1183.2

(Adopted on March 28, 2008)

**PARAMETERS AND GUIDELINES**

On March 28, 2008, the Commission on State Mandates adopted the attached Parameters  
and Guidelines Amendment.

Dated: April 4, 2008

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PAULA HIGASHI, Executive Director

Adopted: July 27, 2000  
Corrected: August 17, 2000  
Amended: December 4, 2006  
Amended: March 28, 2008

## AMENDED PARAMETERS AND GUIDELINES

Government Code Sections 3301, 3303, 3304, 3305, 3306

As Added and Amended by Statutes of 1976, Chapter 465;  
Statutes of 1978, Chapters 775, 1173, 1174, and 1178;  
Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982,  
Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and  
Statutes of 1990, Chapter 675

*Peace Officers Procedural Bill of Rights*

05-RL-4499-01(4499)

06-PGA-06

### BEGINNING IN FISCAL YEAR 2006-2007

#### I. SUMMARY AND SOURCE OF THE MANDATE

In order to ensure stable employer-employee relations and effective law enforcement services, the Legislature enacted Government Code sections 3300 through 3310, known as the Peace Officers Procedural Bill of Rights (POBOR).

The test claim legislation provides procedural protections to peace officers employed by local agencies and school districts<sup>1</sup> when a peace officer is subject to an interrogation by the employer, is facing punitive action or receives an adverse comment in his or her personnel file.

In 1999, the Commission approved the test claim and adopted the original Statement of Decision. The Commission found that certain procedural requirements under POBOR were rights already provided to public employees under the due process clause of the United States and California Constitutions. Thus, the Commission denied the procedural requirements of POBOR that were already required by law on the ground that they did not impose a new program or higher level of service, or impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c). Government Code section 17556, subdivision (c), generally provides that the Commission shall not find costs mandated by the state for test claim statutes that implement a federal law, unless the test claim statute mandates costs that exceed the federal mandate. The Commission approved the activities required by POBOR that exceeded the requirements of existing state and federal law.

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<sup>1</sup> Government Code section 3301 states: "For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code."

On July 27, 2000, the Commission adopted parameters and guidelines that authorized reimbursement, beginning July 1, 1994, to counties, cities, a city and county, school districts, and special districts that employ peace officers for the ongoing activities summarized below:

- Developing or updating policies and procedures.
- Training for human resources, law enforcement, and legal counsel.
- Updating the status of cases.
- Providing the opportunity for an administrative appeal for permanent, at-will, and probationary employees that were subject to certain disciplinary actions that were not covered by the due process clause of state and federal law.
- When a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the employer that could lead to certain disciplinary actions, the following costs and activities are eligible for reimbursement: compensation to the peace officer for interrogations occurring during off-duty time; providing prior notice to the peace officer regarding the nature of the interrogation and identification of investigating officers; tape recording the interrogation; providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time or if any further specified proceedings are contemplated; and producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of complaints of reports or complaints made by investigators.
- Performing certain activities, specified by the type of local agency or school district, upon the receipt of an adverse comment against a peace officer employee.

A technical correction was made to the parameters and guidelines on August 17, 2000.

In 2005, Statutes 2005, chapter 72, section 6 (AB 138) added section 3313 to the Government Code to direct the Commission to “review” the Statement of Decision, adopted in 1999, on the *Peace Officer Procedural Bill of Rights* test claim (commonly abbreviated as “POBOR”) to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions.

On April 26, 2006, the Commission reviewed its original findings and adopted a Statement of Decision on reconsideration (05-RL-4499-01). The Statement of Decision on reconsideration became final on May 1, 2006. On review of the claim, the Commission found that the *San Diego Unified School Dist.* case supports the Commission’s 1999 Statement of Decision, which found that the test claim legislation constitutes a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for counties, cities, school districts, and special districts identified in Government Code section 3301 that employ peace officers.

The Commission further found that the *San Diego Unified School Dist.* case supports the Commission’s 1999 Statement of Decision that the test claim legislation constitutes a partial reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for all activities previously approved by the Commission except the following:

- The activity of providing the opportunity for an administrative appeal to probationary and at-will peace officers (except when the chief of police is removed) pursuant to Government Code section 3304 is no longer a reimbursable state-mandated activity because the Legislature amended Government Code section 3304 in 1998. The amendment limited the right to an administrative appeal to only those peace officers “who successfully completed the probationary period that may be required” by the employing agency and to situations where the chief of police is removed. (Stats. 1998, ch. 786, § 1.)
- The activities of obtaining the signature of the peace officer on the adverse comment or noting the officer’s refusal to sign the adverse comment, pursuant to Government Code sections 3305 and 3306, when the adverse comment results in a punitive action protected by the due process clause<sup>2</sup> does not constitute a new program or higher level of service and does not impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c).

The Statement of Decision adopted by the Commission on this reconsideration applies to costs incurred and claimed for the 2006-2007 fiscal year.

## **II. ELIGIBLE CLAIMANTS**

Counties, cities, a city and county, school districts and special districts that employ peace officers are eligible claimants.

## **III. PERIOD OF REIMBURSEMENT**

The period of reimbursement for the activities and reasonable reimbursement methodology in this parameters and guidelines amendment begin on July 1, 2006.

Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

1. A local agency or school district may, by February 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim for that fiscal year.
2. In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between November 15 and February 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

Reimbursable costs for one fiscal year shall be included in each claim. If total costs for a given year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

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<sup>2</sup> Due process attaches when a permanent employee is dismissed, demoted, suspended, receives a reduction in salary, or receives a written reprimand. Due process also attaches when the charges supporting a dismissal of a probationary or at-will employee constitute moral turpitude that harms the employee’s reputation and ability to find future employment and, thus, a name-clearing hearing is required.

#### IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, an eligible claimant may file a reimbursement claim based on the reasonable reimbursement methodology described in Section V A. or for actual costs, as described in Section V. B.

For each eligible claimant, the following activities are reimbursable:

##### A. Administrative Activities (On-going Activities)

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities.
2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate. The training must relate to mandate-reimbursable activities.
3. Updating the status report of mandate-reimbursable POBOR activities. "Updating the status report of mandate-reimbursable POBOR-activities" means tracking the procedural status of the mandate-reimbursable activities only. Reimbursement is not required to maintain or update the cases, set up the cases, review the cases, evaluate the cases, or close the cases.

##### B. Administrative Appeal

1. The administrative appeal activities listed below apply to permanent peace officer employees as defined in Penal Code sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5. The administrative appeal activities do not apply to reserve or recruit officers; coroners; railroad police officers commissioned by the Governor; or non-sworn officers including custodial officers, sheriff security officers, police security officers, and school security officers.<sup>3</sup>

The following activities and costs are reimbursable:

- a. Providing the opportunity for, and the conduct of an administrative appeal hearing for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):
  - Transfer of permanent-employees for purposes of punishment;
  - Denial of promotion for permanent-employees for reasons other than merit; and
  - Other actions against permanent employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.
- b. Preparation and review of the various documents necessary to commence and proceed with the administrative appeal hearing.
- c. Legal review and assistance with the conduct of the administrative appeal hearing.
- d. Preparation and service of subpoenas.
- e. Preparation and service of any rulings or orders of the administrative body.

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<sup>3</sup> *Burden v. Snowden* (1992) 2 Cal.4th 556, 569; Government Code section 3301; Penal Code sections 831, 831.4.

- f. The cost of witness fees.
- g. The cost of salaries of employee witnesses, including overtime, the time and labor of the administrative appeal hearing body and its attendant clerical services.

The following activities are **not** reimbursable:

- a. Investigating charges.
- b. Writing and reviewing charges.
- c. Imposing disciplinary or punitive action against the peace officer.
- d. Litigating the final administrative decision.

2. Providing the opportunity for, and the conduct of an administrative appeal hearing for removal of the chief of police under circumstances that do not create a liberty interest (i.e., the charges do not constitute moral turpitude, which harms the employee's reputation and ability to find future employment). (Gov. Code, § 3304, subd. (b).)

The following activities and costs are reimbursable:

- a. Preparation and review of the various documents necessary to commence and proceed with the administrative appeal hearing.
- b. Legal review and assistance with the conduct of the administrative appeal hearing.
- c. Preparation and service of subpoenas.
- d. Preparation and service of any rulings or orders of the administrative body.
- e. The cost of witness fees.
- f. The cost of salaries of employee witnesses, including overtime, the time and labor of the administrative appeal hearing body and its attendant clerical services.

The following activities are **not** reimbursable:

- a. Investigating charges.
- b. Writing and reviewing charges.
- c. Imposing disciplinary or punitive action against the chief of police.
- d. Litigating the final administrative decision.



### C. Interrogations

The performance of the activities listed in this section are eligible for reimbursement only when a peace officer, as defined in Penal Code sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5, is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. (Gov. Code, § 3303.)<sup>4</sup>

Claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer. Claimants are also not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities. (Gov. Code, § 3303, subd. (i).)

The following activities are reimbursable:

1. When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)

Preparation and review of overtime compensation requests are reimbursable.

2. Providing notice to the peace officer before the interrogation. The notice shall inform the peace officer of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. The notice shall inform the peace officer of the nature of the investigation. (Gov. Code, § 3303, subs. (b) and (c).)

The following activities relating to the notice of interrogation are reimbursable:

- a. Review of agency complaints or other documents to prepare the notice of interrogation.
  - b. Identification of the interrogating officers to include in the notice of interrogation.
  - c. Preparation of the notice.
  - d. Review of notice by counsel.
  - e. Providing notice to the peace officer prior to interrogation.
3. Recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g).)

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<sup>4</sup> Interrogations of reserve or recruit officers; coroners; railroad police officers commissioned by the Governor; or non-sworn officers including custodial officers, sheriff security officers, police security officers, and school security officers are not reimbursable. (*Burden v. Snowden* (1992) 2 Cal.4th 556, 569; Government Code section 3301; Penal Code sections 831, 831.4.)

The cost of media and storage, and the cost of transcription are reimbursable. The investigator's time to record the session and transcription costs of non-sworn peace officers are **not** reimbursable.

4. Providing the peace officer employee with access to the recording prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code, § 3303, subd. (g)):
  - a. The further proceeding is not a disciplinary action;
  - b. The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e., the charges supporting the dismissal does not harm the employee's reputation or ability to find future employment);
  - c. The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;
  - d. The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;
  - e. The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.

The cost of media copying is reimbursable.

5. Producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer, in the following circumstances (Gov. Code, § 3303, subd. (g)):
  - a) When the investigation does not result in disciplinary action; and
  - b) When the investigation results in:
    - A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e.; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
    - A transfer of a permanent, probationary or at-will employee for purposes of punishment;
    - A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit; or
    - Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.

Review of the complaints, notes or recordings for issues of confidentiality by law enforcement, human relations or counsel; and the cost of processing, service and retention of copies are reimbursable.

The following activities are **not** reimbursable:

1. Activities occurring before the assignment of the case to an administrative investigator. These activities include taking an initial complaint, setting up the complaint file, interviewing parties, reviewing the file, and determining whether the complaint warrants an administrative investigation.
2. Investigation activities, including assigning an investigator to the case, reviewing the allegation, communicating with other departments, visiting the scene of the alleged incident, gathering evidence, identifying and contacting complainants and witnesses.
3. Preparing for the interrogation, reviewing and preparing interrogation questions, conducting the interrogation, and reviewing the responses given by the officer and/or witness during the interrogation.
4. Closing the file, including the preparation of a case summary disposition reports and attending executive review or committee hearings related to the investigation.

#### **D. Adverse Comment**

Performing the following activities upon receipt of an adverse comment concerning a peace officer, as defined in Penal Code sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5. (Gov. Code, §§ 3305 and 3306.):<sup>5</sup>

#### **School Districts**

- (a) If an adverse comment *is* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for the following activities:
  1. Providing notice of the adverse comment;
  2. Providing an opportunity to review and sign the adverse comment;
  3. Providing an opportunity to respond to the adverse comment within 30 days; and
  4. Noting the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is not* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for:
  1. Obtaining the signature of the peace officer on the adverse comment; or
  2. Noting the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.

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<sup>5</sup> The adverse comment activities do not apply to reserve or recruit officers; coroners; railroad police officers commissioned by the Governor; or non-sworn officers including custodial officers, sheriff security officers, police security officers, or school security officers. (*Burden v. Snowden* (1992) 2 Cal.4th 556, 569; Government Code section 3301; Penal Code sections 831, 831.4.)

### Counties

- (a) If an adverse comment *is* related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities:
1. Providing notice of the adverse comment;
  2. Providing an opportunity to review and sign the adverse comment;
  3. Providing an opportunity to respond to the adverse comment within 30 days; and
  4. Noting the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is not* related to the investigation of a possible criminal offense, then counties obtained are entitled to reimbursement for:
1. Providing notice of the adverse comment: and
  2. Obtaining the signature of the peace officer on the adverse comment; or
  3. Noting the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.

### Cities and Special Districts

- (a) If an adverse comment *is* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
1. Providing notice of the adverse comment;
  2. Providing an opportunity to review and sign the adverse comment;
  3. Providing an opportunity to respond to the adverse comment within 30 days; and
  4. Noting the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is not* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
1. Providing notice of the adverse comment;
  2. Providing an opportunity to respond to the adverse comment within 30 days; and
  3. Obtaining the signature of the peace officer on the adverse comment; or
  4. Noting the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.

The following adverse comment activities are reimbursable:

1. Review of the circumstances or documentation leading to the adverse comment by supervisor, command staff, human resources staff, or counsel to determine whether the comment constitutes a written reprimand or an adverse comment.
2. Preparation of notice of adverse comment.
3. Review of notice of adverse comment for accuracy.
4. Informing the peace officer about the officer's rights regarding the notice of adverse comment.
5. Review of peace officer's response to adverse comment.
6. Attaching the peace officers' response to the adverse comment and filing the document in the appropriate file.

The following activities are **not** reimbursable:

1. Investigating a complaint.
2. Interviewing a complainant.
3. Preparing a complaint investigation report.

## V. CLAIM PREPARATION AND SUBMISSION

Claimants may be reimbursed for the Reimbursable Activities described in Section IV above by claiming costs mandated by the state pursuant to the reasonable reimbursement methodology or by filing an actual cost claim, as described below:

### A. Reasonable Reimbursement Methodology

The Commission is adopting a *reasonable reimbursement methodology* to reimburse local agencies and school districts for all direct and indirect costs, as authorized by Government Code section 17557, subdivision (b), in lieu of payment of total actual costs incurred for the reimbursable activities specified in Section IV above.

#### 1. Definition

The definition of reasonable reimbursement methodology is in Government Code section 17518.5, as follows:

- (a) *Reasonable reimbursement methodology* means a formula for reimbursing local agency and school districts for costs mandated by the state, as defined in Section 17514.
- (b) A reasonable reimbursement methodology shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs.
- (c) A reasonable reimbursement methodology shall consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner.
- (d) Whenever possible, a *reasonable reimbursement methodology* shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state rather than detailed documentation of actual local costs. In cases when local agencies and school districts are projected to incur costs to implement a mandate over a period of more than one fiscal year,

the determination of a reasonable reimbursement methodology may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding 10 years.

- (e) A reasonable reimbursement methodology may be developed by any of the following:
  - (1) The Department of Finance.
  - (2) The Controller.
  - (3) An affected state agency.
  - (4) A claimant.
  - (5) An interested party.

## 2. Formula

The reasonable reimbursement methodology shall allow each eligible claimant to be reimbursed at the rate of \$ 37.25 per full-time sworn peace officer employed by the agency for all direct and indirect costs of performing the activities, as described in Section IV, Reimbursable Activities.

The rate per full-time sworn peace officer shall be adjusted each year by the Implicit Price Deflator referenced in Government Code section 17523.

Reimbursement is determined by multiplying the rate per full time sworn peace officer for the appropriate fiscal year by the number of full time sworn peace officers employed by the agency and reported to the Department of Justice.

### B. ACTUAL COST CLAIMS

Although the Commission adopted a reasonable reimbursement methodology for this mandated program, any eligible claimant may instead choose to file a reimbursement claim based on actual costs.

Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

Claimants may use time studies to support salary and benefit costs when an activity is task-repetitive. Time study usage is subject to the review and audit conducted by the State Controller's Office.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified above. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described above. Additionally, each reimbursement claim must be filed in a timely manner.

#### 1. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

##### a. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

##### b. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

##### c. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

##### d. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

##### e. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time

according to the rules of cost element B. 1. a. Salaries and Benefits, for each applicable reimbursable activity.

f. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element B.1.a, Salaries and Benefits, and B.1.b, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element B.1.c, Contracted Services.

2. Indirect Cost Rates

a. Local Agencies

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

- i. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be



expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or

ii The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

b. School Districts

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

c. County Offices of Education

County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

d. Community College Districts

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

## VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>6</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall

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<sup>6</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the application of a reasonable reimbursement methodology must also be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

#### **VII. OFFSETTING REVENUES AND OTHER REIMBURSEMENTS**

Any offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds shall be identified and deducted from this claim.

#### **VIII. STATE CONTROLLER'S REVISED CLAIMING INSTRUCTIONS**

Pursuant to Government Code section 17558, subdivision (c), the Controller shall issue revised claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the revised parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The revised claiming instructions shall be derived from the test claim decision and the revised parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(2), issuance of the revised claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon the revised parameters and guidelines adopted by the Commission.

#### **IX. REMEDIES BEFORE THE COMMISSION**

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

#### **X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

The Statement of Decision (CSM 4499) and the Statement of Decision on Reconsideration (05-RL-4499-01) are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision and the Statement of Decision on Reconsideration, is on file with the Commission.

# Exhibit G

OFFICE OF THE STATE CONTROLLER  
STATE MANDATED COSTS CLAIMING INSTRUCTIONS NO. 2008-08  
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS (POBOR)  
LOCAL AGENCIES  
BEGINNING IN FISCAL YEAR 2006-2007

JUNE 3, 2008

In accordance with Government Code (GC) section 17561, eligible claimants may submit claims to the State Controller's Office (SCO) for reimbursement of costs incurred for state mandated cost programs. The following are claiming instructions and forms that eligible claimants will use for filing claims for the POBOR program. These claiming instructions are issued subsequent to adoption of the program's Parameters and Guidelines (P's & G's) by the Commission on State Mandates (CSM).

On April 26, 2006, CSM reviewed its original findings and adopted a Statement of Decision on reconsideration which determined that the test claim legislation established costs mandated by the State according to the provisions listed in the P's & G's. For your reference, the P's & G's are included as an integral part of the claiming instructions.

**Limitations and Exceptions**

The following activities are not reimbursable:

**IV. REIMBURSABLE ACTIVITIES**

**A. Administrative Activities (Ongoing)**

Maintaining or updating cases, setting up, reviewing, evaluating, and closing cases. (See page 5 of the P's and G's).

**B. Administrative Appeal**

The administrative appeal activities do not apply to reserve or recruit officers; coroners; railroad police officers commissioned by the Governor; or non-sworn officers including custodial officers, sheriff security officers, police security officers, and school security officers. (See page 5 of the P's and G's).

The following activities related to administrative appeals are not reimbursable:

- a. Investigating charges;
- b. Writing and reviewing charges;
- c. Imposing disciplinary or punitive action against the peace officer or chief of police;
- d. Litigating the final administrative decision.

### **C. Interrogation**

The following activities related to interrogations are not reimbursable:

1. Interrogation of reserve or recruit officers; coroners; railroad police officers commissioned by the Governor; or non-sworn officers including custodial officers, sheriff security officers, police security officers, and school security officers. (See footnote on page 7 of the P's and G's).
2. When an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer. Claimants are also not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities. (See page 7 of the P's and G's).
3. The investigator's time to record the session and transcription costs of non-sworn peace officers.
4. Activities occurring before the assignment of the case to an administrative investigator. These activities include taking an initial complaint file, setting up the complaint file, interviewing parties, reviewing the file, and determining whether the complaint warrants an administrative investigation.
5. Investigation activities, including assigning an investigator to the case, reviewing the allegation, communicating with other departments, visiting the scene of the alleged incident, gathering evidence, identifying and contacting complainants and witnesses.
6. Preparing for the interrogation, reviewing and preparing interrogation questions, conducting the interrogation, and reviewing the responses given by the officer and/or witness during the interrogation.
7. Closing the file, including the preparation of a case summary disposition report and attending executive review or committee hearings related to the investigation.

### **D. Adverse Comment**

The following activities related to adverse comments are not reimbursable:

1. Adverse comment activities do not apply to reserve or recruit officers; coroners; railroad police officers commissioned by the Governor; or non-sworn officers including custodial officers, sheriff security officers, police security officers, and school security officers. (See footnote on page 9 of the P's and G's).
2. Investigating a complaint;
3. Interviewing a complainant;
4. Preparing a complaint investigation report.

## **Claim Preparation and Submission**

Claimants may be reimbursed for the activities described in Section IV of the P's and G's by using the reasonable reimbursement methodology or by filing an actual cost claim.

### **A. Reasonable Reimbursement Methodology**

This method allows each eligible claimant to be reimbursed at the rate of \$37.25 per full-time sworn peace officer employed by the agency and includes all direct and indirect costs of performing the activities described in Section IV, Reimbursable Activities, in the P's and G's. This rate will be adjusted annually by the Implicit Price Deflator (IPD).

### **B. Actual Cost Method**

Actual costs are those costs incurred to implement the mandated activities. These costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at, or near, the same time the actual cost was incurred for the event or activity in question.

Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts. Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. It may also include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

Claimants may use time studies to support salary and benefit costs when an activity is repetitive. Time study usage is subject to the review and audit conducted by SCO.

## **Eligible Claimants**

Any city, county, or special district that employs peace officers and incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of these costs.

## **Filing Deadlines**

### **A. Reimbursement Claims**

Initial reimbursement claims must be filed within 120 days from the issuance date of the claiming instructions. Costs incurred for compliance with this mandate are reimbursable for fiscal year 2006-2007 and beyond. Claims for the 06-07 fiscal year must be filed with SCO and be delivered or postmarked on or before **October 1, 2008**. Claims for fiscal year 2007-08 must be filed with SCO and be delivered or postmarked on or before **February 17, 2009**, before a late fee is assessed. **Claims filed more than one year after the deadline will not be accepted.**

## **B. Late Penalty**

GC Section 17568 as amended by Chapter 6, Statutes of 2008, states that if a local agency submits a reimbursement claim to SCO after the deadline as specified in GC Section 17560, the Controller shall reduce the reimbursement claim in an amount equal to 10 percent of the amount that would have been allowed had the reimbursement claim been timely filed, provided that the amount of this reduction shall not exceed ten thousand dollars (\$10,000).

## **C. Estimated Claims**

Pursuant to AB 8, Chapter 6, Statutes of 2008, the option to file estimated reimbursement claims has been eliminated. Therefore, estimated claims filed on or after February 16, 2008, will not be accepted by SCO.

## **Minimum Claim Cost**

GC section 17564(a) provides that no claim shall be filed pursuant to Sections 17551 and 17561, unless such claim exceeds one thousand dollars (\$1,000).

## **Certification of Claim**

In accordance with the provisions of GC section 17561, an authorized officer of the claimant shall be required to provide a certification of claim stating: "I certify, (or declare), under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of the Code of Civil Procedure section 2015.5, for those costs mandated by the State and contained herein.

## **Audit of Costs**

All claims submitted to SCO are reviewed to determine if costs are related to the mandate, are reasonable and not excessive, and the claim was prepared in accordance with SCO's claiming instructions and the P's & G's adopted by CSM. If any adjustments are made to a claim, a "Notice of Claim Adjustment" specifying the claim component adjusted, the amount adjusted, and the reason for the adjustment, will be mailed within 30 days after payment of the claim.

Pursuant to GC section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency for this mandate is subject to the initiation of an audit by SCO no later than three years after the date that the actual reimbursement claim was filed or last amended, whichever is later. However, if no funds are appropriated or no payment was made to a claimant for the program for the fiscal year for which the claim was filed, the time for SCO to initiate an audit shall commence to run from the date of initial payment of the claim.

In any case, an audit shall be completed no later than two years after the date that the audit was initiated. All documents used to support the reimbursable activities must be retained during the period subject to audit. If an audit has been initiated by SCO during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings. On-site audits will be conducted by SCO as deemed necessary.

## **Retention of Claiming Instructions**

The claiming instructions and forms in this package should be retained permanently in your Mandated Cost Manual for future reference and use in filing claims. These forms should be

duplicated to meet your filing requirements. You will be notified of updated forms or changes to claiming instructions as necessary.

Questions, or requests for hard copies of these instructions, should be faxed to Angie Lowi-Teng at (916) 323-6527 or e-mailed to [ateng@sco.ca.gov](mailto:ateng@sco.ca.gov). Or, if you wish, you may call Angie of the Local Reimbursements Section at (916) 323-0706.

For your reference, these and future mandated costs claiming instructions and forms can be found on the Internet at [www.sco.ca.gov/ard/local/mancost/index.shtml](http://www.sco.ca.gov/ard/local/mancost/index.shtml).

### **Address for Filing Claims**

Claims should be rounded to the nearest dollar. Submit a signed original and a copy of form FAM-27, Claim for Payment, and all other forms and supporting documents.

**To expedite the payment process, please sign the form in blue ink, and attach a copy of the form FAM-27 to the top of the claim package.**

Use the following mailing addresses:

If delivered by

U.S. Postal Service:

Office of the State Controller  
Attn: Local Reimbursements Section  
Division of Accounting and Reporting  
P.O. Box 942850  
Sacramento, CA 94250

If delivered by

other delivery services:

Office of the State Controller  
Attn: Local Reimbursements Section  
Division of Accounting and Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95816



BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Government Code Sections 3300 through 3310, As Added and Amended by Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174, and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675

And filed December 21, 1995;

By the City of Sacramento, Claimant.

NO. CSM – 4499

**ADOPTION OF  
PARAMETERS AND  
GUIDELINES PURSUANT  
TO GOVERNMENT CODE  
SECTION 17557 AND  
TITLE 2, CALIFORNIA  
CODE OF REGULATIONS,  
SECTION 1183.12**

(Adopted on July 27, 2000)

**ADOPTED PARAMETERS AND GUIDELINES**

The Commission on State Mandates adopted the attached Parameters and Guidelines on July 27, 2000.

