

ITEM 16
REQUEST TO AMEND PARAMETERS AND GUIDELINES

DRAFT 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

Table of Contents

Exhibit A

Department of Finance's Request to Amend Parameters and Guidelines101

Exhibit B

Statement of Decision, Adopted September 28, 2000123

Exhibit C

Parameters and Guidelines, Adopted February 22, 2001143

Exhibit D

Staff Analysis on Parameters and Guidelines Adopted on February 22, 2001149

Exhibit E

Draft Staff Analysis on Request to Amend Parameters and Guidelines,
Issued June 23, 2009155

COMMISSION ON STATE MANDATES**Exhibit A**

980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
F O: (916) 323-3562
F O: (916) 445-0278
E-mail: csminfo@csm.ca.gov

October 25, 2005

Ms. Jeannie Oropeza
Department of Finance
Education Systems Unit
915 L Street, 7th Floor
Sacramento, CA 95814

And Affected State Agencies and Interested Parties (See Enclosed Mailing List)

Re: Requests to Amend Various Parameters and Guidelines

Department of Finance, Requestor

Health Benefits for Survivors of Peace Officers and Firefighters, 05-PGA-06

Labor Code Section 4856, Government Code Section 26135
Statutes of 1996, Chapter 1120; Statutes of 1997, Chapter 193;
-and-

Peace Officers Procedural Bill of Rights, 05-PGA-07

Government Code Sections 3300 through 3310
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-

Law Enforcement Sexual Harassment Complaint Procedures and Training, 05-PGA-08

Penal Code Section 13519.7
Statutes of 1993, Chapter 126;
-and-

Sex Offenders: Disclosure by Law Enforcement Officers, 05-PGA-09

Penal Code Sections 290 and 290.4
Statutes of 1996, Chapters 908 and 909; Statutes of 1997, Chapters 17, 80, 817, 818,
819, 820, 821 and 822; Statutes of 1998, Chapters 485, 550, 927, 928, 929 and 930;
-and-

Law Enforcement College Jurisdiction Agreements, 05-PGA-10

Education Code Section 67381
Statutes 1998, Chapter 284

Dear Ms. Oropeza:

On September 14, 2005, the Commission on State Mandates received your office's request to amend the parameters and guidelines for various law enforcement mandates related to K-12 schools and community college districts. Your request is deemed complete. However, your request is being treated as five individual requests to amend the above-named parameters and guidelines.

Review and Comments. All state agencies and interested parties in receipt of this letter are invited to comment on the requests to amend the above-named parameters and guidelines. Recommendations and comments must be submitted to the Commission by **November 28, 2005**. The requestor and interested parties may file rebuttals with the Commission by **December 27, 2005**. The requestor, state agencies, and interested parties are required to submit an original and two (2) copies of written responses or rebuttals to the Commission and to simultaneously serve copies on the requestor, state agencies, and interested parties on the mailing list. *Any recipient may propose a "reasonable reimbursement methodology" pursuant to Government Code section 17518.5.*

Hearing. If requested, Commission staff will conduct a prehearing conference. The hearings on these matters will be set when the records close.

Please contact Tina Poole at (916) 323-8220 if you have any questions.

Sincerely,



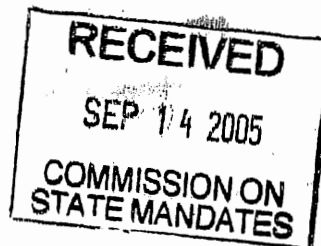
NANCY PATTON
Assistant Executive Director

Enclosure: Request to amend parameters and guidelines


**DEPARTMENT OF
FINANCE**
ARNOLD SCHWARZENEGGER, GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

September 13, 2005



Ms. Paula Higashi
 Executive Director
 Commission on State Mandates
 980 Ninth Street, Suite 300
 Sacramento, CA 95814

Dear Ms. Higashi:

The Department of Finance respectfully requests that the Commission on State Mandates (Commission) amend the parameters and guidelines for various law enforcement mandates related to K-12 school and community college districts. The requested amendments, if approved, will result in the exclusion of claimants from optional activities and prevent any further claims related to those activities, effective July 1, 2005, pursuant to Government Code Section 17557(d) and Title 2, California Code of Regulations section 1183.2.

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. Therefore, we respectfully request the following amendments:

Request to Amend Parameters and Guidelines for Health Benefits for Survivors of Peace Officers and Firefighters (97-TC-25)

Change 1: Delete the reference to school districts under eligible claimants on page 1:

II. ELIGIBLE CLAIMANTS
1. Providing Survivor Health Benefits (Labor Code Section 4856)

Counties, cities, a city and county, and special districts, as defined in Government Code section 17518 that employ peace officers and firefighters, and school districts, as defined in Government Code section 17519, that employ peace officers are eligible claimants.

Change 2: Delete the section related to school districts on page 6:

School Districts

1. ~~School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.~~
2. ~~County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the State Department of Education.~~
3. ~~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.~~

Request to Amend Parameters and Guidelines for Peace Officers Procedural Bill of Rights (CSM-4499)

Change 1: Delete the reference to school districts under eligible claimants on page 1:

II. ELIGIBLE CLAIMANTS

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

Change 2: Delete the section related to school districts on page 5:

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.~~

Request to Amend Parameters and Guidelines for Law Enforcement Sexual Harassment Complaint Procedures and Training (97-TC-07)

Change 1: Delete the reference to school and community college districts under eligible claimants on page 2:

II. 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.

Change 2: Delete the sections related to school districts and community colleges on page 5:

2. School Districts

~~School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.~~

3. Community Colleges

~~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.~~

Request to Amend Parameters and Guidelines for Sex Offenders: Disclosure by Law Enforcement Officers (97-TC-15)

Change 1: Delete the reference to community college districts under eligible claimants on page 2:

II. ELIGIBLE CLAIMANTS

Any county, city, city and county, ~~or community college district~~, that has incurred increased costs as a direct result of this mandate is eligible to claim reimbursement of these costs, except as limited in Section IV, activity 12.

Change 2: Delete the section related to community colleges on page 6:

~~Community Colleges~~

~~Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the OMB Circular A-2-1, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.~~

Request to Amend Parameters and Guidelines for Law Enforcement College Jurisdiction Agreements (98-TC-20)

Change 1: Delete Eligible Claimants on page 1, which would essentially eliminate the need for the remaining pieces of the parameters and guidelines:


~~II. ELIGIBLE CLAIMANTS~~

~~Any community college, or joint powers authority between community colleges, which incurs increased costs as a result of this mandate is eligible to claim reimbursement.~~

Further, we respectfully request the Commission make any other conforming amendments it believes may be additionally necessary as a result of the changes explicitly requested in this letter.

If you have any questions regarding this letter, please contact Pete Cervinka, Principal Program Budget Analyst at (916) 445-0328 or Jesse McGuinn, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,



Jeannie Oropeza
Program Budget Manager

Attachments

Attachment A

DECLARATION OF PETE CERVINKA
DEPARTMENT OF FINANCE
CLAIM NO. 97-TC-25, 4499, 97-TC-07, 97-TC-15, 98-TC-20

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. I concur that the statutes relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

August 26, 2005
at Sacramento, CA

Pete Cervinka
Pete Cervinka

PROOF OF SERVICE

Test Claim Name: Health Benefits for Survivors of Peace Officers and Firefighters, Peace Officers Procedural Bill of Rights, Law Enforcement Sexual Harassment Complaint Procedures and Training, Sex Offenders: Disclosure by Law Enforcement Officers, Law Enforcement College Jurisdiction Agreements.
 Test Claim Number: 97-TC-25, 4499, 97-TC-07, 97-TC-15, 98-TC-20

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 7th Floor, Sacramento, CA 95814.

On September 13, 2005 I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7th Floor, for Interagency Mail Service, addressed as follows:

A-16

Ms. Paula Higashi, Executive Director
 Commission on State Mandates
 980 Ninth Street, Suite 300
 Sacramento, CA 95814
 Facsimile No. 445-0278

B-8

State Controller's Office
 Division of Accounting and Reporting
 Attention: William Ashby
 3301 C Street, Suite 500
 Sacramento, CA 95816

B-29

Legislative Analyst's Office
 Attention: Ms. Marianne O'Malley
 925 L Street, Suite 1000
 Sacramento, CA 95814

B-8

State Controller's Office
 Attention: Mr. Jim Spano
 Division of Audits
 300 Capitol Mall, Suite 518
 Sacramento, CA 95814

E-8

Department of Education
 Fiscal and Administrative Services Division
 Attention: Mr. Gerald Shelton
 1430 N Street, Suite 2213
 Sacramento, CA 95814

P-8

Peace Officers Standards and Training
 Attention: Mr. Glen Fine
 Administrative Services Division
 1601 Alhambra Blvd.
 Sacramento, CA 95816-7083

G-01

California Community Colleges
 Attention: Mr. Mark Drummond
 Chancellor's Office
 1102 Q Street, Suite 300
 Sacramento, CA 95814-6549

D-27

Youth & Adult Correctional Agency
 1100 11th Street, 4th Floor
 Sacramento, CA 95814

B-8
 State Controller's Office
 Attention: Ms. Ginny Brummels
 Division of Audits
 300 Capitol Mall, Suite 518

Reynolds Consulting Group, Inc.
 Attention: Ms. Sandy Reynolds
 P.O. Box 987
 Sun City, CA 92586

Shields Consulting Group, Inc.
 Attention: Mr. Steve Shields
 1536 36th Street
 Sacramento, CA 95816

Mandate Resource Services
 Attention: Ms. Harmeet Barkschat
 5325 Elkhorn Blvd. #307
 Sacramento, CA 95842

Steve Smith Enterprises, Inc.
 Attention: Mr. Steve Smith
 4633 Whitney Avenue, Suite A
 Sacramento, CA 95821

California Teachers Association
 Attn: Ms. Nancy Shaffer, CTA Representative
 191 Deerglen Circle
 Vacaville, CA 95687-7414

MAXIMUS
 Attention: Mr. Allan Burdick
 4320 Auburn Blvd., Suite 2000
 Sacramento, CA 95841

Cost Recovery Systems
 Attention: Ms. Annette Chinn
 705-2 East Bidwell Street, #294
 Folsom, CA 95630

Contra Costa Community College District
 Attention: Mr. Doug Roberts
 Vice Chancellor
 Finance and Administration
 500 Court Street
 Martinez, CA 94553

Education Mandated Cost Network
 Attention: Dr. Carol Berg
 1121 L Street Suite 1060
 Sacramento, CA 95814

County of Los Angeles
 Auditor-Controller's Office
 Attention: Mr. Leonard Kaye, Esq.
 500 W. Temple Street, Room 603
 Los Angeles, CA 90012

Spector, Middleton, Young & Minney, LLP
 Attention: Mr. Paul Minney
 7 Park Center Drive
 Sacramento, CA 95825

Sixten & Associates
 Attention: Mr. Keith Petersen
 5252 Balboa Avenue, Suite 807
 San Diego, CA 92117

Office of Criminal Justice Planning
 Attention: Ms. Virginia Papan, Deputy Director
 1130 K Street, Suit 300
 Sacramento, CA 95814

David Wellhouse & Associates, Inc.
 Attention: Mr. David Wellhouse
 9175 Kiefer Blvd, Suite 121
 Sacramento, CA 95826

California State Association of Counties
 1100 K Street, Suite 101
 Sacramento, CA 95814-3941

County of Tuolumne
 Sheriff's Department
 28 N. Lower Sunset Drive
 Sonora, CA 95370

Centration, Inc.
 Attention: Beth Hunter
 8316 Red Oak Street, Suite 101
 Rancho Cucamonga, CA 91730

County of San Bernardino
Office of the Auditor/Controller-Recorder
222 West Hospitality Lane
San Bernardino, CA 92415-0022

San Juan Unified School District
Attention: Ms. Diana Halpenny
3738 Walnut Avenue P.O. Box 477
Carmichael, CA 95609-0477

CCS Partnership
1100 K Street, Suite 201
Sacramento, CA 95814

Office of Labor Relations
Attention: Dee Contreras
Director of Labor Relations
City of Sacramento
921 10th Street, Room 601
Sacramento, CA 95814-2711

State Personnel Board
Attention: Ms. Elise Rose
801 Capitol Mall, MS-53
Sacramento, CA 95814

San Diego Unified School District
Attention: Mr. Arthur Palkowitz
4100 Normal Street, Room 3159
San Diego, CA 92103-8363

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 13, 2005 at Sacramento, California.

