

**ITEM 16**  
**REQUEST TO AMEND PARAMETERS AND GUIDELINES**  
**FINAL STAFF ANALYSIS**

Penal Code Section 13519.7  
Statutes 1993, Chapter 126

*Law Enforcement Sexual Harassment Complaint Procedures and Training*  
05-PGA-08 (97-TC-07)

Department of Finance, Requestor

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**Executive Summary**

This is a request by the Department of Finance to amend the parameters and guidelines for the *Law Enforcement Sexual Harassment Complaint Procedures and Training* program in Penal Code section 13519.7 to remove school districts and community college districts as eligible claimants and to delete boilerplate language relating to school districts on the ground that the program is not mandated by the state for these entities.

**Background**

Penal Code section 13519.7, as amended in 1993, addresses law enforcement training on sexual harassment in the workplace. The statute requires the Commission on Peace Officer Standards and Training (POST) to develop complaint guidelines by August 1994 to be followed by local law enforcement agencies for peace officers who are victims of sexual harassment in the workplace. The test claim statute also requires peace officers that completed basic training before January 1, 1995, to receive supplementary training on sexual harassment in the workplace by January 1, 1997. In 1997, the County of Los Angeles filed a test claim on Penal Code section 13519.7, as amended in 1993, and on the complaint guidelines prepared by POST entitled "Sexual Harassment in the Workplace, Guidelines and Curriculum, 1994."

On September 28, 2000, the Commission on State Mandates (Commission) adopted the Statement of Decision on the *Law Enforcement Sexual Harassment Complaint Procedures and Training (97-TC-07)* approving the test claim. The Commission found that the complaint guidelines developed by POST constituted an executive order that imposed reimbursable state-mandated activities on law enforcement agencies to develop formal written procedures for the acceptance of complaints from peace officers who are the victims of sexual harassment in the workplace. The Commission also found that Penal Code section 13519.7, subdivision (c), imposed a reimbursable state-mandated program, under specified conditions, for peace officers who completed basic training before January 1, 1995, to receive a one-time, two hour course on sexual harassment by January 1, 1997. The Statement of Decision quotes Penal Code section 13519.7, subdivision (a), which provides that POST is required to develop sexual harassment

complaint guidelines to be followed by “city police departments, county sheriff’s departments, *districts*, and state university departments.” (Emphasis added.)

On February 22, 2001, the Commission adopted parameters and guidelines for this program and determined, based on the plain language of Penal Code section 13507 (the statute that defines “district” for purposes of POST law enforcement programs), that the test claim statute required cities, counties, school districts, community districts, and special districts that employ peace officers to comply with the mandated activities. The parameters and guidelines identify the following entities as eligible claimants: cities, counties, city and county, school districts and community college districts that employ peace officers, and special districts as defined in Government Code section 17520 that are authorized by statute to maintain a police department. The parameters and guidelines authorize reimbursement for the one-time cost to develop sexual harassment complaint policies and the cost to conduct a one-time supplementary training class on sexual harassment in the workplace for each peace officer who completed basic training before January 1, 1995.

The issue whether school districts and community college districts are mandated by the state to comply with Penal Code section 13519.7 was never raised or challenged by the state during or after the Commission adopted these legal findings within the statute of limitations. Since no challenges were made to the Commission’s finding on the mandate issue, the decision of the Commission in this case is final. An administrative agency, such as the Commission, does not have jurisdiction to retry a question that has become final.

### **Conclusion**

Staff finds that the Commission no longer has jurisdiction to change its prior final decision in *Law Enforcement Sexual Harassment Complaint Procedures and Training* and amend the parameters and guidelines to delete funding for school districts and community college districts on the ground that the program is not mandated by the state for school districts and community college districts.

### **Staff Recommendation**

Staff recommends that Department of Finance’s request to amend the parameters and guidelines for the *Law Enforcement Sexual Harassment Complaint Procedures and Training* program be denied.