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PAULA HIGASHI, Executive Director

## **PARAMETERS AND GUIDELINES**

Government Code Sections 3300 through 3310

As Added and Amended by Statutes of 1976, Chapter 465;  
Statutes of 1978, Chapters 775, 1173, 1174, and 1178;  
Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter  
994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and  
Statutes of 1990, Chapter 675

*Peace Officers Procedural Bill of Rights*

### **I. SUMMARY AND SOURCE OF THE MANDATE**

In order to ensure stable employer-employee relations and effective law enforcement services, the Legislature enacted Government Code sections 3300 through 3310, known as the Peace Officers Procedural Bill of Rights (POBAR).

The test claim legislation provides procedural protections to peace officers employed by local agencies and school districts<sup>1</sup> when a peace officer is subject to an interrogation by the employer, is facing punitive action or receives an adverse comment in his or her personnel file. The protections required by the test claim legislation apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at-will" employees), and peace officers on probation who have not reached permanent status.

On November 30, 1999, the Commission adopted its Statement of Decision that the test claim legislation constitutes a partial reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

### **II. ELIGIBLE CLAIMANTS**

Counties, cities, a city and county, school districts and special districts that employ peace officers are eligible claimants.

### **III. PERIOD OF REIMBURSEMENT**

At the time this test claim was filed, Section 17557 of the Government Code stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. On December 21, 1995, the City of Sacramento filed the test claim for this mandate. Therefore, costs incurred for Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174, and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675 are eligible for reimbursement on or after July 1, 1994.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section

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<sup>1</sup> Government Code section 3301 states: "For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code."

17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If total costs for a given year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

#### **IV. REIMBURSABLE ACTIVITIES**

For each eligible claimant, all direct and indirect costs of labor, supplies and services, training and travel for the performance of the following activities, are eligible for reimbursement:

##### A. Administrative Activities (On-going Activities)

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities
2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.
3. Updating the status of the POBAR cases.

##### B. Administrative Appeal

1. Reimbursement period of July 1, 1994 through December 31, 1998 – The administrative appeal activities listed below apply to permanent employees, at-will employees, and probationary employees.

Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interest are not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent, probationary and at-will employees for purposes of punishment;
- Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
- Other actions against permanent, probationary and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

2. Reimbursement period beginning January 1, 1999 – The administrative appeal activities listed below apply to permanent employees and the Chief of Police.

Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent employees for purposes of punishment;
- Denial of promotion for permanent employees for reasons other than merit; and
- Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

### C. Interrogations

Claimants are eligible for reimbursement for the performance of the activities listed in this section only when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. (Gov. Code, § 3303.)

Claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer. Claimants are also not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities. (Gov. Code, § 3303, subd. (i).)

1. When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)

Included in the foregoing is the preparation and review of overtime compensation requests.

2. Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subds. (b) and (c).)

Included in the foregoing is the review of agency complaints or other documents to prepare the notice of interrogation; determination of the investigating officers; redaction of the agency complaint for names of the complainant or other accused parties or witnesses or confidential information; preparation of notice or agency

complaint; review by counsel; and presentation of notice or agency complaint to peace officer.

3. Tape recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g).)

Included in the foregoing is the cost of tape and storage, and the cost of transcription.

4. Providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code, § 3303, subd. (g));

- a) The further proceeding is not a disciplinary action;

- b) The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e., the charges supporting the dismissal does not harm the employee's reputation or ability to find future employment);

- c) The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;

- d) The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;

- e) The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.

Included in the foregoing is the cost of tape copying.

5. Producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer, in the following circumstances (Gov. Code, § 3303, subd. (g)):

- a) When the investigation does not result in disciplinary action; and

- b) When the investigation results in:

- A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e.; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
- A transfer of a permanent, probationary or at-will employee for purposes of punishment;
- A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit; or
- Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.

Included in the foregoing is the review of the complaints, notes or tape recordings for issues of confidentiality by law enforcement, human relations or counsel; cost of processing, service and retention of copies.

#### D. Adverse Comment

Performing the following activities upon receipt of an adverse comment (Gov. Code, §§ 3305 and 3306):

##### School Districts

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
  - Providing an opportunity to review and sign the adverse comment;
  - Providing an opportunity to respond to the adverse comment within 30 days; and
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

##### Counties

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities:

- Providing notice of the adverse comment;
  - Providing an opportunity to review and sign the adverse comment;
  - Providing an opportunity to respond to the adverse comment within 30 days;  
and
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then counties obtained are entitled to reimbursement for:
- Providing notice of the adverse comment: and
  - Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Cities and Special Districts

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
  - Providing an opportunity to review and sign the adverse comment;
  - Providing an opportunity to respond to the adverse comment within 30 days;  
and
  - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
  - Providing an opportunity to respond to the adverse comment within 30 days;  
and
  - Obtaining the signature of the peace officer on the adverse comment; or

- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Included in the foregoing are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing.

#### **V. CLAIM PREPARATION AND SUBMISSION**

Claims for reimbursement must be timely filed and identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV. of this document.

#### **SUPPORTING DOCUMENTATION**

Claimed costs shall be supported by the following cost element information:

##### **A. Direct Costs**

Direct Costs are defined as costs that can be traced to specific goods, services, units, programs, activities or functions.

Claimed costs shall be supported by the following cost element information:

##### **1. Salaries and Benefits**

Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

Reimbursement includes compensation paid for salaries, wages, and employee benefits. Employee benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and worker's compensation insurance. Employee benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.

##### **2. Materials and Supplies**

Only expenditures that can be identified as a direct cost of this mandate may be claimed. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

##### **3. Contract Services**

Provide the name(s) of the contractor(s) who performed the services, including any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services. Submit contract consultant and attorney invoices with the claim.



4. Travel

Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points, and travel costs.

5. Training

The cost of training an employee to perform the mandated activities is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, and per diem.

B. Indirect Costs

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the OMB A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) for the department if the indirect cost rate claimed exceeds 10%. If more than one department is claiming indirect costs for the mandated program, each department must have its own ICRP prepared in accordance with OMB A-87. An ICRP must be submitted with the claim when the indirect cost rate exceeds 10%.

**VI. SUPPORTING DATA**

For audit purposes, all costs claimed shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested, and all reimbursement claims are subject to audit during the period specified in Government Code section 17558.5, subdivision (a).

All claims shall identify the number of cases in process at the beginning of the fiscal year, the number of new cases added during the fiscal year, the number of cases completed or closed during the fiscal year, and the number of cases in process at the end of the fiscal year.

**VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT**

Any offsetting savings the claimant experiences as a direct result of the subject mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds shall be identified and deducted from this claim.

#### **VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION**

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.

<b>CLAIM FOR PAYMENT</b> Pursuant to Government Code Section 17561 <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS (POBOR)</b> <b>LOCAL AGENCIES</b>		For State Controller Use Only (19) Program Number 00187 (20) Date Filed (21) LRS Input	PROGRAM  <b>187</b>
(01) Claimant Identification Number		<b>Reimbursement Claim Data</b>	
(02) Claimant Name		(22) FORM-1, (03)	
Address		(23) FORM-1, (05)(A)(g)	
		(24) FORM-1, (05)(B)(g)	
		(25) FORM-1, (05)(C)(g)	
<b>Type of Claim</b>	<b>Estimated Claim</b>	<b>Reimbursement Claim</b>	(26) FORM-1, (05)(D)(g)
	(03) Estimated <input type="checkbox"/>	(09) Reimbursement <input type="checkbox"/>	(27) FORM-1, (07)
	(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(28) FORM-1, (09)
	(05) Amended <input type="checkbox"/>	(11) Amended <input type="checkbox"/>	(29) FORM-1, (10)
<b>Fiscal Year of Cost</b>	(06)	(12)	(30) FORM-1, (11)
<b>Total Claimed Amount</b>	(07)	(13)	(31)
<b>Less: 10% Late Penalty (refer to claiming instructions)</b>		(14)	(32)
<b>Less: Prior Claim Payment Received</b>		(15)	(33)
<b>Net Claimed Amount</b>		(16)	(34)
<b>Due from State</b>	(08)	(17)	(35)
<b>Due to State</b>		(18)	(36)
<b>(37) CERTIFICATION OF CLAIM</b>			
In accordance with the provisions of Government Code § 17561, I certify that I am the officer authorized by the local agency to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1098, inclusive.			
I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein; and such costs are for a new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.			
The amounts for the Reimbursement Claim are hereby claimed from the State for payment of actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.			
Signature of Authorized Officer		Date	
_____		_____	
Type or Print Name		Title	
(38) Name of Contact Person for Claim		Telephone Number	
_____		_____	
		E-mail Address	
		_____	

<b>Program</b> <b>187</b>	<b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS (POBOR)</b> <b>LOCAL AGENCIES</b> <b>Certification Claim Form</b> <b>Instructions</b>	<b>FORM</b> <b>FAM-27</b>
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- (01) Enter the payee number assigned by the State Controller's Office.
- (02) Enter your Official Name, County of Location, Street or P. O. Box address, City, State, and Zip Code.
- (03) Leave blank.
- (04) Leave blank.
- (05) Leave blank.
- (06) Leave blank.
- (07) Leave blank.
- (08) Leave blank.
- (09) If filing a reimbursement claim, enter an "X" in the box on line (09) Reimbursement.
- (10) If filing a combined reimbursement claim on behalf of districts within the county, enter an "X" in the box on line (10) Combined.
- (11) If filing an amended reimbursement claim, enter an "X" in the box on line (11) Amended.
- (12) Enter the fiscal year for which actual costs are being claimed. If actual costs for more than one fiscal year are being claimed, complete a separate form FAM-27 for each fiscal year.
- (13) Enter the amount of the reimbursement claim from Form-1, line (12). The total claimed amount must exceed \$1,000.
- (14) Actual claims for 06-07 must be filed by **October 1, 2008**, otherwise the claims shall be reduced by a late penalty. Enter zero if the claim was timely filed, otherwise, enter the product of multiplying line (13) by the factor 0.10 (10% penalty), not to exceed \$1,000.
- (15) If filing a reimbursement claim or a claim was previously filed for the same fiscal year, enter the amount received for the claim. Otherwise, enter a zero.
- (16) Enter the result of subtracting line (14) and line (15) from line (13).
- (17) If line (16), Net Claimed Amount, is positive, enter that amount on line (17), Due from State.
- (18) If line (16), Net Claimed Amount, is negative, enter that amount on line (18), Due to State.
- (19) to (21) Leave blank.
- (22) to (36) Reimbursement Claim Data. Bring forward the cost information as specified on the left-hand column of lines (22) through (36) for the reimbursement claim, e.g., Form-1, (05)(A)(g), means the information is located on Form-1, block (05)(A), column (g). Enter the information on the same line but in the right-hand column. Cost information should be rounded to the nearest dollar, i.e., no cents. Indirect costs percentage should be shown as a whole number and without the percent symbol, i.e., 35.19% should be shown as 35. **Completion of this data block will expedite the payment process.**
- (37) Read the statement "Certification of Claim." If it is true, the claim must be dated, signed by the agency's authorized officer, and must include the person's name and title, typed or printed. **Claims cannot be paid unless accompanied by an original signed certification. (To expedite the payment process, please sign the form FAM-27 with blue ink, and attach a copy of the form FAM-27 to the top of the claim package.)**
- (38) Enter the name, telephone number, and e-mail address of the person to contact if additional information is required.

**SUBMIT A SIGNED ORIGINAL, AND A COPY OF FORM FAM-27, WITH ALL OTHER FORMS AND SUPPORTING DOCUMENTS TO:**

*Address, if delivered by U.S. Postal Service:*

**OFFICE OF THE STATE CONTROLLER  
 ATTN: Local Reimbursements Section  
 Division of Accounting and Reporting  
 P.O. Box 942850  
 Sacramento, CA 94250**

*Address, if delivered by other delivery service:*

**OFFICE OF THE STATE CONTROLLER  
 ATTN: Local Reimbursements Section  
 Division of Accounting and Reporting  
 3301 C Street, Suite 500  
 Sacramento, CA 95816**

<b>Program</b>  <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS (POBOR)</b> <b>LOCAL AGENCIES</b> <b>CLAIM SUMMARY</b>	<b>FORM</b>  <b>1</b>					
(01) Claimant		(02) Fiscal Year ____ / ____					
<b>Claim Statistics</b>							
(03) Number of full-time sworn peace officers employed by the agency during this fiscal year							
<b>Flat Rate Method</b>							
(04) Total Cost		[Line (03) X \$39.31 for 07-08 fiscal year] [Enter total on line (09)]					
<b>Actual Cost Method</b>							
<b>Direct Costs</b>	<b>Object Accounts</b>						
	(a)	(b)	(c)	(d)	(e)	(f)	(g)
(05) Reimbursable Activities	Salaries	Benefits	Materials And Supplies	Contract Services	Fixed Assets	Travel And Training	Total
A. Administrative Activities							
B. Administrative Appeal							
C. Interrogations							
D. Adverse Comment							
(06) Total Direct Costs							
<b>Indirect Costs</b>							
(07) Indirect Cost Rate		[From ICRP or 10%]					%
(08) Total Indirect Costs		[Refer to claiming instructions]					
(09) Total Direct and Indirect Costs		[Refer to claiming instructions]					
<b>Cost Reduction</b>							
(10) Less: Offsetting Savings							
(11) Less: Other Reimbursements							
(12) Total Claimed Amount		[Line (09) - {(line (10) + line (11))}]					

Program  <b>187</b>	<b>MANDATED COSTS</b> PEACE OFFICERS PROCEDURAL BILL OF RIGHTS (POBOR) LOCAL AGENCIES CLAIM SUMMARY	<b>FORM</b>  <b>1</b>
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- (01) Enter the name of the claimant.
- (02) Enter the fiscal year of claim.
- (03) Enter the number of full-time sworn peace officers who were employed by the agency during the fiscal year of claim.
- (04) Total Cost. Multiply the number of peace officers from line (03) by the flat rate for the total cost, and enter the result on line (09).
- (05) Reimbursable Activities. For each reimbursable activity, enter the total from form 2, line (05), columns (d) through (i) to form 1, block (04), columns (a) through (f) in the appropriate row. Total each row.
- (06) Total Direct Costs. Total columns (a) through (g).
- (07) Indirect Cost Rate. Indirect costs may be computed as 10% of direct labor costs, excluding fringe benefits, without preparing an ICRP. If an indirect cost rate of greater than 10% is used, include the Indirect Cost Rate Proposal (ICRP) with the claim.
- (08) Total Indirect Costs. If the 10% flat rate is used for indirect costs, multiply Total Salaries, line (06)(a), by the Indirect Cost Rate, line (07). If an ICRP is submitted and both salaries and benefits were used in the distribution base for the computation of the indirect cost rate, then multiply the sum of Total Salaries, line (06)(a), and Total Benefits, line (06)(b), by the Indirect Cost Rate, line (07). If more than one department is reporting costs, each must have its own ICRP for the program.
- (09) Total Direct and Indirect Costs. **Flat Rate Method:** Enter the total from line (04).  
  
**Actual Cost Method:** Enter the sum of Total Direct Costs, line (06)(g), and Total Indirect Costs, line (08).
- (10) Less: Offsetting Savings. If applicable, enter the total savings experienced by the claimant as a direct result of this mandate. Submit a detailed schedule of savings with the claim.
- (11) Less: Other Reimbursements. If applicable, enter the amount of other reimbursements received from any source including, but not limited to, service fees collected, federal funds, and other state funds, that reimbursed any portion of the mandated cost program. Submit a schedule detailing the reimbursement sources and amounts.
- (12) Total Claimed Amount. Line (09) less the sum of line (10) plus line (11). Enter the total on this line and carry the amount forward to form FAM-27, line (13) for the Reimbursement Claim.

<b>Program</b>  <span style="font-size: 24pt; font-weight: bold;">187</span>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS (POBOR)</b> <b>LOCAL AGENCIES</b> <b>ACTIVITY COST DETAIL</b>	<b>FORM</b>  <span style="font-size: 24pt; font-weight: bold;">2</span>
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(01) Claimant	(02) Fiscal Year
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(03) Reimbursable Activities: Check only one box per form to identify the activity being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Interrogations
<input type="checkbox"/> Administrative Appeal	<input type="checkbox"/> Adverse Comment

(04) Description of Expenses			Object Accounts					
(a) Employee Names, Job Classifications, Functions Performed and Description of Expenses	(b) Hourly Rate or Unit Cost	(c) Hours Worked or Quantity	(d) Salaries	(e) Benefits	(f) Materials And Supplies	(g) Contract Services	(h) Fixed Assets	(i) Travel And Training

(05) Total	Subtotal	Page: ___ of ___						
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<b>Program</b>  <b>187</b>	<b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS (POBOR)</b>  <b>LOCAL AGENCIES</b>  <b>ACTIVITY COST DETAIL</b>  <b>Instructions</b>	<b>FORM</b>  <b>2</b>
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**For Actual Cost Method Use Only.**

- (01) Claimant. Enter the name of the claimant.
- (02) Fiscal Year. Enter the fiscal year for which costs were incurred.
- (03) Reimbursable Activities. Check the box that indicates the activity being claimed. Check only one box per form. A separate Form 2 shall be prepared for each activity.
- (04) Description of Expenses. The following table identifies the type of information required to support reimbursable costs. To detail costs for the activity box "checked" in block (03), enter the employee names, position titles, a brief description of the activities performed, actual time spent by each employee, productive hourly rates, fringe benefits, supplies used, contract services, and travel and training expenses. **The descriptions required in column (4)(a) must be of sufficient detail to explain the cost of activities or items being claimed.** For audit purposes, all supporting documents must be retained by the claimant for a period of not less than three years after the date the claim was filed or last amended, whichever is later. If no funds were appropriated and no payment was made at the time the claim was filed, the time for the Controller to initiate an audit shall be from the date of initial payment of the claim. Such documents shall be made available to SCO on request.

Object/ Sub object Accounts	Columns									Submit supporting documents with the claim
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	
<b>Salaries</b>	Employee Name & Title	Hourly Rate	Hours Worked	Salaries= Hourly Rate x Hours Worked						
<b>Benefits</b>	Activities Performed	Benefit Rate			Benefits+ Benefit Rate X Salaries					
<b>Materials and Supplies</b>	Description of Supplies Used	Unit Cost	Quantity Used			Cost= Unit Cost X Quantity Used				
<b>Contract Services</b>	Name of Contractor Specific Tasks Performed	Hourly Rate	Hours Worked Inclusive Dates of Service			Cost=Hourly Rate x Hours Worked or Total Contract Cost				Copy of Contract and Invoices
<b>Fixed Assets</b>	Description of Equipment Purchased	Unit Cost	Usage					Cost=Unit Cost x Usage		
<b>Travel and Training</b>	Purpose of Trip Name and Title Departure and Return Date	Per Diem Rate Mileage Rate Travel Cost	Days Miles Travel Mode						Total Travel=Rate x Days or Miles	
Training	Employee Name and Title Name of Class		Dates Attended						Registration Fee	

- (05) Total line (04), columns (d) through (i) and enter the sum on this line. Check the appropriate box to indicate if the amount is a total or subtotal. If more than one form is needed to detail the activity costs, number each page. Enter totals from line (05), columns (d) through (i) to form 1, block (04), columns (a) through (f) in the appropriate row.



BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR  
STATEMENT OF DECISION ON:

Government Code Sections 3300 through 3310

As Added and Amended by Statutes 1976,  
Chapter 465; Statutes 1978, Chapters 775, 1173,  
1174, and 1178; Statutes 1979, Chapter 405;  
Statutes 1980, Chapter 1367; Statutes 1982,  
Chapter 994; Statutes 1983, Chapter 964;  
Statutes 1989, Chapter 1165; and  
Statutes 1990, Chapter 675 (CSM 4499)

Directed by Government Code Section 3313,  
Statutes 2005, chapter 72, section 6  
(Assem. Bill (AB) No. 138),  
Effective July 19, 2005.

Case No.: 05-RL-4499-01

*Peace Officer Procedural Bill of Rights*

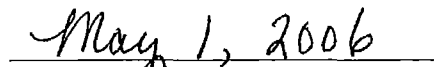
STATEMENT OF DECISION PURSUANT  
TO GOVERNMENT CODE SECTION 17500  
ET SEQ.; CALIFORNIA CODE OF  
REGULATIONS, TITLE 2, DIVISION 2,  
CHAPTER 2.5, ARTICLE 7

(Adopted on April 26, 2006)

STATEMENT OF DECISION

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

  
\_\_\_\_\_  
PAULA HIGASHI, Executive Director

  
\_\_\_\_\_  
Date

# Exhibit H

**CLAIM FOR PAYMENT**  
**Pursuant to Government Code Section 17561**  
**PEACE OFFICERS PROCEDURAL BILL OF RIGHTS**

For State Controller Use Only

(19) Program Number 00187

(20) Date Filed \_\_\_/\_\_\_/\_\_\_

(21) LRS Input \_\_\_/\_\_\_/\_\_\_

**Program**  
**187**

(01) Claimant Identification Number <b>9943</b>		<b>Reimbursement Claim Data</b>		
(02) Claimant Name <b>70 West Hedding Street, East Wing</b>		(22) PPBR-1,(03)(a)		23
County of Location <b>Santa Clara</b>		(23) PPBR-1,(03)(b)		6
Street Address or P.O. Box <b>2nd Floor</b>		(24) PPBR-1,(03)(c)		28
City <b>San Jose</b>	State <b>CA</b>	Zip Code <b>95110</b>	(25) PPBR-1,(03)(d)	1
<b>Type of Claim</b>	<b>Estimated Claim</b>	<b>Reimbursement Claim</b>	(26) PPBR-1,(04)(1)(e)	23,522
	(03) Estimated <input checked="" type="checkbox"/>	(09) Reimbursement <input checked="" type="checkbox"/>	(27) PPBR-1,(04)(2)(e)	1,204
	(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(28) PPBR-1,(04)(3)(e)	58,917
	(05) Amended <input type="checkbox"/>	(11) Amended <input type="checkbox"/>	(29) PPBR-1,(04)(4)(e)	25,256
Fiscal Year of Cost of Cost	(06) <b>2004-5005</b>	(12) <b>2003-2004</b>	(30) PPBR-1,(06)	<b>SEE ICRP SUMMARY</b>
Total Claimed Amount	(07) <b>\$153,980</b>	(13) <b>\$153,980</b>	(31) PPBR-1,(07)	45,082
LESS: 10% Late Penalty		(14)	(32) PPBR-1,(09)	
LESS: Estimated Claim Payment Received		(15)	(33) PPBR-1,(10)	
Net Claimed Amount		(16) <b>\$153,980</b>	(34)	
Due from State	(08) <b>\$153,980</b>	(17) <b>\$153,980</b>	(35)	
Due to State		(18)	(36)	

**(37) CERTIFICATION OF CLAIM**

In accordance with the provisions of Government Code 17561, I certify that I am the officer authorized by the local agency to file mandated cost claims with the State of California for this program, and certify under the penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 through 1098, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein, and such costs are for new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.