Clad Robus for Cythia Munoz

Cythia Munoz

Commission on State Mandates

Original List Date: 10/20/2005

Mailing Information: Completeness Determination

Last Updated:

Mailing List

List Print Date: 10/25/2005

Claim Number: 05-PGA-06

Issue: Health Benefits for Survivors of Peace Officers and Firefighters

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Ms. Jeannie Oropeza

Department of Finance (A-15)

Education Systems Unit

915 L Street, 7th Floor

Sacramento, CA 95814

Tel: (916) 445-0328

Fax: (916) 323-9530

Mr. David Wellhouse

David Wellhouse & Associates, Inc.

9175 Kiefer Blvd, Suite 121

Sacramento, CA 95826

Tel: (916) 368-9244

Fax: (916) 368-5723

Ms. Harmeet Barkschat

Mandate Resource Services

5325 Elkhorn Blvd. #307

Sacramento, CA 95842

Tel: (916) 727-1350

Fax: (916) 727-1734

Mr. Steve Smith

Steve Smith Enterprises, Inc.

4633 Whitney Avenue, Suite A

Sacramento, CA 95821

Tel: (916) 483-4231

Fax: (916) 483-1403

Ms. Annette Chinn

Cost Recovery Systems, Inc.

705-2 East Bidwell Street, #294

Folsom, CA 95630

Tel: (916) 939-7901

Fax: (916) 939-7801

Mr. Allan Burdick

MAXIMUS

4320 Auburn Blvd., Suite 2000

Sacramento, CA 95841

Tel: (916) 485-8102

Fax: (916) 485-0111

Mr. Leonard Kaye, Esq.
County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012

Tel: (213) 974-8564

Fax: (213) 617-8106

Mr. Jim Jagers
Axiom, Inc.
2440 Gold River Road, Suite 200
Gold River, CA 95670

Tel: (916) 853-6000

Fax: (916) 351-1020

Mr. Glen Everroad
City of Newport Beach
3300 Newport Blvd.
P. O. Box 1768
Newport Beach, CA 92659-1768

Tel: (949) 644-3127

Fax: (949) 644-3339

Ms. Ginny Brummels
State Controller's Office (B-08)
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Tel: (916) 324-0256

Fax: (916) 323-6527

Mr. J. Bradley Burgess
Public Resource Management Group
1380 Lead Hill Boulevard, Suite #106
Roseville, CA 95661

Tel: (916) 677-4233

Fax: (916) 677-2283

Commission on State Mandates

Original List Date: 10/25/2005

Mailing Information: Completeness Determination

Last Updated:

List Print Date: 10/25/2005

Mailing List

Claim Number: 05-PGA-07

Issue: Peace Officers Procedural Bill of Rights

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Ms. Bonnie Ter Keurst

County of San Bernardino

Office of the Auditor/Controller-Recorder

222 West Hospitality Lane

San Bernardino, CA 92415-0018

Tel: (909) 386-8850

Fax: (909) 386-8830

Mr. Victor Sanchez

Sacramento Police Officers Association

2620 21st Street

Sacramento, CA 95818-2507

Tel:

Fax:

Mr. Steve Shields

Shields Consulting Group, Inc.

1536 36th Street

Sacramento, CA 95816

Tel: (916) 454-7310

Fax: (916) 454-7312

Mr. Mark Sigman

Riverside County Sheriff's Office

4095 Lemon Street

P O Box 512

Riverside, CA 92502

Tel: (951) 955-2700

Fax: (951) 955-2720

Mr. David Wellhouse

David Wellhouse & Associates, Inc.

9175 Kiefer Blvd, Suite 121

Sacramento, CA 95826

Tel: (916) 368-9244

Fax: (916) 368-5723

Mr. Michael Vigliota

Santa Ana Police Department

City Attorney's Office

60 Civic Center Plaza

Santa Ana, CA 92702

Tel:

Fax:

Mr. Don Benninghoven
CCS Partnership
1100 K Street, Suite 201
Sacramento, CA 95814

Tel:

Fax:

Ms. Jeannie Oropeza
Department of Finance (A-15)
Education Systems Unit
915 L Street, 7th Floor
Sacramento, CA 95814

Tel: (916) 445-0328

Fax: (916) 323-9530

Mr. Allan Burdick
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Tel: (916) 485-8102

Fax: (916) 485-0111

Ms. Dee Contreras
Office of Labor Relations
City of Sacramento
921 10th Street, Room 601
Sacramento, CA 95814-2711

Tel:

Fax:

Ms. Annette Chinn
Cost Recovery Systems, Inc.
705-2 East Bidwell Street, #294
Folsom, CA 95630

Tel: (916) 939-7901

Fax: (916) 939-7801

Ms. Susan Geanacou
Department of Finance (A-15)
915 L Street, Suite 1190
Sacramento, CA 95814

Tel: (916) 445-3274

Fax: (916) 324-4888

Mr. Edward J. Takach
Department of Employee Relations
921 10th Street, Room 601
Sacramento, CA 95814-2711

Tel:

Fax:

Ms. Ginny Brummels
State Controller's Office (B-08)
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Tel: (916) 324-0256

Fax: (916) 323-6527

Ms. Connie Peters
Youth & Adult Correctional Agency (D-27)
1100 11th Street, 4th Floor
Sacramento, CA 95814

Tel: (916) 323-6001

Fax: (916) 442-2637

Ms. Elise Rose

State Personnel Board (E-09)

801 Capitol Mall

Sacramento, CA 95814

Tel:

Fax: (916) 653-1028

Ms. Harmeet Barkschat

Mandate Resource Services

5325 Elkhorn Blvd. #307

Sacramento, CA 95842

Tel: (916) 727-1350

Fax: (916) 727-1734

Mr. J. Bradley Burgess

Public Resource Management Group

1380 Lead Hill Boulevard, Suite #106

Roseville, CA 95661

Tel: (916) 677-4233

Fax: (916) 677-2283

Mr. Steve Smith

Steve Smith Enterprises, Inc.

4633 Whitney Avenue, Suite A

Sacramento, CA 95821

Tel: (916) 483-4231

Fax: (916) 483-1403

Mr. Jim Jagers

Axiom, Inc.

2440 Gold River Road, Suite 200

Gold River, CA 95670

Tel: (916) 853-6000

Fax: (916) 351-1020

Mr. Glen Everroad

City of Newport Beach

3300 Newport Blvd.

P. O. Box 1768

Newport Beach, CA 92659-1768

Tel: (949) 644-3127

Fax: (949) 644-3339

Mr. Leonard Kaye, Esq.

County of Los Angeles

Auditor-Controller's Office

500 W. Temple Street, Room 603

Los Angeles, CA 90012

Tel: (213) 974-8564

Fax: (213) 617-8106

Commission on State Mandates

Original List Date: 10/25/2005
Last Updated:
List Print Date: 10/25/2005
Claim Number: 05-PGA-08
Issue:

Mailing Information: Completeness Determination

Mailing List

Law Enforcement Sexual Harassment Complaint Procedures and Training

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Ms. Jeannie Oropeza
Department of Finance (A-15)
Education Systems Unit
915 L Street, 7th Floor
Sacramento, CA 95814

Tel: (916) 445-0328
Fax: (916) 323-9530

Ms. Annette Chinn
Cost Recovery Systems, Inc.
705-2 East Bidwell Street, #294
Folsom, CA 95630

Tel: (916) 939-7901
Fax: (916) 939-7801

Mr. Ted Buckley
Long Beach Unified School District
Legal Services Office
1515 Hughes Way, Room 437
Long Beach, CA 90810-1839

Tel: (562) 997-8251
Fax: (562) 997-8092

Mr. Allan Burdick
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Tel: (916) 485-8102
Fax: (916) 485-0111

Director
Office of Criminal Justice Planning (P-03)
1130 K Street, Suite 300
Sacramento, CA 95814

Tel: (916) 324-9132
Fax: (916) 324-9167

Ms. Susan Geanacou
Department of Finance (A-15)
915 L Street, Suite 1190
Sacramento, CA 95814

Tel: (916) 445-3274
Fax: (916) 324-4888

Ms. Ginny Brummels
State Controller's Office (B-08)
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Tel: (916) 324-0256
Fax: (916) 323-6527

Mr. Leonard Kaye, Esq.
County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012

Tel: (213) 974-8564
Fax: (213) 617-8106

Mr. J. Bradley Burgess
Public Resource Management Group
1380 Lead Hill Boulevard, Suite #106
Roseville, CA 95661

Tel: (916) 677-4233
Fax: (916) 677-2283

Mr. David Wellhouse
David Wellhouse & Associates, Inc.
9175 Kiefer Blvd, Suite 121
Sacramento, CA 95826

Tel: (916) 368-9244
Fax: (916) 368-5723

Ms. Harmeet Barkschat
Mandate Resource Services
5325 Elkhorn Blvd. #307
Sacramento, CA 95842

Tel: (916) 727-1350
Fax: (916) 727-1734

Mr. Steve Smith
Steve Smith Enterprises, Inc.
4633 Whitney Avenue, Suite A
Sacramento, CA 95821

Tel: (916) 483-4231
Fax: (916) 483-1403

Mr. Jim Jagers
Axiom, Inc.
2440 Gold River Road, Suite 200
Gold River, CA 95670

Tel: (916) 853-6000
Fax: (916) 351-1020

Mr. Glen Everroad
City of Newport Beach
3300 Newport Blvd.
P. O. Box 1768
Newport Beach, CA 92659-1768

Tel: (949) 644-3127
Fax: (949) 644-3339

Commission on State Mandates

Original List Date: 10/25/2005

Mailing Information: Completeness Determination

Last Updated:

Mailing List

List Print Date: 10/25/2005

Claim Number: 05-PGA-09

Issue: Sex Offenders: Disclosure by Law Enforcement Officers

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Ms. Jeannie Oropeza
Department of Finance (A-15)
Education Systems Unit
915 L Street, 7th Floor
Sacramento, CA 95814