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## STAFF ANALYSIS

### Requestor

Department of Finance

### Chronology

- 09/28/00 Commission adopts Statement of Decision
- 02/22/01 Commission adopts Parameters and Guidelines
- 09/14/05 Department of Finance requests that parameters and guidelines be amended
- 10/25/05 Department of Finance's request deemed complete and issued for comment
- 06/19/09 Draft staff analysis issued

### Request to Amend Parameters and Guidelines

On September 14, 2005, the Department of Finance requested that the *Law Enforcement Sexual Harassment Complaint Procedures and Training* program be amended to remove school districts and community college districts as eligible claimants for this program and to delete boilerplate language relating to school districts.<sup>1</sup>

Finance states in its request:

Education Code Sections 38000 and 72330 permit K-12 school and community college districts to establish police departments, but do not require it. Therefore, forming a police department is a discretionary activity on the part of these districts, and pursuant to case law and consistent with other Commission decisions regarding school and community college district law enforcement activities, the consequences of participation in a discretionary program cannot be found to be reimbursable.

### Summary of the Mandate

Penal Code section 13519.7, as amended in 1993, addresses law enforcement training on sexual harassment in the workplace. The statute requires the Commission on Peace Officer Standards and Training (POST) to develop complaint guidelines by August 1994 to be followed by local law enforcement agencies for peace officers who are victims of sexual harassment in the workplace. The test claim statute also requires peace officers that completed basic training before January 1, 1995, to receive supplementary training on sexual harassment in the workplace by January 1, 1997. In 1997, the County of Los Angeles filed a test claim on Penal Code section 13519.7, as amended in 1993, and on the complaint guidelines prepared by POST entitled "Sexual Harassment in the Workplace, Guidelines and Curriculum, 1994."

On September 28, 2000, the Commission on State Mandates (Commission) adopted the Statement of Decision on the *Law Enforcement Sexual Harassment Complaint*

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<sup>1</sup> Exhibit A.

*Procedures and Training (97-TC-07)* test claim.<sup>2</sup> The Commission found that the complaint guidelines developed by POST constituted an executive order that imposed reimbursable state-mandated activities on law enforcement agencies to develop formal written procedures for the acceptance of complaints from peace officers who are the victims of sexual harassment in the workplace. The Commission also found that Penal Code section 13519.7, subdivision (c), imposed a reimbursable state-mandated program, under specified conditions, for peace officers who completed basic training before January 1, 1995, to receive a one-time, two hour course on sexual harassment by January 1, 1997.

On February 22, 2001, the Commission adopted parameters and guidelines for this program.<sup>3</sup> The parameters and guidelines authorize reimbursement for the one-time cost to develop sexual harassment complaint policies and the cost to conduct a one-time supplementary training class on sexual harassment in the workplace for each peace officer who completed basic training before January 1, 1995. The parameters and guidelines identify the following entities as eligible claimants: cities, counties, city and county, school districts and community college districts that employ peace officers, and special districts as defined in Government Code section 17520 that are authorized by statute to maintain a police department.

**Issue: Should the Commission amend the parameters and guidelines in *Law Enforcement Sexual Harassment Complaint Procedures and Training* to delete funding for school districts and community college districts on the ground that the program is not mandated by the state for these entities?**

The Department of Finance requests that the parameters and guidelines be amended for the *Law Enforcement Sexual Harassment Complaint Procedures and Training* program (Penal Code section 13519.7) to delete funding for school districts and community college districts on the ground that the program is not mandated by the state for these entities.

The question whether a statute constitutes a state-mandated program under article XIII B, section 6 of the California Constitution is a question of law.<sup>4</sup> On this substantive issue, the court in *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355 recently determined that school districts and community college districts that are permitted by statute to employ peace officers who supplement the general law enforcement units of cities and counties, are not mandated by the state to comply with the *Peace Officers Procedural Bill of Rights Act*. The court's finding was made on the ground that the plain language of Education Code sections 38000 and 72330 gives school districts and community college districts the authority to employ peace officers. Moreover, there was no concrete evidence in the record that school districts and community college districts face certain and severe penalties, such as double taxation or other draconian consequences, if they fail to exercise the discretionary authority to

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<sup>2</sup> Exhibit B.

<sup>3</sup> Exhibit C.

<sup>4</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

employ peace officers and comply with the downstream requirements imposed by the test claim statute.