The amounts for this Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature of Authorized Officer \_\_\_\_\_ Date \_\_\_\_\_

**Ram Venkatesan** \_\_\_\_\_ **SB 90 Coordinator** \_\_\_\_\_  
 Print or type name Title

(38) Name of Contact Person for Claim Telephone Number **(916) 485-8102**  
**Ferlyn Junio (MAXIMUS, Inc.)** E-mail Address \_\_\_\_\_

**MULTIPLE DEPARTMENT CLAIM (Sheriff, DA, Probation & Other)**

**SB90 CLAIMING BASIC DATA**

**PEACE OFFICERS PROCEDURAL BILL OF RIGHTS  
Chapter 465, Statutes of 1976**

**Claimant ID Number:** 9943  
**Claimant Name:** County of Santa Clara  
**County:** Santa Clara  
**Address:** 70 West Hedding Street, East Wing  
**Street:** 2nd Floor  
**City:** San Jose  
**Zip Code:** 95110

**TYPE OF CLAIM**

<b>Reimbursement Claim:</b>	<b>(tag with an "X")</b>	<b>Estimated Claim:</b>	<b>(tag with an "X")</b>
Reimbursement	<input checked="" type="checkbox"/>	Estimated	<input checked="" type="checkbox"/>
Combined	<input type="checkbox"/>	Combined	<input type="checkbox"/>
Amended	<input type="checkbox"/>	Amended	<input type="checkbox"/>

**Actual Fiscal Year:** 2003-2004  
**Estimated Fiscal Year:** 2004-5005

**Contact Name:** Ferlyn Junio (MAXIMUS, Inc.)  
**Phone Number:** (916) 485-8102

**Auth. Representative:** Ram Venkatesan  
**Title:** SB 90 Coordinator  
**E-Mail Address:**  
**Date:**

**INDIRECT COST RATE PROPOSAL (ICRP)**

<b>ICRP Rate</b> (enter rate)	<b>Salaries Only</b> (tag with an "X")	<b>Salaries &amp; Ben.</b> (tag with an "X")
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\* See ICRP SUMMARY WORKSHEET at end of workbook

<b>PRODUCTIVE HOURS</b>	<b>1560.65</b>
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CLAIM FOR PAYMENT Pursuant to Government Code Section 17561 PEACE OFFICERS PROCEDURAL BILL OF RIGHTS			For State Controller Use Only		Program <b>187</b>
			(19) Program Number 00187	(20) Date Filed ___/___/___	
(01) Claimant Identification Number <b>9943</b>			Reimbursement Claim Data		
(02) Claimant Name <b>70 West Hedding Street, East Wing</b>			(22)	PPBR-1,(03)(a)	<b>23</b>
County of Location <b>Santa Clara</b>			(23)	PPBR-1,(03)(b)	<b>6</b>
Street Address or P.O. Box <b>2nd Floor</b>			(24)	PPBR-1,(03)(c)	<b>28</b>
City <b>San Jose</b>			State <b>CA</b>		Zip Code <b>95110</b>
			(25)	PPBR-1,(03)(d)	<b>1</b>
Type of Claim	Estimated Claim	Reimbursement Claim	(26)	PPBR-1,(04)(1)(e)	<b>23,522</b>
	(03) Estimated <input checked="" type="checkbox"/>	(09) Reimbursement <input checked="" type="checkbox"/>	(27)	PPBR-1,(04)(2)(e)	<b>1,204</b>
	(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(28)	PPBR-1,(04)(3)(e)	<b>58,917</b>
	(05) Amended <input type="checkbox"/>	(11) Amended <input type="checkbox"/>	(29)	PPBR-1,(04)(4)(e)	<b>25,256</b>
Fiscal Year of Cost of Cost	(06) <b>2004-5005</b>	(12) <b>2003-2004</b>	(30)	PPBR-1,(06)	<b>SEE ICRP SUMMARY</b>
Total Claimed Amount	(07) <b>\$153,980</b>	(13) <b>\$153,980</b>	(31)	PPBR-1,(07)	<b>45,082</b>
LESS: 10% Late Penalty		(14)	(32)	PPBR-1,(09)	
LESS: Estimated Claim Payment Received		(15)	(33)	PPBR-1,(10)	
Net Claimed Amount		(16) <b>\$153,980</b>	(34)		
Due from State	(08) <b>\$153,980</b>	(17) <b>\$153,980</b>	(35)		
Due to State		(18)	(36)		
<b>(37) CERTIFICATION OF CLAIM</b>					
In accordance with the provisions of Government Code 17561, I certify that I am the officer authorized by the local agency to file mandated cost claims with the State of California for this program, and certify under the penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 through 1098, inclusive.					
I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein, and such costs are for new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.					
The amounts for this Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.					
Signature of Authorized Officer			Date		
<b>Ram Venkatesan</b>			<b>SB 90 Coordinator</b>		
Print or type name			Title		
(38) Name of Contact Person for Claim			Telephone Number <b>(916) 485-8102</b>		
<b>Ferlyn Junio (MAXIMUS, Inc.)</b>			E-mail Address		

<b>Program 187</b>	<b>MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS CLAIM SUMMARY</b>				<b>FORM PPBR-1</b>
(01) Claimant: County of Santa Clara		(02) Fiscal year costs were incurred: 2003-2004			
<b>Claim Statistics</b>					
(03)	(a) Number of cases in process at the beginning of the fiscal year				23
	(b) Number of new cases added during the fiscal year				6
	(c) Number of cases completed or closed during the fiscal year				28
	(d) Number of cases in process at the end of the year				1
<b>Direct Costs</b>					
(04) Reimbursable Components	(a) Salaries	(b) Benefits	(c) Services and Supplies	(d) Travel and Training	(e) Total
1. Administrative Activities	\$17,793	\$5,728			\$23,522
2. Administrative Appeal	\$935	\$269			\$1,204
3. Interrogations	\$45,176	\$13,741			\$58,917
4. Adverse Comment	\$19,739	\$5,517			\$25,256
(05) Total Direct Costs	\$83,643	\$25,255			\$108,898
<b>Indirect Costs</b>					
(06) Indirect Cost Rate (From ICRP)	Salary and Benefits				SEE ICRP SUMMARY
(07) Indirect Costs	[(Line(06))*(line(05)(a)+line(05)(b))				\$45,082
(08) Total Direct and Indirect Costs	[Line (05)(e) + Line (07)]				\$153,980
<b>Cost Reductions</b>					
(09) Less Offsetting Savings, if applicable					
(10) Less Other Reimbursements, if applicable					
(11) Total Claimed Amount:	{Line(08)- [Line (09) + Line(10)]}				\$153,980

Revised 09/03

<b>Program</b> <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant: <b>County of Santa Clara</b>	(02) Fiscal year costs were incurred: <b>2003-2004</b>
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input checked="" type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>SHERIFF COSTS</b>								
Lawrence St. Denis, Sergeant	\$51.15	23.09%	7.25			\$371	\$86	\$456
Robert Schiller, Sergeant	\$64.91	34.02%	5.00			\$325	\$110	\$435
Dorothy Matuzek, Sergeant	\$54.98	33.32%	18.40			\$1,012	\$337	\$1,349
Cathy Watson, Sergeant	\$54.98	30.72%	8.50			\$467	\$144	\$611
Karen Burgess, Sergeant	\$54.98	28.76%	3.60			\$198	\$57	\$255
Revise and update internal policies, procedures, manuals and or other materials relating to POBARS, attendance to specific training and maintaining and/or updating the status of the POBAR case records.								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total ( )      Subtotal ( )						\$2,372	\$734	\$3,106

<b>Program</b> <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input checked="" type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	Object Accounts		
						(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>DISTRICT ATTORNEY COSTS</b>								
W. Vidmar, Criminal Investigator	\$67.93	25.52%	15.00			\$1,019	\$260	\$1,279
B. Fraccoli, Criminal Investigator	\$64.91	34.05%	15.00			\$974	\$332	\$1,305
M. Avila, Criminal Investigator	\$57.54	35.79%	15.00			\$863	\$309	\$1,172
G. Cunningham, Criminal Investigator	\$64.91	34.95%	15.00			\$974	\$340	\$1,314
B. Headrick, Criminal Investigator	\$64.91	27.74%	15.00			\$974	\$270	\$1,244
Revise and update internal policies, procedures, manuals and or other materials relating to POBARS, attendance to specific training and maintaining and/or updating the status of the POBAR case records.								
J. Perez, Criminal Investigator	\$54.98	38.02%	24.00			\$1,320	\$502	\$1,821
S. Reinhardt, Criminal Investigator	\$57.54	35.83%	24.00			\$1,381	\$495	\$1,876
W. Vidmar, Criminal Investigator	\$67.93	25.52%	24.00			\$1,630	\$416	\$2,046
M. Avila, Criminal Investigator	\$57.54	35.79%	24.00			\$1,381	\$494	\$1,875
L. Evans, Criminal Investigator	\$57.54	26.97%	24.00			\$1,381	\$372	\$1,753
J. McMullen, Criminal Investigator	\$56.26	36.14%	24.00			\$1,350	\$488	\$1,838
Attended training related to POBAR.								
W. Vidmar, Criminal Investigator	\$67.93	25.52%	6.00			\$408	\$104	\$512
Maintained and updated the status of the POBAR case records.								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								

(05) Total ( ) Subtotal ( )	Page: ____ of ____					\$13,654	\$4,382	\$18,036
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<b>Program</b> <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant: <b>County of Santa Clara</b>	(02) Fiscal year costs were incurred: <b>2003-2004</b>
---	--

(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input checked="" type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)	Object Accounts							
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>PROBATION COSTS</b>								
<b>Supervising Probation Officer (9)</b> Attended a four-hour training related to POBAR on 12/10/03 provided by the Probation department.  See the attached roster and course description.	\$49.08	34.66%	36.00			\$1,767	\$612	\$2,379
(05) Total ( )      Subtotal ( )						\$1,767	\$612	\$2,379

*The agency named above has made every effort not to include costs relating to the "Skelly Process".*

Page: \_\_\_\_\_ of \_\_\_\_\_

<b>Program</b> <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input checked="" type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>OTHER DEPARTMENT COSTS:</b>								
<u>Revise and update internal policies, procedures, manuals and or other materials relating to POBARS, attendance to specific training and maintaining and/or updating the status of the POBAR case records.</u>								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total ( )      Subtotal ( )		Page: ____ of ____						

Revised 09/03

<b>Program</b> <span style="font-size: 24pt; font-weight: bold;">187</span>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
--------------------------------------	---

(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input checked="" type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

**(04) Description of Expense: Complete columns (a) through (g)** **Object Accounts**

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>SHERIFF COSTS</b>								
<b>Karen Burgess, Sergeant</b> Preparation and review of documents to proceed with administrative hearing, including legal review and providing assistance with the hearing.	\$54.98	28.76%	17.00			\$935	\$269	\$1,204

*The agency named above has made every effort not to include costs relating to the "Skelly Process".*

(05) Total ( )	Subtotal ( )	Page: _____ of _____	\$935	\$269	\$1,204
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<b>Program</b> <b style="font-size: 1.5em;">187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
--	---	------------------------------

(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
--------------------------------------	---

(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input checked="" type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)	Object Accounts							
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>DISTRICT ATTORNEY COSTS:</b>								
<u>Preparation and review of documents to proceed with administrative hearing, including legal review and providing assistance with the hearing.</u>								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total ( )      Subtotal ( )								

Program  
**187**

**MANDATED COSTS  
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS  
COMPONENT / ACTIVITY COST DETAIL**

**FORM  
PPBR-2**

(01) Claimant: County of Santa Clara

(02) Fiscal year costs were incurred:

2003-2004

(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

Administrative Activities

Administrative Appeal

Interrogations

Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)

Object Accounts

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>PROBATION COSTS:</b>								
<u>Preparation and review of documents to proceed with administrative hearing, including legal review and providing assistance with the hearing.</u>								
<p><i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i></p>								

(05) Total ( )      Subtotal ( )

Page: \_\_\_\_\_ of \_\_\_\_\_

Program  
**187**

**MANDATED COSTS  
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS  
COMPONENT / ACTIVITY COST DETAIL**

**FORM  
PPBR-2**

(01) Claimant: County of Santa Clara

(02) Fiscal year costs were incurred:

2003-2004

(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

Administrative Activities

Administrative Appeal

Interrogations

Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)

Object Accounts

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>OTHER DEPARTMENT COSTS:</b>								
<u>Preparation and review of documents to proceed with administrative hearing, including legal review and providing assistance with the hearing.</u>								
<p><i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i></p>								

(05) Total ( )      Subtotal ( )

Page: \_\_\_\_ of \_\_\_\_

<b>Program</b> <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
------------------------------	---	------------------------------

(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
--------------------------------------	---

(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input checked="" type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>SHERIFF COSTS</b>								
Lawrence St. Denis, Sergeant	\$51.15	23.09%	96.25			\$4,923	\$1,137	\$6,060
Robert Schiller, Sergeant	\$64.91	34.02%	18.00			\$1,168	\$398	\$1,566
Dorothy Matuzek, Sergeant	\$54.98	33.32%	89.46			\$4,919	\$1,639	\$6,558
Cathy Watson, Sergeant	\$54.98	30.72%	87.50			\$4,811	\$1,478	\$6,289
Karen Burgess, Sergeant	\$54.98	28.76%	26.40			\$1,452	\$417	\$1,869
Deputy Sheriff Interrogations-(Sworn-officer's only) Time spent interrogating an officer. Notify officer prior to interrogation the nature of interrogation and identify the investigating officers. (Including the review of complaints, documents to prepare the notice of interrogation; determination of the investigating officers; redaction of agency complaint for names of the complainant, witnesses; and the preparation of notices.)	\$40.05	38.68%	9.50			\$380	\$147	\$528
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total ( ) Subtotal ( )				Page: ____ of ____		\$17,653	\$5,216	\$22,869

<b>Program 187</b>	<b>MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input checked="" type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)	Object Accounts							
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>DISTRICT ATTORNEY COSTS</b>								
G. Cunningham, Criminal Investigator	\$64.91	34.95%	5.50			\$357	\$125	\$482
B. Fraccoli, Criminal Investigator	\$64.91	34.05%	3.50			\$227	\$77	\$305
M. Lane, Criminal Investigator	\$64.91	32.71%	8.00			\$519	\$170	\$689
K. Smith, Criminal Investigator	\$64.91	29.74%	10.50			\$682	\$203	\$884
P. Campbell, Criminal Investigator Interrogating a peace officer.	\$64.91	29.18%	1.00			\$65	\$19	\$84
B. Fraccoli, Criminal Investigator	\$64.91	34.05%	30.50			\$1,980	\$674	\$2,654
K. Smith, Criminal Investigator	\$64.91	29.74%	19.50			\$1,266	\$376	\$1,642
P. Campbell, Criminal Investigator	\$64.91	29.18%	3.50			\$227	\$66	\$293
G. Cunningham, Criminal Investigator	\$64.91	34.95%	38.00			\$2,467	\$862	\$3,329
M. Lane, Criminal Investigator Notify officer prior to the interrogation the nature of the interrogation and identifying the investigating officers. (This includes the review of complaints, documents to prepare the notice of interrogation; determination of the investigating officers; redaction of agency complaint for names of the complainant, witnesses; and the preparation of notices.)	\$64.91	32.71%	20.00			\$1,298	\$425	\$1,723
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								

(05) Total ( )	Subtotal ( )	Page: _____ of _____			\$9,088	\$2,997	\$12,085
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<b>Program</b> <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input checked="" type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>PROBATION DEPARTMENT</b>								
Jim Tarshis, Group Counselor	\$49.84	31.11%	115.00			\$5,732	\$1,783	\$7,515
Cathy Shields, Probation Manager	\$63.03	28.28%	7.00			\$441	\$125	\$566
Alicia Garcia, Supv., Group Counselor	\$49.84	31.11%	25.50			\$1,271	\$395	\$1,666
Diana Bishop, Supv. Group Conselor	\$49.84	26.72%	66.00			\$3,289	\$879	\$4,168
Rita Loncarich, Probation Manager	\$64.88	27.98%	15.00			\$973	\$272	\$1,246
Review of the complaints and documents; prepare the notice of interrogation; determine the investigating officers; and redaction of agency complaint for names of the complainant and witness.								
Jim Tarshis, Group Counselor	\$49.84	31.11%	126.00			\$6,280	\$1,954	\$8,233
Diana Bishop, Supv. Group Conselor	\$49.84	26.72%	9.00			\$449	\$120	\$568
Time spent interrogating an officer. Notify officer prior to interrogation the nature of interrogation and identify the investigating officers.								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total ( )      Subtotal ( )				Page: _____ of _____		\$18,435	\$5,528	\$23,963

<b>Program</b> <span style="font-size: 24pt; font-weight: bold;">187</span>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input checked="" type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>OTHER DEPARTMENT COSTS:</b>								
<b><i>Interrogations-(Sworn-officer's only)</i></b> <b><u>Time spent interrogating an officer. Notify officer prior to interrogation the nature of interrogation and identify the investigating officers.</u></b> (Including the review of complaints, documents to prepare the notice of interrogation; determination of the investigating officers; redaction of agency complaint for names of the complainant, witnesses; and the preparation of notices.)								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total ( )      Subtotal ( )								

<b>Program</b> <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input checked="" type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>SHERIFF COSTS</b>								
Lawrence St. Denis, Sergeant	\$51.15	23.09%	62.00			\$3,171	\$732	\$3,903
Robert Schiller, Sergeant	\$64.91	34.02%	7.00			\$454	\$155	\$609
Dorothy Matuzek, Sergeant	\$54.98	33.32%	23.25			\$1,278	\$426	\$1,704
Cathy Watson, Sergeant	\$54.98	30.72%	51.50			\$2,832	\$870	\$3,702
Karen Burgess, Sergeant	\$54.98	28.76%	14.00			\$770	\$221	\$991
Time to review circumstances or documentation of adverse comments, notification and presentations of comments; review of response to comments and filing. Time to gather reports and log sheets, review questions and preparation, case summary and IA review, command staff review of adverse comments and findings.								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total ( ) Subtotal ( )						\$8,505	\$2,404	\$10,909

<b>Program</b> <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input checked="" type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>DISTRICT ATTORNEY COSTS</b>								
W. Vidmar, Criminal Investigator	\$67.93	25.52%	3.00			\$204	\$52	\$256
B. Fraccoli, Criminal Investigator	\$64.91	34.05%	3.00			\$195	\$66	\$261
P. Campbell, Criminal Investigator	\$64.91	29.18%	3.00			\$195	\$57	\$252
G. Cunningham, Criminal Investigator	\$64.91	34.95%	4.00			\$260	\$91	\$350
Time to review circumstances or documentation of adverse comments, notification and presentations of comments.								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total ( )      Subtotal ( )		Page: _____ of _____				\$853	\$266	\$1,119

<b>Program 187</b>	<b>MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input checked="" type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)	Object Accounts								
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)			
						Salaries	Benefits	Total Sal. & Bens	
<b>PROBATION DEPARTMENT</b>									
Cathy Shields, Probation Manager	\$63.03	28.28%	20.00			\$1,261	\$356	\$1,617	
Diana Bishop, Supv. Group Conselor	\$49.84	26.72%	100.00			\$4,984	\$1,332	\$6,316	
Rita Loncarich, Probation Manager	\$64.88	27.98%	55.00			\$3,568	\$998	\$4,567	
Cathy Shields, Probation Manager	\$63.03	28.28%	9.00			\$567	\$160	\$728	
Time to review circumstances or documentation of adverse comments, notification and presentations of comments; review of response to comments and filing. Time to gather reports and log sheets, review questions and preparation, case summary and IA review, command staff review of adverse comments and findings.									
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>									
(05) Total ( ) Subtotal ( )						\$10,380	\$2,847	\$13,227	

<b>Program</b> <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input checked="" type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>OTHER DEPARTMENT COSTS:</b>								
<u>Time to review circumstances or documentation of adverse comments, notification and presentations of comments; review of response to comments and filing.</u>								
<u>Time to gather reports and log sheets, review questions and preparation, case summary and IA review, command staff review of adverse comments and findings.</u>								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total ( )      Subtotal ( )								

**MANDATED COSTS  
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS  
COMPONENT / ACTIVITY COST DETAIL**

**FORM  
ICRP Summary**

(01) Claim: County of Santa Clara

(02) Fiscal year costs were incurred:

2003-2004

**Indirect Cost Summary Sheet**  
*- By Department -*

<b>Department</b>	<b>ICRP</b>		<b>Total Direct</b>		<b>Total Indirect Costs</b>			<b>DEPT. TOTALS</b>
	Base	Percent	Salaries	Benefits	S&W	S&W&B	Total	
Enter ICRP Rate in column F. Below each department "x" option rate is based on - "Salaries & Benefits" or "Salaries only"								
Salaries only		Salaries & Benefits						
<b>Sheriff</b>	S&W&B	32.90%	\$29,466	\$8,622		\$12,531		<b>\$ 50,619</b>
		x						
<b>District Attorney</b>	S&W&B	24.50%	\$23,595	\$7,645		\$7,654		<b>\$ 38,894</b>
		x						
<b>Probation</b>	S&W	81.41%	\$30,582	\$8,987	\$24,897			<b>\$ 64,466</b>
x								
<b>Other</b>	S&W	10.00%						<b>\$ -</b>
x								
							\$45,082	
<b>Check totals on claim summary page:</b>								
Total Service & Supply								
Total Travel & Training								
Salaries			83,643					
Benefits			25,255					
							\$45,082	
Claim total			\$153,980					
			\$ 83,643	\$ 25,255	\$ 24,897	\$20,185		

**MULTIPLE DEPARTMENT CLAIM (Sheriff, DA, Probation & Other)**

**SB90 CLAIMING BASIC DATA**

**PEACE OFFICERS PROCEDURAL BILL OF RIGHTS  
Chapter 465, Statutes of 1976**

**Claimant ID Number:** 9943  
**Claimant Name:** County of Santa Clara  
**County:** Santa Clara  
**Address:** 70 West Hedding Street, East Wing  
**Street:** 2nd Floor  
**City:** San Jose  
**Zip Code:** 95110

**TYPE OF CLAIM**

<b>Reimbursement Claim:</b>	<b>(tag with an "X")</b>	<b>Estimated Claim:</b>	<b>(tag with an "X")</b>
Reimbursement	<input type="checkbox"/>	Estimated	<input type="checkbox"/>
Combined	<input type="checkbox"/>	Combined	<input type="checkbox"/>
Amended	<input checked="" type="checkbox"/>	Amended	<input type="checkbox"/>

**Actual Fiscal Year:** 2003-2004  
**Estimated Fiscal Year:**

**Contact Name:** Ferlyn Junio (MAXIMUS, Inc.)  
**Phone Number:** (916) 485-8102

**Auth. Representative:** Ram Venkatesan  
**Title:** SB 90 Coordinator  
**E-Mail Address:**  
**Date:**

**INDIRECT COST RATE PROPOSAL (ICRP)**

**ICRP Rate**                      **Salaries Only**                      **Salaries & Ben.**  
(enter rate)                      (tag with an "X")                      (tag with an "X")

\* See ICRP SUMMARY WORKSHEET at end of workbook

**PRODUCTIVE HOURS**                      1560.65



<b>CLAIM FOR PAYMENT</b> <b>Pursuant to Government Code Section 17561</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b>			For State Controller Use Only		<b>Program</b> <b>187</b>		
			(19) Program Number 00187				
			(20) Date Filed ___/___/___				
			(21) LRS Input ___/___/___				
(01) Claimant Identification Number <b>9943</b>			<b>Reimbursement Claim Data</b>				
(02) Claimant Name <b>70 West Hedding Street, East Wing</b>						(22) PPBR-1,(03)(a)	<b>23</b>
County of Location <b>Santa Clara</b>						(23) PPBR-1,(03)(b)	<b>6</b>
Street Address or P.O. Box <b>2nd Floor</b>						(24) PPBR-1,(03)(c)	<b>28</b>
City <b>San Jose</b>	State <b>CA</b>	Zip Code <b>95110</b>				(25) PPBR-1,(03)(d)	<b>1</b>
<b>Type of Claim</b>	<b>Estimated Claim</b>		<b>Reimbursement Claim</b>		(26) PPBR-1,(04)(1)(e)	<b>30,999</b>	
	(03) Estimated	<input type="checkbox"/>	(09) Reimbursement	<input type="checkbox"/>	(27) PPBR-1,(04)(2)(e)	<b>1,204</b>	
	(04) Combined	<input type="checkbox"/>	(10) Combined	<input type="checkbox"/>	(28) PPBR-1,(04)(3)(e)	<b>60,752</b>	
	(05) Amended	<input type="checkbox"/>	(11) Amended	<input checked="" type="checkbox"/>	(29) PPBR-1,(04)(4)(e)	<b>26,059</b>	
Fiscal Year of Cost of Cost	(06)	(12) <b>2003-2004</b>	(30) PPBR-1,(06)	<b>SEE ICRP SUMMARY</b>			
Total Claimed Amount	(07)	(13) <b>\$167,422</b>	(31) PPBR-1,(07)	<b>48,409</b>			
LESS: 10% Late Penalty		(14) <b>\$1,000</b>	(32) PPBR-1,(09)				
LESS: Estimated Claim Payment Received		(15)	(33) PPBR-1,(10)				
Net Claimed Amount		(16) <b>\$166,422</b>	(34)				
Due from State	(08)	(17) <b>\$166,422</b>	(35)				
Due to State		(18)	(36)				
<b>(37) CERTIFICATION OF CLAIM</b> <p>In accordance with the provisions of Government Code 17561, I certify that I am the officer authorized by the local agency to file mandated cost claims with the State of California for this program, and certify under the penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 through 1098, inclusive.</p> <p>I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein, and such costs are for new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.</p> <p>The amounts for this Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.</p>							
Signature of Authorized Officer			Date				
<b>Ram Venkatesan</b>			<b>SB 90 Coordinator</b>				
Print or type name			Title				
(38) Name of Contact Person for Claim							
<b>Ferlyn Junio (MAXIMUS, Inc.)</b>			Telephone Number	<b>(916) 485-8102</b>			
			E-mail Address				

<b>Program</b> <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>CLAIM SUMMARY</b>				<b>FORM</b> <b>PPBR-1</b>
<b>(01) Claimant:</b> County of Santa Clara		<b>(02) Fiscal year costs were incurred:</b> 2003-2004			
<b>Claim Statistics</b>					
<b>(03) (a) Number of cases in process at the beginning of the fiscal year</b>				<b>23</b>	
<b>(b) Number of new cases added during the fiscal year</b>				<b>6</b>	
<b>(c) Number of cases completed or closed during the fiscal year</b>				<b>28</b>	
<b>(d) Number of cases in process at the end of the year</b>				<b>1</b>	
<b>Direct Costs</b>					
<b>(04) Reimbursable Components</b>  <b>1. Administrative Activities</b>  <b>2. Administrative Appeal</b>  <b>3. Interrogations</b>  <b>4. Adverse Comment</b>	<b>(a)</b> <b>Salaries</b>	<b>(b)</b> <b>Benefits</b>	<b>(c)</b> <b>Services and Supplies</b>	<b>(d)</b> <b>Travel and Training</b>	<b>(e)</b> <b>Total</b>
	\$23,402	\$7,597			\$30,999
	\$935	\$269			\$1,204
	\$46,524	\$14,228			\$60,752
	\$20,335	\$5,723			\$26,059
<b>(05) Total Direct Costs</b>	\$91,196	\$27,817			\$119,013
<b>Indirect Costs</b>					
<b>(06) Indirect Cost Rate (From ICRP)</b> Salary and Benefits				<b>SEE ICRP SUMMARY</b>	
<b>(07) Indirect Costs</b>				<b>[[Line(06)*(line(05)(a)+line(05)(b))</b>	
<b>(08) Total Direct and Indirect Costs</b>				<b>[Line (05)(e) + Line (07)]</b>	
<b>Cost Reductions</b>					
<b>(09) Less Offsetting Savings, if applicable</b>					
<b>(10) Less Other Reimbursements, if applicable</b>					
<b>(11) Total Claimed Amount:</b>				<b>{Line(08)- [Line (09) + Line(10)]}</b>	

Revised 09/03

<b>Program</b> <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant: <b>County of Santa Clara</b>	(02) Fiscal year costs were incurred: <b>2003-2004</b>
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input checked="" type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>SHERIFF COSTS</b>								
Sgt Staats	\$54.98	42.44%	24.00			\$1,320	\$560	\$1,880
Lawrence St. Denis, Sergeant	\$51.15	23.09%	7.25			\$371	\$86	\$456
Robert Schiller, Sergeant	\$64.91	34.02%	5.00			\$325	\$110	\$435
Dorothy Matuzek, Sergeant	\$54.98	33.32%	48.40			\$2,661	\$887	\$3,548
Cathy Watson, Sergeant	\$54.98	30.72%	8.50			\$467	\$144	\$611
Karen Burgess, Sergeant	\$54.98	28.76%	51.60			\$2,837	\$816	\$3,653
Revise and update internal policies, procedures, manuals and or other materials relating to POBARS, attendance to specific training and maintaining and/or updating the status of the POBAR case records.								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total ( )      Subtotal ( )      Page: _____ of _____						\$7,981	\$2,602	\$10,583