Tel: (916) 445-0328

Fax: (916) 323-9530

Ms. Annette Chinn
Cost Recovery Systems, Inc.
705-2 East Bidwell Street, #294
Folsom, CA 95630

Tel: (916) 939-7901

Fax: (916) 939-7801

Mr. Steve Kell
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814-3941

Tel: (916) 327-7523

Fax: (916) 441-5507

Ms. Ginny Brummels
State Controller's Office (B-08)
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Tel: (916) 324-0256

Fax: (916) 323-6527

Mr. Keith B. Petersen
SixTen & Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Tel: (858) 514-8605

Fax: (858) 514-8645

Ms. Jean Green
County of Tuolumne
Sheriff's Department
28 N. Lower Sunset Drive
Sonora, CA 95370

Tel: (209) 535-5815

Fax: (209) 533-5860

Ms. Bonnie Ter Keurst
County of San Bernardino
Office of the Auditor/Controller-Recorder
222 West Hospitality Lane
San Bernardino, CA 92415-0018

Tel: (909) 386-8850
Fax: (909) 386-8830

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816

Tel: (916) 454-7310
Fax: (916) 454-7312

Ms. Susan Geanaçou
Department of Finance (A-15)
915 L Street, Suite 1190
Sacramento, CA 95814

Tel: (916) 445-3274
Fax: (916) 324-4888

Ms. Connie Peters
Youth & Adult Correctional Agency (D-27)
1100 11th Street, 4th Floor
Sacramento, CA 95814

Tel: (916) 323-6001
Fax: (916) 442-2637

Mr. David Wellhouse
David Wellhouse & Associates, Inc.
9175 Kiefer Blvd, Suite 121
Sacramento, CA 95826

Tel: (916) 368-9244
Fax: (916) 368-5723

Mr. J. Bradley Burgess
Public Resource Management Group
1380 Lead Hill Boulevard, Suite #106
Roseville, CA 95661

Tel: (916) 677-4233
Fax: (916) 677-2283

Ms. Harmeet Barkschat
Mandate Resource Services
5325 Elkhorn Blvd. #307
Sacramento, CA 95842

Tel: (916) 727-1350
Fax: (916) 727-1734

Mr. Steve Smith
Steve Smith Enterprises, Inc.
4633 Whitney Avenue, Suite A
Sacramento, CA 95821

Tel: (916) 483-4231
Fax: (916) 483-1403

Mr. Allan Burdick
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Tel: (916) 485-8102
Fax: (916) 485-0111

Mr. Leonard Kaye, Esq.
County of Los Angeles
Auditor-Controller's Office

Tel: (213) 974-8564
Fax: (213) 617-8106

500 W. Temple Street, Room 603
Los Angeles, CA 90012

Mr. Glen Everroad
City of Newport Beach
3300 Newport Blvd.
P. O. Box 1768
Newport Beach, CA 92659-1768

Tel: (949) 644-3127

Fax: (949) 644-3339

Mr. Jim Jagers
Axiom, Inc.
2440 Gold River Road, Suite 200
Gold River, CA 95670

Tel: (916) 853-6000

Fax: (916) 351-1020

Commission on State Mandates

Original List Date: 10/25/2005

Mailing Information: Completeness Determination

Last Updated:

List Print Date: 10/25/2005

Mailing List

Claim Number: 05-PGA-10

Issue: Law Enforcement College Jurisdiction Agreements

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Ms. Jeannie Oropeza

Department of Finance (A-15)

Education Systems Unit

915 L Street, 7th Floor

Sacramento, CA 95814

Tel: (916) 445-0328

Fax: (916) 323-9530

Ms. Susan Geanacou

Department of Finance (A-15)

915 L Street, Suite 1190

Sacramento, CA 95814

Tel: (916) 445-3274

Fax: (916) 324-4888

Ms. Harmeet Barkschat

Mandate Resource Services

5325 Elkhorn Blvd. #307

Sacramento, CA 95842

Tel: (916) 727-1350

Fax: (916) 727-1734

Ms. Ginny Brummels

State Controller's Office (B-08)

Division of Accounting & Reporting

3301 C Street, Suite 500

Sacramento, CA 95816

Tel: (916) 324-0256

Fax: (916) 323-6527

Mr. John E. Hendrickson

Contra Costa Community College District

Business Services

500 Court Street

Martinez, CA 94553

Tel: (925) 229-1000

Fax: (925) 370-2019

Mr. Keith B. Petersen

SixTen & Associates

5252 Balboa Avenue, Suite 807

San Diego, CA 92117

Tel: (858) 514-8605

Fax: (858) 514-8645

Ms. Alexandra Condon
California Teachers Association
6 Red River Ct
Sacramento, CA 95831-3036

Tel: (707) 468-7877
Fax:

Ms. Diana Halpenny
San Juan Unified School District
3738 Walnut Avenue
P.O. Box 477
Carmichael, CA 95609-0477

Tel: (916) 971-7109
Fax: (916) 971-7704

Mr. Robert Miyashiro
School Services of California, Inc.
1121 L Street, Suite 1060
Sacramento, CA 95814

Tel: (916) 446-7517
Fax: (916) 446-2011

Ms. Sandy Reynolds
Reynolds Consulting Group, Inc.
P.O. Box 894059
Temecula, CA 92589

Tel: (951) 303-3034
Fax:

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816

Tel: (916) 454-7310
Fax: (916) 454-7312

Mr. Steve Smith
Steve Smith Enterprises, Inc.
4633 Whitney Avenue, Suite A
Sacramento, CA 95821

Tel: (916) 483-4231
Fax: (916) 483-1403

Ms. Beth Hunter
Centration, Inc.
8316 Red Oak Street, Suite 101
Rancho Cucamonga, CA 91730

Tel: (866) 481-2642
Fax: (866) 481-5383

Mr. David E. Scribner
Scribner Consulting Group, Inc.
3840 Rosin Court, Suite 190
Sacramento, CA 95834

Tel: (916) 922-2636
Fax: (916) 922-2719

Mr. J. Bradley Burgess
Public Resource Management Group
1380 Lead Hill Boulevard, Suite #106
Roseville, CA 95661

Tel: (916) 677-4233
Fax: (916) 677-2283

Mr. David Wellhouse
David Wellhouse & Associates, Inc.
9175 Kiefer Blvd, Suite 121

Tel: (916) 368-9244
Fax: (916) 368-5723

Sacramento, CA 95826

Ms. Annette Chinn

Cost Recovery Systems, Inc.
705-2 East Bidwell Street, #294
Folsom, CA 95630

Tel: (916) 939-7901

Fax: (916) 939-7801

Mr. Allan Burdick

MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Tel: (916) 485-8102

Fax: (916) 485-0111

Mr. Leonard Kaye, Esq.

County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012

Tel: (213) 974-8564

Fax: (213) 617-8106

Mr. Glen Everroad

City of Newport Beach
3300 Newport Blvd.
P. O. Box 1768
Newport Beach, CA 92659-1768

Tel: (949) 644-3127

Fax: (949) 644-3339

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM:

Penal Code Section 13519.7,

As Amended by Statutes of 1993, Chapter 126;
and

Filed on December 23, 1997;

By the County of Los Angeles, Claimant.

NO. CSM 97-TC-07

*Sexual Harassment Training in the Law
Enforcement Workplace*

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

(Adopted on September 28, 2000)

STATEMENT OF DECISION

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

This Decision shall become effective on September 29, 2000.

Paula Higashi, Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM:

Penal Code Section 13519.7,

As Amended by Statutes of 1993, Chapter 126;
and

Filed on December 23, 1997;

By the County of Los Angeles, Claimant.

NO. CSM 97-TC-07

*Sexual Harassment Training in the Law
Enforcement Workplace*

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

(Adopted on September 28, 2000)

STATEMENT OF DECISION

On August 24, 2000 the Commission on State Mandates (Commission) heard this test claim during a regularly scheduled hearing. Mr. Leonard Kaye appeared for the County of Los Angeles. Captain Tom Laing and Lieutenant Randy Olson appeared as witnesses for the Los Angeles County Sheriff's Department. Mr. James W. Miller and Ms. Amber D. Pearce appeared for the Department of Finance. Mr. Hal Snow appeared for the Commission on Peace Officer Standards and Training (POST). Mr. Allan Burdick appeared on behalf of the California State Association of Counties (CSAC).

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. article XIII B, section 6 of the California Constitution, and related case law.

The Commission, by a vote of 6 to 1, partially approved this test claim.

//

//

//

//

BACKGROUND

The test claim statute, Penal Code section 13519.7, addresses the implementation of complaint guidelines and training on sexual harassment in the workplace for local law

enforcement officers. The test claim statute became effective on January 1, 1994, and requires the Commission on Peace Officer Standards and Training (POST) to develop complaint guidelines by August 1, 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 the course of basic training for law enforcement officers to include instruction on sexual harassment in the workplace no later than January 1, 1995. Peace officers that completed basic training before January 1, 1995 are required to receive supplementary training on sexual harassment in the workplace by January 1, 1997.

In the past, the Commission has decided three test claims addressing training for peace officers and firefighters. In 1991, the Commission denied a test claim filed by the City of Pasadena requiring new and veteran peace officers to complete a course regarding the handling of domestic violence complaints as part of their basic training and continuing education courses (*Domestic Violence Training*, CSM-4376). The Commission reached the following conclusions:

- The test claim legislation does not require local agencies to implement a domestic violence training program and to pay the cost of such training;
- The test claim legislation does not increase the minimum number of basic training hours, nor the minimum number of advanced officer training hours and, thus, no additional costs are incurred by local agencies; and
- The test claim legislation does not require local agencies to provide domestic violence training.

In January 1998, the Commission denied a test claim filed by the County of Los Angeles requiring veteran law enforcement officers below the rank of supervisor to complete an updated course of instruction on domestic violence every two years (*Domestic Violence Training and Incident Reporting*, CSM-96-362-01). Although the statute imposed an express continuing education requirement upon individual officers and not local agencies, the last sentence of the test claim statute stated that “it is the intent of the Legislature not to increase the annual training costs of local government.” Thus, the Commission recognized the Legislature’s awareness of the potential impact of the training course upon local governments and found that the continuing education activity was imposed upon local agencies. The Commission denied the test claim, however, based on the finding that local agencies incur *no* increased “costs mandated by the state” in carrying out the two-hour course for the following reasons:

- *Immediately before and after* the effective date of the test claim legislation, POST’s minimum required number of continuing education hours for the law enforcement officers in question *remained the same at 24 hours*. After the operative date of the test claim statute these officers must still complete at least 24 hours of professional training every two years,
- The two hour domestic violence training update may be credited toward satisfying the officer’s 24-hour minimum,

- The two hour training is *not* separate and apart nor “on top of” the 24-hour minimum,
- POST does not mandate creation and maintenance of a separate schedule and tracking system for this two hour course,
- POST prepared and provides local agencies with the course materials and video tape to satisfy the training in question, and
- Of the 24-hour minimum, the two hour domestic violence training update is the only course that is legislatively mandated to be continuously completed every two years by the officers in question. The officers may satisfy their remaining 22-hour requirement by choosing from *the many elective courses* certified by POST.