The *Department of Finance* case is a precedential decision, requiring the Commission to apply the court's holding in all cases for which the Commission has jurisdiction. For the reasons below, however, staff finds that the Commission no longer has jurisdiction to change its prior final decision in *Law Enforcement Sexual Harassment Complaint Procedures and Training* and amend the parameters and guidelines to delete funding for school districts and community college districts on the ground that the program is not mandated by the state for school districts and community college districts.

The Commission adopted the Statement of Decision on September 28, 2000, determining that the *Law Enforcement Sexual Harassment Complaint Procedures and Training* program in Penal Code section 13519.7 and POST's Guidelines constituted a state-mandated program for all local law enforcement agencies in the state. Page 4 of the Statement of Decision quotes Penal Code section 13519.7, subdivision (a), which provides that the Commission on Peace Officer Standards and Training (POST) is required to develop sexual harassment complaint guidelines to be followed by "city police departments, county sheriff's departments, districts, and state university departments." When adopting the parameters and guidelines on February 22, 2001, the Commission determined, based on the plain language of Penal Code section 13507 (the statute that defines "district" for purposes of POST law enforcement programs) that the test claim statute required cities, counties, school districts, community districts, and special districts that employ peace officers to comply with the mandated activities.<sup>5</sup>

The issue whether school districts and community college districts are mandated by the state to comply with Penal Code section 13519.7 was never raised or challenged by the state during or after the Commission adopted these legal findings within the statute of limitations. Government Code section 17559, subdivision (a), allows a party to request reconsideration of all or part of a test claim within 30 days after the Statement of Decision is delivered or mailed to the claimant. A party also has the right under Government Code section 17559, subdivision (b), to commence a proceeding in court pursuant to Code of Civil Procedure section 1094.5 to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record. The statute of limitations to challenge a Commission decision is three years from the date the decision is issued.<sup>6</sup> In this case, Finance had until February 2004 to challenge the state-mandate finding. Since no challenges were made to the Commission's finding within the statute of limitations, the decision of the Commission in this case is final.

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<sup>5</sup> Exhibit D.

<sup>6</sup> Code of Civil Procedure, section 338, subdivision (a); *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 534.

It is a well-settled principle of law that an administrative agency does not have jurisdiction to retry a question that has become final. If a prior decision is retried by the agency, that decision is void.<sup>7</sup>

Thus, the Commission does not have jurisdiction to change its prior final decision on the question of law whether school districts and community college districts are mandated by the state to comply with the *Law Enforcement Sexual Harassment Complaint Procedures and Training* program.

Staff notes that the reimbursable activities in this program are one-time activities, with the period of reimbursement beginning July 1, 1996. The sexual harassment training activity was required to be provided to peace officers by January 1, 1997, and should be completed for all eligible claimants. The Commission has no authority to amend the parameters and guidelines on its own motion, and has not received a request to amend the parameters and guidelines to cap reimbursement for completion of the mandate.

Therefore, staff recommends that the Commission deny the request of the Department of Finance to amend the parameters and guidelines.

### CONCLUSION

Staff finds that the Commission no longer has jurisdiction to change its prior final decision in *Law Enforcement Sexual Harassment Complaint Procedures and Training* and amend the parameters and guidelines to delete funding for school districts and community college districts on the ground that the program is not mandated by the state for school districts and community college districts.

### Staff Recommendation

Staff recommends that Department of Finance's request to amend the parameters and guidelines for the *Law Enforcement Sexual Harassment Complaint Procedures and Training* program be denied.

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<sup>7</sup> *Heap v. City of Los Angeles* (1936) 6 Cal.2d 405, 407, where the court held that the civil service commission had no jurisdiction to retry a question and make a different finding at a later time; *City and County of San Francisco v. Ang* (1979) 97 Cal.App.3d 673, 697, where the court held that whenever a quasi-judicial agency is vested with the authority to decide a question, such decision, when made, is res judicata, and as conclusive of the issues involved in the decision as though the adjudication had been made by the court; and *Save Oxnard Shores v. California Coastal Commission* (1986) 179 Cal.App.3d 140, 143, where the court held that in the absence of express statutory authority, an administrative agency may not change a determination made on the facts presented at a full hearing once the decision becomes final.