<b>Program</b> <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input checked="" type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)	Object Accounts							
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>DISTRICT ATTORNEY COSTS</b>								
W. Vidmar, Criminal Investigator	\$67.93	25.52%	15.00			\$1,019	\$260	\$1,279
B. Fraccoli, Criminal Investigator	\$64.91	34.05%	15.00			\$974	\$332	\$1,305
M. Avila, Criminal Investigator	\$57.54	35.79%	15.00			\$863	\$309	\$1,172
G. Cunningham, Criminal Investigator	\$64.91	34.95%	15.00			\$974	\$340	\$1,314
B. Headrick, Criminal Investigator	\$64.91	27.74%	15.00			\$974	\$270	\$1,244
Revise and update internal policies, procedures, manuals and or other materials relating to POBARS, attendance to specific training and maintaining and/or updating the status of the POBAR case records.								
J. Perez, Criminal Investigator	\$54.98	38.02%	24.00			\$1,320	\$502	\$1,821
S. Reinhardt, Criminal Investigator	\$57.54	35.83%	24.00			\$1,381	\$495	\$1,876
W. Vidmar, Criminal Investigator	\$67.93	25.52%	24.00			\$1,630	\$416	\$2,046
M. Avila, Criminal Investigator	\$57.54	35.79%	24.00			\$1,381	\$494	\$1,875
L. Evans, Criminal Investigator	\$57.54	26.97%	24.00			\$1,381	\$372	\$1,753
J. McMullen, Criminal Investigator	\$56.26	36.14%	24.00			\$1,350	\$488	\$1,838
Attended training related to POBAR.								
W. Vidmar, Criminal Investigator	\$67.93	25.52%	6.00			\$408	\$104	\$512
Maintained and updated the status of the POBAR case records.								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								

(05) Total ( )	Subtotal ( )	Page: _____ of _____				\$13,654	\$4,382	\$18,036
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<b>Program</b> <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input checked="" type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>PROBATION COSTS</b>								
<b>Supervising Probation Officer (9)</b> Attended a four-hour training related to POBAR on 12/10/03 provided by the Probation department.  See the attached roster and course description.	\$49.08	34.66%	36.00			\$1,767	\$612	\$2,379
(05) Total ( )      Subtotal ( )				Page: _____ of _____		\$1,767	\$612	\$2,379

*The agency named above has made every effort not to include costs relating to the "Skelly Process".*

<b>Program</b> <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input checked="" type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>OTHER DEPARTMENT COSTS:</b>								
<u>Revise and update internal policies, procedures, manuals and or other materials relating to POBARS, attendance to specific training and maintaining and/or updating the status of the POBAR case records.</u>								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total ( )      Subtotal ( )								

Revised 09/03

<b>Program</b> <span style="font-size: 24pt; font-weight: bold;">187</span>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input checked="" type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>SHERIFF COSTS</b>								
<b>Karen Burgess, Sergeant</b> Preparation and review of documents to proceed with administrative hearing, including legal review and providing assistance with the hearing.	\$54.98	28.76%	17.00			\$935	\$269	\$1,204
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total ( )      Subtotal ( )      Page: _____ of _____						\$935	\$269	\$1,204

Program  
**187**

**MANDATED COSTS  
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS  
COMPONENT / ACTIVITY COST DETAIL**

**FORM  
PPBR-2**

(01) Claimant: County of Santa Clara

(02) Fiscal year costs were incurred:

2003-2004

(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

Administrative Activities

Administrative Appeal

Interrogations

Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)

Object Accounts

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)			
						Salaries	Benefits	Total Sal. & Bens	
<b>DISTRICT ATTORNEY COSTS:</b>									
<u>Preparation and review of documents to proceed with administrative hearing, including legal review and providing assistance with the hearing.</u>									

*The agency named above has made every effort not to include costs relating to the "Skelly Process".*

(05) Total ( )      Subtotal ( )

Page: \_\_\_\_\_ of \_\_\_\_\_



Program  
**187**

**MANDATED COSTS  
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS  
COMPONENT / ACTIVITY COST DETAIL**

**FORM  
PPBR-2**

(01) Claimant: County of Santa Clara

(02) Fiscal year costs were incurred:

2003-2004

(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

Administrative Activities

Administrative Appeal

Interrogations

Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)

Object Accounts

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>PROBATION COSTS:</b>								
<u>Preparation and review of documents to proceed with administrative hearing, including legal review and providing assistance with the hearing.</u>								

*The agency named above has made every effort not to include costs relating to the "Skelly Process".*

(05) Total ( )      Subtotal ( )

Page: \_\_\_\_\_ of \_\_\_\_\_

<b>Program</b> <b>187</b>	<b>MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check **ONLY** one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input checked="" type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g) Object Accounts			
						Salaries	Benefits	Total Sal. & Bens	
<b>OTHER DEPARTMENT COSTS:</b>									
<u>Preparation and review of documents to proceed with administrative hearing, including legal review and providing assistance with the hearing.</u>									
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>									
(05) Total ( )      Subtotal ( )      Page: ____ of ____									

Revised 09/03

<b>Program</b> <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input checked="" type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)	Object Accounts							
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>SHERIFF COSTS</b>								
Sgt. Tait	\$54.98	41.77%	0.50			\$27	\$11	\$39
Sgt. Stevens	\$54.98	36.60%	0.42			\$23	\$8	\$32
Sgt. Staats	\$54.98	42.44%	3.00			\$165	\$70	\$235
Sgt. Lewis	\$52.35	37.41%	0.33			\$17	\$6	\$24
Deputy Dona	\$49.66	38.31%	0.50			\$25	\$10	\$34
Sgt. Broaumeland	\$46.36	38.68%	0.92			\$43	\$16	\$59
Sgt. Atlas	\$54.98	40.85%	0.33			\$18	\$7	\$26
Lawrence St. Denis, Sergeant	\$51.15	23.09%	96.25			\$4,923	\$1,137	\$6,060
Robert Schiller, Sergeant	\$64.91	34.02%	18.00			\$1,168	\$398	\$1,566
Dorothy Matuzek, Sergeant	\$54.98	33.32%	95.71			\$5,263	\$1,753	\$7,016
Cathy Watson, Sergeant	\$54.98	30.72%	92.50			\$5,086	\$1,562	\$6,648
Karen Burgess, Sergeant	\$54.98	28.76%	26.65			\$1,465	\$421	\$1,887
<b>Deputy Sheriff</b>	\$40.05	38.68%	19.42			\$778	\$301	\$1,079
Interrogations-(Sworn-officer's only) Time spent interrogating an officer. Notify officer prior to interrogation the nature of interrogation and identify the investigating officers. (Including the review of complaints, documents to prepare the notice of interrogation; determination of the investigating officers; redaction of agency complaint for names of the complainant, witnesses; and the preparation of notices.)								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total ( )	Subtotal ( )		Page: _____ of _____			\$19,002	\$5,702	\$24,704

Revised 09/03

<b>Program 187</b>	<b>MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input checked="" type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>DISTRICT ATTORNEY COSTS</b>								
G. Cunningham, Criminal Investigator	\$64.91	34.95%	5.50			\$357	\$125	\$482
B. Fraccoli, Criminal Investigator	\$64.91	34.05%	3.50			\$227	\$77	\$305
M. Lane, Criminal Investigator	\$64.91	32.71%	8.00			\$519	\$170	\$689
K. Smith, Criminal Investigator	\$64.91	29.74%	10.50			\$682	\$203	\$884
P. Campbell, Criminal Investigator Interrogating a peace officer.	\$64.91	29.18%	1.00			\$65	\$19	\$84
B. Fraccoli, Criminal Investigator	\$64.91	34.05%	30.50			\$1,980	\$674	\$2,654
K. Smith, Criminal Investigator	\$64.91	29.74%	19.50			\$1,266	\$376	\$1,642
P. Campbell, Criminal Investigator	\$64.91	29.18%	3.50			\$227	\$66	\$293
G. Cunningham, Criminal Investigator	\$64.91	34.95%	38.00			\$2,467	\$862	\$3,329
M. Lane, Criminal Investigator Notify officer prior to the interrogation the nature of the interrogation and identifying the investigating officers. This includes the review of complaints, documents to prepare the notice of interrogation; determination of the investigating officers; redaction of agency complaint for names of the complainant, witnesses; and the preparation of notices.)	\$64.91	32.71%	20.00			\$1,298	\$425	\$1,723
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total ( ) Subtotal ( )				Page: _____ of _____		\$9,088	\$2,997	\$12,085

<b>Program</b> <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input checked="" type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>PROBATION DEPARTMENT</b>								
Jim Tarshis, Group Counselor	\$49.84	31.11%	115.00			\$5,732	\$1,783	\$7,515
Cathy Shields, Probation Manager	\$63.03	28.28%	7.00			\$441	\$125	\$566
Alicia Garcia, Supv., Group Counselor	\$49.84	31.11%	25.50			\$1,271	\$395	\$1,666
Diana Bishop, Supv. Group Conselor	\$49.84	26.72%	66.00			\$3,289	\$879	\$4,168
Rita Loncarich, Probation Manager	\$64.88	27.98%	15.00			\$973	\$272	\$1,246
Review of the complaints and documents; prepare the notice of interrogation; determine the investigating officers; and redaction of agency complaint for names of the complainant and witness.								
Jim Tarshis, Group Counselor	\$49.84	31.11%	126.00			\$6,280	\$1,954	\$8,233
Diana Bishop, Supv. Group Conselor	\$49.84	26.72%	9.00			\$449	\$120	\$568
Time spent interrogating an officer. Notify officer prior to interrogation the nature of interrogation and identify the investigating officers.								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total ( )      Subtotal ( )      Page: _____ of _____						\$18,435	\$5,528	\$23,963

Program  
**187**

**MANDATED COSTS  
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS  
COMPONENT / ACTIVITY COST DETAIL**

**FORM  
PPBR-2**

(01) Claimant: County of Santa Clara

(02) Fiscal year costs were incurred:

2003-2004

(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

Administrative Activities

Administrative Appeal

Interrogations

Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)

Object Accounts

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>OTHER DEPARTMENT COSTS:</b>								
<b><u>Interrogations-(Sworn-officer's only)</u></b>								
<b><u>Time spent interrogating an officer. Notify officer prior to interrogation the nature of interrogation and identify the investigating officers.</u></b> (Including the review of complaints, documents to prepare the notice of interrogation; determination of the investigating officers; redaction of agency complaint for names of the complainant, witnesses; and the preparation of notices.)								
<p><i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i></p>								

(05) Total ( )      Subtotal ( )

Page: \_\_\_\_\_ of \_\_\_\_\_

<b>Program 187</b>	<b>MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input checked="" type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g) Object Accounts		
						Salaries	Benefits	Total Sal. & Bens
<b>SHERIFF COSTS</b>								
Sgt. Tait	\$54.98	41.77%	0.50			\$27	\$11	\$39
Sgt. Stevens	\$54.98	36.60%	0.17			\$9	\$3	\$13
Sgt. Staats	\$54.98	42.44%	1.08			\$59	\$25	\$85
Sgt. Dona	\$49.66	38.31%	0.25			\$12	\$5	\$17
Sgt. Broaumeland	\$46.36	38.68%	0.75			\$35	\$13	\$48
Sgt. Atlas	\$54.98	40.85%	0.17			\$9	\$4	\$13
Sgt. Babcock	\$53.71	48.66%	0.17			\$9	\$4	\$14
Sgt. Dutra	\$54.98	38.12%	0.25			\$14	\$5	\$19
Sgt. Langley	\$54.98	36.47%	0.25			\$14	\$5	\$19
Sgt. Peterson	\$54.98	42.43%	0.25			\$14	\$6	\$20
Lawrence St. Denis, Sergeant	\$51.15	23.09%	62.00			\$3,171	\$732	\$3,903
Robert Schiller, Sergeant	\$64.91	34.02%	7.00			\$454	\$155	\$609
Dorothy Matuzek, Sergeant	\$54.98	33.32%	25.58			\$1,406	\$469	\$1,875
Cathy Watson, Sergeant	\$54.98	30.72%	55.83			\$3,070	\$943	\$4,013
Karen Burgess, Sergeant	\$54.98	28.76%	14.50			\$797	\$229	\$1,027
Time to review circumstances or documentation of adverse comments, notification and presentations of comments; review of response to comments and filing. Time to gather reports and log sheets, review questions and preparation, case summary and IA review, command staff review of adverse comments and findings.								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								

(05) Total ( )	Subtotal ( )	Page: ____ of ____	\$9,102	\$2,610	\$11,713
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<b>Program</b> <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input checked="" type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>DISTRICT ATTORNEY COSTS</b>								
W. Vidmar, Criminal Investigator	\$67.93	25.52%	3.00			\$204	\$52	\$256
B. Fraccoli, Criminal Investigator	\$64.91	34.05%	3.00			\$195	\$66	\$261
P. Campbell, Criminal Investigator	\$64.91	29.18%	3.00			\$195	\$57	\$252
G. Cunningham, Criminal Investigator	\$64.91	34.95%	4.00			\$260	\$91	\$350
Time to review circumstances or documentation of adverse comments, notification and presentations of comments.								

*The agency named above has made every effort not to include costs relating to the "Skelly Process".*

(05) Total ( )	Subtotal ( )	Page: ____ of ____			\$853	\$266	\$1,119
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Program  
**187**

**MANDATED COSTS  
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS  
COMPONENT / ACTIVITY COST DETAIL**

**FORM  
PPBR-2**

(01) Claimant: County of Santa Clara

(02) Fiscal year costs were incurred:

2003-2004

(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

Administrative Activities

Administrative Appeal

Interrogations

Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)

Object Accounts

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>PROBATION DEPARTMENT</b>								
Cathy Shields, Probation Manager	\$63.03	28.28%	20.00			\$1,261	\$356	\$1,617
Diana Bishop, Supv. Group Conselor	\$49.84	26.72%	100.00			\$4,984	\$1,332	\$6,316
Rita Loncarich, Probation Manager	\$64.88	27.98%	55.00			\$3,568	\$998	\$4,567
Cathy Shields, Probation Manager	\$63.03	28.28%	9.00			\$567	\$160	\$728
Time to review circumstances or documentation of adverse comments, notification and presentations of comments; review of response to comments and filing. Time to gather reports and log sheets, review questions and preparation, case summary and IA review, command staff review of adverse comments and findings.								
<p><i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i></p>								
(05) Total ( )	Subtotal ( )		Page: _____ of _____			\$10,380	\$2,847	\$13,227

<b>Program</b> <span style="font-size: 24pt; font-weight: bold;">187</span>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input checked="" type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>OTHER DEPARTMENT COSTS:</b> <u>Time to review circumstances or documentation of adverse comments, notification and presentations of comments; review of response to comments and filing.</u> <u>Time to gather reports and log sheets, review questions and preparation, case summary and IA review, command staff review of adverse comments and findings.</u>								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total ( )      Subtotal ( )				Page: ____ of ____				

**MANDATED COSTS  
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS  
COMPONENT / ACTIVITY COST DETAIL**

**FORM  
ICRP Summary**

(01) Claim: County of Santa Clara

(02) Fiscal year costs were incurred:

2003-2004

**Indirect Cost Summary Sheet**

*- By Department -*

<b>Department</b>	<b>ICRP</b>		<b>Total Direct</b>		<b>Total Indirect Costs</b>			<b>DEPT. TOTALS</b>
	Base	Percent	Salaries	Benefits	S&W	S&W&B	Total	
Enter ICRP Rate in column F. Below each department "x" option rate is based on - "Salaries & Benefits" or "Salaries only"								
Salaries only								
Salaries & Benefits								
<b>Sheriff</b>	S&W&B	32.90%	\$37,019	\$11,184		\$15,859		\$ 64,062
<b>District Attorney</b>	S&W&B	24.50%	\$23,595	\$7,645		\$7,654		\$ 38,894
<b>Probation</b>	S&W	81.41%	\$30,582	\$8,987	\$24,897			\$ 64,466
<b>Other</b>	S&W	10.00%						\$ -
							\$48,409	
<b>Check totals on claim summary page:</b>								
Total Service & Supply								
Total Travel & Training								
Salaries			91,196					
Benefits			27,817					
							\$48,409	
<b>Claim total</b>			<b>\$167,422</b>					
			\$ 91,196	\$ 27,817	\$ 24,897	\$23,513		

<b>CLAIM FOR PAYMENT</b> Pursuant to Government Code Section 17561 <b>PERMANENT ABSENT VOTERS</b>	For State Controller Use Only (19) Program Number 00083 (20) Date Filed ___/___/___ (21) LRS Input ___/___/___	<b>PROGRAM</b>  <b>083</b>
---	---	----------------------------------

(01) Claimant Identification Number <b>9901</b>			<b>Reimbursement Claim Data</b>		
(02) Claimant Name <b>County of Alameda</b>			(22) FORM-1, (04)(A)(1)(d)	0	
County of Location <b>Alameda</b>			(23) FORM-1, (04)(A)(2)(d)	0	
Street Address or P.O. Box <b>1221 Oak Street</b>		Suite <b>Suite 249</b>	(24) FORM-1, (04)(A)(3)(d)	0	
City <b>Oakland</b>	State <b>CA</b>	Zip Code <b>94612</b>	(25) FORM-1, (04)(B)(1)(d)	14,430	
			<b>Type of Claim</b>		
			(03)	(09) Reimbursement <input checked="" type="checkbox"/>	(26) FORM-1, (04)(B)(2)(d) <span style="float: right;">0</span>
			(04)	(10) Combined <input type="checkbox"/>	(27) FORM-1, (04)(B)(3)(d) <span style="float: right;">0</span>
			(05)	(11) Amended <input type="checkbox"/>	(28) FORM-1, (04)(B)(4)(d) <span style="float: right;">0</span>
(06) Fiscal Year of Cost			(12) <b>2008-2009</b>	(30) <span style="float: right;">8,598</span>	
(07) Total Claimed Amount			(13) <b>\$23,028</b>	(31) FORM-1, (09) <span style="float: right;">0</span>	
Less: 10% Late penalty (refer to attached instructions)			(14)	(32) FORM-1, (10) <span style="float: right;">0</span>	
Less: Prior Claim Payment Received			(15)	(33) <span style="float: right;"></span>	
Net Claimed Amount			(16) <b>\$23,028</b>	(34) <span style="float: right;"></span>	
(08) Due from State			(17) <b>\$23,028</b>	(35) <span style="float: right;"></span>	
Due to State			(18)	(36) <span style="float: right;"></span>	

**(37) CERTIFICATION OF CLAIM**

In accordance with the provisions of Government Code Section 17561, I certify that I am the officer authorized by the local agency to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Article 4, Chapter 1 of Division 4 of the Title 1 Government Code.

I further certify that there was no application other than from the claimant, nor any grants or payments received for reimbursement of costs claimed herein and claimed costs are for a new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the parameters and guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.

The amount for this reimbursement is hereby claimed from the State for payment of actual costs set forth on the attached statements.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature of Authorized Officer

Date Signed \_\_\_\_\_

Telephone Number

**510-272-6565**

E-Mail Address

**pat.oconnell@acgov.org**

**Patrick J. O'Connell, Auditor-Controller**

Type or Print Name and Title of Authorized Signatory

(38) Name of Agency Contact person for Claim

Telephone Number

**510-645-9316**

**Sherie Peterson**

E-Mail Address

**sherie.peterson@acgov.org**

Name of Consulting Firm / Claim Preparer

Telephone Number

**916-669-3583 Ext. 5515**

**Maximus Allan Burdick**

E-Mail Address

**allanburdick@maximus.com**

CLAIM FOR PAYMENT Pursuant to Governmen		MANDATE COSTS PERMANENT ABSENT VOTERS CLAIM SUMMARY			FORM 1
(01) Claimant County of Alameda		(02) Fiscal Year 2008-2009			
(03) Department					
<b>Direct Costs</b>		<b>Object Accounts</b>			
(04) Reimbursable Activities		(a) Salaries	(b) Benefits	(c) Materials and Supplies	(d) Total
<b>A. Initial - One-Time Activities</b>					
1. Computer Costs					
2. Sample Ballots (Change Format)					
3. Creating Initial Absentee File					
<b>B. Ongoing Activities</b>					
1. Maintenance of Permanent File		\$4,132	\$1,237	\$9,061	\$14,430
2. Increased Postage					
3. Cancellation of Non-Voters/Reinstatement upon Request					
4. Marking PAV Affidavit for Identification					
(05) Total Direct Costs		\$4,132	\$1,237	\$9,061	\$14,430
<b>Indirect Costs</b>					
(06) Indirect Cost Rate		[From ICRP or 10%]			208.10%
(07) Total Indirect Costs		[Refer to Claiming Instructions]			\$8,598
(08) Total Direct and Indirect Costs		[Line (05)(d) + line (07)]			\$23,028
<b>Cost Reduction</b>					
(09) Less: Offsetting Savings					
(10) Less: Other Reimbursements					
(11) Total Claimed Amount		[Line (08) - {line (09) + line (10)}]			\$23,028

**CLAIM FOR  
PAYMENT**  
Pursuant to  
Government

**MANDATED COSTS  
PERMANENT ABSENT VOTERS  
ACTIVITY COST DETAIL**

**FORM  
2**

(01) Claimant  
County of Alameda

(02) Fiscal Year  
2008-2009

(03) Reimbursable Activities: Check only one box per form to identify the activity being claimed.

**A. Initial - One-Time Activities**

- Computer Costs
- Sample Ballots (Change Format)
- Creating Initial Absentee File

**B. Ongoing Activities**

- Maintenance of Permanent File
- Increased Postage
- Cancellation of Non-Voters (Reinstatement upon Request)

# INDIRECT COST RATE PROPOSAL

**Claimant Name:** Alameda County  
**Department:** Registrar of Voters  
**Fiscal Year:** 2008-2009

Description of Costs	Total Costs	Unallowable Costs	Allowable Indirect Costs	Allowable Direct Costs
<b>Personnel Services:</b>				
1 Salaries & Wages	\$1,709,055		\$654,553	\$1,054,502
2 Part-time Wages & Overtime	\$981,709			\$981,709
3 Benefits <span style="float: right;">60.5%</span>	\$1,034,219		\$396,097	\$638,122
<b>SUBTOTAL:</b>	<b>\$3,724,983</b>		<b>\$1,050,649</b>	<b>\$2,674,334</b>
<b>Line Item Costs (Services, Supplies &amp; Other):</b>				
4 Rents and Leases	\$18,514		\$18,514	
5 Repair and Maintenance	\$227,027		\$227,027	
6 Transportation	\$227		\$227	
7 Travel	\$3,076		\$3,076	
8 Training	\$6,468		\$6,468	
9 Prof & Specialized Services	\$493,531		\$493,531	\$0
10 Temporary Services	\$2,167,978			\$2,167,978
11 Memberships and Dues	\$525	\$525		
12 Spcl Departmental Exp	\$318,294		\$20,553	\$297,741
13 Office Expense	\$6,004,569		\$560,287	\$5,444,282
14 Communications	\$112,876		\$112,876	
15 Electronic Eq. Maint	\$2,870		\$2,870	
16 Motor Vehicle Transportation	\$59,798		\$59,798	
17 BMD Space Rental	\$660,805		\$660,805	
18 Info Technology Svcs	\$428,887		\$329,687	\$99,200
19 Reprographic Svcs	\$107,926			\$107,926
20 Risk Mgmt Ins Svcs	\$78,228		\$78,228	
21				
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<b>PAGE 1 - SUBTOTAL:</b>	<b>\$10,691,600</b>	<b>\$525</b>	<b>\$2,573,947</b>	<b>\$8,117,128</b>

# INDIRECT COST RATE PROPOSAL

**Claimant Name:** Alameda County  
**Department:** Registrar of Voters  
**Fiscal Year:** 2008-2009

Description of Costs	Total Costs	Unallowable Costs	Allowable Indirect Costs	Allowable Direct Costs
49				
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<b>PAGE 2 - SUBTOTAL:</b>														
Total Line Item Costs - Page 1 and 2	\$10,691,600	\$525	\$2,573,947	\$8,117,128										
<b>TOTAL ALL EXPENDITURES:</b>	<b>\$14,416,583</b>													
<b>Cost Adjustments and/or Cost Plan Costs:</b>														
89 A-87 Cost Allocation	\$612,208		\$612,208											
90														
<b>COST ALLOCATION SUBTOTAL:</b>	<b>\$612,208</b>		<b>\$612,208</b>											
<b>TOTAL ALL COSTS:</b>	<b>\$15,028,791</b>		<b>\$4,236,804</b>	<b>\$10,791,462</b>										
<table style="width: 100%; border: none;"> <tr> <td style="width: 35%;">CALCULATED INDIRECT COST RATE =</td> <td style="width: 15%; text-align: center; border: 1px solid black;">208.1%</td> <td style="width: 15%; text-align: right;">\$4,236,804</td> <td style="width: 15%;">= Total allowable indirect costs</td> <td style="width: 20%;"></td> </tr> <tr> <td>Rate is based on: Salaries</td> <td></td> <td style="text-align: right;">\$2,036,212</td> <td>= Total direct salaries + P.T. wages &amp; OT</td> <td></td> </tr> </table>					CALCULATED INDIRECT COST RATE =	208.1%	\$4,236,804	= Total allowable indirect costs		Rate is based on: Salaries		\$2,036,212	= Total direct salaries + P.T. wages & OT	
CALCULATED INDIRECT COST RATE =	208.1%	\$4,236,804	= Total allowable indirect costs											
Rate is based on: Salaries		\$2,036,212	= Total direct salaries + P.T. wages & OT											



## DEPARTMENTAL INDIRECT SALARIES

**Claimant Name:** Alameda County  
**Department:** Registrar of Voters  
**Fiscal Year:** 2008-2009

### INDIRECT SALARIES

Position or Name of Employee	Annual Wages	Departmental Administration		Departmental Support	
		(%)	(\$)	(%)	(\$)
1 Tom York, Info Systems Coordinator	\$100,360			100%	\$100,360
2 Benita Cox, Administrative Specialist II	\$75,608			100%	\$75,608
3 Kathy Pelayo, Secretary II	\$65,354			100%	\$65,354
4 Cynthia Cornejo, Deputy Registrar	\$103,979	100%	\$103,979		
5 Janet Peters, Supervising Clerk I	\$57,330			100%	\$57,330
6 Ramon Herce, Accounting Specialist I	\$43,368			100%	\$43,368
7 John Serrano, Supervising Clerk	\$65,869	100%		100%	\$65,869
8 Esther Robinson, Supervision Regist/Elections Tech	\$77,060	100%	\$77,060		
9 Dusting Zafren, Geographical Info Tech	\$65,624			100%	\$65,624
10					
11					
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<b>TOTALS</b>	<b>\$654,553</b>	<b>\$181,039</b>	<b>\$473,514</b>
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TOTAL INDIRECT SALARIES \$654,553