In December 1998, the Commission approved a test claim filed by the County of Los Angeles and remanded by the court, which required new and veteran firefighters to complete a training course on Sudden Infant Death Syndrome (*Sudden Infant Death Syndrome (SIDS) for Firefighters*, CSM-4412). The test claim statute further authorized local agencies to provide the instruction and training, and to assess a fee to pay for the costs of the training. In its order, the court found that there were no state training programs available to provide SIDS training to new and veteran firefighters. Thus, the court concluded that the SIDS training program was a new program imposed on the county. The court remanded the case to the Commission to determine if the fee authority provided by the statute could be realistically recovered from firefighters. In this respect, the Commission recognized that local agencies have the unilateral authority to impose changes regarding terms of employment, such as training fees, on employees. However, based on the evidence presented at the hearing, the Commission found that the fee authority could not be realistically exercised. The Commission also recognized that, unlike POST, an agency charged with overseeing peace officer training, there is no state agency charged with developing and overseeing firefighter training. Accordingly, the Commission reached the following conclusions:

- The SIDS training program is a new program imposed on local agencies and does not impose requirements on firefighters alone.
- When SIDS instruction is provided by a private facility, local agencies still incur “costs mandated by the state” in the form of salaries, benefits, and other incidental expenses for the time that its employees spend in training (trainee time), registration and materials.
- When SIDS training is provided by the local agency, the local agency incurs “costs mandated by the state” for the development of the training, trainee time, trainer time and materials since the fee authority provided in the statute cannot be realistically exercised.

COMMISSION FINDINGS

In order for a statute or an executive order to impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution and Government Code section 17514, the statutory language must first direct or obligate an activity or task

upon local governmental agencies. If the statutory language does not direct or obligate local agencies to perform a task, then compliance with the test claim statute or executive order is within the discretion of the local agency and a reimbursable state mandated program does not exist.

In addition, the required activity or task must constitute a new program or create an increased or higher level of service over the former required level of service. The California Supreme Court has defined a “new program” or “higher level of service” as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the State. To determine if the “program” is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must impose “costs mandated by the state”.¹

This decision addresses the following issues:

- Do the sexual harassment complaint guidelines developed by POST in response to Penal Code section 13519.7, subdivision (a), constitute a reimbursable state mandated program for local agencies?
- Does the requirement that the course of basic training for law enforcement officers include instruction on sexual harassment in the workplace no later than January 1, 1995 constitute a reimbursable state mandated program?
- Does the requirement for peace officers that completed basic training before January 1, 1995 to receive supplementary training on sexual harassment in the workplace by January 1, 1997 constitute a reimbursable state mandated program?

The Commission’s findings on these issues are presented below.

Issue 1: Do the sexual harassment complaint guidelines developed by POST in response to Penal Code section 13519.7, subdivision (a), constitute a reimbursable state mandated program for local agencies?

Penal Code section 13519.7, subdivision (a), states the following:

“On or before August 1, 1994, [POST] shall develop complaint guidelines to be followed by city police departments, county sheriffs’ departments, districts, and state university departments, for peace officers who are victims of sexual harassment in the workplace. In developing the complaint guidelines, [POST] shall consult with appropriate groups and individuals having an expertise in the area of sexual harassment.”

¹ Article XIII B, section 6 of the California Constitution; *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 66; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835; Gov. Code, § 17514.

The Department of Finance contended that this provision does not constitute a reimbursable state mandated program because it is not unique to local government. The Department contended that the test claim statute affects all peace officers in the State, including those in the University of California and California State University systems. The Department cites the *County of Los Angeles v. State of California* and *City of Sacramento v. State of California* cases in support of its position.²

The claimant disagreed. The claimant argued that the test claim statute is unique to government and that the cases cited by the Department are not applicable here. The claimant also submitted with the test claim a document prepared by POST entitled “Sexual Harassment in the Workplace, Guidelines and Curriculum, 1994” in support of its position that Penal Code section 13519.7, subdivision (a), imposes reimbursable state mandated activities on local agencies.

The Commission found that POST’s “Sexual Harassment in the Workplace, Guidelines and Curriculum, 1994” constitutes an executive order under Government Code section 17516. That section defines an “executive order,” in relevant part, as any order, plan, requirement, rule, or regulation issued by any agency, department, board, or commission of state government.

The Commission also found that the Department’s reliance on the *County of Los Angeles* and *City of Sacramento* cases, to support its argument that sexual harassment complaint guidelines for peace officers is not unique to government, is misplaced. Both cases involved state-mandated increases in workers’ compensation benefits, which affected public and *private* employers alike. The California Supreme Court found that the term “program” as used in article XIII B, section 6, and the intent underlying section 6 “was to require reimbursement to local agencies for the costs involved in carrying out functions *peculiar to government*, not for expenses incurred as an incidental impact of law that apply generally to all state residents and entities.” (Emphasis added.)³ Since the increase in workers’ compensation benefits applied to all employees of private and public businesses, the court found that no reimbursement was required.

Here, on the other hand, the sexual harassment complaint guidelines are to be followed by city police departments, county sheriffs’ departments, districts, and state university departments. They do not apply “generally to all state residents and entities” in the state, such as private businesses. In addition, the Court of Appeal, Third Appellate District, has recognized that police protection is a peculiarly governmental function.⁴ Accordingly, the Commission found that the sexual harassment complaint guidelines developed by POST in response to Penal Code section 13519.7, subdivision (a), are unique to government and constitute a “program” within the meaning of article XIII B, section 6 of the California Constitution.

The Commission further found that the complaint guidelines prepared by POST in response to Penal Code section 13519.7, subdivision (a), constitute a “new program” and

² *County of Los Angeles v. State of California*, supra; 43 Cal.3d 46; *City of Sacramento v. State of California*, supra, 50 Cal.3d 51.

³ *County of Los Angeles*, supra, 43 Cal.3d at 56-57; *City of Sacramento*, supra, 50 Cal.3d at 67.

⁴ *Carmel Valley Fire Protection Dist.*, supra, 190 Cal.App.3d 521, 537.

impose “costs mandated by the state” on local law enforcement agencies. The document lists twelve guidelines, nine of which *require* local agencies to develop a formal written complaint procedure containing specified procedures. The nine required guidelines state the following:

- “Each law enforcement agency . . . *shall* develop a formal written procedure for the acceptance of complaints from peace officers who are the victims of sexual harassment in the work place.”
- “Each law enforcement agency . . . *shall* provide a written copy of their complaint procedure to every peace officer employee.”
- “Agency sexual harassment complaint procedures *shall* include the definitions and examples of sexual harassment as contained in the Code of Federal Regulations (29 CFR 1604.11) and California Government Code Section 12950.”
- “Agency sexual harassment complaint procedures *shall* identify the specific steps complainants should follow for initiating a complaint.”
- “Agency sexual harassment complaint procedures *shall* address supervisory/management responsibilities to intervene and/or initiate an investigation when possible sexual harassment is observed in the work place.”
- “Sexual harassment complaint procedures *shall* state that agencies must attempt to prevent retaliation, and, under the law, sanctions can be imposed if complainants and/or witnesses are subjected to retaliation.”
- “[T]he agency procedure *shall* identify parties to whom the incident should/may be reported . . . , *shall* allow the complainant to circumvent their normal chain of command in order to report a sexual harassment incident [and] *shall* include a specific statement that the complainant is always entitled to go directly to the California Department of Fair Employment and Housing (DFEH) and/or the Federal Equal Employment Opportunity Commission (EEOC) to file a complaint.”
- “Agency sexual harassment complaint procedures *shall* require that all complaints shall be fully documented by the person receiving the complaint.”
- “All sexual harassment prevention training *shall* be documented for each participant and maintained in an appropriate file.”

The Commission determined that local law enforcement agencies were not required to follow the sexual harassment guidelines developed by POST prior to the enactment of the test claim statute.

Accordingly, the Commission found that the sexual harassment complaint guidelines entitled “Sexual Harassment in the Workplace, Guidelines and Curriculum, 1994,” which were developed by POST in response to Penal Code section 13519.7, subdivision (a), constitute a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Issue 2: Does the requirement that the course of basic training for law enforcement officers include instruction on sexual harassment in the

workplace no later than January 1, 1995 constitute a reimbursable state mandated program?

Penal Code section 13519.7, subdivision (b), states the following:

“The course of basic training for law enforcement officers shall, no later than January 1, 1995, include instruction on sexual harassment in the workplace. The training shall include, but not be limited to, the following:

- (1) The definition of sexual harassment.
- (2) A description of sexual harassment, utilizing examples.
- (3) The illegality of sexual harassment.
- (4) The complaint process, legal remedies, and protection from retaliation available to victims of sexual harassment.

In developing this training, [POST] shall consult with appropriate groups and individuals having an interest and expertise in the area of sexual harassment.”

Article XIII B, section 6 of the California Constitution states that “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.” (Emphasis added.)

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

The claimant contended that local agencies are required to provide basic training, including sexual harassment training, to new recruit employees. Even if an agency hires persons who have already obtained the training, the claimant states that the first law enforcement agency that actually provides the training should be reimbursed. The claimant is requesting reimbursement for the salaries, benefits and other incidental expenses for the time that its new recruit employees spend in training and the costs incurred to present the course at its basic training academy.

At the hearing, Mr. Leonard Kaye, Certified Public Accountant, Office of Auditor-Controller, testified on behalf of the claimant. Mr. Kaye acknowledged that local agencies are not specifically required by state law to be responsible for basic training. However, he contended that when the Legislature requires a new basic training component or course, the basic training academies, which include cities, counties, and community colleges, are required to provide the new basic training course.⁵

The Department of Finance contended that Penal Code section 13519.7, subdivision (b), does not impose a new program or higher level of service since there is no obligation imposed on any local law enforcement agency to provide the training. Rather, the Department contended that the statute imposes a training obligation on recruits alone.

⁵ Hearing Transcript (August 24, 2000), page 35, lines 4-15.

Since the statute applies to new recruits, the Department contended that the local agency has the option of hiring only those persons who have already obtained the sexual harassment training. Thus, the Department concluded that if a local agency trains its recruit employees on sexual harassment, the local agency does so at its option.

POST did not submit any written comments on the issue of whether Penal Code section 13519.7, subdivision (b), mandates a new program or higher level of service on local agencies. However, Mr. Hal Snow, Assistant Executive Director of POST, provided testimony at the hearing. Mr. Snow testified that POST certifies about 39 academies in the state as basic training institutions. Mr. Snow stated that the academies are not required to be certified. Rather, it is an option on the part of the entity. Mr. Snow's testimony is as follows:

“We certify about 39 academies around the state, and they are certified voluntarily; that is, no agency or community college or other organization is required to be certified. For those who are certified, they, of course, incur substantial costs in operating those academies, most of which are not reimbursable by POST. Some of them are subvented by community college funding, but, in every case, it is - - it's an option on the part of the entity, whether it's an agency or a community college, to be certified as a basic training institution.”⁶

Mr. Snow further testified that roughly 6,000 people graduate from basic academy per year. Of the 6,000 graduates, about 2,000 are unemployed and pay for their own training.⁷

For the reasons stated below, the Commission found that Penal Code section 13519.7, subdivision (b), does not impose any activities or duties upon local law enforcement agencies. Rather, the requirement to complete the basic training course on sexual harassment is a mandate imposed on the individual who seeks peace officer status.