# Exhibit I

<b>CLAIM FOR PAYMENT</b> <b>Pursuant to Government Code Section 17561</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b>			For State Controller Use Only (19) Program Number 00187 (20) Date Filed ___/___/___ (21) LRS Input ___/___/___	<b>Program</b> <b>187</b>
(01) Claimant Identification Number <b>9943</b>			<b>Reimbursement Claim Data</b>	
(02) Claimant Name <b>County of Santa Clara</b>			(22) PPBR-1,(03)(a)	<b>0</b>
County of Location <b>Santa Clara</b>			(23) PPBR-1,(03)(b)	<b>62</b>
Street Address or P.O. Box <b>70 West Hedding Street, East Wing, 2nd Floor</b>			(24) PPBR-1,(03)(c)	<b>60</b>
City <b>San Jose</b> State <b>CA</b> Zip Code <b>95110</b>			(25) PPBR-1,(03)(d)	<b>2</b>
<b>Type of Claim</b>	<b>Estimated Claim</b>		<b>Reimbursement Claim</b>	
	(03) Estimated <input checked="" type="checkbox"/>	(09) Reimbursement <input checked="" type="checkbox"/>	(26) PPBR-1,(04)(1)(e)	<b>93,401</b>
	(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(27) PPBR-1,(04)(2)(e)	<b>984</b>
	(05) Amended <input type="checkbox"/>	(11) Amended <input type="checkbox"/>	(28) PPBR-1,(04)(3)(e)	<b>39,473</b>
Fiscal Year of Cost of Cost <b>2005-2006</b>			(12) <b>2004-2005</b>	(30) PPBR-1,(06) <b>40,24,6,74</b>
Total Claimed Amount <b>\$216,619</b>			(13) <b>\$270,774</b>	(31) PPBR-1,(07) <b>103,117</b>
LESS: 10% Late Penalty			(14)	(32) PPBR-1,(09)
LESS: Estimated Claim Payment Received			(15)	(33) PPBR-1,(10)
Net Claimed Amount			(16) <b>\$270,774</b>	(34)
Due from State	(08) <b>\$216,619</b>	(17) <b>\$270,774</b>	(35)	
Due to State		(18)	(36)	
<b>(37) CERTIFICATION OF CLAIM</b>				
In accordance with the provisions of Government Code 17561, I certify that I am the officer authorized by the local agency to file mandated cost claims with the State of California for this program, and certify under the penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 through 1098, inclusive.				
I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein, and such costs are for new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.				
The amounts for this Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.				
Signature of Authorized Officer			Date	
<b>Ram Venkatesan</b>			<b>SB 90 Coordinator</b>	
Print or type name			Title	
(38) Name of Contact Person for Claim			Telephone Number	<b>916.485.8102 x 110</b>
<b>Ferlyn B. Junio (MAXIMUS, Inc.)</b>			E-mail Address	<b>ferlynjunio@maximus.com</b>

<b>Program</b> <b>187</b>	<b>MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS CLAIM SUMMARY</b>				<b>FORM PPBR-1</b>
(01) Claimant: County of Santa Clara		(02) Fiscal year costs were incurred: 2004-2005			
<b>Claim Statistics</b>					
(03)	(a) Number of cases in process at the beginning of the fiscal year				0
	(b) Number of new cases added during the fiscal year				62
	(c) Number of cases completed or closed during the fiscal year				60
	(d) Number of cases in process at the end of the year				2
<b>Direct Costs</b>					
(04) Reimbursable Components	(a) Salaries	(b) Benefits	(c) Services and Supplies	(d) Travel and Training	(e) Total
1. Administrative Activities	\$69,649	\$19,135	\$1,318	\$3,299	\$93,401
2. Administrative Appeal	\$776	\$208			\$984
3. Interrogations	\$28,901	\$9,898	\$673		\$39,473
4. Adverse Comment	\$25,766	\$8,032			\$33,799
(05) Total Direct Costs	\$125,092	\$37,274	\$1,991	\$3,299	\$167,657
<b>Indirect Costs</b>					
(06) Indirect Cost Rate (From ICRP)	Salary and Benefits				See Summary
(07) Indirect Costs	[(Line(06))*(line(05)(a)+line(05)(b))]				\$103,117
(08) Total Direct and Indirect Costs	[Line (05)(e) + Line (07)]				\$270,774
<b>Cost Reductions</b>					
(09) Less Offsetting Savings, if applicable					
(10) Less Other Reimbursements, if applicable					
(11) Total Claimed Amount:	{Line(08)- [Line (09) + Line(10)]}				\$270,774

Revised 09/03

<b>Program 187</b>	<b>MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM PPBR-2</b>
------------------------	---	------------------------

(01) Claimant: <b>County of Santa Clara</b>	(02) Fiscal year costs were incurred: <b>2004-2005</b>
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input checked="" type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>SHERIFF COSTS:</b>								
Revise and update internal policies, procedures, manuals and or other materials relating to POBARS, attendance to specific training and maintaining and/or updating the status of the POBAR case records.								
Lt Burgess	\$66.15	30.6%	24.00			\$1,588	\$486	\$2,074
Sgt. Matuzek	\$57.39	33.0%	30.00			\$1,722	\$567	\$2,289
<i>Training</i>								
Lt. Burgess	\$66.15	30.6%	8.00			\$529	\$162	\$691
Sgt. Matuzek	\$57.39	33.0%	6.50			\$373	\$123	\$496
Sgt. Staats	\$57.40	38.7%	10.00			\$574	\$222	\$796
Revise and update internal policies, procedures, manuals and or other materials relating to POBARS, attendance to specific training and maintaining and/or updating the status of the POBAR case records.								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total ( ) Subtotal ( )						\$4,786	\$1,561	\$6,346

<b>Program</b> <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2004-2005
--------------------------------------	---

(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input checked="" type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>DISTRICT ATTORNEY COSTS:</b>								
M. Vidmar, Assistant Chief Maintained and updated the status of the POBAR case records.	\$74.06	29.07%	1.00			\$74	\$22	\$96
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total ( )      Subtotal ( )				Page: _____ of _____		\$74	\$22	\$96

<b>Program 187</b>	<b>MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2004-2005
--------------------------------------	---

(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input checked="" type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)	Object Accounts								
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)			
						Salaries	Benefits	Total Sal. & Bens	
<b>PROBATION COSTS:</b>									
Shirley Cantu, Acting Chief Prob Officer	\$73.34	26.20%	2.00			\$147	\$38	\$185	
Nicholas Cademartori, Interim Chief Prob Officer	\$100.97	19.03%	2.00			\$202	\$38	\$240	
Ann Meta Clarke, Acting Chief Prob Officer	\$95.50	23.91%	2.00			\$191	\$46	\$237	
Kathy Duque, Deputy Chief Probation Officer	\$72.63	26.29%	52.00			\$3,777	\$993	\$4,770	
Phuong Le, HR Manager	\$52.52	30.10%	5.00			\$263	\$79	\$342	
Delores Nnam, Administrative Services Manager	\$70.47	26.60%	29.00			\$2,044	\$544	\$2,587	
Karen Fletcher, Deputy Chief Probation Officer	\$66.84	26.03%	457.00			\$30,546	\$7,951	\$38,497	
Kathy Viana, Administrative Assistant	\$30.57	39.97%	93.00			\$2,843	\$1,136	\$3,979	
In FY 05, the department established an IA unit. The time spent by staff involved was to create and develop the department's internal policies and procedures related to POBAR.									
Karen Fletcher, Deputy Chief Probation Officer	\$66.84	26.03%	72.00		\$1,506	\$4,812	\$1,253	\$6,065	
John Dahl, Probation Manager	\$65.79	26.20%	24.00		\$447	\$1,579	\$414	\$1,993	
Bret Fidler, Supv Group Counselor	\$51.16	29.33%	24.00		\$662	\$1,228	\$360	\$1,588	
Ned Putt, Supv Probation Officer	\$56.96	27.90%	24.00		\$684	\$1,367	\$381	\$1,748	
Attended specific training related to POBAR. See attached for date and location.									
Karen Fletcher, Deputy Chief Probation Officer	\$66.84	26.03%	153.00			\$10,227	\$2,662	\$12,888	
Update the status of POBAR cases.									
<b>Prob-Consult.Svcs - Contractor</b>					\$1,318				
Assisted in the development of the IA unit of the Probation department.									
Probation Officer (12)	\$45.37	32.56%	48.00			\$2,178	\$709	\$2,887	
Supervising Prbation Officer (13)	\$65.14	28.00%	52.00			\$3,387	\$948	\$4,336	
Attended specific training related to POBAR. See attached for dates.									
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>									
<b>(05) Total ( ) Subtotal ( )</b>					<b>\$1,318</b>	<b>\$3,299</b>	<b>\$64,789</b>	<b>\$17,553</b>	<b>\$82,342</b>

<b>Program</b> <span style="font-size: 24pt; font-weight: bold;">187</span>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2004-2005
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input checked="" type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts					
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)			
						Salaries	Benefits	Total Sal. & Bens	
<b>OTHER DEPARTMENT COSTS:</b>									
<u>Revise and update internal policies, procedures, manuals and or other materials relating to POBARS, attendance to specific training and maintaining and/or updating the status of the POBAR case records.</u>									
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>									
(05) Total ( )      Subtotal ( )				Page: _____ of _____					

Revised 09/03



Program  
**187**

**MANDATED COSTS  
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS  
COMPONENT / ACTIVITY COST DETAIL**

**FORM  
PPBR-2**

(01) Claimant: County of Santa Clara

(02) Fiscal year costs were incurred:

2004-2005

(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

Administrative Activities

Administrative Appeal

Interrogations

Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)

Object Accounts

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>SHERIFF COSTS:</b>								
<u>Preparation and review of documents to proceed with administrative hearing, including legal review and providing assistance with the hearing.</u>								
<p><i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i></p>								

(05) Total ( )      Subtotal ( )

Page: \_\_\_\_ of \_\_\_\_

Program  
**187**

**MANDATED COSTS  
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS  
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PPBR-2**

(01) Claimant: County of Santa Clara

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Administrative Activities

Administrative Appeal

Interrogations

Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)

Object Accounts

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>DISTRICT ATTORNEY COSTS:</b>								
<u>Preparation and review of documents to proceed with administrative hearing, including legal review and providing assistance with the hearing.</u>								
<p><i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i></p>								

(05) Total ( )      Subtotal ( )

Page: \_\_\_\_ of \_\_\_\_

<b>Program</b> <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2004-2005
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input checked="" type="checkbox"/> Administrative Appeal
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(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>PROBATION COSTS:</b>								
Robert DeJesus, Probation Manager Preparation and review of documents to proceed with administrative hearing, including legal review and providing assistance with the hearing.	\$62.08	26.9%	12.50			\$776	\$208	\$984
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total ( )      Subtotal ( )						\$776	\$208	\$984

Program  
**187**

**MANDATED COSTS  
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS  
COMPONENT / ACTIVITY COST DETAIL**

**FORM  
PPBR-2**

(01) Claimant: County of Santa Clara

(02) Fiscal year costs were incurred:

2004-2005

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Administrative Activities

Administrative Appeal

Interrogations

Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)

Object Accounts

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>OTHER DEPARTMENT COSTS:</b>								
<u>Preparation and review of documents to proceed with administrative hearing, including legal review and providing assistance with the hearing.</u>								
<p><i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i></p>								

(05) Total ( )      Subtotal ( )

Page: \_\_\_\_ of \_\_\_\_

<b>Program</b> <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2004-2005
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input checked="" type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>SHERIFF COSTS:</b>								
<b><u>Interrogations-(Sworn-officer's only)</u></b>								
<b><u>Time spent interrogating an officer. Notify officer prior to interrogation the nature of interrogation and identify the investigating officers.</u></b> (Including the review of complaints, documents to prepare the notice of interrogation; determination of the investigating officers; redaction of agency complaint for names of the complainant, witnesses; and the preparation of notices.)								
Lt. Burgess	\$66.15	30.6%	86.17			\$5,700	\$1,747	\$7,447
Sgt. Dona	\$57.01	41.9%	0.50			\$29	\$12	\$40
Deputy Holloway	\$48.93	36.7%	0.99			\$48	\$18	\$66
Sgt. Matuzek	\$57.39	33.0%	47.07			\$2,701	\$890	\$3,592
Sgt. Mitre	\$56.85	39.6%	0.50			\$28	\$11	\$40
Sgt. Staats	\$57.40	38.7%	124.15			\$7,126	\$2,754	\$9,880
Deputy Sheriff	\$42.09	52.0%	47.24			\$1,988	\$1,033	\$3,022
Sergeant	\$48.71	52.0%	0.33			\$16	\$8	\$24
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total ( ) Subtotal ( ) Page: _____ of _____						\$17,637	\$6,474	\$24,111

<b>Program</b> <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2004-2005
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input checked="" type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g) Object Accounts

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)			
						Salaries	Benefits	Total Sal. & Bens	
<b>DISTRICT ATTORNEY COSTS:</b>									
<b>M. Lane, Lieutenant</b>	\$70.19	32.28%	11.25			\$790	\$255	\$1,045	
<b>R. Pifferini, Deputy Chief</b>	\$58.30	34.49%	23.75			\$1,385	\$478	\$1,862	
Time spent interrogating an officer. Notify officer prior to interrogation the nature of interrogation and identify the investigating officers.									
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>									

(05) Total ( )	Subtotal ( )	Page: ____ of ____			\$2,174	\$732	\$2,907
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<b>Program 187</b>	<b>MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM PPBR-2</b>
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(01) Claimant: <b>County of Santa Clara</b>	(02) Fiscal year costs were incurred: <b>2004-2005</b>
---	--

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<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input checked="" type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)	Object Accounts							
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>PROBATION COSTS:</b>								
<p><b><u>Interrogations-(Sworn-officer's only)</u></b>            Time spent interrogating an officer. Notify officer prior to interrogation the nature of interrogation and identify the investigating officers. (Including the review of complaints, documents to prepare the notice of interrogation; determination of the investigating officers; redaction of agency complaint for names of the complainant, witnesses; and the preparation of notices.)</p> <p>See attached summary for detail of personnel involved from the IA Unit.</p> <p><b>Transcriptions Plus</b>  <b>Advantage Reporting Servies</b>  <b>San Jose Blue Print</b>  <b>Sandra Puentes - Witness Fees</b>            See attached schedule for detail.</p> <p><b>Robert DeJesus, Probation Manager</b>            Involmtment in the interrogation process. This individual is from the ESA division.            See attached for detail.</p>						\$8,531	\$2,542	\$ 11,073
				\$238 \$200 \$185 \$50				
	\$62.08	26.9%	9.00			\$559	\$150	\$709
<p><i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i></p>								
<b>(05) Total ( ) Subtotal ( )</b>				<b>\$673</b>		<b>\$9,089</b>	<b>\$2,692</b>	<b>\$11,782</b>

PROBATION - IA UNIT FY 04/05

\* INTERVIEWED = I, WITNESS = W, SUBJECT = S, INVESTIGATING = V, REVIEW BOARD = R  
 \* PROBATION MANAGER = PM, SUPERVISING PROBATION OFFICER= SPO,  
 \* HUMAN RESOURCE MANAGER = HRM, ASSO. MGMT. ANALYST = AMA, DEPUTY PROBATION OFFICER= DPO

CASE#	#	OFFICER NAME	TITLE	FUNCTIO N	PRE INTER- ROGATION	INTER- ROGATIONS	TOTAL HOURS WORKED	PROD HR RATE	BENEFIT RATE	TOTAL SAL	TOTAL BEN
1A2005-03-0002	A	ANNETTE VAN UNEN	AA	I	6.75	0	6.75				
1A2005-03-0003	A	ANNETTE VAN UNEN	AA	I	0	6.25	6.25				
1A2005-04-0007	A	ANNETTE VAN UNEN	AA	I	7	0	7.00				
1A2005-04-0009	A	ANNETTE VAN UNEN	AA	I	0.5		0.50				
		<b>ANNETTE VAN UNEN Total</b>					20.50	30.32	40.17%	\$ 621.56	\$ 249.68
1A2005-03-0002	1	BRET FIDLER	SGC	V	30	2	32.00				
1A2005-03-0003	1	BRET FIDLER	SGC	V	23	2	25.00				
1A2005-04-0007	1	BRET FIDLER	SGC	V	26	2	28.00				
		<b>BRET FIDLER Total</b>					85.00	51.16	29.33%	\$ 4,348.60	\$ 1,275.44
1A2005-03-0002	7	BRUCE HANDRY	SPO	W	1.5	0	1.50				
1A2005-03-0003	3	BRUCE HANDRY	SPO	W	1	0	1.00				
		<b>BRUCE HANDRY Total</b>					2.50	56.96	27.90%	\$ 142.40	\$ 39.73
1A2005-03-0002	12	CLEVELAND PRINCE	PM	R	0	0	-				
1A2005-03-0003	5	CLEVELAND PRINCE	PM	R	0	0	-				
		<b>CLEVELAND PRINCE Total</b>					-	63.45	26.60%	\$ -	
1A2005-03-0001	1	DAVE PEREZ	SPO	W	3	1	4.00				
		<b>DAVE PEREZ Total</b>					4.00	56.96	27.90%	\$ 227.84	\$ 63.57
1A2005-03-0002	B	DELORES NHAM	ASM	R	0	0	-				
1A2005-03-0003	B	DELORES NHAM	ASM	R	0	0	-				
1A2005-04-0007	B	DELORES NHAM	ASM	R	0	0	-				
		<b>DELORES NHAM Total</b>					-	70.47	26.60%	\$ -	
1A2005-03-0002	8	GENE GINN	DPO	W	1.5	0	1.50				
		<b>GENE GINN Total</b>					1.50	50.18	29.61%	\$ 75.27	\$ 22.29
1A2005-03-0002	3	JILL ORNELLAS	SPO	W	1.5	0	1.50				
		<b>JILL ORNELLAS Total</b>					1.50	57.11	27.87%	\$ 85.67	\$ 23.87
1A2005-03-0002	14	JOHN DAHL	PM	W	1.5	0	1.50				
		<b>JOHN DAHL Total</b>					1.50	65.79	26.20%	\$ 98.69	\$ 25.86
1A2005-03-0001	5	KAREN FLETCHER	PM	I	3	0	3.00				
1A2005-03-0002	11	KAREN FLETCHER	PM	R	0	0	-				
1A2005-03-0003	4	KAREN FLETCHER	PM	R	0	0	-				
1A2005-04-0007	3	KAREN FLETCHER	PM	R	0	0	-				
		<b>KAREN FLETCHER Total</b>					3.00	66.84	26.03%	\$ 200.52	\$ 52.20
1A2005-03-0002	13	KATHY DUQUE	DCPO	R	0	0	-				
1A2005-03-0003	6	KATHY DUQUE	DCPO	R	0	0	-				
1A2005-04-0007	5	KATHY DUQUE	DCPO	R	0	0	-				
		<b>KATHY DUQUE Total</b>					-	72.63	26.29%	\$ -	
1A2005-03-0001	2	LINDA NGUYEN	SPO	W	1	0.5	1.50				
		<b>LINDA NGUYEN Total</b>					1.50	56.96	27.90%	\$ 85.44	\$ 23.84
1A2005-03-0002	6	LUCY TREVINO	DPO	W	1.5	0	1.50				
		<b>LUCY TREVINO Total</b>					1.50	36.55	34.98%	\$ 54.83	\$ 19.18
1A2005-03-0002	4	MARY RYAN	DPO	W	1.5	0	1.50				
		<b>MARY RYAN Total</b>					1.50	50.32	29.57%	\$ 75.48	\$ 22.32
1A2005-04-0007	4	MICHAEL SIMMS	PM	R	0	0	-				
		<b>MICHAEL SIMMS Total</b>					-	61.93	26.88%	\$ -	
1A2005-03-0001	4	NED PUTT	SPO	V	17	4.5	21.50				
1A2005-04-0009	1	NED PUTT	SPO	V	13	1	14.00				
		<b>NED PUTT Total</b>					35.50	56.96	27.90%	\$ 2,022.08	\$ 564.16
1A2005-03-0001	B	PHUONG LE	HRM	I	0	0	-				
1A2005-03-0002	B'	PHUONG LE	HRM	I	0	0	-				
1A2005-03-0003	B'	PHUONG LE	HRM	I	0	0	-				
1A2005-05-0010	B'	PHUONG LE	HRM	I	0	0	-				
		<b>PHUONG LE Total</b>					-	52.52	30.10%	\$ -	
1A2005-03-0002	10	RICHARD DE JESUS	DPO	W	1.5	0	1.50				
		<b>RICHARD DE JESUS Total</b>					1.50	44.62	29.01%	\$ 66.93	\$ 19.42
1A2005-03-0001	A	STARR COATNEY	AMA	I	0	0	-				
1A2005-03-0002	A'	STARR COATNEY	AMA	I	0	0	-				
1A2005-03-0003	A'	STARR COATNEY	AMA	I	0	0	-				
1A2005-05-0010	A'	STARR COATNEY	AMA	I	0	0	-				
		<b>STARR COATNEY Total</b>					-	35.01	36.98%	\$ -	
1A2005-03-0001	3	SUBJECT	DPO	S	0	2	2.00				
1A2005-03-0002	2	SUBJECT	SPO	S	1	1	2.00				
1A2005-03-0003	2	SUBJECT	DPO	S	0.5	1	1.50				
1A2005-04-0007	2	SUBJECT	PCII	S	0.5	1	1.50				
1A2005-04-0009	2	SUBJECT	PC II	S		0.5	0.50				
		<b>SUBJECT Total</b>					7.50				
1A2005-03-0002	5	BOLIAVONE KEGARICE	DPO	W	1.5	0	1.50				
		<b>BOLIAVONE KEGARICE Total</b>					1.50	50.18	29.61%	\$ 75.27	\$ 22.29
1A2005-03-0002	9	ZULEMA VASQUEZ	DPO	W	1.5	0	1.50				
		<b>ZULEMA VASQUEZ Total</b>					1.50	44.62	31.40%	\$ 66.93	\$ 21.02
		<b>Grand Total</b>					171.50			\$ 8,530.68	\$ 2,542.10



Program  
**187**

**MANDATED COSTS  
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS  
COMPONENT / ACTIVITY COST DETAIL**

**FORM  
PPBR-2**

(01) Claimant: County of Santa Clara

(02) Fiscal year costs were incurred:

2004-2005

(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

- |  |  |
|--|--|
| <input type="checkbox"/> Administrative Activities | <input type="checkbox"/> Administrative Appeal |
| <input checked="" type="checkbox"/> Interrogations | <input type="checkbox"/> Adverse Comment       |

(04) Description of Expense: Complete columns (a) through (g)

Object Accounts

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>OTHER DEPARTMENT COSTS:</b>								
<b><i>Interrogations-(Sworn-officer's only)</i></b>								
<b><u>Time spent interrogating an officer. Notify officer prior to interrogation the nature of interrogation and identify the investigating officers.</u></b> (Including the review of complaints, documents to prepare the notice of interrogation; determination of the investigating officers; redaction of agency complaint for names of the complainant, witnesses; and the preparation of notices.)								
<p><i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i></p>								

(05) Total ( )      Subtotal ( )

Page: \_\_\_\_\_ of \_\_\_\_\_

<b>Program</b> <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2004-2005
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input checked="" type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g) Object Accounts		
						Salaries	Benefits	Total Sal. & Bens
<b>SHERIFF COSTS:</b>								
Time to review circumstances or documentation of adverse comments, notification and presentations of comments; review of response to comments and filing. Time to gather reports and log sheets, review questions and preparation, case summary and IA review, command staff review of adverse comments and findings.								
Sgt. Atlas	\$61.80	35.0%	0.50			\$31	\$11	\$42
Lt. Burgess	\$66.15	30.6%	75.33			\$4,983	\$1,527	\$6,510
Lt. Calderone	\$70.19	31.3%	1.50			\$105	\$33	\$138
Sgt. Carrasco	\$58.67	52.8%	0.33			\$19	\$10	\$30
Sgt. Dona	\$57.01	41.9%	0.25			\$14	\$6	\$20
Deputy Holloway	\$48.93	36.7%	0.33			\$16	\$6	\$22
Sgt. Hooper	\$60.48	40.4%	0.50			\$30	\$12	\$42
Sgt. Imas	\$57.39	35.1%	2.00			\$115	\$40	\$155
Lt Keith	\$67.75	33.8%	1.00			\$68	\$23	\$91
Lt. Lemmon	\$57.37	25.9%	0.50			\$29	\$7	\$36
Sgt. Mathison	\$57.45	38.3%	0.66			\$38	\$15	\$52
Sgt. Matuzek	\$57.39	33.0%	80.81			\$4,638	\$1,529	\$6,166
Sgt. McIntosh	\$57.11	36.3%	0.66			\$38	\$14	\$51
Sgt. Mitre	\$56.85	39.6%	0.50			\$28	\$11	\$40
Sgt. Peterson	\$59.60	38.9%	0.25			\$15	\$6	\$21
Lt. Pugh	\$67.75	34.4%	1.83			\$124	\$43	\$167
Sgt. Rodriguez	\$47.22	33.3%	0.50			\$24	\$8	\$31
Sgt. Scott	\$57.66	31.5%	0.50			\$29	\$9	\$38
Sgt. Staats	\$57.40	38.7%	28.91			\$1,659	\$641	\$2,301
Sgt. Waldher	\$61.27	36.9%	0.66			\$40	\$15	\$55

The agency named above has made every effort not to include costs relating to the "Skelly Process".