The test claim statute states that “the course of basic training for law enforcement officers” shall include sexual harassment in the workplace. The test claim statute itself does not mandate local agencies to provide the course of basic training to recruits. Rather, the statute is silent in this respect and does not specify who is required to provide the basic training course.

In addition, the Commission determined that there are no provisions in other statutes or regulations issued by POST that require local agencies to provide basic training. Since 1959, Penal Code section 13510 and following have required POST to adopt rules establishing minimum standards relating to the physical, mental and moral fitness governing the recruitment of new local law enforcement officers.⁸ In establishing the standards for training, the Legislature instructed POST to permit the required training to be conducted at *any* institution approved by POST.⁹ For those “persons” who have

⁶ Hearing Transcript (August 24, 2000), page 36, lines 18-25, and page 37, lines 1-2.

⁷ Hearing Transcript (August 24, 2000) page 32, lines 8-21.

⁸ These standards can be found in Title 11 of the California Code of Regulations.

⁹ Pen. Code, § 13511.

acquired prior equivalent peace officer training, POST is required to provide the opportunity for testing instead of the attendance at a “basic training academy or accredited college.”¹⁰ Moreover, “each *applicant* for admission to a basic course of training certified by [POST] who is *not* sponsored by a local or other law enforcement agency . . . shall be required to submit written certification from the Department of Justice . . . that the applicant has no criminal history background. . . .”

Since 1971, Penal Code section 832 has required “every *person* described in this chapter as a peace officer” to satisfactorily complete an introductory course of training prescribed by POST before they can exercise the powers of a peace officer.¹¹ Any “*person*” completing the basic training course “who does *not become employed* as a peace officer” within three years is required to re-take and pass the basic training examination. Since 1994, POST has been authorized to charge a fee for the basic training examination to each “*applicant*” who is *not* sponsored or employed by a local law enforcement agency.¹²

The Commission acknowledged that some local law enforcement agencies, including the claimant, employ persons who have not yet completed their basic training course, and then sponsor or provide the training themselves.¹³ Based on the statutory and regulatory scheme outlined above, however, the state has *not* mandated local agencies to do so.

In fact, the Commission recognized that there are several community colleges approved by POST offering basic training academy courses, including the course on sexual harassment in the workplace, that are open to any interested individual, whether or not employed or sponsored by a local agency. The colleges charge an average of \$2000 to cover their costs for law enforcement basic training and financial assistance is available to those students in need.¹⁴

Thus, the Commission found that the test claim statute does not mandate local agencies to provide basic training, including the course on sexual harassment, and does not mandate local agencies to incur costs to send their new employees to basic training.

The Commission further disagreed with the claimant’s arguments contained in its comments to the Draft Staff Analysis submitted on February 10, 2000, and comments to the Final Staff Analysis submitted on July 19, 2000. The claimant contended that the Commission’s past decisions regarding training are precedential and hold that when the Legislature imposes training, it is a mandate upon the local law enforcement agency. The claimant cited the Commission’s decisions in *Domestic Violence Training and Incident Reporting* (CSM – 96-362-01) and *SIDS* (CSM – 4412). The Commission determined

¹⁰ *Id.*

¹¹ See also POST’s regulation, tit. 11, Cal. Code Regs., § 1005, subd. (a)(9).

¹² Pen. Code, § 832, subd. (g), added by Stats. 1994, c. 43.

¹³ Other agencies, however, require the successful completion of POST Basic Training *before* the applicant will be considered for the job. (See, Job Announcement for Amador County Deputy Sheriff.)

¹⁴ POST Certified Basic Training Academies including Los Medanos College Basic Training Academy, charging \$2200 for California State residents and offering financial assistance; Allan Hancock College Law Enforcement Academy stating that “the course is open to law enforcement agency ‘sponsored’ recruits and other interested students”; and Golden West College, whose mission statement promises that “90% of the academy graduates received jobs within three years of completion of the academy course.”

that these prior Commission decisions are distinguishable from this test claim and should not be applied.

Domestic Violence Training and Incident Reporting involved a statute that required *veteran* law enforcement officers below the rank of supervisor to complete an updated course of instruction on domestic violence every two years. The Commission denied the test claim finding no increased “costs mandated by the state”.

The Commission recognized that the test claim statute at issue here, on the other hand, involves basic training for recruits who may or may not be employed. Thus, the Commission found that its findings in *Domestic Violence Training and Incident Reporting* do not apply to this test claim.

The Commission further determined that the statutory scheme presented by this test claim is different than the *SIDS* training test claim approved by the Commission in 1998 following the remand from the court. In *SIDS*, the Commission found that the training program for both new and veteran firefighters was a new program imposed on local agencies and not on firefighters alone. In contrast to the present claim, the *SIDS* statute expressly authorized local agencies to provide the instruction and training, and to assess a fee to cover their costs. Furthermore, unlike the training provided for law enforcement recruits, the court found *no* state training programs available to provide *SIDS* training to new and veteran firefighters. Thus, the Commission concluded that its findings in *SIDS* do not apply to this test claim.

Based on the foregoing, the Commission found that Penal Code section 13519.7, subdivision (b), is not subject to article XIII B, section 6 of the California Constitution because it does not impose any mandated duties or activities on any local governmental agency to provide basic training, including the course on sexual harassment, or to incur costs to send their new employees to basic training. Rather, the requirement to complete the basic training course on sexual harassment is a mandate imposed on the individual who seeks peace officer status.

Issue 3: Does the requirement for peace officers that completed basic training before January 1, 1995 to receive supplementary training on sexual harassment in the workplace by January 1, 1997 constitute a reimbursable state mandated program?

Penal Code section 13519.7, subdivision (c), states the following:

“All *peace officers* who have received their basic training before January 1, 1995, shall receive supplementary training on sexual harassment in the workplace by January 1, 1997.”

A. Is Penal Code section 13519.7, subdivision (c), subject to article XIII B, section 6 of the California Constitution?

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

The claimant contended that Penal Code section 13519.7, subdivision (c), requires local agencies to provide supplementary sexual harassment training to veteran officers. The claimant is requesting reimbursement for the salaries, benefits and other incidental expenses for the time that its veteran employees spend in training and the costs incurred to present the course.

The Department of Finance contended that reimbursement is not required under article XIII B, section 6 since Penal Code section 13519.7, subdivision (c), does not impose any obligations on any local law enforcement agency to provide the training. Rather, the Department contended that the statute imposes a training obligation on law enforcement officers alone.

Penal Code section 13519.7, subdivision (c), requires veteran peace officers to receive continuing education training on sexual harassment by January 1, 1997. The plain language of the test claim statute does not mandate or require local agencies to provide or pay for the supplemental training. In addition, there are no other state statutes or executive orders requiring local agencies to pay for continuing education training.

Nevertheless, Penal Code section 13519.7, subdivision (c), specifically refers to “peace officers.” Section 830.1 of the Penal Code defines “peace officers” as those persons who are “employed” by a public safety agency of a county, city or special district.

Since peace officers, by definition, are employed by local agencies, the Commission agreed with the claimant that the federal Fair Labor Standards Act (FLSA), which requires local agencies to compensate their employees for training under specified circumstances, is relevant to this claim.

Generally, the FLSA provides employee protection by establishing the minimum wage, maximum hours and overtime pay under federal law. In 1985, the United States Supreme Court found that the FLSA applies to state and local governments.¹⁵ The FLSA is codified in title 29 of the Code of Federal Regulations (CFR).

The requirement to compensate employees for training time under the FLSA is described below.

Training Conducted During Regular Working Hours

The claimant contended that since sexual harassment training is required by the state, is not voluntary, and is conducted during regular working hours, training time needs to be counted as compensable working time under 29 CFR section 785.27 of the FLSA and treated as an obligation imposed on the local agency. Section 785.27 states the following:

“Attendance at lectures, meetings, training programs and similar activities need not be counted as working time if the following four criteria are met:

- (a) Attendance is outside of the employee’s regular workings hours;
- (b) Attendance is in fact voluntary;

¹⁵ *Garcia v. San Antonio Metropolitan Transit Authority et al.* (1985) 469 U.S. 528.

- (c) The course, lecture, or meeting is not directly related to the employee's job; and
- (d) The employee does not perform any productive work during such attendance.”

The Commission agreed with the claimant that local agencies are required under the FLSA to compensate their employees for mandatory training *if* the training occurs during the employee's regular working hours. However, this raises the issue whether the obligation to pay for sexual harassment training is an obligation imposed by the state, or an obligation arising out of existing federal law through the provisions of the FLSA.

The Commission found that there is no federal statutory or regulatory scheme requiring local agencies to provide sexual harassment training to veteran officers. Rather, what sets the provisions of the FLSA in motion requiring local agencies to compensate veteran officers for sexual harassment training is the test claim statute. If the state had not created this program, veteran officers would not be required to receive sexual harassment training and local agencies would not be obligated to compensate their veteran employees for such training.

Accordingly, the Commission found that local agencies are mandated by the state through subdivision (c) of the test claim statute to provide sexual harassment training to veteran officers *if* the training occurs during the employee's regular working hours.

Training Conducted Outside Regular Working Hours

The Commission noted, however, that an exception to the FLSA was enacted in 1987, which provides that time spent by employees of state and local governments in training required for certification by a higher level of government that occurs outside of the employee's regular working hours is noncompensable. In this regard, 29 CFR section 553.226 states in pertinent part the following:

“(a) The general rules for determining the compensability of training time under the FLSA are set forth in §§ 785.27 through 785.32 of this title.

(b) While time spent in attending training required by an employer is normally considered compensable hours of work, following are situations where time spent by employees of State and local governments in required training is considered to be *noncompensable*:

(2) *Attendance outside of regular working hours at specialized or follow-up training, which is required for certification of employees of a governmental jurisdiction by law of a higher level of government (e.g., where a State or county law imposes a training obligation on city employees), does **not** constitute compensable hours of work.*” (Emphasis added.)

The Commission found that 29 CFR section 553.226, subdivision (b)(2), applies when the sexual harassment training is conducted outside the employee's regular working hours. In such cases, the local agency is not required to compensate the employee. Rather, the cost of sexual harassment training becomes a term or condition of

employment subject to the negotiation and collective bargaining between the local agency and the employee.¹⁶

Collective bargaining between local agencies and their employees is governed by the Meyers-Milias-Brown Act. (Gov. Code, §§ 3500 et al.) The Act requires the governing body of the local agency and its representatives to meet and confer in good faith regarding wages, hours and other terms of employment with representatives of employee organizations. If an agreement is reached, the parties enter into a collective bargaining agreement, or memorandum of understanding (MOU). Only upon the approval and adoption by the governing board of the local agency, the MOU becomes binding on the local agency and employees.¹⁷

Although providing or paying for sexual harassment training conducted outside the employee's regular working hours is an issue negotiated at the local level, the Commission recognized that the California Constitution prohibits the Legislature from impairing obligations or denying rights to the parties of a valid, binding contract absent an emergency.¹⁸ In the present case, the test claim statute became effective on January 1, 1994, and was not enacted as an urgency measure.