(05) Total ( ) Subtotal ( )	Page: _____ of _____				\$12,043	\$3,965	\$16,009
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Program  
**187**

**MANDATED COSTS  
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS  
COMPONENT / ACTIVITY COST DETAIL**

**FORM  
PPBR-2**

(01) Claimant: County of Santa Clara

(02) Fiscal year costs were incurred:

2004-2005

(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

Administrative Activities

Administrative Appeal

Interrogations

Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)

Object Accounts

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)			
						Salaries	Benefits	Total Sal. & Bens	
<b>DISTRICT ATTORNEY COSTS:</b>									
<u>Time to review circumstances or documentation of adverse comments, notification and presentations of comments; review of response to comments and filing.</u>									
<u>Time to gather reports and log sheets, review questions and preparation, case summary and IA review, command staff review of adverse comments and findings.</u>									
<p><i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i></p>									
(05) Total ( )		Subtotal ( )		Page: _____ of _____					

<b>Program</b> <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2004-2005
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input checked="" type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>PROBATION COSTS:</b>								
Time to review circumstances or documentation of adverse comments, notification and presentations of comments; review of response to comments and filing. Time to gather reports and log sheets, review questions and preparation, case summary and IA review, command staff review of adverse comments and findings.  See attached summary for further detail.						\$9,812	\$3,017	\$12,829
<b>Robert DeJesus, Probation Manager</b> Involvement in the interrogation process. This individual is from the ESA division. See attached for detail.	\$62.08	26.9%	63.00			\$3,911	\$1,050	\$4,961
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total ( )      Subtotal ( )      Page: _____ of _____						\$13,723	\$4,067	\$17,790

PROBATION  
 POBAR FY 2004-2005  
 ADVERSE COMMENT COSTS

CASE#	#	OFFICER NAME	TITLE	FUNC	ADVERSE COMMENT	TOTAL	PROD HR RATE	BENEFIT RATE	TOTAL SAL	TOTAL BEN
1A2005-03-0002	1	BRET FIDLER	SGC	V	15	15.00				
1A2005-03-0003	1	BRET FIDLER	SGC	V	15	15.00				
1A2005-04-0007	1	BRET FIDLER	SGC	V	15	15.00				
<b>BRET FIDLER Total</b>						45.00	51.16	29.33%	\$ 2,302.20	\$ 675.24
1A2005-03-0002	12	CLEVELAND PRINCE	PM	R	2	2.00				
1A2005-03-0003	5	CLEVELAND PRINCE	PM	R	3	3.00				
<b>CLEVELAND PRINCE Total</b>						5.00	63.45	26.60%	\$ 317.25	\$ 84.39
1A2005-03-0002	B	DELORES NHAM	ASM	R	1	1.00				
1A2005-03-0003	B	DELORES NHAM	ASM	R	1	1.00				
1A2005-04-0007	B	DELORES NHAM	ASM	R	2	2.00				
<b>DELORES NHAM Total</b>						4.00	70.47	26.60%	\$ 281.88	\$ 74.98
1A2005-03-0001	5	KAREN FLETCHER	PM	I	1	1.00				
1A2005-03-0002	11	KAREN FLETCHER	PM	R	7	7.00				
1A2005-03-0003	4	KAREN FLETCHER	PM	R	8	8.00				
1A2005-04-0007	3	KAREN FLETCHER	PM	R	7	7.00				
<b>KAREN FLETCHER Total</b>						23.00	66.84	26.03%	\$ 1,537.32	\$ 400.16
1A2005-03-0002	13	KATHY DUQUE	DCPO	R	2	2.00				
1A2005-03-0003	6	KATHY DUQUE	DCPO	R	3	3.00				
1A2005-04-0007	5	KATHY DUQUE	DCPO	R	2	2.00				
<b>KATHY DUQUE Total</b>						7.00	72.63	26.29%	\$ 508.41	\$ 133.66
1A2005-04-0007	4	MICHAEL SIMMS	PM	R	2	2.00				
<b>MICHAEL SIMMS Total</b>						2.00	61.93	26.88%	\$ 123.86	\$ 33.29
1A2005-03-0001	4	NED PUTT	SPO	V	16	16.00				
1A2005-04-0009	1	NED PUTT	SPO	V	3	3.00				
<b>NED PUTT Total</b>						19.00	56.96	27.90%	\$ 1,082.24	\$ 301.94
1A2005-03-0001	B	PHUONG LE	HRM	I	3	3.00				
1A2005-03-0002	B'	PHUONG LE	HRM	I	2	2.00				
1A2005-03-0003	B'	PHUONG LE	HRM	I	2	2.00				
1A2005-05-0010	B'	PHUONG LE	HRM	I	4	4.00				
<b>PHUONG LE Total</b>						11.00	52.52	30.10%	\$ 577.72	\$ 173.89
1A2005-03-0001	A	STARR COATNEY	AMA	I	20	20.00				
1A2005-03-0002	A'	STARR COATNEY	AMA	I	13	13.00				
1A2005-03-0003	A'	STARR COATNEY	AMA	I	13	13.00				
1A2005-05-0010	A'	STARR COATNEY	AMA	I	42	42.00				
<b>STARR COATNEY Total</b>						88.00	35.01	36.98%	\$ 3,080.88	\$ 1,139.31
<b>Grand Total</b>						204.00			<b>\$ 9,811.76</b>	<b>\$ 3,016.87</b>

Program  
**187**

**MANDATED COSTS  
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS  
COMPONENT / ACTIVITY COST DETAIL**

FORM  
PPBR-2

(01) Claimant: County of Santa Clara

(02) Fiscal year costs were incurred:

2004-2005

(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

Administrative Activities

Administrative Appeal

Interrogations

Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)

Object Accounts

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)			
						Salaries	Benefits	Total Sal. & Bens	
<b>OTHER DEPARTMENT COSTS:</b>									
<u>Time to review circumstances or documentation of adverse comments, notification and presentations of comments; review of response to comments and filing.</u> <u>Time to gather reports and log sheets, review questions and preparation, case summary and IA review, command staff review of adverse comments and findings.</u>									
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>									
(05) Total ( )		Subtotal ( )		Page: _____ of _____					

**MANDATED COSTS  
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS  
COMPONENT / ACTIVITY COST DETAIL**

**FORM  
ICRP Summary**

(01) Claimant: County of Santa Clara

(02) Fiscal year costs were incurred:

2004-2005

**Indirect Cost Summary Sheet  
- By Department -**

<b>Department</b>	<b>ICRP</b>		<b>Total Direct</b>			<b>Total Indirect Costs</b>		
	Base	Percent	Salaries	Benefits	Services & Supplies	S&W	S&W&B	Total
Enter ICRP Rate in column F. Below each department "x" option rate is based on - "Salaries & Benefits" or "Salaries only"								
Salaries only								
Salaries & Benefits								
<b>Sheriff</b>	S&W&B	40.1%	\$34,466	\$12,000			\$18,610	
<b>District Attorney</b>	S&W&B	24.6%	\$2,248	\$754			\$737	
<b>Probation</b>	S&W&B	74.2%	\$88,378	\$24,520	\$5,290		\$83,770	
<b>Other</b>	S&W	10.0%						
								\$103,117
<b>Check totals on claim summary page:</b>								
Total Service & Supply					\$1,991			
Total Travel & Training					\$3,299			
Salaries			125,092					
Benefits			37,274					
					\$103,117			
Claim total					\$270,774			
			\$ 125,092	\$ 37,274	\$ 5,290	\$ -	\$103,117	

# Exhibit J



<b>CLAIM FOR PAYMENT</b> <b>Pursuant to Government Code Section 17561</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b>			For State Controller Use Only (19) Program Number 00187 (20) Date Filed ___/___/___ (21) LRS Input ___/___/___	<b>Program</b> <b>187</b>
(01) Claimant Identification Number <b>9943</b>			<b>Reimbursement Claim Data</b>	
(02) Claimant Name <b>County of Santa Clara</b>			(22) PPBR-1,(03)(a)	1
County of Location <b>Santa Clara</b>			(23) PPBR-1,(03)(b)	70
Street Address or P.O. Box <b>70 W. Hedding Street, 2nd Floor, West Wing</b>			(24) PPBR-1,(03)(c)	69
City <b>San Jose</b>			(25) PPBR-1,(03)(d)	2
State <b>CA</b>				
Zip Code <b>95110</b>				
<b>Type of Claim</b>	<b>Estimated Claim</b>	<b>Reimbursement Claim</b>	(26) PPBR-1,(04)(1)(e)	10,707
	(03) Estimated <input checked="" type="checkbox"/>	(09) Reimbursement <input checked="" type="checkbox"/>	(27) PPBR-1,(04)(2)(e)	153,424
	(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(28) PPBR-1,(04)(3)(e)	153,424
	(05) Amended <input type="checkbox"/>	(11) Amended <input type="checkbox"/>	(29) PPBR-1,(04)(4)(e)	27,682
Fiscal Year of Cost	(06) <b>2006-2007</b>	(12) <b>2005-2006</b>	(30) PPBR-1,(06)	35.5, 22.92, 73.65
Total Claimed Amount	(07) <b>\$237,508</b>	(13) <b>\$311,692</b>	(31) PPBR-1,(07)	119,694
LESS: 10% Late Penalty, not to exceed \$1,000			(32) PPBR-1,(09)	0
LESS: Estimated Claim Payment Received			(33) PPBR-1,(10)	0
Net Claimed Amount			(34)	
			<b>\$311,692</b>	
Due from State	(08) <b>\$237,508</b>	(17) <b>\$311,692</b>	(35)	
Due to State		(18)	(36)	
<b>(37) CERTIFICATION OF CLAIM</b>				
<p>In accordance with the provisions of Government Code 17561, I certify that I am the officer authorized by the local agency to file mandated cost claims with the State of California for this program, and certify under the penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 through 1098, inclusive.</p> <p>I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein, and such costs are for new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.</p> <p>The amounts for this Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.</p>				
Signature of Authorized Officer			Date	
<b>Ram Venkatesan</b>			<b>SB 90 Coordinator</b>	
Print or type name			Title	
(38) Name of Contact Person for Claim			Telephone Number	
<b>Ferlyn B. Junio (MAXIMUS, Inc.)</b>			<b>(916) 485-8102</b> X 110	
			E-mail Address	
			<b>ferlynjunio@maximus.com</b>	

<b>Program</b> <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>CLAIM SUMMARY</b>	<b>FORM</b> <b>PPBR-1</b>
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<b>(01) Claimant:</b> County of Santa Clara	<b>(02) Fiscal year costs were incurred:</b> 2005-2006
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<b>Claim Statistics</b>	
<b>(03) (a) Number of cases in process at the beginning of the fiscal year</b>	1
<b>(b) Number of new cases added during the fiscal year</b>	70
<b>(c) Number of cases completed or closed during the fiscal year</b>	69
<b>(d) Number of cases in process at the end of the year</b>	2

<b>Direct Costs</b>					
<b>(04) Reimbursable Components</b>	<b>(a)</b>	<b>(b)</b>	<b>(c)</b>	<b>(d)</b>	<b>(e)</b>
	Salaries	Benefits	Services and Supplies	Travel and Training	Total
1. Administrative Activities	\$7,963	\$2,744			\$10,707
2. Administrative Appeal	\$120	\$64			\$184
3. Interrogations	\$114,751	\$38,673			\$153,424
4. Adverse Comment	\$17,962	\$9,720			\$27,682
<b>(05) Total Direct Costs</b>	<b>\$140,795</b>	<b>\$51,202</b>			<b>\$191,997</b>

<b>Indirect Costs</b>		
<b>(06) Indirect Cost Rate (From ICRP)</b>	Salary and Benefits	<b>SEE INDIRECT SUMMARY SHEET</b>
<b>(07) Indirect Costs</b>	[(Line(06))*(line(05)(a)+line(05)(b))]	\$119,694
<b>(08) Total Direct and Indirect Costs</b>	[Line (05)(e) + Line (07)]	\$311,692

<b>Cost Reductions</b>		
<b>(09) Less Offsetting Savings, if applicable</b>		
<b>(10) Less Other Reimbursements, if applicable</b>		
<b>(11) Total Claimed Amount:</b>	{Line(08)- [Line (09) + Line(10)]}	\$311,692

<b>Program 187</b>	<b>MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM PPBR-2</b>
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(01) Claimant: <b>County of Santa Clara</b>	(02) Fiscal year costs were incurred: <b>2005-2006</b>
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input checked="" type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)	Object Accounts								
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)			
						Salaries	Benefits	Total Sal. & Bens	
<b>SHERIFF COSTS:</b>									
<u>Revise and update internal policies, procedures, manuals and or other materials relating to POBARS, attendance to specific training and maintaining and/or updating the status of the POBAR case records.</u>									
Lt. Burgess	\$70.75	48.5%	4.50			\$318	\$154		
Sgt. Matuzek	\$59.93	53.7%	12.33			\$739	\$397		
Sgt. Peterson	\$62.18	57.7%	0.50			\$31	\$18		
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>									

(05) Total ( )	Subtotal ( x )	Page 1 of 3			\$1,088	\$569	\$1,658
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<b>Program</b> <span style="font-size: 24pt; font-weight: bold;">187</span>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2005-2006
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						Salaries	Benefits	Total Sal. & Bens
<b>DISTRICT ATTORNEY COSTS</b>								
<b>Mike Vidmar, Criminal Investigator III</b> Maintaining and/or updating the status of the POBAR case files.	\$64.13	45.0%	2.00			\$128	\$58	\$186
<i>The agency named above has made every effort not                      to include costs relating to the "Skelly Process".</i>								
(05) Total ( )      Subtotal ( x )						\$128	\$58	\$186

<b>Program</b> <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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						Salaries	Benefits	Total Sal. & Bens
<b>PROBATION COSTS</b>								
John Dahl, Probation Manager Update POBAR procedure manual.	\$67.58	24.03%	2.00			\$135	\$32	\$168
John Dahl, Probation Manager Provide POBAR training to EOD staff.	\$67.58	24.03%	1.00			\$68	\$16	\$84
John Dahl, Probation Manager Maintain and update POBAR case files.	\$67.58	24.03%	8.50			\$574	\$138	\$712
Deputy Probation Officer X5X Supervising Probation Officer X48, X44 Received training on POBAR. Course title "Labor Relations Overview" on 5/25/06, Peace Office Discipline on 1/26/06, How To Conduct Investigations into Allegations of Employees on 3/29/06, and Civil Liabilities for Managers and Supervisors on 5/10/06.	\$46.91	34.51%	53.00			\$2,486	\$858	\$3,344
	\$60.05	30.78%	58.00			\$3,483	\$1,072	\$4,555
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total ( x )      Subtotal ( )						\$6,746	\$2,117	\$8,863

Program <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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						Salaries	Benefits	Total Sal. & Bens
<b>OTHER DEPARTMENT COSTS:</b>								
<u>Revise and update internal policies, procedures, manuals and or other materials relating to POBARS, attendance to specific training and maintaining and/or updating the status of the POBAR case records.</u>								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								

(05) Total ( )	Subtotal ( )	Page: ____ of ____	
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<b>Program</b> <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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						Salaries	Benefits	Total Sal. & Bens
<b>SHERIFF COSTS:</b>								
<b><u>Preparation and review of documents to proceed with administrative hearing, including legal review and providing assistance with the hearing.</u></b>								
Sgt. Matuzek	\$59.93	53.7%	2.00			\$120	\$64	\$184
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								

(05) Total ( )	Subtotal ( )	Page: _____ of _____			\$120	\$64	\$184
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Program <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(05) Total ( )	Subtotal ( )	Page: ____ of ____
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<b>Program</b> <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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						Salaries	Benefits	Total Sal. & Bens
<b>PROBATION COSTS:</b>								
<u>Preparation and review of documents to proceed with administrative hearing, including legal review and providing assistance with the hearing.</u>								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total ( )      Subtotal ( )				Page: ____ of ____				

<b>Program</b> <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant: <b>County of Santa Clara</b>	(02) Fiscal year costs were incurred: <b>2005-2006</b>
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input checked="" type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

**(04) Description of Expense: Complete columns (a) through (g)**

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g) Object Accounts		
						Salaries	Benefits	Total Sal. & Bens
<b>OTHER DEPARTMENT COSTS:</b>								
<u>Preparation and review of documents to proceed with administrative hearing, including legal review and providing assistance with the hearing.</u>								
The agency named above has made every effort not to include costs relating to the "Skelly Process".								

(05) Total ( )	Subtotal ( )	Page: ____ of ____
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<b>Program 187</b>	<b>MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM PPBR-2</b>
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(01) Claimant: <b>County of Santa Clara</b>	(02) Fiscal year costs were incurred: <b>2005-2006</b>
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input checked="" type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>SHERIFF COSTS</b>								
<b><u>Interrogations-(Sworn-officer's only)</u></b>								
<b><u>Time spent interrogating an officer. Notify officer prior to interrogation the nature of interrogation and identify the investigating officers.</u></b> (Including the review of complaints, documents to prepare the notice of interrogation; determination of the investigating officers; redaction of agency complaint for names of the complainant, witnesses; and the preparation of notices.)								
Lt. Burgess	\$70.75	48.5%	9.50			\$672	\$326	\$998
Sgt. Imas	\$59.93	59.4%	1.00			\$60	\$36	\$96
Sgt. Langley	\$59.93	59.9%	16.50			\$989	\$592	\$1,581
Sgt. Matuzek	\$59.93	53.7%	101.42			\$6,078	\$3,266	\$9,344
Sgt. Peterson	\$62.18	57.7%	0.50			\$31	\$18	\$49
Lt. Pugh	\$72.90	57.8%	1.00			\$73	\$42	\$115
Deputy Sheriff/Witness & Subject	\$44.24	58.9%	142.72			\$6,314	\$3,718	\$10,032
Sergeant/ Witness & Subject	\$51.21	58.9%	5.08			\$260	\$153	\$413
Lieutenant/ Witness & Subject	\$60.52	58.9%	0.67			\$41	\$24	\$64
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total ( ) Subtotal ( x )						\$14,518	\$8,175	\$22,693

<b>Program</b> <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2005-2006
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input checked="" type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>DISTRICT ATTORNEY COSTS</b>								
Maurice Lane, Lieutenant	\$73.32	52.4%	24.75			\$1,815	\$951	\$2,766
Pat Alvarez, Criminal Investigator III	\$64.13	50.2%	9.25			\$593	\$298	\$891
Mike Vidmar, Criminal Investigator III	\$64.13	45.0%	2.50			\$160	\$72	\$232
Time spent interrogating an officer. Notify officer prior to interrogation the nature of interrogation and identify the investigating officers.								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total ( )      Subtotal ( x )						\$2,568	\$1,321	\$3,889

<b>Program</b> <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2005-2006
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input checked="" type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g) Object Accounts

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>PROBATION COSTS</b>								
Andrew Flores, DPO	\$44.44	34.34%	1.00			\$44	\$15	\$60
Annette Vanunen, DPO	\$33.57	45.45%	158.05			\$5,306	\$2,411	\$7,717
Anthony Enweluzor, DPO	\$42.32	36.06%	1.00			\$42	\$15	\$58
Brad Kinne, DPO	\$58.40	23.13%	1.00			\$58	\$14	\$72
Bret Fidler, DPO	\$52.45	29.09%	682.50			\$35,797	\$10,413	\$46,211
Bruce Hendry, DPO	\$58.40	30.03%	1.00			\$58	\$18	\$76
Burga Santiago, DPO	\$58.86	29.80%	6.00			\$353	\$105	\$458
Delores Nnam, DPO	\$73.04	24.01%	27.00			\$1,972	\$473	\$2,446
Diano Teves, DPO	\$28.48	61.58%	4.00			\$114	\$70	\$184
Emi Chu, DPO	\$40.15	43.68%	266.00			\$10,680	\$4,665	\$15,345
George Burnette, DPO	\$50.45	32.19%	1.00			\$50	\$16	\$67
Jabari Lomak, DPO	\$44.44	36.54%	1.00			\$44	\$16	\$61
Joel Humble, DPO	\$39.45	41.17%	1.00			\$39	\$16	\$56
John Dahl, DPO	\$67.58	24.03%	91.00			\$6,150	\$1,478	\$7,628
Kathy Duque, DPO	\$78.32	20.74%	39.00			\$3,054	\$633	\$3,688
Marvin Kusumoto, DPO	\$36.23	38.41%	1.00			\$36	\$14	\$50
Mauricio Rodriguez, DPO	\$29.24	47.59%	1.00			\$29	\$14	\$43
Michelle Fernandez, DPO	\$51.45	24.22%	2.00			\$103	\$25	\$128
Mike Green, DPO	\$67.81	20.52%	3.00			\$203	\$42	\$245
Mike Simms, DPO	\$67.34	18.51%	6.50			\$438	\$81	\$519
Ned Putt, DPO	\$58.40	23.83%	412.00			\$24,061	\$5,734	\$29,794
Nick Birchard, DPO	\$60.13	23.14%	26.00			\$1,563	\$362	\$1,925
Phuong Le, DPO	\$58.61	30.0%	22.50			\$1,319	\$395	\$1,714
Rita Loncarich, DPO	\$67.58	26.0%	3.00			\$203	\$53	\$255
Sal Heredia, DPO	\$57.24	30.7%	3.00			\$172	\$53	\$224
Steve Lived, DPO	\$58.40	30.1%	1.00			\$58	\$18	\$76
Steven Majores, DPO	\$37.31	47.1%	0.50			\$19	\$9	\$27
Vanessa Fajardo, DPO	\$27.34	45.6%	1.00			\$27	\$12	\$40
Jon Vickroy, DPO III	\$73.04	24.0%	8.00			\$584	\$140	\$725

*The agency named above has made every effort not to include costs relating to the "Skelly Process".*

(05) Total ( ) Subtotal ( x )	Page 3 of 7	\$92,580	\$27,311	\$119,891
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<b>Program</b> <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2005-2006
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input checked="" type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>PROBATION COSTS</b>								
DPO	46.91	34.51%	1.00			\$47	\$16	\$63
DPO	46.91	34.51%	1.00			\$47	\$16	\$63
DPO	46.91	34.51%	1.00			\$47	\$16	\$63
DPO	46.91	34.51%	1.00			\$47	\$16	\$63
DPO	46.91	34.51%	1.00			\$47	\$16	\$63
DPO	46.91	34.51%	1.00			\$47	\$16	\$63
DPO	46.91	34.51%	1.00			\$47	\$16	\$63
DPO	46.91	34.51%	1.00			\$47	\$16	\$63
DPO	46.91	34.51%	1.00			\$47	\$16	\$63
DPO	46.91	34.51%	1.00			\$47	\$16	\$63
DPO	46.91	34.51%	1.00			\$47	\$16	\$63
DPO I	46.91	34.51%	2.00			\$94	\$32	\$126
DPO II	46.91	34.51%	1.50			\$70	\$24	\$95
DPO II	46.91	34.51%	1.00			\$47	\$16	\$63
DPO III	46.91	34.51%	1.00			\$47	\$16	\$63
DPO III	46.91	34.51%	1.00			\$47	\$16	\$63
DPO III	46.91	34.51%	2.50			\$117	\$40	\$158
DPO III	46.91	34.51%	1.00			\$47	\$16	\$63
DPO III	46.91	34.51%	1.00			\$47	\$16	\$63
DPO III	46.91	34.51%	1.00			\$47	\$16	\$63
DPO III	46.91	34.51%	2.00			\$94	\$32	\$126
DPO III	46.91	34.51%	1.00			\$47	\$16	\$63
DPO III	46.91	34.51%	1.00			\$47	\$16	\$63
DPO III	46.91	34.51%	1.50			\$70	\$24	\$95
GCI	36.23	38.41%	2.00			\$72	\$28	\$100
GCI	36.23	38.41%	2.00			\$72	\$28	\$100
GCI	36.23	38.41%	1.50			\$54	\$21	\$75
GCI	36.23	38.41%	1.50			\$54	\$21	\$75
GCI	36.23	38.41%	1.50			\$54	\$21	\$75

The agency named above has made every effort not to include costs relating to the "Skelly Process".