Accordingly, the Commission found that providing sexual harassment training outside the employee's regular working hours is an obligation imposed on those local agencies that, as of January 1, 1994 (the effective date of the statute) are bound by an existing MOU, which requires that the agency provide or pay for continuing education training.

However, when the existing MOU terminates, or in the case of a local agency that is not bound by an existing MOU on January 1, 1994 requiring that the agency pay for continuing education training, sexual harassment training conducted outside the employee's regular working hours becomes a negotiable matter subject to the discretion of the local agency. Thus, under such circumstances, the Commission found that the requirement to provide or pay for sexual harassment training is not an obligation imposed by the state on a local agency.

Conclusion

Based on the foregoing, the Commission found that Penal Code section 13519.7, subdivision (c), is subject to article XIII B, section 6 of the California Constitution because it imposes an obligation on local agencies to provide sexual harassment training under the following circumstances:

¹⁶ The claimant contended that 29 CFR section 553.226 is not relevant since that section addresses overtime pay. While Commission agreed that many of the 1985 amendments to the FLSA involved overtime pay for state and local governmental employees, section 553.226 addresses the compensability of training only. (52 Federal Register 2012.)

¹⁷ Gov. Code, §§ 3500, 3505, and 3505.1. The Commission analyzed the Meyers-Milias-Brown Act in the *SIDS* test claim to determine if the fee authority established in the statute could realistically be imposed on firefighter employees. Based on evidence presented at the hearing, the Commission found that even though local agencies have the unilateral authority to impose changes regarding the terms of employment, the use of the unilateral authority is rare. Therefore, the Commission determined that the authority to impose fees upon firefighters in the *SIDS* case could not be realistically exercised by local agencies.

¹⁸ Cal. Const., art. 1, § 9.

- When the sexual harassment training occurs during the employee's regular working hours; and
- When the sexual harassment training occurs outside the employee's regular working hours *and* there is an obligation imposed by an MOU existing on January 1, 1994 (the effective date of the statute), which requires that the local agency provide or pay for continuing education training.

B. Does Penal Code section 13519.7, subdivision (c), constitute a new program or higher level of service, and impose "costs mandated by the state"?

Veteran peace officers were not required to receive sexual harassment training before the enactment of the test claim statute. Thus, the Commission found that Penal Code section 13519.7, subdivision (c), constitutes a new program or higher level of service under article XIII B, section 6 of the California Constitution. The Commission continued its inquiry to determine if there are any "costs mandated by the state."

Government Code section 17514 defines "costs mandated by the state" as any *increased* costs which a local agency is required to incur as a result of any statute or executive order that mandates a new program or higher level of service.

The claimant contended that Penal Code section 13519.7, subdivision (c), results in increased costs mandated by the state in the form of salaries, benefits and other incidental expenses for the time that its veteran employees spend in training and the costs incurred to present the course. The claimant submitted cost data and records to support its claim. The claimant further contended that the costs are reimbursable, regardless of whether the county's annual training costs increase, since the test claim statute results in work being redirected by the state.

On July 19, 2000, the claimant submitted supplemental comments to the Final Staff Analysis further describing its sexual harassment training program. Attached to the supplemental comments is a document signed by Lt. Randy Olson, which states that the claimant's approved sexual harassment curriculum requires eight (8) hours of training for chiefs and above, eight (8) hours of training for managers (area and unit commanders), six (6) hours of training for supervisors (lieutenants, sergeants, and civilian equivalents), and four (4) hours of training for line personnel. The claimant has also hired a consultant to design and implement a sexual harassment prevention program.

POST stated that it developed a two-hour telecourse on sexual harassment for in-service, or veteran officers and made the telecourse available to local agencies. POST contended that since it developed the telecourse, POST estimates *no* increased costs to local agencies to present the training. However, POST estimates increased costs to local agencies for the salaries of the veteran officers attending the two-hour training while on duty.

The Department of Finance did not provide any comments on the issue of whether Penal Code section 13519.7, subdivision (c), imposes costs mandated by the state.

In order to determine if there are any costs mandated by the state, the Commission first determined the scope of the mandate.

The test claim statute expressly requires POST to develop the sexual harassment training. In this regard, the test claim statute states the following:

“In developing this training, the commission [i.e., POST] shall consult with appropriate groups and individuals having an interest and expertise in the area of sexual harassment.”

Therefore, the Commission found that local agencies are *not* required by the state to incur costs to develop or design the training course and, thus, such costs are not reimbursable under article XIII B, section 6 of the California Constitution.

The Commission further found that a *one-time, two-hour course* for each veteran officer is mandated by the state. The test claim statute requires veteran officers to receive supplemental training on sexual harassment *by* January 1, 1997. Based on the express completion date for training, the Commission found that the Legislature intended to require sexual harassment training on a one-time basis. Additionally, the sexual harassment training course developed by POST consists of two hours of training. Thus, any training on sexual harassment beyond two hours is within the discretion of the local agency.

The Commission also found that local agencies may have incurred increased costs mandated by the state to present the training in the form of materials provided to employees and/or trainer time during the two-hour course. The POST document entitled “Sexual Harassment in the Workplace, Guidelines and Curriculum” states that a written copy of the complaint procedure shall be provided to every employee. The POST document further suggests that “all instructors should have training expertise regarding sexual harassment issues.”

The question remains, however, if there are increased costs mandated by the state for the time the veteran employees spend in training.

In 1998, the Commission analyzed whether a statute requiring continuing education training for peace officers imposed “costs mandated by the state” in the *Domestic Violence Training and Incident Reporting* test claim. That test claim statute included a the following language: “The instruction required pursuant to this subdivision shall be funded from existing resources available for the training required pursuant to this section. It is the intent of the Legislature not to increase the annual training costs of local government.”

Thus, the Commission determined in the *Domestic Violence Training and Incident Reporting* test claim that if the domestic violence training course caused an increase in the total number of required continuing education hours, then the increased costs associated with the new training course were reimbursable as “costs mandated by the state”. On the other hand, if there was no overall increase in the total number of continuing education hours, then there were no increased training costs associated with the training course. Instead, the cost of the training course was accommodated or absorbed by local law enforcement agencies within their existing resources available for training.

The Commission recognized POST regulations, which provide that local law enforcement officers must receive at least 24 hours of Advanced Officer continuing education training every two years. POST regulations state in pertinent part the following:

“Continuing Professional Training (Required).

“(1) Every peace officer below the rank of a middle management position as defined in section 1001 and every designated Level 1 Reserve Officer as defined in Commission Procedure H-1-2 (a) *shall satisfactorily complete the Advanced Officer Course of 24 or more hours at least once every two years after meeting the basic training requirement.*”

“(2) The above requirement may be met by satisfactory completion of one or more Technical Courses totaling 24 or more hours, or satisfactory completion of an alternative method of compliance as determined by the Commission...”

“(3) Every regular officer, regardless of rank, may attend a certified Advanced Officer Course and the jurisdiction may be reimbursed.”

“(4) Requirements for the Advanced Officer Course are set forth in the POST Administrative Manual, section D-2.”¹⁹

The Commission found that there were no costs mandated by the state in the *Domestic Violence Training and Incident Reporting* test claim and, thus, denied the claim for the following reasons:

- *Immediately before and after* the effective date of the test claim legislation, POST’s minimum required number of continuing education hours for the law enforcement officers in question *remained the same at 24 hours*. After the operative date of the test claim statute these officers must still complete at least 24 hours of professional training every two years,
- The two hour domestic violence training update may be credited toward satisfying the officer’s 24-hour minimum,
- The two hour training is *not* separate and apart nor “on top of” the 24-hour minimum,
- POST does not mandate creation and maintenance of a separate schedule and tracking system for this two hour course,
- POST prepared and provides local agencies with the course materials and video tape to satisfy the training in question, and
- Of the 24-hour minimum, the two-hour domestic violence training update is the only course that is legislatively mandated to be continuously completed every two years by the officers in question. The officers may satisfy their remaining 22-hour requirement by choosing from *the many elective courses* certified by POST.

¹⁹ Cal.Code Regs., tit. 11, § 1005, subd. (d).

The Commission found that the facts of this case are different than the facts in the *Domestic Violence Training and Incident Reporting* test claim. Unlike the test claim statute in *Domestic Violence Training and Incident Reporting*, the test claim statute here does not contain legislative intent language that sexual harassment training shall be funded from existing resources and that the annual training costs of local government should not be increased.

Additionally, in *Domestic Violence Training and Incident Reporting*, the Commission recognized a bulletin issued by POST recommending that local agencies make the required updated domestic violence training part of the officer's continuing education. Moreover, POST interpreted the *Domestic Violence Training* statute to require the inclusion of the domestic violence training within the 24-hour continuing education requirement. These facts are not present here. Rather, POST estimates increased costs to local agencies for the sexual harassment training for the officer's salaries in the approximate amount of \$2,839,208.00.

Further, the Commission recognized that the purpose of the *Domestic Violence Training* course, as well as the other courses mandated by the Legislature during the training period in question, is to provide training to officers in their role as peace officers in the community. Sexual harassment training in the workplace, on the other hand, addresses internal employment issues and relationships with fellow co-workers.

Moreover, the Commission agreed with the claimant that a substantial number of officers may have already met their 24-hour requirement before they had to take sexual harassment training.

Thus, the Commission found that the two-hour sexual harassment training is not accommodated or absorbed by local law enforcement agencies within their existing resources available for training. Rather, the Commission determined that local agencies incur increased "costs mandated by the state" for the time spent by veteran officers in the one-time, two-hour sexual harassment training course. In this regard, the Commission found that Penal Code section 13519.7, subdivision (c), does impose "costs mandated by the state".

Conclusion

Based on the foregoing, the Commission found that Penal Code section 13519.7, subdivision (c), constitutes a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 when the sexual harassment training occurs during the employee's regular working hours, or when the sexual harassment training occurs outside the employee's regular working hours *and* is an obligation imposed by an MOU existing on

January 1, 1994 (the effective date of the statute), which requires that the local agency provide or pay for continuing education training, for the following increased “costs mandated by the state”:

- Salaries, benefits, and incidental expenses for each veteran officer to receive a one-time, two-hour course on sexual harassment; and
- Costs to present the one-time, two-hour course in the form of materials and trainer time.

CONCLUSION

Based on the foregoing, the Commission concluded the following:

Issue 1

The sexual harassment complaint guidelines, entitled “Sexual Harassment in the Workplace, Guidelines and Curriculum, 1994,” which were developed by POST in response to Penal Code section 13519.7, subdivision (a), constitute a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514;

Issue 2

Penal Code section 13519.7, subdivision (b), which requires that the course of basic training include instruction on sexual harassment, does not constitute a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution since it does not impose any mandated duties on the local agency; and

Issue 3

Penal Code section 13519.7, subdivision (c), which requires peace officers to receive a one-time, two-hour course on sexual harassment by January 1, 1997, constitutes a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 when the sexual harassment training occurs during the employee’s regular working hours, or when the sexual harassment training occurs outside the employee’s regular working hours *and* is an obligation imposed by an MOU existing on January 1, 1994 (the effective date of the statute), which requires that the local agency provide or pay for continuing education training, for the following increased “costs mandated by the state”:

- Salaries, benefits, and incidental expenses for each veteran officer to receive a one-time, two-hour course on sexual harassment; and
- Costs to present the one-time, two-hour course in the form of materials and trainer time.

Parameters and Guidelines

Penal Code Section 13519.7, Subdivisions (a) and (c)
 Statutes of 1993, Chapter 126

Law Enforcement Sexual Harassment Complaint Procedures and Training

I. SUMMARY OF MANDATE

Penal Code Section 13519.7 as added by Statutes of 1993, Chapter 126, requires, in subdivision (a), that city police departments, county sheriffs' departments, districts, and state university departments follow sexual harassment complaint guidelines developed by the Commission on Peace Officer Standards and Training (POST) and, in subdivision (c), that peace officers, who completed their basic training before January 1, 1995, receive supplementary training on sexual harassment in the workplace by January 1, 1997.

On September 28, 2000, the Commission on State Mandates (Commission) adopted its Statement of Decision on the subject test claim, finding that Penal Code section 13519.7, subdivisions (a) and (c), constitutes a reimbursable state mandated program as follows:

“The sexual harassment guidelines, entitled “Sexual Harassment in the Workplace, Guidelines and Curriculum, 1994” which were developed by POST in response to Penal Code section 13519.7, subdivision (a), constitute a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514;”

“Penal Code section 13519.7, subdivision (c), which requires peace officers to receive a one-time, two-hour course on sexual harassment by January 1, 1997, constitutes a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 when the sexual harassment training occurs during the employee's regular working hours, or when the sexual harassment training occurs outside the employee's regular working hours and is an obligation imposed by an MOU existing on January 1, 1994 (the effective date of the statute), which requires the local agency to provide or pay for continuing education training, for the following increased ‘costs mandated by the state’:

- Salaries, benefits, and incidental expenses for each veteran officer to receive a one-time, two-hour course on sexual harassment; and
- Costs to present the one-time, two-hour course in the form of materials and trainer time.”

II. 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.¹

III. PERIOD OF REIMBURSEMENT

Section 17557 of the Government Code, prior to its amendment by Statutes of 1998, Chapter 681, 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. This test claim was filed by the County of Los Angeles on December 23, 1997. Therefore, costs incurred in implementing Statutes of 1993, Chapter 126, after July 1, 1996, are eligible for reimbursement.

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 shall be submitted within 120 days of notification by the State Controller of the enactment of the claim's bill.

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

A. Sexual Harassment Complaint Procedures

Local law enforcement agency costs incurred in following the sexual harassment guidelines developed by POST are reimbursable as follows:

One-time Costs

For the development of a local law enforcement agency's sexual harassment complaint policies and procedures, including:

1. Developing a formal written procedure for the acceptance of complaints from peace officers who are the victims of sexual harassment training in the workplace,
2. Providing a written copy of the local agency's complaint procedure to every peace officer employee,
3. Using definitions and examples of sexual harassment as contained in the Code of Federal Regulations (29 CFR 1604.11) and California Government Code Section 12950,
4. Identifying the specific steps complainants should follow for initiating a complaint,
5. Addressing supervisory/management responsibilities to intervene and/or initiate an investigation when possible sexual harassment is observed in the workplace,
6. Stating that agencies must attempt to prevent retaliation, and under the law, sanctions can be imposed if complainants and/or witnesses are subjected to retaliation,
7. Identifying parties to whom the incident should/may be reported, allowing complainant to circumvent their normal chain of command in order to report a sexual harassment incident,

¹ Penal Code section 13507 defines "district" to include the school districts, community college districts, and special districts authorized by statute to maintain a police department for purposes of the chapter on local officer standards and training.

including stating that the complainant is always entitled to go directly to the California Department of Fair Employment Housing (DFEH) and/ or the Federal Equal Employment Opportunity Commission (EEOC) to file a complaint,

8. Requiring that all complaints shall be fully documented by the person receiving the complaint,
9. Requiring that all sexual harassment prevention training shall be documented for each person and maintained in an appropriate file.

B. Sexual Harassment Training

Local law enforcement agency costs incurred in conducting sexual harassment training during their employee's regular working hours, or outside the employee's regular working hours and is an obligation imposed by an MOU existing on January 1, 1994 which requires that the local agency provide or pay for continuing education training, are reimbursable.

Claimant-Sponsored Training

Costs incurred in conducting a one-time, two-hour supplementary training class on sexual harassment in the workplace for each peace officer who completed basic training before January 1, 1995, are reimbursable as follows:

1. Training the trainers to conduct the training,
2. Obtaining training materials including, but not limited to, training videos and audio visual aids,
3. A one-time, two-hour sexual harassment training course for each peace officer veteran that includes:
 - a. Instructor time to prepare and teach the two-hour sexual harassment class,
 - b. Trainee time to attend the two-hour sexual harassment class.

Outside Training

Costs incurred in attending a one-time, two-hour outside training class which meets the requirements of the mandated training on sexual harassment in the workplace for peace officers, who completed their basic training before January 1, 1995, are reimbursable as follows:

1. Trainee time to attend the one-time, two-hour sexual harassment class,
2. Training fees for each peace officer attending the one-time, two-hour class,
3. Purchase of training materials for each peace officer attending the one-time, two-hour class.

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 and they must be supported by the following cost element information:

A. Direct Cost

Direct cost are defined as cost that can be traced to specific goods, services, units, programs, activities or functions and 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, productive hourly rate and related fringe benefits.

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

2. Materials and Supplies

Only expenditures that can be identified as direct costs 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 contract 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.

4. Fixed Assets

List the costs of the fixed assets that have been acquired specifically for the purpose of this mandate. If the fixed asset is utilized in some way not directly related to the mandated program, only the pro-rata portion of the asset, which is used for the purposes of the mandated program, is eligible for reimbursement.

5. 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 the travel, inclusive dates and times of travel, destination points and travel costs.

6. Training

The cost of training an employee to perform the mandated activities as specified in section IV of these parameters and guidelines, 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 of trainees and trainers, registration fees, transportation, lodging, per diem, and incidental audiovisual aids. If the training encompasses subjects broader than this mandate, only the pro rata portion of the training costs can be claimed.

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.

1. Special Districts, Counties and Cities

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 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%.

2. School Districts

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

3. Community Colleges

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. SUPPORTING DATA

For audit purposes, all costs claimed shall be traceable to source documents (e.g., invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations) 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).

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, 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 Office claiming instructions, for those costs mandated by the State contained herein.

IX. PARAMETERS AND GUIDELINES AMENDMENTS

Pursuant to Title 2, California Code of Regulations, section 1183.2, Parameters and Guidelines amendments filed before the deadline for initial claims as specified in the Claiming Instructions shall apply to all years eligible for reimbursement as defined in the original parameters and guidelines. A Parameters and Guidelines amendment filed after the initial claiming deadline must be submitted on or before January 15, following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.

ITEM 4

STAFF ANALYSIS CLAIMANT'S PROPOSED PARAMETERS AND GUIDELINES, AS MODIFIED BY STAFF

Penal Code Section 13519.7, subdivisions (a) and (c)
 Statutes of 1993, Chapter 126

Law Enforcement Sexual Harassment Complaint Procedures and Training

EXECUTIVE SUMMARY

Penal Code section 13519.7 as added by Statutes of 1993, Chapter 126, requires, in subdivision (a), that city police departments, county sheriffs' departments, districts, and state university departments follow sexual harassment complaint guidelines developed by the Commission on Peace Officer Standards and Training [POST] and, in subdivision (c), that peace officers, who completed their basic training before January 1, 1995, receive supplementary training on sexual harassment in the workplace by January 1, 1997.

On September 28, 2000, the Commission on State Mandates (Commission) adopted its Statement of Decision finding that Penal Code section 13519.7, subdivisions (a) and (c), constitutes a reimbursable state mandated program.

Staff Analysis

The claimant submitted its proposed parameters and guidelines on October 23, 2000. Staff received comments on the claimant's proposal from the State Controller's Office (SCO), dated December 13, 2000, and the Department of Finance (DOF), dated December 15, 2000. The claimant responded to the state agency comments by letter dated January 19, 2001.

Staff finds that local agencies required to comply with this mandate include 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. Staff revised section II. Eligible Claimants accordingly. In addition, staff revised B. Indirect Costs under section V. Claim Preparation and Submission to include indirect costs reimbursement for school districts and community colleges.

Staff made several modifications to the claimant's proposed parameters and guidelines in section IV. Reimbursable Activities. The claimant proposed reimbursement of continuing costs to investigate and take remedial actions following the receipt of a sexual harassment complaint. Staff finds that these activities were not addressed in the Commission's Statement of Decision, and go beyond the scope of the mandate. More importantly, local agencies were required under *prior* state and federal law to take immediate and appropriate corrective action upon receipt of a sexual harassment complaint, including fully informing the complainant of their rights, fully and effectively investigating the charge, and taking remedial action if harassment is proven. Therefore, staff deleted all activities under "Continuing Costs."

Under B. Sexual Harassment Training, the claimant's proposal includes costs to design and develop the sexual harassment training course. The Commission's Statement of Decision specifically states that these costs are not reimbursable. Therefore, staff modified this section to delete all references to designing and developing the course. Staff also included the Commission's finding that the training was limited to a one-time, two-hour course.

Staff added Section IX. Parameters and Guidelines Amendments to cite the Commission's regulations regarding amendments to parameters and guidelines.

No comments were received on, nor did staff make any substantive changes to, sections: I. Summary of the Mandate; III. Period of Reimbursement; VI. Supporting Data; VII. Offsetting Savings and Other Reimbursements; or VIII. Required Certification. Non-substantive changes were made for the purposes of clarification, conformity to the Statement of Decision, and consistency with language in recently adopted Parameters and Guidelines.

Staff Recommendation

Staff recommends that the Commission adopt the claimant's proposed parameters and guidelines, as Modified by Commission Staff, beginning on page seven.

Claimant

County of Los Angeles

Chronology

09/28/00 Commission adopted Statement of Decision
10/23/00 Claimant submitted Proposed Parameters and Guidelines
12/13/00 The State Controller's Office (SCO) submitted comments
12/15/00 The Department of Finance (DOF) submitted comments
01/19/01 Claimant submitted response to state agency comments
02/09/01 Commission issued staff analysis

Summary of the Mandate

Penal Code section 13519.7 as added by Statutes of 1993, Chapter 126, requires, in subdivision (a), that city police departments, county sheriffs' departments, districts, and state university departments follow sexual harassment complaint guidelines developed by the Commission on Peace Officer Standards and Training [POST] and, in subdivision (c), that peace officers, who completed their basic training before January 1, 1995, receive supplementary training on sexual harassment in the workplace by January 1, 1997.

On September 28, 2000, the Commission on State Mandates (Commission) adopted its Statement of Decision¹ finding that Penal Code section 13519.7, subdivisions (a) and (c), constitutes a reimbursable state mandated program.

Staff Analysis

The claimant submitted the proposed parameters and guidelines on October 23, 2000.² Staff received comments on the claimant's proposal from the State Controller's Office (SCO), dated December 13, 2000,³ and the Department of Finance (DOF), dated December 15, 2000.⁴ The claimant responded to the state agency comments by letter dated January 19, 2001.⁵

No comments were received on, nor did staff make any substantive changes to, sections: I. Summary of the Mandate; III. Period of Reimbursement; VI. Supporting Data; VII. Offsetting Savings and Other Reimbursements; or VIII. Required Certification. Non-substantive changes were made for the purposes of clarification, conformity to the Statement of Decision, and consistency with language in recently adopted parameters and guidelines.