(05) Total ( )	Subtotal ( x )	Page 4 of 7			\$1,645	\$580	\$2,225
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<b>Program 187</b>	<b>MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2005-2006
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input checked="" type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>PROBATION COSTS</b>								
GCI	36.23	38.41%	1.50			\$54	\$21	\$75
GCI	36.23	38.41%	1.00			\$36	\$14	\$50
GCI	36.23	38.41%	1.50			\$54	\$21	\$75
GCI	36.23	38.41%	1.00			\$36	\$14	\$50
GCI	36.23	38.41%	1.00			\$36	\$14	\$50
GCI	36.23	38.41%	1.00			\$36	\$14	\$50
GCI	36.23	38.41%	1.00			\$36	\$14	\$50
GCI	36.23	38.41%	1.00			\$36	\$14	\$50
GCI	36.23	38.41%	1.00			\$36	\$14	\$50
GCI	36.23	38.41%	1.50			\$54	\$21	\$75
GCI	36.23	38.41%	1.50			\$54	\$21	\$75
GCI	36.23	38.41%	1.50			\$54	\$21	\$75
GCI	36.23	38.41%	1.50			\$54	\$21	\$75
GCI	36.23	38.41%	1.50			\$54	\$21	\$75
GCI	36.23	38.41%	1.50			\$54	\$21	\$75
GCI	36.23	38.41%	0.50			\$18	\$7	\$25
GCI	36.23	38.41%	2.00			\$72	\$28	\$100
GCI	36.23	38.41%	3.00			\$109	\$42	\$150
GCII	39.45	41.17%	2.00			\$79	\$32	\$111
GCII	39.45	41.17%	1.00			\$39	\$16	\$56
GCII	39.45	41.17%	1.50			\$59	\$24	\$84
GCII	39.45	41.17%	4.00			\$158	\$65	\$223
PC	37.31	47.10%	1.00			\$37	\$18	\$55
PCI	37.31	47.10%	1.00			\$37	\$18	\$55
PCII	37.31	47.10%	2.00			\$75	\$35	\$110
SGC	44.44	36.54%	2.00			\$89	\$32	\$121
SGC	44.44	36.54%	1.50			\$67	\$24	\$91
SGC	44.44	36.54%	1.50			\$67	\$24	\$91
SGC	44.44	36.54%	1.50			\$67	\$24	\$91
SGC	44.44	36.54%	1.50			\$67	\$24	\$91
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.00			\$44	\$16	\$61

*The agency named above has made every effort not to include costs relating to the "Skelly Process".*

(05) Total ( )	Subtotal ( x )	Page 5 of 7			\$1,762	\$691	\$2,453
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<b>Program 187</b>	<b>MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2005-2006
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input checked="" type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)						Object Accounts		
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>PROBATION COSTS</b>								
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	2.00			\$89	\$32	\$121
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	2.50			\$111	\$41	\$152
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.50			\$67	\$24	\$91
SGC	44.44	36.54%	1.50			\$67	\$24	\$91
SGC	44.44	36.54%	1.50			\$67	\$24	\$91
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	4.00			\$178	\$65	\$243
SPO	60.05	30.78%	1.00			\$60	\$18	\$79
SPO	60.05	30.78%	1.00			\$60	\$18	\$79
SPO	60.05	30.78%	1.00			\$60	\$18	\$79
SPO	60.05	30.78%	1.00			\$60	\$18	\$79
SPO	60.05	30.78%	1.00			\$60	\$18	\$79

*The agency named above has made every effort not to include costs relating to the "Skelly Process".*

(05) Total ( )	Subtotal ( x )	Page 6 of 7				\$1,678	\$596	\$2,274
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<b>Program</b> <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2005-2006
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input checked="" type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g) Object Accounts

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>PROBATION COSTS</b>								
<p>DPO = Deputy Probation Officer                      GCI = Group Counselor                      PC = Probation Counselor                      SGC = Senior Group Counselor                      SPO = Supervising Probation Officer</p> <p><i>All staff claimed are sworn personnel.</i></p> <p><i>Time spent includes interrogating the subject officer and witnesses. Notifying the officer prior to the interrogation of the nature of the interrogation, and identifying the investigation officers.</i></p>								
<p><i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i></p>								

(05) Total ( x )	Subtotal ( )	Page 7 of 7	
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<b>Program</b> <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant: <b>County of Santa Clara</b>	(02) Fiscal year costs were incurred: <b>2005-2006</b>
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input checked="" type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

**(04) Description of Expense: Complete columns (a) through (g)**

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g) Object Accounts		
						Salaries	Benefits	Total Sal. & Bens
<b>OTHER DEPARTMENT COSTS:</b>								
<b><u>Interrogations-(Sworn-officer's only)</u></b> <b><u>Time spent interrogating an officer. Notify officer prior to interrogation the nature of interrogation and identify the investigating officers.</u></b> (Including the review of complaints, documents to prepare the notice of interrogation; determination of the investigating officers; redaction of agency complaint for names of the complainant, witnesses; and the preparation of notices.)								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								

(05) Total ( )      Subtotal ( )	Page: _____ of _____
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<b>Program</b> <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant: <b>County of Santa Clara</b>	(02) Fiscal year costs were incurred: <b>2005-2006</b>
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input checked="" type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>SHERIFF COSTS</b>								
<u>Time to review circumstances or documentation of adverse comments, notification and presentations of comments; review of response to comments and filing.</u>								
<u>Time to gather reports and log sheets, review questions and preparation, case summary and IA review, command staff review of adverse comments and findings.</u>								
Lt Burgess	\$70.75	48.5%	39.75			\$2,812	\$1,363	\$4,175
Sgt. Langley	\$59.93	59.9%	120.25			\$7,207	\$4,317	\$11,523
Sgt. Matuzek	\$59.93	53.7%	72.42			\$4,340	\$2,332	\$6,673
Sgt. Peterson	\$62.18	57.7%	5.00			\$311	\$179	\$490
<i>Time spent on Findings</i>								
Captain Angus	\$86.23	51.9%	1.00			\$86	\$45	\$131
Lt Burgess	\$70.75	48.5%	19.25			\$1,362	\$660	\$2,022
Commander Bacon	\$105.58	48.7%	2.75			\$290	\$142	\$432
Sgt. Dutra	\$60.08	63.1%	1.00			\$60	\$38	\$98
Lt. Geary	\$63.57	59.3%	0.50			\$32	\$19	\$51
Captain Hirokawa	\$91.40	49.7%	1.00			\$91	\$45	\$137
Sgt. Langley	\$59.93	59.9%	4.08			\$245	\$146	\$391
Captain Laverone	\$78.36	57.9%	0.50			\$39	\$23	\$62
Sgt. Matuzek	\$59.93	53.7%	4.33			\$259	\$139	\$399
Captain Perusina	\$104.60	43.6%	0.58			\$61	\$26	\$87
Captain Rode	\$80.86	55.9%	1.00			\$81	\$45	\$126
Lt. Schiller	\$73.35	55.2%	0.58			\$43	\$23	\$66
Sgt. Spagnola	\$58.83	62.4%	1.00			\$59	\$37	\$96
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total ( )      Subtotal ( x )						\$17,378	\$9,580	\$26,958

<b>Program 187</b>	<b>MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2005-2006
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input checked="" type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g) Object Accounts

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>DISTRICT ATTORNEY COSTS:</b> <u>Time to review circumstances or documentation of adverse comments, notification and presentations of comments; review of response to comments and filing.</u> <u>Time to gather reports and log sheets, review questions and preparation, case summary and IA review, command staff review of adverse comments and findings.</u>								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								

(05) Total ( )	Subtotal ( )	Page: _____ of _____
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<b>Program</b> <b>187</b>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2005-2006
--------------------------------------	---

(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input checked="" type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
<b>PROBATION COSTS:</b>								
<b>Jon Vickroy, DPO III</b> Time to review circumstances or documentation of adverse comments, notification and presentations of comments; review of response to comments and filing. Time to gather reports and log sheets, review questions and preparation, case summary and IA review, command staff review of adverse comments and findings.	\$73.04	24.0%	8.00			\$584	\$140	\$725
The agency named above has made every effort not to include costs relating to the "Skelly Process".								
(05) Total ( x )      Subtotal (   )						\$584	\$140	\$725

<b>Program</b> <span style="font-size: 24pt; font-weight: bold;">187</span>	<b>MANDATED COSTS</b> <b>PEACE OFFICERS PROCEDURAL BILL OF RIGHTS</b> <b>COMPONENT / ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>PPBR-2</b>
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(01) Claimant: <b>County of Santa Clara</b>	(02) Fiscal year costs were incurred: <b>2005-2006</b>
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input checked="" type="checkbox"/> Adverse Comment

**(04) Description of Expense: Complete columns (a) through (g)**

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g) Object Accounts		
						Salaries	Benefits	Total Sal. & Bens
<b>OTHER DEPARTMENT COSTS:</b> <u>Time to review circumstances or documentation of adverse comments, notification and presentations of comments; review of response to comments and filing.</u> <u>Time to gather reports and log sheets, review questions and preparation, case summary and IA review, command staff review of adverse comments and findings.</u>								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								

(05) Total ( )	Subtotal ( )	Page: _____ of _____
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**MANDATED COSTS  
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS  
COMPONENT / ACTIVITY COST DETAIL**

**FORM  
ICRP Summary**

(01) Claimant: County of Santa Clara

(02) Fiscal year costs were incurred:

2005-2006

**Indirect Cost Summary Sheet**

*- By Department -*

<b>Department</b>	<b>ICRP</b>		<b>Total Direct</b>		<b>Total Indirect Costs</b>		
	Base	Percent	Salaries	Benefits	S&W	S&W&B	Total
Enter ICRP Rate in column F. Below each department "x" option rate is based on - "Salaries & Benefits" or "Salaries only"							
Salaries only							
Salaries & Benefits							
<b>Sheriff</b>	S&W&B	35.50%	\$33,104	\$18,389		\$18,280	
<b>District Attorney</b>	S&W&B	22.92%	\$2,696	\$1,378		\$934	
<b>Probation</b>	S&W&B	73.65%	\$104,995	\$31,435		\$100,481	
<b>Other</b>	S&W	10.00%					
x							\$119,694
<b>Check totals on claim summary page:</b>							
Total Service & Supply							
Total Travel & Training							
Salaries			140,795				
Benefits				51,202			
						\$119,694	
Claim total							\$311,692
			\$ 140,795	\$ 51,202	\$ -	\$119,694	

County of Santa Clara  
FY 06-07 Estimate Breakdown  
POBAR

<u>Claiming Department</u>	<u>FY 05/06 Actual</u>	<u>FY 06/07 Estimate</u>
Probation	\$236,910	\$177,683
District Attorney	\$5,009	\$4,007
Sheriff	\$69,772	\$55,818
<b>Total</b>	<b>\$311,692</b>	<b>\$237,508</b>

*\*Probation Estimate is based on 75% of Actual  
DA and Sheriff Estimate is based on 80% of Actual*



# Exhibit K

## County of Santa Clara

Finance Agency  
Controller-Treasurer Department

County Government Center  
70 W. Hedding Street, East Wing, 2<sup>nd</sup> Floor  
San Jose, California 95110-1705  
(408) 299-5200 FAX (408) 289-8629



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DATE: March 11, 2008

TO: Jim L. Spano  
Chief, Compliance Audits Bureau,  
State Controller's Office, Division of audits,  
Post Office Box 942850,  
Sacramento, CA 94250-5874

FROM: Irene Lui  
Divisional Manager,  
Cost management and claims

RE: Response to POBOR Draft audit report

Dear Mr. Spano,

Thank you for sending us the draft audit report regarding our claim for the legislatively mandated Peace Officers Procedural Bill of Rights Program (Chapter 465, Statutes of 1976) for the period from July 1, 2003 through June 30, 2006

We attach our responses to your audit findings in the order they were presented on your draft report. Except the matters that we have specifically accepted, we disagree to all other findings; the attached detailed response addresses our concerns from respective claiming departments. Please review our comments and make appropriate adjustments for the draft report accordingly.

Your draft report attempts to disallow \$511,221 out of our claimed amount of \$744,598 which is about 69%. This high percentage of disallowance was mainly contributed by the difference in interpretation of legal provisions and Ps and Gs between the state auditors and the local governments. Your strict and narrow interpretation of Ps and Gs is, in fact, a relatively new phenomenon that has not been adhered to by any local agencies, and will only lead to prolonged litigation that hurts both the State and local agencies.

Board of Supervisors: Donald F. Gage, Blanca Alvarado, Pete McHugh, Ken Yeager, Liz Kniss  
County Executive: Peter Kutas, Jr.

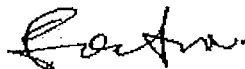
Noting this situation, we along with the CSAC has tried to negotiate a balanced settlement which is still pending in spite of our efforts for the past few years.

The POBOR law and the Ps and Gs for state mandates are highly complicated. The initial Ps and Gs adopted by the Commission in July 2000 did not specifically disallow the various activities such as interrogation during regular work hours, training etc. AB138 enacted in 2005 directed the Commission to review the Statement of Decision adopted in 1999. The Ps and Gs were then amended by the Commission; and the SCO issued the amended claiming instructions on March 19, 2007. The very fact that the Commission had to reconsider and reissue amended Ps and Gs in 2007 (after 7 years the Ps & Gs was initially adopted) shows that the original Ps and Gs were subject to different interpretations in various claimable costs. The State auditors, however, have used the amended Ps and Gs (recently issued in 2007) to justify their disallowances for the previous years' claims that were compiled based on the original Ps & Gs.

We, and many other local agencies, cannot agree to those disallowances of the non-overtime hours and findings based on the subsequently revised Ps and Gs in March 2007. The County has made every attempt to efficiently and effectively complete the SB90 claims in a fair and reasonable basis. The action of disallowing the majority of the claims based on the auditors' interpretations is not an appropriate approach, and will defeat the objectives of mandating this claim.

We appreciate the opportunity to review and comment upon this audit. We would like to meet with you and your staff to explain our various points, and to seek a reasonable settlement of the claimed costs before we explore other alternatives available to us. Please contact Ram Venkatesan, the County SB 90 Coordinator, at (408) 299-5210 if you have questions.

Regards,



Irene Lui  
Divisional manager

Attachment: Detailed response to your draft audit findings

Board of Supervisors: Donald F. Gage, Blanca Alvarado, Pete McHugh, Ken Yeager, Liz Kniss  
County Executive: Peter Kutas, Jr.

**County of Santa Clara**  
**SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008**

**FINDING 1—Unallowable salaries and benefits**

The county claimed unallowable salaries and benefits costs totaling \$326,274 for the audit period because the activities it claimed were not identified as reimbursable costs in the parameters and guidelines for the program. Related unallowable indirect costs totaled \$184,947.

The following table summarizes the audit adjustments by cost component:

	Claimed Costs	Allowable Costs	Audit Adjustment
<u>Salaries and Benefits</u>			
Administrative Activities:			
Sheriff's Department	\$ 18,587	\$ 10,124	\$ (8,463)
Probation Department	93,584	58,094	(35,490)
District Attorney's Office	18,318	16,565	(1,753)
Total Administrative Activities	<u>130,489</u>	<u>84,783</u>	<u>(45,706)</u>
Administrative Appeals:			
Sheriff's Department	1,388	—	(1,388)
Probation Department	985	—	(985)
District Attorney's Office	—	—	—
Total Administrative Appeals	<u>2,373</u>	<u>—</u>	<u>(2,373)</u>
Interrogation:			
Sheriff's Department	71,506	10,156	(61,350)
Probation Department	162,587	32,351	(130,236)
District Attorney's Office	18,880	2,530	(16,350)
Total Interrogation	<u>252,973</u>	<u>45,037</u>	<u>(207,936)</u>
Adverse Comment:			
Sheriff's Department	54,680	11,389	(43,291)
Probation Department	31,741	5,633	(26,108)
District Attorney's Office	1,119	259	(860)
Total Adverse Comment	<u>87,540</u>	<u>17,281</u>	<u>(70,259)</u>
Total salaries and benefits	<u>473,375</u>	<u>147,101</u>	<u>(326,274)</u>
Related indirect costs	<u>271,223</u>	<u>86,276</u>	<u>(184,947)</u>
Total	<u>\$744,598</u>	<u>\$233,377</u>	<u>\$ (511,221)</u>
<u>Recap by Department</u>			
Sheriff's Department			\$
	\$198,910	\$ 42,901	(156,009)
Probation Department	498,045	166,384	(331,661)
District Attorney's Office	47,643	24,092	(23,551)
Total	<u>\$744,598</u>	<u>\$233,377</u>	<u>\$ (511,221)</u>

## County of Santa Clara

### SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

*For each fiscal year, the county claimed costs for activities that did not exceed the duties of due process of law and therefore did not impose increased costs as a result of compliance with the mandate and were ineligible for reimbursement.*

*We broke down the audit findings for overstated salaries and benefits by individual cost component for each of the three county departments included in the county's claims. The ineligible activities claimed are indicated for each county department.*

#### County's response

The County does not agree with this finding at all and our response is given under individual cost component and under each department.

*For the Administrative Activities cost component, the county claimed \$130,489 in salaries and benefits costs (\$18,587 by the Sheriff's Department, \$93,584 by the Probation Department, and \$18,318 by the District Attorney's Office) during the audit period. Related indirect costs totaled \$80,163. We determined that \$45,706 was unallowable (\$8,463 by the Sheriff's Department, \$35,490 by the Probation Department, and \$1,753 by the District Attorney's Office) because costs claimed were for ineligible activities. Related unallowable indirect costs totaled \$29,543.*

The parameters and guidelines, section IVA (Administrative Activities, Ongoing Activities), allow for reimbursement of the following ongoing activities:

1. Developing or updating internal policies, procedures, manual and other materials pertaining to the conduct of the mandated activities.
2. Attendance at specific training for human resources, law enforcement, and legal counsel regarding the requirements of the mandate.
3. Updating the status of the POBOR cases.

#### Sheriff's Department

*The Sheriff's Department claimed the following reimbursable activities:*

- *Updating POBOR case records (FY 2005-06).*
- *Training for Internal Affairs staff (FY 2003-04 and FY 2004-05).*

*However, the department claimed the following activities that are not reimbursable:*

- *Preparing the file.*
- *Logging initial case information into the system and*

## County of Santa Clara

SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

*assign the case.*

- *Interviewing the complainants.*

### County's response (Sheriff)

The audit disallowed the reimbursement for three categories: preparing the file, logging the initial case information and interviewing the complainant. While these changes to the reimbursement section are now clearly spelled out in the Ps & Gs, they would be viewed as new cost the department must now carry. As such, we believe they would fall under Government Code 17514 which states - "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.

That being said, it is our opinion that since no notification was made prior to this change and the fact that the impact would directly cause an effect to the funding recovery process, these costs should be allowed at this time.

### Probation Department

*The Probation Department claimed the following reimbursable activities:*

- *Reviewing and updating internal policies and procedures relating to POBOR.*

### County's response (Probation)

We do not agree with the narrow interpretation given to "due process" of law and the restrictive definition of the activities over and above the duties beyond the due process of law

- *Training for Internal Affairs staff (training hours were partially adjusted to account for hours that were not related to POBOR training). Unallowable training hours included the following topics:*

- Labor relations
- Unionized vs. non-unionized employees
- Private and public employees
- Handling sexual harassment issues
- Confidentiality issues
- Investigation errors
- Ethical issues in probation
- Budgeting implications
- Juvenile Justice Reforms
- Discrimination issues

**County of Santa Clara**

**SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008**

Electronic research  
First Amendment related conduct  
Preparing investigations reports  
Key mistakes in workplace investigations  
Assessing credibility  
Types of lawsuits  
Representation and indemnification  
Supervisory liability of failure to train  
Minimizing exposure to liability

*The department also claimed the following activities that are not reimbursable (FY 2004-05):*

- *Reviewing Internal Affairs (IA) investigations reports to approve or to make corrections.*
- *Visiting other IA units during the establishment of the IA unit at the Probation Department.*
- *Conducting interviews for IA Management Analyst position.*
- *Reviewing the progress of development of the IA database.*
- *Reviewing complaints, response letters, Merit System Rules, and assigning cases.*
- *Reviewing training schedule for the unit.*

**County's response (Probation)**

We do not agree with the audit interpretation of training that the training course, if they include other topics only proportionate costs will be allowed. In our view the training has to be a composite one and it cannot be a restrictive one. We cannot go through the training with a microscope on this issue and we disagree with the audit's negative approach to training.

**District Attorney's Office**

*The District Attorney's Office claimed the following reimbursable activities:*

- *Updating/maintaining POBOR case records.*
- *Training for Internal Affairs staff (FY 2003-04) (hours were adjusted for one employee, whose training records did not reflect attendance at the claimed training class).*
- *Develop internal policies and procedures (FY 2003-04).*

*The District Attorney's Office did not claim any ineligible activities in this category.*

**County of Santa Clara**

**SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008**

**County's response (DA)**

The above comment is incorrect as investigator training records were not checked by the audit and the identity of the officer who was disallowed was not disclosed by the audit. The District Attorney's office claimed in FY 2003-04 that six investigators attended a peace officer standards and training (POST) internal affairs school. A review of the POST records confirmed that all the six investigators attended and were given credit for the IA class. We request that this finding may be withdrawn and the costs allowed.

*Administrative Appeals*

*For the Administrative Appeals cost component, the county claimed \$2,373 in salaries and benefits costs (\$1,388 by the Sheriff's Department and \$985 by the Probation Department) during the audit period. Related indirect costs totaled \$1,193. We determined that both amounts were unallowable because costs claimed were for ineligible activities.*

The parameters and guidelines, section IVB (2) (Administrative Appeals), allow reimbursement for providing the opportunity for, and the conduct of, an administrative appeal for the following disciplinary actions:

1. Dismissal, demotion, suspension, salary reduction, or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e., the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
2. Transfer of permanent employees for purposes of punishment;
3. Denial of promotion for permanent employees for reasons other than merit; and
4. Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss, or hardship, and that impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical



**County of Santa Clara**

**SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008**

services; and the preparation and service of any rulings or orders of the administrative body.

In reference to reimbursable circumstances surrounding administrative appeal hearings pursuant to Government Code section 3304, subdivision (b), the CSM statement of decision regarding the adopted parameters and guidelines states:

The Commission found that the administrative appeal would be required in the absence of the test claim legislation when:

- A permanent employee is dismissed, demoted, suspended, receives a reduction in pay or a written reprimand; or
- A probationary or at-will employee is dismissed and the employee's reputation and ability to obtain future employment is harmed by the dismissal.

Under these circumstances, the Commission determined that the administrative appeal does not constitute a new program or higher lever of service because prior law requires such an appeal under the due process. Moreover, the Commission recognized that pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing the administrative appeal in the above circumstances would not constitute "costs mandated by the state" since the administrative appeal merely implements the requirements of the United States Constitution.

*In other words, if officers appeal actions such as transfer for purposes of punishment or denial of promotion, then administrative appeal costs can be claimed for reimbursement. However, if officers appeal actions such as dismissal, demotion, suspension, reduction in pay, or written reprimand, then those appeal hearings would fall under due process and could not be claimed for reimbursement.*

Sheriff's Department

*Our review of claimed costs under this cost component revealed that no administrative hearings were held for the cases included in the claims. Even if the hearings had taken place for the two cases in question, they would have resulted from unallowable disciplinary actions (letter of reprimand and suspension) that fall under due process.*

**County of Santa Clara**  
**SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008**

*Subsequently, claimed activities were unallowable for reimbursement.*

**County's response (Sheriff)**

**Administrative Appeal**

The language in the audit contradicts itself in as far as what is allowed and what is not. For an example, on the top of page 9 it states, "The parameter and guidelines, section IVB (2) allow reimbursement for providing the opportunity for, and the conduct of, an administrative appeal for the following reasons:

1. Dismissal, demotion, suspension, reduction in pay, or written reprimand.....

Then when you go to the finding of the audit on page 10, it states - "Our review of claimed costs under this cost component revealed that no administrative hearings were held for the cases included in the claims. Even if the hearings had taken place for the two cases in question, they would have resulted from unallowable disciplinary actions (letter of reprimand and suspension) that fall under due process.

Clearly the two cases that the audit looked at would have fallen under the reimbursable category. Section IVB (2) allows for reimbursement for those two issues should an administrative appeal take place.

It is our belief that the auditor misstated the factual basis for when reimbursement can be claimed when she said it was only allowed for anything other than dismissal, demotion, suspension, reduction in pay, or written reprimand. It is clear that POBAR does not even allow an administrative hearing for those things that do not rise to the level of written reprimand - such as verbal counseling, documented counseling, supervisor comment card... This belief is further supported in the Commissions Ps & Gs where it is stated "The following activities and costs are reimbursable:

4. Other actions against permanent employees that result in disadvantage, harm, loss, or hardship, and that impact the career opportunities of the employee." There is no doubt that a dismissal, demotion, suspension, reduction in pay, or written reprimand falls within this area and as such would be covered for reimbursement.

**Probation Department**

*All costs claimed under this cost component included hours incurred during appeal hearings that resulted from unallowable disciplinary actions (suspension and letter of reprimand). Subsequently, claimed activities were unallowable for reimbursement.*

**District Attorney's Office**

**County of Santa Clara**

**SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008**

*The District Attorney's Office did not claim any costs under this cost component.*

*Interrogation*

*For the Interrogation cost component, the county claimed \$252,973 in salaries and benefits costs (\$71,506 by the Sheriff's Department, \$162,587 by the Probation Department, and \$18,880 by the District Attorney's Office) during the audit period. Related indirect costs totaled \$147,574. We determined that \$207,936 was unallowable (\$61,350 by the Sheriff's Department, \$130,236 by the Probation Department, and \$16,350 by the District Attorney's Office) because costs claimed were for ineligible activities. Related unallowable indirect costs totaled \$120,026.*

*The parameters and guidelines, section IV(C) (Interrogations), identify the specific interrogation activities that are reimbursable when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department during off-duty time, if the interrogation could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. Section IV(C) also identifies reimbursable activities under compensation and timing of an interrogation, interrogation notice, tape recording of an interrogation, and documents provided to the employee.*

*The parameters and guidelines, section IV(C), also state that claimants are not eligible for interrogation activities when an interrogation of a peace officer occurs in the normal course of duty. It further states:*

*When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures is absolutely essential.*

*In reference to compensation and timing of the interrogation pursuant to Government Code section 3303, subdivision (a), the CSM Final Staff Analysis to the adopted parameters and guidelines states:*

*It does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review the responses given by the officers and/or witnesses, as implied by the claimant's proposed language. Certainly, local agencies were performing these investigative activities before POBAR was enacted.*

*The parameters and guidelines, section IV(C), also state that the following activities are reimbursable:*

**County of Santa Clara**

**SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008**

*Tape recording the interrogation when the peace officer employee records the interrogation is an essential part of the interrogation.*

*Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers is required.*

**Sheriff's Department**

*The Sheriff's Department claimed the following reimbursable activities:*

- *Providing Interrogation Notice and/or Statement of Allegations to the officer.*
- *Reviewing the tape/summarize/transcribe accused officers' statements (accused officers generally receive the copy of their interviews).*
- *Providing copies of tapes and file documentation in case of further proceedings/hearings/action (FY 2003-04 and FY 2004-05).*

*However, the department claimed the following activities that are not reimbursable:*

- *Gathering reports and reviewing complaints and evidence as part of investigating the allegations.*
- *Investigation time.*
- *Preparing questions for the interviews.*
- *Interviewing witnesses during normal working hours (investigators' time).*
- *Reviewing tape and summarizing/transcribing witness officer's statements (witness officers generally do not receive a copy of their interview).*
- *Conducting pre-interrogation meetings.*
- *Interviewing accused officers during normal working hours (investigators' time).*

## County of Santa Clara

SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

### County Response (Sheriff)

#### Interrogation

The big issue in this area, which was raised during the exit conference, was based on reimbursement for the officer's time. While the auditor stated reimbursement would be made if the officer was off-duty and overtime was caused, the Commissions Ps & Gs do not state that. Rather, what they do state is that overtime will be reimbursed when required by the seriousness of the investigation and the officer is interviewed off-duty. This is clearly different from what was stated during the conference. While many of these other exclusions are recent changes to the POBAR status, we believe they would therefore fall under the guides of Government Code 17514 which states - "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

#### Probation Department

*The Probation Department claimed the following reimbursable activities:*

- *Providing administrative notice to the accused officer regarding the nature of allegations*
- *Transcribing/summarizing accused officer's statement (accused officers generally receive the copy of their interviews).*

*However, the department claimed the following activities that are not reimbursable:*

- *Gathering reports, log sheets, and evidence.*
- *Reviewing complaints, reports, and evidence as part of investigating the allegations.*
- *Interviewing witnesses, both civilian and officers (investigators' time).*
- *Traveling to interview witnesses.*
- *Transcribing witness tapes (witnesses do not receive copies of their interviews.)*
- *Reviewing tapes and making corrections.*
- *Preparing interview questions.*
- *Conducting pre-interrogation meetings.*
- *Interviewing accused officers during normal working hours (investigators' time).*

**County of Santa Clara**  
**SB90 mandate-Detailed Response to POBAR Draft audit report-March, 2008**

**County's response (Probation)**

We do not agree with the audit's standing view that a majority of our costs incurred under this activity come under "due process of law" and therefore not reimbursable if the activity is performed during normal hours. If this interpretation is taken as correct, cost of doing business in an efficient way will be jeopardized. It is the efficiency of conducting business and the authority of the local agency in deciding how to perform a mandate which is under question in this case. We totally disagree with audit finding.