Staff modified the claimant's proposed parameters and guidelines, as discussed below:

¹ Exhibit A, bates page 15.

² Exhibit B, bates page 41.

³ Exhibit C, bates page 61.

⁴ Exhibit D, bates page 65.

⁵ Exhibit E, bates page 67.

II. Eligible Claimants

The claimant's proposal included only cities and counties. Pursuant to Penal Code section 13507,⁶ local agencies required to comply with this mandate include 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. Staff revised this section accordingly.

IV. Reimbursable Activities

The claimant's proposal describes reimbursable activities separately for the sexual harassment complaint program and the sexual harassment training program. In addition, the claimant included ongoing and continuing activities for the sexual harassment complaint program.

A. Sexual Harassment Complaint Procedures

The SCO suggested a nonsubstantive, technical amendment to the "One-time Costs" portion of this section to prevent reimbursement of costs that are not required by the mandate. The claimant concurs with the change. Staff agreed and included the SCO's proposed modification.

The claimant's proposal also includes ongoing activities to *implement* POST's sexual harassment guidelines once a sexual harassment complaint is received. For example, the claimant requests reimbursement for investigating complaints, interviewing the alleged harasser and witnesses, and documenting the complaint. For the reasons provided below, staff finds that reimbursement for implementation of the sexual harassment guidelines is not required under article XIII B, section 6 of the California Constitution.

First, the test claim legislation does not require local law enforcement agencies to investigate or document sexual harassment complaints. Rather, Penal Code section 13519.7 and the executive order issued by POST ("Sexual Harassment in the Workplace Guidelines and Curriculum, 1994") simply require local law enforcement agencies to develop formal written procedures, as specified by POST, for the acceptance of sexual harassment complaints, and to provide supplemental training for veteran officers on sexual harassment in the workplace. The Senate Floor Analysis of the test claim statute also states that the purpose of the bill is "to provide complaint guidelines and educational instruction on sexual harassment in the workplace for peace officers."⁷

Moreover, implementation of the sexual harassment guidelines does not constitute a new program or higher level of service. Local agencies were required under *prior* state and federal law to take immediate and appropriate corrective action, including investigation, upon receipt of a sexual harassment complaint.

⁶ For purposes of the chapter on local officer standards and training, Penal Code section 13507 defines "district" to include:

- (a) A regional park district.
- (b) A district authorized by statute to maintain a police department.
- (c) The University of California.
- (d) The California State University and Colleges.
- (e) A community college district.
- (f) A school district.
- (g) A transit district.
- (h) A harbor district.

⁷ Exhibit F, Senate Floor Analysis of Statutes of 1993, Chapter 126, dated May 11, 1993, bates page 75.

Since 1980, Government Code section 12940 has stated the following: “Harassment of an employee or applicant by an employee other than an agent or supervisor shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and corrective action.”⁸ Regulations from the Department of Fair Employment and Housing (DFEH) contain the same language.⁹ The DFEH interprets Government Code section 12940 to require the employer to “fully inform the complainant of their rights, fully and effectively investigate the charge, and take remedial action if the harassment is proven.”¹⁰ Moreover, the California Supreme Court has held that public entities may be directly liable to sexually harassed employees for compensatory damages if found to be in violation of Government Code section 12940.¹¹

Furthermore, since 1964, harassment on the basis of gender is a violation of the federal Civil Rights Act. In 1980, the Equal Employment Opportunity Commission (EEOC) adopted regulations stating that “an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.”¹² In 1991, the Ninth Circuit Court of Appeals found that “immediate and corrective action” includes fully investigating the allegations and taking remedial action that is reasonably calculated to end the harassment.¹³

Based on the foregoing analysis, staff deleted the ongoing and continuing activities.

B. Sexual Harassment Training

The claimant’s proposed parameters and guidelines include costs to design and develop the sexual harassment course. The Commission’s Statement of Decision states: “...the Commission found that local agencies are *not* required by the state to incur costs to develop or design the training course and, thus, such costs are not reimbursable under article XIII B, section 6 of the California Constitution.” Therefore, staff finds that these costs are not reimbursable. Thus, staff modified this section to delete all references to designing and developing the course.

Staff also added language consistent with the Commission’s Statement of Decision, that sexual harassment training is limited to a one-time, two-hour course.

V. Claim Preparation and Submission

The claimant’s proposal only described indirect costs reimbursement for cities and counties. Since staff revised the eligible claimants section to include city and county, school districts and community college districts that employ peace officers, and special districts that are authorized by statute to maintain a police department, staff also revised this section to include indirect costs reimbursement for those entities.

IX. Parameters and Guidelines Amendments

Staff added this section to cite the Commission’s regulations regarding amendments to parameters and guidelines.

⁸ Exhibit G, POST’s Guidelines, bates pages 168-174.

⁹ Exhibit H, Title 2, California Code of Regulations, section 7287.6, bates page 181.

¹⁰ Exhibit I, DFEH complaint procedure, bates page 183.

¹¹ Exhibit J, *Farmers Insurance Group v. County of Santa Clara* (1995) 11 Cal.4th 992, bates page 185.

¹² Exhibit K, 29 Code of Federal Regulations section 1604.11, bates page 221.

¹³ Exhibit L, *Ellison v. Brady* (1991) 924 F.2d 872, bates page 223.

Staff Recommendation

Staff recommends that the Commission adopt the claimant's proposed parameters and guidelines, as Modified by Commission Staff, beginning on page seven.

COMMISSION ON STATE MANDATES**Exhibit E**

980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
; (916) 445-0278
...ail: csminfo@csm.ca.gov

June 23, 2009

Ms. Jeannie Oropeza
Department of Finance
Education Systems Unit
915 L Street, 7th Floor
Sacramento, CA 95814

And Affected State Agencies and Interested Parties (See Enclosed Mailing List)

Re: Request to Amend Parameters and Guidelines
Department of Finance, Requestor
Law Enforcement Sexual Harassment Complaint Procedures and Training
05-PGA-08 (97-TC-07)
Penal Code Section 13519.7
Statutes of 1993, Chapter 126

Dear Ms. Oropeza:

The draft staff analysis on the above-named matter is enclosed for your review and comment.

Written Comments

Any party or interested person may file written comments on the draft staff analysis and proposed amendments by Thursday, **July 14, 2009**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. (Cal. Code Regs., tit. 2, § 1181.2.) If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

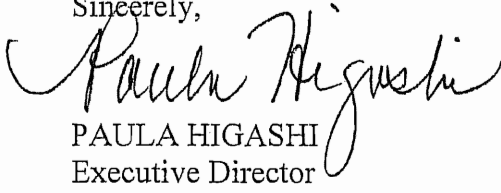
Hearing

This matter is set for hearing on **Friday, July 31, 2009**, at 9:30 a.m., Room 447 of the State Capitol, Sacramento, California. The final staff analysis will be issued on or about July 17, 2009. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

Ms. Jeannie Oropeza
05-PGA-08
June 23, 2009
Page 2

Please contact Camille Shelton, Chief Legal Counsel, at (916) 323-3562 if you have questions.

Sincerely,


PAULA HIGASHI
Executive Director

Enclosure

J:\mandates\2005\pga\05pga08\dsatrans

ITEM 16
REQUEST TO AMEND PARAMETERS AND GUIDELINES
DRAFT 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

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.

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.¹

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*

¹ Exhibit A.

Procedures and Training (97-TC-07) test claim.² 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.³ 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.⁴ 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

² Exhibit B.

³ Exhibit C.

⁴ *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.

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.⁵ 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.

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.⁶

⁵ Code of Civil Procedure, section 338, subdivision (a); *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 534.

⁶ *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

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.

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.

Commission on State Mandates

Original List Date: 10/25/2005
Last Updated: 6/23/2009
List Print Date: 06/23/2009
Claim Number: 05-PGA-08
Issue: Law Enforcement Sexual Harassment Complaint Procedures and Training

Agenda Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Mr. Keith B. Petersen SixTen & Associates 3841 North Freeway Blvd., Suite 170 Sacramento, CA 95834	Tel: (916) 565-6104 Fax: (916) 564-6103
Mr. Arthur Palkowitz San Diego Unified School District 4100 Normal Street, Room 3126 San Diego, CA 92103-2682	Tel: (619) 725-7786 Fax: (619) 725-7569
Mr. Patrick Day San Jose Unified School District 855 Lenzen Avenue San Jose, CA 95126-2736	Tel: (408) 535-6572 Fax: (408) 535-6692
Mr. Robert Miyashiro Education Mandated Cost Network 1121 L Street, Suite 1060 Sacramento, CA 95814	Tel: (916) 446-7517 Fax: (916) 446-2011
Ms. Carla Castaneda Department of Finance (A-15) 915 L Street, 12th Floor Sacramento, CA 95814	Tel: (916) 445-3274 Fax: (916) 323-9584
Ms. Jeannie Oropeza Department of Finance (A-15) Education Systems Unit 915 L Street, 7th Floor Sacramento, CA 95814	Tel: (916) 445-0328 Fax: (916) 323-9530
Ms. Annette Chinn Cost Recovery Systems, Inc. 705-2 East Bidwell Street, #294 Folsom, CA 95630	Tel: (916) 939-7901 Fax: (916) 939-7801

Mr. Allan Burdick MAXIMUS 3130 Kilgore Road, Suite 400 Rancho Cordova, CA 95670	Tel: (916) 471-5538 Fax: (916) 366-4838
Ms. Susan Geanacou Department of Finance (A-15) 915 L Street, Suite 1280 Sacramento, CA 95814	Tel: (916) 445-3274 Fax: (916) 449-5252
Ms. Ginny Brummels State Controller's Office (B-08) Division of Accounting & Reporting 3301 C Street, Suite 500 Sacramento, CA 95816	Tel: (916) 324-0256 Fax: (916) 323-6527
Mr. Leonard Kaye County of Los Angeles Auditor-Controller's Office 500 W. Temple Street, Room 603 Los Angeles, CA 90012	Tel: (213) 974-9791 Fax: (213) 617-8106
Ms. Jolene Tollenaar MGT of America 455 Capitol Mall, Suite 600 Sacramento, CA 95814	Tel: (916) 712-4490 Fax: (916) 290-0121
Mr. David Wellhouse David Wellhouse & Associates, Inc. 9175 Kiefer Blvd, Suite 121 Sacramento, CA 95826	Tel: (916) 368-9244 Fax: (916) 368-5723
Ms. Harmeet Barkschat Mandate Resource Services, LLC 5325 Elkhorn Blvd. #307 Sacramento, CA 95842	Tel: (916) 727-1350 Fax: (916) 727-1734
Mr. Steve Smith Steve Smith Enterprises, Inc. 2200 Sunrise Blvd., Suite 220 Gold River, CA 95670	Tel: (916) 852-8970 Fax: (916) 852-8978
Mr. Glen Everroad City of Newport Beach 3300 Newport Blvd. P. O. Box 1768 Newport Beach, CA 92659-1768	Tel: (949) 644-3127 Fax: (949) 644-3339