**District Attorney's Office**

*The District Attorney's Office claimed providing prior notice to the subject officers regarding the investigation/allegations as a reimbursable activity.*

*However, the District Attorney's Office claimed the following activities that are not reimbursable:*

- *Gathering reports, log sheets, etc.*
- *Reviewing complaints, reports, and evidence as part of investigating the allegations.*
- *Preparing interview questions.*
- *Interviewing witnesses during normal working hours (investigators' time).*
- *Conducting pre-interrogation meetings.*
- *Interviewing accused officers during normal working hours (investigators' time).*
- *Preparing a summary report of the agency complaint as part of the case file preparation.*
- *Reviewing interview tapes.*

**County's Response (DA)**

The County disagrees with the above comments that indicate "local agencies were performing these investigative activities before POBAR was enacted" etc. POBAR was enacted on January 1, 1977. The requirement of POBAR has far exceeded investigative activities required prior to its enactment. Opponents to the ACT were the California Peace Officers Association, Cities and Counties and Sheriff's Association and League of Cities. This Act requires a great deal of work and administrative record keeping.

*Adverse Comment*

*For the Adverse Comment cost component, the county claimed \$87,540 in salaries and benefits costs (\$54,680 by the Sheriff's Department, \$31,741 by the Probation*

**County of Santa Clara**

**SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008**

*Department, and \$1,119 by the District Attorney's Office) during the audit period. Related indirect costs totaled \$42,293. We determined that \$70,259 was unallowable (\$43,291 by the Sheriff's Department, \$26,108 by the Probation Department, and \$860 by the District Attorney's Office) because costs claimed were for ineligible activities. Related unallowable indirect costs totaled \$34,185.*

*Depending on the circumstances surrounding an adverse comment, the parameters and guidelines, section IVD (Adverse Comment); allow some or all of the following four activities upon receipt of an Adverse Comment:*

- Providing notice of the adverse comment;*
- Providing an opportunity to review and sign the adverse comment;*
- Providing an opportunity to respond to the adverse comment within 30 days; and*
- Noting on the document the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.*

*The parameters and guidelines also state:*

*Included in the foregoing are review of circumstances or documentation leading to the adverse comment by the supervisor, command staff, human resources staff, or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of the adverse comment to officer and notification concerning rights regarding same; review of response to the adverse comment; attaching same to adverse comment, and filing.*

**Sheriff's Department**

*The Sheriff's Department claimed the following activities that are reimbursable:*

- Preparing and serving an Administrative Notice of Allegations.*
- Reviewing documentation leading to the adverse comment/findings by Command staff.*

*However, the department claimed the following activities that are not reimbursable:*

- Reviewing the circumstances of the complaint to determine the level of investigation prior to starting the*

## County of Santa Clara

SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

*case investigation process (to determine whether the case will be investigated at the Internal Affairs or division level).*

- *Documenting the complaint/allegation and reviewing it for accuracy during the initial complaint intake prior to starting the investigation.*
- *Summarizing the investigation in a case summary report and having Internal Affairs review the summary report to ensure proper procedures were followed.*
- *Preparing interview questions.*

### County's response (Sheriff)

#### Adverse Comment

The first area of denial for reimbursement relates to "Reviewing the circumstances of the complaint to determine the level of investigation prior to starting the case investigation. This refers to the internal issue of whether the case will be handled by IA investigators or by division level investigators. However what it does not do is determine if the case will be handled at all. The Commission's Ps & Gs state what is not reimbursable is determining whether the case rises to the level of an investigation. The issue here is whether all citizen complaints that are investigated need to be handled within Internal Affairs to fall within that SB90 reimbursement section. It is our contention that whether or not the case is handled in IA or by the administration within the division it is still a full investigation and treated, statistically monitored and handled as a citizen complaint. If this is not the case, then those agencies which do not have a formal IA unit would not be allowed any reimbursement.

The issue of determining where the case is handled, Internal Affairs or with the Division, is merely based on which arena is better suited to handle the allegations, what is best for a speedy, fair and thorough investigation. It is not an issue of whether it is a complaint or not.

*Several of the other denied areas in this section we believe would again fall under Government Code 17514 which states - "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*

#### Probation Department

*The Probation Department claimed the following reimbursable activities:*

- *Preparing and serving the Final Disciplinary Order*



**County of Santa Clara**

**SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008**

*(adverse comment notice).*

- *Interacting with labor relations to ensure proper disciplinary action (reviewing documentation leading to adverse comment/findings by Labor Relations staff).*
- *Reviewing documentation leading to the adverse comment/findings by Command staff.*

*However, the department claimed the following activities that are not reimbursable:*

- *Preparing the investigation summary and reviewing it with the supervisor prior to closing the case.*
- *Preparing the final case report.*

District Attorney's Office

*The District Attorney's Office claimed the following reimbursable activities:*

- *Reviewing documentation leading to the adverse comment/findings by Command staff.*

*However, the District Attorney's Office claimed preparing the case summary report, which is not a reimbursable activity.*

*(NOTE: For FY 2004-05 and FY 2005-06, the District Attorney's Office combined interrogation activities and adverse comment activities, and claimed them under the Interrogations cost component.)*

**County's response (DA)**

The County strongly believes that the claiming methodology is complex as is the view of all the various departments in the State. The Government agencies throughout the State of California are not consistent with POBAR requirements due to various historic reasons including differences in state and local perspectives of implementation of this act and the costs thereof. The Commission on state mandates has to reexamine the reimbursable activities with a wider definition thereby allowing the agencies to claim all the relevant costs without restricting the local agencies bound to narrow definition of words and meanings. The Act has to be seen in its overall perspective and the narrow reading of the Act has to be done away with.

**County of Santa Clara**  
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The following table summarizes the overstated costs by fiscal year:

Cost Category	Fiscal Year			Total
	2003-04	2004-05	2005-06	
Salaries and benefits:				
Sheriff's Department				\$
	\$ (36,003)	\$ (39,709)	\$ (38,780)	(114,492)
Probation Department	(32,644)	(52,500)	(107,675)	(192,819)
District Attorney's Office	(13,877)	(1,396)	(3,690)	(18,963)
Subtotal	(82,524)	(93,605)	(150,145)	(326,274)
Related indirect costs	(35,831)	(55,199)	(93,917)	(184,947)
Audit adjustment	\$ (118,355)	\$ (148,804)	\$ (244,062)	\$ (511,221)

*The program's parameters and guidelines, adopted by GSM on July 27, 2000, define the criteria for procedural protections for the county's peace officers.*

*The parameters and guidelines section IV (Reimbursable Activities); outline specific tasks that are deemed to be above the due process clause. The statement of decision, on which the parameters and guidelines were based, noted that due process activities were not reimbursable.*

*The parameters and guidelines, section VA(1) (Salaries and Benefits), require that claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.*

*The parameters and guidelines section VI (Supporting Data); require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state-mandated program.*

Recommendation

*We recommend that the county ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.*

**FINDING 2—Unallowable productive hours**

*The county overstated allowable salaries and related benefits costs by a total of \$11,800 for the audit period (\$2,543 by the Sheriff's Department, \$7,762 by the Probation Department, and \$1,495 by the District Attorney's Office). Related unallowable indirect costs*

## County of Santa Clara

### SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

*totalled \$6,952. This overstatement occurred because the county understated annual productive hours in its calculation of productive hourly rates in each fiscal year.*

#### *Ineligible Training Hours*

*When calculating annual productive hours, the county deducted training time based on hours required by employees' bargaining unit agreements and/or continuing education requirements for licensure/certification rather than deducting actual non-program specific training. Starting with FY 2002-03, the county introduced a training code under its automated payroll system to track employees' training hours. The training code keeps track of the following types of training:*

- 1. Mandatory training for licensure/certification requirements and continuing education for specific job classifications such as attorneys, probation officers, real estate property appraisers, physicians, nurses, and others.*
- 2. POST training for law enforcement personnel.*
- 3. County-required training such as new employee orientation, supervisory training, safety seminars, and software classes.*

*The county claimed that the training hours charged to this code were actual time spent by employees attending non-program-related training. However, the county was unable to substantiate the excluded training hours with any supporting documentation. Further, some of the training types described above relate to specific programs/classifications and therefore cannot be excluded from annual productive hours for the entire county. Training types described under items 1 and 2 above benefit specific job classifications and functions and therefore cannot be considered non-program-related training. Deduction from annual productive hours of the training types described under item 3 above is potentially allowable because the hours are non-program specific. However, the county did not keep track of this type of training separately in its payroll system.*

#### *Ineligible Break Time*

*When calculating annual productive hours, the county also deducted authorized break time rather than actual break time taken. The county did not adjust for break time directly charged to program activities and deducted break time per*

**County of Santa Clara**

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*bargaining unit contract agreements. Because the county did not keep track of actual break time taken by employees, it cannot deduct break time from its calculations of annual productive hours.*

The following table summarizes the overstated costs by fiscal year:

Cost Category	Fiscal Year			Total
	2003-04	2004-05	2005-06	
Salaries and benefits:				
Sheriff's Department	\$ (980)	\$ (554)	\$ (1,009)	\$ (2,543)
Probation Department	(542)	(4,920)	(2,300)	(7,762)
District Attorney's Office	(1,388)	(130)	23	(1,495)
Subtotal	(2,910)	(5,604)	(3,286)	(11,800)
Related indirect costs	(1,000)	(3,905)	(2,047)	(6,952)
Audit adjustment				\$
	\$ (3,910)	\$ (9,509)	\$ (5,333)	(18,752)

The parameters and guidelines, section VA(1) (Salaries and Benefits), require that claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

The parameters and guidelines, section VI (Supporting Data), require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state-mandated program.

Recommendation

*We recommend that the county establish and implement procedures to ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.*

County's response (Finance)

FINDING 2— Unallowable productive hours

This audit finding relates to unsupported salaries, benefits and related indirect costs arising out of the usage of Countywide Productive hour rate. This issue of Countywide Productive hours was replied to in all responses to State audit reports on other programs. We repeat our earlier responses on the issue of countywide productive hourly rate for record...

**County of Santa Clara**

**SB90 mandate-Detailed Response to FOBOR Draft audit report-March, 2008**

We notice that in this audit report only two issues have been taken up namely the deduction of training hours and usage of authorized break time rather than the actual break time.

We note that compared to the previous audit reports, there is a welcome change now that the audit finding is not the rejection of the policy of countywide productive hours in its entirety but is extremely limited to the treatment and documentation for training and break time only. Thank you for accepting the countywide productive hour policy. Consequently, we will only discuss the two specific issues of documentation for training time and break.

The County implemented the countywide calculation of productive hours in FY 2000-01. Claims filed for that fiscal year were based on calculations that included training time received by employees and reported by County departments, based on collective bargaining agreements or rosters related to actual training sessions that were conducted. Break-time was similarly calculated, based on requirements of collective bargaining agreements and State law. For all subsequent fiscal years, the County modified the automated payroll system to capture actual hours of training by individual employee for all County departments.

The county's policy for reporting training time is only related to non-program training. Departments have been advised to exclude program-related training from the pay period data reporting. We explained this to the state audit staff. We also explained that the payroll section can only maintain the total time spent and reported by each department. The analysis as to whether they were program-related or not are done in the departments. We informed the state audit staff to check this issue in the departments by a visit there if they wished. All data and records required for the audit were produced.

On the issue of reporting actual break-time taken by employees, our automated payroll system could accommodate such a change; but the additional time and cost of recording such information would exceed the value of the information obtained. This information can readily be determined by simple calculation. This conclusion is consistent with OMB A-87 cost allocation principles, which limit the effort expected of state and local governments to calculate indirect costs when such costs are "... not readily assignable...without effort disproportionate to the results achieved." In the case of daily break-time required by both State law and collective bargaining agreements, the recording of actual break-time taken twice daily by more than 15,000 employees during 250 workdays per year would not result in the determination of a materially different amount of actual time taken than could be readily calculated pursuant to the 30 minute daily standard specified by the collective bargaining agreements. The cost of doing this would be prohibitive. Because the County has directed all employees (Attachment A) to limit the daily reporting of hours worked to 7.5 hours when preparing SB 90 claims, the

County of Santa Clara

SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

effect of not allowing the County to exclude one-half hour per day break-time from the productive hour calculation would be to increase the hours charged to SB 90 claims by the same one-half hour per day for all claims involving full-day charges and therefore except for increasing the workload no useful purpose will be served.. As stated in the case of training time earlier, the break time on days when the staff works exclusively on specific programs is not included in the break time for this purpose.

We previously clarified all these issues in response to an email dated February 6, 2004 from the Audit Division of the State Controller's Office. The email stated that the State would accept the usage of a countywide productive hourly rate with certain conditions (Attachment B). That email raised the same issues raised in this audit report. For your reference the email from the Audit Division of the State Controller's Office dated February 6, 2004 is reproduced below.

*Copy of email dated February 6, 2004 from Jim Spano to the County of Santa Clara*

*Ram,*

*I reviewed the county's proposal dated December 19, 2001, to use countywide Productive hours and have discussed your analysis with my staff and Division Of Accounting and reporting staff. The use of countywide productive hours Would be acceptable to the State Controller's Office provided all employee Classifications are included and productive hours are consistently used for all county programs (mandated and non-mandated).*

*The SCO's Mandated Cost Manual (claiming instructions), which includes Guidelines for preparing mandated cost claims, does not identify the time Spent on training and authorized breaks as deductions (excludable Components) from total hours when computing productive hours. However, if a County chooses to deduct time for training and authorized breaks in calculating countywide productive hours, its accounting system must separately identify the actual time associated with these two components. The accounting system must also separately identify training time directly charged to program activities. Training time directly charged to program activities may not be deducted when calculating productive hours.*

*The countywide productive hours used by Santa Clara County were not consistently applied to all mandates for FY 2000-01. Furthermore, countywide productive hours used during the audit periods include unallowable deductions for time spent on training and authorized breaks. The county deducted training time based on hours required by employees' bargaining unit agreement and continuing education requirements for licensure/certification rather than actual training hours taken. In addition, the county deducted authorized break time rather than actual break time taken. The county did not adjust for training time and break time directly charged to program activities during the audit period, and therefore, cannot exclude those hours from productive hours.*

**County of Santa Clara**  
**SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008**

*If you would like to discuss the above further, please contact me.*  
*Jim Spano*

We responded to all the issues raised in the above email. We continue to use the countywide productive hours policy for non-SB90 programs, as accepted in the above email. Further, before the introduction of the countywide productive hour policy in the County of Santa Clara in our letter of December 27, 2001, we noticed (Attachment C) the State Controller that the County was electing to change its SB 90 claiming procedures for the calculation of productive hourly rates. The County reported that the switch to a countywide methodology for the calculation of average countywide productive hours per position would improve SB 90 claiming accuracy, consistency, and documentation and facilitate the State audit function. Consequently, more than 50 claims have been submitted and accepted during the past two years using this countywide methodology.

We advised state audit staff and provided a copy of the County's letter dated December 27, 2001 and explained our understanding of the SB 90 instructions pertaining to the calculation of productive hours. The State auditors did not provide any written State procedures, regulations or other legal authority to refute our interpretation of Section 7 of the State Controller's SB 90 Claiming Instructions for Cities, Counties and Special Districts.

We invite your kind attention to the amount involved in this finding which is very less compared to the claimed cost and therefore request you to drop this finding and allow the costs as claimed by us.

**FINDING 3—Understated benefit rates**

*The county understated employee benefit costs by \$941 for FY 2004-05 (\$748 by the Sheriff's Department and \$193 by the District Attorney's Office). Related unallowable indirect costs totaled \$347. This understatement occurred because the county calculated benefit rates for employees by dividing their annual benefits by their respective total compensation (benefits plus salaries), instead of only salaries. Therefore, the county understated benefit rates for this fiscal year for these two departments. We recalculated benefit rates by dividing employees' total annual benefits by their total annual salaries to arrive at the correct benefit rates.*

*The parameters and guidelines, section VA(1) (Salaries and Benefits), require that claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.*

**County of Santa Clara**

**SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008**

*The parameters and guidelines section VI (Supporting Data); require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state mandated program.*

Recommendation

*We recommend that the county ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.*

**County's response (probation)**

We accept the audit comments and request that the costs be allowed to the extent understated.

**FINDING 4 - understated indirect costs**

*The county understated indirect costs by \$1,222 for FY 2003-04. This understatement occurred because the Probation Department mistakenly applied its indirect cost rate to the incorrect base. For FY 2003-04, the Probation Department computed its indirect cost rate on the basis of salaries and benefits. However, on the mandate claim, the rate was mistakenly applied to claimed salaries only. We recomputed allowable indirect costs by applying the claimed indirect cost rate to both salaries and benefits allowable.*

The program's parameters and guidelines, section VB (Indirect Costs), state that indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Compensation for indirect costs is eligible for reimbursement using the procedures provided in the OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments."

Recommendation

*We recommend that the county calculate its indirect costs in a manner that is consistent with the methodology outlined in OMB Circular A-87.*

**County's response (Probation)**

We accept the finding as it was an oversight and we request that the costs be recalculated and allowed.



**County of Santa Clara**

SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

**FINDING 5—Unallowable travel and training costs**

The county claimed unallowable travel and training costs of \$1,521 for FY 2004-05. This overstatement occurred because the Probation Department claimed ineligible training-related expenses. As discussed in Finding 1 under the Administrative Activities cost component, the Probation Department's training hours were adjusted to account only for eligible POBOR-related training. We also adjusted travel expenses associated with attendance at the ineligible portion of training classes accordingly.

The parameters and guidelines, Section VA (5) (Supporting Documentation-Training), allow for reimbursement of travel and training costs incurred for the performance of mandated activities. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, and per diem.

Recommendation

We recommend that the county ensure that claimed costs include only eligible costs and are based on expenditures that occurred as a result of performing mandated activities.

**County's response (probation)**

As stated earlier, we do not agree with the narrow interpretation on training costs as explained by the audit. We therefore are of the strong view that all the training costs and costs associated with the training are reimbursable and as such should be reimbursed to us without any cuts.

**General response**

We thank the audit team for their speedy audit work and the discussions they had with us. However we felt highly disappointed with their unwillingness to go through the program implementation constraints and the background of the procedures followed in the county in this program. Please also see our cover letter to which this response is attached.

# Exhibit L

## County of Santa Clara

Finance Agency  
Controller-Treasurer Department  
County Government Center, East Wing  
70 West Hedding Street  
San Jose, California 95110-1705  
PHONE 202-3541 FAX 282-8152D



December 27, 2001

The State Controller's Office  
Attn: Local Reimbursements Section  
Division of Accounting and Reporting  
P. O. Box 942850  
Sacramento, CA 94250

Subject: Countywide Productive Hourly Rate for SB90 Claims

The Santa Clara County has decided to use the countywide effectively hourly rate in calculating the direct labor costs for its future SB90 claims. The methodology used by the County in determining the countywide effective hourly rate is consistent with the guidelines issued by the State Controller's Office in the 'SB90-Mandated Cost Manual for the Counties'. Developing a countywide effective hourly rate will standardize the County's approach, minimize duplication of effort presently expended making these calculations, and improve the accuracy and documentation related to the calculation of the productive hour rates.

The State Manual suggests the following three methods for determining the productive hours and gives the counties an option to use any of these methods:

- a. Actual annual productive hours for each job title;
- b. Countywide average annual productive hours; or
- c. The standard annual 1800 hours. The State Controller included the following items in determining the standard 1800 hours:
  - Paid holidays
  - Vacation earned
  - Sick leave taken
  - Informal time off
  - Jury Duty
  - Military leave taken

Prior to developing the productive hourly rate calculations, our Management Auditor (Roger Mialocq) contacted the State Controller's Bureau Chief for Compliance Audits (Jim Spano) to see if there were any objections to the countywide productive hourly rate usage. Mr. Spano concurred that the countywide hourly rate will result in a more efficient, less costly and more accurate approach.

Board of Supervisors: Donald F. Gage, Eduardo Avarado, Pete McHugh, James T. Baird Jr., Liz Kriss  
County Executive: Richard Wittenberg

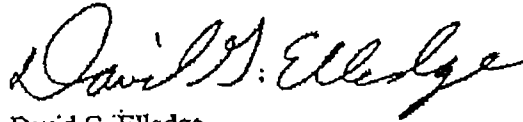
SB90-Productive Hours  
December 27, 2001  
Page 2 of 2

We have decided to use the countywide effective hours, and have enclosed for your review, analysis of actual hours for all county employees and the calculation of the countywide productive hours for the fiscal years 2000 and 2001. For this, we have used the information on actual hours expended during the fiscal year with data extracted from the county's computerized payroll (People Soft) system. We will amend the SB90 claims for fiscal year 2000, and will prepare all future SB90 claims using this methodology.

Please review the enclosed schedules and provide us with your immediate response. Complete supporting working papers are available at our office and will be made available upon your request. We will submit the details with each claim submitted.

If you need more information, please contact the County's SB90 Coordinator, Mr. Ram Venkatesan, at (408) 299-5214 or by email [ramaiah.venkatesan@fin.co.scl.ca.us](mailto:ramaiah.venkatesan@fin.co.scl.ca.us)

Sincerely,



David G. Elledge  
Controller-Treasurer

Encl:

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## ANALYSIS OF FY 2000-01 ACTUAL HOURS FOR ALL COUNTY EMPLOYEES

Hours Code	Description	Balance at 6/25/00 (1)	Balance at 12/24/00 (2)	6/25/00-12/24/00 (3)	Balance at 7/8/01 (4)	FY 1999-00 Total (3+4)	Avg Hrs Per FTE*4
51	Vacation Accumulated and Earned *1	1,096,825	2,277,954	1,181,129	1,216,792	2,267,652	159.10
52	Personal Leave Earned	6,964	283,279	276,315	8,199	284,514	19.96
100	Regular Hours	12,245,376	24,433,925	12,188,550	13,609,296	25,797,846	1,809.94
600	Release Time	3,038	6,166	3,128	2,494	5,623	0.39
605	Administrative Leave	4,620	10,074	5,454	9,253	14,707	1.03
606	Paid Leave Pending Investigation	8,409	15,576	7,467	2,549	10,015	0.70
620	First Day Sick	50,392	99,702	49,310	54,673	103,983	7.30
625	Sarny 4851 - Long Disability Lv	32,532	75,077	43,445	53,603	97,048	6.81
630	Military Leave - Pay	328	1,284	956	506	1,462	0.10
635	FLSA Comp. Time Used*5	21,440	45,862	24,422	29,060	17,827	1.30
640	Regular Comp. Time Used*5	42,447	15,794	43,307	52,363	31,890	2.32
653	Annual Leave Used	14,552	31,108	16,545	19,225	35,770	2.51
655	Sick Leave Used	452,512	38,243	435,741	507,728	943,469	66.19
660	Other Paid Time	16,413	34,635	18,232	10,374	29,106	2.04
665	Jury Duty	629	1,401	772	1,301	2,073	0.15
675	Rejuvenation Leave	364	1,604	741	2,211	2,952	0.21
676	Rejuvenation Leave-PTD/STD	24	70	46	113	159	0.01
677	Rejuvenation Leave-Chg Sick Lv	270	557	286	782	1,068	0.07
<b>Total Actual Hours Earned</b>		<b>13,997,762</b>	<b>28,293,610</b>	<b>14,295,847</b>	<b>15,561,023</b>	<b>29,847,195</b>	<b>2,080</b>
Full-time Equivalent Positions						13,726	
Weekdays in Period			130		140	270	
Paid Hours in Period						2,160	

352

ANALYSIS	
Average Productive Hours per Employee	1,809.94
Less Holidays	-88.00
Less Daily Break Time	-113.12
Less Training Time *3	-37.17
<b>Net Average Productive Hours Per Employee</b>	<b>1,571.65</b>

- Notes:
- \*1 Excludes 1,480 CEMA employees, since holiday hours are included for all employees below.
  - \*2 Two 15-minute breaks are provided daily per bargaining unit contracts.
  - \*3 Training time is calculated based on an analysis of each bargaining unit MCA and the required continuing education hours for licensure/certification in the applicable classifications.
  - \*4 Adjusted by a factor of .963 to account for the additional 10 days covered by the payroll documents.
  - \*5 Includes one-third of comp time hours used since one hour is worked for every 1.5 hours taken.

11/13/01

01/13/2008 10:30 PM

# Exhibit M



Jspano@sco.ca.gov  
02/08/2004 03:09 PM

To: Ram.Venkatesan@fin.sco.gov.org  
cc: cprasad@sco.ca.gov, svanzee@sco.ca.gov, mhavey@sco.ca.gov,  
gibrummels@sco.ca.gov, mquerin@sco.ca.gov, aluna@sco.ca.gov,  
jvenneman@sco.ca.gov  
Subject: Countywide Productive Hours

Ram,

I reviewed the county's proposal dated December 19, 2001, to use countywide productive hours and have discussed your analysis with my staff and Division of Accounting and Reporting staff. The use of countywide productive hours would be acceptable to the State Controller's Office provided all employee classifications are included and productive hours are consistently used for all county programs (mandates and nonmandated).

The SCO's Mandated Cost Manual (claiming instructions), which includes guidelines for preparing mandated cost claims, does not identify the time spent on training and authorized breaks as deductions (excludable components) from total hours when computing productive hours. However, county chooses to deduct time for training and authorized breaks in calculating countywide productive hours, its accounting system must separately identify the actual time associated with these two components. The accounting system must also separately identify training time directly charged to program activities. Training time directly charged to program activities may not be deducted when calculating productive hours.

The countywide productive hours used by Santa Clara County were not consistently applied to all mandates for FY 2000-01. Furthermore, countywide productive hours used during the audit periods include unallowable deductions for time spent on training and authorized breaks. The county deducted training time based on hours required by employees' bargaining unit agreement and continuing education requirements for licensure/certification rather than actual training hours taken. In addition, the county deducted authorized break time rather than actual break time taken. The county did not adjust for training time and break time directly charged to program activities during the audit period, and therefore, cannot exclude those hours from productive hours.

If you would like to discuss the above further, please contact me.

> Jim L. Spano, CPA  
> Chief, Compliance Audits Bureau  
> Division of Audits  
> State Controller's Office  
> Work - (916) 323-5849  
> Fax - (916) 327-0832  
>  
>

12. CLAIM CERTIFICATION

Read, sign, and date this section and insert at the end of the incorrect reduction claim submission. \*

This claim alleges an incorrect reduction of a reimbursement claim filed with the State Controller's Office pursuant to Government Code section 17561. This incorrect reduction claim is filed pursuant to Government Code section 17551, subdivision (d). I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this incorrect reduction claim submission is true and complete to the best of my own knowledge or information or belief.

RAM VENKATESAN

Print or Type Name of Authorized Local Agency or School District Official

SB90 COORDINATOR

Print or Type Title

Ram Venkatesan

Signature of Authorized Local Agency or School District Official

9/10/2010

Date

\* If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the incorrect reduction claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.

CONTROLLER DEPARTMENT  
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